

104TH CONGRESS
1ST SESSION

H. R. 1670

To revise and streamline the acquisition laws of the Federal Government, to reorganize the mechanisms for resolving Federal procurement disputes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 1995

Mr. CLINGER (for himself, Mr. SPENCE, Mr. HORN, Mr. ZELIFF, Mr. BLUTE, Mr. DAVIS, Mr. SCARBOROUGH, Mr. LEWIS of California, Mr. TATE, Mr. TIAHRT, Mr. FLANAGAN, Mr. BASS, and Mr. CHAMBLISS) introduced the following bill; which was referred to the Committee on Government Reform and Oversight, and in addition to the Committees on National Security and the Judiciary, 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, to reorganize the mechanisms for resolving Federal procurement disputes, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. TABLE OF CONTENTS.**

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

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—COMPETITION

- Sec. 101. Improvement of competition requirements.
- Sec. 102. Definition relating to competition requirements.
- Sec. 103. Contract solicitation amendments.
- Sec. 104. Preaward debriefings.
- Sec. 105. Contract types.
- Sec. 106. Contractor performance.

TITLE II—COMMERCIAL ITEMS

- Sec. 201. Commercial item exception to requirement for cost or pricing data and information limitations.
- Sec. 202. Application of simplified procedures to commercial items.
- Sec. 203. Amendment to definition of commercial items.
- Sec. 204. Inapplicability of cost accounting standards to contracts and sub-contracts for commercial items.

TITLE III—ADDITIONAL REFORM PROVISIONS

- Sec. 301. Government reliance on the private sector.
- Sec. 302. Elimination of certain certification requirements.
- Sec. 303. Amendment to commencement and expiration of authority to conduct certain tests of procurement procedures.
- Sec. 304. International competitiveness.
- Sec. 305. Procurement integrity.
- Sec. 306. Further acquisition streamlining provisions.

TITLE IV—STREAMLINING OF DISPUTE RESOLUTION

Subtitle A—General Provisions

- Sec. 401. Definitions.

Subtitle B—Establishment of the United States Board of Contract Appeals

- Sec. 411. Establishment.
- Sec. 412. Membership.
- Sec. 413. Chairman.
- Sec. 414. Rulemaking authority.
- Sec. 415. Litigation authority.
- Sec. 416. Seal of Board.
- Sec. 417. Authorization of appropriations.

Subtitle C—Functions of United States Board of Contract Appeals

- Sec. 421. Alternative dispute resolution services.
- Sec. 422. Alternative dispute resolution of disputes and protests submitted to Board.
- Sec. 423. Contract disputes.
- Sec. 424. Protests.

Sec. 425. Applicability to contracts for commercial items.

Subtitle D—Repeal of Other Statutes Authorizing Administrative Protests

Sec. 431. Repeals.

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

Sec. 441. Transfer and allocation of appropriations and personnel.

Sec. 442. Terminations and savings provisions.

Sec. 443. Contract dispute authority of Board.

Sec. 444. References to agency boards of contract appeals.

Sec. 445. Conforming amendments.

Subtitle F—Effective Date; Interim Appointment and Rules

Sec. 451. Effective date.

Sec. 452. Interim appointment.

Sec. 453. Interim rules.

TITLE V—EFFECTIVE DATES AND IMPLEMENTATION

Sec. 501. Effective date and applicability.

Sec. 502. Implementing regulations.

1 **TITLE I—COMPETITION**

2 **SEC. 101. IMPROVEMENT OF COMPETITION REQUIRE-** 3 **MENTS.**

4 (a) ARMED SERVICES ACQUISITIONS.—(1) Section
5 2304 of title 10, United States Code, is amended to read
6 as follows:

7 **“§ 2304. Contracts: competition requirements**

8 “(a) MAXIMUM PRACTICABLE COMPETITION.—Ex-
9 cept as provided in subsections (b), (c), and (e) and except
10 in the case of procurement procedures otherwise expressly
11 authorized by statute, the head of an agency in conducting
12 a procurement for property or services—

13 “(1) shall obtain maximum practicable competi-
14 tion through the use of competitive procedures con-
15 sistent with the need to efficiently fulfill the Govern-

1 ment’s requirements in accordance with this chapter
2 and the Federal Acquisition Regulation; and

3 “(2) shall use the competitive procedure or
4 combination of competitive procedures that is best
5 suited under the circumstances of the procurement.

6 “(b) EXCLUSION OF PARTICULAR SOURCE.—The
7 head of an agency may provide for the procurement of
8 property or services covered by this chapter using competi-
9 tive procedures but excluding a particular source in order
10 to establish or maintain an alternative source or sources
11 of supply for that property or service. The Federal Acqui-
12 sition Regulation shall set forth the circumstances under
13 which a particular source may be excluded pursuant to
14 this subsection.

15 “(c) EXCLUSION OF CONCERNS OTHER THAN SMALL
16 BUSINESS CONCERNS AND CERTAIN OTHER ENTITIES.—
17 The head of an agency may provide for the procurement
18 of property or services covered by this section using com-
19 petitive procedures, but excluding concerns other than
20 small business concerns in furtherance of sections 9 and
21 15 of the Small Business Act (15 U.S.C. 638, 644) and
22 concerns other than small business concerns, historically
23 Black colleges and universities, and minority institutions
24 in furtherance of section 2323 of this title.

1 “(d) PROCEDURES OTHER THAN COMPETITIVE PRO-
2 CEDURES.—Procedures other than competitive procedures
3 may be used for purchasing property and services only
4 when the use of competitive procedures is not feasible or
5 appropriate. Each procurement using procedures other
6 than competitive procedures (other than a procurement
7 for commercial items or a procurement in an amount not
8 greater than the simplified acquisition threshold) shall be
9 justified in writing and approved in accordance with the
10 Federal Acquisition Regulation.

11 “(e) SIMPLIFIED PROCEDURES.—(1) In order to pro-
12 mote efficiency and economy in contracting and to avoid
13 unnecessary burdens for agencies and contractors, the
14 Federal Acquisition Regulation shall provide for special
15 simplified procedures for purchases of property and serv-
16 ices for amounts not greater than the simplified acquisi-
17 tion threshold.

18 “(2) A proposed purchase or contract for an amount
19 above the simplified acquisition threshold may not be di-
20 vided into several purchases or contracts for lesser
21 amounts in order to use the simplified procedures required
22 by paragraph (1).

23 “(3) In using simplified procedures, the head of an
24 agency shall ensure that competition is obtained to the ex-

1 tent practicable consistent with the particular Government
2 requirement.

3 “(f) CERTAIN CONTRACTS.—For the purposes of the
4 following laws, purchases or contracts awarded after using
5 procedures other than sealed-bid procedures shall be treat-
6 ed as if they were made with sealed-bid procedures:

7 “(1) The Walsh-Healey Act (41 U.S.C. 35–45).

8 “(2) The Act entitled “An Act relating to the
9 rate of wages for laborers and mechanics employed
10 on public buildings of the United States and the
11 District of Columbia by contractors and subcontrac-
12 tors, and for other purposes”, approved March 3,
13 1931 (commonly referred to as the “Davis-Bacon
14 Act”) (40 U.S.C. 276a–276a-5).”.

15 (2) Chapter 137 of title 10, United States Code, is
16 amended by inserting before section 2305 a new section—

17 (A) the designation and heading for which is as
18 follows:

19 “§ 2304f. Merit-based selection”;

20 and

21 (B) the text of which consists of subsection (j)
22 of section 2304 of such title, as in effect on the day
23 before the date of the enactment of this Act, modi-
24 fied—

1 (i) by striking out the subsection designa-
2 tion and the subsection heading;

3 (ii) in paragraphs (2)(A), (3), and (4), by
4 striking out “subsection” and inserting in lieu
5 thereof “section” each place it appears;

6 (iii) in paragraph (2)(C), by striking out
7 “paragraph (1)” and inserting in lieu thereof
8 “subsection (a)”;

9 (iv) by redesignating paragraphs (1), (2),
10 (3), and (4) as subsections (a), (b), (c), and
11 (d), respectively; and

12 (v) in subsection (b) (as so redesignated),
13 by redesignating subparagraphs (A), (B), and
14 (C) as paragraphs (1), (2), and (3), respec-
15 tively.

16 (3) The table of sections at the beginning of such
17 chapter is amended by inserting before the item relating
18 to section 2305 the following new item:

“2304f. Merit-based selection.”.

19 (b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section
20 303 of the Federal Property and Administrative Services
21 Act of 1949 (41 U.S.C. 253) is amended to read as fol-
22 lows:

23 **“SEC. 303. CONTRACTS: COMPETITION REQUIREMENTS.**

24 “(a) MAXIMUM PRACTICABLE COMPETITION.—Ex-
25 cept as provided in subsections (b), (c), and (e) and except

1 in the case of procurement procedures otherwise expressly
2 authorized by statute, an executive agency in conducting
3 a procurement for property or services—

4 “(1) shall obtain maximum practicable competi-
5 tion through the use of competitive procedures con-
6 sistent with the need to efficiently fulfill the Govern-
7 ment’s requirements in accordance with this chapter
8 and the Federal Acquisition Regulation; and

9 “(2) shall use the competitive procedure or
10 combination of competitive procedures that is best
11 suited under the circumstances of the procurement.

12 “(b) EXCLUSION OF PARTICULAR SOURCE.—An ex-
13 ecutive agency may provide for the procurement of prop-
14 erty or services covered by this chapter using competitive
15 procedures but excluding a particular source in order to
16 establish or maintain an alternative source or sources of
17 supply for that property or service. The Federal Acquisi-
18 tion Regulation shall set forth the circumstances under
19 which a particular source may be excluded pursuant to
20 this subsection.

21 “(c) EXCLUSION OF CONCERNS OTHER THAN SMALL
22 BUSINESS CONCERNS AND CERTAIN OTHER ENTITIES.—
23 An executive agency may provide for the procurement of
24 property or services covered by this section using competi-
25 tive procedures, but excluding concerns other than small

1 business concerns in furtherance of sections 9 and 15 of
2 the Small Business Act (15 U.S.C. 638, 644) and con-
3 cerns other than small business concerns, historically
4 Black colleges and universities, and minority institutions
5 in furtherance of section 7102 of the Federal Acquisition
6 Streamlining Act of 1994 (15 U.S.C. 644 note).

7 “(d) PROCEDURES OTHER THAN COMPETITIVE PRO-
8 CEDURES.—Procedures other than competitive procedures
9 may be used for purchasing property and services only
10 when the use of competitive procedures is not feasible or
11 appropriate. Each procurement using procedures other
12 than competitive procedures (other than a procurement
13 for commercial items or a procurement in an amount not
14 greater than the simplified acquisition threshold) shall be
15 justified in writing and approved in accordance with the
16 Federal Acquisition Regulation.

17 “(e) SIMPLIFIED PROCEDURES.—(1) In order to pro-
18 mote efficiency and economy in contracting and to avoid
19 unnecessary burdens for agencies and contractors, the
20 Federal Acquisition Regulation shall provide for special
21 simplified procedures for purchases of property and serv-
22 ices for amounts not greater than the simplified acqui-
23 sition threshold.

