

104TH CONGRESS
1ST SESSION

H. R. 1388

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 1995

Mr. CLINGER (for himself, Mrs. COLLINS of Illinois, Mr. SPENCE, and Mr. DELLUMS) (all by request) introduced the following bill; which was referred to the Committee on Government Reform and Oversight, and in addition to the Committees on National Security, the Judiciary, Small Business, Science, and International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Acquisition
5 Improvement Act of 1995”.

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

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

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- Sec. 1002. Modification of approval levels.
- Sec. 1003. Advisory and assistance services defined.

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- Sec. 1012. Competitive range determinations.
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- Sec. 1014. Two-phase selection procedures.

SUBPART C—KINDS OF CONTRACTS

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SUBPART B—PLANNING, SOLICITATION, EVALUATION, AND AWARD

- Sec. 1061. Evolving solicitations.
- Sec. 1062. Competitive range determinations.
- Sec. 1063. Preaward debriefings.
- Sec. 1064. Two-phase selections procedures.

SUBPART C—KINDS OF CONTRACTS

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- Sec. 1101. Required regulations.

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- Sec. 1431. Decisions on protests.
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- Sec. 1551. Repeal of multi-year limitation on inspection, maintenance, and repair.
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1 **TITLE I—CONTRACT FORMATION**

2 **Subtitle A—Competition Statutes**

3 **PART I—ARMED SERVICES ACQUISITIONS**

4 **Subpart A—Competition Requirements**

5 **SEC. 1001. DELEGATION OF AUTHORITIES AND CONFORM-**
 6 **ING AMENDMENTS.**

7 (a) COMPETITION REQUIREMENTS.—Section 2304 of
 8 title 10, United States Code, is amended—

9 (1) in subsection (b) by striking “the head of
 10 an agency” in each place that it appears and insert-
 11 ing in lieu thereof “the head of the contracting ac-
 12 tivity”;

1 (2) in subsection (c) by striking out “the head
2 of an agency” in the first sentence and inserting in
3 lieu thereof “an executive agency”;

4 (3) in subsection (c)(7) by striking out “head of
5 the agency” and inserting in lieu thereof “head of
6 the contracting activity”; and

7 (4) in subsection (d)(2) by striking out “head
8 of an agency” and inserting in lieu therefor “head
9 of the contracting activity”.

10 (b) FORMATION PROCEDURES.—Section 2305 of title
11 10, United States Code, is amended by striking out “the
12 head of an agency” or “the head of the agency” in each
13 place that it appears and inserting in lieu thereof “the
14 contracting officer”.

15 (c) KINDS OF CONTRACTS.—Subsection (a) of section
16 2306 of title 10, United States Code, is amended to read
17 as follows:

18 “(a) The cost-plus percentage-of-cost system of con-
19 tracting may not be used. Subject to the limitation in the
20 preceding sentence, the other provisions of this section,
21 and other applicable provisions of law, an agency, in
22 awarding contracts under this chapter after using proce-
23 dures other than sealed-bid procedures, may enter into
24 any kind of contract that the agency considers will pro-
25 mote the best interests of the United States.”.

1 (d) COST OR PRICING DATA.—Section 2306a of title
2 10, United States Code, is amended—

3 (1) in subsection (b)(1)(B) by striking out
4 “when the head of the procuring activity, without
5 delegation,” and inserting in lieu thereof “when the
6 contracting officer”; and

7 (2) in subsection (g) by striking the words “the
8 head of”.

9 (e) ENCOURAGEMENT OF NEW COMPETITORS.—Sec-
10 tion 2319 of title 10, United States Code is amended—

11 (1) by striking out “the head of an agency” or
12 “the head of the agency” in each place that it ap-
13 pears and inserting in lieu thereof “the contracting
14 officer”;

15 (2) by striking out subparagraph (A) of sub-
16 section (c)(2) and inserting in lieu thereof the fol-
17 lowing:

18 “(A) Except as provided in subparagraph
19 (B), if it is unreasonable to specify the stand-
20 ards for qualification which a prospective
21 offeror or its product must satisfy, a determina-
22 tion to that effect shall be submitted to the
23 head of the contracting activity. After consider-
24 ing the determination and the facts supporting
25 it, the head of the contracting activity may

1 waive the requirements of clauses (2) through
2 (6) of subsection (b) for up to two years with
3 respect to the item subject to the qualification
4 requirement.”; and

5 (3) by adding a new subsection (g) to read as
6 follows:

7 “(g) The contracting officer need not prepare the jus-
8 tification required by subsection (b)(1) nor the determina-
9 tion required by subsection (f) if, in the prior fiscal year,
10 the agency either obligated 75 percent or more of its con-
11 tract dollars available for competition or awarded 95 per-
12 cent or more of its contract actions available for competi-
13 tion using competitive procedures.”.

14 **SEC. 1002. MODIFICATION OF APPROVAL LEVELS.**

15 (a) APPROVAL OF JUSTIFICATIONS.—Section
16 2304(f)(1)(B) of title 10, United States Code is amended
17 to read as follows:

18 “(f)(1)(B) the justification is approved—

19 “(i) in the case of a contract for an amount ex-
20 ceeding \$500,000 (but equal to or less and
21 \$5,000,000) by the competition advocate for the pro-
22 curing activity (without further delegation) or by an
23 official referred to in (ii), (iii), or (iv);

24 “(ii) in the case of a contract for an amount ex-
25 ceeding \$5,000,000 (but equal to or less than

1 \$115,000,000), by the head of the procuring activity
2 (or the head of the procuring activity’s delegate des-
3 ignated pursuant to paragraph (6)(A));

4 “(iii) in the case of a contract for amount ex-
5 ceeding \$115,000,000 (but equal to or less than
6 \$500,000,000), by the senior procuring executive of
7 the agency designated pursuant to section 16(3) of
8 the Office of Federal Procurement Policy Act (41
9 U.S.C. 414(3)) or the senior procurement executive’s
10 delegate designated pursuant to paragraph (6)(B),
11 or in the case of the Under Secretary of Defense for
12 Acquisition, acting in his capacity as the senior pro-
13 curement executive for the Department of Defense;
14 the Under Secretary’s delegate designated pursuant
15 to paragraph (6)(C);

16 “(iv) in the case of a contract for amount ex-
17 ceeding \$500,000,000, by the senior procuring exec-
18 utive of the agency designated pursuant to section
19 16(3) of the Office of Federal Procurement Policy
20 Act (41 U.S.C. 414(3)) (without further delegation)
21 or in the case of the Under Secretary of Defense for
22 Acquisition, acting in his capacity as the senior pro-
23 curement executive for the Department of Defense,
24 the Under Secretary’s delegate designated pursuant
25 to paragraph (6)(C); and”.

1 (b) EXCEPTION.—Section 2304(f)(1) of title 10,
2 United States Code, is further amended by adding at the
3 end the following:

4 “(D) The justification required by paragraph
5 (1)(A) is not required to be approved as under para-
6 graph (1)(B) if the agency obligated 75 percent or
7 more of its contract dollars available for competition
8 or awarded 95 percent or more of its contract ac-
9 tions available for competition during the previous
10 fiscal year using competitive procedures.”.

11 **SEC. 1003. ADVISORY AND ASSISTANCE SERVICES DEFINED.**

12 (a) DEFINITION.—Section 2304b(i) of title 10,
13 United States Code, is amended to read as follows:

14 “(i) Advisory and Assistance Services Defined.

15 “In this section:

16 “(1) the term “advisory and assistance serv-
17 ices” means the following services when provided by
18 nongovernmental sources:

19 “(A) Management and professional support
20 services.

21 “(B) Studies, analysis, and evaluations.

22 “(C) Engineering and technical services.

23 “(2) In paragraph (1), such term does not in-
24 clude the following services:

1 “(A) Routine automated data processing
2 telecommunications services unless such services
3 are an integral part of a contract for the pro-
4 curement of advisory and assistance services.

5 “(B) Architectural and engineering serv-
6 ices, as defined in section 901 of the Brooks
7 Architect-Engineers Act (40 U.S.C. 541).

8 “(C) Research on basic mathematics or
9 medical, biological, physical, social, psycho-
10 logical, or other phenomena.”.

11 (b) TECHNICAL AMENDMENT.—Section 2304a(f) of
12 title 10 is amended by striking “section 1105(g) of title
13 31” and inserting in lieu thereof “section 2304b(i) of title
14 10”.

15 **Subpart B—Planning, Solicitation,**
16 **Evaluation, and Award**

17 **SEC. 1011. EVOLVING SOLICITATIONS.**

18 Subsection (a) of section 2305 of title 10, United
19 States Code, is amended—

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

22 (2) by inserting after paragraph (4) the follow-
23 ing paragraph (5):

24 “(5) When purchasing commercial items under
25 this subpart, nothing in this or any other Act shall

1 be construed to prohibit an agency from adding, de-
2 leting, or tailoring evaluation factors or specifica-
3 tions at any time up until the issuance of a request
4 for final offers.”.

5 **SEC. 1012. COMPETITIVE RANGE DETERMINATIONS.**

6 Paragraph (4) of section 2305(b) of title 10, United
7 States Code, is amended by—

8 (1) redesignating subparagraphs (B) and (C) as
9 subparagraphs (C) and (D) respectively;

10 (2) striking out “(B)” in subparagraph (D) and
11 inserting in lieu thereof “(C)”; and

12 (3) inserting after subparagraph (A) the follow-
13 ing:

14 “(B) If the contracting officer determines
15 that the number of offerors that would other-
16 wise be included in the competitive range under
17 subparagraph (A)(i) exceeds the number at
18 which an efficient competition can be con-
19 ducted, the contracting officer may limit the
20 number of offerors in the competitive range to
21 the greatest number of competitors that will
22 permit an efficient award; provided that when
23 the competition is limited for this purpose, the
24 number of offerors may not be limited to less
25 than three.”.

1 **SEC. 1013. PREAWARD DEBRIEFINGS.**

2 Section 2305(b) of title 10, United States Code, is
3 amended—

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

6 (2) inserting after paragraph (5) the following
7 new paragraph (6):

8 “(6)(A) When the contracting officer excludes
9 an offeror submitting a competitive proposal from
10 the competitive range (or otherwise excludes such an
11 offeror from further consideration prior to the final
12 source selection decision), the excluded offeror may
13 request in writing, within 3 days after the date on
14 which the excluded offeror receives notice of its ex-
15 clusion, a debriefing prior to award. The contracting
16 officer shall either debrief the unsuccessful offeror as
17 soon as is practicable or refuse the request.

18 “(B) The contracting officer is required to de-
19 brief an excluded offeror in accordance with para-
20 graph (5) of this section only if that offeror re-
21 quested and was refused a preaward debriefing
22 under subparagraph (A) of this paragraph.

23 “(C) The debriefing conducted under this sub-
24 section shall include—

25 “(i) the executive agency’s evaluation of
26 the significant factors in the offeror’s offer;

1 “(ii) a summary of the rationale for the
2 offeror’s exclusion, including the reason or rea-
3 sons it was determined not to have a reasonable
4 chance of being selected for contract award or
5 other reason or reasons it was excluded; and

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

12 “(D) The debriefing conducted pursuant to this
13 subsection may not disclose the number or identity
14 of other offerors and shall not disclose information
15 about the content, ranking, or evaluation of other
16 offerors’ proposals.

17 “(E) The contracting officer shall include a
18 summary of the debriefing in the contract file.”.

19 **SEC. 1014. TWO-PHASE SELECTION PROCEDURES.**

20 (a) PROCEDURES AUTHORIZED.—Chapter 137 of
21 title 10, United States Code, is amended by inserting after
22 section 2305 the following new section:

23 **“§ 12305a. Two-phase selection procedures**

24 “(a) AUTHORIZATION.—The contracting officer may
25 use the two-phase selection procedures authorized herein

1 for acquiring the design and construction of a public build-
2 ing, facility, or work when the criteria for use in sub-
3 section (b) are met. The two-phase selection procedures
4 authorized herein may also be used for entering into a con-
5 tract for the acquisition of property or services other than
6 construction services when the criteria described in sub-
7 section (b) are met.

8 “(b) CRITERIA FOR USE.—The contracting officer
9 shall make a determination whether the authorized two-
10 phase selection procedures are appropriate for use when
11 the contracting officer anticipates that three or more of-
12 fers will be received for such contract, design work must
13 be performed before an offeror can develop a price or cost
14 proposal for such contract, the offeror will incur a sub-
15 stantial amount of expense in preparing the offer, and
16 after considering in individual situations information such
17 as the following:

18 “(1) The extent to which the project require-
19 ments have been adequately defined.

20 “(2) The time constraints for delivery of the
21 project.

22 “(3) The capability and experience of potential
23 contractors.

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

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

3 “(6) Other criteria established by the agency.

4 “(c) PROCEDURES DESCRIBED.—Two-phase selec-
5 tion procedures consist of the following:

6 “(1) The agency shall develop, either in-house
7 or by contract, a scope of work defining the project
8 for inclusion in the solicitation that provides pro-
9 spective offerors with sufficient information regard-
10 ing the Government’s requirements which may in-
11 clude criteria and preliminary conceptual design,
12 budget parameters and schedule or delivery require-
13 ments to enable the offerors to submit proposals
14 which meet the Government’s needs. When the two-
15 phase selection procedure is used for design and con-
16 struction of a public building, facility, or work and
17 the agency contracts for development of the scope of
18 work, the agency shall contract for architectural/en-
19 gineering services as defined by and in accordance
20 with section 541 and the following of title 40,
21 United States Code.

22 “(2) The contracting officer solicits phase-one
23 proposals that—

24 “(A) include information on the offeror’s—

25 “(i) technical approach; and

1 “(ii) technical qualifications; and

2 “(B) do not include—

3 “(i) detailed design information; or

4 “(ii) cost or price information.

