

103^D CONGRESS
2^D SESSION

H. R. 4328

To amend the Office of Federal Procurement Policy Act to reform the Federal acquisition process, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 1994

Mr. CONYERS (for himself and Mr. CLINGER) introduced the following bill;
which was referred to the Committee on Government Operations

A BILL

To amend the Office of Federal Procurement Policy Act to reform the Federal acquisition process, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Acquisition
5 Reform Act of 1994”.

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

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—CONTRACT FORMATION

Subtitle A—Competition Statutes

PART I—COMPETITION REQUIREMENTS

Sec. 1051. Competition requirements.

PART II—PLANNING, SOLICITATION, EVALUATION, AND AWARD

- Sec. 1061. Solicitation, evaluation, and award.
- Sec. 1062. Solicitation provision regarding evaluation of purchase options.
- Sec. 1063. Prompt notice of award.
- Sec. 1064. Post-award debriefings.
- Sec. 1065. Protest file.
- Sec. 1066. Award of costs and fees in agency settlement of protests.
- Sec. 1067. Award of multiple contracts.

PART III—KINDS OF CONTRACTS

- Sec. 1071. Agency head determination regarding use of cost type or incentive contract.
- Sec. 1072. Multiyear contracting authority.
- Sec. 1073. Severable services contracts crossing fiscal years.
- Sec. 1074. Economy Act purchases.

PART IV—MISCELLANEOUS

- Sec. 1091. Policy regarding consideration of contractor past performance.
- Sec. 1092. Repeal of requirement for annual report on competition.
- Sec. 1093. Discouragement of nonstandard contract clauses.
- Sec. 1094. Repeal of obsolete provision.

Subtitle B—Truth in Negotiations

- Sec. 1251. Provisions to ensure uniform treatment of cost or pricing data.

Subtitle C—Procurement Protests

PART I—PROTESTS TO THE COMPTROLLER GENERAL

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

PART II—PROTESTS IN PROCUREMENTS OF AUTOMATIC DATA PROCESSING

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

Subtitle D—Definitions and Other Matters

- Sec. 1551. Definitions.

- Sec. 1552. Delegation of procurement functions.
- Sec. 1553. Determinations and decisions.
- Sec. 1554. Research, development, and production costs.
- Sec. 1555. Repeals.
- Sec. 1556. Cooperative purchasing.

TITLE II—CONTRACT ADMINISTRATION

Subtitle A—Contract Payment

- Sec. 2051. Contract financing.

Subtitle B—Cost Principles

- Sec. 2151. Allowable contract costs.
- Sec. 2152. Travel expenses of Government contractors.

Subtitle C—Audit and Access to Records

- Sec. 2251. Authority to examine records of contractors.

Subtitle D—Cost Accounting Standards

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

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

Subtitle A—Simplified Acquisition Threshold

PART I—ESTABLISHMENT OF THRESHOLD

- Sec. 3001. Establishment of simplified acquisition threshold.
- Sec. 3002. Federal acquisition computer network.
- Sec. 3003. Implementation in executive agencies.

PART II—SIMPLIFICATION OF PROCEDURES

- Sec. 3011. Simplified acquisition procedures.
- Sec. 3012. Small business provisions.
- Sec. 3013. Procedures for purchases below micro-purchase threshold.
- Sec. 3014. Procurement notice.
- Sec. 3015. Small business reservation.
- Sec. 3016. GAO test and report on performance of simplified acquisition threshold.

PART III—INAPPLICABILITY OF LAWS TO, AND WAIVER OF LAWS FOR, ACQUISITIONS NOT IN EXCESS OF SIMPLIFIED ACQUISITION THRESHOLD

- Sec. 3021. Inapplicability of future enacted procurement laws to contracts not exceeding the simplified acquisition threshold.
- Sec. 3022. Authority to waive procurement laws for contracts not exceeding the simplified acquisition threshold.

PART IV—REVISION OF REGULATIONS

- Sec. 3081. Revision required.

Subtitle B—Socioeconomic and Small Business Laws

- Sec. 3101. Payment protections for subcontractors and suppliers.
- Sec. 3102. Small business procurement advisory council.

Subtitle C—Miscellaneous Acquisition Laws

- Sec. 3151. Restriction on use of noncompetitive procedures for procurement from a specified source.
- Sec. 3152. Repeal of obsolete provision.

TITLE IV—STANDARDS OF CONDUCT

- Sec. 4001. Contracting functions performed by Federal personnel.
- Sec. 4002. Repeal of executed requirement for study and report.
- Sec. 4003. Interests of Members of Congress.
- Sec. 4004. Waiting period for significant changes proposed for acquisition regulations.

TITLE V—COMMERCIAL ITEMS

- Sec. 5001. Definitions.
- Sec. 5002. Preference for acquisition of commercial items and nondevelopmental items.
- Sec. 5003. Acquisition of commercial items.
- Sec. 5004. Principle of construction with future laws.
- Sec. 5005. Authority to waive certain procurement laws for contracts for commercial items.
- Sec. 5006. Flexible deadlines for submission of offers of commercial items.
- Sec. 5007. Additional responsibilities for Advocates for Competition.
- Sec. 5008. Provisions not affected.
- Sec. 5009. Comptroller General review of Federal government use of market research.

TITLE VI—MISCELLANEOUS PROVISIONS

- Sec. 6001. Test program.
- Sec. 6002. Study of participation by certain small businesses in Federal procurement.
- Sec. 6003. Furtherance of government-wide contract goal for small disadvantaged businesses and certain institutions of higher education.
- Sec. 6004. Education and training.
- Sec. 6005. Sense of Congress on negotiated rulemaking.
- Sec. 6006. Vendor and employee excellence awards.
- Sec. 6007. Technical and clerical amendments.

TITLE VII—EFFECTIVE DATES AND REGULATIONS

- Sec. 7001. Effective dates.
- Sec. 7002. Regulations.
- Sec. 7003. Evaluation by the Comptroller General.
- Sec. 7004. Data collection through the Federal procurement data system.

1 **TITLE I—CONTRACT FORMATION**

2 **Subtitle A—Competition Statutes**

3 **PART I—COMPETITION REQUIREMENTS**

4 **SEC. 1051. COMPETITION REQUIREMENTS.**

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

8 **“SEC. 29. COMPETITION REQUIREMENTS.**

9 “(a)(1) Except as provided in subsections (b), (c),
10 and (g) and except in the case of procurement procedures
11 otherwise expressly authorized by statute, an executive
12 agency in conducting a procurement for property or serv-
13 ices—

14 “(A) shall obtain full and open competition
15 through the use of competitive procedures in accord-
16 ance with the requirements of this title and the Fed-
17 eral Acquisition Regulation; and

18 “(B) shall use the competitive procedure or
19 combination of competitive procedures that is best
20 suited under the circumstances of the procurement.

21 “(2) In determining the competitive procedures ap-
22 propriate under the circumstances, an executive agency—

23 “(A) shall solicit sealed bids if—

24 “(i) time permits the solicitation, submis-
25 sion, and evaluation of sealed bids;

1 “(ii) the award will be made on the basis
2 of price and other price-related factors;

3 “(iii) it is not necessary to conduct discus-
4 sions with the responding sources about their
5 bids; and

6 “(iv) there is a reasonable expectation of
7 receiving more than one sealed bid; and

8 “(B) shall request competitive proposals if
9 sealed bids are not appropriate under clause (A).

10 “(b)(1) An executive agency may provide for the pro-
11 curement of property or services covered by this section
12 using competitive procedures but excluding a particular
13 source in order to establish or maintain any alternative
14 source or sources of supply for that property or service
15 if the agency head determines that to do so—

16 “(A) would increase or maintain competition
17 and would likely result in reduced overall costs for
18 such procurement, or for any anticipated procure-
19 ment, of such property or services;

20 “(B) would be in the interest of national de-
21 fense in having a facility (or a producer, manufac-
22 turer, or other supplier) available for furnishing the
23 property or service in case of a national emergency
24 or industrial mobilization;

1 “(C) would be in the interest of national de-
2 fense in establishing or maintaining an essential en-
3 gineering, research, or development capability to be
4 provided by an educational or other nonprofit insti-
5 tution or a federally funded research and develop-
6 ment center;

7 “(D) would ensure the continuous availability of
8 a reliable source of supply of such property or serv-
9 ice;

10 “(E) would satisfy projected needs for such
11 property or service determined on the basis of a his-
12 tory of high demand for the property or service; or

13 “(F) in the case of medical supplies, safety sup-
14 plies, or emergency supplies, would satisfy a critical
15 need for such supplies.

16 “(2) The determination required of the agency head
17 in paragraph (1) may not be made for a class of purchases
18 or contracts.

19 “(3) An executive agency may provide for the pro-
20 curement of property or services covered by this section
21 using competitive procedures, but excluding other than
22 small business concerns in furtherance of sections 9 and
23 15 of the Small Business Act (15 U.S.C. 639; 644).

24 “(4) A contract awarded pursuant to the competitive
25 procedures referred to in paragraphs (1) and (3) shall not

1 be subject to the justification and approval required by
2 subsection (f)(1).

3 “(c) An executive agency may use procedures other
4 than competitive procedures only when—

5 “(1) the property or services needed by the ex-
6 ecutive agency are available from only one respon-
7 sible source and no other type of property or services
8 will satisfy the needs of the executive agency;

9 “(2) the executive agency’s need for the prop-
10 erty or services is of such an unusual and compelling
11 urgency that the Government would be seriously in-
12 jured unless the executive agency is permitted to
13 limit the number of sources from which it solicits
14 bids or proposals;

15 “(3) it is necessary to award the contract to a
16 particular source or sources in order (A) to maintain
17 a facility, producer, manufacturer, or other supplier
18 available for furnishing property or services in case
19 of a national emergency or to achieve industrial mo-
20 bilization, or (B) to establish or maintain an essen-
21 tial engineering, research, or development capability
22 to be provided by an educational or other nonprofit
23 institution or a federally funded research and devel-
24 opment center;

1 “(4) the terms of an international agreement or
2 treaty between the United States Government and a
3 foreign government or international organization, or
4 the written directions of a foreign government reim-
5 bursing the executive agency for the cost of the pro-
6 curement of the property or services for such gov-
7 ernment, have the effect of requiring the use of pro-
8 cedures other than competitive procedures;

9 “(5) a statute expressly authorizes or requires
10 that the procurement be made through another exec-
11 utive agency or from a specified source, or the agen-
12 cy’s need is for a brand-name commercial item for
13 authorized resale;

14 “(6) the disclosure of the executive agency’s
15 needs would compromise the national security unless
16 the agency is permitted to limit the number of
17 sources from which it solicits bids or proposals; or

18 “(7) the head of the executive agency—

19 “(A) determines that it is necessary in the
20 public interest to use procedures other than
21 competitive procedures in the particular pro-
22 curement concerned, and

23 “(B) notifies the Congress in writing of
24 such determination not less than 30 days before
25 the award of the contract.

1 “(d)(1) For the purposes of applying subsection
2 (c)(1)—

3 “(A) in the case of a contract for property or
4 services to be awarded on the basis of acceptance of
5 an unsolicited research proposal, the property or
6 services shall be considered to be available from only
7 one source if the source has submitted an unsolicited
8 research proposal that demonstrates a unique and
9 innovative concept the substance of which is not oth-
10 erwise available to the United States and does not
11 resemble the substance of a pending competitive pro-
12 curement; and

13 “(B) in the case of a follow-on contract for the
14 continued development or production of a major sys-
15 tem or highly specialized equipment when it is likely
16 that award to a source other than the original
17 source would result in (i) substantial duplication of
18 cost to the Government which is not expected to be
19 recovered through competition, or (ii) unacceptable
20 delays in fulfilling the executive agency’s needs, such
21 property may be deemed to be available only from
22 the original source and may be procured through
23 procedures other than competitive procedures.

24 “(2) The authority of the head of an executive agency
25 under subsection (c)(7) may not be delegated.

1 “(e) An executive agency using procedures other than
2 competitive procedures to procure property or services by
3 reason of the application of subsection (c)(2) or (c)(6)
4 shall request offers from as many potential sources as is
5 practicable under the circumstances.

6 “(f)(1) Except as provided in paragraph (2), an execu-
7 tive agency may not award a contract using procedures
8 other than competitive procedures unless—

9 “(A) the contracting officer for the contract
10 justifies the use of such procedures in writing and
11 certifies the accuracy and completeness of the jus-
12 tification;

13 “(B) the justification is approved—

14 “(i) in the case of a contract for an
15 amount exceeding \$100,000 (but equal to or
16 less than \$1,000,000), by the competition advo-
17 cate for the procuring activity (without further
18 delegation) or by an official referred to in
19 clause (ii), (iii), or (iv);

20 “(ii) in the case of a contract for an
21 amount exceeding \$1,000,000 (but equal to or
22 less than \$10,000,000), by the head of the pro-
23 curing activity or a delegate who, if a member
24 of the armed forces, is a general or flag officer
25 or, if a civilian; is serving in a position in grade

1 GS-16 or above under the General Schedule (or
2 in a comparable or higher position under an-
3 other schedule); or

4 “(iii) in the case of a contract for an
5 amount exceeding \$10,000,000, by the senior
6 procurement executive of the agency designated
7 pursuant to section 16(3) (without further dele-
8 gation); and

9 “(C) any required notice has been published
10 with respect to such contract pursuant to section 18
11 and all bids or proposals received in response to
12 such notice have been considered by such executive
13 agency.

14 “(2) In the case of a procurement permitted by sub-
15 section (c)(2), the justification and approval required by
16 paragraph (1) may be made after the contract is awarded.
17 The justification and approval required by paragraph (1)
18 is not required—

19 “(A) when a statute expressly requires that the
20 procurement be made from a specified source;

21 “(B) when the agency’s need is for a brand-
22 name commercial item for authorized resale;

23 “(C) in the case of a procurement permitted by
24 subsection (c)(7); or

1 “(D) in the case of a procurement conducted
2 under (i) the Act of June 25, 1938 (41 U.S.C. 46
3 et seq.), popularly referred to as the Wagner-O’Day
4 Act, or (ii) section 8(a) of the Small Business Act
5 (15 U.S.C. 637(a)).

6 “(3) The justification required by paragraph (1)(A)
7 shall include—

8 “(A) a description of the agency’s needs;

9 “(B) an identification of the statutory exception
10 from the requirement to use competitive procedures
11 and a demonstration, based on the proposed contrac-
12 tor’s qualifications or the nature of the procurement,
13 of the reasons for using that exception;

14 “(C) a determination that the anticipated cost
15 will be fair and reasonable;

16 “(D) a description of the market survey con-
17 ducted or a statement of the reasons a market sur-
18 vey was not conducted;

19 “(E) a listing of the sources, if any, that ex-
20 pressed in writing an interest in the procurement;
21 and

22 “(F) a statement of the actions, if any, the
23 agency may take to remove or overcome a barrier to
24 competition before a subsequent procurement for
25 such needs.

1 “(4) The justification required by paragraph (1)(A)
2 and any related information shall be made available for
3 inspection by the public consistent with the provisions of
4 section 552 of title 5, United States Code.

5 “(5) In no case may an executive agency—

6 “(A) enter into a contract for property or serv-
7 ices using procedures other than competitive proce-
8 dures on the basis of the lack of advance planning
9 or concerns related to the amount of funds available
10 to the agency for procurement functions; or

11 “(B) procure property or services from another
12 executive agency unless such other executive agency
13 complies fully with the requirements of this title in
14 its procurement of such property or services.

15 The restriction set out in clause (B) is in addition to, and
16 not in lieu of any other restriction provided by law.

17 “(g)(1) In order to promote efficiency and economy
18 in contracting and to avoid unnecessary burdens for agen-
19 cies and contractors, the Federal Acquisition Regulation
20 shall provide for special simplified procedures for small
21 purchases of property and services.

22 “(2) For the purposes of this title, a small purchase
23 is a purchase or contract for an amount which does not
24 exceed the small purchase threshold.

1 “(3) A proposed purchase or contract for an amount
2 above the small purchase threshold may not be divided
3 into several purchases or contracts for lesser amounts in
4 order to use the small purchase procedures required by
5 paragraph (1).

6 “(4) In using small purchase procedures, an executive
7 agency shall promote competition to the maximum extent
8 practicable.

9 “(5) In this subsection, the term ‘small purchase
10 threshold’ has the meaning given such term in section
11 4(11) of the Office of Federal Procurement Policy Act (41
12 U.S.C. 403(11)).”.

13 **PART II—PLANNING, SOLICITATION,**
14 **EVALUATION, AND AWARD**

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

16 (a) CONTENT OF SOLICITATION.—The Office of Fed-
17 eral Procurement Policy Act (41 U.S.C. 401 et seq.), as
18 amended by section 1051, is further amended by adding
19 at the end the following new section:

20 **“SEC. 30. PLANNING AND SOLICITATION REQUIREMENTS.**

21 “(a)(1) In preparing for the procurement of property
22 or services, an executive agency shall—

23 “(A) specify its needs and solicit bids or pro-
24 posals in a manner designed to achieve full and open
25 competition for the procurement;

1 “(B) use advance procurement planning and
2 market research; and

3 “(C) develop specifications in such manner as is
4 necessary to obtain full and open competition with
5 due regard to the nature of the property or services
6 to be acquired.

7 “(2) Each solicitation under this title shall include
8 specifications which—

9 “(A) consistent with the provisions of this title,
10 permit full and open competition; and

11 “(B) include restrictive provisions or conditions
12 only to the extent necessary to satisfy the needs of
13 the executive agency or as authorized by law.

14 “(3) For the purposes of paragraphs (1) and (2), the
15 type of specification included in a solicitation shall depend
16 on the nature of the needs of the executive agency and
17 the market available to satisfy such needs. Subject to such
18 needs, specifications may be stated in terms of—

19 “(A) function, so that a variety of products or
20 services may qualify;

21 “(B) performance, including specifications of
22 the range of acceptable characteristics or of the min-
23 imum acceptable standards; or

24 “(C) design requirements.

1 “(b) In addition to the specifications described in
2 subsection (a), each solicitation for sealed bids or competi-
3 tive proposals (other than for small purchases) shall at
4 a minimum include—

5 “(1) a statement of—

6 “(A) all significant factors and significant
7 subfactors (including cost or price, cost-related
8 or price-related factors and subfactors, and
9 noncost-related or nonprice-related factors and
10 subfactors) which the executive agency reason-
11 ably expects to consider in evaluating sealed
12 bids or competitive proposals; and

13 “(B) the relative importance assigned to
14 each of those factors and subfactors; and

15 “(2)(A) in the case of sealed bids—

16 “(i) a statement that sealed bids will be
17 evaluated without discussions with the bidders;
18 and

19 “(ii) the time and place for the opening of
20 the sealed bids; or

21 “(B) in the case of competitive proposals—

22 “(i) either a statement that the pro-
23 posals are intended to be evaluated with,
24 and award made after, discussions with the
25 offerors, or a statement that the proposals

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

7 “(ii) the time and place for submission of
8 proposals.

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

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

18 “(B) shall include cost or price to the Federal
19 Government as an evaluation factor that must be
20 considered in the evaluation of proposals; and

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

24 “(i) significantly more important than
25 price or cost;

1 “(ii) approximately equal in importance to
2 price or cost; or

3 “(iii) significantly less important than
4 price or cost.

5 “(2) Nothing in this subsection prohibits an agency
6 from—

7 “(A) providing additional information in a solic-
8 itation, including numeric weights for all evaluation
9 factors; or

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

14 (b) EVALUATION AND AWARD.—The Office of Fed-
15 eral Procurement Policy Act (41 U.S.C. 401 et seq.), as
16 amended by subsection (a), is further amended by adding
17 at the end the following new section:

18 **“SEC. 31. EVALUATION AND AWARD.**

19 “(a) An executive agency shall evaluate sealed bids
20 and competitive proposals, and award a contract, based
21 solely on the factors specified in the solicitation.

22 “(b) All sealed bids or competitive proposals received
23 in response to a solicitation may be rejected if the agency
24 head determines that such action is in the public interest.

1 “(c) Sealed bids shall be opened publicly at the time
2 and place stated in the solicitation. The executive agency
3 shall evaluate the bids in accordance with subsection (a)
4 without discussions with the bidders and, except as pro-
5 vided in subsection (b), shall award a contract with rea-
6 sonable promptness to the responsible source whose bid
7 conforms to the solicitation and is most advantageous to
8 the United States, considering only price and the other
9 price-related factors included in the solicitation. The
10 award of a contract shall be made by transmitting written
11 notice of the award to the successful bidder.

12 “(d)(1) An agency head shall evaluate competitive
13 proposals in accordance with subsection (a) and may
14 award a contract—

15 “(A) after discussions with the offerors, pro-
16 vided that written or oral discussions have been con-
17 ducted with all responsible offerors who submit pro-
18 posals within the competitive range; or

19 “(B) based on the proposals received and with-
20 out discussions with the offerors (other than discus-
21 sions conducted for the purpose of minor clarifica-
22 tion), provided that, as required by section
23 30(b)(2)(B)(i), the solicitation included a statement
24 that proposals are intended to be evaluated, and

1 award made, without discussions, unless discussions
2 are determined to be necessary.

3 “(2) Except as otherwise provided in subsection (b),
4 the executive agency shall award a contract with reason-
5 able promptness to the responsible source whose proposal
6 is most advantageous to the United States, considering
7 only cost or price and the other factors included in the
8 solicitation. The executive agency shall award the contract
9 by transmitting written notice of the award to such source
10 and shall promptly notify all other offerors of the rejection
11 of their proposals.

12 “(e) If the agency head considers that a bid or pro-
13 posal evidences a violation of the antitrust laws, such
14 agency head shall refer the bid or proposal to the Attorney
15 General for appropriate action.

16 “(f)(1)(A) In preparing a solicitation for the award
17 of a development contract for a major system, the head
18 of an agency shall consider requiring in the solicitation
19 that an offeror include in its offer proposals described in
20 subparagraph (B). In determining whether to require such
21 proposals, the head of the agency shall give due consider-
22 ation to the purposes for which the system is being pro-
23 cured and the technology necessary to meet the system’s
24 required capabilities. If such proposals are required, the

1 head of the agency shall consider them in evaluating the
2 offeror's price.

3 “(B) The proposals that the head of an agency is to
4 consider requiring in a solicitation for the award of a de-
5 velopment contract are the following:

6 “(i) Proposals to incorporate in the design of
7 the major system items which are currently available
8 within the supply system of the Federal agency re-
9 sponsible for the major system, available elsewhere
10 in the national supply system, or commercially avail-
11 able from more than one source.

12 “(ii) With respect to items that are likely to be
13 required in substantial quantities during the sys-
14 tem's service life, proposals to incorporate in the de-
15 sign of the major system items which the United
16 States will be able to acquire competitively in the fu-
17 ture.

18 “(2)(A) In preparing a solicitation for the award of
19 a production contract for a major system, the head of an
20 agency shall consider requiring in the solicitation that an
21 offeror include in its offer proposals described in subpara-
22 graph (B). In determining whether to require such propos-
23 als, the head of the agency shall give due consideration
24 to the purposes for which the system is being procured
25 and the technology necessary to meet the system's re-

1 quired capabilities. If such proposals are required, the
2 head of the agency shall consider them in evaluating the
3 offeror's price.

4 “(B) The proposals that the head of an agency is to
5 consider requiring in a solicitation for the award of a pro-
6 duction contract are proposals identifying opportunities to
7 ensure that the United States will be able to obtain on
8 a competitive basis items procured in connection with the
9 system that are likely to be reprocured in substantial
10 quantities during the service life of the system. Proposals
11 submitted in response to such requirement may include
12 the following:

13 “(i) Proposals to provide to the United States
14 the right to use technical data to be provided under
15 the contract for competitive reprocurement of the
16 item, together with cost to the United States, if any,
17 of acquiring such technical data and the right to use
18 such data.

19 “(ii) Proposals for the qualification or develop-
20 ment of multiple sources of supply for the item.

21 “(3) If the head of an agency is making a non-
22 competitive award of a development contract or a produc-
23 tion contract for a major system, the factors specified in
24 paragraphs (1) and (2) to be considered in evaluating an

1 offer for a contract may be considered as objectives in ne-
2 gotiating the contract to be awarded.”.

3 (c) APPLICABILITY.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), sections 30 and 31 of the Office of Fed-
6 eral Procurement Policy Act, as added by sub-
7 sections (a) and (b), shall apply to—

8 (A) solicitations for sealed bids or competi-
9 tive proposals issued after the end of the 180-
10 day period beginning on the date of the enact-
11 ment of this Act; and

12 (B) contracts awarded pursuant to those
13 solicitations.