24 “(2)(A) The Administrator of General Services shall
25 prescribe regulations that provide special simplified proce-

1 dures for acquisitions of leasehold interests in real prop-
2 erty at rental rates that do not exceed the simplified acqui-
3 sition threshold.

4 “(B) For purposes of subparagraph (A), the rental
5 rate or rates under a multiyear lease do not exceed the
6 simplified acquisition threshold if the average annual
7 amount of the rent payable for the period of the lease does
8 not exceed the simplified acquisition threshold.

9 “(3) A proposed purchase or contract or for an
10 amount above the simplified acquisition threshold may not
11 be divided into several purchases or contracts for lesser
12 amounts in order to use the simplified procedures required
13 by paragraph (1).

14 “(4) In using simplified procedures, an executive
15 agency shall ensure that competition is obtained to the ex-
16 tent practicable consistent with the particular Government
17 requirement.”.

18 (2) Title III of the Federal Property and Administra-
19 tive Services Act of 1949 (41 U.S.C. 251 et seq.) is
20 amended by inserting after section 303L a new section—

21 (A) the designation and heading for which is as
22 follows:

23 **“SEC. 303M. MERIT-BASED SELECTION.”;**

24 and

1 (B) the text of which consists of subsection (h)
2 of section 303 of such Act, as in effect on the day
3 before the date of the enactment of this Act, modi-
4 fied—

5 (i) by striking out the subsection designa-
6 tion and the subsection heading;

7 (ii) in paragraphs (2)(A), (3), and (4), by
8 striking out “subsection” and inserting in lieu
9 thereof “section” each place it appears;

10 (iii) in paragraph (2)(C), by striking out
11 “paragraph (1)” and inserting in lieu thereof
12 “subsection (a)”;

13 (iv) by redesignating paragraphs (1), (2),
14 (3), and (4) as subsections (a), (b), (c), and
15 (d), respectively; and

16 (v) in subsection (b) (as so redesignated),
17 by redesignating subparagraphs (A), (B), and
18 (C) as paragraphs (1), (2), and (3), respec-
19 tively.

20 (3) The table of contents for the Federal Property
21 and Administrative Services Act of 1949 (contained in sec-
22 tion 1(b)) is amended—

23 (A) by striking out the item relating to section
24 303 and inserting in lieu thereof the following:

“Sec. 303. Contracts: competition requirements.”; and

1 (B) by inserting after the item relating to sec-
2 tion 303L the following new item:

“Sec. 303M. Merit-based selection.”.

3 (c) REVISIONS TO PROCUREMENT NOTICE PROVI-
4 SIONS.—Section 18 of the Office of Federal Procurement
5 Policy Act (41 U.S.C. 416) is amended—

6 (1) in subsection (a)—

7 (A) in subparagraph (B) of paragraph
8 (1)—

9 (i) by striking out “subsection (f)—”
10 and all that follows through the end of the
11 subparagraph and inserting in lieu thereof
12 “subsection (b); and”; and

13 (ii) by inserting after “property or
14 services” the following: “for a price ex-
15 pected to exceed \$10,000 but not to exceed
16 \$25,000”;

17 (B) by striking out paragraph (4); and

18 (C) by redesignating paragraphs (5) and
19 (6) as paragraphs (4) and (5), respectively; and
20 (2) in subsection (b)(4)—

21 (A) by striking out “all”; and

22 (B) by striking out “(as appropriate)
23 which shall be considered by the agency”.

1 (d) REPEAL OF DUPLICATIVE PROVISIONS.—Section
2 8 of the Small Business Act (15 U.S.C. 637) is amend-
3 ed—

4 (1) by striking out subsections (e), (f), (g), (h),
5 and (i); and

6 (2) by redesignating subsection (j) as sub-
7 section (e).

8 (e) EXECUTIVE AGENCY RESPONSIBILITIES.—(1)
9 Section 16 of the Office of Federal Procurement Policy
10 Act (41 U.S.C. 414) is amended—

11 (A) by striking out “achieve” in the matter pre-
12 ceding paragraph (1) and inserting in lieu thereof
13 “promote”; and

14 (B) by amending paragraph (1) to read as fol-
15 lows:

16 “(1) to implement maximum practicable com-
17 petition in the procurement of property or services
18 by the executive agency by establishing policies, pro-
19 cedures, and practices that are consistent with the
20 need to efficiently fulfill the Government’s require-
21 ments;”.

22 (2) Section 20 of such Act (41 U.S.C. 418) is amend-
23 ed in subsection (a)(2)(A) by striking out “serving in a
24 position authorized for such executive agency on the date

1 of enactment of the Competition in Contracting Act of
2 1984”.

3 **SEC. 102. DEFINITION RELATING TO COMPETITION RE-**
4 **QUIREMENTS.**

5 (a) DEFINITION.—Paragraph (6) of section 4 of the
6 Office of Federal Procurement Policy Act (41 U.S.C. 403)
7 is amended to read as follows:

8 “(6) The term ‘maximum practicable competi-
9 tion’, when used with respect to a procurement,
10 means that a maximum number of responsible or
11 verified sources (consistent with the particular Gov-
12 ernment requirement) are permitted to submit
13 sealed bids or competitive proposals on the procure-
14 ment.”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) OFFICE OF FEDERAL PROCUREMENT POL-
17 ICY ACT.—The Office of Federal Procurement Policy
18 Act is further amended—

19 (A) in section 4(5), by striking out “full
20 and open” and inserting “maximum prac-
21 ticable”; and

22 (B) in section 20, by striking out “full and
23 open” and inserting in lieu thereof “maximum
24 practicable” each place it appears in subsection

1 (b)(1), subsection (b)(3)(A), subsection
2 (b)(4)(C), and subsection (c);

3 (2) TITLE 10.—Title 10, United States Code, is
4 amended—

5 (A) in section 2302(2), by striking out
6 “pursuant to full and open competition” and in-
7 serting in lieu thereof “using maximum prac-
8 ticable competition”;

9 (B) in section 2323(e)(3), by striking out
10 “less than full and open” and inserting in lieu
11 thereof “procedures other than”; and

12 (C) in each of the following sections, by
13 striking out “full and open” and inserting in
14 lieu thereof “maximum practicable”:

15 (i) Section 2302(3).

16 (ii) Section 2305(a)(1)(A)(i).

17 (iii) Section 2305(a)(1)(A)(iii).

18 (iv) Section 2323(i)(3)(A).

19 (3) FEDERAL PROPERTY AND ADMINISTRATIVE
20 SERVICES ACT.—Title III of the Federal Property
21 and Administrative Services Act of 1949 (41 U.S.C.
22 251 et seq.) is amended—

23 (A) in section 309(b), by striking out
24 “pursuant to full and open competition” and in-

1 serting in lieu thereof “using maximum prac-
2 ticable competition”; and

3 (B) in each of the following sections, by
4 striking out “full and open” and inserting in
5 lieu thereof “maximum practicable”:

6 (i) Section 303A(a)(1)(A).

7 (ii) Section 303A(a)(1)(C).

8 (iii) Section 304B(a)(2)(B).

9 (iv) Section 309(c)(4).

10 (4) OTHER LAWS.—(A) Section 7102 of the
11 Federal Acquisition Streamlining Act of 1994 (108
12 Stat. 3367; 15 U.S.C. 644 note) is amended in sub-
13 section (a)(1)(A) by striking out “less than full and
14 open competition” and inserting in lieu thereof “pro-
15 cedures other than competitive procedures”.

16 (B) Section 15(l) of the Small Business Act (15
17 U.S.C. 644(l)) is amended in paragraph (1) and in
18 paragraph (2)(A) by striking out “full and open”
19 and inserting in lieu thereof “maximum practicable”
20 each place it appears.

21 **SEC. 103. CONTRACT SOLICITATION AMENDMENTS.**

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

24 (1) in subsection (a)(1)—

25 (A) by striking out subparagraph (B); and

1 (B) by redesignating subparagraph (C) as
2 subparagraph (B) and in that subparagraph by
3 striking out “subparagraphs (A) and (B)” and
4 inserting in lieu thereof “subparagraph (A)”;
5 and

6 (2) in subsection (b)(4)(A)(i), by striking out
7 “all” and inserting in lieu thereof “the”.

8 (b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section
9 303A of the Federal Property and Administrative Services
10 Act of 1949 (41 U.S.C. 253a) is amended—

11 (A) by striking out paragraph (2); and

12 (B) by redesignating paragraph (3) as para-
13 graph (2) and in that paragraph by striking out
14 “paragraphs (1) and (2)” and inserting in lieu
15 thereof “paragraph (1)”.

16 (2) Section 303B(d)(1)(A) of such Act (41 U.S.C.
17 253b) is amended by striking out “all” and inserting in
18 lieu thereof “the”.

19 **SEC. 104. PREAWARD DEBRIEFINGS.**

20 (a) ARMED SERVICES ACQUISITIONS.—Section
21 2305(b) of title 10, United States Code, is amended—

22 (1) by striking out subparagraph (F) of para-
23 graph (5);

24 (2) by redesignating paragraph (6) as para-
25 graph (8); and

1 (3) by inserting after paragraph (5) the follow-
2 ing new paragraphs:

3 “(6)(A) When the contracting officer excludes
4 an offeror submitting a competitive proposal from
5 the competitive range (or otherwise excludes such an
6 offeror from further consideration prior to the final
7 source selection decision), the excluded offeror may
8 request in writing, within three days after the date
9 on which the excluded offeror receives notice of its
10 exclusion, a debriefing prior to award. The contract-
11 ing officer shall make every effort to debrief the un-
12 successful offeror as soon as practicable and may
13 refuse the request for a debriefing if it is not in the
14 best interests of the Government to conduct a de-
15 briefing at that time.

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

21 “(C) The debriefing conducted under this sub-
22 section shall include—

23 “(i) the executive agency’s evaluation of
24 the significant elements in the offeror’s offer;

1 “(ii) a summary of the rationale for the
2 offeror’s exclusion; and

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

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

14 “(7) The contracting officer shall include a
15 summary of any debriefing conducted under para-
16 graph (5) or (6) in the contract file.”.

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

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

22 (2) by redesignating subsections (f), (g), (h),
23 and (i) as subsections (h), (i), (j), and (k), respec-
24 tively; and

1 (3) by inserting after subsection (e) the follow-
2 ing new subsections:

3 “(f)(1) When the contracting officer excludes an
4 offeror submitting a competitive proposal from the com-
5 petitive range (or otherwise excludes such an offeror from
6 further consideration prior to the final source selection de-
7 cision), the excluded offeror may request in writing, within
8 3 days after the date on which the excluded offeror re-
9 ceives notice of its exclusion, a debriefing prior to award.
10 The contracting officer shall make every effort to debrief
11 the unsuccessful offeror as soon as practicable and may
12 refuse the request for a debriefing if it is not in the best
13 interests of the Government to conduct a debriefing at
14 that time.

15 “(2) The contracting officer is required to debrief an
16 excluded offeror in accordance with subsection (e) of this
17 section only if that offeror requested and was refused a
18 preaward debriefing under paragraph (1) of this sub-
19 section.