5 “(3) The evaluation factors to be used in evalu-
6 ating phase one proposals shall be stated in the so-
7 licitation and include specialized experience and
8 technical competence, capability to perform, past
9 performance of the offeror’s team (including the ar-
10 chitect-engineer and construction members of the
11 team if the project is for the construction of a public
12 building, facility or work) and other appropriate fac-
13 tors, except that cost-related or price-related evalua-
14 tion factors are not permitted. Each solicitation shall
15 establish the relative importance assigned to the
16 evaluation factors and subfactors that must be con-
17 sidered in the evaluation of phase one proposals. The
18 agency evaluates phase one proposals on the basis of
19 the phase one evaluation factors set forth in the
20 solicitation.

21 “(4) The contracting officer selects as the most
22 highly qualified the number of offerors specified in
23 the solicitation to provide the property or services
24 under the contract and requests the selected offerors
25 to submit phase-two competitive proposals that in-

1 clude technical proposals and cost or price informa-
2 tion. Each solicitation shall establish with respect to
3 phase two—

4 “(A) the technical submission requirements
5 for the proposal, including design concepts and/
6 or proposed solutions to requirements addressed
7 within the scope of work, and

8 “(B) the evaluation factors and subfactors,
9 including cost or price, that must be considered
10 in the evaluation of proposals in accordance
11 with section 2305(b)(4).

12 “(5) The agency awards the contract in accord-
13 ance with section 2305(b)(4) of this title.

14 “(d) SOLICITATION TO STATE NUMBER OF
15 OFFERORS TO BE SELECTED FOR PHASE TWO RE-
16 QUESTS FOR COMPETITIVE PROPOSALS.—A solicitation
17 issued pursuant to subsection (c) shall state the maximum
18 number of offerors that are to be selected to submit com-
19 petitive proposals pursuant to subsection (c)(4). The maxi-
20 mum number specified in the solicitation shall not exceed
21 five unless the agency head determines with respect to an
22 individual solicitation that a specified number greater than
23 five is in the Government’s interest and is consistent with
24 the purposes and objectives of the two-phase selection
25 process.

1 “(e) STIPENDS AUTHORIZED.—The head of an execu-
2 tive agency is authorized to provide a stipend to competi-
3 tors that are selected to submit phase two proposals and
4 that submit proposals that meet the requirements of the
5 solicitation but are not selected for the award.

6 “(f) REQUIREMENT FOR GUIDANCE AND REGULA-
7 TIONS.—The Federal Acquisition Regulatory Council, es-
8 tablished by section 25(a) of the Office of Federal Pro-
9 curement Policy Act (41 U.S.C. 421(a)), shall provide
10 guidance and promulgate regulations—

11 “(1) regarding the factors that may be consid-
12 ered in determining whether the two-phase contract-
13 ing procedures authorized by subsection (a) are ap-
14 propriate for use in individual contracting situations;

15 “(2) regarding the factors that may be used in
16 selecting contractors;

17 “(3) providing for a uniform approach to be
18 used government-wide; and

19 “(4) regarding criteria to be used in determin-
20 ing whether the payment of a stipend is appropriate
21 and for determining the amount of the stipend.”.

22 (b) CLERICAL AMENDMENT.—The table of sections
23 at the beginning of such chapter is amended by inserting
24 after the item relating to section 2305 the following:

“Sec. 2305a. Two-phase selection procedures.”.

1 **Subpart C—Kinds of Contracts**

2 **SEC. 1021. REPEAL OF FEE LIMITATIONS.**

3 (a) REPEALS.—(1) Subsection (d) of section 2306 of
4 title 10, United States Code, is repealed.

5 (2) Sections 4540, 7212, and 9540 of title 10, United
6 States Code, are repealed.

7 “(b) CLERICAL AMENDMENTS.—(1) The table of sec-
8 tions at the beginning of chapter 433 of title 10, United
9 States Code, is amended by striking out the item relating
10 to section 4540.

11 (2) The table of sections at the beginning of chapter
12 631 of title 10, United States Code, is amended by strik-
13 ing out the item relating to section 7212.

14 (3) The table of sections at the beginning of chapter
15 933 of title 10, United States Code, is amended by strik-
16 ing out the item relating to section 9540.

17 (c) CIVIL WORKS AUTHORITY.—Section 2855 of title
18 10, United States Code, is amended to read as follows:

19 **“§ 2855 Law applicable to contracts for architectural**
20 **and engineering services and construc-**
21 **tion design**

22 “(a) The Secretary of Defense and Secretaries of the
23 military departments may contract for architectural and
24 engineering services in connection with a military con-
25 struction or family housing project or for other Depart-
26 ment of Defense or military department purposes.

1 “(b) Contracts for architectural and engineering serv-
2 ices entered into pursuant to subsection (a) shall be
3 awarded in accordance with title IX of the Federal Prop-
4 erty and Administrative Services Act of 1949 (40 U.S.C.
5 541 et seq.).”.

6 **PART II—CIVILIAN AGENCY ACQUISITIONS**

7 **Subpart A—Competition Requirements**

8 **SEC. 1051. DELEGATION OF AUTHORITIES AND CONFORM-**
9 **ING AMENDMENTS.**

10 (a) COMPETITION REQUIREMENTS.—Section 303 of
11 the Federal Property and Administrative Services Act of
12 1949 (41 U.S.C. 253) is amended—

13 (1) in section (b)(1) by striking “the agency
14 head” and inserting in lieu thereof “the head of the
15 contracting activity”;

16 (2) in section (c)(7) by striking “head of the ex-
17 ecutive agency” and inserting in lieu thereof “head
18 of the contracting activity”; and

19 (3) in section (d)(2) by striking “head of an ex-
20 ecutive agency” and inserting in lieu thereof “head
21 of the contracting activity”.

22 (b) EVALUATION AND AWARD.—Section 303B of the
23 Federal Property and Administrative Services Act of 1949
24 (41 U.S.C. 253b) is amended by striking out “the head
25 of an executive agency”, “the head of an agency” or “the

1 agency head” in each place that it appears and inserting
2 in lieu thereof “the contracting officer”.

3 (c) ENCOURAGEMENT OF NEW COMPETITION.—Sec-
4 tion 303C of the Federal Property and Administrative
5 Services Act of 1949 (41 U.S.C. 253c) is amended—

6 (1) by striking out “the head of an executive
7 agency”, “agency head”, in each place that it ap-
8 pears and inserting “contracting officer” in lieu
9 thereof and also striking out “the head of an agen-
10 cy” or “the head of the agency” in each place that
11 it appears and inserting in lieu thereof “the con-
12 tracting officer”;

13 (2) by striking out paragraph (2) in subsection
14 (c) and inserting in lieu thereof the following:

15 “(2) Except as provided in subparagraph (3), if
16 it is unreasonable to specify the standards for quali-
17 fication which a prospective offeror or its product
18 must satisfy, a determination to that effect shall be
19 submitted to the head of the contracting activity.
20 After considering the determination and the facts
21 supporting it, the head of the contracting activity
22 may waive the requirements of clauses (2) through
23 (5) of subsection (b) for up to two years with respect
24 to the item subject to the qualification require-
25 ment.”; and

1 (3) by adding a new paragraph (g) to read as
2 follows:

3 “(g) The contracting officer need not prepare the jus-
4 tification required by subsection (b)(1) nor the determina-
5 tion required by subsection (f) if, in the prior fiscal year,
6 the agency either obligated 75 percent or more of its con-
7 tract dollars available for competition or awarded 95 per-
8 cent or more of its contract actions available for competi-
9 tion using competitive procedures.”.

10 (d) COST OR PRICING DATA.—Section
11 304A(b)(1)(B) of the Federal Property and Administra-
12 tive Services Act of 1949 is amended by striking out
13 “when the head of the procuring activity, without delega-
14 tion,” and inserting in lieu thereof “when the contracting
15 officer”.

16 “(e) PRICE REDUCTIONS.—Subsection
17 304A(e)(1)(A) of the Federal Property and Administrative
18 Services Act of 1949 is amended by striking out “head
19 of the executive agency” and in lieu thereof inserting “con-
20 tracting officer”.

21 **SEC. 1052. MODIFICATION OF APPROVAL LEVELS.**

22 Section 303(f) of the Federal Property and Adminis-
23 trative Services Act of 1949 (41 U.S.C. 253) is amend-
24 ed—

1 (1) in paragraph (1)(B)(i) by deleting
2 “\$100,000 (but equal to or less than \$1,000,000)”
3 and inserting in lieu thereof “\$500,000 (but equal
4 to or less than \$10,000,000)”;

5 (2) in paragraph (1)(B)(ii) by deleting
6 “\$1,000,000 (but equal to or less than \$10,000,000)
7 and inserting in lieu thereof “\$10,000,000 (but
8 equal to or less than \$50,000,000)”;

9 (3) in paragraph (1)(B)(iii) by deleting
10 “\$10,000,000” and inserting in lieu thereof
11 “\$50,000,000”; and

12 (4) by adding at the end a new paragraph (6)
13 to read as follows:

14 “(6) The justification required by paragraph
15 (1)(A) is not required to be approved under para-
16 graph (1)(B) if the agency obligated 75 percent or
17 more of its contract dollars available for competition
18 or awarded 95 percent or more of its contract ac-
19 tions available for competition during the previous
20 fiscal year using competitive procedures.”.

21 **SEC. 1053. ADVISORY AND ASSISTANCE SERVICES DEFINED.**

22 (a) DEFINITION.—Subsection (i) of section 303I(i) of
23 the Federal Property and Administrative Services Act of
24 1949 is amended to read as follows:

1 “(i) ADVISORY AND ASSISTANCE SERVICES DE-
2 FINED.—In this section—

3 “(1) the term ‘advisory and assistance services’
4 means the following services when provided by non-
5 governmental sources:

6 “(A) Management and professional support
7 services.

8 “(B) Studies, analysis, and evaluations.

9 “(C) Engineering and technical services.

10 “(2) In paragraph (1), such term does not in-
11 clude the following services:

12 “(A) Routine automated data processing
13 telecommunications services unless such services
14 are an integral part of a contract for the pro-
15 curement of advisory and assistance services.

16 “(B) Architectural and engineering serv-
17 ices, as defined in section 901 of the Brooks
18 Architect-Engineers Act (40 U.S.C. 541).

19 “(C) Research on basic mathematics or
20 medical, biological, physical, social, psycho-
21 logical, or other phenomena.”.

22 (b) TECHNICAL AMENDMENT.—Section 303H(f) of
23 title 41 is amended by striking “section 1105(g) of title
24 31” and inserting in lieu thereof “section 303I(i) of title
25 41”.

1 **SEC. 1054. CONTINUED OCCUPANCY OF LEASED SPACE.**

2 Section 303(d) of the Federal Property and Adminis-
3 trative Services Act of 1949 (41 U.S.C. 253(d)) is amend-
4 ed—

5 (1) by redesignating paragraph (2) as para-
6 graph (3); and

7 (2) by inserting after paragraph (1) the follow-
8 ing new paragraph (2):

9 “(2)(A) For the purposes of applying subsection
10 (c)(1) in the case of a follow-on lease to be entered
11 into for the purpose of providing for continued occu-
12 pancy of particular space in leased real property by
13 a Federal agency, space may be treated as being
14 available from only the lessor of such space and may
15 be acquired through the use of other than competi-
16 tive procedures (without the justification otherwise
17 required by subsection (f)) if a written determination
18 is made by the contracting officer that—

19 “(i) the occupying agency has a continuing
20 need for the space;

21 “(ii) the space meets the needs of the
22 agency; and

23 “(iii) the lessor is willing to continue to
24 provide the space at a fair market price deter-
25 mined by the contracting officer on the basis of
26 a market survey or an appraisal conducted in

1 (1) by redesignating subsection (e) as sub-
2 section (f); and

3 (2) by inserting after subsection (d) the follow-
4 ing new subsection (e):

5 “(e) When purchasing commercial items under this
6 subpart, nothing in this or any other Act shall be con-
7 strued to prohibit an agency from adding, deleting, or tai-
8 loring evaluation factors or specifications at any time up
9 until the issuance of a request for final offers.”.

10 **SEC. 1062. COMPETITIVE RANGE DETERMINATIONS.**

11 Subsection (d) of section 303B of the Federal Prop-
12 erty and Administrative Services Act of 1949 (41 U.S.C.
13 253b), is amended—

14 (1) by redesignating paragraph (2) as para-
15 graph (3); and

16 (2) by inserting after subparagraph (1) the fol-
17 lowing:

18 “(2) If the contracting officer determines that
19 the number of offerors that would otherwise be in-
20 cluded in the competitive range under subparagraph
21 (1)(A) exceeds the number at which an efficient
22 competition can be conducted, the contracting officer
23 may limit the number of offerors in the competitive
24 range to the greatest number of competitors that
25 will permit an efficient award; provided that when

1 the competition is limited for this purpose, the num-
2 ber of offerors may not be limited to less than
3 three.”.

4 **SEC. 1063. PREAWARD DEBRIEFINGS.**

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

8 (1) by redesignating subsections (f) and (g) as
9 subsections (g) and (h), respectively; and

10 (2) by inserting after subsection (e) the follow-
11 ing new subsection (f):

12 “(f)(1) When the contracting officer excludes an
13 offeror submitting a competitive proposal from the com-
14 petitive range (or otherwise excludes such an offeror from
15 further consideration prior to the final source selection de-
16 cision), the excluded offeror may request in writing, within
17 3 days after the date on which the excluded offeror re-
18 ceives notice of its exclusion, a debriefing prior to award.
19 The contracting officer shall either debrief the unsuccess-
20 ful offeror as soon as is practicable or refuse the request.

21 “(2) The contracting officer is required to debrief an
22 excluded offeror in accordance with subsection (e) of this
23 section only if that offeror requested and was refused a
24 preaward debriefing under paragraph (1) of this sub-
25 section.

1 “(3) The debriefing conducted under this subsection
2 shall include—

3 “(A) the executive agency’s evaluation of the
4 significant factors in the offeror’s offer;

5 “(B) a summary of the rationale for the
6 offeror’s exclusion, including the reason or reasons it
7 was determined not to have a reasonable chance of
8 being selected for contract award or other reason or
9 reasons it was excluded; and

10 “(C) reasonable responses to relevant questions
11 posed by the debriefed offeror as to whether source
12 selection procedures set forth in the solicitation, ap-
13 plicable regulations, and other applicable authorities
14 were followed by the executive agency.