14 (2) AUTHORITY TO APPLY AMENDMENTS
15 EARLY.—The head of an executive agency may apply
16 sections 30 and 31 of the Office of Federal Procure-
17 ment Policy Act to solicitations issued before the end
18 of the period referred to in paragraph (1). The head
19 of the executive agency shall publish in the Federal
20 Register notice of any such earlier date of applica-
21 tion at least 10 days before that date.

22 (d) STANDARDS AND REQUIREMENTS FOR COST AND
23 PRICE AS EVALUATION FACTORS.—

24 (1) IN GENERAL.—The Federal Acquisition
25 Regulation, as revised pursuant to section 7002,

1 shall establish standards and requirements for the
2 consideration of cost and price to the Federal Gov-
3 ernment as evaluation factors under section 30(c) of
4 the Office of Federal Procurement Policy Act, as
5 added by subsection (a).

6 (2) STANDARDS AND REQUIREMENTS.—Stand-
7 ards and requirements established under subsection
8 (a) shall be adequate to ensure that, to the maxi-
9 mum extent practicable consistent with the needs of
10 the Federal Government in conducting procure-
11 ments—

12 (A) cost or price is an evaluation factor of
13 sufficient weight to affect each source selection
14 decision; and

15 (B) competition among competing offerors
16 is affected by cost or price.

17 **SEC. 1062. SOLICITATION PROVISION REGARDING EVALUA-**
18 **TION OF PURCHASE OPTIONS.**

19 Section 30 of the Office of Federal Procurement Pol-
20 icy Act, as added by section 1061(a), is amended by add-
21 ing at the end the following new subsection:

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

1 chase additional supplies or services under the contract
2 unless the agency head has determined that there is a rea-
3 sonable likelihood that the options will be exercised.”.

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

5 (a) SEALED BID PROCEDURES.—Subsection (c) of
6 section 31 of the Office of Federal Procurement Policy
7 Act, as added by section 1061(b), is amended by adding
8 at the end the following: “Within 3 days after the date
9 of contract award, the agency head shall notify, in writing
10 or by electronic means, offerors not awarded the contract
11 that the contract has been awarded.”.

12 (b) COMPETITIVE PROPOSALS PROCEDURES.—Para-
13 graph (2) of subsection (d) of such section is amended
14 in the second sentence by striking out “shall promptly no-
15 tify” and inserting in lieu thereof “, within 3 days after
16 the date of contract award, shall notify, in writing or by
17 electronic means,”.

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

19 Section 31 of the Office of Federal Procurement Pol-
20 icy Act, as added by section 1061(b), is amended—

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

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

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

10 “(2) The debriefing shall include, at a minimum—

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

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

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

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

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

24 “(F) reasonable responses to questions posed by
25 the debriefed offeror as to whether source selection

1 procedures set forth in the solicitation, applicable
2 regulations, and other applicable authorities were
3 followed by the executive agency.

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

9 “(A) trade secrets;

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

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

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

19 “(5) If, within one year after the date of the contract
20 award and as a result of a successful procurement protest
21 or otherwise, the executive agency seeks to fulfill same the
22 requirement under the contract either on the basis of a
23 new solicitation of offers or on the basis of new best and
24 final offers requested for that contract, the agency head
25 shall make available to offerors—

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

4 “(B) the comparable debriefing information
5 that was prepared with respect to the original
6 offerors.

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

9 **SEC. 1065. PROTEST FILE.**

10 Section 31 of the Office of Federal Procurement Pol-
11 icy Act, as amended by section 1064(1), is further amend-
12 ed by adding at the end the following:

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

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

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

8 **SEC. 1066. AWARD OF COSTS AND FEES IN AGENCY SETTLE-**
9 **MENT OF PROTESTS.**

10 Section 31 of the Office of Federal Procurement Pol-
11 icy Act, as amended by section 1065, is further amended
12 by adding at the end the following new subsection:

13 “(i) If, in connection with a protest, an agency head
14 determines that a solicitation, proposed award, or award
15 does not comply with the requirements of law or regula-
16 tion, the agency head may take—

17 “(1) any action set out in subparagraphs (A)
18 through (F) of subsection (b)(1) of section 3554 of
19 title 31, United States Code; and

20 “(2) may pay costs described in paragraph (1)
21 of section 3554(c) of such title.”.

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

23 Section 31 of the Office of Federal Procurement Pol-
24 icy Act, as amended by section 1066, is further amended
25 by adding at the end the following new subsection:

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

9 **PART III—KINDS OF CONTRACTS**

10 **SEC. 1071. AGENCY HEAD DETERMINATION REGARDING**
11 **USE OF COST TYPE OR INCENTIVE CON-**
12 **TRACT.**

13 Section 304(b) of the Federal Property and Adminis-
14 trative Services Act of 1949 (41 U.S.C. 254(b)) is amend-
15 ed by striking out the second sentence.

16 **SEC. 1072. MULTIYEAR CONTRACTING AUTHORITY.**

17 (a) IN GENERAL.—Title III of the Federal Property
18 and Administrative Services Act of 1949 (41 U.S.C. 251
19 et seq.) is amended by inserting after section 303G the
20 following new section:

21 **“SEC. 303H. MULTIYEAR CONTRACTS.**

22 “(a) AUTHORITY.—The head of an executive agency
23 may enter into a multiyear contract for the acquisition of
24 property or services if—

1 “(1) funds are available and obligated for such
2 contract, for the full period of the contract or for the
3 first fiscal year in which the contract is in effect,
4 and for the estimated costs associated with any nec-
5 essary termination of such contract;

6 “(2) the agency head determines that—

7 “(A) the need for the property or services
8 is reasonably firm and continuing over the pe-
9 riod of the contract; and

10 “(B) a multiyear contract will serve the
11 best interests of the United States by encourag-
12 ing full and open competition or promoting
13 economy in administration, performance, and
14 operation of the agency’s programs; and

15 “(3) such contract is awarded on a fully com-
16 petitive basis.

17 “(b) TERMINATION CLAUSE.—A multiyear contract
18 entered into under the authority of this section shall in-
19 clude a clause that provides that the contract shall be ter-
20 minated if funds are not made available for the continu-
21 ation of such contract in any fiscal year covered by the
22 contract. Amounts available for paying termination costs
23 shall remain available for such purpose until the costs as-
24 sociated with termination of the contract are paid.

1 “(c) CANCELLATION CEILING NOTICE.—Before any
2 contract described in subsection (a) that contains a clause
3 setting forth a cancellation ceiling in excess of
4 \$10,000,000 may be awarded, the head of the agency shall
5 give written notification of the proposed contract and of
6 the proposed cancellation ceiling for that contract to the
7 Congress, and such contract may not then be awarded
8 until the end of a period of 30 days beginning on the date
9 of such notification.

10 “(d) MULTIYEAR CONTRACT DEFINED.—For the
11 purposes of this section, a multiyear contract is a contract
12 for the purchase of property or services for more than one,
13 but not more than five, program years. Such a contract
14 may provide that performance under the contract during
15 the second and subsequent years of the contract is contin-
16 gent upon the appropriation of funds and (if it does so
17 provide) may provide for a cancellation payment to be
18 made to the contractor if such appropriations are not
19 made.

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

23 (b) CLERICAL AMENDMENT.—The first section of
24 such Act is amended by inserting after the item relating

1 to section 303G in the table of contents the following new
2 item:

“Sec. 303H. Multiyear contracts.”.

3 **SEC. 1073. SEVERABLE SERVICES CONTRACTS CROSSING**
4 **FISCAL YEARS.**

5 (a) IN GENERAL.—Title III of the Federal Property
6 and Administrative Services Act of 1949 (41 U.S.C. 251
7 et seq.), as amended by section 1072, is further amended
8 by inserting after section 303H the following new section:

9 **“SEC. 303I. SEVERABLE SERVICES CONTRACTS FOR PERI-**
10 **ODS CROSSING FISCAL YEARS.**

11 “(a) AUTHORITY.—The head of an executive agency
12 may enter into a severable contract for procurement of
13 services for a period that begins in one fiscal year and
14 ends in the next fiscal year if (without regard to any op-
15 tion to extend the period of the contract) the contract pe-
16 riod does not exceed one year.

17 “(b) AVAILABILITY OF FUNDS.—To the extent pro-
18 vided in appropriations Acts, funds obligated for a con-
19 tract entered into under the authority of subsection (a)
20 shall remain available until no longer needed to pay for
21 such contract.

22 “(c) SEVERABLE CONTRACT DEFINED.—In this sec-
23 tion, the term ‘severable contract’ means a contract that
24 contains a clause that makes the effectiveness of the con-
25 tract for periods after the end of the fiscal year in which

1 the performance of the contract begins subject to the
2 availability of appropriations.”.

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

“Sec. 303I. Severable services contracts for periods crossing fiscal years.”.

7 **SEC. 1074. ECONOMY ACT PURCHASES.**

8 (a) REGULATIONS REQUIRED.—Not later than six
9 months after the date of the enactment of this Act, the
10 Federal Acquisition Regulation shall be revised to include
11 regulations governing the exercise of the authority under
12 section 1535 of title 31, United States Code, for Federal
13 agencies to purchase goods and services under contracts
14 entered into or administered by other agencies.

15 (b) CONTENT OF REGULATIONS.—The regulations
16 prescribed pursuant to subsection (a) shall—

17 (1) require that each purchase described in sub-
18 section (a) be approved in advance by a contracting
19 officer of the ordering agency with authority to con-
20 tract for the goods or services to be purchased or by
21 another official in a position specifically designated
22 by regulation to approve such purchase;

23 (2) provide that such a purchase of goods or
24 services may be made only if—

1 (A) the purchase is appropriately made
2 under a contract that the agency filling the pur-
3 chase order entered into, before the purchase
4 order, in order to meet the requirements of
5 such agency for the same or similar goods or
6 services;

7 (B) the agency filling the purchase order is
8 better qualified to enter into or administer the
9 contract for such goods or services by reason of
10 capabilities or expertise that is not available
11 within the ordering agency; or

12 (C) the agency or unit filling the order is
13 specifically authorized by law or regulations to
14 purchase such goods or services on behalf of
15 other agencies;

16 (3) prohibit any such purchase under a contract
17 or other agreement entered into or administered by
18 an agency not covered by the Federal Acquisition
19 Regulation unless the purchase is approved in ad-
20 vance by the senior procurement official responsible
21 for purchasing by the ordering agency; and

22 (4) prohibit any payment to the agency filling
23 a purchase order of any fee that exceeds the actual
24 cost or, if the actual cost is not known, the esti-
25 mated cost of entering into and administering the

1 contract or other agreement under which the order
2 is filled.

3 (c) MONITORING SYSTEM REQUIRED.—The Adminis-
4 trator for Federal Procurement Policy shall ensure that,
5 not later than one year after the date of the enactment
6 of this Act, systems for collecting and evaluating procure-
7 ment data are capable of collecting and evaluating appro-
8 priate data on procurements conducted under the regula-
9 tions prescribed pursuant to subsection (a).

10 (d) TERMINATION.—This section shall cease to be ef-
11 fective one year after the date on which final regulations
12 prescribed pursuant to subsection (a) take effect.

13 **PART IV—MISCELLANEOUS**

14 **SEC. 1091. POLICY REGARDING CONSIDERATION OF CON-** 15 **TRACTOR PAST PERFORMANCE.**

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

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

20 (2) by striking out the period at the end of
21 paragraph (13) and inserting in lieu thereof “; and”;
22 and

23 (3) by adding at the end the following new
24 paragraph:

1 “(14) establishing policies and procedures that
2 encourage the consideration of contractors’ past per-
3 formance in the selection of contractors.”.

4 (b) GUIDANCE REQUIRED.—Section 6 of the Office
5 of Federal Procurement Policy Act (41 U.S.C. 405) is
6 amended by adding at the end the following:

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

8 “(A) Past contract performance of an offeror is
9 one of the relevant factors that contracting officials
10 of executive agencies should consider in entering into
11 contracts.

12 “(B) It is appropriate for a contracting official
13 to consider past contract performance of an offeror
14 as an indicator of the likelihood that the offeror will
15 successfully perform a contract to be entered into by
16 that official.

17 “(2) The Administrator shall prescribe for executive
18 agencies guidance regarding consideration of the past con-
19 tract performance of offerors in awarding contracts. The
20 guidance shall include—

21 “(A) standards for evaluating past performance
22 with respect to cost (when appropriate), schedule,
23 compliance with technical or functional specifica-
24 tions, and other relevant performance factors that

1 facilitate consistent and fair evaluation by all execu-
2 tive agencies;

3 “(B) policies for the collection and maintenance
4 of information on past contract performance that, to
5 the maximum extent practicable, facilitate auto-
6 mated collection, maintenance, and dissemination of
7 information and provide for ease of collection, main-
8 tenance, and dissemination of information by other
9 methods, as necessary; and

10 “(C) policies for ensuring that offerors are af-
11 farded an opportunity to submit information on past
12 contract performance and that information submit-
13 ted by offerors is considered.

14 “(3) The Administrator shall prescribe for all execu-
15 tive agencies the policy regarding the period for which in-
16 formation on past performance of offerors may be main-
17 tained and considered.

18 “(4) In the case of an offeror regarding whom there
19 is no information on past contract performance or regard-
20 ing whom information on past contract performance is not
21 available, the offeror may not be evaluated favorably or
22 unfavorably on the factor of past contract performance.”.

1 **SEC. 1092. REPEAL OF REQUIREMENT FOR ANNUAL RE-**
2 **PORT ON COMPETITION.**

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

5 **SEC. 1093. DISCOURAGEMENT OF NONSTANDARD CON-**
6 **TRACT CLAUSES.**

7 Section 31 of the Office of Federal Procurement Pol-
8 icy Act, as amended by section 1067, is further amended
9 by adding at the end the following new subsection:

10 “(k) NONSTANDARD CONTRACT CLAUSES.—The
11 Federal Acquisition Regulatory Council shall promulgate
12 regulations to discourage the use of a nonstandard con-
13 tract clause on a repetitive basis. The regulations shall in-
14 clude provisions that—

15 “(1) clearly define nonstandard clauses; and

16 “(2) require prior approval for the use of a
17 nonstandard clause on a repetitive basis by an offi-
18 cial at a level of responsibility above the contracting
19 officer.”.

20 **SEC. 1094. REPEAL OF OBSOLETE PROVISION.**

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

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

1 **Subtitle B—Truth in Negotiations**

2 **SEC. 1251. PROVISIONS TO ENSURE UNIFORM TREATMENT**
3 **OF COST OR PRICING DATA.**

4 The Office of Federal Procurement Policy Act (41
5 U.S.C. 401 et seq.), as amended by section 1061, is fur-
6 ther amended by adding after section 31 the following new
7 section:

8 **“SEC. 32. COST OR PRICING DATA: TRUTH IN NEGOTIA-**
9 **TIONS.**

10 “(a) REQUIRED COST OR PRICING DATA AND CER-
11 TIFICATION.—(1) An agency head shall require offerors,
12 contractors, and subcontractors to make cost or pricing
13 data available as follows:

14 “(A) An offeror for a prime contract under this
15 title to be entered into using procedures other than
16 sealed-bid procedures shall be required to submit
17 cost or pricing data before the award of a contract
18 if—

19 “(i) in the case of a prime contract entered
20 into after the date of the enactment of the Fed-
21 eral Acquisition Improvement Act of 1994, the
22 price of the contract to the United States is ex-
23 pected to exceed \$500,000; and

24 “(ii) in the case of a prime contract en-
25 tered into on or before the date of the enact-

1 ment of the Federal Acquisition Improvement
2 Act of 1994, the price of the contract to the
3 United States is expected to exceed \$100,000.

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

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

12 “(ii) in the case of a change or modifica-
13 tion made to a prime contract that was entered
14 into on or before the date of the enactment of
15 the Federal Acquisition Improvement Act of
16 1994, and that has been modified pursuant to
17 paragraph (6), the price adjustment is expected
18 to exceed \$500,000; and

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

22 “(C) An offeror for a subcontract (at any tier)
23 of a contract under this title shall be required to
24 submit cost or pricing data before the award of the
25 subcontract if the prime contractor and each higher-

1 tier subcontractor have been required to make avail-
2 able cost or pricing data under this section and—

3 “(i) in the case of a subcontract under a
4 prime contract referred to in subparagraph
5 (A)(i), the price of the subcontract is expected
6 to exceed \$500,000;

7 “(ii) in the case of a subcontract entered
8 into under a prime contract that was entered
9 into on or before the date of the enactment of
10 the Federal Acquisition Improvement Act of
11 1994, and that has been modified pursuant to
12 paragraph (6), the price of the subcontract is
13 expected to exceed \$500,000; and

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

17 “(D) The subcontractor for a subcontract cov-
18 ered by subparagraph (C) shall be required to sub-
19 mit cost or pricing data before the pricing of a
20 change or modification to the subcontract if—

21 “(i) in the case of a change or modification
22 to a subcontract referred to in subparagraph
23 (C)(i) or (C)(ii), the price adjustment is ex-
24 pected to exceed \$500,000; and

1 “(ii) in the case of a change or modifica-
2 tion to a subcontract referred to in subpara-
3 graph (C)(iii), the price adjustment is expected
4 to exceed \$100,000.

5 “(2) A person required, as an offeror, contractor, or
6 subcontractor, to submit cost or pricing data under para-
7 graph (1) (or required by the head of the procuring activ-
8 ity concerned to submit such data under subsection (c))
9 shall be required to certify that, to the best of the person’s
10 knowledge and belief, the cost or pricing data submitted
11 are accurate, complete, and current.

12 “(3) Cost or pricing data required to be submitted
13 under paragraph (1) (or under subsection (c)), and a cer-
14 tification required to be submitted under paragraph (2),
15 shall be submitted—

16 “(A) in the case of a submission by a prime
17 contractor (or an offeror for a prime contract), to
18 the contracting officer for the contract (or to a des-
19 ignated representative of the contracting officer); or

20 “(B) in the case of a submission by a sub-
21 contractor (or an offeror for a subcontract), to the
22 prime contractor.

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

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

5 “(6) Upon the request of a contractor that was re-
6 quired to submit cost or pricing data under paragraph (1)
7 in connection with a prime contract entered into on or be-
8 fore the date of the enactment of the Federal Acquisition
9 Improvement Act of 1994, the agency head that entered
10 into such contract shall modify the contract to reflect sub-
11 paragraphs (B)(ii) and (C)(ii) of paragraph (1). All such
12 modifications shall be made without requiring consider-
13 ation.

14 “(7) Effective on October 1 of each year that is divis-
15 ible by 5, each amount set forth in paragraph (1) shall
16 be adjusted to the amount that is equal to the fiscal year
17 1994 constant dollar value of the amount set forth. Any
18 amount, as so adjusted, that is not evenly divisible by
19 \$50,000 shall be rounded to the nearest multiple of
20 \$50,000. In the case of an amount that is evenly divisible
21 by \$25,000 but not evenly divisible by \$50,000, the
22 amount shall be rounded to the next higher multiple of
23 \$50,000.

24 “(b) EXCEPTIONS.—(1) Submission of cost and pric-
25 ing data shall not be required under subsection (a)—

1 “(A) in the case of a contract, a subcontract,
2 or a contract or subcontract modification, for which
3 the price agreed upon is based on—

4 “(i) adequate price competition;

5 “(ii) established catalog or market prices
6 of commercial items or of services regularly
7 used for other than Government purposes, as
8 the case may be, that are sold in substantial
9 quantities to the general public; or

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

11 “(B) in an exceptional case when the head of
12 the procuring activity, without delegation, deter-
13 mines that the requirements of this section may be
14 waived, justifies in writing the reasons for such de-
15 termination, and certifies the accuracy and com-
16 pleteness of the justification.

17 “(2) The Federal Acquisition Regulation (issued
18 under section 25(c)) shall provide clear standards for de-
19 termining whether the exceptions provided in paragraph
20 (1)(A) apply. In the case of the exception provided in
21 paragraph (1)(A)(i), the regulations shall specify the cri-
22 teria that will be used to determine whether adequate price
23 competition exists. In the case of the exception provided
24 in paragraph (1)(A)(ii), the regulations shall preclude the
25 consideration of sales to the Federal Government, includ-

1 ing the percentage of an item's overall sales that are made
2 to the Federal Government, when determining whether the
3 item has been sold in substantial quantities to the public.

4 “(c) AUTHORITY TO REQUIRE COST OR PRICING
5 DATA ON BELOW-THRESHOLD CONTRACTS.—When cost
6 or pricing data are not required to be submitted by sub-
7 section (a), such data may nevertheless be required to be
8 submitted by the head of the procuring activity, but only
9 if the head of the procuring activity determines that such
10 data are necessary for the evaluation by the agency of the
11 reasonableness of the price of the contract or subcontract.
12 In any case in which the head of the procuring activity
13 requires such data to be submitted under this subsection,
14 the head of the procuring activity shall justify in writing
15 the reason for such requirement and certify the accuracy
16 and completeness of the justification. The head of the pro-
17 curing activity may not delegate the functions under this
18 subsection.

19 “(d) ADDITIONAL EXCEPTION PROVISIONS REGARD-
20 ING COMMERCIAL ITEMS.—(1) In any case in which it is
21 not practicable to conduct a procurement of a commercial
22 item on a competitive basis and the procurement is not
23 covered by an exception in subsection (b), the contracting
24 officer shall nonetheless exempt a contract or subcontract

1 under the procurement from the requirements of sub-
2 section (a) if the contracting officer develops or obtains
3 from the offeror or contractor, or from another source or
4 sources, in accordance with standards and procedures set
5 forth in the Federal Acquisition Regulation, information
6 on prices at which the same or similar items have been
7 sold in the commercial market that is adequate for evalu-
8 ating the reasonableness of the price of the contract or
9 subcontract for a commercial item.

10 “(2)(A) In accordance with procedures prescribed in
11 the Federal Acquisition Regulation, an agency head shall
12 have the right to examine all information provided by an
13 offeror, contractor, or subcontractor pursuant to sub-
14 section (b)(1)(A) or paragraph (1) of this subsection and
15 all books and records of such offeror, contractor, or sub-
16 contractor that directly relate to such information in order
17 to determine whether the agency is receiving accurate in-
18 formation required under this section.

19 “(B) The right under subparagraph (A) shall expire
20 1 year after the date of commencement of performance
21 of the contract, or 1 year after the date of commencement
22 of performance of the modification of the contract, with
23 respect to which the information was provided.

1 “(3) The Federal Acquisition Regulation shall estab-
2 lish reasonable limitations on requests under this section
3 for sales data relating to commercial items.

4 “(e) PRICE REDUCTIONS FOR DEFECTIVE COST OR
5 PRICING DATA.—(1)(A) A prime contract (or change or
6 modification to a prime contract) under which a certificate
7 under subsection (a)(2) is required shall contain a provi-
8 sion that the price of the contract to the United States,
9 including profit or fee, shall be adjusted to exclude any
10 significant amount by which it may be determined by the
11 agency head that such price was increased because the
12 contractor (or any subcontractor required to make avail-
13 able such a certificate) submitted defective cost or pricing
14 data.

15 “(B) For the purposes of this section, defective cost
16 or pricing data are cost or pricing data which, as of the
17 date of agreement on the price of the contract (or another
18 date agreed upon between the parties), were inaccurate,
19 incomplete, or noncurrent. If for purposes of the preceding
20 sentence the parties agree upon a date other than the date
21 of agreement on the price of the contract, the date agreed
22 upon by the parties shall be as close to the date of agree-
23 ment on the price of the contract as is practicable.

24 “(2) In determining for purposes of a contract price
25 adjustment under a contract provision required by para-

1 graph (1) whether, and to what extent, a contract price
2 was increased because the contractor (or a subcontractor)
3 submitted defective cost or pricing data, it shall be a de-
4 fense that the United States did not rely on the defective
5 data submitted by the contractor or subcontractor.

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

9 “(A) the price of the contract would not have
10 been modified even if accurate, complete, and cur-
11 rent cost or pricing data had been submitted by the
12 contractor or subcontractor because the contractor
13 or subcontractor—

14 “(i) was the sole source of the property or
15 services procured; or

16 “(ii) otherwise was in a superior bargain-
17 ing position with respect to the property or
18 services procured;

19 “(B) the contracting officer should have known
20 that the cost and pricing data in issue were defective
21 even though the contractor or subcontractor took no
22 affirmative action to bring the character of the data
23 to the attention of the contracting officer;

24 “(C) the contract was based on an agreement
25 between the contractor and the United States about

1 the total cost of the contract and there was no
2 agreement about the cost of each item procured
3 under such contract; or

4 “(D) the prime contractor or subcontractor did
5 not submit a certification of cost and pricing data
6 relating to the contract as required under subsection
7 (a)(2).