20 “(3) The debriefing conducted under this subsection
21 shall include—

22 “(A) the executive agency’s evaluation of the
23 significant elements in the offeror’s offer;

24 “(B) a summary of the rationale for the
25 offeror’s exclusion; and

1 “(C) reasonable responses to relevant questions
2 posed by the debriefed offeror as to whether source
3 selection procedures set forth in the solicitation, ap-
4 plicable regulations, and other applicable authorities
5 were followed by the executive agency.

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

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

13 **SEC. 105. CONTRACT TYPES.**

14 (a) ARMED SERVICES ACQUISITIONS.—(1) Section
15 2306 of title 10, United States Code, is amended—

16 (A) by inserting before the period at the end of
17 subsection (a) the following: “, based on market con-
18 ditions, established commercial practice (if any) for
19 the product or service being acquired, and sound
20 business judgment”;

21 (B) by striking out subsections (b), (d), (e), (f),
22 and (h); and

23 (C) by redesignating subsection (g) as sub-
24 section (b).

1 (2) The heading of such section is amended to read
2 as follows:

3 **“§ 2306. Contract types”.**

4 (b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section
5 304 of the Federal Property and Administrative Services
6 Act of 1949 (41 U.S.C. 254) is amended—

7 (A) by inserting before the period at the end of
8 the first sentence of subsection (a) the following: “,
9 based on market conditions, established commercial
10 practice (if any) for the product or service being ac-
11 quired, and sound business judgment”; and

12 (B) by striking out “Every contract award” in
13 the second sentence of subsection (a) and all that
14 follows through the end of the section.

15 (2) The heading of such section is amended to read
16 as follows:

17 **“SEC. 304. CONTRACT TYPES.”.**

18 (c) CONFORMING REPEALS.—(1) Sections 4540,
19 7212, and 9540 of title 10, United States Code, are re-
20 pealed.

21 (2) The table of sections at the beginning of chapter
22 433 of such title is amended by striking out the item relat-
23 ing to section 4540.

1 (3) The table of sections at the beginning of chapter
2 631 of such title is amended by striking out the item relat-
3 ing to section 7212.

4 (4) The table of sections at the beginning of chapter
5 933 of such title is amended by striking out the item relat-
6 ing to section 9540.

7 (d) CIVIL WORKS AUTHORITY.—(1) Chapter 137 of
8 title 10, United States Code, is amended by adding at the
9 end the following new section:

10 **“§2332. Contracts for architectural and engineering**
11 **services and construction design**

12 “The Secretary of Defense and the Secretaries of the
13 military departments may enter into contracts for archi-
14 tectural and engineering services in connection with a mili-
15 tary construction or family housing project or for other
16 Department of Defense or military department purposes.
17 Such contracts shall be awarded in accordance with the
18 Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.).”.

19 (2) The table of sections at the beginning of chapter
20 137 of such title is amended by adding at the end the
21 following new item:

“2332. Contracts for architectural and engineering services and construction de-
sign.”.

22 (3) Section 2855 of such title is repealed. The table
23 of sections at the beginning of chapter 169 of such title

1 is amended by striking out the item relating to such sec-
2 tion.

3 **SEC. 106. CONTRACTOR PERFORMANCE.**

4 (a) REQUIREMENT FOR SYSTEM.—The Office of Fed-
5 eral Procurement Policy Act (41 U.S.C. 401 et seq.) is
6 amended by adding at the end the following new section:

7 **“SEC. 35. CONTRACTOR PERFORMANCE.**

8 “(a) VERIFICATION AUTHORIZED.—The Federal Ac-
9 quisition Regulation shall provide a contractor verification
10 system for the procurement of particular property or serv-
11 ices that are procured by executive agencies on a repetitive
12 basis. Under the system, the head of an executive agen-
13 cy—

14 “(1) shall use competitive procedures to verify
15 contractors as eligible for contracts to furnish such
16 property or services; and

17 “(2) shall award verifications on the basis of
18 the relative efficiency and effectiveness of the busi-
19 ness practices, level of quality, and demonstrated
20 contract performance of the responding contractors
21 with regard to the particular property or services.

22 “(b) PROCUREMENT FROM VERIFIED CONTRAC-
23 TORS.—The Federal Acquisition Regulation shall provide
24 procedures under which the head of an executive agency
25 may enter into a contract for a procurement of property

1 or services referred to in subsection (a) on the basis of
2 a competition among contractors verified with respect to
3 such property or services pursuant to that subsection.

4 “(c) TERMINATION OF VERIFICATION.—The Federal
5 Acquisition Regulation shall provide procedures under
6 which the head of an executive agency—

7 “(1) may provide for the termination of a ver-
8 ification awarded a contractor under this section
9 upon the expiration of a period specified by the head
10 of an executive agency; and

11 “(2) may revoke a verification awarded a con-
12 tractor under this section upon a determination that
13 the quality of performance of the contractor does not
14 meet standards applied by the head of the executive
15 agency as of the time of the revocation decision.”.

16 (b) REPEALS.—Section 2319 of title 10, United
17 States Code, is repealed. Section 303C of the Federal
18 Property and Administrative Services Act of 1949 (41
19 U.S.C. 253c) is repealed.

20 (c) CLERICAL AMENDMENTS.—(1) The table of con-
21 tents for the Office of Federal Procurement Policy Act
22 (contained in section 1(b)) is amended by adding at the
23 end the following new item:

“Sec. 35. Contractor performance.”.

1 (2) The table of sections at the beginning of chapter
2 137 of title 10, United States Code, is amended by strik-
3 ing out the item relating to section 2319.

4 (3) The table of contents for the Federal Property
5 and Administrative Services Act of 1949 (contained in sec-
6 tion 1(b)) is amended by striking out the item relating
7 to section 303C.

8 **TITLE II—COMMERCIAL ITEMS**

9 **SEC. 201. COMMERCIAL ITEM EXCEPTION TO REQUIRE-** 10 **MENT FOR COST OR PRICING DATA AND IN-** 11 **FORMATION LIMITATIONS.**

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

15 “(b) EXCEPTIONS.—

16 “(1) IN GENERAL.—Submission of cost or pric-
17 ing data shall not be required under subsection (a)
18 in the case of a contract, a subcontract, or modifica-
19 tion of a contract or subcontract—

20 “(A) for which the price agreed upon is
21 based on—

22 “(i) adequate price competition; or

23 “(ii) prices set by law or regulation;

24 “(B) for the acquisition of a commercial
25 item; or

1 “(C) in an exceptional case when the head
2 of the procuring activity, without delegation, de-
3 termines that the requirements of this section
4 may be waived and justifies in writing the rea-
5 sons for such determination.

6 “(2) MODIFICATIONS OF CONTRACTS AND SUB-
7 CONTRACTS FOR COMMERCIAL ITEMS.—In the case
8 of a modification of a contract or subcontract for a
9 commercial item that is not covered by the exception
10 on the submission of cost or pricing data in para-
11 graph (1)(A) or (1)(B), submission of cost or pricing
12 data shall not be required under subsection (a) if—

13 “(A) the contract or subcontract being
14 modified is a contract or subcontract for which
15 submission of cost or pricing data may not be
16 required by reason of paragraph (1)(A) or
17 (1)(B); and

18 “(B) the modification would not change
19 the contract or subcontract, as the case may be,
20 from a contract or subcontract for the acquisi-
21 tion of a commercial item to a contract or sub-
22 contract for the acquisition of an item other
23 than a commercial item.

24 “(c) AUTHORITY TO REQUIRE COST OR PRICING
25 DATA ON BELOW-THRESHOLD CONTRACTS.—(1) Subject

1 to paragraph (2), when cost or pricing data are not re-
2 quired to be submitted by subsection (a) for a contract,
3 subcontract, or modification of a contract or subcontract,
4 such data may nevertheless be required to be submitted
5 by the head of the procuring activity, but only if the head
6 of the procuring activity determines that such data are
7 necessary for the evaluation by the agency of the reason-
8 ableness of the price of the contract, subcontract, or modi-
9 fication of a contract or subcontract. In any case in which
10 the head of the procuring activity requires such data to
11 be submitted under this subsection, the head of the pro-
12 curing activity shall justify in writing the reason for such
13 requirement.

14 “(2) The head of the procuring activity may not re-
15 quire certified cost or pricing data to be submitted under
16 this paragraph for any contract or subcontract, or modi-
17 fication of a contract or subcontract, covered by the excep-
18 tions in subparagraph (A) or (B) of subsection (b)(1).

19 “(3) The head of a procuring activity may not dele-
20 gate functions under this paragraph.

21 “(d) LIMITATIONS ON OTHER INFORMATION.—The
22 Federal Acquisition Regulation shall include the following:

23 “(1) Provisions concerning the types of infor-
24 mation that contracting officers may consider in de-
25 termining whether the price of a procurement to the

1 Government is fair and reasonable when certified
2 cost or pricing data are not required to be submitted
3 under this section, including appropriate information
4 on the prices at which the same item or similar
5 items have previously been sold that is adequate for
6 evaluating the reasonableness of the price of the pro-
7 posed contract or subcontract for the procurement.

8 “(2) Reasonable limitations on requests for
9 sales data relating to commercial items.

10 “(3) A requirement that a contracting officer
11 shall, to the maximum extent practicable, limit the
12 scope of any request for information relating to com-
13 mercial items from an offeror to only that informa-
14 tion that is in the form regularly maintained by the
15 offeror in commercial operations.

16 “(4) A statement that any information received
17 relating to commercial items that is exempt from
18 disclosure under section 552(b) of title 5 shall not
19 be disclosed by the Federal Government.”.

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

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

22 (B) by redesignating subsection (i) as sub-
23 section (h).

24 (3) Section 2375 of title 10, United States Code, is
25 amended by striking out subsection (c).

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

5 “(b) EXCEPTIONS.—

6 “(1) IN GENERAL.—Submission of cost or pric-
7 ing data shall not be required under subsection (a)
8 in the case of a contract, a subcontract, or a modi-
9 fication of a contract or subcontract—

10 “(A) for which the price agreed upon is
11 based on—

12 “(i) adequate price competition; or

13 “(ii) prices set by law or regulation;

14 “(B) for the acquisition of a commercial
15 item; or

16 “(C) in an exceptional case when the head
17 of the procuring activity, without delegation, de-
18 termines that the requirements of this section
19 may be waived and justifies in writing the rea-
20 sons for such determination.

21 “(2) MODIFICATIONS OF CONTRACTS AND SUB-
22 CONTRACTS FOR COMMERCIAL ITEMS.—In the case
23 of a modification of a contract or subcontract for a
24 commercial item that is not covered by the exception
25 on the submission of cost or pricing data in para-

1 graph (1)(A) or (1)(B), submission of cost or pricing
2 data shall not be required under subsection (a) if—

3 “(A) the contract or subcontract being
4 modified is a contract or subcontract for which
5 submission of cost or pricing data may not be
6 required by reason of paragraph (1)(A) or
7 (1)(B); and

8 “(B) the modification would not change
9 the contract or subcontract, as the case may be,
10 from a contract or subcontract for the acquisi-
11 tion of a commercial item to a contract or sub-
12 contract for the acquisition of an item other
13 than a commercial item.