15 “(4) The debriefing conducted pursuant to this sub-
16 section may not disclose the number or identity of other
17 offerors and shall not disclose information about the con-
18 tent, ranking, or evaluation of other offerors’ proposals.

19 “(5) The contracting officer shall include a summary
20 of the debriefing in the contract file.”.

21 **SEC. 1064. TWO-PHASE SELECTION PROCEDURES.**

22 (a) PROCEDURES AUTHORIZED.—Title III of the
23 Federal Property and Administrative Services Act of 1949
24 (41 U.S.C. 251 et seq.), is amended by inserting after sec-
25 tion 303L the following new section:

1 **“§ 303M. Two-phase selection procedures**

2 “(a) AUTHORIZATION.—The contracting officer may
3 use the two-phase selection procedures authorized herein
4 for acquiring the design and construction of a public build-
5 ing, facility, or work when the criteria for use in sub-
6 section (b) are met. The two-phase selection procedures
7 authorized herein may also be used for entering into a con-
8 tract for the acquisition of property or services other than
9 construction services when the criteria described in sub-
10 section (b) are met.

11 “(b) CRITERIA FOR USE.—The contracting officer
12 shall make a determination whether the authorized two-
13 phase selection procedures are appropriate for use when
14 the contracting officer anticipates that three or more of-
15 fers will be received for such contract, design work must
16 be performed before an offeror can develop a price or cost
17 proposal for such contract, the offeror will incur a sub-
18 stantial amount of expense in preparing the offer, and
19 after considering in individual situations information such
20 as the following:

21 “(1) The extent to which the project require-
22 ments have been adequately defined.

23 “(2) The time constraints for delivery of the
24 project.

25 “(3) The capability and experience of potential
26 contractors.

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

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

5 “(6) Other criteria established by the agency.

6 “(c) PROCEDURES DESCRIBED.—Two-phase selec-
7 tion procedures consist of the following:

8 “(1) The agency shall develop, either in-house
9 or by contract, a scope of work defining the project
10 for inclusion in the solicitation that provides pro-
11 spective offerors with sufficient information regard-
12 ing the Government’s requirements which may in-
13 clude criteria and preliminary conceptual design,
14 budget parameters and schedule or delivery require-
15 ments to enable the offerors to submit proposals
16 which meet the Government’s needs. When the two-
17 phase selection procedure is used for design and con-
18 struction of a public building, facility, or work and
19 the agency contracts for development of the scope of
20 work, the agency shall contract for architectural/en-
21 gineering services as defined by and in accordance
22 with section 541 and the following of title 40,
23 United States Code.

24 “(2) The contracting officer solicits phase-one
25 proposals that—

1 “(A) include information on the offeror’s—

2 “(i) technical approach; and

3 “(ii) technical qualifications; and

4 “(B) do not include—

5 “(i) detailed design information; or

6 “(ii) cost or price information.

7 “(3) The evaluation factors to be used in evalu-
8 ating phase one proposals shall be stated in the so-
9 licitation and include specialized experience and
10 technical competence, capability to perform, past
11 performance of the offeror’s team (including the ar-
12 chitect-engineer and construction members of the
13 team if the project is for the construction of a public
14 building, facility or work) and other appropriate fac-
15 tors, except that cost-related or price-related evalua-
16 tion factors are not permitted. Each solicitation shall
17 establish the relative importance assigned to the
18 evaluation factors and subfactors that must be con-
19 sidered in the evaluation of phase one proposals. The
20 agency evaluates phase one proposals on the basis of
21 the phase one evaluation factors set forth in the
22 solicitation.

23 “(4) The contracting officer selects as the most
24 highly qualified the number of offerors specified in
25 the solicitation to provide the property or services

1 under the contract and requests the selected offerors
2 to submit phase-two competitive proposals that in-
3 clude technical proposals and cost or price informa-
4 tion. Each solicitation shall establish with respect to
5 phase two—

6 “(A) the technical submission requirements
7 for the proposal, including design concepts and/
8 or proposed solutions to requirements addressed
9 within the scope of work, and

10 “(B) the evaluation factors and subfactors,
11 including cost or price, that must be considered
12 in the evaluation of proposals in accordance
13 with section 303B(d).

14 “(5) The agency awards the contract in accord-
15 ance with section 303B of this title.

16 “(d) SOLICITATION TO STATE NUMBER OF
17 OFFERORS TO BE SELECTED FOR PHASE TWO RE-
18 QUESTS FOR COMPETITIVE PROPOSALS.—A solicitation
19 issued pursuant to subsection (c) shall state the maximum
20 number of offerors that are to be selected to submit com-
21 petitive proposals pursuant to subsection (c)(4). The maxi-
22 mum number specified in the solicitation shall not exceed
23 five unless the agency head determines with respect to an
24 individual solicitation that a specified number greater than
25 five is in the Government’s interest and is consistent with

1 the purposes and objectives of the two-phase selection
2 process.

3 “(e) STIPENDS AUTHORIZED.—The head of an execu-
4 tive agency is authorized to provide a stipend to competi-
5 tors that are selected to submit phase two proposals and
6 that submit proposals that meet the requirements of the
7 solicitation but are not selected for the award.

8 “(f) REQUIREMENT FOR GUIDANCE AND REGULA-
9 TIONS.—The Federal Acquisition Regulatory Council, es-
10 tablished by section 25(a) of the Office of Federal Pro-
11 curement Policy Act (41 U.S.C. 421(a)), shall provide
12 guidance and promulgate regulations—

13 “(1) regarding the factors that may be consid-
14 ered in determining whether the two-phase contract-
15 ing procedures authorized by subsection (a) are ap-
16 propriate for use in individual contracting situations;

17 “(2) regarding the factors that may be used in
18 selecting contractors;

19 “(3) providing for a uniform approach to be
20 used government-wide; and

21 “(4) regarding criteria to be used in determin-
22 ing whether the payment of a stipend is appropriate
23 and for determining the amount of the stipend.”.

24 (b) CLERICAL AMENDMENT.—The table of contents
25 in the first section of such Act, is amended by inserting

1 after the item relating to section 303L the following new
2 item:

“Sec. 303M. Two-phase selection procedures.”.

3 **Subpart C—Kinds of Contracts**

4 **SEC. 1071. REPEAL OF FEE LIMITATIONS.**

5 Section 304(b) of the Federal Property and Adminis-
6 trative Services Act of 1949 (41 U.S.C. 254(b)) is amend-
7 ed in the first sentence by—

8 (1) striking out the comma after “used” and in-
9 serting in lieu thereof a period; and

10 (2) striking out “and in the case of a cost-plus-
11 a-fixed-fee contract” and all that follows through the
12 end of the sentence.

13 **PART III—ACQUISITIONS GENERALLY**

14 **SEC. 1091. REPEAL OF DUPLICATIVE APPROVAL AUTHOR-**
15 **ITY PROVISION.**

16 Section 8 of the Small Business Act (15 U.S.C. 637)
17 is amended—

18 (1) by deleting subsection (h); and

19 (2) by redesignating subsections (i) and (j) as
20 (h) and (i) respectively.

21 **SEC. 1092. REPEAL OF ANNUAL COMPETITIVE REPORT.**

22 Section 20 of the Office of Federal Procurement Pol-
23 icy Act (41 U.S.C. 418) is amended by—

24 (1) striking “and” at the end of paragraph
25 (b)(3)(B);

- 1 (2) striking (b)(4) in its entirety; and
2 (3) redesignating paragraphs (b) (5), (6), and
3 (7) as (b) (4), (5), and (6).

4 **SEC. 1093. REVIEW OF REGULATIONS FOR CONSISTENCY**
5 **WITH FEDERAL ACQUISITION REGULATION.**

6 Subsections 25(c) (4), (5), and (6) of the Office of
7 Federal Procurement Policy Act (41 U.S.C. 421(c) (4),
8 (5), and (6)) are repealed.

9 **SEC. 1094. REPEAL BIENNIAL REPORT ON PROCUREMENT**
10 **REGULATORY ACTIVITY.**

11 Subsection (g) of section 25 of the Office of Federal
12 Procurement Policy Act (41 U.S.C. 421(g)) is repealed.

13 **Subtitle B—Truth in Negotiations**

14 **PART I—ARMED SERVICES ACQUISITIONS**

15 **SEC. 1101. REQUIRED REGULATIONS.**

16 Subsection 2306a(h) of title 10, United States Code,
17 is amended—

18 (1) in the first sentence by striking “that
19 offerors must submit for a contracting officer to”
20 and substituting in lieu thereof “that the contracting
21 officer should”; and

22 (2) in the second sentence by striking “at a
23 minimum, shall” in the last sentence and inserting
24 in lieu thereof “may”.

1 **PART II—CIVILIAN AGENCY ACQUISITIONS**

2 **SEC. 1151. REQUIRED REGULATIONS.**

3 Section 304A(h) of the Federal Property and Admin-
4 istrative Services Act of 1949 (41 U.S.C. 254a(h)) is
5 amended—

6 (1) in the first sentence by striking “that
7 offerors must submit for a contracting officer to”
8 and substituting in lieu thereof “that the contracting
9 officer should”; and

10 (2) in the second sentence by striking “at a
11 minimum, shall” in the last sentence and inserting
12 in lieu thereof “may”.

13 **SEC. 1152. CLARIFICATION OF STATUS OF CERTAIN FED-**
14 **ERAL EMPLOYEES HEALTH BENEFITS CON-**
15 **TRACTS.**

16 Section 304A(b)(1)(A)(ii) of the Federal Property and
17 Administrative Services Act of 1949 (41 U.S.C.
18 254a(b)(1)(A)(ii)) is amended by inserting “(other than
19 a contract for health benefits under section 8903(4) of
20 title 5, United States Code)” after “public”.

1 **Subtitle C—Procurement Protests**
2 **PART I—PROTESTS TO THE COMPTROLLER**
3 **GENERAL**

4 **SEC. 1201. GAO REQUIREMENT TO RULE ON DISPOSITIVE**
5 **MOTIONS.**

6 (a) Subparagraph (b)(2)(A) of section 3553 of title
7 31, United States Code, is amended to read as follows:

8 “(A) within 35 days after the later of the
9 date of the agency’s receipt of (i) the notice re-
10 quired by paragraph (b)(1) of this section, or
11 (ii) notification that the Comptroller General
12 has denied a motion to dismiss filed by the
13 agency in accordance with the limitations of
14 section 3554(a)(5)(A) of this title;”.

15 (b) Subparagraph (b)(2)(C) of section 3553 of title
16 31, United States Code, is amended to read as follows:

17 “(C) in a case determined by the Comp-
18 troller General to be suitable for the express op-
19 tion under section 3554(a)(2) of this title, with-
20 in 20 days after the later of (i) the date of the
21 Federal agency’s receipt of that determination,
22 or (ii) notification that the Comptroller General
23 has denied a motion to dismiss filed by the
24 agency pursuant to section 3554(a)(5)(A) of
25 this title;”.

1 (c) Paragraph (b)(3) of section 3553 of title 31, Unit-
2 ed States Code, is amended to read as follows:

3 “(3) A Federal agency need not submit a report
4 to the Comptroller General pursuant to paragraph
5 (2) of this subsection if the agency is sooner notified
6 by the Comptroller General that the protest con-
7 cerned has been dismissed under section 3554(a) (4)
8 or (5) of this title.”.

9 (d) Paragraph (a)(1) of section 3554 of title 31,
10 United States Code, is amended to read as follows:

11 “(a)(1) To the maximum extent possible, the Comp-
12 troller General shall provide for the inexpensive and expe-
13 ditious resolution of protests under this subchapter. Ex-
14 cept as provided under paragraph (2) of this subsection,
15 the Comptroller General shall issue a final decision con-
16 cerning a protest 125 days after the later of (i) the date
17 the protest is submitted to the Comptroller General, or
18 (ii) the date that the Comptroller General issues a ruling
19 which denies a motion to dismiss filed by the agency in
20 accordance with the limitations of section 3554(a)(5)(A)
21 of this title;”.

22 (e) Subparagraph (a)(2) of section 3554 of title 31,
23 United States Code, is amended to read as follows:

24 “(2) The Comptroller General shall, by regula-
25 tion prescribed pursuant to section 3555 of this title,

1 establish an express option for deciding those pro-
2 tests which the Comptroller General determines suit-
3 able for resolution within 65 days after the later of
4 (i) the date the protest is submitted to the Comp-
5 troller General, or (ii) the date that the Comptroller
6 General issues a ruling which denies a motion to dis-
7 miss filed by the agency in accordance with the limi-
8 tations of section 3554(a)(5)(A) of this title;”.

9 (f) The following new subparagraph is added after
10 section 3554(a)(4) of title 31, United States Code:

11 “(5)(A) The Comptroller General shall, within
12 20 days of receipt, resolve motions made by a Fed-
13 eral agency to dismiss the protest if—

14 “(i) the motion is filed with the Comptrol-
15 ler General within 5 days after the Federal
16 agency receives notification of the protest pur-
17 suant to section 3553(b)(1) of this chapter and
18 the agency certifies that copies of the motion
19 have been served on all interested parties by
20 hand or electronically, or

21 “(ii) the motion asserts one or more of the
22 following:

23 “(I) The protest should be dismissed
24 pursuant to paragraph (a)(4) of this sub-
25 section.

1 “(II) The protester is not an inter-
2 ested party.

3 “(III) The protest is not timely.

4 “(IV) The protest does not allege req-
5 uisite prejudice.

6 “(V) The protest is otherwise
7 dismissable under Comptroller General
8 rules.

9 “(B) The Comptroller General shall consider
10 the comments of interested parties on motions filed
11 by Federal agencies pursuant to paragraph
12 (a)(5)(A) of this subsection if the comments are re-
13 ceived by the Comptroller General within 5 days
14 after the date the Federal agencies motion is filed
15 with the Comptroller General.

16 “(C) Motions of Federal agencies asserting the
17 grounds described in paragraph (a)(5)(A)(ii) which
18 are not filed with the Comptroller General within 5
19 days after the Federal agency receives notification of
20 the protest pursuant to section 3553(b)(1) of this
21 chapter may be resolved by the Comptroller General
22 in the final decision on the protest.”.