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

11 “(i) the contractor certifies to the contracting
12 officer (or to a designated representative of the con-
13 tracting officer) that, to the best of the contractor’s
14 knowledge and belief, the contractor is entitled to
15 the offset; and

16 “(ii) the contractor proves that the cost or pric-
17 ing data were available before the date of agreement
18 on the price of the contract (or price of the modi-
19 fication), or, if applicable consistent with paragraph
20 (1)(B), another date agreed upon between the par-
21 ties, and that the data were not submitted as speci-
22 fied in subsection (a)(3) before such date.

23 “(B) A contractor shall not be allowed to offset an
24 amount otherwise authorized to be offset under subpara-
25 graph (A) if—

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

4 “(ii) the United States proves that, had the cost
5 or pricing data referred to in subparagraph (A)(ii)
6 been submitted to the United States before the date
7 of agreement on the price of the contract (or price
8 of the modification) or, if applicable under para-
9 graph (1)(B), another date agreed upon between the
10 parties, the submission of such cost or pricing data
11 would not have resulted in an increase in that price
12 in the amount to be offset.

13 “(f) INTEREST AND PENALTIES FOR CERTAIN OVER-
14 PAYMENTS.—(1) If the United States makes an overpay-
15 ment to a contractor under a contract with an executive
16 agency subject to this section and the overpayment was
17 due to the submission by the contractor of defective cost
18 or pricing data, the contractor shall be liable to the United
19 States—

20 “(A) for interest on the amount of such over-
21 payment, to be computed—

22 “(i) for the period beginning on the date
23 the overpayment was made to the contractor
24 and ending on the date the contractor repays

1 the amount of such overpayment to the United
2 States; and

3 “(ii) at the current rate prescribed by the
4 Secretary of the Treasury under section 6621
5 of the Internal Revenue Code of 1986; and

6 “(B) if the submission of such defective data
7 was a knowing submission, for an additional amount
8 equal to the amount of the overpayment.

9 “(2) Any liability under this subsection of a contrac-
10 tor that submits cost or pricing data but refuses to submit
11 the certification required by subsection (a)(2) with respect
12 to the cost or pricing data shall not be affected by the
13 refusal to submit such certification.

14 “(g) RIGHT OF UNITED STATES TO EXAMINE CON-
15 TRACTOR RECORDS.—For the purpose of evaluating the
16 accuracy, completeness, and currency of cost or pricing
17 data required to be submitted by this section, the head
18 of an agency shall have the rights provided by section
19 38(a)(2).

20 “(h) COST OR PRICING DATA DEFINED.—In this sec-
21 tion, the term ‘cost or pricing data’ means all facts that,
22 as of the date of agreement on the price of a contract
23 (or the price of a contract modification) or, if applicable
24 consistent with subsection (e)(1)(B), another date agreed
25 upon between the parties, a prudent buyer or seller would

1 reasonably expect to affect price negotiations significantly.
2 Such terms does not include information that is
3 judgmental, but does include the factual information from
4 which a judgment was derived.”.

5 **Subtitle C—Procurement Protests**

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

7 **GENERAL**

8 **SEC. 1401. PROTEST DEFINED.**

9 Paragraph (1) of section 3551 of title 31, United
10 States Code, is amended to read as follows:

11 “(1) ‘protest’ means a written objection by an
12 interested party—

13 “(i) to a solicitation or other request by a
14 Federal agency for offers for a contract for the
15 procurement of property or services;

16 “(ii) to the cancellation of such a solicita-
17 tion or other request;

18 “(iii) to an award or proposed award of
19 such a contract; or

20 “(iv) to a termination or cancellation of an
21 award of such a contract, if the written objec-
22 tion contains an allegation that the termination
23 or cancellation is based in whole or in part on
24 improprieties concerning the award of the con-
25 tract;”.

1 **SEC. 1402. REVIEW OF PROTESTS AND EFFECT ON CON-**
2 **TRACTS PENDING DECISION.**

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

5 (1) in subsection (b)—

6 (A) in paragraph (1), by striking out “one
7 working day of” and inserting in lieu thereof
8 “one day after”; and

9 (B) in paragraph (2)—

10 (i) in subparagraph (A), by striking
11 out “25 working days from” and inserting
12 in lieu thereof “35 days after”; and

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

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

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

21 “(d)(1) A contractor awarded a Federal agency con-
22 tract may, during the period described in paragraph (4),
23 begin performance of the contract and engage in any relat-
24 ed activities that result in obligations being incurred by
25 the United States under the contract unless the contract-
26 ing officer responsible for the award of the contract with-

1 holds authorization to proceed with performance of the
2 contract.

3 “(2) The contracting officer may withhold an author-
4 ization to proceed with performance of the contract during
5 the period described in paragraph (4) if the contracting
6 officer determines in writing that—

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

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

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

13 “(i) the contracting officer may not authorize
14 performance of the contract to begin while the pro-
15 test is pending; or

16 “(ii) if contract performance was authorized in
17 accordance with paragraph (2) before receipt of the
18 notice, the contracting officer shall immediately di-
19 rect the contractor to cease performance under the
20 contract and to suspend any related activities that
21 may result in additional obligations being incurred
22 by the United States under that contract.

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

1 “(C) The head of the procuring activity may author-
2 ize the performance of the contract (notwithstanding a
3 protest of which the Federal agency has notice under this
4 section)—

5 “(i) upon a written finding that—

6 “(I) performance of the contract is in the
7 best interests of the United States; or

8 “(II) urgent and compelling circumstances
9 that significantly affect interests of the United
10 States will not permit waiting for the decision
11 of the Comptroller General concerning the pro-
12 test; and

13 “(ii) after the Comptroller General is notified of
14 that finding.

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

19 “(A) the date that is 10 days after the date of
20 the contract award; or

21 “(B) the date that is 5 days after the debriefing
22 date offered to an unsuccessful offeror for any de-
23 briefing that is requested and, when requested, is
24 required.”.

1 **SEC. 1403. DECISIONS ON PROTESTS.**

2 (a) PERIODS FOR CERTAIN ACTIONS.—Section
3 3554(a) of title 31, United States Code, is amended—

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

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

9 (3) by redesignating paragraph (3) as para-
10 graph (4); and

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

13 “(3) An amendment to a protest that adds a new
14 ground of protest, if timely raised, should be resolved, to
15 the maximum extent practicable, within the time limit es-
16 tablished under paragraph (1) of this subsection for final
17 decision of the initial protest. If an amended protest can-
18 not be resolved within such time limit, the Comptroller
19 General may resolve the amended protest through the ex-
20 press option under paragraph (2) of this subsection.”.

21 (b) GAO RECOMMENDATIONS ON PROTESTS.—

22 (1) IMPLEMENTATION OF RECOMMENDA-
23 TIONS.—Section 3554 of title 31, United States
24 Code, is amended—

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

1 “(3) If the Federal agency fails to implement fully
2 the recommendations of the Comptroller General under
3 this subsection with respect to a solicitation for a contract
4 or an award or proposed award of a contract within 60
5 days after receiving the recommendations, the head of the
6 procuring activity responsible for that contract shall re-
7 port such failure to the Comptroller General not later than
8 5 working days after the end of such 60-day period.”;

9 (B) by striking out subsection (c) and in-
10 serting in lieu thereof the following:

11 “(c)(1) If the Comptroller General determines that
12 a solicitation for a contract or a proposed award or the
13 award of a contract does not comply with a statute or reg-
14 ulation, the Comptroller General may recommend that the
15 Federal agency conducting the procurement pay to an ap-
16 propriate interested party the costs of—

17 “(A) filing and pursuing the protest, including
18 reasonable attorney’s fees and consultant and expert
19 witness fees; and

20 “(B) bid and proposal preparation.

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

24 “(A) pay the costs promptly out of funds appro-
25 priated by section 1304 of this title for the payment

1 of judgments and reimburse that appropriation ac-
2 count out of available funds or out of additional
3 funds appropriated for such Federal agency to make
4 such reimbursement; or

5 “(B) if the Federal agency does not make such
6 payment, promptly report to the Comptroller Gen-
7 eral the reasons for the failure to follow the Comp-
8 troller General’s recommendation.

9 “(3) If the Comptroller General recommends under
10 paragraph (1) that a Federal agency pay costs to an inter-
11 ested party, the Federal agency and the interested party
12 shall attempt to reach an agreement on the amount of the
13 costs to be paid. If the Federal agency and the interested
14 party are unable to agree on the amount to be paid, the
15 Comptroller General may, upon the request of the inter-
16 ested party, recommend to the Federal agency the amount
17 of the costs that the Federal agency should pay.”; and

18 (C) by striking out subsection (e) and in-
19 serting in lieu thereof the following:

20 “(e)(1) The Comptroller General shall report prompt-
21 ly to the Committee on Governmental Affairs and the
22 Committee on Appropriations of the Senate and to the
23 Committee on Government Operations and the Committee
24 on Appropriations of the House of Representatives any
25 case in which a Federal agency fails to implement fully

1 a recommendation of the Comptroller General under sub-
2 section (b) or (c). The report shall include—

3 “(A) a comprehensive review of the pertinent
4 procurement, including the circumstances of the fail-
5 ure of the Federal agency to implement a rec-
6 ommendation of the Comptroller General; and

7 “(B) a recommendation regarding whether, in
8 order to correct an inequity or to preserve the integ-
9 rity of the procurement process, the Congress should
10 consider—

11 “(i) private relief legislation;

12 “(ii) legislative rescission or cancellation of
13 funds;

14 “(iii) further investigation by the Congress;

15 or

16 “(iv) other action.

17 “(2) Not later than January 31 of each year, the
18 Comptroller General shall transmit to the Congress a re-
19 port containing a summary of each instance in which a
20 Federal agency did not fully implement a recommendation
21 of the Comptroller General under subsection (b) or (c)
22 during the preceding year. The report shall also describe
23 each instance in which a final decision in a protest was
24 not rendered within 125 days after the date the protest
25 is submitted to the Comptroller General.”.

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

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

- 23 (1) by inserting “(1)” after “(f)”; and
24 (2) by adding at the end the following:

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

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

13 “(C) Information referred to in subparagraphs (A)
14 and (B) is procurement sensitive information, trade se-
15 crets, or other proprietary or confidential research, devel-
16 opment, or commercial information.

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

21 **SEC. 1404. REGULATIONS.**

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

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

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

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

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

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

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

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

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

24 “(c) The Comptroller General may prescribe proce-
25 dures for the electronic filing and dissemination of docu-

1 ments and information required under this subchapter. In
2 prescribing such procedures, the Comptroller General shall
3 consider the ability of all parties to achieve electronic ac-
4 cess to such documents and records.”.

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

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

11 **SEC. 1431. REVOCATION OF DELEGATIONS OF PROCURE-**
12 **MENT AUTHORITY.**

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

22 **SEC. 1432. AUTHORITY OF THE GENERAL SERVICES ADMIN-**
23 **ISTRATION BOARD OF CONTRACT APPEALS.**

24 The first sentence of section 111(f)(1) of the Federal
25 Property and Administrative Services Act of 1949 (40

1 U.S.C. 759(f)(1)) is amended to read as follows: “Upon
2 request of an interested party in connection with any pro-
3 curement that is subject to this section (including any
4 such procurement that is subject to delegation of procure-
5 ment authority), the board of contract appeals of the Gen-
6 eral Services Administration (hereafter in this subsection
7 referred to as the ‘board’) shall review, as provided in this
8 subsection, any decision by a contracting officer that is
9 alleged to violate a statute, a regulation, or the conditions
10 of a delegation of procurement authority.”.

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

12 (a) SUSPENSION OF PROCUREMENT AUTHORITY.—

13 (1) Section 111(f)(2)(B) of the Federal Property and Ad-
14 ministrative Services Act of 1949 (40 U.S.C. 759(f)) is
15 amended—

16 (A) by redesignating clauses (i) and (ii) as
17 subclauses (I) and (II), respectively;

18 (B) by inserting “(i)” after “(B)”; and

19 (C) by adding at the end the following:

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

1 (2) Section 111(f) of the Federal Property and Ad-
2 ministrative Services Act of 1949 (40 U.S.C. 759(f)) is
3 amended in paragraph (3) by striking out subparagraph
4 (A) and inserting in lieu thereof the following:

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

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

17 “(I) the tenth day after the date of contract
18 award; or

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

22 “(iii) The board shall hold the requested hearing
23 within 5 days after the date of the filing of the protest.”.

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

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

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

8 **SEC. 1434. DISMISSALS OF PROTESTS.**

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

13 “(C) The board may dismiss a protest that the board
14 determines—

15 “(i) is frivolous;

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

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

19 **SEC. 1435. AWARD OF COSTS.**

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

22 “(C) Whenever the board makes such a determina-
23 tion, it may, in accordance with section 1304 of title 31,
24 United States Code, further declare an appropriate pre-
25 vailing party to be entitled to the cost of filing and pursu-

1 ing the protest (including reasonable attorney’s fees and
2 consultant and expert witness fees), and bid and proposal
3 preparation.”.

4 **SEC. 1436. DISMISSAL AGREEMENTS.**

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

9 “(D) Any agreement that provides for the dismissal
10 of a protest and involves a direct or indirect expenditure
11 of appropriated funds shall be submitted to the board and
12 shall be made a part of the public record (subject to any
13 protective order considered appropriate by the board) be-
14 fore dismissal of the protest. If a Federal agency is a party
15 to a settlement agreement, the submission of the agree-
16 ment submitted to the board shall include a memorandum,
17 signed by the contracting officer concerned, that describes
18 in detail the procurement, the grounds for protest, the
19 Federal Government’s position regarding the grounds for
20 protest, the terms of the settlement, and the agency’s posi-
21 tion regarding the propriety of the award or proposed
22 award of the contract at issue in the protest.

23 “(E) Payment of amounts due from an agency under
24 subparagraph (C) or under the terms of a settlement
25 agreement under subparagraph (D) shall be made from

1 the appropriation made by section 1304 of title 31, United
2 States Code, for the payment of judgments. The Federal
3 agency concerned shall reimburse that appropriation ac-
4 count out of funds available for the procurement.”.

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

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

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

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

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

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

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

23 “(II) in the case of a filing of a paper at
24 the board, such last day is a day on which
25 weather or other conditions make the board or

1 Federal agency inaccessible, in which event the
2 next day that is not a Saturday, Sunday, or
3 legal holiday shall be included.

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

9 “(D) The procedures shall provide that if the board
10 expressly finds that a protest or a portion of a protest
11 is frivolous or has not been brought or pursued in good
12 faith, or that any person has willfully abused the board’s
13 process during the course of a protest, the board may im-
14 pose appropriate procedural sanctions, including dismissal
15 of the protest.”.

16 **SEC. 1438. DEFINITIONS.**

17 (a) PROTEST.—Section 111(f)(9) of the Federal
18 Property and Administrative Services Act of 1949 (40
19 U.S.C. 759(f)(9)) is amended—

20 (1) by striking out “and” at the end of sub-
21 paragraph (A);

22 (2) by striking out the period at the end of sub-
23 paragraph (B) and inserting in lieu thereof “; and”;
24 and

1 (3) by adding at the end the following new sub-
2 paragraph:

3 “(C) the term ‘protest’ means a written objec-
4 tion by an interested party—

5 “(i) to a solicitation or other request by a
6 Federal agency for offers for a contract for the
7 procurement of property or services;

8 “(ii) to the cancellation of such a solicita-
9 tion or other request;

10 “(iii) to an award or proposed award of
11 such a contract; or

12 “(iv) to a termination or cancellation of an
13 award of such a contract, if the written objec-
14 tion contains an allegation that the termination
15 or cancellation is based in whole or in part on
16 improprieties concerning the award of the con-
17 tract;”.

18 (b) PREVAILING PARTY.—Section 111(f)(9) of such
19 Act is amended by adding at the end the following new
20 subparagraph:

21 “(C) the term ‘prevailing party’, with respect to
22 a determination of the board under paragraph
23 (5)(B) that a challenged action of a Federal agency
24 violates a statute or regulation or the conditions of
25 a delegation of procurement authority issued pursu-

1 ant to this section, means a party that demonstrated
2 such violation.”.

3 **SEC. 1439. OVERSIGHT OF ACQUISITION OF AUTOMATIC**
4 **DATA PROCESSING EQUIPMENT BY FEDERAL**
5 **AGENCIES.**

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

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

14 “(A) The procuring agency.

15 “(B) The contractor.

16 “(C) The automatic data processing equipment
17 and services procured.

18 “(D) The manufacturer of the equipment pro-
19 cured.

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

22 “(F) The type of contract used.

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

24 “(H) Compatibility restrictions.

25 “(I) Significant modifications of the contract.

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

3 “(2) The head of each Federal agency shall report
4 to the Administrator in accordance with regulations issued
5 by the Administrator all information that the Adminis-
6 trator determines necessary in order to satisfy the require-
7 ments in paragraph (1).

8 “(3) The Administrator shall—

9 “(A) carry out a systematic, periodic review of
10 information received under this subsection;

11 “(B) use such information, as appropriate, to
12 determine the compliance of Federal agencies with
13 the requirements of this section; and

14 “(C) have the authority to suspend the delega-
15 tion to a Federal agency of authority to lease or pur-
16 chase automatic data processing equipment upon
17 any failure by the head of the Federal agency to re-
18 port to the Administrator in accordance with para-
19 graph (2).”.

20 **Subtitle D—Definitions and Other** 21 **Matters**

22 **SEC. 1551. DEFINITIONS.**

23 Section 309(c) of the Federal Property and Adminis-
24 trative Services Act of 1949 (41 U.S.C. 259(c)) is amend-
25 ed by striking out “and ‘supplies’” and inserting in lieu

1 thereof “ ‘supplies’, ‘commercial item’, and
2 ‘nondevelopmental item’ ”.

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

4 The Office of Federal Procurement Policy Act (41
5 U.S.C. 401 et seq.), as amended by section 1251, is fur-
6 ther amended by inserting after section 32 the following
7 new section:

8 **“SEC. 33. DELEGATION OF PROCUREMENT FUNCTIONS.**

9 “(a) IN GENERAL.—Except to the extent expressly
10 prohibited by another provision of law, an agency head
11 may delegate, subject to his direction, to any other officer
12 or official of that agency, any power under this title.

13 “(b) PROCUREMENTS FOR OR WITH OTHER AGEN-
14 CIES.—Subject to subsection (a), to facilitate the procure-
15 ment of property and services covered by this title by each
16 executive agency for any other executive agency, and to
17 facilitate joint procurement by those executive agencies—

18 “(1) an agency head may, within his executive
19 agency, delegate functions and assign responsibilities
20 relating to procurement;

21 “(2) the heads of two or more executive agen-
22 cies may by agreement delegate procurement func-
23 tions and assign procurement responsibilities from
24 one executive agency to another of those executive

1 agencies or to an officer or civilian employee of an-
2 other of those executive agencies; and

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

6 **SEC. 1553. DETERMINATIONS AND DECISIONS.**

7 The Office of Federal Procurement Policy Act (41
8 U.S.C. 401 et seq.), as amended by section 1552, is fur-
9 ther amended by inserting after section 33 the following
10 new section:

11 **“SEC. 34. DETERMINATIONS AND DECISIONS.**

12 “(a) INDIVIDUAL OR CLASS DETERMINATIONS AND
13 DECISIONS AUTHORIZED.—Determinations and decisions
14 required to be made under title III of the Federal Property
15 and Administration Services Act of 1949 (41 U.S.C. 251
16 et seq.) or chapter 137 of title 10, United States Code,
17 by an agency head may be made for an individual pur-
18 chase or contract or for a class of purchases or contracts.
19 Such determinations and decisions are final.

20 “(b) WRITTEN FINDINGS REQUIRED.—(1) Each de-
21 termination under section 36(c) shall be based on a writ-
22 ten finding by the person making the determination or de-
23 cision. The finding shall set out facts and circumstances
24 that support the determination or decision.

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

5 **SEC. 1554. RESEARCH, DEVELOPMENT, AND PRODUCTION**
6 **COSTS.**

7 The Office of Federal Procurement Policy Act (41
8 U.S.C. 401 et seq.), as amended by section 1553, is fur-
9 ther amended by inserting after section 34 the following
10 new section:

11 **“SEC. 35. RESEARCH, DEVELOPMENT, AND PRODUCTION**
12 **COSTS.**

13 “(a) Letters of offer for the sale of defense articles
14 or for the sale of defense services that are issued pursuant
15 to sections 2761 or 2762 of title 22, United States Code,
16 shall not include any charge for the proportionate amount
17 of any nonrecurring costs of research, development, and
18 production of major defense equipment.

19 “(b) Subsection (a) shall be effective with respect to
20 sales agreements entered into on or after October 1,
21 1996.”.

22 **SEC. 1555. REPEALS.**

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

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

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

2 **SEC. 1556. COOPERATIVE PURCHASING.**

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

6 “(b)(1) The Administrator shall, as far as prac-
7 ticable, provide any of the services specified in subsection
8 (a) of this section to any other Federal agency, mixed-
9 ownership Government corporation (as defined in section
10 9101 of title 31, United States Code), or the District of
11 Columbia, upon its request.

12 “(2)(A) The Administrator may provide for the use
13 of Federal supply schedules or other contracts by any of
14 the following entities upon request:

15 “(i) A State, any department or agency of a
16 State, and any political subdivision of a State, in-
17 cluding a local government.

18 “(ii) The District of Columbia.

19 “(iii) The Commonwealth of Puerto Rico.

20 “(iv) The government of an Indian tribe (as de-
21 fined in section 4(e) of the Indian Self-Determina-
22 tion and Education Assistance Act (25 U.S.C.
23 450b(e))).

24 “(B) Subparagraph (A) may not be construed to au-
25 thorize an entity referred to in that subparagraph to order

1 existing stock or inventory from federally owned and oper-
2 ated, or federally owned and contractor operated, supply
3 depots, warehouses, or similar facilities.

4 “(3)(A) Upon the request of a qualified nonprofit
5 agency for the blind or other severely handicapped that
6 is to provide a commodity or service to the Federal Gov-
7 ernment under the Javits-Wagner-O’Day Act, the Admin-
8 istrator may provide any of the services specified in sub-
9 section (a) to such agency to the extent practicable.

10 “(B) A nonprofit agency receiving services under the
11 authority of subparagraph (A) shall use the services di-
12 rectly in making or providing an approved commodity or
13 approved service to the Federal Government.

14 “(C) In this paragraph:

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

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

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

23 “(ii) The terms ‘approved commodity’ and ‘ap-
24 proved service’ mean a commodity and a service, re-
25 spectively, that has been determined by the Commit-

1 tee for Purchase from the Blind and Other Severely
2 Handicapped under section 2 of the Javits-Wagner-
3 O'Day Act (41 U.S.C. 47) to be suitable for pro-
4 curement by the Federal Government.

5 “(iii) The term ‘Javits-Wagner-O’Day Act’
6 means the Act entitled ‘An Act to create a Commit-
7 tee on Purchases of Blind-made Products, and for
8 other purposes’, approved June 25, 1938 (41 U.S.C.
9 46–48c), commonly referred to as the Wagner-
10 O’Day Act, that was revised and reenacted in the
11 Act of June 23, 1971 (85 Stat. 77), commonly re-
12 ferred to as the Javits-Wagner-O’Day Act.”.

13 **TITLE II—CONTRACT** 14 **ADMINISTRATION**

15 **Subtitle A—Contract Payment**

16 **SEC. 2051. CONTRACT FINANCING.**

17 (a) REORGANIZATION OF PRINCIPAL AUTHORITY
18 PROVISION.—The Office of Federal Procurement Policy
19 Act (41 U.S.C. 401 et seq.), as amended by section 1554,
20 is further amended by inserting after section 35 the fol-
21 lowing new section:

22 **“SEC. 36. CONTRACT FINANCING.**

23 “(a) PAYMENT AUTHORITY.—Any executive agency
24 may—

1 “(1) make advance, partial, progress or other
2 payments under contracts of property or services
3 made by the agency; and

4 “(2) insert in bid solicitations for procurement
5 of property or services a provision limiting to small
6 business concerns advance or progress payments.

7 “(b) PAYMENT AMOUNT.—Payments made under
8 subsection (a) may not exceed the unpaid contract price.

9 “(c) SECURITY FOR ADVANCE PAYMENTS.—Advance
10 payments under subsection (a) may be made only upon
11 adequate security and a determination by the agency head
12 that to do so would be in the public interest. Such security
13 may be in the form of a lien in favor of the Government
14 on the property contracted for, on the balance in an ac-
15 count in which such payments are deposited, and on such
16 of the property acquired for performance of the contract
17 as the parties may agree. This lien shall be paramount
18 to all other liens.