14 “(c) AUTHORITY TO REQUIRE COST OR PRICING
15 DATA ON BELOW-THRESHOLD CONTRACTS.—(1) Subject
16 to paragraph (2), when cost or pricing data are not re-
17 quired to be submitted by subsection (a) for a contract,
18 subcontract, or modification of a contract or subcontract,
19 such data may nevertheless be required to be submitted
20 by the head of the procuring activity, but only if the head
21 of the procuring activity determines that such data are
22 necessary for the evaluation by the agency of the reason-
23 ableness of the price of the contract, subcontract, or modi-
24 fication of a contract or subcontract. In any case in which
25 the head of the procuring activity requires such data to

1 be submitted under this subsection, the head of the pro-
2 curing activity shall justify in writing the reason for such
3 requirement.

4 “(2) The head of the procuring activity may not re-
5 quire certified cost or pricing data to be submitted under
6 this paragraph for any contract or subcontract, or modi-
7 fication of a contract or subcontract, covered by the excep-
8 tions in subparagraph (A) or (B) of subsection (b)(1).

9 “(3) The head of a procuring activity may not dele-
10 gate the functions under this paragraph.

11 “(d) LIMITATIONS ON OTHER INFORMATION.—The
12 Federal Acquisition Regulation shall include the following:

13 “(1) Provisions concerning the types of infor-
14 mation that contracting officers may consider in de-
15 termining whether the price of a procurement to the
16 Government is fair and reasonable when certified
17 cost or pricing data are not required to be submitted
18 under this section, including appropriate information
19 on the prices at which the same item or similar
20 items have previously been sold that is adequate for
21 evaluating the reasonableness of the price of the pro-
22 posed contract or subcontract for the procurement.

23 “(2) Reasonable limitations on requests for
24 sales data relating to commercial items.

1 “(3) A requirement that a contracting officer
2 shall, to the maximum extent practicable, limit the
3 scope of any request for information relating to com-
4 mercial items from an offeror to only that informa-
5 tion that is in the form regularly maintained by the
6 offeror in commercial operations.

7 “(4) A statement that any information received
8 relating to commercial items that is exempt from
9 disclosure under section 552(b) of title 5 shall not
10 be disclosed by the Federal Government.”.

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

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

13 (B) by redesignating subsection (i) as sub-
14 section (h).

15 **SEC. 202. APPLICATION OF SIMPLIFIED PROCEDURES TO**
16 **COMMERCIAL ITEMS.**

17 (a) **ARMED SERVICES ACQUISITIONS.**—Section
18 2304(e)(1) of title 10, United States Code, as added by
19 section 101(a), is amended by inserting after “special sim-
20 plified procedures” the following: “for purchases of com-
21 mercial items and”.

22 (b) **CIVILIAN AGENCY ACQUISITIONS.**—Section
23 303(e)(1) of the Federal Property and Administrative
24 Services Act of 1949 (41 U.S.C. 253), as added by section
25 101(b), is amended by inserting after “special simplified

1 procedures” the following: “for purchases of commercial
2 items and”.

3 (c) SIMPLIFIED NOTICE.—Section 18 of the Office
4 of Federal Procurement Policy Act (41 U.S.C. 416) is
5 amended in subsection (a)(5) (as redesignated by section
6 101(d))—

7 (1) by striking out “limited”; and

8 (2) by inserting before “submission” the follow-
9 ing: “issuance of solicitations and the”.

10 **SEC. 203. AMENDMENT TO DEFINITION OF COMMERCIAL**
11 **ITEMS.**

12 Section 4(12)(F) of the Office of Federal Procure-
13 ment Policy Act (41 U.S.C. 403(12)(F)) is amended by
14 striking out “catalog”.

15 **SEC. 204. INAPPLICABILITY OF COST ACCOUNTING STAND-**
16 **ARDS TO CONTRACTS AND SUBCONTRACTS**
17 **FOR COMMERCIAL ITEMS.**

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

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

23 “(i) Contracts or subcontracts for the acquisi-
24 tion of commercial items.”; and

25 (2) by striking out clause (iii).

1 **TITLE III—ADDITIONAL REFORM**
2 **PROVISIONS**

3 **SEC. 301. GOVERNMENT RELIANCE ON THE PRIVATE**
4 **SECTOR.**

5 (a) GOVERNMENT RELIANCE ON THE PRIVATE SEC-
6 TOR.—The Office of Federal Procurement Policy Act (41
7 U.S.C. 401 et seq.) is amended by inserting after section
8 16 the following new section:

9 **“SEC. 17. GOVERNMENT RELIANCE ON THE PRIVATE**
10 **SECTOR.**

11 “It has been and continues to be the policy of the
12 Federal Government to rely on commercial sources to sup-
13 ply the products and services the Federal Government
14 needs.”.

15 (b) CLERICAL AMENDMENT.—The table of contents
16 for the Office of Federal Procurement Policy Act (con-
17 tained in section 1(b)) is amended by inserting after the
18 item relating to section 16 the following new item:

“Sec. 17. Government reliance on the private sector.”.

19 **SEC. 302. ELIMINATION OF CERTAIN CERTIFICATION RE-**
20 **QUIREMENTS.**

21 (a) ELIMINATION OF CERTAIN STATUTORY CERTIFI-
22 CATION REQUIREMENTS.—(1)(A) Section 2410 of title 10,
23 United States Code, is amended—

1 (i) in the heading, by striking out “: **certifi-**
2 **cation**”; and

3 (ii) in subsection (a)—

4 (I) in the heading, by striking out “CER-
5 TIFICATION”;

6 (II) by striking out “unless” and all that
7 follows through “that—” and inserting in lieu
8 thereof “unless—”; and

9 (III) in paragraph (2), by striking out “to
10 the best of that person’s knowledge and belief”.

11 (B) The item relating to section 2410 in the table
12 of sections at the beginning of chapter 141 of such title
13 is amended to read as follows:

“Sec. 2410. Requests for equitable adjustment or other relief.”.

14 (2) Section 2410b of title 10, United States Code,
15 is amended in paragraph (2) by striking out “certification
16 and”.

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

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

20 (B) by inserting “and” after the semicolon at
21 the end of subparagraph (A).

22 (4) Section 5152 of the Drug-Free Workplace Act of
23 1988 (41 U.S.C. 701) is amended—

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

4 (B) in subsection (a)(2), by striking out “con-
5 tract includes a certification by the individual” and
6 inserting in lieu thereof “individual agrees”; and

7 (C) in subsection (b)(1)—

8 (i) by striking out subparagraph (A);

9 (ii) by redesignating subparagraph (B) as
10 subparagraph (A) and in that subparagraph by
11 striking out “such certification by failing to
12 carry out”; and

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

15 (b) ELIMINATION OF CERTAIN REGULATORY CER-
16 TIFICATION REQUIREMENTS.—

17 (1) CURRENT CERTIFICATION REQUIRE-
18 MENTS.—Not later than 210 days after the date of
19 the enactment of this Act, any certification required
20 of contractors or offerors by the Federal Acquisition
21 Regulation or an executive agency procurement reg-
22 ulation that is not specifically imposed by statute
23 shall be removed by the Administrator for Federal
24 Procurement Policy from the Federal Acquisition
25 Regulation or such agency regulation unless—

1 (A) written justification for such certifi-
2 cation is provided to the Administrator by the
3 Federal Acquisition Regulatory Council (in the
4 case of a certification in the Federal Acquisition
5 Regulation) or the head of an executive agency
6 (in the case of a certification in an executive
7 agency procurement regulation); and

8 (B) the Administrator approves in writing
9 the retention of such certification.

10 (2) FUTURE CERTIFICATION REQUIREMENTS.—

11 (A) Section 29 of the Office of Federal Procurement
12 Policy Act (41 U.S.C. 425) is amended—

13 (i) by amending the heading to read as fol-
14 lows:

15 **“SEC. 22. CONTRACT CLAUSES AND CERTIFICATIONS.”;**

16 (ii) by inserting “(a) NONSTANDARD CON-
17 TRACT CLAUSES.—” before “The Federal Ac-
18 quisition”; and

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

21 **“(b) PROHIBITION ON CERTIFICATION REQUIRE-**
22 **MENTS.—**A requirement for a certification by a contractor
23 or offeror may not be included in the Federal Acquisition
24 Regulation or an executive agency procurement regulation
25 unless—

1 “(1) the certification is specifically imposed by
2 statute; or

3 “(2) written justification for such certification
4 is provided to the Administrator for Federal Pro-
5 curement Policy by the Federal Acquisition Regu-
6 latory Council (in the case of a certification in the
7 Federal Acquisition Regulation) or the head of an
8 executive agency (in the case of a certification in an
9 executive agency procurement regulation), and the
10 Administrator approves in writing the inclusion of
11 such certification.”.

12 (B) The item relating to section 29 in the table
13 of contents for the Office of Federal Procurement
14 Policy Act (contained in section 1(b)) (41 U.S.C.
15 401 note) is amended to read as follows:

“Sec. 29. Contract clauses and certifications.”.

16 **SEC. 303. AMENDMENT TO COMMENCEMENT AND EXPIRA-**
17 **TION OF AUTHORITY TO CONDUCT CERTAIN**
18 **TESTS OF PROCUREMENT PROCEDURES.**

19 Subsection (j) of section 5061 of the Federal Acquisi-
20 tion Streamlining Act of 1994 (41 U.S.C. 413 note) is
21 amended to read as follows:

22 “(j) COMMENCEMENT AND EXPIRATION OF AUTHOR-
23 ITY.—The authority to conduct a test under subsection
24 (a) in an agency and to award contracts under such a test
25 shall take effect on August 1, 1995, and shall expire on

1 August 1, 2000. Contracts entered into before such au-
2 thority expires in an agency pursuant to a test shall re-
3 main in effect, notwithstanding the expiration of the au-
4 thority to conduct the test under this section.”.

5 **SEC. 304. INTERNATIONAL COMPETITIVENESS.**

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

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

12 (2) by striking out subparagraph (B) of para-
13 graph (1);

14 (3) by redesignating subparagraph (C) of para-
15 graph (1) as subparagraph (B);

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

17 (5) by redesignating paragraph (3) as para-
18 graph (2).

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

1 **SEC. 305. PROCUREMENT INTEGRITY.**

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

5 **“SEC. 27. RESTRICTIONS ON DISCLOSING AND OBTAINING**
6 **CONTRACTOR BID OR PROPOSAL INFORMA-**
7 **TION OR SOURCE SELECTION INFORMATION.**

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

15 “(2) Paragraph (1) applies to any person who—

16 “(A) is a present or former officer or employee
17 of the United States, or a person who is acting or
18 has acted for or on behalf of, or who is advising or
19 has advised the United States with respect to, a
20 Federal agency procurement; and

21 “(B) by virtue of that office, employment, or re-
22 lationship has or had access to contractor bid or pro-
23 posal information or source selection information.

24 “(b) PROHIBITION ON OBTAINING PROCUREMENT
25 INFORMATION.—A person shall not, other than as pro-
26 vided by law, knowingly and willfully obtain contractor bid

1 or proposal information or source selection information be-
2 fore the award of a Federal agency procurement contract
3 to which the information relates.