1 **SEC. 1202. FRIVOLOUS PROTESTS.**

2 Section 3554 of title 31, United States Code, is
3 amended by inserting the following new paragraph “(5)”
4 at the end of subsection (a):

5 “(5) If the Comptroller General expressly finds
6 that a protest or a portion of a protest is frivolous
7 or has not been brought or pursued in good faith,
8 the Comptroller may recommend that the protester,
9 or other interested party who joins the protest, be
10 liable to the United States for payment of all or that
11 portion of the United States costs, for which such a
12 finding is made, of reviewing the protest, including
13 the fees and other expenses (as defined in section
14 2412(d)(2)(A) of title 28, United States) Code in-
15 curred by the United States in defending the pro-
16 test. The Federal Acquisition Regulation shall pro-
17 vide guidance under which the head of an agency
18 may initiate action to obtain such costs, unless (1)
19 special circumstances would make such payment un-
20 just, or (2) the protester obtains documents or other
21 information for the first time, after the protest is
22 filed with the Comptroller General, which establishes
23 that the protest or a portion is frivolous or has not
24 been brought in good faith and the protester then
25 promptly withdraws the protest or portion of the
26 protest.”.

1 **SEC. 1203. DECISIONS ON PROTESTS.**

2 Subsection (b) of section 3554 of title 31, United
3 States Code, is amended in paragraph (1) to read as
4 follows:

5 “(1) With respect to a solicitation for a con-
6 tract, or a proposed award or the award of a con-
7 tract, protested under this chapter, the Comptroller
8 General shall review the agency’s decision based on
9 the agency record and shall determine that decision
10 is unlawful only if the interested party establishes
11 substantial prejudice and either (i) that the decision
12 was obtained in violation of procedures required by
13 law or regulation, or (ii) that the decision was arbi-
14 trary or capricious. However, protests that are based
15 on contracting officer decisions to cancel a solicita-
16 tion or terminate an award, where the decision is
17 based on a reasonable belief that there was a defect
18 in the source selection process, may be sustained
19 only upon clear and convincing showing that the
20 contracting officer’s decision was an abuse of discre-
21 tion. The agency record shall consist of all informa-
22 tion relied upon by the agency in making the deci-
23 sion and any information furnished by the agency
24 explaining or justifying the agency decision. The
25 agency record shall not be supplemented except as
26 necessary to substantially demonstrate bad faith by

1 the agency. Based upon this review, if the Comptrol-
2 ler General determines that the solicitation, pro-
3 posed award, or award was unlawful, the Comptrol-
4 ler General shall recommend that the Federal
5 agency—”.

6 **SEC. 1204. AWARD OF COSTS.**

7 Section 3554 of title 31, United States Code, is
8 amended in subsection (c)—

9 (1) by redesignating paragraphs (3) and (4) as
10 paragraphs (4) and (5) respectively; and

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

13 “(3) No party may be paid pursuant to a rec-
14 ommendation made under paragraph (1) unless that
15 party has provided the agency a reasonable oppor-
16 tunity to provide relief pursuant to an established
17 agency administrative procedure for resolution of
18 protests where such procedure would provide for re-
19 view by a senior agency official and where such pro-
20 cedure would toll protest stay periods during the
21 pendency of agency review.”.

22 **SEC. 1205. AVAILABILITY OF FUNDS PENDING ADMINISTRA-**
23 **TIVE PROCEDURE.**

24 (a) IN GENERAL.—Section 1558 of title 31, United
25 States Code, is amended to read as follows:

1 **“§ 1558. Availability of funds following resolution of a**
2 **formal protest or challenge**

3 “(a) Notwithstanding section 1552 of this title or any
4 other provision of law, funds available to an agency for
5 obligation for a contract at the time a protest or challenge
6 is filed in connection with a solicitation for, proposed
7 award of, or award of such contract, shall remain available
8 for obligation for 125 calendar days after the date on
9 which the final ruling is made on the protest or challenge.
10 A ruling is considered final on the date on which the time
11 allowed for filing an appeal or request for reconsideration
12 has expired, or the date on which a decision is rendered
13 on such an appeal or request, whichever is later.

14 “(b) Subsection (a) applies with respect to—

15 “(1) any protest filed under subchapter V of
16 chapter 35 of this title or under section 111(f) of
17 the Federal Property and Administrative Services
18 Act of 1949 (40 U.S.C. 759(f)); or

19 “(2) any administrative or judicial proceeding
20 challenging a solicitation for a contract, a proposed
21 award or the award of a contract, or the eligibility
22 of an awardee or potential awardee of a contract,
23 that has the effect of precluding an Executive agen-
24 cy from making an award of a contract or proceed-
25 ing with the procurement.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of chapter 15 of title 31, United States
3 Code, is amended by amending the item relating to section
4 1558 to read as follows:

“1558. Availability of funds following resolution of a formal protest or chal-
lenge.”.

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

6 **SEC. 1211. JURISDICTION OF THE UNITED STATES COURT**
7 **OF FEDERAL CLAIMS.**

8 (a) CLAIMS AGAINST THE UNITED STATES.—Section
9 1491 of title 28, United States Code, is amended—

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

12 **“§ 1491. Claims against United States generally; bid**
13 **protests; actions involving Tennessee Val-**
14 **ley Authority”;**

15 (2) by redesignating subsection (b) as sub-
16 section (d);

17 (3) by redesignating subsection (a)(2) as sub-
18 section (b);

19 (4) by redesignating subsection (a)(1) as sub-
20 section (a);

21 (5) by striking subsection (a)(3);

22 (6) in subsection (a) (as redesignated by sub-
23 section (a)(4)), by inserting “CLAIMS AGAINST THE
24 UNITED STATES.—”after “(a)”;

1 (7) in subsection (b) (as redesignated by sub-
2 section (a)(3)), by inserting “REMEDY AND RE-
3 LIEF.—” after “(b)”;

4 (8) by inserting after subsection (b) (as redesign-
5 ated by subsection (a)(3)) the following new sub-
6 section:

7 “(c) BID PROTESTS.—(1) The United States Court
8 of Federal Claims shall have exclusive judicial jurisdiction
9 of any action by an interested party objecting to a solicita-
10 tion by a Federal agency for bids or proposals for a pro-
11 posed contract or to a proposed award or the award of
12 a contract or to any finding under 31 U.S.C.
13 3553(c)(2)(A) or (d)(2)(A) to award or continue perform-
14 ance of a contract notwithstanding a protest. The court
15 shall have jurisdiction of any such action whether suit is
16 instituted before or after the contract is awarded. To af-
17 ford relief in such an action, the court may award such
18 relief as it deems proper, including declaratory and injunc-
19 tive relief. In exercising this jurisdiction, the court shall
20 give due regard to the interests of national defense and
21 national security and the need for expeditious resolution
22 of the action. The district courts shall have no jurisdiction
23 of any such action.

24 “(2) The court shall review the agency’s decision
25 based on the agency record and shall determine that deci-

1 sion is unlawful only if the interested party established
2 substantial prejudice and either (i) that the decision was
3 obtained in violation of procedures required by law or reg-
4 ulation, or (ii) that the decision was arbitrary or capri-
5 cious. However, protests that are based on contracting of-
6 ficer decisions to cancel a solicitation or terminate an
7 award, where the decision is based on a reasonable belief
8 that there was a defect in the source selection process,
9 may be sustained only upon clear and convincing showing
10 that the contracting officer's decision was an abuse of dis-
11 cretion. The agency record shall consist of all information
12 relied upon by the agency in making the decision and any
13 information furnished by the agency explaining or justify-
14 ing the agency decision. The agency record shall not be
15 supplemented except as necessary to substantially dem-
16 onstrate bad faith by the agency.

17 “(3) The term ‘interested party’ shall have the mean-
18 ing given in section 3551 in title 31.”.

19 (9) in subsection (d) (as redesignated by sub-
20 section (a)(2)), by inserting “TENNESSEE VALLEY
21 AUTHORITY.—”after “(d)”.

22 (b) JUDGMENTS, AWARDS, AND COMPROMISE SET-
23 TLEMENTS.—Section 1304(a)(3)(A) of title 31 is amended
24 by inserting “1491,” after “section”.

1 (c) NONEXCLUSIVITY OF REMEDIES; MATTERS IN-
2 CLUDED IN AGENCY RECORD.—Section 3556 of title 31,
3 United States Code is amended by striking out the first
4 sentence and inserting in lieu thereof the following new
5 sentence: “This subchapter does not give the Comptroller
6 General exclusive jurisdiction over protests, and nothing
7 contained in this subchapter shall affect the right of any
8 interested party to file a protest with the contracting agen-
9 cy or to file an action in the United States Court of Fed-
10 eral Claims.”.

11 (d) CONFORMING AMENDMENT IN BROOKS ACT.—
12 Section 111(f)(6)(C) of the Federal Property and Admin-
13 istrative Services Act of 1949 (40 U.S.C. 759(f)(6)(C))
14 is amended by striking out “a district court of the United
15 States or the United States Claims Court.” and inserting
16 in lieu thereof “the United States Court of Federal
17 Claims.”.

18 **PART III—PROTESTS IN PROCUREMENT OF**

19 **AUTOMATIC DATA PROCESSING**

20 **SEC. 1431. DECISIONS ON PROTESTS**

21 Section 111 (f) of the Federal Property and Adminis-
22 trative Services Act of 1949, (40 U.S.C. 759(f)) is amend-
23 ed in paragraph (1) by deleting the second sentence and
24 inserting in lieu thereof the following: “The Board shall
25 review the agency’s decision based on the agency record

1 and shall determine that decision is unlawful only if the
2 interested party establishes substantial prejudice and ei-
3 ther (i) that the decision was obtained in violation of pro-
4 cedures required by law or regulation, or (ii) that the deci-
5 sion was arbitrary or capricious. However, protests that
6 are based on contracting officer decisions to cancel a solici-
7 tation or terminate an award, where the decision is based
8 on a reasonable belief that there was a defect in the source
9 selection process, may be sustained only upon clear and
10 convincing showing that the contracting officer's decision
11 was an abuse of discretion. The agency record shall consist
12 of all information relied upon by the agency in making
13 the decision and any information furnished by the agency
14 explaining or justifying the agency decision. The agency
15 record shall not be supplemented except as necessary to
16 substantially demonstrate bad faith by the agency.''.
17

17 SEC. 1432. INTERLOCUTORY APPEALS.

18 Section 111(f) of the Federal Property and Adminis-
19 trative Services Act of 1949 (40 U.S.C. 759(f)) is amend-
20 ed—

21 (1) in section (1) by striking out the fourth sen-
22 tence; and

23 (2) in section (6) by adding a new paragraph
24 (D) to read as follows:

1 “(D) A written determination by the
2 Board that—

3 “(i) the procurement is subject to this
4 section; or

5 “(ii) the protest is timely filed in ac-
6 cordance with this section; or

7 “(iii) the party filing the protest is an
8 ‘interested party’ in accordance with the
9 definition contained in this section is sub-
10 ject to an interlocutory appeal by the head
11 of the Federal agency concerned and by
12 any interested party, including interested
13 parties who intervene in any protest filed
14 under this subsection. The interlocutory
15 appeal must be taken within 10 days of the
16 Board’s written determination. Upon prop-
17 er agency motion, the Court of Appeals for
18 the Federal Circuit may stay the Board’s
19 proceedings.”.

20 **SEC. 1433. SUSPENSION OF PROCUREMENT PENDING PRO-**
21 **TEST.**

22 Section 111(f) of the Federal Property and Adminis-
23 trative Services Act of 1949 (40 U.S.C. 759(f)) is amend-
24 ed—

1 (1) in clause (ii) of subparagraph (2)(B) by
2 substituting the word “agency” for the word
3 “board”; and

4 (2) in paragraph (3) by striking out subpara-
5 graph (B) and inserting in lieu thereof the following:

6 “(B) The Board shall suspend the procure-
7 ment authority of the Administrator or the Ad-
8 ministrators’ delegation of procurement author-
9 ity to acquire goods and services under the con-
10 tract which are not previously delivered and ac-
11 cepted unless the head of the contracting activ-
12 ity makes a written finding that contract per-
13 formance will be in the best interest of the
14 United States.”.

15 **SEC. 1434. DISPOSITIVE MOTIONS.**

16 Section 111(f)(4)(A) of the Federal Property and
17 Administrative Services Act of 1949 (40 U.S.C.
18 759(f)(4)(A)) is amended at the end by adding the follow-
19 ing sentence: “If the Board receives timely filed dispositive
20 motions, the Board shall decide such motions in writing
21 as soon as practicable, but in any event, not later than
22 the date established for the hearing on the merits.”.

1 **SEC. 1435. FRIVOLOUS PROTESTS.**

2 Section 111(f) of the Federal Property and Adminis-
3 trative Services Act of 1949 (40 U.S.C. 759) is amended
4 by adding the following after subparagraph (f)(4)(C):

5 “(D) If the board expressly finds that a
6 protest or a portion of a protest is frivolous,
7 has not been brought or pursued in good faith,
8 or does not state on its face a valid basis for
9 protest, the protester or other interested party,
10 who joins the protest, shall be liable to the
11 United States for payment of, and the board
12 shall direct payment for all or that portion of
13 the United States costs, for which such a find-
14 ing is made, of reviewing the protest including
15 the fees and other expenses (as defined in sec-
16 tion 2412(d)(2)(A) of title 28) incurred by the
17 United States in defending the protest, unless
18 (1) special circumstances would make such pay-
19 ment unjust, or (2) the protester obtains docu-
20 ments or other information after the protest is
21 filed with the board, which establishes that the
22 protest or a portion of the protest is frivolous
23 or has not been brought in good faith, and the
24 protester then promptly withdraws the protest
25 or portion of the protest.”.