19 “(d) CONDITIONS FOR PROGRESS PAYMENTS.—(1)
20 The agency head shall ensure that any payment for work
21 in progress (including materials, labor, and other items)
22 under a contract of an executive agency that provides for
23 such payments is commensurate with the work accom-
24 plished that meets standards established under the con-
25 tract. The contractor shall provide such information and

1 evidence as the agency head determines necessary to per-
2 mit the agency head to carry out the preceding sentence.

3 “(2) The agency head shall ensure that progress pay-
4 ments referred to in paragraph (1) are not made for more
5 than 80 percent of the work accomplished under the con-
6 tract so long as the agency head has not made the contrac-
7 tual terms, specifications, and price definite.

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

11 “(e) CONDITIONS FOR PAYMENTS FOR COMMERCIAL
12 ITEMS.—(1) Payments under subsection (a) for commer-
13 cial items, as that term is defined in section 4(12) of this
14 Act, may be made under such terms and conditions as the
15 head of the agency determines are appropriate or cus-
16 tomary in the commercial marketplace. The head of the
17 agency shall obtain adequate security for such payments.
18 If the security is in the form of a lien in favor of the Unit-
19 ed States, such lien is paramount to all other liens and
20 is effective immediately upon the first payment, without
21 filing, notice, or other action by the United States.

22 “(2) Advance payments made under subsection (a)
23 for commercial items may include payments, in a total
24 amount of not more than 15 percent of the contract price,
25 in advance of any performance of work under the contract.

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

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

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

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

24 “(4) A written justification for each decision of the
25 agency head whether to reduce or suspend payments

1 under paragraph (2), and for each recommendation re-
2 ceived by the agency head in connection with such deci-
3 sion, shall be prepared and be retained in the files of the
4 executive agency.

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

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

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

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

21 “(7) Each agency head who receives recommenda-
22 tions made by a remedy coordination official of the execu-
23 tive agency to reduce or suspend payments under para-
24 graph (2) during a fiscal year shall prepare for such year
25 a report that contains the recommendations, the actions

1 taken on the recommendations and the reasons for such
2 actions, and an assessment of the effects of such actions
3 on the Federal Government. Any such report shall be
4 available to any Member of Congress upon request.

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

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

15 (b) RELATIONSHIP TO PROMPT PAYMENT REQUIRE-
16 MENTS.—Section 36 of the Office of Federal Procurement
17 Policy Act, as added by subsection (a) is not intended to
18 impair or modify procedures required by the provisions of
19 chapter 39 of title 31, United States Code, and the regula-
20 tions issued pursuant to such provisions of law, that relate
21 to progress payment requests, as such procedures are in
22 effect on the date of the enactment of this Act.

1 **Subtitle B—Cost Principles**

2 **SEC. 2151. ALLOWABLE CONTRACT COSTS.**

3 The Office of Federal Procurement Policy Act (41
4 U.S.C. 401 et seq.), as amended by section 2051, is fur-
5 ther amended by inserting after section 36 the following
6 new section:

7 **“SEC. 37. ALLOWABLE COSTS.**

8 “(a) **INDIRECT COST THAT VIOLATES A FAR COST**
9 **PRINCIPLE.**—The head of an executive agency shall re-
10 quire that a covered contract provide that if the contractor
11 submits to the executive agency a proposal for settlement
12 of indirect costs incurred by the contractor for any period
13 after such costs have been accrued and if that proposal
14 includes the submission of a cost which is unallowable be-
15 cause the cost violates a cost principle in the Federal Ac-
16 quisition Regulation or an executive agency’s supplement
17 to the Federal Acquisition Regulation, the cost shall be
18 disallowed.

19 “(b) **PENALTY FOR VIOLATION OF COST PRIN-**
20 **CIPLE.**—(1) If the agency head determines that a cost
21 submitted by a contractor in its proposal for settlement
22 is expressly unallowable under a cost principle referred to
23 in subsection (a) that defines the allowability of specific
24 selected costs, the agency head shall assess a penalty
25 against the contractor in an amount equal to—

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

4 “(B) interest (to be computed based on provi-
5 sions in the Federal Acquisition Regulation) to com-
6 pensate the United States for the use of any funds
7 which a contractor has been paid in excess of the
8 amount to which the contractor was entitled.

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

18 “(c) WAIVER OF PENALTY.—In accordance with the
19 Federal Acquisition Regulation, the agency head may
20 waive a penalty under subsection (b) in the case of a con-
21 tractor’s proposal for settlement of indirect costs when—

22 “(1) the contractor withdraws the proposal be-
23 fore the formal initiation of an audit of the proposal
24 by the Federal Government and resubmits a revised
25 proposal;

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

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

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

11 “(B) the unallowable costs subject to the
12 penalty were inadvertently incorporated into the
13 proposal.

14 “(d) APPLICABILITY OF CONTRACT DISPUTES PRO-
15 CEDURE TO DISALLOWANCE OF COST AND ASSESSMENT
16 OF PENALTY.—An action of an agency head under sub-
17 section (a) or (b)—

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

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

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

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

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

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

16 “(D) Payments of fines and penalties resulting
17 from violations of, or failure to comply with, Fed-
18 eral, State, local, or foreign laws and regulations, ex-
19 cept when incurred as a result of compliance with
20 specific terms and conditions of the contract or spe-
21 cific written instructions from the contracting officer
22 authorizing in advance such payments in accordance
23 with applicable provisions of the Federal Acquisition
24 Regulation.

1 “(E) Costs of membership in any social, dining,
2 or country club or organization.

3 “(F) Costs of alcoholic beverages.

4 “(G) Contributions or donations, regardless of
5 the recipient.

6 “(H) Costs of advertising designed to promote
7 the contractor or its products.

8 “(I) Costs of promotional items and memora-
9 bilia, including models, gifts, and souvenirs.

10 “(J) Costs for travel by commercial aircraft
11 which exceed the amount of the standard commercial
12 fare.

13 “(K) Costs incurred in making any payment
14 (commonly known as a ‘golden parachute payment’)
15 which is—

16 “(i) in an amount in excess of the normal
17 severance pay paid by the contractor to an em-
18 ployee upon termination of employment; and

19 “(ii) is paid to the employee contingent
20 upon, and following, a change in management
21 control over, or ownership of, the contractor or
22 a substantial portion of the contractor’s assets.

23 “(L) Costs of commercial insurance that pro-
24 tects against the costs of the contractor for correc-

1 tion of the contractor’s own defects in materials or
2 workmanship.

3 “(M) Costs of severance pay paid by the con-
4 tractor to foreign nationals employed by the contrac-
5 tor under a service contract performed outside the
6 United States, to the extent that the amount of sev-
7 erance pay paid in any case exceeds the amount paid
8 in the industry involved under the customary or pre-
9 vailing practice for firms in that industry providing
10 similar services in the United States, as determined
11 under the Federal Acquisition Regulation.

12 “(N) Costs of severance pay paid by the con-
13 tractor to a foreign national employed by the con-
14 tractor under a service contract performed in a for-
15 eign country if the termination of the employment of
16 the foreign national is the result of the closing of,
17 or the curtailment of activities at, a United States
18 facility in that country at the request of the govern-
19 ment of that country.

20 “(O) Costs incurred by a contractor in connec-
21 tion with any criminal, civil, or administrative pro-
22 ceeding commenced by the United States or a State,
23 to the extent provided in subsection (k).

24 “(2)(A) Pursuant to the Federal Acquisition Regula-
25 tion and subject to the availability of appropriations, the

1 agency head, in awarding a covered contract, may waive
2 the application of the provisions of paragraphs (1)(M) and
3 (1)(N) to that contract if the agency head determines
4 that—

5 “(i) the application of such provisions to the
6 contract would adversely affect the continuation of a
7 program, project, or activity that provides significant
8 support services for employees of the executive agen-
9 cy posted outside the United States;

10 “(ii) the contractor has taken (or has estab-
11 lished plans to take) appropriate actions within the
12 contractor’s control to minimize the amount and
13 number of incidents of the payment of severance pay
14 by the contractor to employees under the contract
15 who are foreign nationals; and

16 “(iii) the payment of severance pay is necessary
17 in order to comply with a law that is generally appli-
18 cable to a significant number of businesses in the
19 country in which the foreign national receiving the
20 payment performed services under the contract or is
21 necessary to comply with a collective bargaining
22 agreement.

23 “(B) The head of the executive agency concerned
24 shall include in the solicitation for a covered contract a
25 statement indicating—

1 “(i) that a waiver has been granted under sub-
2 paragraph (A) for the contract; or

3 “(ii) whether the agency head will consider
4 granting such a waiver, and, if the agency head will
5 consider granting a waiver, the criteria to be used in
6 granting the waiver.

7 “(C) The agency head shall make the final determina-
8 tion regarding whether to grant a waiver under subpara-
9 graph (A) with respect to a covered contract before award
10 of the contract.

11 “(3) The provisions of the Federal Acquisition Regu-
12 lation implementing this section may establish appropriate
13 definitions, exclusions, limitations, and qualifications.

14 “(f) REQUIRED REGULATIONS.—(1) The Federal Ac-
15 quisition Regulation shall contain provisions on the allow-
16 ability of contractor costs. Such provisions shall define in
17 detail and in specific terms those costs which are unallow-
18 able, in whole or in part, under covered contracts. The
19 regulations shall, at a minimum, clarify the cost principles
20 applicable to contractor costs of the following:

21 “(A) Air shows.

22 “(B) Membership in civic, community, and pro-
23 fessional organizations.

24 “(C) Recruitment.

25 “(D) Employee morale and welfare.

1 “(E) Actions to influence (directly or indirectly)
2 executive branch action on regulatory and contract
3 matters (other than costs incurred in regard to con-
4 tract proposals pursuant to solicited or unsolicited
5 bids).

6 “(F) Community relations.

7 “(G) Dining facilities.

8 “(H) Professional and consulting services, in-
9 cluding legal services.

10 “(I) Compensation.

11 “(J) Selling and marketing.

12 “(K) Travel.

13 “(L) Public relations.

14 “(M) Hotel and meal expenses.

15 “(N) Expense of corporate aircraft.

16 “(O) Company-furnished automobiles.

17 “(P) Advertising.

18 “(2) The Federal Acquisition Regulation shall require
19 that a contracting officer not resolve any questioned costs
20 until the contracting officer has obtained—

21 “(A) adequate documentation with respect to
22 such costs; and

23 “(B) the opinion of the executive agency’s con-
24 tract auditor on the allowability of such costs.

1 “(3) The Federal Acquisition Regulation shall pro-
2 vide that, to the maximum extent practicable, an executive
3 agency’s contract auditor be present at any negotiation or
4 meeting with the contractor regarding a determination of
5 the allowability of indirect costs of the contractor.

6 “(4) The Federal Acquisition Regulation shall require
7 that all categories of costs designated in the report of an
8 executive agency’s contract auditor as questioned with re-
9 spect to a proposal for settlement be resolved in such a
10 manner that the amount of the individual questioned costs
11 that are paid will be reflected in the settlement.

12 “(g) APPLICABILITY OF REGULATIONS TO SUB-
13 CONTRACTORS.—The regulations referred to in sub-
14 sections (e) and (f)(1) shall require, to the maximum ex-
15 tent practicable, that such regulations apply to all sub-
16 contractors of a covered contract.

17 “(h) CONTRACTOR CERTIFICATION REQUIRED.—(1)
18 A proposal for settlement of indirect costs applicable to
19 a covered contract shall include a certification by an offi-
20 cial of the contractor that, to the best of the certifying
21 official’s knowledge and belief, all indirect costs included
22 in the proposal are allowable. Any such certification shall
23 be in a form prescribed in the Federal Acquisition Regula-
24 tion.

1 “(2) The agency head concerned may, in an excep-
2 tional case, waive the requirement for certification under
3 paragraph (1) in the case of any contract if the agency
4 head—

5 “(A) determines in such case that it would be
6 in the interest of the United States to waive such
7 certification; and

8 “(B) states in writing the reasons for that de-
9 termination and makes such determination available
10 to the public.

11 “(i) PENALTIES FOR SUBMISSION OF COST KNOWN
12 AS NOT ALLOWABLE.—The submission to an executive
13 agency of a proposal for settlement of costs for any period
14 after such costs have been accrued that includes a cost
15 that is expressly specified by statute or regulation as being
16 unallowable, with the knowledge that such cost is unallow-
17 able, shall be subject to the provisions of section 287 of
18 title 18, United States Code, and section 3729 of title 31,
19 United States Code.

20 “(j) CONTRACTOR TO HAVE BURDEN OF PROOF.—
21 In a proceeding before a board of contract appeals, the
22 United States Court of Federal Claims, or any other Fed-
23 eral court in which the reasonableness of indirect costs for
24 which a contractor seeks reimbursement from the United

1 States is in issue, the burden of proof shall be upon the
2 contractor to establish that those costs are reasonable.

3 “(k) PROCEEDING COSTS NOT ALLOWABLE.—(1)
4 Except as otherwise provided in this subsection, costs in-
5 curred by a contractor in connection with any criminal,
6 civil, or administrative proceeding commenced by the
7 United States or a State are not allowable as reimbursable
8 costs under a covered contract if the proceeding (A) re-
9 lates to a violation of, or failure to comply with, a Federal
10 or State statute or regulation, and (B) results in a disposi-
11 tion described in paragraph (2).

12 “(2) A disposition referred to in paragraph (1)(B) is
13 any of the following:

14 “(A) In the case of a criminal proceeding, a
15 conviction (including a conviction pursuant to a plea
16 of nolo contendere) by reason of the violation or fail-
17 ure referred to in paragraph (1).

18 “(B) In the case of a civil or administrative
19 proceeding involving an allegation of fraud or similar
20 misconduct, a determination of contractor liability
21 on the basis of the violation or failure referred to in
22 paragraph (1).

23 “(C) In the case of any civil or administrative
24 proceeding, the imposition of a monetary penalty by

1 reason of the violation or failure referred to in para-
2 graph (1).

3 “(D) A final decision—

4 “(i) to debar or suspend the contractor,

5 “(ii) to rescind or void the contract, or

6 “(iii) to terminate the contract for default,

7 by reason of the violation or failure referred to in
8 paragraph (1).

9 “(E) A disposition of the proceeding by consent
10 or compromise if such action could have resulted in
11 a disposition described in subparagraph (A), (B),
12 (C), or (D).

13 “(3) In the case of a proceeding referred to in para-
14 graph (1) that is commenced by the United States and
15 is resolved by consent or compromise pursuant to an
16 agreement entered into by a contractor and the United
17 States, the costs incurred by the contractor in connection
18 with such proceeding that are otherwise not allowable as
19 reimbursable costs under such paragraph may be allowed
20 to the extent specifically provided in such agreement.

21 “(4) In the case of a proceeding referred to in para-
22 graph (1) that is commenced by a State, the agency head
23 that awarded the covered contract involved in the proceed-
24 ing may allow the costs incurred by the contractor in con-
25 nection with such proceeding as reimbursable costs if the

1 agency head determines, in accordance with the Federal
2 Acquisition Regulation, that the costs were incurred as a
3 result of (A) a specific term or condition of the contract,
4 or (B) specific written instructions of the agency.

5 “(5)(A) Except as provided in subparagraph (C),
6 costs incurred by a contractor in connection with a crimi-
7 nal, civil, or administrative proceeding commenced by the
8 United States or a State in connection with a covered con-
9 tract may be allowed as reimbursable costs under the con-
10 tract if such costs are not disallowable under paragraph
11 (1), but only to the extent provided in subparagraph (B).

12 “(B)(i) The amount of the costs allowable under sub-
13 paragraph (A) in any case may not exceed the amount
14 equal to 80 percent of the amount of the costs incurred,
15 to the extent that such costs are determined to be other-
16 wise allowable and allocable under the Federal Acquisition
17 Regulation.

18 “(ii) Regulations issued for the purpose of clause (i)
19 shall provide for appropriate consideration of the complex-
20 ity of procurement litigation, generally accepted principles
21 governing the award of legal fees in civil actions involving
22 the United States as a party, and such other factors as
23 may be appropriate.

24 “(C) In the case of a proceeding referred to in sub-
25 paragraph (A), contractor costs otherwise allowable as re-

1 imburseable costs under this paragraph are not allowable
2 if (i) such proceeding involves the same contractor mis-
3 conduct alleged as the basis of another criminal, civil, or
4 administrative proceeding, and (ii) the costs of such other
5 proceeding are not allowable under paragraph (1).

6 “(6) In this subsection:

7 “(A) The term ‘proceeding’ includes an inves-
8 tigation.

9 “(B) The term ‘costs’, with respect to a pro-
10 ceeding—

11 “(i) means all costs incurred by a contrac-
12 tor, whether before or after the commencement
13 of any such proceeding; and

14 “(ii) includes—

15 “(I) administrative and clerical ex-
16 penses;

17 “(II) the cost of legal services, includ-
18 ing legal services performed by an em-
19 ployee of the contractor;

20 “(III) the cost of the services of ac-
21 countants and consultants retained by the
22 contractor; and

23 “(IV) the pay of directors, officers,
24 and employees of the contractor for time

1 devoted by such directors, officers, and em-
2 ployees to such proceeding.

3 “(C) The term ‘penalty’ does not include res-
4 titution, reimbursement, or compensatory damages.

5 “(I) COVERED CONTRACT DEFINED.—(1) In this sec-
6 tion, the term ‘covered contract’ means a contract for an
7 amount in excess of \$500,000 that is entered into by an
8 executive agency, except that such term does not include
9 a fixed-price contract without cost incentives or any con-
10 tract for the purchase of commercial items (as defined in
11 section 4(12).

12 “(2) Effective on October 1 of each year that is divis-
13 ible by 5, the amount set forth in paragraph (1) shall be
14 adjusted to the amount that is equal to the fiscal year
15 1994 constant dollar value of the amount set forth. An
16 amount, as so adjusted, that is not evenly divisible by
17 \$50,000 shall be rounded to the nearest multiple of
18 \$50,000. In the case of an amount that is evenly divisible
19 by \$25,000 but is not evenly divisible by \$50,000, the
20 amount shall be rounded to the next higher multiple of
21 \$50,000.”.

22 **SEC. 2152. TRAVEL EXPENSES OF GOVERNMENT CONTRAC-**
23 **TORS.**

24 Section 24(a) of the Office of Federal Procurement
25 Policy Act (41 U.S.C. 420) is amended by inserting after

1 “Under any contract” the following: “requiring submis-
2 sion of cost or pricing data or the negotiation of final indi-
3 rect costs”.

4 **Subtitle C—Audit and Access to** 5 **Records**

6 **SEC. 2251. AUTHORITY TO EXAMINE RECORDS OF CON-** 7 **TRACTORS.**

8 The Office of Federal Procurement Policy Act (41
9 U.S.C. 401 et seq.), as amended by section 2151, is fur-
10 ther amended by inserting after section 37 the following
11 new section:

12 **“SEC. 38. EXAMINATION OF RECORDS OF CONTRACTOR.**

13 “(a) AGENCY AUTHORITY.—The head of an executive
14 agency, acting through an authorized representative—

15 “(1) is entitled to inspect the plant and audit
16 the records of—

17 “(A) a contractor performing a cost-reim-
18 bursement, incentive, time-and-materials, labor-
19 hour, or price-redeterminable contract, or any
20 combination of such contracts, made by that ex-
21 ecutive agency under this title; and

22 “(B) a subcontractor performing any cost-
23 reimbursement, incentive, time-and-materials,
24 labor-hour, or price-redeterminable subcontract
25 under a contract referred to in subparagraph

1 (A) or under any combination of such contracts;
2 and

3 “(2) shall, for the purpose of evaluating the ac-
4 curacy, completeness, and currency of cost or pricing
5 data required to be submitted pursuant to section 32
6 with respect to a contract or subcontract, have the
7 right to examine all records of the contractor or sub-
8 contractor related to—

9 “(A) the proposal for the contract or sub-
10 contract;

11 “(B) the discussions conducted on the pro-
12 posal;

13 “(C) pricing of the contract or subcontract;
14 or

15 “(D) performance of the contract or sub-
16 contract.

17 “(b) LIMITATION ON PREAWARD AUDITS RELATING
18 TO INDIRECT COSTS.—The head of an agency may not
19 perform a preaward audit to evaluate proposed indirect
20 costs under any contract, subcontract, or modification to
21 be entered into in accordance with this chapter in any case
22 in which the contracting officer determines that the objec-
23 tives of the audit can reasonably be met by accepting the
24 results of an audit conducted by any other department or

1 agency of the Federal Government within one year preced-
2 ing the date of the contracting officer's determination.

3 “(c) COMPTROLLER GENERAL AUTHORITY.—(1) Ex-
4 cept as provided in paragraph (2), each contract awarded
5 after using procedures other than sealed bid procedures
6 shall provide that the Comptroller General and his rep-
7 resentatives are entitled to examine any records of the
8 contractor, or any of its subcontractors, that directly per-
9 tain to, and involve transactions relating to, the contract
10 or subcontract.

11 “(2) Paragraph (1) does not apply to a contract or
12 subcontract with a foreign contractor or foreign sub-
13 contractor if the agency head concerned determines, with
14 the concurrence of the Comptroller General or his des-
15 ignee, that the application of that paragraph to the con-
16 tract or subcontract would not be in the public interest.
17 However, the concurrence of the Comptroller General or
18 his designee is not required—

19 “(A) where the contractor or subcontractor is a
20 foreign government or agency thereof or is precluded
21 by the laws of the country involved from making its
22 records available for examination; and

23 “(B) where the agency head determines, after
24 taking into account the price and availability of the
25 property and services from United States sources,

1 that the public interest would be best served by not
2 applying paragraph (1).

3 “(3) Paragraph (1) may not be construed to require
4 a contractor or subcontractor to create or maintain any
5 record that the contractor or subcontractor does not main-
6 tain in the ordinary course of business or pursuant to an-
7 other provision of law.

8 “(d) LIMITATION.—The right of an agency head
9 under subsection (a), and the right of the Comptroller
10 General under subsection (c), with respect to a contract
11 or subcontract shall expire three years after final payment
12 under such contract or subcontract.

13 “(e) INAPPLICABILITY TO CERTAIN CONTRACTS.—
14 This section is inapplicable to contracts for utility services
15 at rates not exceeding those established to apply uniformly
16 to the public, plus any applicable reasonable connection
17 charge.

18 “(f) FORMS OF ORIGINAL RECORD STORAGE.—Noth-
19 ing in this section shall be construed to preclude a contrac-
20 tor from duplicating or storing original records in elec-
21 tronic form.

22 “(g) USE OF IMAGES OF ORIGINAL RECORDS.—The
23 head of an agency shall not require a contractor or sub-
24 contractor to provide original records in an audit carried
25 out pursuant to this section if the contractor or sub-

1 contractor provides photographic or electronic images of
2 the original records and meets the following requirements:

3 “(1) The contractor or subcontractor has estab-
4 lished procedures to ensure that the imaging process
5 preserves the integrity, reliability, and security of
6 the original records.

7 “(2) The contractor or subcontractor maintains
8 an effective indexing system to permit timely and
9 convenient access to the imaged records.

10 “(3) The contractor or subcontractor retains
11 the original records for a minimum of one year after
12 imaging to permit periodic validation of the imaging
13 systems.

14 “(h) RECORDS DEFINED.—In this section, the term
15 ‘records’ includes books, documents, accounting proce-
16 dures and practices, and other data, regardless of type and
17 regardless of whether such items are in written form, in
18 the form of computer data, or in any other form.”.

19 **Subtitle D—Cost Accounting** 20 **Standards**

21 **SEC. 2301. REPEAL OF OBSOLETE DEADLINE REGARDING** 22 **PROCEDURAL REGULATIONS FOR THE COST** 23 **ACCOUNTING STANDARDS BOARD.**

24 Section 26(f)(3) of the Office of Federal Procurement
25 Policy Act (41 U.S.C. 422(f)(3)) is amended in the first

1 sentence by striking out “Not later than 180 days after
2 the date of the enactment of this section, the Adminis-
3 trator” and inserting in lieu thereof “The Administrator”.

4 **TITLE III—SIMPLIFIED ACQUI-
5 TION THRESHOLD AND SO-
6 CIOECONOMIC, SMALL BUSI-
7 NESS, AND MISCELLANEOUS
8 LAWS**

9 **Subtitle A—Simplified Acquisition
10 Threshold**

11 **PART I—ESTABLISHMENT OF THRESHOLD**

12 **SEC. 3001. ESTABLISHMENT OF SIMPLIFIED ACQUISITION
13 THRESHOLD.**

14 (a) ESTABLISHMENT.—The Office of Federal Pro-
15 curement Policy Act (41 U.S.C. 401 et seq.) is amended
16 by inserting after section 4 the following new section:

17 **“SEC. 4A. SIMPLIFIED ACQUISITION THRESHOLD.**

18 “(a) IN GENERAL.—The simplified acquisition
19 threshold for purposes of Federal acquisitions is (except
20 as provided in subsection (b)) the amount of \$25,000, as
21 adjusted pursuant to subsection (c).