4 “(c) PROHIBITION ON DISCLOSING OR OBTAINING
5 PROCUREMENT INFORMATION IN CONNECTION WITH A
6 PROTEST.—(1) A person shall not, other than as provided
7 by law, knowingly and willfully violate the terms of a pro-
8 tective order described in paragraph (2) by disclosing or
9 obtaining contractor bid or proposal information or source
10 selection information related to the procurement contract
11 concerned.

12 “(2) Paragraph (1) applies to any protective order
13 issued by the Comptroller General or the board of contract
14 appeals of the General Services Administration in connec-
15 tion with a protest against the award or proposed award
16 of a Federal agency procurement contract.

17 “(d) PENALTIES AND ADMINISTRATIVE ACTIONS.—

18 “(1) CRIMINAL PENALTIES.—

19 “(A) Whoever engages in conduct con-
20 stituting an offense under subsection (a), (b),
21 or (c) shall be imprisoned for not more than
22 one year or fined as provided under title 18,
23 United States Code, or both.

1 “(B) Whoever engages in conduct con-
2 stituting an offense under subsection (a), (b),
3 or (c) for the purpose of either—

4 “(i) exchanging the information cov-
5 ered by such subsection for anything of
6 value, or

7 “(ii) obtaining or giving anyone a
8 competitive advantage in the award of a
9 Federal agency procurement contract,
10 shall be imprisoned for not more than five years
11 or fined as provided under title 18, United
12 States Code, or 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
2 organization received or offered for the prohibited
3 conduct.

4 “(3) ADMINISTRATIVE ACTIONS.—(A) If a Fed-
5 eral agency receives information that a contractor or
6 a person has engaged in conduct constituting an of-
7 fense under subsection (a), (b), or (c), the Federal
8 agency shall consider taking one or more of the fol-
9 lowing actions, as appropriate:

10 “(i) Cancellation of the Federal agency
11 procurement, if a contract has not yet been
12 awarded.

13 “(ii) Rescission of a contract with respect
14 to which—

15 “(I) the contractor or someone acting
16 for the contractor has been convicted for
17 an offense under subsection (a), (b), or (c),
18 or

19 “(II) the head of the agency that
20 awarded the contract has determined,
21 based upon clear and convincing evidence,
22 that the contractor or someone acting for
23 the contractor has engaged in conduct con-
24 stituting such an offense.

1 “(iii) Initiation of suspension or debarment
2 proceedings for the protection of the Govern-
3 ment in accordance with procedures in the Fed-
4 eral Acquisition Regulation.

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

9 “(B) If a Federal agency rescinds a contract
10 pursuant to subparagraph (A)(ii), the United States
11 is entitled to recover, in addition to any penalty pre-
12 scribed by law, the amount expended under the con-
13 tract.

14 “(C) For purposes of any suspension or debar-
15 ment proceedings initiated pursuant to subpara-
16 graph (A)(iii), engaging in conduct constituting an
17 offense under subsection (a), (b), or (c) affects the
18 present responsibility of a Government contractor or
19 subcontractor.

20 “(e) DEFINITIONS.—As used in this section:

21 “(1) The term ‘contractor bid or proposal infor-
22 mation’ means any of the following information sub-
23 mitted to a Federal agency as part of or in connec-
24 tion with a bid or proposal to enter into a Federal
25 agency procurement contract, if that information has

1 not been previously made available to the public or
2 disclosed publicly:

3 “(A) Cost or pricing data (as defined by
4 section 2306a(i) of title 10, United States
5 Code, with respect to procurements subject to
6 that section, and section 304A(i) of Federal
7 Property and Administrative Services Act of
8 1949 (41 U.S.C. 254b(i), with respect to pro-
9 curements subject to that section).

10 “(B) Indirect costs and direct labor rates.

11 “(C) Proprietary information about manu-
12 facturing processes, operations, or techniques
13 marked by the contractor in accordance with
14 applicable law or regulation.

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

18 “(2) The term ‘source selection information’
19 means any of the following information prepared for
20 use by a Federal agency for the purpose of evaluat-
21 ing a bid or proposal to enter into a Federal agency
22 procurement contract, if that information has not
23 been previously made available to the public or dis-
24 closed publicly:

1 “(A) Bid prices submitted in response to a
2 Federal agency solicitation for sealed bids, or
3 lists of those bid prices before public bid open-
4 ing.

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

8 “(C) Source selection plans.

9 “(D) Technical evaluation plans.

10 “(E) Technical evaluations of proposals.

11 “(F) Cost or price evaluations of propos-
12 als.

13 “(G) Competitive range determinations
14 that identify proposals that have a reasonable
15 chance of being selected for award of a con-
16 tract.

17 “(H) Rankings of bids, proposals, or com-
18 petitors.

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

21 “(J) Other information marked as ‘source
22 selection information’ based on a case-by-case
23 determination by the head of the agency, his
24 designee, or the contracting officer that its dis-
25 closure would jeopardize the integrity or suc-

1 successful completion of the Federal agency pro-
2 curement to which the information relates.

3 “(3) The term ‘Federal agency’ has the mean-
4 ing provided such term in section 3 of the Federal
5 Property and Administrative Services Act of 1949
6 (40 U.S.C. 472).

7 “(4) The term ‘Federal agency procurement’
8 means the acquisition (by using competitive proce-
9 dures and awarding a contract) of goods or services
10 (including construction) from non-Federal sources
11 by a Federal agency using appropriated funds.

12 “(5) The term ‘contracting officer’ means a
13 person who, by appointment in accordance with ap-
14 plicable regulations, has the authority to enter into
15 a Federal agency procurement contract on behalf of
16 the Government and to make determinations and
17 findings with respect to such a contract.

18 “(6) The term ‘protest’ means a written objec-
19 tion by an interested party to the award or proposed
20 award of a Federal agency procurement contract,
21 pursuant to title IV of the Federal Acquisition Re-
22 form Act of 1995.

23 “(f) LIMITATION ON PROTESTS.—No person may file
24 a protest against the award or proposed award of a Fed-
25 eral agency procurement contract alleging an offense

1 under subsection (a), (b), or (c), of this section, nor may
2 the Comptroller General or the board of contract appeals
3 of the General Services Administration consider such an
4 allegation in deciding a protest, unless that person re-
5 ported to the Federal agency responsible for the procure-
6 ment information that the person believed constituted evi-
7 dence of the offense no later than 14 days after the person
8 first discovered the possible offense.

9 “(g) SAVINGS PROVISIONS.—This section does not—

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

14 “(2) restrict a contractor from disclosing its
15 own bid or proposal information or the recipient
16 from receiving that information;

17 “(3) restrict the disclosure or receipt of infor-
18 mation relating to a Federal agency procurement
19 after it has been canceled by the Federal agency be-
20 fore contract award unless the Federal agency plans
21 to resume the procurement;

22 “(4) authorize the withholding of information
23 from, nor restrict its receipt by, Congress, a commit-
24 tee or subcommittee of Congress, the Comptroller

1 General, a Federal agency, or an inspector general
2 of a Federal agency;

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

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

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

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

16 (2) Section 33 of the Federal Energy Adminis-
17 tration Act of 1974 (15 U.S.C. 789).

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

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

21 (5) The first section 19 of the Federal Non-
22 nuclear Energy Research and Development Act of
23 1974 (42 U.S.C. 5918).

24 (c) CLERICAL AMENDMENTS.—

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

5 (2) The table of sections at the beginning of
6 chapter 15 of title 18, United States Code, is
7 amended by striking out the item relating to section
8 281.

9 (3) Section 32 of the Office of Federal Procure-
10 ment Policy Act (41 U.S.C. 428) is amended by re-
11 designating subsections (d), (e), (f), and (g) as sub-
12 sections (c), (d), (e), and (f), respectively.

13 **SEC. 306. FURTHER ACQUISITION STREAMLINING PROVI-**
14 **SIONS.**

15 (a) PURPOSE OF OFFICE OF FEDERAL PROCURE-
16 MENT POLICY.—(1) Section 5(a) of the Office of Federal
17 Procurement Policy Act (41 U.S.C. 404) is amended to
18 read as follows:

19 “(a) To promote economy, efficiency, and effective-
20 ness in the procurement of property and services by the
21 executive branch of the Federal Government, there shall
22 be an Office of Federal Procurement Policy (hereinafter
23 referred to as the ‘Office’) in the Office of Management
24 and Budget to provide overall direction of Government-

1 wide procurement policies, regulations, procedures, and
2 forms for executive agencies.”.

3 (2) Sections 2 and 3 of such Act (41 U.S.C. 401 and
4 402) are repealed.

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

8 (c) REPEAL OF OBSOLETE PROVISIONS.—(1) Sec-
9 tions 10 and 11 of the Office of Federal Procurement Pol-
10 icy Act (41 U.S.C. 409 and 410) are repealed.

11 (d) CLERICAL AMENDMENTS.—The table of contents
12 for the Office of Federal Procurement Policy Act (con-
13 tained in section 1(b)) is amended by striking out the
14 items relating to sections 2, 3, 8, 10, and 11.

15 **TITLE IV—STREAMLINING OF**
16 **DISPUTE RESOLUTION**
17 **Subtitle A—General Provisions**

18 **SEC. 401. DEFINITIONS.**

19 In this title:

20 (1) The term “Board” means the United States
21 Board of Contract Appeals.

22 (2) The term “Board judge” means a member
23 of the United States Board of Contract Appeals.

24 (3) The term “Chairman” means the Chairman
25 of the United States Board of Contract Appeals.

1 (4) The term “executive agency” has the mean-
2 ing given by section 2(2) of the Contract Disputes
3 Act of 1978 (41 U.S.C. 601(2)).

4 (5) The term “alternative means of dispute res-
5 olution” has the meaning given by section 571(3) of
6 title 5, United States Code.

7 (6) The term “protest” means a written objec-
8 tion by an interested party to any of the following:

9 (A) A solicitation or other request by an
10 executive agency for offers for a contract for
11 the procurement of property or services.

12 (B) The cancellation of such a solicitation
13 or other request.

14 (C) An award or proposed award of such
15 a contract.

16 (D) A termination or cancellation of an
17 award of such a contract, if the written objec-
18 tion contains an allegation that the termination
19 or cancellation is based in whole or in part on
20 improprieties concerning the award of the con-
21 tract.

22 (7) The term “interested party”, with respect
23 to a contract or a solicitation or other request for of-
24 fers, means an actual or prospective bidder or
25 offeror whose direct economic interest would be af-

1 fected by the award of the contract or by failure to
2 award the contract.

3 (8) The term “prevailing party”, with respect
4 to a determination of the Board under subsection
5 424(b) that a decision of a contracting officer vio-
6 lates a statute or regulation, means a party that
7 demonstrated such violation.

8 **Subtitle B—Establishment of the**
9 **United States Board of Contract**
10 **Appeals**

11 **SEC. 411. ESTABLISHMENT.**

12 There is established in the executive branch of the
13 Government an independent establishment to be known as
14 the United States Board of Contract Appeals.