1 **SEC. 1436. AWARD OF COSTS.**

2 Section 111(f)(5) of the Federal Property and Ad-
3 ministrative Services Act of 1949 (40 U.S.C. 759(f)(5))
4 is amended—

5 (1) by inserting “(i)” after “(C)”; and

6 (2) by inserting after subparagraph (i) the fol-
7 lowing new subparagraph (ii):

8 “(ii) No party may be paid pursuant to a
9 decision made under subparagraph (C)(i) unless
10 that party has provided the agency a reasonable
11 opportunity to provide relief pursuant to an es-
12 tablished agency administrative procedure for
13 resolution of protests where such procedure
14 would provide for review by a senior agency of-
15 ficial and where such procedure would toll pro-
16 test stay periods during the pendency of agency
17 review.”.

18 **PART IV—GENERAL**

19 **SEC. 1441. PROTESTS OF PROCUREMENTS MADE THROUGH**
20 **THE FEDERAL ACQUISITION COMPUTER NET-**
21 **WORK UNDER THE SIMPLIFIED ACQUISITION**
22 **THRESHOLD.**

23 The Office of Federal Procurement Policy Act (41
24 U.S.C. 401 et seq.) is amended by adding the following
25 new section:

1 **“SEC. 35. PROTESTS OF PROCUREMENTS UNDER THE SIM-**
2 **PLIFIED ACQUISITION THRESHOLD.**

3 “(a) PROTESTS.—A protest, other than to the pro-
4 curing agency, is not authorized in connection with the
5 award or proposed award of any procurement in an
6 amount not exceeding the simplified acquisition threshold
7 if conducted through a system with interim FACNET ca-
8 pability certified pursuant to section 30A(a)(1) or with full
9 FACNET capability certified pursuant to section
10 30A(a)(2);

11 “(b) DEFINITION.—For purposes of this section, the
12 term ‘simplified acquisition threshold’ has the meaning
13 given such term in section 4(11)(A) of this Act.

14 “(c) INAPPLICABILITY.—The provisions of this sec-
15 tion shall not apply to protests regarding business size or
16 status as defined in sections 8 and 15 of the Small Busi-
17 ness Act.”.

18 **SEC. 1442. OFFEROR STATEMENTS TO REFRAIN FROM PRO-**
19 **TESTING PROCUREMENTS.**

20 The Office of Federal Procurement Policy Act (41
21 U.S.C. 401 et seq.) is amended by adding the following
22 new section:

23 **“SEC. 36. OFFEROR STATEMENTS TO REFRAIN FROM PRO-**
24 **TESTING PROCUREMENTS.**

25 “(a) STATEMENTS NOT TO PROTEST.—An offeror
26 may include in an offer a statement that the offeror will

1 not file a procurement protest with any judicial, legisla-
2 tive, or executive body, other than the agency issuing the
3 solicitation, except with respect to an agency determina-
4 tion favoring an offeror who has not made such statement
5 in its offer. Any protest filed in violation of such statement
6 shall be dismissed.

7 “(b) TREATMENT OF STATEMENTS NOT TO PRO-
8 TEST IN EVALUATION OF OFFERS.—The inclusion or non-
9 inclusion in an offer of a statement by an offeror agreeing
10 not to protest the award or proposed award of a contract
11 shall not be considered by an agency in evaluating the
12 proposal. The notice of award required by section
13 416(a)(1)(C) may include information about statements
14 provided by offerors.”.

15 **SEC. 1443. SENSE OF CONGRESS ON AGENCY RESOLUTION**
16 **OF PROTESTS.**

17 It is the sense of Congress that executive agencies
18 should consider the establishment, by the head of the
19 agency, of agency administrative remedial procedures for
20 the resolution of protests as a discretionary alternative to
21 protest fora outside the agency. It is further the sense of
22 Congress that during the pendency of such procedures,
23 protest stay periods should be tolled.

1 **Subtitled D—Policy, Definitions, and Other**
2 **Matters**

3 **SEC. 1551. REPEAL OF MULTI-YEAR LIMITATION ON IN-**
4 **SPECTION, MAINTENANCE, AND REPAIR.**

5 Section 210 of the Federal Property and Administra-
6 tive Act of 1949, as amended, (40 U.S.C. 490) is amend-
7 ed—

8 (1) by deleting paragraph (14); and

9 (2) by redesignating paragraphs (15), (16), (17),
10 (18), and (19) as (14), (15), (16), (17), and (18) re-
11 spectively.

12 **SEC. 1552. PUBLIC UTILITIES SERVICES.**

13 Section 210(a) of the Federal Property and Adminis-
14 trative Services Act of 1949 (40 U.S.C. 490) as amended
15 by section 1551 is further amended by adding at the end
16 the following:

17 “(19) accept and pay for public utility service
18 from an entity which is a monopoly providing serv-
19 ices under a tariff at the lowest applicable rates ap-
20 proved or set by a Federal, State or local govern-
21 mental body in accordance with the terms and condi-
22 tions of such tariff, without entering into a con-
23 tract.”.

1 **SEC. 1553. CONTRACTING FOR GUARDS, ELEVATOR OPERA-**
2 **TORS, MESSENGERS, AND CUSTODIANS.**

3 Section 210(a) of the Federal Property and Adminis-
4 trative Services Act of 1949, as amended (40 U.S.C. 490),
5 is amended to add the following section (1):

6 “(l) Notwithstanding any other provision of law,
7 funds appropriated pursuant to section 210(f) of the Fed-
8 eral Property and Administrative Services Act of 1949,
9 as amended, shall be available for the procurement by con-
10 tract for the services of guards, elevator operators, mes-
11 sengers, and custodians without limitation.”.

12 **TITLE II—CONTRACT ADMINISTRATION**

13 **Subtitle A—Contract Payment**

14 **PART I—ARMED SERVICES ACQUISITIONS**

15 **SEC. 2001. VESTITURE OF TITLE.**

16 Section 2307(e) of title 10, United States Code, is
17 amended by inserting after paragraph (3) the following
18 new paragraph:

19 “(4) When payments have been made under
20 subsection (a), title to parts, materials, inventory,
21 work in progress, and other property, hereinafter
22 collectively referred to as property, shall vest in the
23 United States. Vestiture shall be immediately upon
24 the date of the contract for property acquired or
25 produced before that date. Otherwise, vestiture shall
26 occur when the property is or should have been allo-

1 cable or properly chargeable to the contract. Title
2 shall vest in the United States regardless of any
3 prior or subsequently asserted security interest in
4 the property. This right to take title may be waived
5 by the head of the agency for an individual acquisi-
6 tion or a class of acquisitions or by the Federal Ac-
7 quisition Regulation for a class of acquisitions gov-
8 ernmentwide.”.

9 **PART II—CIVILIAN AGENCY ACQUISITIONS**

10 **SEC. 2051. VESTITURE OF TITLE.**

11 Section 305(e) of the Federal Property and Adminis-
12 trative Services Act of 1949 (41 U.S.C. 255) is amended
13 by inserting after subsection (3) the following new sub-
14 section (4):

15 “(4) When payments have been made under
16 subsection (a), title to parts, materials, inventory,
17 work in progress, and other property, hereinafter
18 collectively referred to as property, shall vest in the
19 United States. Vestiture shall be immediately upon
20 the date of the contract for property acquired or
21 produced before that date. Otherwise, vestiture shall
22 occur when the property is or should have been allo-
23 cable or properly chargeable to the contract. Title
24 shall vest in the United States regardless of any
25 prior or subsequently asserted security interest in

1 the property. This right to take title may be waived
2 by the head of the agency for an individual acquisi-
3 tion or a class of acquisitions or by the Federal Ac-
4 quisition Regulation for a class of acquisitions gov-
5 ernmentwide.”.

6 **Subtitle B—Cost Principles**

7 **PART I—CIVILIAN AGENCY ACQUISITIONS**

8 **SEC. 2101. APPLICABILITY OF COST PRINCIPLES.**

9 Section 306 of the Federal Property and Administra-
10 tive Services Act of 1949 (41 U.S.C. 256) is amended in
11 subsection (l)(1) by inserting “a contract for health bene-
12 fits under section 8903(1)–(3) of title 5, United States
13 Code, and” after “means”.

14 **PART II—ACQUISITIONS GENERALLY**

15 **SEC. 2151. ALLOWABLE CONTRACT COSTS.**

16 (a) **PROTEST COSTS.**—The Federal Acquisition Reg-
17 ulation shall identify those costs incurred in preparation,
18 filing, or pursuit of a protest, including attorneys’ fees and
19 consultant and expert witness fees which are unallowable,
20 in whole or in part, under covered contracts.

21 (b) **COVERED CONTRACT DEFINED.**—The term “cov-
22 ered contract” has the meaning given such term in section
23 2324(l) of title 10, United States Code, and section 306(l)
24 of the Federal Property and Administrative Services Act
25 of 1949.

1 **Subtitle C—Claims and Disputes**

2 **SEC. 2251. DIVESTITURE OF DISTRICT COURTS OF DISPUTE**
3 **JURISDICTION.**

4 Section 1346(a)(2) of title 28, United States Code,
5 is amended to read as follows:

6 “(2) Any other civil action or claim against the
7 United States, not exceeding \$10,000 in amount,
8 founded either upon the Constitution, or any Act of
9 Congress, or any regulation of an executive depart-
10 ment, or upon any express or implied contract with
11 the United States, or for liquidated or unliquidated
12 damages in cases not sounding in tort, except that
13 the district courts shall not have jurisdiction over
14 any civil action or claim against the United States
15 or any Federal entity which relates in any manner
16 to a contract subject to the Contract Disputes Act
17 of 1978, including, but not limited to, a claim which
18 seeks to establish the existence or nonexistence of
19 such a contract with the United States, seeks to es-
20 tablish that an existing contract subject to the Con-
21 tract Disputes Act is void, or seeks to determine and
22 construe the terms of such a contract. This excep-
23 tion bars the district courts from exercising any ju-
24 risdiction of the above-described civil actions or
25 claims pursuant to section 1331, 1334 of title 28,

1 United States Code, or any other provision of law in-
2 cluding any provision giving a Federal entity the
3 right to sue or be sued in its own name.”.

4 **SEC. 2252. CONTRACT DISPUTES ACT IMPROVEMENT**

5 Section 10(a)(3) of the Contract Disputes Act of
6 1978 (41 U.S.C. 609(a)(3)) is amended by striking out
7 “twelve months” each place it appears and inserting in
8 lieu thereof in each instance “ninety days”.

9 **Subtitle D—Miscellaneous**

10 **SEC. 2301. ACCOUNTING FOR ADVISORY AND ASSISTANCE**
11 **SERVICES.**

12 Section 1105 of title 31, United States Code, is
13 amended by striking subsection (g).

14 **SEC. 2302. WAIVERS FROM CANCELLATION OF FUNDS.**

15 Notwithstanding section 1552(a) of title 31, United
16 States Code, (1) funding appropriated for satellite on-orbit
17 incentive fees will remain available for obligation until the
18 fee is earned, and (2) funding appropriated for Shipbuild-
19 ing and Conversion, Navy, and for other government ship-
20 building appropriations, available for engineering services,
21 tests, evaluations, and other such budgeted work that
22 must be performed in the final stage of ship construction
23 shall be available for obligation until the purpose for which
24 such monies were appropriated is satisfied.

1 **TITLE III—COMMERCIAL ITEMS**

2 **SEC. 3001. COMMERCIAL ITEMS.**

3 Section 4(12)(F) of the Office of Federal Procure-
4 ment Policy Act (41 U.S.C. 403(12)(F)) is amended to
5 read as follows:

6 “(F) Services offered and sold competitively, in
7 substantial quantities, in the commercial market-
8 place based on established prices for specific tasks
9 performed and under standard commercial terms
10 and conditions.”.

11 **TITLE IV—SIMPLIFIED ACQUISITION**

12 **THRESHOLD**

13 **Subtitle A—Threshold Defined**

14 **SEC. 4001. SIMPLIFIED ACQUISITION THRESHOLD DE-**
15 **FINED.**

16 Section 4(11) of the Office of Federal Procurement
17 Policy Act (41 U.S.C. 403(11)) is amended to read as fol-
18 lows:

19 “(11) The term ‘simplified acquisition thresh-
20 old’ means:

21 “(A) \$100,000; or

22 “(B) \$1,000,000 for the acquisition of
23 services, including construction, when the pro-
24 curement is conducted as a small business set-
25 aside and if supply items are expected to con-

1 stitute less than 20 percent of the total value
2 of the contract.”.

3 **Subtitle B—Inapplicability of Laws to Acqui-**
4 **sitions at or Below the Simplified Acqui-**
5 **sition Threshold**

6 **SEC. 4101. MILLER ACT.**

7 Section 4104(b)(2) of the Federal Acquisition
8 Streamlining Act of 1994 is repealed.

9 **Subtitle C—Simplified Procedures**

10 **SEC. 4201. REPEAL OF DUPLICATIVE AUTHORITY FOR SIM-**
11 **PLIFIED ACQUISITION PURCHASES.**

12 Section 31 of the Office of Federal Procurement Pol-
13 icy Act is amended—

14 (1) by striking out subsections (a), (b), and (c);

15 (2) by redesignating subsections (d), (e), and
16 (f) as (a), (b), and (c) respectively; and

17 (3) in subsection (b) as redesignated by striking
18 out “pursuant to this section” in paragraphs (1) and
19 (2) and inserting in lieu thereof “pursuant to section
20 2304(g) of title 10 and section 253(g) of title 41,
21 United States Code.”.

22 **SEC. 4202. AMENDMENT TO CONFORM PROCUREMENT NO-**
23 **TICE POSTING THRESHOLDS.**

24 Section 18(a)(1)(B) of the Office of Federal Procure-
25 ment Policy Act (41 U.S.C. 416(a)(1)(B)) is amended—

1 (1) by inserting, after the word “contract” the
2 following: “expected to exceed \$10,000 but not to
3 exceed \$25,000” and

4 (2) by deleting subparagraphs (i) and (ii) en-
5 tirely.

6 **SEC. 4203. EXEMPTION FROM WAIT PERIOD WHEN USING**
7 **DETAILED SYNOPSIS.**

8 (A) WAIT PERIODS.—Paragraph (3)(A) of section
9 18(a) of the Office of Federal Procurement Policy Act (41
10 U.S.C. 416(a)(3)) is amended by adding “except when the
11 notice includes a description of the item(s) to be acquired
12 along with all other information necessary for the offeror
13 to prepare an offer” after “published by the Secretary of
14 Commerce”.