22 “(b) AGENCIES WITH FACNET SYSTEM.—In the
23 case of an agency for which there is in effect a certification
24 under section 39A of the Office of Federal Procurement
25 Policy Act with respect to implementation of a FACNET

1 system, the simplified acquisition threshold is the amount
2 of \$100,000, as adjusted pursuant to subsection (c).

3 “(c) PERIODIC ADJUSTMENT FOR INFLATION.—The
4 dollar amount in effect under subsection (a) shall be ad-
5 justed on October 1 of each year divisible by 5 to the
6 equivalent amount in constant fiscal year 1990 dollars
7 (rounded to the nearest \$1,000). The dollar amount in ef-
8 fect under subsection (b) shall be adjusted on October 1
9 of each year divisible by 5 to the equivalent amount in
10 constant fiscal year 1993 dollars (rounded to the nearest
11 \$1,000).

12 “(d) SPECIAL RULE FOR CONTINGENCY OPER-
13 ATIONS.—In the case of a contract to be awarded and per-
14 formed, or a purchase to be made, outside the United
15 States in support of a contingency operation (as defined
16 in section 101(a)(13) of title 10, United States Code), the
17 amounts in effect under subsections (a) and (b) shall be
18 two times the amounts otherwise applicable.”.

19 (b) CONFORMING AMENDMENT TO DEFINITION.—
20 Section 4(11) of such Act is amended to read as follows:

21 “(11) The term ‘small purchase threshold’
22 means the simplified acquisition threshold estab-
23 lished by section 4A.”.

1 **SEC. 3002. FEDERAL ACQUISITION COMPUTER NETWORK.**

2 (a) FEDERAL ACQUISITION COMPUTER NETWORK.—
3 The Office of Federal Procurement Policy Act (41 U.S.C.
4 401 et seq.), as amended by section 2251, is further
5 amended by adding after section 38 the following new sec-
6 tion:

7 **“SEC. 39. FEDERAL ACQUISITION COMPUTER NETWORK**
8 **(FACNET).**

9 “(a) IN GENERAL.—(1) The Administrator shall es-
10 tablish a program for the development and implementation
11 of a Federal acquisition computer network system archi-
12 tecture. Any system developed in accordance with this ar-
13 chitecture shall be known as a ‘FACNET system’. The
14 Administrator shall assign a program manager for the
15 FACNET system and shall provide for overall direction
16 of policy and leadership in the development, coordination,
17 installation, operation, and completion of implementation
18 of the FACNET system by executive agencies.

19 “(2) The FACNET system architecture shall involve
20 enabling technology and procurement electronic data
21 interchange transaction sets. The enabling technology
22 shall consist of computer network capabilities, supporting
23 data bases, and standard interfaces that interconnect Fed-
24 eral Government automated systems to the network. The
25 procurement electronic data interchange transaction sets
26 shall facilitate the electronic interchange of standard pro-

1 curement information between Federal Government and
2 industry automated acquisition systems.

3 “(3) In carrying out paragraph (1), the Adminis-
4 trator shall consult with the Office of Information and
5 Regulatory Affairs.

6 “(4) The Administrator shall carry out paragraph (1)
7 not later than the date that is 3 years after the date of
8 enactment of the Federal Acquisition Reform Act of 1994.

9 “(b) FUNCTIONS OF FACNET.—The FACNET sys-
10 tem architecture shall have the capacity to carry out the
11 following functions:

12 “(1) GOVERNMENT FUNCTIONS.—

13 “(A) Provide widespread public notice of
14 solicitations for contract opportunities issued by
15 an executive agency and of orders to be made
16 by the agency.

17 “(B) Allow responses to solicitations and
18 requests for information to be submitted to the
19 procuring activity through such system.

20 “(C) Allow public notice of contract
21 awards to be provided through such system.

22 “(D) In cases in which it is practicable,
23 allow questions regarding solicitations to be an-
24 swered through such system.

1 “(E) Allow orders to be made through
2 such system.

3 “(F) In cases in which it is practicable,
4 make payments to contractors by bank card,
5 electronic funds transfer, or other automated
6 methods.

7 “(G) Archive data relating to each pro-
8 curement action made using such system.

9 “(2) USER FUNCTIONS.—Allow private users to
10 electronically—

11 “(A) access notice of solicitations for con-
12 tract opportunities issued by an agency and of
13 orders to be made by the agency;

14 “(B) selectively access and review solicita-
15 tions and orders issued by the agency;

16 “(C) respond to solicitations and notices of
17 orders issued by the agency;

18 “(D) receive orders from the agency;

19 “(E) access information on contract
20 awards made by the agency; and

21 “(F) in cases in which it is practicable, re-
22 ceive payment by bank card, electronic funds
23 transfer, or other automated means.

24 “(3) GENERAL FUNCTIONS.—

1 “(A) Allow the electronic exchange of pro-
2 curement information between the private sec-
3 tor and the Federal Government.

4 “(B) Employ nationally and internationally
5 recognized data formats that serve to broaden
6 and ease the electronic interchange of data.

7 “(C) Allow convenient and universal user
8 access through a single point of entry.

9 “(c) FUNCTIONS OF ADMINISTRATOR OF GENERAL
10 SERVICES.—The Administrator of General Services shall
11 do the following:

12 “(1) Provide technical support for FACNET
13 systems by doing the following:

14 “(A) Coordinate with the Administrator to
15 facilitate the efficient and widespread imple-
16 mentation of various FACNET systems by ex-
17 ecutive agencies. This shall include interfacing
18 FACNET systems to other systems, such as the
19 Federal Government bank card and Electronic
20 Funds Transfer payment systems.

21 “(B) Assist the Director of the National
22 Institute of Standards and Technology in the
23 development and application of appropriate
24 Federal Information Processing Standards.

1 “(C) Prepare a technical plan for coordi-
2 nating the design, development, implementation,
3 operation, and maintenance of the FACNET
4 system architecture. The plan shall include
5 roles and responsibilities, major milestones, cost
6 estimates, and performance requirements.

7 “(2) Ensure compliance with section 111 of the
8 Federal Property and Administrative Services Act of
9 1949 in the implementation of FACNET systems by
10 executive agencies, including by limiting the scope of
11 delegations under subsection (a) of that section.

12 “(3) Evaluate progress by executive agencies in
13 implementing FACNET systems, and recommend
14 changes in that implementation to the program
15 manager assigned by the Administrator under sub-
16 section (a).

17 “(4) Submit to the Congress, on the date that
18 is one year after the date of the enactment of the
19 Federal Acquisition Reform Act of 1994 and on that
20 date in each of the 3 years thereafter, a report on
21 the overall progress by the executive branch of the
22 Federal Government and by each executive agency in
23 implementing the FACNET system architecture.

1 “(d) FUNCTIONS OF NATIONAL INSTITUTE OF
2 STANDARDS AND TECHNOLOGY.—The Director of the Na-
3 tional Institute of Standards and Technology shall—

4 “(1) ensure that the FACNET system architec-
5 ture complies with Federal Information Processing
6 Standards;

7 “(2) issue additional standards for the
8 FACNET system architecture as necessary; and

9 “(3) establish tests to facilitate the aims of this
10 section and support policies established by the Ad-
11 ministrator under this section.”.

12 (b) TECHNICAL AMENDMENTS.—Section 18 of the
13 Office of Federal Procurement Policy Act (41 U.S.C. 416)
14 is amended—

15 (1) in subsection (a)(1)(A), by striking out “no-
16 tice” in the matter following clause (ii) and inserting
17 in lieu thereof “notice of solicitation”; and

18 (2) in subsection (d), by striking out “a notice
19 under subsection (e)” in the first sentence and in-
20 serting in lieu thereof “a notice of solicitation under
21 subsection (a)”.

22 **SEC. 3003. IMPLEMENTATION IN EXECUTIVE AGENCIES.**

23 The Office of Federal Procurement Policy Act (41
24 U.S.C. 401 et seq.), as amended by section 3002, is fur-

1 ther amended by adding after section 39 the following new
2 section:

3 **“SEC. 39A. IMPLEMENTATION OF FACNET SYSTEMS.**

4 “(a) IMPLEMENTATION OF FACNET SYSTEMS.—(1)
5 The head of each executive agency shall implement the
6 Federal acquisition computer network (‘FACNET’) sys-
7 tems required by section 39.

8 “(2) In implementing the FACNET systems pursu-
9 ant to paragraph (1), the head of an executive agency shall
10 consult with the Administrator for Federal Procurement
11 Policy and the Administrator for General Services.

12 “(b) DESIGNATION OF AGENCY PROGRAM MAN-
13 AGER.—(1) The head of each executive agency shall des-
14 ignate a program manager to have responsibility for imple-
15 mentation of FACNET systems for that agency and other-
16 wise to implement this section.

17 “(2) A program manager designated under this sub-
18 section for an executive agency shall—

19 “(A) report directly to the senior procurement
20 executive designated for the agency under section
21 16(4);

22 “(B) be responsible for the timely and cost-ef-
23 fective implementation of the FACNET system ar-
24 chitecture for the agency in a manner that is respon-
25 sive to the procurement needs of the agency, na-

1 tional business needs, and the public's interest in
2 open government;

3 “(C) develop plans for phasing-in the implemen-
4 tation of FACNET systems for the procuring activi-
5 ties of the executive agency and phasing-out local
6 network systems that perform comparable procure-
7 ment functions;

8 “(D) participate in the interagency development
9 of standard procurement electronic data interchange
10 transaction sets; and

11 “(E) in carrying out this section, comply with
12 guidelines issued by the Administrator under this
13 section and program directives issued by the Admin-
14 istrator of General Services under section 111 of the
15 Federal Property and Administrative Services Act of
16 1949.

17 “(c) CERTIFICATION OF FACNET SYSTEM.—(1)
18 When the senior procurement official of an executive agen-
19 cy determines that a procuring activity of the agency has
20 implemented an interim FACNET system (as defined in
21 subsection (f)), the senior procurement official shall certify
22 to the Administrator for Federal Procurement Policy that
23 the agency has implemented an interim FACNET system.

24 “(2) When the head of an executive agency, with the
25 concurrence of the Administrator for Federal Procurement

1 Policy, determines that the agency has implemented a full
2 FACNET system (as defined in subsection (g)), the head
3 of the agency shall certify to Congress that the agency
4 has implemented a full FACNET system.

5 “(3) The head of each executive agency shall provide
6 for implementation of both interim FACNET system and
7 full FACNET system, with priority on providing conven-
8 ient and universal user access as required by section
9 39(b)(3)(C), in that agency as soon as practicable after
10 the date of the enactment of the Federal Acquisition Re-
11 form Act of 1994.

12 “(d) HIGHER SIMPLIFIED ACQUISITION THRESHOLD
13 WHEN FACNET SYSTEM CERTIFIED.—A certification to
14 the Administrator or Congress under subsection (c) shall
15 be considered to be a certification for purposes of the high-
16 er simplified acquisition threshold under section 4A(b), ex-
17 cept that a certification under paragraph (1) of subsection
18 (c) shall not constitute such a certification in the case of
19 solicitations issued after the end of the three-year period
20 beginning on the date of the enactment of the Federal Ac-
21 quisition Reform Act of 1994.

22 “(e) EXEMPTION FROM NOTICE PROVISIONS.—An
23 executive agency is exempt from the requirements of sec-
24 tion 18(a)(1) of the Office of Federal Procurement Policy
25 Act (41 U.S.C. 416(a)(1)) if the senior procurement offi-

1 cial of the agency makes the certification described in sub-
2 section (c)(1).

3 “(f) IMPLEMENTATION OF INTERIM FACNET SYS-
4 TEM.—A procuring activity shall be considered to have im-
5 plemented an interim FACNET system if—

6 “(1) with respect to each procurement expected
7 to be in an amount less than the simplified acquisi-
8 tion threshold, the procuring activity has imple-
9 mented the FACNET functions described in para-
10 graphs (1)(A) and (2)(A) of section 39(b), as in ef-
11 fect on the effective date of section 3002 of the Fed-
12 eral Acquisition Reform Act of 1994; and

13 “(2) with respect to each procurement expected
14 to be in an amount less than the simplified acquisi-
15 tion threshold, the procuring activity issues notices
16 of solicitations through a system with those func-
17 tions for all contracting opportunities other than in
18 cases covered by section 18(c).

19 “(g) IMPLEMENTATION OF FULL FACNET SYS-
20 TEM.—(1) An executive agency shall be considered to have
21 implemented a full FACNET system if (except in the case
22 of procuring activities (or portions thereof) of the agency
23 for which the head of the agency determines that imple-
24 mentation is not cost effective or practicable) the executive
25 agency has implemented all of the FACNET functions de-

1 scribed in section 39(b), as in effect on the effective date
2 of section 3002 of the Federal Acquisition Reform Act of
3 1994.

4 “(2) For purposes of paragraph (1), an executive
5 agency may not be considered to have implemented a full
6 FACNET system if—

7 “(A) the head of the agency has determined
8 that implementation of FACNET system is not cost
9 effective or practicable in the case of certain procur-
10 ing activities (or portions thereof) of the agency; and

11 “(B) the percentage of the procurement actions
12 executed by those procuring activities (or portions
13 thereof) for the preceding fiscal year is greater than
14 25 percent of the total number of procurement ac-
15 tions executed by the agency for that year.

16 “(h) PROCURING ACTIVITIES ORIGINALLY EX-
17 CLUDED IN CERTIFICATION.—(1) If the head of an execu-
18 tive agency, in certifying under subsection (c) that the
19 agency has implemented a full FACNET system, deter-
20 mines that such implementation is not cost effective or
21 practicable in the case of any procuring activity (or por-
22 tion thereof) of that agency, then that certification shall
23 not apply under section 4A(b) to any procurement action
24 by that procuring activity (or portion thereof).

1 “(2) If the head of an executive agency determines
2 that a full FACNET system has subsequently been imple-
3 mented for that procuring activity (or portion thereof), the
4 head of the agency shall make a certification to Adminis-
5 trator for Federal Procurement Policy in the same manner
6 as a certification under paragraph (2) of subsection (c),
7 and such certification shall have the same effect with re-
8 spect to that procuring activity (or portion thereof) as if
9 made under such paragraph of subsection (c).”.

10 **PART II—SIMPLIFICATION OF PROCEDURES**

11 **SEC. 3011. SIMPLIFIED ACQUISITION PROCEDURES.**

12 The Office of Federal Procurement Policy Act (41
13 U.S.C. 401 et seq.), as amended by section 3001, is fur-
14 ther amended by inserting after section 4A the following
15 new section:

16 **“SEC. 4B. SIMPLIFIED ACQUISITION PROCEDURES.**

17 “(a) SIMPLIFIED PROCEDURES REQUIRED.—In
18 order to promote efficiency and economy in contracting
19 and to avoid unnecessary burdens for agencies and con-
20 tractors, the Federal Acquisition Regulation shall provide
21 for special simplified procedures for contracts for acqui-
22 sition of property and services that are not in excess of the
23 simplified acquisition threshold.

24 “(b) DIVISION OF CONTRACTS PROHIBITED.—A pro-
25 posed purchase or contract for an amount above the sim-

1 plified acquisition threshold may not be divided into
2 several purchases or contracts for lesser amounts in order
3 to use the simplified acquisition procedures required by
4 subsection (a).

5 “(c) PROMOTION OF COMPETITION.—In using sim-
6 plified acquisition procedures, the head of an executive
7 agency shall promote competition to the maximum extent
8 practicable.”.

9 **SEC. 3012. SMALL BUSINESS PROVISIONS.**

10 (a) INTERIM REPORTING RULE.—Notwithstanding
11 section 4A of the Office of Federal Procurement Policy
12 Act, as added by section 3001, during the 3-year period
13 beginning on the date of the issuance in final form of revi-
14 sions to the Federal Acquisition Regulation under section
15 4C of the Office of Federal Procurement Policy Act, as
16 added by section 3013, procuring activities shall continue
17 to report, pursuant to section 19(d) of the Office of Fed-
18 eral Procurement Policy Act (41 U.S.C. 417(d)), procure-
19 ment awards with a dollar value of at least \$25,000, but
20 less than \$100,000, in conformity with the procedures for
21 the reporting of a contract award in excess of \$25,000
22 in effect on November 18, 1993.

23 (b) FUNCTIONS OF ADMINISTRATOR FOR FEDERAL
24 PROCUREMENT POLICY.—Section 6(d) of the Office of

1 Federal Procurement Policy Act (41 U.S.C. 405(d)) is
2 amended—

3 (1) in paragraph (7), by striking out “and”
4 after the semicolon at the end; and

5 (2) by redesignating paragraph (8) as para-
6 graph (10) and inserting after paragraph (7) the fol-
7 lowing:

8 “(8) developing policies, in consultation with
9 the Administrator of the Small Business Administra-
10 tion, that ensure that small businesses and small
11 businesses owned and controlled by socially and eco-
12 nomically disadvantaged persons are provided with
13 the maximum practicable opportunities to partici-
14 pate in procurements that are conducted for
15 amounts below the simplified acquisition threshold;

16 “(9) developing policies that will promote
17 achievement of goals for participation by small busi-
18 nesses and small businesses owned and controlled by
19 socially and economically disadvantaged individuals;
20 and”.

21 **SEC. 3013. PROCEDURES FOR PURCHASES BELOW MICRO-**
22 **PURCHASE THRESHOLD.**

23 The Office of Federal Procurement Policy Act (41
24 U.S.C. 401 et seq.), as amended by section 3011, is fur-

1 ther amended by inserting after section 4B the following
2 new section:

3 **“SEC. 4C. PROCEDURES APPLICABLE TO PURCHASES**
4 **BELOW MICRO-PURCHASE THRESHOLD.**

5 “(a) REQUIREMENTS.—(1) The head of each execu-
6 tive agency shall ensure that procuring activities of that
7 agency, in awarding a contract with a price exceeding the
8 micro-purchase threshold, comply with the requirements
9 of section 8(a) of the Small Business Act (15 U.S.C.
10 637(a)) and section 45 of this Act.

11 “(2) The authority under part 13.106(a)(1) of the
12 Federal Acquisition Regulation (48 C.F.R. 13.106(a)(1)),
13 as in effect on November 18, 1993, to make purchases
14 without securing competitive quotations does not apply to
15 any purchases with a price exceeding the micro-purchase
16 threshold.

17 “(3) The head of each executive agency shall ensure
18 that procuring activities of that agency comply with the
19 requirements of section 40, relating to the small business
20 reserve.

21 “(b) CERTAIN CONTRACTING OFFICIALS NOT TO BE
22 CONSIDERED PROCUREMENT OFFICIALS.—Any civilian
23 officer or employee, and any member of the Armed Forces,
24 who has authority to enter into contracts but whose con-
25 tracting authority is limited to the amount of the micro-

1 purchase threshold or less is not a procurement official
2 as defined in paragraph (3)(A) of section 27(p).

3 “(c) IMPLEMENTATION THROUGH FAR.—The provi-
4 sions of subsections (a) and (b) shall be implemented
5 through the Federal Acquisition Regulation.

6 “(d) MICRO-PURCHASE THRESHOLD DEFINED.—For
7 purposes of this subsection, the micro-purchase threshold
8 is the amount of \$2,500, adjusted on October 1 of each
9 year divisible by 5 to the equivalent amount in constant
10 fiscal year 1993 dollars (rounded to the nearest \$100).”.

11 **SEC. 3014. PROCUREMENT NOTICE.**

12 (a) CONTINUATION OF EXISTING NOTICE THRESH-
13 OLDS.—Subsection (a) of section 18 of the Office of Fed-
14 eral Procurement Policy Act (41 U.S.C. 416) is amended
15 as follows:

16 (1) Paragraph (1) is amended—

17 (A) by striking out “the small purchase
18 threshold” each place it appears and inserting
19 in lieu thereof “the simplified acquisition
20 threshold”;

21 (B) by striking out “(c)—” in the matter
22 preceding subparagraph (A) and inserting in
23 lieu thereof “(c):”;

1 (C) by striking out “an executive” at the
2 beginning of subparagraphs (A) and (C) and in-
3 serting in lieu thereof “An executive”;

4 (D) by striking out the semicolon at the
5 end of subparagraph (A) and inserting in lieu
6 thereof a period; and

7 (E) by amending subparagraph (B) to read
8 as follows:

9 “(B) An executive agency intending to solicit
10 (including orally or by any other means) bids or pro-
11 posals for a contract for property or services for a
12 price expected to exceed \$10,000 but not to exceed
13 the simplified acquisition threshold shall post a no-
14 tice of solicitation described in subsection (b). The
15 notice shall be posted at the contracting office issu-
16 ing the solicitation or shall be made available
17 through an electronic system with a FACNET sys-
18 tem that at least meets the requirements of para-
19 graphs (1)(A) and (2)(A) of section 39(b). The no-
20 tice shall be posted for a period of not less than 10
21 days, except that in the case of a posting made
22 through an electronic system with such a FACNET
23 system, the posting may be for a period of less than
24 10 days as prescribed in the Federal Acquisition
25 Regulation.”.

1 (2) Paragraph (3)(B) is amended by inserting
2 after “(B)” the following: “in the case of a contract
3 or order for an amount expected to exceed the sim-
4 plified acquisition threshold,”.

5 (b) OPPORTUNITY FOR ALL RESPONSIBLE POTEN-
6 TIAL OFFERORS.—Such subsection is further amended by
7 adding at the end the following:

8 “(4) An executive agency intending to solicit offers
9 for a contract for which a notice of solicitation is required
10 to be posted under paragraph (1)(B) shall ensure that all
11 potential offerors are permitted to respond to the solicita-
12 tion for the contract within the period of time specified
13 in the solicitation for the submission of offers.”.

14 (c) ESTABLISHMENT OF DEADLINE FOR SUBMISSION
15 OF OFFERS.—Such subsection is further amended by in-
16 serting after paragraph (4), as added by subsection (b),
17 the following new paragraph:

18 “(5) An executive agency shall establish a deadline
19 for the submission of all bids or proposals in response to
20 a notice of solicitation with respect to which no such dead-
21 line is provided by statute.”.

22 (d) EXCEPTIONS.—Subsection (c) of such section is
23 amended by adding at the end the following new para-
24 graph:

1 “(4)(A) The requirements of subsection (a)(1) shall
2 not apply in the case of an acquisition accomplished
3 through the use of an electronic system within a FACNET
4 system, as described in section 39 and certified under sec-
5 tion 39A.

6 “(B) The Federal Acquisition Regulation shall pro-
7 vide for minimum periods of time for submission of offers
8 for acquisitions described in subparagraph (A). Such peri-
9 ods shall provide offerors a reasonable opportunity to re-
10 spond.

11 “(C) A notice of solicitation of bids or proposals for
12 an acquisition described in subparagraph (A) shall include
13 the matter described in under subsection (b).”.

14 **SEC. 3015. SMALL BUSINESS RESERVATION.**

15 The Office of Federal Procurement Policy Act (41
16 U.S.C. 401 et seq.), as amended by section 3003, is fur-
17 ther amended by adding after section 39A the following
18 new section:

19 **“SEC. 40. CONTRACTS: SMALL BUSINESS RESERVATION.**

20 “(a) REQUIREMENT.—Each contract for the procure-
21 ment of property and services that has an anticipated
22 value not in excess of \$100,000 shall be reserved exclu-
23 sively for small business concerns unless the contracting
24 officer is unable to obtain offers from two or more small
25 business concerns that (1) are competitive with market

1 prices, and (2) are competitive with regard to the quality
2 and delivery of the goods or services being procured.

3 “(b) OFFERS TO BE CONSIDERED.—In carrying out
4 subsection (a), a contracting officer shall consider any
5 offer that is responsive and that is received in a timely
6 manner from an eligible small business offeror.

7 “(c) RELATIONSHIP TO OTHER LAWS.—Nothing in
8 subsection (a) shall be construed as precluding an award
9 of a contract with a value not in excess of \$100,000 under
10 the authority of section 45 of this Act and section 12 of
11 the Business Opportunity Development Reform Act of
12 1988 (Public Law 100–656; 15 U.S.C. 644 note).