15 **SEC. 412. MEMBERSHIP.**

16 (a) APPOINTMENT.—(1) The Board shall consist of
17 Board judges appointed by the Chairman, without regard
18 to political affiliation and solely on the basis of the profes-
19 sional qualifications required to perform the duties and
20 responsibilities of a Board judge, from a register of appli-
21 cants maintained by the Board.

22 (2) The members of the Board shall be selected and
23 appointed to serve in the same manner as administrative
24 law judges appointed pursuant to section 3105 of title 5,
25 United States Code, with an additional requirement that

1 such members shall have had not fewer than five years'
2 experience in public contract law.

3 (3) Notwithstanding paragraph (2), the following
4 persons shall be considered qualified to serve as Board
5 judges:

6 (A) Any full-time member of an agency board
7 of contract appeals serving as such on the day before
8 the effective date of this title.

9 (B) Any person serving on the day before the
10 effective date of this title in a position at a level of
11 assistant general counsel or higher with authority
12 delegated from the Comptroller General to decide
13 bid protests under subchapter V of chapter 35 of
14 title 31, United States Code.

15 (b) REMOVAL.—Members of the Board shall be sub-
16 ject to removal in the same manner as administrative law
17 judges, as provided in section 7521 of title 5, United
18 States Code.

19 (c) COMPENSATION.—Compensation for the Chair-
20 man and all other members of the Board shall be deter-
21 mined under section 5273a of title 5, United States Code.

22 **SEC. 413. CHAIRMAN.**

23 (a) DESIGNATION.—(1) The Chairman shall be des-
24 igned by the President to serve for a term of five years.
25 The President shall select the Chairman from among sit-

1 ting Board judges each of whom has had at least five years
2 of service—

3 (A) as a member of an agency board of contract
4 appeals; or

5 (B) in a position at a level of assistant general
6 counsel or higher with authority delegated from the
7 Comptroller General to decide bid protests under
8 subchapter V of chapter 35 of title 31, United
9 States Code (as in effect on the day before the effec-
10 tive date of this title).

11 (2) A Chairman may continue to serve after the expi-
12 ration of the Chairman's term until a successor has taken
13 office. A Chairman may be reappointed any number of
14 times.

15 (b) RESPONSIBILITIES.—The Chairman shall be re-
16 sponsible on behalf of the Board for the executive and ad-
17 ministrative operation of the Board, including functions
18 of the Board with respect to the following:

19 (1) The selection, appointment, and fixing of
20 the compensation of such personnel, pursuant to
21 part III of title 5, United States Code, as the Chair-
22 man considers necessary or appropriate, including a
23 Clerk of the Board, a General Counsel, and clerical
24 and legal assistance for Board judges.

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

4 (3) The response to any request that may be
5 made by Congress or the Office of Management and
6 Budget.

7 (4) The allocation of funds among the various
8 functions of the Board.

9 (5) The entering into and performance of such
10 contracts, leases, cooperative agreements, or other
11 similar transactions with public agencies and private
12 organizations and persons, and the making of such
13 payments, as the Chairman considers necessary or
14 appropriate to carry out functions vested in the
15 Board.

16 (6) The operation of an Office of the Clerk of
17 the Board, including the receipt of all filings made
18 with the Board, the assignment of cases, and the
19 maintenance of all records of the Board.

20 (7) The acquisition, operation, and maintenance
21 of such automatic data processing resources as may
22 be needed by the Board.

23 (8) The prescription of such rules and regula-
24 tions as the Chairman considers necessary or appro-

1 piate for the administration and management of the
2 Board.

3 (c) VICE CHAIRMEN.—The Chairman may designate
4 up to four other Board judges as Vice Chairmen. The
5 Chairman may divide the Board into two or more divi-
6 sions, and, if such division is made, shall assign a Vice
7 Chairman to head each division. The Vice Chairmen, in
8 the order designated by the Chairman, shall act in the
9 place and stead of the Chairman during the absence of
10 the Chairman.

11 **SEC. 414. RULEMAKING AUTHORITY.**

12 (a) IN GENERAL.—The Board may establish—

13 (1) such procedural rules and regulations as are
14 necessary to the exercise of its functions, including
15 internal rules for the assignment of cases; and

16 (2) statements of policy of general applicability
17 with respect to its functions.

18 (b) PROHIBITION ON REVIEW BY OTHER AGENCY OR
19 PERSON.—Rules and regulations established by the Board
20 (including forms which are a part thereof) shall not be
21 subject to review by any other agency or person (including
22 the Administrator of Information and Regulatory Affairs,
23 pursuant to chapter 35 of title 44, United States Code)
24 in advance of publication.

1 **SEC. 415. LITIGATION AUTHORITY.**

2 Except as provided in section 518 of title 28, United
3 States Code, relating to litigation before the Supreme
4 Court, attorneys designated by the Chairman may appear
5 for, and represent the Board in, any civil action brought
6 in connection with any function carried out by the Board.

7 **SEC. 416. SEAL OF BOARD.**

8 The Chairman shall cause a seal of office to be made
9 for the Board of such design as the Board shall approve.
10 Judicial notice shall be taken of such seal.

11 **SEC. 417. AUTHORIZATION OF APPROPRIATIONS.**

12 There are authorized to be appropriated for fiscal
13 year 1997 and each succeeding fiscal year such sums as
14 may be necessary to carry out the provisions of this title
15 and to enable the Board to perform its functions. Funds
16 appropriate pursuant to this section shall remain available
17 until expended.

18 **Subtitle C—Functions of United**
19 **States Board of Contract Appeals**

20 **SEC. 421. ALTERNATIVE DISPUTE RESOLUTION SERVICES.**

21 (a) REQUIREMENT TO PROVIDE SERVICES UPON RE-
22 QUEST.—The Board shall provide alternative means of
23 dispute resolution for any disagreement regarding a con-
24 tract or prospective contract upon the request of all par-
25 ties to the disagreement.

1 (b) PERSONNEL QUALIFIED TO ACT.—Each Board
2 judge and each attorney employed by the Board shall be
3 considered to be qualified to act for the purpose of con-
4 ducting alternative means of dispute resolution under this
5 section.

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

10 (d) RECUSAL OF CERTAIN PERSONNEL UPON RE-
11 QUEST.—In the event that a matter which is presented
12 to the Board for alternative means of dispute resolution,
13 pursuant to this section, later becomes the subject of for-
14 mal proceedings before the Board, any Board judge or em-
15 ployee who was involved in the alternative means shall,
16 if requested by any party to the formal proceeding, take
17 no part in that proceeding.

18 **SEC. 422. ALTERNATIVE DISPUTE RESOLUTION OF DIS-**
19 **PUTES AND PROTESTS SUBMITTED TO**
20 **BOARD.**

21 With reasonable promptness after the submission to
22 the Board of a contract dispute under section 423 or a
23 bid protest under section 424, a Board judge to whom the
24 contract dispute or protest is assigned shall request the
25 parties to meet with a Board judge, or an attorney em-

1 ployed by the Board, for the purpose of attempting to re-
2 solve the dispute or protest through alternative means of
3 dispute resolution. Formal proceedings in the appeal shall
4 then be suspended until such time as any party or a Board
5 judge to whom the dispute or protest is assigned deter-
6 mines that alternative means of dispute resolution are not
7 appropriate for resolution of the dispute or protest.

8 **SEC. 423. CONTRACT DISPUTES.**

9 The Board shall have jurisdiction as provided by sec-
10 tion 8(a) of the Contract Disputes Act of 1978 (41 U.S.C.
11 601–613).

12 **SEC. 424. PROTESTS.**

13 (a) REVIEW REQUIRED UPON REQUEST.—Upon re-
14 quest of an interested party in connection with any pro-
15 curement conducted by any executive agency, the Board
16 shall review, as provided in this section, any decision by
17 a contracting officer alleged to violate a statute or regula-
18 tion. The authority of the Board to conduct such review
19 shall include the authority to review regulations to deter-
20 mine their consistency with applicable statutes. A decision
21 or order of the Board pursuant to this section shall not
22 be subject to interlocutory appeal or review.

23 (b) STANDARD OF REVIEW.—In deciding a protest,
24 the Board may consider all evidence that is relevant to
25 the decision under protest. It shall accord a presumption

1 of correctness to all facts found and determinations made
2 by the contracting officer whose decision is being pro-
3 tested. The protester may rebut this presumption by show-
4 ing, by a preponderance of the evidence, that a finding
5 or determination was incorrect. The Board may find that
6 a decision by a contracting officer violates a statute or
7 regulation for any of the reasons stated in section 706(2)
8 of title 5, United States Code.

9 (c) DETERMINATION OF WHETHER TO SUSPEND AU-
10 THORITY TO CONDUCT PROCUREMENT IN PROTEST
11 FILED BEFORE CONTRACT AWARD.—(1) When a protest
12 under this section is filed before the award of a contract
13 in a protested procurement, the Board, at the request of
14 an interested party and within 10 days after the submis-
15 sion of the protest, shall hold a hearing to determine
16 whether the Board should suspend the authority of the
17 executive agency involved (or its head) to conduct such
18 procurement until the Board can decide the protest.

19 (2) The Board shall suspend the authority of the ex-
20 ecutive agency (or its head) unless the agency concerned
21 establishes that—

22 (A) absent action by the Board, contract award
23 is likely to occur within 30 days after the hearing;
24 and

1 (B) urgent and compelling circumstances which
2 significantly affect interests of the United States will
3 not permit waiting for the decision of the Board.

4 (3) A suspension under paragraph (2) shall not pre-
5 clude the executive agency concerned from continuing the
6 procurement process up to but not including award of the
7 contract unless the Board determines such action is not
8 in the best interests of the United States.

9 (d) DETERMINATION OF WHETHER TO SUSPEND
10 AUTHORITY TO CONDUCT PROCUREMENT IN PROTEST
11 FILED AFTER CONTRACT AWARD.—(1) If, with respect
12 to an award of a contract, the Board receives notice of
13 a protest under this section within the period described
14 in paragraph (2), the Board shall, at the request of an
15 interested party, hold a hearing to determine whether the
16 Board should suspend the authority of the executive agen-
17 cy involved (or its head) to conduct such procurement
18 until the Board can decide the protest.

19 (2) The period referred to in paragraph (1) is the
20 period beginning on the date on which the contract is
21 awarded and ending at the end of the later of—

22 (A) the tenth day after the date of contract
23 award; or

1 (B) the fifth day after the debriefing date of-
2 fered to an unsuccessful offeror for any debriefing
3 that is requested and, when requested, is required.

4 (3) The Board shall hold the requested hearing with-
5 in 5 days after the date of the filing of the protest or,
6 in the case of a request for debriefing, within 5 days after
7 the later of the date of the filing of the protest or the
8 date of the debriefing.

9 (4) The Board shall suspend the procurement author-
10 ity of the executive agency involved (or its head) to acquire
11 any goods or services under the contract which are not
12 previously delivered and accepted unless such agency es-
13 tablishes that urgent and compelling circumstances which
14 significantly affect interests of the United States will not
15 permit waiting for the decision of the Board.