15 (b) LIMITATION.—Subsection (a) shall not apply to
16 the extent the President determines it is inconsistent with
17 any international agreement to which the United States
18 is a party.

19 **SEC. 4204. EXEMPTION FROM SYNOPSISING REQUIRE-**
20 **MENTS.**

21 (a) EXEMPTION.—Subsection (c) of section 18 of the
22 Office of Federal Procurement Policy Act (41 U.S.C.
23 416(c)(1)), is amended—

1 (1) in paragraph (1)(A) by striking “for an
2 amount not greater than the simplified acquisition
3 threshold and is”; and

4 (2) in paragraph (1)(B)(i) by striking “for an
5 amount not greater than \$250,000 and is”.

6 (b) RESPONSE TIMES.—Such subsection is further
7 amended by adding at the end the following new para-
8 graph (4):

9 “(4) In all procurements accomplished by in-
10 terim or full FACNET, contracting officers shall
11 provide a reasonable period within which for con-
12 tractors to respond to the solicitation commensurate
13 with the complexity of the procurement.”.

14 (c) LIMITATIONS.—Subsections (a) and (b) shall not
15 apply to the extent the President determines it is incon-
16 sistent with any international agreement to which the
17 United States is a party.

18 **SEC. 4205. REPEAL OF DUPLICATIVE PROCUREMENT NO-**
19 **TICE PROVISION.**

20 Section 8 of the Small Business Act (15 U.S.C. 637)
21 is amended—

22 (1) by striking out subsections (e), (f), and (g);

23 (2) by redesignating subsections (h) and (i) as
24 redesignated by section 1091 as subsections (e) and
25 (f) respectively; and

1 (3) in subsection (e), as redesignated, by strik-
2 ing “under subsection (e)” and inserting in lieu
3 thereof “pursuant to section 18 of the Office of Fed-
4 eral Procurement Policy Act (41 U.S.C. 416)”.

5 **SEC. 4206. TECHNICAL AMENDMENTS.**

6 (a) Section 18 of the Office of Federal Procurement
7 Policy Act (41 U.S.C. 416) is amended in subparagraph
8 (c)(1)(E) by inserting, “a task order contract, or a deliv-
9 ery order contract” after “requirements contract”.

10 **Subtitle D—Micro-Purchase Procedures**

11 **SEC. 4301. MICRO-PURCHASES.**

12 Section 32(d) of the Office of Federal Procurement
13 Policy Act (42 U.S.C. 428) is amended by striking out
14 “the contracting officer determines that the price for the
15 purchase is” and inserting in lieu thereof “if the price for
16 the purchase is considered”.

17 **TITLE V—ACQUISITION MANAGEMENT**

18 **Subtitle A—Pilot Programs**

19 **SEC. 5001. ACQUISITION RESEARCH DEMONSTRATION**
20 **PROJECTS.**

21 Section 15 of the Office of Federal Procurement Pol-
22 icy Act (41 U.S.C. 413) is amended to read as follows:

23 **“SEC. 15. ACQUISITION DEMONSTRATION PROJECTS.**

24 “(a) The Administrator may authorize agencies in
25 consultation with agency heads to conduct and evaluate

1 test programs to determine whether a specified change in
2 acquisition policies or procedures would result in improved
3 Federal acquisition management. The conduct of a test
4 program shall not be limited by any lack of specific au-
5 thority under this section to take the action contemplated
6 or by any law, rule or regulation that is inconsistent with
7 the test program or that impedes its full implementation.
8 To the extent necessary, the Administrator may waive any
9 provision of law, rule or regulation necessary to implement
10 a demonstration project successfully.

11 “(b) Before conducting any test program, the Agency
12 participating in the program shall develop a plan for the
13 project which identifies—

14 “(1) the purposes of the project;

15 “(2) the methodology, duration, and anticipated
16 costs;

17 “(3) the methodology and criteria for evalua-
18 tion;

19 “(4) a specific description of any aspect of the
20 project for which the lack of specific authority exists;
21 and

22 “(5) a specific citation to any provision of law,
23 rule or regulation which, if not waived under this
24 section, would prohibit the conduct of the project or
25 any part of the project as proposed.

1 “(c) Unless a longer time period for a demonstration
2 project is approved by the Administrator and the reasons
3 for the extension are described in the plan in accordance
4 with section (b) above, each demonstration project shall
5 terminate before the end of the five year period beginning
6 on the date on which the project takes effect, except that
7 the project may continue beyond the date to the extent
8 necessary to validate the results of the project.

9 “(d) The Administrator or the Agency head may ter-
10 minate any project if he determines that the project is no
11 longer in the best interests of the public or the Federal
12 Government.

13 “(e) The Administrator shall provide for an evalua-
14 tion of the results of each demonstration project and its
15 impact on improving public management.

16 “(f) The head of an agency may submit a test plan
17 that specifies the use of adequate competition when con-
18 ducting an acquisition that is a recompetition for a con-
19 tinuing requirement where the agency head certifies that
20 the incumbent contractor has met or exceeded the cost,
21 schedule, and performance requirements established in the
22 current contract.

23 “(g) The Administrator shall prescribe regulations as
24 are necessary to carry out the purpose of this section.

1 “(h) A program to test procurement methods and
2 procedures under this section may not be carried out un-
3 less approved by the heads of the executive agencies se-
4 lected to carry out such programs.”.

5 **Subtitle B—Miscellaneous**

6 **SEC. 5051. ADMINISTRATIVE PROCEDURES, DEPARTMENT**
7 **OF ENERGY.**

8 “Section 501(b)(3) of the Department of Energy Or-
9 ganization Act (42 U.S.C. 7191(b)(3)) is amended to read
10 as follows:

11 “For purposes of this title, the exception from the
12 requirements of section 553 of title 5, United States Code,
13 provided by subsection (a)(2) of such section with respect
14 to grants or loans shall not be available.”.

15 **TITLE VI—OTHER PROCUREMENT-**
16 **RELATED MATTERS**

17 **Subtitle A—Standards of Conduct/Ethics**

18 **SEC. 6001. DISCLOSING AND OBTAINING CONTRACTOR BID**
19 **OR PROPOSAL INFORMATION OR SOURCE SE-**
20 **LECTION INFORMATION.**

21 (a) Section 27 of the Office of Federal Procurement
22 Policy Act (41 U.S.C. 423) is amended—

23 (1) by repealing subsections (a) through (e) and
24 (g) through (p);

1 information relates, is subject to the penalties and
2 administrative actions set forth in subsection (d).

3 “(b) Whoever, other than as provided by law, know-
4 ingly obtains contractor bid or proposal information or
5 source selection information before the award of a Federal
6 agency procurement contract to which the information re-
7 lates, is subject to the penalties and administrative actions
8 set forth in subsection (d).

9 “(c) Whoever, other than as provided by law, know-
10 ingly violates the terms of a protective order, issued by
11 the Comptroller General or the board of contract appeals
12 of the General Services Administration in connection with
13 a protest against the award or proposed award of a Fed-
14 eral agency procurement contract, by disclosing or obtain-
15 ing contractor bid or proposal information or source selec-
16 tion information is subject to the penalties and adminis-
17 trative actions set forth in subsection (d).

18 “(d) The penalties and administrative actions for an
19 offense under subsection (a), (b), or (c), are as follows:

20 “(1) CRIMINAL PENALTIES.—

21 “(A) Whoever engages in the conduct con-
22 stituting the offense shall be imprisoned for not
23 more than one year or fined in the amount set
24 forth in section 3571 of title 18, United States
25 Code, or both.

1 “(B) Whoever engages in the conduct con-
2 stituting the offense for the purpose of either—

3 “(i) exchanging the information cov-
4 ered by subsections (a), (b), and (c), for
5 anything of value, or

6 “(ii) obtaining or giving anyone a
7 competitive advantage in the award of a
8 Federal agency procurement contract, shall
9 be imprisoned for not more than 15 years
10 or fined in the amount set forth in section
11 3571 of title 18, United States Code, or
12 both.

13 “(2) CIVIL PENALTIES.—The Attorney General
14 may bring a civil action in the appropriate United
15 States district court against any person who engages
16 in conduct constituting an offense under subsection
17 (a), (b), or (c). Upon proof of such conduct by a
18 preponderance of the evidence, the person is subject
19 to a civil penalty. An individual who engages in such
20 conduct is subject to a civil penalty of not more than
21 \$50,000 for each violation plus twice the amount of
22 compensation which the individual received or of-
23 fered for the prohibited conduct. An organization
24 that engages in such conduct is subject to a civil
25 penalty of not more than \$500,000 for each violation

1 plus twice the amount of compensation which the or-
2 ganization received or offered for the prohibited con-
3 duct.

4 “(3) Administrative actions. If a Federal agen-
5 cy receives information that a contractor or a person
6 has engaged in conduct constituting an offense
7 under subsection (a), (b), or (c), the Federal agency
8 shall consider one or more of the following actions,
9 as appropriate:

10 “(A) Canceling the Federal agency pro-
11 curement when a contract has not been award-
12 ed;

13 “(B) Declaring void and rescinding a con-
14 tract in relation to which there has been ei-
15 ther—

16 “(i) a conviction for an offense under
17 subsection (a), (b), or (c), committed by
18 the contractor or someone acting for the
19 contractor, or

20 “(ii) a determination by the head of
21 the agency based upon a preponderance of
22 the evidence that the contractor or some-
23 one acting for the contractor has engaged
24 in such conduct.

1 If such action is taken, the United States is en-
2 titled to recover in addition to any penalty pre-
3 scribed by law, the amount expended under the
4 contract;

5 “(C) Initiating suspension or debarment
6 proceedings for the protection of the Govern-
7 ment in accordance with procedures in the Fed-
8 eral Acquisition Regulation. In this regard, en-
9 gaging in conduct constituting an offense under
10 subsection (a), (b), or (c), affects the present
11 responsibility of a Government contractor or
12 subcontractor; or

13 “(D) Initiating adverse personnel action,
14 pursuant to the procedures in chapter 75 of
15 title 5, United States Code, or other applicable
16 law or regulation.

17 “(e) For purposes of this section:

18 “(1) The term ‘contracting officer’ means a
19 person who, by appointment in accordance with ap-
20 plicable regulations, has the authority to enter a
21 Federal agency procurement contract on behalf of
22 the Government and to make determinations and
23 findings with respect to such a contract.

24 “(2) The term ‘contractor bid or proposal infor-
25 mation’ means the following information submitted

1 to a Federal agency as part of or in connection with
2 a bid or proposal to enter into a Federal agency pro-
3 curement contract, if that information has not been
4 previously made available to the public or disclosed
5 publicly;

6 “(A) Cost or pricing data;

7 “(B) Indirect costs and direct labor rates;

8 “(C) Proprietary information about manu-
9 facturing processes, operations, or techniques
10 marked by the contractor in accordance with
11 applicable law or regulation; or

12 “(D) Information marked by the contrac-
13 tor as ‘contractor bid or proposal information,’
14 in accordance with applicable law or regulation.

15 “(3) The term ‘Federal agency’ has the mean-
16 ing given that term in section 3 of the Federal Prop-
17 erty and Administrative Services Act (40 U.S.C.
18 472).

19 “(4) The term ‘Federal agency procurement’
20 means the competitive acquisition by contract of
21 supplies or services (including construction) from
22 non-Federal sources by a Federal agency using ap-
23 propriated funds.

24 “(5) The term ‘protest’ means a written objec-
25 tion by an interested party to the award or proposed

1 award of a Federal agency procurement contract,
2 pursuant to section 111 of the Federal Property and
3 Administrative Services Act (40 U.S.C. 759) or sub-
4 chapter V of chapter 35 of title 31, United States
5 Code.

6 “(6) The term ‘source selection information’
7 means the following information prepared for use by
8 a Federal agency for the purpose of evaluating a bid
9 or proposal to enter into a Federal agency procure-
10 ment contract, if that information has not been pre-
11 viously made available to the public or disclosed pub-
12 licly:

13 “(A) Bid prices submitted in response to a
14 Federal agency solicitation for sealed bids or
15 lists of those bid prices prior to public bid open-
16 ing;

17 “(B) Proposed costs or prices submitted in
18 response to a Federal agency solicitation or lists
19 of those proposed costs or prices;

20 “(C) Source selection plans;

21 “(D) Technical evaluation plans;

22 “(E) Technical evaluations of proposals;

23 “(F) Cost or price evaluations of propos-
24 als;

1 “(G) Competitive range determinations
2 which identify proposals that have a reasonable
3 chance of being selected for award of a con-
4 tract;

5 “(H) Rankings of bids, proposals, or com-
6 petitors;

7 “(I) The reports and evaluations of source
8 selection panels or boards or advisory councils;
9 or

10 “(J) Other information marked as ‘source
11 selection information’ based upon a case-by-case
12 determination by the head of the agency, his
13 designee, or the contracting officer that its dis-
14 closure would jeopardize the integrity or suc-
15 cessful completion of the Federal agency pro-
16 curement to which the information relates.

17 “(f) No person may file a protest against the award
18 or proposed award of a Federal agency procurement con-
19 tract alleging an offense under subsection (a), (b), or (c),
20 of this section, nor may the Comptroller General or the
21 board of contract appeals of the General Services Adminis-
22 tration consider such an allegation in deciding such a pro-
23 test, unless that person reported information to the Fed-
24 eral agency responsible for the procurement that he be-

1 lieved constituted evidence of the offense no later than ten
2 working days after he first discovered the possible offense.