13 “(d) PAYMENT TERMS AND DISBURSEMENT.—In the
14 case of contracts referred to in subsection (a) that are en-
15 tered into with small business concerns, contracting offi-
16 cers shall, wherever circumstances permit, provide for the
17 use of fast payment terms and the disbursement of pay-
18 ment through electronic fund transfer.”.

19 **SEC. 3016. GAO TEST AND REPORT ON PERFORMANCE OF**
20 **SIMPLIFIED ACQUISITION THRESHOLD.**

21 (a) PERFORMANCE TEST.—The Comptroller General
22 of the United States shall collect data and assess the ef-
23 fects of the simplified acquisition threshold, as established
24 in section 4A of the Office of Federal Procurement Policy
25 Act, on the participation of small business concerns (in-

1 cluding small business concerns owned and controlled by
2 socially and economically disadvantaged individuals) in
3 procurement awards of less than \$100,000 and the bene-
4 fits and detriments, if any, to the procuring activities of
5 the various Executive agencies.

6 (b) DATA TO BE COLLECTED.—Data collected under
7 subsection (a) shall include data regarding whether the es-
8 tablishment of the simplified acquisition threshold has im-
9 proved the acquisition process in terms of reduced paper-
10 work, financial or other savings to the Federal Govern-
11 ment, and any increase in the number of contractors par-
12 ticipating in the contracting process.

13 (c) PERIOD.—Data shall be collected for purposes of
14 subsection (a) during the period beginning with the first
15 full fiscal year quarter after the effective date of the
16 amendments made by section 3001 and ending on Septem-
17 ber 30, 1997.

18 (d) REPORT.—By March 1, 1998, the Comptroller
19 General shall submit to the Committee on Government
20 Operations of the House of Representatives, the Commit-
21 tee on Governmental Affairs of the Senate, and the Com-
22 mittees on Small Business of the House of Representatives
23 and the Senate a report on the effects of the establishment
24 of the simplified acquisition threshold by the amendments
25 made by section 3001.

1 **PART III—INAPPLICABILITY OF LAWS TO, AND**
2 **WAIVER OF LAWS FOR, ACQUISITIONS NOT**
3 **IN EXCESS OF SIMPLIFIED ACQUISITION**
4 **THRESHOLD**

5 **SEC. 3021. INAPPLICABILITY OF FUTURE ENACTED PRO-**
6 **UREMENT LAWS TO CONTRACTS NOT EX-**
7 **CEEDING THE SIMPLIFIED ACQUISITION**
8 **THRESHOLD.**

9 Section 4A of the Office of Federal Procurement Pol-
10 icy Act, as added by section 3001, is amended by adding
11 at the end the following new subsection:

12 “(e) CONSTRUCTION WITH FUTURE ENACTMENTS.—
13 A provision of law enacted after the date of the enactment
14 of the Federal Acquisition Reform Act of 1994 shall not
15 be construed as applicable to purchases of property or
16 services by an executive agency for an amount not in ex-
17 cess of the simplified acquisition threshold unless that pro-
18 vision of law specifically refers to this section and specifi-
19 cally states that such provision of law modifies or super-
20 sedes this section.”.

21 **SEC. 3022. AUTHORITY TO WAIVE CERTAIN PROCUREMENT**
22 **LAWS FOR CONTRACTS NOT EXCEEDING THE**
23 **SIMPLIFIED ACQUISITION THRESHOLD.**

24 Section 4A of the Office of Federal Procurement Pol-
25 icy Act, as amended by section 3021, is further amended
26 by adding at the end the following new subsection:

1 “(f) AUTHORITY TO WAIVE CERTAIN PROCUREMENT
2 LAWS.—

3 “(1) IN GENERAL.—Subject to paragraphs (2)
4 and (3), the Federal Acquisition Regulatory Council
5 may waive any provision of law subject to implemen-
6 tation by the Council or by an executive agency
7 under section 25 of this Act that sets forth policies,
8 procedures, requirements, restrictions, or contract
9 clauses that are not necessary to implement any of
10 the Governmental policies set forth in paragraph (2)
11 under a contract in an amount not greater than the
12 simplified acquisition threshold. Any waiver under
13 this subsection shall apply to the procurement by ex-
14 ecutive agencies of property and services not in ex-
15 cess of the simplified acquisition threshold.

16 “(2) DETERMINATION REQUIRED.—The Fed-
17 eral Acquisition Regulatory Council may waive a
18 provision of law under this section only if the Coun-
19 cil determines that the waiver will not adversely af-
20 fect—

21 “(A) national security interests;

22 “(B) the economy, efficiency, and effective-
23 ness of Federal procurement;

24 “(C) full and open competition;

1 “(D) the Federal Government’s ability to
2 obtain property and services of the requisite
3 quality, at a reasonable price, and within the
4 time needed;

5 “(E) small and small disadvantaged busi-
6 ness concerns; or

7 “(F) fair dealings and equitable relation-
8 ships with the private sector.

9 “(3) LIMITATIONS.—The Federal Acquisition
10 Regulatory Council may not under this section waive
11 a requirement that is established by statute or regu-
12 lation under any of the following provisions:

13 “(A) Section 2533 of title 10, United
14 States Code (relating to limitation on procure-
15 ment of goods which are other than American
16 goods).

17 “(B) Section 2631 of title 10, United
18 States Code (relating to preference to United
19 States vessels for transportation of supplies).

20 “(C) The Small Business Act (15 U.S.C.
21 631 et seq.).

22 “(D) Section 4124 of title 18, United
23 States Code (relating to purchase of prison-
24 made products by Federal departments).

1 “(E) Title 18, United States Code, and
2 any other law imposing a criminal penalty.

3 “(F) Section 503 of the Rehabilitation Act
4 of 1973 (29 U.S.C. 793) (relating to employ-
5 ment under Federal contracts for individuals
6 with disabilities).

7 “(G) Section 4212 of title 38, United
8 States Code (relating to veterans’ employment
9 emphasis under Federal contracts).

10 “(H) The Act of August 24, 1935 (40
11 U.S.C. 270a et seq.), commonly referred to as
12 the ‘Miller Act’.

13 “(I) The Act of March 3, 1931 (40 U.S.C.
14 276a et seq.), commonly referred to as the
15 ‘Davis-Bacon Act’.

16 “(J) Title IX of the Federal Property and
17 Administrative Services Act of 1949 (40 U.S.C.
18 541 et seq.), popularly referred to as the
19 ‘Brooks Architect-Engineers Act’.

20 “(K) Section 111 of the Federal Property
21 and Administrative Services Act of 1949 (40
22 U.S.C. 759), popularly referred to as the
23 ‘Brooks Automatic Data Processing Act’.

1 “(L) Section 901(b) of the Merchant Ma-
2 rine Act, 1936 (46 U.S.C. app. 1241(b)) (relat-
3 ing to cargo preference for American vessels).

4 “(M) Title III of the Act of March 3, 1933
5 (41 U.S.C. 10a et seq.), commonly referred to
6 as the ‘Buy American Act’.

7 “(N) The Act of June 25, 1938 (41 U.S.C.
8 46 et seq.), commonly referred to as the Wag-
9 ner-O’Day Act, that was revised and reenacted
10 in the Act of June 23, 1971 (85 Stat. 77), com-
11 monly referred to as the ‘Javits-Wagner-O’Day
12 Act’.

13 “(O) The Service Contract Act of 1965
14 (41 U.S.C. 351–358).

15 “(P) Section 27 of this Act (41 U.S.C.
16 423), other than subsection (e) of that section
17 (relating to procurement integrity).

18 “(Q) Executive Order No. 11246 (or any
19 successor to that order), dated September 24,
20 1965.”.

21 **PART IV—REVISION OF REGULATIONS**

22 **SEC. 3081. REVISION REQUIRED.**

23 (a) FEDERAL ACQUISITION REGULATION.—(1) Not
24 later than one year after the date of the enactment of this
25 Act, the Federal Acquisition Regulatory Council estab-

1 lished by section 25(a) of the Office of Federal Procure-
2 ment Policy Act (41 U.S.C. 421(a)) shall—

3 (A) review the Federal Acquisition Regulation
4 to identify regulations that are applicable to acquisi-
5 tions in excess of a specified amount that is less
6 than \$100,000; and

7 (B) amend the regulations so identified as nec-
8 essary to provide that such regulations do not apply
9 to acquisitions that are not in excess of the sim-
10 plified acquisition threshold.

11 (2) Paragraph (1) does not apply in the case of a
12 regulation for which such an amendment would not be in
13 the national interest, as determined by the Council.

14 (b) SUPPLEMENTAL REGULATIONS.—Not later than
15 90 days after the date on which the review required by
16 subsection (a) is completed, the head of each executive
17 agency that has issued regulations, policies, or procedures
18 referred to in section 25(c)(2) of the Office of Federal
19 Procurement Policy Act (41 U.S.C. 421(c)(2)) shall—

20 (1) identify any such regulation, policy, or pro-
21 cedure that is applicable to acquisitions in excess of
22 a specified amount that is less than \$100,000; and

23 (2) pursuant to section 22 of such Act (41
24 U.S.C. 418b), publish amendments to the regula-
25 tions so identified as necessary to provide that such

1 regulations, policies, and procedures do not apply to
2 acquisitions that are not in excess of the simplified
3 acquisition threshold.

4 (c) DEFINITIONS.—In this section:

5 (1) The term “simplified acquisition threshold”
6 has the meaning given such term in section 4A of
7 the Office of Federal Procurement Policy Act, as
8 added by section 3001.

9 (2) The term “executive agency” has the mean-
10 ing given such term in section 3(a) of the Federal
11 Property and Administrative Services Act of 1949
12 (41 U.S.C. 472(b)).

13 **Subtitle B—Socioeconomic and** 14 **Small Business Laws**

15 **SEC. 3101. PAYMENT PROTECTIONS FOR SUBCONTRAC-** 16 **TORS AND SUPPLIERS.**

17 (a) REGULATIONS.—

18 (1) IN GENERAL.—The Administrator for Fed-
19 eral Procurement Policy shall prescribe in regula-
20 tions the requirements described in paragraph (2).

21 (2) PROCEDURES RELATING TO COMPLIANCE
22 WITH PAYMENT TERMS.—(A) Under procedures es-
23 tablished in the regulations, upon the assertion by a
24 subcontractor or supplier of a contractor performing
25 a Government contract that the subcontractor or

1 supplier has not been paid by the prime contractor
2 in accordance with the payment terms of the sub-
3 contract, purchase order, or other agreement with
4 the prime contractor, the contracting officer may de-
5 termine the following:

6 (i) With respect to a construction contract,
7 whether the contractor has made progress pay-
8 ments to the subcontractor or supplier in com-
9 pliance with chapter 39 of title 31, United
10 States Code.

11 (ii) With respect to a contract other than
12 a construction contract, whether the contractor
13 has made progress or other payments to the
14 subcontractor or supplier in compliance with
15 the terms of the subcontract, purchase order, or
16 other agreement with the prime contractor.

17 (iii) With respect to either a construction
18 contract or a contract other than a construction
19 contract, whether the contractor has made final
20 payment to the subcontractor or supplier in
21 compliance with the terms of the subcontract,
22 purchase order, or other agreement with the
23 prime contractor.

24 (iv) With respect to either a construction
25 contract or a contract other than a construction

1 contract, whether any certification of payment
2 of the subcontractor or supplier accompanying
3 the contractor's payment request to the Govern-
4 ment is accurate.

5 (B) If the contracting officer determines that
6 the prime contractor is not in compliance with any
7 matter referred to in clause (i), (ii), or (iii) of sub-
8 paragraph (A), the contracting officer may, under
9 procedures established in the regulations—

10 (i) encourage the prime contractor to make
11 timely payment to the subcontractor or sup-
12 plier; or

13 (ii) reduce or suspend progress payments
14 with respect to amounts due to the prime con-
15 tractor.

16 (C) If the contracting officer determines that a
17 certification referred to in clause (iv) of subpara-
18 graph (A) is inaccurate in any material respect, the
19 contracting officer shall, under procedures estab-
20 lished in the regulations, initiate appropriate admin-
21 istrative or other remedial action.

22 (D) This paragraph shall apply with respect to
23 any Government contract that is in effect on the
24 date of promulgation of the regulations under this
25 subsection or that is awarded after such date.

1 (b) INAPPLICABILITY TO CERTAIN CONTRACTS.—
2 The regulations prescribed under this section shall not
3 apply to the following contracts:

4 (1) A contract that is for an amount not in ex-
5 cess of the simplified acquisition threshold (within
6 the meaning of section 4A of the Office of Federal
7 Procurement Policy Act).

8 (2) A contract for the acquisition of commercial
9 items (as that term is defined in section 4(12) of the
10 Office of Federal Procurement Policy Act.

11 (c) REGULATIONS DEADLINES.—(1) The Adminis-
12 trator for Federal Procurement Policy shall publish pro-
13 posed regulations under subsection (a) not later than 180
14 days after the date of the enactment of this Act.

15 (2) The Administrator shall publish final regulations
16 under subsection (a) not later than 270 days after the date
17 of the enactment of this Act.

18 **SEC. 3102. SMALL BUSINESS PROCUREMENT ADVISORY**

19 **COUNCIL.**

20 (a) ESTABLISHMENT.—There is hereby established
21 an interagency council to be known as the “Small Busi-
22 ness Procurement Advisory Council” (hereinafter in this
23 section referred to as the “Council”).

24 (b) DUTIES.—The duties of the Council are—

1 (1) to serve as a forum for discussion of issues
2 and problems relating to, and ideas for improvement
3 of, small business procurement matters within the
4 Federal Government;

5 (2) to provide information to other departments
6 and agencies of the Federal Government about small
7 business procurement; and

8 (3) to issue advisory reports to the Small Busi-
9 ness Administration and the Office of Federal Pro-
10 curement Policy on small business procurement mat-
11 ters.

12 (c) MEMBERSHIP.—The Council shall be composed of
13 the following members:

14 (1) The Administrator of the Small Business
15 Administration (or the designee of the Adminis-
16 trator).

17 (2) The Administrator for Federal Procurement
18 Policy (or the designee of the Administrator).

19 (3) The Director of the Minority Business De-
20 velopment Agency.

21 (4) The head of each Office of Small and Dis-
22 advantaged Business Utilization in each Federal
23 agency having procurement powers.

24 (d) CO-CHAIRMEN.—The Council shall be co-chaired
25 by the Administrator of the Small Business Administra-

1 tion and the Administrator for Federal Procurement Pol-
2 icy.

3 (e) MEETINGS.—The Council shall meet at the call
4 of the chairmen, but not less often than four times a year
5 and once each quarter.

6 (f) DIRECTOR.—The Chief Counsel for Advocacy of
7 the Small Business shall serve as the director of the Coun-
8 cil. The director may not vote on matters before the coun-
9 cil except in the case of a tie vote among the members.
10 The duties of the director shall be determined by the
11 chairmen of the Council. The Chief Counsel for Advocacy
12 shall receive no additional pay by reason of the counsel's
13 service as director of the Council.

14 (g) ANNUAL REPORT.—Not later than 30 days after
15 the end of each fiscal year, the Council shall submit to
16 Congress a report detailing the activities of the Council
17 in the preceding fiscal year in carrying out this section.

18 **Subtitle C—Miscellaneous**

19 **Acquisition Laws**

20 **SEC. 3151. RESTRICTION ON USE OF NONCOMPETITIVE**
21 **PROCEDURES FOR PROCUREMENT FROM A**
22 **SPECIFIED SOURCE.**

23 The Office of Federal Procurement Policy Act (41
24 U.S.C. 401 et seq.), as amended by section 3015, is fur-

1 ther amended by adding at the end the following new sec-
2 tion:

3 **“SEC. 41. RESTRICTION ON USE OF NONCOMPETITIVE PRO-**
4 **CEDURES FOR PROCUREMENT FROM A SPEC-**
5 **IFIED SOURCE.**

6 “(a) POLICY.—It is the policy of Congress that no
7 legislation should be enacted that requires a procurement
8 by an executive agency to be made from a specified non-
9 Federal Government source.

10 “(b) CONDITIONS.—A provision of law may not be
11 construed as requiring a procurement by an executive
12 agency to be made from a specified non-Federal Govern-
13 ment source unless that provision of law—

14 “(1) specifically refers to this subsection;

15 “(2) specifically identifies the particular non-
16 Federal Government source involved; and

17 “(3) specifically states that the procurement
18 from that source is required by such provision of law
19 in contravention of the policy set forth in subsection
20 (a).”.

21 **SEC. 3152. REPEAL OF OBSOLETE PROVISION.**

22 Section 308 of the Federal Property and Administra-
23 tive Services Act of 1949 (41 U.S.C. 258) is repealed.

1 **TITLE IV—STANDARDS OF**
2 **CONDUCT**

3 **SEC. 4001. CONTRACTING FUNCTIONS PERFORMED BY FED-**
4 **ERAL PERSONNEL.**

5 (a) AMENDMENT OF OFPP ACT.—The Office of Fed-
6 eral Procurement Policy Act, as amended by section 1092,
7 is further amended by inserting after section 22 the fol-
8 lowing new section 23:

9 **“SEC. 23. CONTRACTING FUNCTIONS PERFORMED BY FED-**
10 **ERAL PERSONNEL.**

11 “(a) LIMITATION ON PAYMENT FOR ADVISORY AND
12 ASSISTANCE SERVICES.—(1) No person who is not an em-
13 ployee may be paid by an agency for services to conduct
14 evaluations or analyses of any aspect of a proposal submit-
15 ted for an acquisition unless employees with adequate
16 training and capabilities to perform such evaluations and
17 analyses are not readily available within the agency or an-
18 other Federal agency, as determined in accordance with
19 standards and procedures prescribed in the Federal Acqui-
20 sition Regulation.

21 “(2) In the administration of this subsection, the
22 head of each agency shall determine in accordance with
23 the standards and procedures set forth in the Federal Ac-
24 quisition Regulation whether—

1 “(A) a sufficient number of employees within
2 the agency or another Federal agency are readily
3 available to perform a particular evaluation or analy-
4 sis for the agency head making the determination;
5 and

6 “(B) the readily available employees have the
7 training and capabilities necessary to perform the
8 evaluation or analysis.

9 “(b) DEFINITION.—For purposes of this section, the
10 term ‘employee’ has the meaning given such term in sec-
11 tion 2105 of title 5, United States Code.”.

12 (b) REQUIREMENT FOR GUIDANCE AND REGULA-
13 TIONS.—

14 (1) GUIDANCE AND REGULATIONS REQUIRED.—
15 The Federal Acquisition Regulatory Council estab-
16 lished by section 25(a) of the Office of Federal Pro-
17 curement Policy Act (41 U.S.C. 421(a)) shall—

18 (A) review part 37 of title 48 of the Code
19 of Federal Regulations as it relates to the use
20 of advisory and assistance services; and

21 (B) provide guidance and promulgate regu-
22 lations regarding—

23 (i) what actions Federal agencies are
24 required to take to determine whether ex-
25 pertise is readily available within the Fed-

1 eral Government before contracting for ad-
2 visory and technical services to conduct ac-
3 quisitions; and

4 (ii) the manner in which Federal em-
5 ployees with expertise may be shared with
6 agencies needing expertise for such acquisi-
7 tions.

8 (2) DEFINITION.—In paragraph (1), the term
9 “employee” has the meaning given such term in sec-
10 tion 2105 of title 5, United States Code.

11 **SEC. 4002. REPEAL OF EXECUTED REQUIREMENT FOR**
12 **STUDY AND REPORT.**

13 Section 17 of the Office of Federal Procurement Pol-
14 icy Act (41 U.S.C. 415) is repealed.

15 **SEC. 4003. INTERESTS OF MEMBERS OF CONGRESS.**

16 Section 3741 of the Revised Statutes (41 U.S.C. 22)
17 is amended to read as follows:

18 “No member of Congress shall be admitted to any
19 share or part of any contract or agreement made, entered
20 into, or accepted by or on behalf of the United States,
21 or to any benefit to arise thereupon.”.

22 **SEC. 4004. WAITING PERIOD FOR SIGNIFICANT CHANGES**
23 **PROPOSED FOR ACQUISITION REGULATIONS.**

24 Section 22(a) of the Office of Federal Procurement
25 Policy Act (41 U.S.C. 418b) is amended—

1 (1) by striking out “30 days” and inserting in
2 lieu thereof “60 days”; and

3 (2) by adding at the end the following: “Not-
4 withstanding the preceding sentence, such a policy,
5 regulation, procedure, or form may take effect ear-
6 lier than 60 days after the publication date when
7 there are compelling circumstances for the earlier ef-
8 fective date, but in no event may that effective date
9 be less than 30 days after the publication date.”.

10 **TITLE V—COMMERCIAL ITEMS**

11 **SEC. 5001. DEFINITIONS.**

12 (a) DEFINITIONS.—Section 4 of the Office of Federal
13 Procurement Policy Act (41 U.S.C. 403) is amended by
14 adding at the end the following new paragraphs:

15 “(12) The term ‘commercial item’ means any of
16 the following:

17 “(A) Any item of a type customarily used
18 in the course of normal business operations for
19 other than Federal Government purposes,
20 that—

21 “(i) has been sold, leased, or licensed
22 to the general public or to domestic State,
23 or local government entities; or

1 “(ii) has been offered for sale, lease,
2 or license to the general public or to do-
3 mestic State, or local government entities.

4 “(B) An item intended to be used in the
5 course of normal business operations for other
6 than Federal Government purposes that is not
7 yet available in the commercial marketplace,
8 but will be available in time to satisfy the deliv-
9 ery requirements under a Federal Government
10 solicitation.

11 “(C) Any item that, but for—

12 “(i) modifications of a type customar-
13 ily available in the commercial market-
14 place, or

15 “(ii) minor modifications made to
16 meet Federal Government requirements,
17 would satisfy the criteria in subparagraph (A)
18 or (B).

19 “(D) Any combination of items meeting
20 the requirements of subparagraph (A), (B), or
21 (C) that are of a type customarily combined
22 and sold in combination to the general public.

23 “(E) Installation services, maintenance
24 services, repair services, training services, and
25 other services if such services are procured for

1 support of an item referred to in subparagraph
2 (A), (B), (C), or (D) and if the source of such
3 services—

4 “(i) offers such services to the general
5 public and the Federal Government con-
6 temporaneously and under similar terms
7 and conditions; and

8 “(ii) offers to use the same work force
9 for providing the Federal Government with
10 such services as the source uses for provid-
11 ing such services to the general public.

12 “(F) Services offered and sold competi-
13 tively, in significant quantities, in the commer-
14 cial marketplace at established catalog prices or
15 standard rates and under standard commercial
16 terms and conditions.

17 “(G) Any item, combination of items, or
18 service referred to in subparagraphs (A)
19 through (F) notwithstanding the fact that the
20 item, combination of items, or service is trans-
21 ferred between or among separate divisions,
22 subsidiaries, or affiliates of a contractor.

23 “(13) The term ‘nondevelopmental item’ means
24 any of the following:

25 “(A) Any commercial item.

1 “(B) Any previously developed item of sup-
2 ply that is in use by a department or agency of
3 the United States, a State or local government,
4 or a foreign government with which the United
5 States has a mutual defense cooperation agree-
6 ment.

7 “(C) Any item of supply described in sub-
8 paragraph (B) that requires only minor modi-
9 fication of the type normally available in the
10 commercial marketplace in order to meet the
11 requirements of the procuring department or
12 agency.

13 “(D) Any item of supply currently being
14 produced that does not meet the requirements
15 of subparagraph (A), (B), or (C) solely because
16 the item—

17 “(i) is not yet in use; or

18 “(ii) is not yet available in the com-
19 mercial marketplace.

20 “(14) The term ‘component’ means any item
21 supplied to the Federal Government as part of an
22 end item or of another component.

23 “(15) The term ‘commercial component’ means
24 any component that is a commercial item.”.

1 (b) CONFORMING AMENDMENTS.—Such section is
2 further amended—

3 (1) by striking out “Act—” and inserting in
4 lieu thereof “Act.”;

5 (2) by capitalizing the initial letter in the first
6 word of each paragraph;

7 (3) by striking out the semicolon at the end of
8 each of paragraphs (1), (2), (3), (5), (6), (7), (8),
9 and (9) and inserting in lieu thereof a period; and

10 (4) in paragraphs (4) and (10), by striking out
11 “; and” at the end and inserting in lieu thereof a
12 period.