16 (e) PROCEDURES.—

17 (1) PROCEEDINGS AND DISCOVERY.—The
18 Board shall conduct proceedings and allow such dis-
19 covery as may be required for the expeditious, fair,
20 and reasonable resolution of the protest. The Board
21 shall limit discovery to material which is relevant to
22 the grounds of protest or to such affirmative de-
23 fenses as the executive agency involved, or any inter-
24 venor supporting the agency, may raise.

1 (2) PRIORITY.—Subject to any deadlines im-
2 posed pursuant to section 9(a) of the Contract Dis-
3 putes Act of 1978 (41 U.S.C. 608(a)), the Board
4 shall give priority over contract disputes and alter-
5 native dispute services to protests filed under this
6 section. Except as provided in paragraph (3), the
7 Board shall issue its final decision within 65 days
8 after the date of the filing of the protest, unless the
9 Chairman determines that the specific and unique
10 circumstances of the protest require a longer period,
11 in which case the Board shall issue such decision
12 within the longer period determined by the Chair-
13 man. An amendment that adds a new ground of pro-
14 test should be resolved, to the maximum extent prac-
15 ticable, within the time limits established for resolu-
16 tion of the initial protest.

17 (3) THRESHOLD.—Any protest in which the an-
18 ticipated value of the contract award that will result
19 from the protested procurement, as estimated by the
20 executive agency involved, is less than \$1,000,000
21 shall be considered under simplified rules of proce-
22 dure. These rules shall provide that discovery in
23 such protests shall be in writing only. Such protests
24 shall be decided by a single Board judge, whose deci-
25 sion shall be final and conclusive and shall not be set

1 aside except in cases of fraud. The Board shall issue
2 its final decision in each such protest within 35 days
3 after the date of the filing of the protest.

4 (4) CALCULATION OF TIME FOR ADR.—In cal-
5 culating time for purposes of paragraph (2) or (3)
6 of this subsection, any days during which proceed-
7 ings are suspended for the purpose of attempting to
8 resolve the protest by alternative means of dispute
9 resolution, up to a maximum of 20 days, shall not
10 be counted.

11 (5) DISMISSAL OF FRIVOLOUS PROTESTS.—The
12 Board may dismiss a protest that the Board deter-
13 mines is frivolous or which, on its face, does not
14 state a valid basis for protest.

15 (6) PAYMENT OF COSTS FOR FRIVOLOUS PRO-
16 TESTS.—(A) If the Board expressly finds that a pro-
17 test or a portion of a protest is frivolous or does not
18 state on its face a valid basis for protest, the Board
19 shall recommend that the protester or other inter-
20 ested party who joins the protest be liable to the
21 United States for payment of the costs described in
22 subparagraph (B) unless—

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

1 (ii) the protester obtains documents or
2 other information after the protest is filed with
3 the Board that establishes that the protest or
4 a portion of the protest is frivolous or does not
5 state on its face a valid basis for protest, and
6 the protester then promptly withdraws the pro-
7 test or portion of the protest.

8 (B) The costs referred to in subparagraph (A)
9 are all of the costs incurred by the United States of
10 reviewing the protest, or of reviewing that portion of
11 the protest for which the finding is made, including
12 the fees and other expenses (as defined in section
13 2412(d)(2)(A) of title 28, United States Code) in-
14 curred by the United States in defending the pro-
15 test.

16 (f) DECISIONS AND CORRECTIVE ACTIONS ON PRO-
17 TESTS.—(1) In making a decision on protests filed under
18 this section, the Board shall accord due weight to the goals
19 of economic and efficient procurement, and shall take due
20 account of the rule of prejudicial error.

21 (2) If the Board determines that a decision of a con-
22 tracting officer violates a statute or regulation, the Board
23 may order the agency (or its head) to take such corrective
24 action as the Board considers appropriate. Corrective ac-
25 tion includes recommending that the Federal agency—

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

3 (B) recompute the contract immediately;

4 (C) issue a new solicitation;

5 (D) terminate the contract;

6 (E) award a contract consistent with the re-
7 quirements of such statute and regulation;

8 (F) implement any combination of recommenda-
9 tions under subparagraphs (A), (B), (C), (D), and
10 (E); or

11 (G) implement such other recommendations as
12 the Board determines to be necessary in order to
13 promote compliance with procurement statutes and
14 regulations.

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

20 (4) Any agreement that provides for the dismissal of
21 a protest and involves a direct or indirect expenditure of
22 appropriated funds shall be submitted to the Board and
23 shall be made a part of the public record (subject to any
24 protective order considered appropriate by the Board) be-
25 fore dismissal of the protest.

1 (g) AUTHORITY TO DECLARE ENTITLEMENT TO
2 COSTS.—(1)(A) Whenever the Board determines that a
3 decision of a contracting officer violates a statute or regu-
4 lation, it may, in accordance with section 1304 of title 31,
5 United States Code, further declare an appropriate pre-
6 vailing party to be entitled to the costs of—

7 (i) filing and pursuing the protest, including
8 reasonable attorneys' fees and consultant and expert
9 witness fees, and

10 (ii) bid and proposal preparation.

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

15 (i) consultants and expert witness fees that ex-
16 ceed the highest rate of compensation for expert wit-
17 nesses paid by the Federal Government, or

18 (ii) attorneys' fees that exceed \$150 per hour
19 unless the Board, on a case by case basis, deter-
20 mines that an increase in the cost of living or a spe-
21 cial factor, such as the limited availability of quali-
22 fied attorneys for the proceedings involved, justifies
23 a higher fee.

24 (2) Payment of amounts due from an agency under
25 paragraph (1) or under the terms of a settlement agree-

1 ment under subsection (e)(4) shall be made from the ap-
2 propriation made by section 1304 of title 31, United
3 States Code, for the payment of judgments. The executive
4 agency concerned shall reimburse that appropriation ac-
5 count out of funds available for the procurement.

6 (h) APPEALS.—The final decision of the Board may
7 be appealed as set forth in section 8(d)(1) of the Contract
8 Disputes Act of 1978 by the head of the executive agency
9 concerned and by any interested party, including inter-
10 ested parties who intervene in any protest filed under this
11 section.

12 (i) ADDITIONAL RELIEF.—Nothing contained in this
13 section shall affect the power of the Board to order any
14 additional relief which it is authorized to provide under
15 any statute or regulation.

16 (j) NONEXCLUSIVITY OF REMEDIES.—Nothing con-
17 tained in this section shall affect the right of any inter-
18 ested party to file a protest with the contracting agency
19 or to file an action in the United States Court of Federal
20 Claims or in a United States district court.

21 **SEC. 425. APPLICABILITY TO CONTRACTS FOR COMMER-**
22 **CIAL ITEMS.**

23 Notwithstanding section 34 of the Office of Federal
24 Procurement Policy Act (41 U.S.C. 430), the authority

1 conferred on the Board by this title is applicable to con-
2 tracts for the procurement of commercial items.

3 **Subtitle D—Repeal of Other Stat-**
4 **utes Authorizing Administrative**
5 **Protests**

6 **SEC. 431. REPEALS.**

7 (a) GSBICA PROVISIONS.—Subsection (f) of the
8 Brooks Automatic Data Processing Act (section 111 of the
9 Federal Property and Administrative Services Act of
10 1949; 40 U.S.C. 759) is repealed.

11 (b) GAO PROVISIONS.—Subchapter V of chapter 35
12 of title 31, United States Code (31 U.S.C. 3551–3556)
13 is repealed.

14 **Subtitle E—Transfers and Transi-**
15 **tional, Savings, and Conforming**
16 **Provisions**

17 **SEC. 441. TRANSFER AND ALLOCATION OF APPROPRIA-**
18 **TIONS AND PERSONNEL.**

19 (a) TRANSFER.—The personnel employed in connec-
20 tion with, and the assets, liabilities, contracts, property,
21 records, and unexpended balance of appropriations, au-
22 thorizations, allocations, and other funds employed, held,
23 used, arising from, available to, or to be made available
24 in connection with the functions vested by law in the
25 Comptroller General pursuant to subchapter V of chapter

1 35 of title 31, United States Code, and in the boards of
2 contract appeals established pursuant to section 8 of the
3 Contract Disputes Act of 1978 (41 U.S.C. 607) (as in ef-
4 fect on the day before the effective date of this Act), shall
5 be transferred to the Board for appropriate allocation by
6 the Chairman.

7 (b) EFFECT ON PERSONNEL.—Personnel transferred
8 pursuant to this title shall not be separated or reduced
9 in classification or compensation for one year after such
10 transfer, except for cause.

11 (c) REGULATIONS.—(1) The Board shall prescribe
12 regulations for the release of competing employees in a
13 reduction in force that gives due effect to—

14 (A) efficiency or performance ratings;

15 (B) military preference; and

16 (C) tenure of employment.

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

21 **SEC. 442. TERMINATIONS AND SAVINGS PROVISIONS.**

22 (a) TERMINATION OF BOARDS OF CONTRACT AP-
23 PEALS.—On the effective date of this title, the boards of
24 contract appeals established pursuant to section 8 of the
25 Contract Disputes Act of 1978 (41 U.S.C. 607) (as in ef-

1 fect on the day before the effective date of this Act) shall
2 terminate.

3 (b) SAVINGS PROVISION FOR CONTRACT DISPUTE
4 MATTERS PENDING BEFORE BOARDS.—The provisions of
5 this title shall not affect any proceedings (other than bid
6 protests pending before the board of contract appeals of
7 the General Services Administration) pending on the effec-
8 tive date of this Act before any board of contract appeals
9 described in subsection (a). Such proceedings shall be con-
10 tinued by the Board, and orders which were issued in any
11 such proceeding by any board of contract appeals shall
12 continue in effect until modified, terminated, superseded,
13 or revoked by the Board, by a court of competent jurisdic-
14 tion, or by operation of law.

15 (c) BID PROTEST TRANSITION PROVISIONS.—(1) No
16 protest may be submitted to the Comptroller General pur-
17 suant to section 3553(a) of title 31, United States Code,
18 or to the board of contract appeals for the General Serv-
19 ices Administration pursuant to the Brooks Automatic
20 Data Processing Act (40 U.S.C. 759) on or after the effec-
21 tive date of this Act.

22 (2) The provisions repealed by section 401 shall con-
23 tinue to apply to proceedings pending on the effective date
24 of this title before the board of contract appeals of the
25 General Services Administration and the Comptroller Gen-

1 eral pursuant to those provisions, until the board or the
2 Comptroller General determines such proceedings have
3 been completed.

4 **SEC. 443. CONTRACT DISPUTE AUTHORITY OF BOARD.**

5 (a) Section 2 of the Contract Disputes Act of 1978
6 (41 U.S.C. 601) is amended by striking out paragraph (6)
7 and inserting in lieu thereof the following:

8 “(6) the term ‘Board’ means the United States
9 Board of Contract Appeals; and”.

10 (b) Section 6(c) of the Contract Disputes Act of 1978
11 (41 U.S.C. 605(c)) is amended—

12 (1) in paragraph (4)—

13 (A) by striking out “the agency board of
14 contract appeals” and inserting in lieu thereof
15 “the United States Board of Contract Ap-
16 peals”; and

17 (B) by striking out “the board” and insert-
18 ing in lieu thereof “the Board”; and

19 (2) in paragraph (6)—

20 (A) by striking out “an agency board of
21 contract appeals” and inserting in lieu thereof
22 “the United States Board of Contract Ap-
23 peals”; and

24 (B) by striking out “agency board” and in-
25 serting in lieu thereof “the Board”.