3 “(g) This section does not—

4 “(1) restrict the disclosure of information to or
5 its receipt by any person or class of persons author-
6 ized, in accordance with applicable agency regula-
7 tions or procedures, to receive that information;

8 “(2) restrict a contractor from disclosing its
9 own bid or proposal information or the recipient
10 from receiving that information;

11 “(3) restrict the disclosure or receipt of infor-
12 mation relating to the Federal agency procurement
13 after it has been canceled by the Federal agency
14 prior to contract award unless the Federal agency
15 plans on resuming the procurement;

16 “(4) authorize the withholding of information
17 from nor restrict its receipt by the Congress, a com-
18 mittee or subcommittee thereof, the Comptroller
19 General, a Federal agency, or an Inspector General
20 of a Federal agency;

21 “(5) authorize the withholding of information
22 from nor restrict its receipt by the Court of Federal
23 Claims, any board of contract appeals of a Federal
24 agency or the Comptroller General in the course of

1 a protest against the award or proposed award of a
2 Federal agency procurement contract;

3 “(6) prohibit individual meetings between an
4 agency employee and a competitor for or recipient of
5 a contract or subcontract under a Federal agency
6 procurement, provided that unauthorized disclosure
7 or receipt of contractor bid or proposal information
8 or source selection information does not occur; or

9 “(7) limit the applicability of the requirements,
10 sanctions, contract penalties, and remedies estab-
11 lished under any other law or regulation.

12 “(h) This section does not apply to the conduct of
13 a Federal agency procurement for an amount not greater
14 than the simplified acquisition threshold as defined in sec-
15 tion 4(11).”.

16 “(b) Government-wide regulations and guidelines
17 deemed appropriate to carry out this Act shall be issued
18 in the Federal Acquisition Regulation by the Department
19 of Defense, the General Services Administration, and the
20 National Aeronautics and Space Administration, in coordi-
21 nation with the Federal Acquisition Regulatory Council.

22 **SEC. 6002. REPEALS.**

23 Subsection 32(c) of the Office of Federal Procure-
24 ment Policy Act (41 U.S.C. 28(c)) is repealed.

1 **SEC. 6003. CONFORMING AMENDMENTS.**

2 Section 32 of the Office of Federal Procurement Pol-
3 icy Act is amended by redesignating subsections (d), (e),
4 (f), and (g) as (c), (d), (e), and (f).

5 **Subtitle B—Additional Amendments**

6 **SEC. 6051. INAPPLICABILITY OF PROHIBITION ON GRATU-**
7 **ITIES.**

8 Section 2207 of title 10, United States Code, is
9 amended—

10 (1) by inserting “in excess of the simplified ac-
11 quisition threshold (as defined in section 4(11) of
12 the Office of Federal Procurement Policy Act (41
13 U.S.C. 403(11))” after “may not be spent under a
14 contract”; and

15 (2) by inserting “or for commercial items as de-
16 fined in section 4(12) of the Office of Federal Pro-
17 curement Policy Act (41 U.S.C. 403(12))” after “a
18 contract for personal services”.

19 **Subtitle C—Intellectual Property**

20 **SEC. 6101. TECHNOLOGY INNOVATION.**

21 (a) COOPERATIVE RESEARCH AND DEVELOPMENT
22 AGREEMENTS.—Section 12 of the Stevenson-Wydler
23 Technology Innovation Act of 1980 (15 U.S.C. 3710a) is
24 amended—

25 (1) in subsection (a)(1), by striking out “(in-
26 cluding licensees of inventions owned by the Federal

1 agency);” and inserting in lieu thereof “(including li-
2 censees of inventions or copyrights owned by the
3 Federal agency);” and further by deleting “and”;

4 (2) by adding “and” at the end of paragraph
5 (2);

6 (3) in subsection (a), by adding at the end the
7 following new paragraph:

8 “(3) to negotiate licensing agreements following
9 the criteria set forth in section 209 of title 35 or
10 under other authorities (in the case of a Govern-
11 ment-owned, contractor-operated laboratory, subject
12 to subsection (c) of this section) for copyrights
13 owned by the Government pursuant to subsection
14 (h) or copyrights that may be voluntarily assigned to
15 the Government.”;

16 (4) in subsection (b), by amending paragraphs
17 (2) and (3) to read as follows:

18 “(2) grant or agree to grant in advance, to a
19 collaborating party, patent and copyright licenses or
20 assignments, or options thereto, in any invention
21 made or computer programs prepared in whole or in
22 part by a laboratory employee under the agreement,
23 retaining a nonexclusive, nontransferable, irrev-
24 ocable, paid-up license to practice the invention and
25 exercise all rights under the copyright or have the

1 invention practiced and have all rights under any
2 copyright for the computer program exercised
3 throughout the world by or on behalf of the Govern-
4 ment and such other rights as the Federal labora-
5 tory deems appropriate; provided in agreements hav-
6 ing as a primary purpose the research, development
7 or utilization of products or services for the commer-
8 cial market, agencies may limit the retained govern-
9 ment license under any copyright for a computer
10 program, reserving, however, at a minimum, the
11 paid-up, worldwide right in the government to repro-
12 duce, prepare derivative works, and to distribute to
13 other United States agencies and their contractors
14 for government purposes;

15 “(3) waive, subject to reservation by the Gov-
16 ernment of a nonexclusive, irrevocable, paid-up li-
17 cense to practice the invention and exercise all rights
18 under any copyright or have the invention practiced
19 and all rights under any copyright exercised
20 throughout the world by or on behalf of the Govern-
21 ment, in advance, in whole or in part, any right of
22 ownership which the Federal Government may have
23 to any subject invention made or copyrighted work
24 prepared under the agreement by a collaborating
25 party or employee of a collaborating party; provided

1 in agreements having as a primary purpose the re-
2 search, development or utilization of products or
3 services for the commercial market, agencies may
4 limit the retained government license under any
5 copyright for a computer program, reserving, how-
6 ever, at a minimum, the paid-up, worldwide right in
7 the government to reproduce, prepare derivative
8 works, and to distribute to other United States
9 agencies and their contractors for government pur-
10 poses;”;

11 (5) by amending subsection (b)(5) to read as
12 follows:

13 “(5) to the extent consistent with any applica-
14 ble agency requirements and standards of conduct,
15 permit employees or former employees of the labora-
16 tory to participate in efforts to commercialize inven-
17 tions they made or copyrighted works they prepared
18 while in the service of the United States, notwith-
19 standing that such employees may have received roy-
20 alties pursuant to section 3710c of title 15; pro-
21 vided, however, that such inventor or author did not
22 personally and substantially participate in the selec-
23 tion of the collaborating party to the cooperative re-
24 search and development agreement or in the negotia-
25 tion of the licensing agreement. A Government-

1 owned, contractor-operated laboratory that enters
2 into a cooperative research and development agree-
3 ment under subsection (a)(1) of this section may use
4 or obligate royalties or other income accruing to
5 such laboratory under such agreement with respect
6 to any invention or copyrighted work only (i) for
7 payments to inventors and authors; (ii) for the pur-
8 poses described in section 3710(a)(1)(B) (i), (ii),
9 and (iv) of this title; and (iii) for scientific research
10 and development consistent with the research and
11 development missions and objectives of the labora-
12 tory.”;

13 (6) in subsection (d), by striking out “DEFINI-
14 TIONS.—As used in this section—” and inserting in
15 lieu thereof:

16 “(d) DEFINITIONS.—As used in sections 12, 13, 14,
17 and 15 of the Stevenson-Wydler Technology Innovation
18 Act of 1980, (15 U.S.C. 3710a, 3710b, 3710c, and
19 3710d)—”

20 (7) in subsection (d), by adding at the end the
21 following new paragraphs:

22 “(5) the term ‘Computer Program’ means a
23 computer program as defined in section 101 of title
24 17, United States Code and includes instructions
25 necessary to use the program, but does not include

1 data, data bases, data base retrieval programs or
2 other programs which directly support the dissemi-
3 nation of Government information; and

4 “(6) the term ‘Author’ includes a Federal offi-
5 cer or employee who has prepared a copyrighted
6 work as part of that person’s official duties as a
7 work made for hire and any person who has as-
8 signed his or her rights in a copyright to the United
9 States.”;

10 (8) by adding at the end the following new sub-
11 section:

12 “(h) COPYRIGHT OF COMPUTER PROGRAMS.—Each
13 Federal agency may claim copyright on behalf of the Unit-
14 ed States as owner in any computer program prepared by
15 employees of the United States Government in the course
16 of work under, or related to, a cooperative research and
17 development agreement entered into under the authority
18 of subsection (a)(1) of this section, or under any other
19 equivalent authority and may grant or agree to grant in
20 advance to a collaborating party, licenses or assignments
21 for such copyrights, or options thereto, retaining a
22 nonexclusive, nontransferable, irrevocable, paid-up license
23 to exercise all rights under any copyright for computer
24 program throughout the world by or on behalf of the Gov-
25 ernment and such other rights as the Federal agency

1 deems appropriate; provided in agreements having as a
2 primary purpose the research, development or utilization
3 of products or services for the commercial market, agen-
4 cies may limit the retained Government license under any
5 copyright for a computer program, reserving, however, at
6 a minimum, the paid-up, worldwide right in the Govern-
7 ment to reproduce, prepare derivative works, and to dis-
8 tribute to other United States agencies and their contrac-
9 tors for government purposes.”.

10 (b) DISTRIBUTION OF ROYALTIES RECEIVED BY
11 FEDERAL AGENCIES.—Section 14 of the Stevenson-
12 Wydler Technology Innovation Act of 1980 (15 U.S.C.
13 3710c) is amended to read as follows:

14 **“SEC. 1354. DISTRIBUTION OF ROYALTIES RECEIVED BY**
15 **FEDERAL AGENCIES.**

16 “(a) IN GENERAL.—(1) Except as provided in para-
17 graphs (2) and (4), royalties or other income received by
18 a Federal agency from the licensing or assignment of in-
19 ventions or copyrights under agreements entered into by
20 Government-operated Federal laboratories under section
21 12 of this Act, and inventions or copyrights of Govern-
22 ment-operated Federal laboratories licensed under section
23 207 of title 35, United States Code, or under any other
24 provision of law, shall be retained by the agency whose

1 laboratory produced the invention or copyrighted work and
2 shall be disposed of as follows:

3 “(A)(i) The head of the agency shall pay at
4 least 15 percent of the royalties or other income the
5 agency receives on account of any invention or copy-
6 right to the inventor or the author (or co-inventors
7 or co-authors) if the inventor or author (or each
8 such co-inventor or co-author) has assigned his or
9 her rights in the invention or copyrighted work to
10 the United States or, in the case of a copyrighted
11 work, if the work was made for hire by an officer
12 or employee of the United States Government.

13 “(ii) An agency may promulgate, in accordance
14 with section 553 of title 5, United States Code, reg-
15 ulations providing for an alternative program for
16 sharing royalties with inventors or authors under
17 clause (i). Such regulations must—

18 “(I) guarantee a fixed minimum payment
19 to each such inventor or author each year that
20 the agency receives royalties from that inven-
21 tor’s invention or author’s copyrighted work;

22 “(II) provide a percentage royalty share to
23 each such inventor or author, each year that
24 the agency receives royalties from that inven-

1 tor's invention or author's copyrighted work in
2 excess of a threshold amount;

3 “(III) provide that total payments to all
4 such inventors or authors shall equal at least
5 15 percent of total agency royalties in any given
6 fiscal year; and

7 “(IV) provide appropriate incentives from
8 royalties for those laboratory employees who
9 contribute substantially to the technical devel-
10 opment of a licensed invention or copyrighted
11 work between the time of the filing of the pat-
12 ent application and the licensing of the inven-
13 tion or copyrighted work.

14 “(iii) An agency that has published its intention
15 to promulgate regulations under clause (ii) may elect
16 not to pay inventors or authors under clause (i) until
17 the expiration of two years after October 20, 1986,
18 or until the date of the promulgation of such regula-
19 tions, whichever is earlier. If an agency makes such
20 an election and after two years the regulations have
21 not been promulgated, the agency shall make pay-
22 ments (in accordance with clause (i)) of at least 15
23 percent of the royalties involved, retroactive to Octo-
24 ber 20, 1986. If promulgation of the regulations oc-
25 curs within two years after October 20, 1986, pay-

1 ments shall be made in accordance with such regula-
2 tions, retroactive to October 20, 1986. The agency
3 shall retain its royalties until the inventor's or au-
4 thor's portion is paid under either clause (i) or (ii).
5 Such royalties shall not be transferred to the agen-
6 cy's Government-operated laboratories under sub-
7 paragraph (B) and shall not revert to the Treasury
8 pursuant to paragraph (2) as a result of any delay
9 caused by rule making under this subparagraph.

10 “(B) The balance of the royalties or other in-
11 come shall be transferred by the agency to its Gov-
12 ernment-operated laboratories, with the majority
13 share of the royalties or other income from any in-
14 vention or copyright going to the laboratory where
15 the invention occurred or copyrighted work was pre-
16 pared; and the funds so transferred to any such lab-
17 oratory may be used or obligated by that laboratory
18 during the fiscal year in which they are received or
19 during the succeeding fiscal year—

20 “(i) for payment of expenses incidental to the
21 administration and licensing of inventions or copy-
22 rights by that laboratory or by the agency with re-
23 spect to inventions which occurred or copyrighted
24 work prepared at that laboratory, including the fees
25 or other costs for the services of other agencies, per-

1 sons, or organizations for invention or copyright
2 management and licensing services;

3 “(ii) to reward scientific, engineering, and tech-
4 nical employees of that laboratory, including pay-
5 ments to inventors and developers of sensitive or
6 classified technology, regardless of whether the tech-
7 nology has commercial applications; and

8 “(iii) to further scientific exchange among the
9 Government-operated laboratories of the agency; or

10 “(iv) for education and training of employees
11 consistent with the research and development mis-
12 sion and objectives of the agency, and for other ac-
13 tivities that increase the licensing potential for
14 transfer of the technology of the laboratories of the
15 agency. Any of such funds not so sued or obligated
16 by the end of the fiscal year succeeding the fiscal
17 year in which they are received shall be paid into the
18 Treasury of the United States.

19 “(2) If, after payments to inventors or authors under
20 paragraph (1), the royalties received by an agency in any
21 fiscal year exceed 5 percent of the budget of the Govern-
22 ment-operated laboratories of the agency for that year, 75
23 percent of such excess shall be paid to the Treasury of
24 the United States and the remaining 25 percent may be
25 used or obligated for the purposes described in clauses (i)

1 and (ii) of paragraph (1)(B) during that fiscal year or the
2 succeeding fiscal year. Any funds not so obligated shall
3 be paid into the Treasury of the United States.