13 **SEC. 5002. PREFERENCE FOR ACQUISITION OF COMMER-**
14 **CIAL ITEMS.**

15 The Office of Federal Procurement Policy Act (41
16 U.S.C. 401 et seq.), as amended by section 3151, is fur-
17 ther amended by adding at the end the following new sec-
18 tion:

19 **“SEC. 42. PREFERENCE FOR ACQUISITION OF COMMERCIAL**
20 **ITEMS.**

21 “(a) PREFERENCE.—The head of each executive
22 agency shall ensure that, to the maximum extent prac-
23 ticable—

1 “(1) requirements of the executive agency with
2 respect to a procurement of supplies or services are
3 stated in terms of—

4 “(A) functions to be performed;

5 “(B) performance required; or

6 “(C) essential physical characteristics;

7 “(2) such requirements are defined so that
8 commercial items or, to the extent that commercial
9 items suitable to meet the agency’s needs are not
10 available, other nondevelopmental items may be pro-
11 cured to fulfill such requirements; and

12 “(3) offerors of commercial items and other
13 nondevelopmental items are provided an opportunity
14 to compete in any procurement to fill such require-
15 ments.

16 “(b) IMPLEMENTATION.—The head of each executive
17 agency shall ensure that procurement officials in that ex-
18 ecutive agency, to the maximum extent practicable—

19 “(1) acquire commercial items or other
20 nondevelopmental items to meet the needs of the ex-
21 ecutive agency;

22 “(2) require prime contractors and subcontractors
23 at all levels under the executive agency con-
24 tracts to incorporate commercial items or other

1 nondevelopmental items as components of items sup-
2 plied to the executive agency;

3 “(3) modify requirements in appropriate cases
4 to ensure that the requirements can be met by com-
5 mercial items or, to the extent that commercial
6 items suitable to meet the agency’s needs are not
7 available, other nondevelopmental items;

8 “(4) state specifications in terms that enable
9 and encourage bidders and offerors to supply com-
10 mercial items or, to the extent that commercial
11 items suitable to meet the agency’s needs are not
12 available, other nondevelopmental items in response
13 to the executive agency solicitations;

14 “(5) revise the executive agency’s procurement
15 policies, practices, and procedures not required by
16 law to reduce any impediments in those policies,
17 practices, and procedures to the acquisition of com-
18 mercial items; and

19 “(6) require training of appropriate personnel
20 in the acquisition of commercial items.

21 “(c) PRELIMINARY MARKET RESEARCH.—(1) The
22 head of an executive agency shall conduct market research
23 appropriate to the circumstances—

24 “(A) before developing new specifications for a
25 procurement by that executive agency; and

1 “(B) before soliciting bids or proposals for a
2 contract in excess of the simplified acquisition
3 threshold.

4 “(2) The head of an executive agency shall use the
5 results of market research to determine whether there are
6 commercial items available that—

7 “(A) meet the executive agency’s requirements;

8 “(B) could be modified to meet the executive
9 agency’s requirements; or

10 “(C) could meet the executive agency’s require-
11 ments if those requirements were modified to a rea-
12 sonable extent.”.

13 **SEC. 5003. ACQUISITION OF COMMERCIAL ITEMS.**

14 (a) **REQUIRED FAR PROVISIONS.**—The Office of
15 Federal Procurement Policy Act (41 U.S.C. 401 et seq.),
16 as amended by section 5002, is further amended by adding
17 at the end the following new section:

18 **“SEC. 43. REGULATIONS ON ACQUISITION OF COMMERCIAL**
19 **ITEMS.**

20 “(a) **IN GENERAL.**—The Federal Acquisition Regula-
21 tion shall provide regulations to implement section 42 and
22 paragraphs (12) through (15) of section 4.

23 “(b) **TERMS AND CONDITIONS.**—The regulations pre-
24 scribed under subsection (a) shall contain a set or sets
25 of terms and conditions to be included in contracts for

1 the acquisition of commercial end items. Such terms and
2 conditions shall, to the maximum extent practicable, in-
3 clude only those contract clauses that are determined by
4 the agency head to be—

5 “(1) required to implement provisions of law
6 applicable to commercial item acquisitions; or

7 “(2) consistent with standard commercial prac-
8 tice.

9 “(c) TERMS AND CONDITIONS FOR COMPONENTS.—
10 Such regulations shall provide that a prime contractor fur-
11 nishing commercial items or items other than commercial
12 items as items or components shall not be required to
13 apply to any of its divisions, subsidiaries, or affiliates or
14 any of its subcontractors or suppliers that are furnishing
15 commercial items as components any clause, term, or con-
16 dition except those determined by the head of the agency
17 to be—

18 “(1) required to implement provisions of law
19 applicable to subcontractors furnishing commercial
20 items; or

21 “(2) determined to be consistent with standard
22 commercial practice.

23 “(d) MARKET ACCEPTANCE.—The regulations pre-
24 scribed under subsection (a) shall provide that, under ap-
25 propriate conditions, the agency head may require an

1 offeror to demonstrate, as a condition for being considered
2 responsive, that the items offered meet, among other cri-
3 teria, market acceptance criteria, unless such item has
4 been satisfactorily supplied to an executive agency under
5 current or recent contracts for the same or similar require-
6 ments.

7 “(e) USE OF FIXED PRICE CONTRACTS.—The regu-
8 lations prescribed under subsection (a) shall include a re-
9 quirement that firm, fixed price contracts, or fixed price
10 contracts with economic price adjustment provisions, be
11 used for the acquisition of commercial items and compo-
12 nents.

13 “(f) TERM OF CONTRACTS.—The regulations pre-
14 scribed under subsection (a) shall provide that, to the ex-
15 tent practicable, contracts for acquisition of commercial
16 items shall not require contract performance for a term
17 longer than customary industry practice for the item being
18 acquired. A contracting officer may include in a contract
19 provisions for economic price adjustment if an extended
20 period of performance under the contract cannot be avoid-
21 ed.

22 “(g) CONTRACT QUALITY REQUIREMENTS.—The
23 regulations prescribed under subsection (a) shall include
24 provisions that—

1 “(1) permit, to the maximum extent prac-
2 ticable, a contractor under a commercial items ac-
3 quisition to use the existing quality assurance sys-
4 tem of the contractor as a substitute for compliance
5 with an otherwise applicable requirement for the
6 Government to inspect or test the commercial items
7 before the contractor’s tender of those items for ac-
8 ceptance by the Government;

9 “(2) require that, to the maximum extent prac-
10 ticable, the executive agency take advantage of war-
11 ranties (including extended warranties) offered by
12 offerors of commercial items and use such warran-
13 ties for the repair and replacement of commercial
14 items; and

15 “(3) set forth guidance regarding the use of
16 past performance of commercial items and sources
17 as a factor in contract award decisions.”.

18 **SEC. 5004. PRINCIPLE OF CONSTRUCTION WITH FUTURE**

19 **LAWS.**

20 The Office of Federal Procurement Policy Act (41
21 U.S.C. 401 et seq.), as amended by section 5003, is fur-
22 ther amended by adding at the end the following new sec-
23 tion:

1 **“SEC. 44. PRINCIPLE OF CONSTRUCTION WITH FUTURE**
2 **LAWS.**

3 “A provision of law enacted after the date of the en-
4 actment of the Federal Acquisition Reform Act of 1994
5 shall not be construed as applicable to purchases of com-
6 mercial items by an executive agency unless that provision
7 of law specifically refers to this section and specifically
8 states that such provision of law modifies or supersedes
9 section 42, section 43, section 44, or paragraphs (12)
10 through (15) of section 4.”.

11 **SEC. 5005. AUTHORITY TO WAIVE CERTAIN PROCUREMENT**
12 **LAWS FOR CONTRACTS FOR COMMERCIAL**
13 **ITEMS.**

14 The Office of Federal Procurement Policy Act (41
15 U.S.C. 401 et seq.), as amended by section 5004, is fur-
16 ther amended by adding at the end the following new sec-
17 tion:

18 **“SEC. 45. AUTHORITY TO WAIVE CERTAIN PROCUREMENT**
19 **LAWS FOR CONTRACTS FOR COMMERCIAL**
20 **ITEMS.**

21 “(a) IN GENERAL.—Subject to subsections (b) and
22 (c), the Federal Acquisition Regulatory Council may waive
23 any provision of law subject to implementation by the
24 Council or by an executive agency under section 25 of this
25 Act that sets forth policies, procedures, requirements, re-
26 strictions, or contract clauses that are not necessary to

1 implement any of the Governmental policies set forth in
2 subsection (b) under a contract for commercial items. Any
3 waiver under this subsection shall apply to the procure-
4 ment by executive agencies of commercial items.

5 “(b) DETERMINATION REQUIRED.—The Federal Ac-
6 quisition Regulatory Council may waive a provision of law
7 under this section only if the Council determines that the
8 waiver will not adversely affect—

9 “(1) national security interests;

10 “(2) the economy, efficiency, and effectiveness
11 of Federal procurement;

12 “(3) full and open competition;

13 “(4) the Federal Government’s ability to obtain
14 property and services of the requisite quality, at a
15 reasonable price, and within the time needed;

16 “(5) small and small disadvantaged business
17 concerns; or

18 “(6) fair dealings and equitable relationships
19 with the private sector.

20 “(c) LIMITATIONS.—The Federal Acquisition Regu-
21 latory Council may not under this section waive a require-
22 ment that is established by statute or regulation under
23 any of the following provisions:

1 “(1) Section 2533 of title 10, United States
2 Code (relating to limitation on procurement of goods
3 which are other than American goods).

4 “(2) Section 2631 of title 10, United States
5 Code (relating to preference to United States vessels
6 for transportation of supplies).

7 “(3) The Small Business Act (15 U.S.C. 631 et
8 seq.).

9 “(4) Section 4124 of title 18, United States
10 Code (relating to purchase of prison-made products
11 by Federal departments).

12 “(5) Title 18, United States Code, and any
13 other law imposing a criminal penalty.

14 “(6) Section 503 of the Rehabilitation Act of
15 1973 (29 U.S.C. 793) (relating to employment
16 under Federal contracts for individuals with disabili-
17 ties).

18 “(7) Section 1352 of title 31, United States
19 Code, popularly referred to as the ‘Byrd Amend-
20 ment’.

21 “(8) Section 4212 of title 38, United States
22 Code (relating to veterans’ employment emphasis
23 under Federal contracts).

1 “(9) The Act of August 24, 1935 (40 U.S.C.
2 270a et seq.), commonly referred to as the ‘Miller
3 Act’.

4 “(10) The Act of March 3, 1931 (40 U.S.C.
5 276a et seq.), commonly referred to as the ‘Davis-
6 Bacon Act’.

7 “(11) Title IX of the Federal Property and Ad-
8 ministrative Services Act of 1949 (40 U.S.C. 541 et
9 seq.), popularly referred to as the ‘Brooks Architect-
10 Engineers Act’.

11 “(12) Section 111 of the Federal Property and
12 Administrative Services Act of 1949 (40 U.S.C.
13 759), popularly referred to as the ‘Brooks Automatic
14 Data Processing Act’.

15 “(13) Section 901(b) of the Merchant Marine
16 Act, 1936 (46 U.S.C. app. 1241(b)) (relating to
17 cargo preference for American vessels).

18 “(14) Title III of the Act of March 3, 1933 (41
19 U.S.C. 10a et seq.), commonly referred to as the
20 ‘Buy American Act’.

21 “(15) The Act of June 25, 1938 (41 U.S.C. 46
22 et seq.), commonly referred to as the Wagner-O’Day
23 Act, that was revised and reenacted in the Act of
24 June 23, 1971 (85 Stat. 77), commonly referred to
25 as the ‘Javits-Wagner-O’Day Act’.

1 “(16) The Service Contract Act of 1965 (41
2 U.S.C. 351–358).

3 “(17) Section 27 of this Act (41 U.S.C. 423),
4 other than subsection (e) of that section (relating to
5 procurement integrity).

6 “(18) Executive Order No. 11246 (or any suc-
7 cessor to that order), dated September 24, 1965.”.

8 **SEC. 5006. FLEXIBLE DEADLINES FOR SUBMISSION OF OF-**
9 **FERS OF COMMERCIAL ITEMS.**

10 Section 18(a) of the Office of Federal Procurement
11 Policy Act (41 U.S.C. 416(a)) is amended by adding at
12 the end the following new paragraph:

13 “(4) The requirements of paragraph (3)(B) do not
14 apply to contracts for the purchase of commercial items.
15 The Administrator shall prescribe for such contracts ap-
16 propriate limits on the applicability of a deadline for sub-
17 mission of bids or proposals that is required by subsection
18 (a)(1). Such limits shall be incorporated in the Federal
19 Acquisition Regulation.”.

20 **SEC. 5007. ADDITIONAL RESPONSIBILITIES FOR ADVOC-**
21 **CATES FOR COMPETITION.**

22 (a) RESPONSIBILITIES OF THE ADVOCATE FOR COM-
23 PETITION.—Section 20(c) of the Office of Federal Pro-
24 curement Policy Act (41 U.S.C. 418(c)) is amended to
25 read as follows:

1 “(c) The advocate for competition for each procuring
2 activity shall be responsible for promoting full and open
3 competition, promoting the acquisition of commercial
4 items and other nondevelopmental items, and challenging
5 barriers to such acquisition, including such barriers as un-
6 necessarily restrictive statements of need, unnecessarily
7 detailed specifications, and unnecessarily burdensome con-
8 tract clauses.”.

9 (b) REPEAL OF SUPERSEDED PROVISION.—Section
10 28 of such Act (41 U.S.C. 424) is repealed.

11 **SEC. 5008. PROVISIONS NOT AFFECTED.**

12 Nothing in this title shall be construed as amending,
13 modifying, or superseding, or as intended to impair or re-
14 strict authorities or responsibilities under—

15 (1) section 46 of the Office of Federal Procure-
16 ment Policy Act, as added by section 6003 of this
17 Act;

18 (2) section 111 of the Federal Property and
19 Administrative Services Act of 1949 (40 U.S.C.
20 759), popularly referred to as the “Brooks Auto-
21 matic Data Processing Act”;

22 (3) title IX of the Federal Property and Admin-
23 istrative Services Act of 1949 (40 U.S.C. 541 et
24 seq.), popularly referred to as the “Brooks Archi-
25 tect-Engineers Act”;

1 (4) section 8(a) of the Small Business Act (15
2 U.S.C. 637(a)) or any other provision of that Act;
3 or

4 (5) the Act of June 25, 1938 (41 U.S.C. 46–
5 48c), that was revised and reenacted in the Act of
6 June 23, 1971 (85 Stat. 77), popularly referred to
7 as the “Javits-Wagner-O’Day Act”.

8 **SEC. 5009. COMPTROLLER GENERAL REVIEW OF FEDERAL**
9 **GOVERNMENT USE OF MARKET RESEARCH.**

10 (a) REPORT REQUIRED.—Not later than 2 years
11 after the date of the enactment of this Act, the Comptrol-
12 ler General of the United States shall submit to the Con-
13 gress a report on the use of market research by the Fed-
14 eral Government in support of the procurement of com-
15 mercial items and nondevelopmental items.

16 (b) CONTENT OF REPORT.—The report shall include
17 the following:

18 (1) A review of existing Federal Government
19 market research efforts to gather data concerning
20 commercial and other nondevelopmental items.

21 (2) A review of the feasibility of creating a Gov-
22 ernment-wide data base for storing, retrieving, and
23 analyzing market data, including use of existing
24 Federal Government resources.

1 (3) Any recommendations for changes in law or
2 regulations that the Comptroller General considers
3 appropriate.

4 **TITLE VI—MISCELLANEOUS**
5 **PROVISIONS**

6 **SEC. 6001. TEST PROGRAM.**

7 (a) IN GENERAL.—The Administrator for Federal
8 Procurement Policy (in this section referred to as the “Ad-
9 ministrator”) may conduct a program of tests of alter-
10 native and innovative procurement procedures. To the ex-
11 tent consistent with this section, such program shall be
12 conducted consistent with section 15 of the Office of Fed-
13 eral Procurement Policy Act (41 U.S.C. 413). No more
14 than 6 such tests shall be conducted under this authority.

15 (b) DESIGNATION OF AGENCIES.—Each test con-
16 ducted pursuant to subsection (a) shall be limited to not
17 more than 2 specific contracting activities in an agency
18 designated by the Administrator. Each agency so des-
19 igned shall select the contracting activities participating
20 in the test with the approval of the Administrator and
21 shall designate a procurement testing official who shall be
22 responsible for the conduct and evaluation of tests within
23 that agency.

24 (c) TEST REQUIREMENTS.—Tests conducted under
25 subsection (a)—

1 (1) shall be developed and structured by the
2 Administrator or by the agency senior procurement
3 executives designated pursuant to section 16(3) of
4 the Office of Federal Procurement Policy Act in
5 close coordination with the Administrator;

6 (2) shall be for a period of not greater than 4
7 years;

8 (3) shall be limited to specific programs of
9 agencies or specific acquisitions;

10 (4) may not include any test with a total esti-
11 mated life-cycle cost to the Federal Government
12 greater than \$100,000,000;

13 (5) shall include—

14 (A) a test by the National Aeronautics and
15 Space Administration of simplified procurement
16 procedures for acquisitions with an estimated
17 annual total obligation of funds of \$500,000 or
18 less;

19 (B) a test by the General Services Admin-
20 istration of expedited methods for procuring
21 automatic data processing equipment commod-
22 ities; and

23 (C) a test by at least one agency of
24 streamlined procedures for competition among
25 interested sources participating in the tailoring

1 of a solicitation for the purchase of commercial
2 products; and

3 (6) shall not include any procurement the cost
4 of which is expected to exceed \$5,000,000 (including
5 options).

6 (d) LIMITATION ON TOTAL VALUE OF CONTRACTS
7 UNDER PROGRAM.—

8 (1) LIMITATION.—The Administrator shall en-
9 sure that the total amount obligated under contracts
10 awarded pursuant to the program under this section
11 does not exceed \$600,000,000.

12 (2) MONITORING.—The Administrator shall
13 monitor the value of contracts awarded pursuant to
14 the program under this section.

15 (3) PROHIBITION ON AWARDS IN EXCESS OF
16 LIMIT.—No contract may be awarded under the pro-
17 gram under this section if the award of the contract
18 would result in obligation of more than
19 \$600,000,000 under contracts under this section.

20 (e) PROCEDURES AUTHORIZED.—Tests conducted
21 under this section may include tests of any of the following
22 procedures:

23 (1) Publication of agency needs prior to draft-
24 ing of a solicitation.

1 (2) Screening of sources and competition
2 among capable vendors.

3 (3) Issuance of draft solicitations for comment.

4 (4) Streamlined solicitations, with a minimized
5 number of evaluation factors and information re-
6 quired from vendors, abbreviated periods for submis-
7 sion of offers, and page limitations on offers.

8 (5) Limitation of source selection factors to—

9 (A) cost to the Federal Government;

10 (B) past experience; and

11 (C) quality of the contents of the offer.

12 (6) Evaluation of proposals by small teams of
13 highly qualified people, limited to 30 days.

14 (7) Competition among sources of preevaluated
15 products.

16 (8) Alternative notice and publication require-
17 ments.

18 (9) A process in which—

19 (A) the competitive process is initiated by
20 a notice in the Commerce Business Daily syn-
21 opsizing the needs of the executive agency con-
22 ducting the test, in functional and performance
23 terms, with other specifications provided for
24 guidance only;

1 (B) the notice invites interested sources to
2 submit information or samples showing their
3 product's suitability for those needs (with price
4 quotations) or, if appropriate, showing the
5 sources' technical capability, past performance,
6 product supportability, or other qualifications
7 (with appropriate consideration to rates and
8 other cost-related factors);

9 (C) contracting officials develop a request
10 for proposals (including appropriate specifica-
11 tions and evaluation criteria) after reviewing
12 the submittals made by interested sources and,
13 if the officials determine necessary, after con-
14 sultation with those sources; and

15 (D) the contract is awarded after a
16 streamlined competition limited to all sources
17 that timely provided product information in re-
18 sponse to the notice or, if appropriate, to those
19 sources determined most capable based on those
20 qualification-based factors included in an invita-
21 tion to submit information pursuant to sub-
22 paragraph (B).

23 (f) TEST PLAN.—Not later than 60 days before im-
24 plementing any test program under this section, the Ad-
25 ministrator shall—

1 (1) provide a detailed test plan, including lists
2 of any regulations that are to be waived, and any
3 written determination under subsection (g)(1)(B) to
4 the Committee on Government Operations of the
5 House of Representatives and the Committee on
6 Governmental Affairs of the Senate;

7 (2) provide a copy of the plan to the appro-
8 priate authorizing committees of the House of Rep-
9 resentatives and the Senate; and

10 (3) publish the plan in the Federal Register
11 and provide an opportunity for public comment.

12 (g) WAIVER OF PROCUREMENT REGULATIONS.—

13 (1) IN GENERAL.—For purposes of a test con-
14 ducted under subsection (a), the Administrator may
15 waive—

16 (A) any provision of the Federal Acquisi-
17 tion Regulation that is not required by statute;
18 and

19 (B) any provision of the Federal Acquisi-
20 tion Regulation that is required by a provision
21 of law described in paragraph (2), the waiver of
22 which the Administrator determines in writing
23 to be necessary to conduct any test of any of
24 the 9 procedures described in subsection (e).

1 (2) PROVISIONS OF LAW DESCRIBED.—The pro-
2 visions of law referred to in paragraph (1) are the
3 following:

4 (A) Section 3709 of the Revised Statutes
5 (41 U.S.C. 5).

6 (B) Section 3710 of the Revised Statutes
7 (41 U.S.C. 8).

8 (C) Section 3735 of the Revised Statutes
9 (41 U.S.C. 13).

10 (D) Section 310 of the Federal Property
11 and Administrative Services Act of 1949 (41
12 U.S.C. 260).

13 (E) Section 303 of the Federal Property
14 and Administrative Services Act of 1949 (41
15 U.S.C. 253).

16 (F) Section 303A of the Federal Property
17 and Administrative Services Act of 1949 (41
18 U.S.C. 253a).

19 (G) Section 303B of the Federal Property
20 and Administrative Services Act of 1949 (41
21 U.S.C. 253b).

22 (H) Section 303C of the Federal Property
23 and Administrative Services Act of 1949 (41
24 U.S.C. 253c).

1 (I) Section 4(6) of the Office of Federal
2 Procurement Policy Act (41 U.S.C. 403(6)).

3 (J) Section 18 of the Office of Federal
4 Procurement Policy Act (41 U.S.C. 416).

5 (3) PROPOSAL FOR ADDITIONAL WAIVER.—If
6 the Administrator determines that the conduct of a
7 test requires the waiver of a law not listed in para-
8 graph (2) or requires approval of an estimated dollar
9 amount not permitted under subsection (c)(4), the
10 Administrator may propose legislation to authorize
11 the waiver or grant the approval. Before proposing
12 such legislation, the Administrator may provide and
13 publish a test plan as described in subsection (f). If
14 Congress does not authorize the waiver or grant the
15 approval within 120 days after the date of receipt of
16 the proposal, the proposal shall be deemed to be
17 withdrawn. A proposal not approved within such 120
18 days may be resubmitted to Congress under this
19 paragraph at any time.

20 (h) REPORTS AND REVIEWS.—

21 (1) ADMINISTRATOR.—The Administrator shall
22 report to the Congress on the results of each test
23 conducted under subsection (a).

24 (2) COMPTROLLER GENERAL.—The Comptrol-
25 ler General of the United States shall review each

1 test conducted under subsection (a) and report to
2 the Congress on each test and shall report annually
3 to the Congress on the conduct of and results of all
4 tests conducted under subsection (a).

5 (i) EXPIRATION OF AUTHORITY.—The authority to
6 conduct tests under this section and to award contracts
7 under such tests shall expire on October 1, 1998. Con-
8 tracts entered prior to October 1, 1998, pursuant to a test
9 shall remain in effect, notwithstanding the expiration of
10 the authority to conduct the test under this section.

11 (j) PILOT PROGRAMS.—(1) The Administrator may
12 delegate to the Secretary of Defense authority to conduct
13 7 pilot programs of alternative and innovative procure-
14 ment procedures, including the waiver authority described
15 in paragraph (2).

16 (2) The authority delegated under paragraph (1) may
17 include authority for the Secretary of Defense—

18 (A) to apply any amendment or repeal of a pro-
19 vision of law made in the Federal Acquisition Re-
20 form Act of 1994 to the pilot programs before the
21 effective date of such amendment or repeal; and

22 (B) to apply to a procurement of noncommer-
23 cial items under such programs—

24 (i) any authority provided in such Act (or
25 in an amendment made by a provision of such

1 Act) to waive a provision of law in the case of
2 commercial items, and

3 (ii) any exception applicable under such
4 Act (or an amendment made by a provision of
5 such Act) in the case of commercial items,
6 before the effective date of such provision (or amendment)
7 to the extent that the Secretary determines necessary to
8 test the application of such waiver or exception to procure-
9 ments of noncommercial items.