1 (c) Section 7 of the Contract Disputes Act of 1978
2 (41 U.S.C. 606) is amended by striking out “an agency
3 board of contract appeals” and inserting in lieu thereof
4 “the United States Board of Contract Appeals”.

5 (d) Section 8 of the Contract Disputes Act of 1978
6 (41 U.S.C. 607) is amended—

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

8 “UNITED STATES BOARD OF CONTRACT APPEALS”;

9 (2) by striking out subsections (a), (b), and (c);

10 (3) in subsection (d)—

11 (A) by striking out the first sentence and

12 inserting in lieu thereof the following:

13 “The United States Board of Contract Appeals shall have
14 jurisdiction to decide any appeal from a decision of a con-
15 tracting officer of any executive agency relative to a con-
16 tract made by that agency.”; and

17 (B) in the second sentence, by striking out

18 “the agency board” and inserting in lieu thereof

19 “the Board”;

20 (4) in subsection (e), by striking out “An agen-

21 cy board” and inserting in lieu thereof “The United

22 States Board of Contract Appeals”;

23 (5) in subsection (f), by striking out “each

24 agency board” and inserting in lieu thereof “the

25 United States Board of Contract Appeals”;

26 (6) in subsection (g)—

1 (A) in the first sentence of paragraph (1),
2 by striking out “an agency board of contract
3 appeals” and inserting in lieu thereof “the
4 United States Board of Contract Appeals”;

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

6 (C) by redesignating paragraph (3) as
7 paragraph (2);

8 (7) by striking out subsections (h) and (i); and

9 (8) by redesignating subsections (d), (e), (f),
10 and (g) (as amended) as subsections (a), (b), (c),
11 and (d), respectively.

12 (e) Section 9 of the Contract Disputes Act of 1978
13 (41 U.S.C. 608) is amended—

14 (1) in subsection (a), by striking out “each
15 agency board” and inserting in lieu thereof “the
16 United States Board of Contract Appeals”; and

17 (2) in subsection (b), by striking out “the agen-
18 cy board” and inserting in lieu thereof “the Board”.

19 (f) Section 10 of the Contract Disputes Act of 1978
20 (41 U.S.C. 609) is amended—

21 (1) in subsection (a)—

22 (A) in the first sentence of paragraph

23 (1)—

1 (i) by striking out “Except as pro-
2 vided in paragraph (2), and in” and insert-
3 ing in lieu thereof “In”; and

4 (ii) by striking out “an agency board”
5 and inserting in lieu thereof “the United
6 States Board of Contract Appeals”;

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

8 (C) by redesignating paragraph (3) as
9 paragraph (2), and in that paragraph, by strik-
10 ing out “or (2)”;

11 (2) in subsection (b), by striking out “any
12 agency board” and “the agency board” and inserting
13 in lieu of each “the Board”;

14 (3) in subsection (c), by striking out “an agen-
15 cy board” and “the agency board” and inserting in
16 lieu of each “the Board”; and

17 (4) in subsection (d), by striking out “one or
18 more agency boards” and “or among the agency
19 boards involved” and inserting in lieu of each “the
20 Board”.

21 (g) Section 11 of the Contract Disputes Act of 1978
22 (41 U.S.C. 610) is amended—

23 (1) in the first sentence, by striking out “an
24 agency board of contract appeals” and inserting in

1 lieu thereof “the United States Board of Contract
2 Appeals”; and

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

8 (h) Section 13 of the Contract Disputes Act of 1978
9 (41 U.S.C. 612) is amended—

10 (1) in subsection (b), by striking out “an agen-
11 cy board of contract appeals” and inserting in lieu
12 thereof “the United States Board of Contract Ap-
13 peals”; and

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

17 **SEC. 444. REFERENCES TO AGENCY BOARDS OF CONTRACT**
18 **APPEALS.**

19 Any reference to an agency board of contract appeals
20 in any provision of law or in any rule, regulation, or other
21 paper of the United States shall be treated as referring
22 to the United States Board of Contract Appeals.

23 **SEC. 445. CONFORMING AMENDMENTS.**

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

1 (1) in subsection (a)(1), by striking out “an
2 agency board of contract appeals appointed under
3 section 8 of the Contract Disputes Act of 1978” and
4 inserting in lieu thereof “the United States Board of
5 Contract Appeals”;

6 (2) in subsection (a)(2), by striking out “an
7 agency board of contract appeals established pursu-
8 ant to section 8 of the Contract Disputes Act of
9 1978” and inserting in lieu thereof “the United
10 States Board of Contract Appeals”; and

11 (3) in subsection (b), by striking out “an ap-
12 peals board” each place it appears and inserting in
13 lieu thereof “the appeals board”.

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

16 (A) in paragraph (1), by striking out “sub-
17 chapter V of chapter 35 of title 31” and inserting
18 in lieu thereof “title IV of the Federal Acquisition
19 Reform Act of 1995”; and

20 (B) by striking out paragraph (3).

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

22 (A) in paragraph (1), by striking out “in sub-
23 paragraphs (A) through (F) of subsection (b)(1) of
24 section 3554 of title 31” and inserting in lieu there-

1 of “section 424(f)(2) of the Federal Acquisition Re-
2 form Act of 1995”; and

3 (B) in paragraph (2), by striking out “para-
4 graph (1) of section 3554(c) of title 31” and insert-
5 ing in lieu thereof “section 424(g)(1)(A) of the Fed-
6 eral Acquisition Reform Act of 1995”.

7 (c) FEDERAL PROPERTY AND ADMINISTRATIVE
8 SERVICES ACT OF 1949.—(1) Section 303B(h) of the
9 Federal Property and Administrative Services Act of 1949
10 (41 U.S.C. 253b(h)) is amended—

11 (A) in paragraph (1), by striking out “sub-
12 chapter V of chapter 35 of title 31” and inserting
13 in lieu thereof “title IV of the Federal Acquisition
14 Reform Act of 1995”; and

15 (B) by striking out paragraph (3).

16 (2) Section 303B(i) of such Act (41 U.S.C. 253b(i))
17 is amended—

18 (A) in paragraph (1), by striking out “in sub-
19 paragraphs (A) through (F) of subsection (b)(1) of
20 section 3554 of title 31” and inserting in lieu there-
21 of “section 424(f)(2) of the Federal Acquisition Re-
22 form Act of 1995”; and

23 (B) in paragraph (2), by striking out “para-
24 graph (1) of section 3554(c) of title 31” and insert-

1 ing in lieu thereof “section 424(g)(1)(A) of the Fed-
2 eral Acquisition Reform Act of 1995”.

3 **Subtitle F—Effective Date; Interim**
4 **Appointment and Rules**

5 **SEC. 451. EFFECTIVE DATE.**

6 This title shall take effect on October 1, 1996.

7 **SEC. 452. INTERIM APPOINTMENT.**

8 The Board judge serving as chairman of the board
9 of contract appeals of the General Services Administration
10 on the date of the enactment of this Act shall serve as
11 Chairman during the two-year period beginning on the ef-
12 fective date of this title, unless such individual resigns
13 such position or the position otherwise becomes vacant be-
14 fore the expiration of such period. The authority vested
15 in the President by section 413 shall take effect upon the
16 expiration of such two-year period or on the date such po-
17 sition is vacated, whichever occurs earlier.

18 **SEC. 453. INTERIM RULES.**

19 (a) RULES OF PROCEDURE.—Until such date as the
20 Board promulgates rules of procedure, the rules of proce-
21 dure of the board of contract appeals of the General Serv-
22 ices Administration, as in effect on the effective date of
23 this Act, shall be the rules of procedure of the Board.

24 (b) RULES REGARDING BOARD JUDGES.—Until such
25 date as the Board promulgates rules governing the estab-

1 lishment and maintenance of a register of eligible appli-
2 cants and the selection of Board judges, the rules of the
3 Armed Services Board of Contract Appeals governing the
4 establishment and maintenance of a register of eligible ap-
5 plicants and the selection of board members shall be the
6 rules of the Board governing the establishment and main-
7 tenance of a register of eligible applicants and the selec-
8 tion of Board judges, except that any provisions of the
9 rules of the Armed Services Board of Contract Appeals
10 that authorize any individual other than the chairman of
11 such board to select a Board judge shall have no effect.

12 **TITLE V—EFFECTIVE DATES** 13 **AND IMPLEMENTATION**

14 **SEC. 501. EFFECTIVE DATE AND APPLICABILITY.**

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

19 (b) **APPLICABILITY OF AMENDMENTS.**—(1) An
20 amendment made by this Act shall apply, in the manner
21 prescribed in the final regulations promulgated pursuant
22 to section 502 to implement such amendment, with respect
23 to any solicitation that is issued, any unsolicited proposal
24 that is received, and any contract entered into pursuant

1 to such a solicitation or proposal, on or after the date de-
2 scribed in paragraph (3).

3 (2) An amendment made by this Act shall also apply,
4 to the extent and in the manner prescribed in the final
5 regulations promulgated pursuant to section 502 to imple-
6 ment such amendment, with respect to any matter related
7 to—

8 (A) a contract that is in effect on the date de-
9 scribed in paragraph (3);

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

12 (C) any other proceeding or action that is ongo-
13 ing on the date described in paragraph (3).

14 (3) The date referred to in paragraphs (1) and (2)
15 is the date specified in such final regulations. The date
16 so specified shall be October 1, 1996, or any earlier date
17 that is not within 30 days after the date on which such
18 final regulations are published.

19 **SEC. 502. IMPLEMENTING REGULATIONS.**

20 (a) **PROPOSED REVISIONS.**—Proposed revisions to
21 the Federal Acquisition Regulation and such other pro-
22 posed regulations (or revisions to existing regulations) as
23 may be necessary to implement this Act shall be published
24 in the Federal Register not later than 210 days after the
25 date of the enactment of this Act.

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

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

7 (d) MODIFICATIONS.—Final regulations promulgated
8 pursuant to this section to implement an amendment
9 made by this Act may provide for modification of an exist-
10 ing contract without consideration upon the request of the
11 contractor.

12 (e) SAVINGS PROVISIONS.—(1) Nothing in this Act
13 shall be construed to affect the validity of any action taken
14 or any contract entered into before the date specified in
15 the regulations pursuant to section 501(b)(3) except to the
16 extent and in the manner prescribed in such regulations.

17 (2) Except as specifically provided in this Act, noth-
18 ing in this Act shall be construed to require the renegoti-
19 ation or modification of contracts in existence on the date
20 of the enactment of this Act.

21 (3) Except as otherwise provided in this Act, a law
22 amended by this Act shall continue to be applied according
23 to the provisions thereof as such law was in effect on the
24 day before the date of the enactment of this Act until—

1 (A) the date specified in final regulations imple-
2 menting the amendment of that law (as promulgated
3 pursuant to this section); or

4 (B) if no such date is specified in regulations,
5 October 1, 1996.

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