4 “(3) Any payment made to an employee under this
5 section shall be in addition to the regular pay of the em-
6 ployee and to any other awards made to the employee, and
7 shall not affect the entitlement of the employee to any reg-
8 ular pay, annuity, or award to which he is otherwise enti-
9 tled or for which he is otherwise eligible or limit the
10 amount thereof. Any payment made to an inventor or au-
11 thor as such shall continue after the inventor or author
12 leaves the laboratory or agency. Payments made under
13 this section shall not exceed \$100,000 per year to any one
14 person, unless the President approves a larger award (with
15 the excess over \$100,000 being treated as a Presidential
16 award under section 4504 of title 5, United States Code).

17 “(4) A Federal agency receiving royalties or other in-
18 come as a result of invention, or copyright, management
19 services performed for another Federal agency or labora-
20 tory under section 207 of title 35, United States Code,
21 may retain such royalties or income to the extent required
22 to offset the payment of royalties to inventors or authors
23 under clause (i) of paragraph (1)(A), costs and expenses
24 incurred under clause (i) of paragraph (1)(B), and the
25 cost of foreign patenting or copyrighting and maintenance

1 for any invention or copyright of the other agency. All roy-
2 alties and other income remaining after payment of the
3 royalties, costs, and expenses described in the preceding
4 sentence shall be transferred to the agency for which the
5 services were performed, for distribution in accordance
6 with clauses (i) and (ii) of paragraph (1)(B).

7 “(b) CERTAIN ASSIGNMENTS.—If the invention or
8 copyright involved was one assigned to the Federal agen-
9 cy—

10 “(1) by a contractor, grantee, or participant in
11 a cooperative agreement with the agency; or

12 “(2) by an employee of the agency who was not
13 working in the laboratory at the time the invention
14 was made or copyrightable work prepared, the agen-
15 cy unit that was involved in such assignment shall
16 be considered to be a laboratory for purposes of this
17 section.

18 “(c) REPORTS.—In making their annual budget sub-
19 missions Federal agencies shall submit, to the appropriate
20 authorization and appropriation committees of both
21 Houses of Congress, summaries of the amount of royalties
22 or other income received and expenditures made (including
23 inventor or author awards) under this section.”.

1 **SEC. 6102. EMPLOYEE ACTIVITIES.**

2 Section 15 of the Stevenson-Wydler Technology Inno-
3 vation Act of 1980 (15 U.S.C. 3710d) is amended—

4 (1) by redesignating subsections (b) and (c) as
5 subsections (c) and (d) respectively; and

6 (2) by inserting after subsection (a) the follow-
7 ing new subsection:

8 “(b) RIGHTS TO COMPUTER PROGRAMS PREPARED
9 BY GOVERNMENT EMPLOYEES.—(1) A computer program
10 prepared by an officer or employee of the United State
11 Government as part of that person’s official duties shall
12 be a ‘work made for hire’ as defined in subparagraph (1)
13 of section 101 of title 17, United States Code, and the
14 United States Government shall obtain all rights, title,
15 and interest therein as ‘author’ in accordance with section
16 201(b) of title 17, United States Code, unless otherwise
17 provided in paragraph (2).

18 “(2) If a Federal agency has the right of ownership
19 to a computer program for which the agency does not in-
20 tend to copyright or otherwise promote the commercializa-
21 tion of such computer program, the agency may agree to
22 allow the author to acquire title to copyright, subject to
23 the reservation of a nonexclusive, nontransferable, irrev-
24 ocable, paid-up license to exercise all rights under the
25 copyright by or on behalf of the Government throughout
26 the world, as such other reservations deemed necessary to

1 assure distribution and utilization of the computer pro-
2 gram.”.

3 **SEC. 6103. EXCEPTION TO PROHIBITION ON COPYRIGHT**
4 **PROTECTION FOR WORKS OF THE UNITED**
5 **STATES GOVERNMENT.**

6 Section 105 of title 17, United States Code, is
7 amended to read as follows:

8 **“§105. Subject matter of copyright: United States**
9 **Government works**

10 “Copyright protection under this title is not available
11 for any work of the United States Government, except as
12 provided in section 12 of the Stevenson-Wydler Tech-
13 nology Innovation Act of 1980 (15 U.S.C. 3710a), but the
14 United States is not precluded from receiving and holding
15 copyrights transferred to it by assignment, bequest, or
16 otherwise.”.

17 **SEC. 6104. PATENT RIGHTS IN INVENTIONS MADE WITH**
18 **FEDERAL ASSISTANCE.**

19 Subsection 202(c) of title 35, United States Code, is
20 amended by amending paragraphs (2) and (3) to read as
21 follows:

22 “(2) That the contractor make a written elec-
23 tion within two years after disclosure to the Federal
24 agency (or such additional time as may be approved
25 by the Federal agency) whether to retain title to a

1 subject invention in the United States and in any
2 foreign countries; provided, that, if a contractor
3 elects to retain title in the United States, the elec-
4 tion to retain title in any foreign country may be de-
5 layed until six months after filing the United States
6 patent application; and provided further, that, in
7 any case where publication, or sale, or public use has
8 initiated the one year statutory period within which
9 a patent application must be filed in the United
10 States, the period for election may be shortened by
11 the Federal agency to a date that is not more than
12 four months prior to the end of the statutory period;
13 and that the Federal Government may, after notice
14 to the contractor, receive title to any subject inven-
15 tion in which the contractor does not elect to retain
16 title.

17 “(3) That a contractor agrees to file a patent
18 application on a subject invention in—

19 “(A) the United States within one year
20 after the written election to retain title in the
21 United States (or such additional time as may
22 be approved by the Federal agency), but, in any
23 event, prior to any statutory bar, and that the
24 Federal Government may, after notice to the
25 contractor, receive title to any subject invention

1 on which a patent application has not been filed
2 within the above required time period; and

3 “(B) each elected foreign country, or to file
4 an international application, within four months
5 after the written election to retain title in the
6 foreign country, but, in any event, prior to any
7 bar due to publication, public use or sale of the
8 invention, (or such additional time as may be
9 approved by the Federal agency), and that the
10 Federal Government may, after notice to the
11 contractor, receive title to any subject invention
12 on which a foreign patent or international ap-
13 plication has not been filed within the above re-
14 quired time period.”.

15 **TITLE VII—SMALL BUSINESS AND**
16 **SOCIOECONOMIC LAWS**
17 **Subtitle A—Small Business Laws**

18 **SEC. 7001. DIRECT CONTRACTING WITH SECTION 8(A) COM-**
19 **PANIES.**

20 Section 8(a) of the Small Business Act (15 U.S.C.
21 637(a)) is amended—

22 (1) in paragraph (1), by adding at the end the
23 following new subparagraph:

24 “(E) to delegate to any department, agen-
25 cy, or officer thereof having procurement pow-

1 ers any of the authorities contained in this sub-
2 section so that an award or a contract can be
3 made by the procurement officer directly to an
4 eligible Program participant. Such delegation
5 may be made generally to specific departments,
6 agencies, or officers or may be made on a case-
7 by-case basis in the discretion of the Adminis-
8 tration. Any such delegation may be revoked by
9 the Administrator, except that any revocation
10 shall not be effective as to any procurement
11 where a solicitation has been issued prior to the
12 revocation.”; and

13 (2) by amending paragraph (3)(A) to read as
14 follows:

15 “(A) Any Program participant selected to
16 perform a contract to be let noncompetitively
17 pursuant to this subsection shall, when prac-
18 ticable, participate in any negotiation of the
19 terms and conditions of such contract. When
20 authority has been delegated to a department
21 or agency, the Administration may also partici-
22 pate in any negotiation of the terms and condi-
23 tions of a contract when requested to partici-
24 pate by either the Program participant or the
25 procurement officer.”.

1 **SEC. 7002. SMALL BUSINESS SUBCONTRACTING PLANS.**

2 Section 8 of the Small Business Act, Public Law 85–
3 536, 72 Stat. 395, as amended (15 U.S.C. 637), is amend-
4 ed—

5 (1) in subsection (c) by deleting “[Reserved].”
6 and inserting the following in lieu thereof:

7 “(c) Provision of Utility Services under Tariff with-
8 out entering into Contracts; Small business subcontracting
9 plans. It is the policy of the United States that small busi-
10 ness concerns, small business concerns owned and con-
11 trolled by socially and economically disadvantaged individ-
12 uals and small business concerns owned and controlled by
13 women shall have a maximum practicable opportunity to
14 participate in the provision of public utility services to
15 Federal agencies under section 210(a)(19) of the Federal
16 Property and Administrative Services Act of 1949. Any
17 public utility that provides utility services in excess of
18 \$500,000 to the Federal Government in a twelve month
19 period shall, within 60 days thereafter, submit a small
20 business subcontracting plan to the agency receiving the
21 service for approval. If multiple agencies are receiving
22 service, the plans shall be submitted to the General Serv-
23 ices Administration. The plan shall include the same basic
24 elements as required by subsection (d)(6).”; and

25 (2) by inserting, at the end of subsection
26 8(d)(7), the following: “or to State or local govern-

1 ments acting as contractors if the state or local gov-
2 ernment provides a description of its own similar
3 program and the contracting officer makes a deter-
4 mination, after consultation with the Administration,
5 that the State or local program serves the same pur-
6 pose as the Federal plan outlined in paragraph (6)''.

7 **SEC. 7003. REPORTING REQUIREMENT ON NUMBER OF**
8 **SMALL BUSINESS SUBCONTRACT AWARDS.**

9 Section 15 of the Small Business Act (15 U.S.C. 644)
10 is amended in subsection (h)(2)—

11 (1) by striking out “number and” in paragraph
12 (E); and

13 (2) by amending paragraph (F) to read as fol-
14 lows:

15 “(F) The number and dollar value of prime
16 contracts and the dollar value of subcontracts
17 awarded to small business concerns owned and
18 controlled by women.”.

19 **SEC. 7004. REPEAL OF SMALL BUSINESS COMPETITIVENESS**
20 **DEMONSTRATION PROGRAM.**

21 (a) REPEAL.—The Small Business Competitiveness
22 Demonstration Program Act of 1988, as amended (15
23 U.S.C. 644 note) is repealed.

24 (b) CONFORMING AMENDMENT.—Section 15 of the
25 Small Business Act (15 U.S.C. 644) is amended—

1 (1) by redesignating subsection 15(a) as
2 15(a)(1);

3 (2) by adding to subsection 15(a) the following
4 new paragraph:

5 “(2) Each contract opportunity in construction,
6 refuse and related services, and non-nuclear ship repair
7 that has an anticipated value greater than the simplified
8 acquisition threshold shall be solicited on an unrestricted
9 basis. If an agency fails to attain at least a 40 percent
10 small business participation rate in the above industries,
11 subsequent contract opportunities should be solicited
12 through a competition restricted to eligible small business
13 concerns pursuant to section 15(a) of the Small Business
14 Act (15 U.S.C. 644(a)) to the extent necessary for such
15 agency to attain the above rate. Nothing in this paragraph
16 shall be construed as precluding an award of a contract
17 under the authority of subsection 8(a) of this Act, section
18 2323 of title 10, United States Code, or section 7102 of
19 the Federal Acquisition Streamlining Act of 1994.”.

20 (3) by striking out the words, “section 712 of the
21 Business Opportunity Development Reform Act of
22 1988 (Public Law 100–656; 15 U.S.C. 644 note)”
23 in subsection (j)(3).

1 **SEC. 7005. REPEAL OF PROGRAM FOR MANUFACTURING**
2 **CONTRACTS THROUGH MANUFACTURING AP-**
3 **PLICATION AND EDUCATION CENTERS.**

4 Section 303 of the Public Law 103–403 is repealed.

5 **SEC. 7006. REPEAL OF PILOT PROGRAM FOR VERY SMALL**
6 **BUSINESS CONCERNS.**

7 Section 304 of Public Law 103–403 is repealed.

8 **Subtitle B—Socioeconomic Laws**

9 **SEC. 7101. REPEAL OF WALSH-HEALEY PUBLIC CONTRACTS**
10 **ACT.**

11 The Act of June 30, 1936 (41 U.S.C. 35 through
12 45), commonly known as the Walsh-Healey Act, is re-
13 pealed.

14 **SEC. 7102. PROCUREMENT REPORT—RESOURCE CON-**
15 **SERVATION AND RECOVERY ACT.**

16 Section 6002(g) of the Resource Conservation and
17 Recovery Act (42 U.S.C. 6962(g)) is amended—

18 (1) in the second sentence by inserting a period
19 after “resources” and striking all that follows; and

20 (2) by inserting the following new third sen-
21 tence: “Every two years beginning in 1996, the Ad-
22 ministrators shall report to Congress on actions taken
23 by Federal agencies and the progress made in the
24 implementation of this section, including compliance
25 with subsection (d) of this section.”.

1 **SEC. 7103. REQUIREMENTS FOR CERTIFICATION AND VER-**
2 **IFICATION.**

3 Section 6962 of title 42, United States Code (42
4 U.S.C. 6962), is amended—

5 (1) by striking subparagraph (3) of paragraph
6 (c) in its entirety; and

7 (2) by adding “and” at the end of paragraph
8 (B), in subsection (i)(2), striking paragraph (C) in
9 its entirety, and redesignating paragraph (D) as
10 paragraph (C).

11 **TITLE VIII—DEFENSE INTERNATIONAL**
12 **TRADE**

13 **SEC. 8001. COMPETITIVENESS OF UNITED STATES COMPA-**
14 **NIES.**

15 Section 2761 of title 22, United States Code, is
16 amended—

17 (a) by adding the word “and” to the end of
18 subparagraph (e)(1)(A);

19 (b) by striking out subparagraph (e)(1)(B) in
20 its entirety;

21 (c) by redesignating the existing subparagraph
22 (e)(1)(C) as (e)(1)(B);

23 (d) by striking out paragraph (e)(2) in its en-
24 tirety; and

1 (e) by redesignating the existing paragraph
2 (e)(3) as (e)(2).

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