10 (3)(A) Paragraph (2) applies with respect to—

11 (i) a contract that is awarded or modified dur-
12 ing the period described in subparagraph (B); and

13 (ii) a contract that is awarded before the begin-
14 ning of such period and is to be performed (or may
15 be performed), in whole or in part, during such pe-
16 riod.

17 (B) The period referred to in subparagraph (A) is
18 the period that begins 45 days after the date of the enact-
19 ment of the Federal Acquisition Reform Act of 1994 and
20 ends on September 30, 1998.

21 **SEC. 6002. STUDY OF PARTICIPATION BY CERTAIN SMALL**
22 **BUSINESSES IN FEDERAL PROCUREMENT.**

23 (a) **STUDY.**—The Administrator for Federal Procure-
24 ment Policy shall conduct a study of—

1 (1) the degree of participation by small busi-
2 nesses owned and controlled by socially and economi-
3 cally disadvantaged individuals in procurements con-
4 ducted by executive agencies, other than agencies in
5 the Department of Defense; and

6 (2) the extent of compliance by those executive
7 agencies with the goals for participation by such
8 businesses required by Office of Federal Procure-
9 ment Policy policy letter 91-1, relating to Govern-
10 ment-wide small business and small disadvantaged
11 business goals for procurement contracts.

12 (b) REPORT.—Not later than 6 months after the date
13 of the enactment of this Act, the Administrator for Fed-
14 eral Procurement Policy shall submit a report on the study
15 required under subsection (a) to the Committee on Gov-
16 ernment Operations and the Committee on Small Business
17 of the House of Representatives, and to the Committee
18 on Governmental Affairs and the Committee on Small
19 Business of the Senate. The report shall include rec-
20 ommendations to facilitate the provision of authority to
21 executive agencies, other than agencies in the Department
22 of Defense, to conduct procurement set asides for small
23 businesses owned and controlled by socially and economi-
24 cally disadvantaged individuals, and on improved outreach

1 programs to increase the participation by such businesses
2 in procurements conducted by those executive agencies.

3 **SEC. 6003. FURTHERANCE OF GOVERNMENT-WIDE CON-**
4 **TRACT GOAL FOR SMALL DISADVANTAGED**
5 **BUSINESSES AND CERTAIN INSTITUTIONS OF**
6 **HIGHER EDUCATION.**

7 The Office of Federal Procurement Policy Act (41
8 U.S.C. 41 et seq.), as amended by section 5005, is further
9 amended by adding at the end the following new section:

10 **“SEC. 46. FURTHERANCE OF GOVERNMENT-WIDE CON-**
11 **TRACT GOAL FOR SMALL DISADVANTAGED**
12 **BUSINESSES AND CERTAIN INSTITUTIONS OF**
13 **HIGHER EDUCATION.**

14 “(a) GOAL.—(1) A goal of 5 percent of the amount
15 described in subsection (b) shall be the objective of an ex-
16 ecutive agency in each of fiscal years 1994 through 2000
17 for the total combined amount obligated for contracts and
18 subcontracts entered into with—

19 “(A) small business concerns, including mass
20 media and advertising firms, owned and controlled
21 by socially and economically disadvantaged individ-
22 uals (as such term is used in section 8(d) of the
23 Small Business Act (15 U.S.C. 637(d)) and regula-
24 tions issued under that section), the majority of the
25 earnings of which directly accrue to such individuals;

1 “(B) historically Black colleges and universities,
2 including any nonprofit research institution that was
3 an integral part of such a college or university be-
4 fore November 14, 1986; and

5 “(C) minority institutions (as defined in section
6 1046(3) of the Higher Education Act of 1965 (20
7 U.S.C. 1135d-5(3)), which, for the purposes of this
8 section, shall include Hispanic-serving institutions
9 (as defined in section 316(b)(1) of such Act (20
10 U.S.C. 1059c(b)(1)).

11 “(2) The head of the agency shall establish a specific
12 goal within the overall 5 percent goal for the award of
13 prime contracts and subcontracts to historically Black col-
14 leges and universities and minority institutions in order
15 to increase the participation of such colleges and univer-
16 sities in the program provided for by this section.

17 “(3)(i) The Federal Acquisition Regulation (issued
18 under section 25(c)) shall provide procedures or guidelines
19 for contracting officers to set goals which executive agency
20 prime contractors that are required to submit subcontract-
21 ing plans under section 8(d)(4)(B) of the Small Business
22 Act (15 U.S.C. 637(d)(4)(B)) in furtherance of the agen-
23 cy’s program to meet the 5 percent goal specified in para-
24 graph (1) should meet in awarding subcontracts, including

1 subcontracts to minority-owned media, to entities de-
2 scribed in that paragraph.

3 “(ii) The regulations required by clause (i) shall pro-
4 vide that when a contract for a major system is to be per-
5 formed pursuant to a teaming arrangement between two
6 or more contractors, the contracting officer shall set each
7 team member’s goal by excluding the price of the work
8 to be performed by the other team members from the cal-
9 culation of total planned subcontract awards.

10 “(b) AMOUNT.—The requirements of subsection (a)
11 for any fiscal year apply to the total value of all prime
12 contract and subcontract awards entered into by the exec-
13 utive agency for such fiscal year.

14 “(c) TYPES OF ASSISTANCE.—(1) To attain the goal
15 specified in subsection (a)(1), the head of the agency shall
16 provide technical assistance to the entities referred to in
17 that subsection and, in the case of historically Black col-
18 leges and universities and minority institutions, shall also
19 provide infrastructure assistance.

20 “(2) Technical assistance provided under this section
21 shall include information about the program, advice about
22 the agency’s procurement procedures, instruction in prep-
23 aration of proposals, and other such assistance as the
24 agency head considers appropriate. If the resources of the
25 executive agency are inadequate to provide such assist-

1 ance, the agency head may enter into contracts with mi-
2 nority private sector entities with experience and expertise
3 in the design, development, and delivery of technical as-
4 sistance services to eligible individuals, business firms and
5 institutions, acquisition agencies, and prime contractors.
6 Agency contracts with such entities shall be awarded an-
7 nually, based upon, among other things, the number of
8 minority small business concerns, historically Black col-
9 leges and universities, and minority institutions that each
10 such entity brings into the program.

11 “(3) The agency head shall, to the maximum extent
12 practical, carry out programs under this section at col-
13 leges, universities, and institutions that agree to bear a
14 substantial portion of the cost associated with the pro-
15 grams.

16 “(d) COMPETITIVE PROCEDURES AND ADVANCE
17 PAYMENTS.—To attain the goal of subsection (a):

18 “(1)(A) The head of the agency shall—

19 “(i) ensure that substantial progress is
20 made in increasing awards of agency contracts
21 to entities described in subsection (a)(1);

22 “(ii) exercise his utmost authority, re-
23 sourcefulness, and diligence; and

1 “(iii) actively monitor and assess the
2 progress of prime contractors of the agency in
3 attaining such goal.

4 “(B) In making the assessment under subpara-
5 graph (A)(iii), the agency head shall evaluate the ex-
6 tent to which use of the authority provided in para-
7 graphs (2) and (3) and compliance with the require-
8 ment in paragraph (4) is effective for facilitating the
9 attainment of the goal.

10 “(2) To the extent practicable and when nec-
11 essary to facilitate achievement of the 5 percent goal
12 described in subsection (a), the agency head shall
13 make advance payments under section 36 of this Act
14 to contractors described in subsection (a). The Fed-
15 eral Acquisition Regulation shall provide guidance to
16 contracting officers for making advance payments to
17 entities described in subsection (a)(1) under such
18 section.

19 “(3) To the extent practicable and when nec-
20 essary to facilitate achievement of the 5 percent goal
21 described in subsection (a), the agency head may
22 enter into contracts using less than full and open
23 competitive procedures and partial set asides for en-
24 tities described in subsection (a)(1), but shall pay a
25 price not exceeding fair market cost by more than

1 10 percent in payment per contract to contractors or
2 subcontractors described in subsection (a). The
3 agency head shall adjust the percentage specified in
4 the preceding sentence for any industry category if
5 available information clearly indicates that
6 nondisadvantaged small business concerns in such
7 industry category are generally being denied a rea-
8 sonable opportunity to compete for contracts because
9 of the use of that percentage in the application of
10 this paragraph.

11 “(4) To the extent practicable, the agency head
12 shall maximize the number of minority small busi-
13 ness concerns, historically Black colleges and univer-
14 sities, and minority institutions participating in the
15 program.

16 “(5) The Federal Acquisition Regulation shall
17 provide for the following:

18 “(A) Procedures or guidance for contract-
19 ing officers to provide incentives for prime con-
20 tractors referred to in subsection (a)(3) to in-
21 crease subcontractor awards to entities de-
22 scribed in subsection (a)(1).

23 “(B) A requirement that contracting offi-
24 cers emphasize the award of contracts to enti-
25 ties described in subsection (a)(1) in all indus-

1 try categories, including those categories in
2 which such entities have not traditionally domi-
3 nated.

4 “(C) Guidance to executive agency person-
5 nel on the relationship among the following pro-
6 grams:

7 “(i) The program implementing this
8 section.

9 “(ii) The program established under
10 section 8(a) of the Small Business Act (15
11 U.S.C. 637(a)).

12 “(iii) The small business set-aside
13 program established under section 15(a) of
14 the Small Business Act (15 U.S.C.
15 644(a)).

16 “(D) With respect to an agency procure-
17 ment which is reasonably likely to be set aside
18 for entities described in subsection (a)(1), a re-
19 quirement that (to the maximum extent prac-
20 ticable) the procurement be designated as such
21 a set-aside before the solicitation for the pro-
22 curement is issued.

23 “(E) Policies and procedures which, to the
24 maximum extent practicable, will ensure that
25 current levels in the number or dollar value of

1 contracts awarded under the program estab-
2 lished under section 8(a) of the Small Business
3 Act (15 U.S.C. 637(a)) and under the small
4 business set-aside program established under
5 section 15(a) of the Small Business Act (15
6 U.S.C. 644(a)) are maintained and that every
7 effort is made to provide new opportunities for
8 contract awards to eligible entities, in order to
9 meet the goal of subsection (a).

10 “(F) Implementation of this section in a
11 manner which will not alter the procurement
12 process under the program established under
13 section 8(a) of the Small Business Act (15
14 U.S.C. 637(a)).

15 “(G) A requirement that one factor used in
16 evaluating the performance of a contracting of-
17 ficer be the ability of the officer to increase con-
18 tract awards to entities described in subsection
19 (a)(1).

20 “(H) Increased technical assistance to en-
21 tities described in subsection (a)(1).

22 “(e) PENALTIES AND REGULATIONS RELATING TO
23 STATUS.—(1) Whoever for the purpose of securing a con-
24 tract or subcontract under subsection (a) misrepresents
25 the status of any concern or person as a small business

1 concern owned and controlled by a minority (as described
2 in subsection (a)), shall be punished by a fine of not less
3 than \$10,000, or by imprisonment for not more than one
4 year, or both.

5 “(2) The Federal Acquisition Regulation shall pro-
6 hibit awarding a contract under this section to an entity
7 described in subsection (a)(1) unless the entity agrees to
8 comply with the requirements of section 15(o)(1) of the
9 Small Business Act (15 U.S.C. 644(o)(1)).

10 “(f) DETERMINATION BY AGENCY HEAD.—Under
11 procedures prescribed in the Federal Acquisition Regula-
12 tion, a person may request the agency head to determine
13 whether the use of small disadvantaged business set asides
14 by a contracting activity of the agency has caused a par-
15 ticular industry category to bear a disproportionate share
16 of the contracts awarded to attain the goal established for
17 that contracting activity for the purposes of this section.
18 Upon making a determination that a particular industry
19 category is bearing a disproportionate share, the agency
20 head shall take appropriate actions to limit the contracting
21 activity’s use of set asides in awarding contracts in that
22 particular industry category.

23 “(g) COMPLIANCE WITH SUBCONTRACTING PLAN
24 REQUIREMENTS.—(1) The Federal Acquisition Regulation
25 shall contain regulations to ensure that potential contrac-

1 tors submitting sealed bids or competitive proposals to the
2 executive agency for procurement contracts to be awarded
3 under the program provided for by this section are comply-
4 ing with applicable subcontracting plan requirements of
5 section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

6 “(2) The regulations required by paragraph (1) shall
7 ensure that, with respect to a sealed bid or competitive
8 proposal for which the bidder or offeror is required to ne-
9 gotiate or submit a subcontracting plan under section 8(d)
10 of the Small Business Act (15 U.S.C. 637(d)), the sub-
11 contracting plan shall be a factor in evaluating the bid
12 or proposal.

13 “(h) ANNUAL REPORT.—(1) Not later than Decem-
14 ber 15 of each year, the Administrator shall submit to
15 Congress a report on the progress of executive agencies
16 toward attaining the goal of subsection (a) during the pre-
17 ceding fiscal year.

18 “(2) The report required under paragraph (1) shall
19 include the following:

20 “(A) A full explanation of any progress toward
21 attaining the goal of subsection (a).

22 “(B) A plan to achieve the goal, if necessary.

23 “(3) The report required under paragraph (1) shall
24 also include the following:

1 “(A) The aggregate differential between the fair
2 market price of all contracts awarded pursuant to
3 subsection (d)(3) and the estimated fair market
4 price of all such contracts had such contracts been
5 entered into using full and open competitive proce-
6 dures.

7 “(B) An analysis of the impact that subsection
8 (a) shall have on the ability of small business con-
9 cerns not owned and controlled by socially and eco-
10 nomically disadvantaged individuals to compete for
11 contracts with the executive agency.

12 “(C) A description of the percentage of con-
13 tracts (actions), the total dollar amount (size of ac-
14 tion), and the number of different entities relative to
15 the attainment of the goal of subsection (a), sepa-
16 rately for Black Americans, Native Americans, His-
17 panic Americans, Asian Pacific Americans, and
18 other minorities.

19 “(D) A detailed description of the infrastruc-
20 ture assistance provided under subsection (c) during
21 the preceding fiscal year and of the plans for provid-
22 ing such assistance during the fiscal year in which
23 the report is submitted.

24 “(i) RELATIONSHIP TO OTHER GOALS.—This section
25 shall not be construed as amending, modifying, or super-

1 seding any other provision of law establishing a goal or
2 requirement for an agency to obligate 5 percent or more
3 of the total value of all prime contract and subcontract
4 awards entered into by the agency for a fiscal year with
5 any entity described in subsection (a)(1).

6 “(j) EFFECTIVE DATE.—This section applies to each
7 of fiscal years 1994 through 2000.”.

8 **SEC. 6004. EDUCATION AND TRAINING.**

9 Section 6(d)(5) of the Office of Federal Procurement
10 Policy Act (41 U.S.C. 405(d)(4)) is amended—

11 (1) by striking out “and” at the end of sub-
12 paragraph (A);

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

16 (3) by adding at the end the following new sub-
17 paragraph:

18 “(C) establish policies and procedures for
19 the establishment and implementation of edu-
20 cation and training programs authorized by this
21 Act, including the establishment and implemen-
22 tation of a sensitivity training course, in con-
23 junction with the General Services Administra-
24 tion, for critical procurement personnel de-
25 signed to increase the participation of small

1 business concerns owned and controlled by so-
2 cially and economically disadvantaged individ-
3 uals, women, and other minorities in procure-
4 ment activities conducted by an executive agen-
5 cy.”.

6 **SEC. 6005. SENSE OF CONGRESS ON NEGOTIATED RULE-**
7 **MAKING.**

8 (a) FINDINGS.—The Congress finds the following:

9 (1) The use of negotiated rulemaking or similar
10 policy discussion group techniques is an appropriate
11 tool for—

12 (A) fostering effective implementation of,
13 and compliance with, laws and regulations;

14 (B) avoiding litigation; and

15 (C) achieving more productive and equi-
16 table relationships between the Federal Govern-
17 ment and the regulated segments of the private
18 sector.

19 (2) The use of negotiated rulemaking or similar
20 techniques in Federal procurement regulations could
21 be appropriate given the extreme complexity and in-
22 tricate interactions between buyer and seller in Fed-
23 eral procurements.

24 (b) SENSE OF CONGRESS.—It is the sense of Con-
25 gress that, in prescribing acquisition regulations, the Fed-

1 eral Acquisition Regulatory Council should consider using
2 negotiated rulemaking procedures in accordance with sec-
3 tions 561 through 570 of title 5, United States Code, or
4 similar techniques intended to achieve the benefits de-
5 scribed in subsection (a)(1).

6 **SEC. 6006. VENDOR AND EMPLOYEE EXCELLENCE AWARDS.**

7 Section 6(d) of the Office of Federal Procurement
8 Policy Act (41 U.S.C. 405(d)), as amended by section
9 3012(b), is further amended—

10 (1) by striking out the period at the end of
11 paragraph (10) (as redesignated by section
12 3012(b)(2)) and inserting in lieu thereof a semi-
13 colon; and

14 (2) by adding at the end the following new
15 paragraphs:

16 “(11) providing for a Government-wide award
17 to recognize and promote vendor excellence; and

18 “(12) providing for a Government-wide award
19 to recognize and promote excellence in officers and
20 employees of the Federal Government serving in pro-
21 curement-related positions.”.

22 **SEC. 6007. TECHNICAL AND CLERICAL AMENDMENTS.**

23 (a) TABLE OF CONTENTS AMENDMENT.—Section 1
24 of the Office of Federal Procurement Policy Act (41
25 U.S.C. 401 note) is amended to read as follows:

1 **“SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 “(a) SHORT TITLE.—This Act may be cited as the
3 ‘Office of Federal Procurement Policy Act’.

4 “(b) TABLE OF CONTENTS.—The table of contents
5 for this Act is as follows:

- “Sec. 1. Short title; table of contents.
- “Sec. 2. Declaration of policy.
- “Sec. 3. Findings and purpose.
- “Sec. 4. Definitions.
- “Sec. 4A. Simplified acquisition threshold.
- “Sec. 4B. Simplified acquisition procedures.
- “Sec. 4C. Procedures applicable to purchases below micro-purchase threshold.
- “Sec. 5. Office of Federal Procurement Policy.
- “Sec. 6. Authority and functions of the Administrator.
- “Sec. 7. Administrative powers.
- “Sec. 8. Responsiveness to Congress.
- “Sec. 9. Effect on existing laws.
- “Sec. 10. Effect on existing regulations.
- “Sec. 11. Authorization of appropriations.
- “Sec. 12. Delegation.
- “Sec. 14. Access to information.
- “Sec. 15. Tests of innovative procurement methods and procedures.
- “Sec. 16. Executive agency responsibilities.
- “Sec. 18. Procurement notice.
- “Sec. 19. Record requirements.
- “Sec. 20. Advocates for competition.
- “Sec. 21. Rights in technical data.
- “Sec. 22. Publication of proposed regulations.
- “Sec. 23. Contracting functions performed by Federal personnel.
- “Sec. 24. Travel expenses of Government contractors.
- “Sec. 25. Federal Acquisition Regulatory Council.
- “Sec. 26. Cost Accounting Standards Board.
- “Sec. 27. Procurement integrity.
- “Sec. 29. Competition requirements.
- “Sec. 30. Planning and solicitation requirements.
- “Sec. 31. Evaluation and award.
- “Sec. 32. Cost or pricing data: truth in negotiations.
- “Sec. 33. Delegation of procurement functions.
- “Sec. 34. Determinations and decisions.
- “Sec. 35. Research, development, and production costs.
- “Sec. 36. Contract financing.
- “Sec. 37. Allowable costs.
- “Sec. 38. Examination of records of contractor.
- “Sec. 39. Federal acquisition computer network (FACNET).
- “Sec. 39A. Implementation of FACNET systems.
- “Sec. 40. Contracts: small business reservation.
- “Sec. 41. Restriction on use of noncompetitive procedures for procurement
from a specified source.
- “Sec. 42. Preference for acquisition of commercial items.

- “Sec. 43. Regulations on acquisition of commercial items.
 “Sec. 44. Principle of construction with future laws.
 “Sec. 45. Authority to waive certain procurement laws for contracts for commercial items.
 “Sec. 46. Furtherance of Government-wide contract goal for small disadvantaged businesses and certain institutions of higher education.”.

1 (b) AMENDMENTS FOR STYLISTIC CONSISTENCY.—

2 (1) OFFICE OF FEDERAL PROCUREMENT POL-
 3 ICY ACT.—The Office of Federal Procurement Policy
 4 Act (41 U.S.C. 401 et seq.) is amended so that the
 5 section designation and section heading of each sec-
 6 tion of such Act is in the same form and typeface
 7 as the section designation and heading of this sec-
 8 tion.

9 (2) FEDERAL PROPERTY AND ADMINISTRATIVE
 10 SERVICES ACT OF 1949.—The Federal Property and
 11 Administrative Services Act of 1949 (41 U.S.C. 471
 12 et seq.) is amended so that the section designation
 13 and section heading of each section of such Act is
 14 in the same form and typeface as the section des-
 15 ignation and heading of this section.

16 **TITLE VII—EFFECTIVE DATES**
 17 **AND REGULATIONS**

18 **SEC. 7001. EFFECTIVE DATES.**

19 (a) IN GENERAL.—Except as provided in subsection
 20 (b), this Act and the amendments made by this Act shall
 21 apply with respect to any contract for which a solicitation
 22 for bid or proposal is issued after—

1 (1) 30 days have expired after the issuance in
2 final form of revisions to the Federal Acquisition
3 Regulation pursuant to section 7002; or

4 (2) 180 days have expired after the date of the
5 enactment of this Act;

6 whichever is earlier.

7 (b) SPECIFIC EFFECTIVE DATE.—Subtitle C of title
8 I of this Act, and the amendments made by such subtitle
9 (relating to procurement protests), shall apply with re-
10 spect to any protest filed after the expiration of the 90-
11 day period beginning on the date of the enactment of this
12 Act.

13 **SEC. 7002. REGULATIONS.**

14 Not later than 150 days after the date of the enact-
15 ment of this Act, the Federal Acquisition Regulation (re-
16 ferred to in section 25(c) of the Office of Federal Procure-
17 ment Policy Act (41 U.S.C. 421(c))) shall be revised, in
18 final form, to implement this Act and the amendments
19 made by this Act.

20 **SEC. 7003. EVALUATION BY THE COMPTROLLER GENERAL.**

21 (a) EVALUATION RELATING TO ISSUANCE OF REGU-
22 LATIONS.—Not later than December 1, 1995, the Comp-
23 troller General shall submit to the committees referred to
24 in subsection (c) a report evaluating compliance with the

1 requirements in section 7002, relating to the issuance of
2 implementing regulations.

3 (b) EVALUATION OF IMPLEMENTATION OF REGULA-
4 TIONS.—Not later than December 1, 1996, the Comptrol-
5 ler General shall submit to the committees referred to in
6 subsection (c) a report evaluating the effectiveness of the
7 regulations implementing this Act in streamlining the ac-
8 quisition system and fulfilling the other purposes of this
9 Act.

10 (c) COMMITTEES DESIGNATED TO RECEIVE THE RE-
11 PORTS.—The Comptroller General shall submit the re-
12 ports required by this section to the Committees on Armed
13 Services and on Governmental Affairs of the Senate and
14 the Committees on Small Business on Government Oper-
15 ations of the House of Representatives.

16 **SEC. 7004. DATA COLLECTION THROUGH THE FEDERAL**
17 **PROCUREMENT DATA SYSTEM.**

18 (a) DATA COLLECTION REQUIRED.—The Federal
19 Procurement Data System described in section 6(d)(4)(A)
20 of the Office of Federal Procurement Policy Act (41
21 U.S.C. 405(d)(4)(A)) shall be modified to collect from con-
22 tracts in excess of the simplified acquisition threshold data
23 pertaining to the following matters:

24 (1) Contract awards made pursuant to competi-
25 tions conducted pursuant to section 46 of the Office

1 of Federal Procurement Policy Act, as added by sec-
2 tion 6003.

3 (2) Awards to business concerns owned and
4 controlled by women.

5 (3) Number of offers received in response to a
6 solicitation.

7 (4) Task order contracts.

8 (5) Contracts for the acquisition of commercial
9 items.

10 (b) DEFINITION.—In this section, the term “sim-
11 plified acquisition threshold” has the meaning given such
12 term in section 4A of the Office of Federal Procurement
13 Policy Act (41 U.S.C. 403).



HR 4328 IH—2

HR 4328 IH—3

HR 4328 IH—4

HR 4328 IH—5

HR 4328 IH—6

HR 4328 IH—7

HR 4328 IH—8

HR 4328 IH—9

HR 4328 IH—10

HR 4328 IH—11

HR 4328 IH—12

HR 4328 IH—13