

March 12, 2002



# Testimony

Statement for the Record  
Robert J. Lieberman  
Deputy Inspector General  
Department Defense  
to the  
Subcommittee on Technology and  
Procurement Policy  
House Committee on Government Reform  
on  
The Services Acquisition Reform Act (SARA) of 2002

Hearing Date: March 7, 2002

Report No. D-2002-064

Department of Defense  
Office of the Inspector General

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DEPARTMENT OF DEFENSE  
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MAR 12 2002

Honorable Tom Davis  
Chairman, Subcommittee on  
Technology and Procurement Policy  
Committee on Government Reform  
House of Representatives  
Washington, D.C. 20515-6142

Dear Mr. Chairman:

This letter provides our views on the legislation "Service Acquisition Reform Act," HR 3832. During the hearing on March 7, 2002, the chair agreed to the request of the Honorable Jim Turner, Ranking Member, to include the comments of this office in the hearing record.

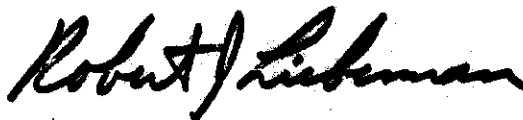
The Department of Defense procurement system is the largest in the world with \$175 billion of acquisitions in fiscal year 2001. The acquisition process has been greatly improved by reform legislation since 1994, but the implementation of those changes is still incomplete. The pace and effectiveness of implementation have been hampered by a variety of factors, including inadequate training. Nevertheless, we believe that the reform legislation of the 1990's has provided the Department with powerful tools and authorities to improve acquisition performance and their positive effect should become more evident over the next several years.

We welcome your interest in the acquisition of services, which is an area that receives far less oversight than does the procurement of equipment and supplies. In the Department of Defense, which purchases over \$56 billion of services annually, the services segment of the acquisition program could easily be considered to be one of the largest Federal acquisition efforts in its own right. Our audits have consistently indicated problems across the spectrum of requirements determination, procurement strategy, market survey, price analysis, and contract administration. The root causes of those deficiencies, in our view, lie much more in training and staffing than in flawed or excessive laws and regulations. This general view contributes to our concern about several provisions in HR 3832.

We are especially concerned about the proposed broadening of the definition of commercial items, which likely would lead to increased contract risk and higher costs, not the efficiencies that are intended. Our reservations about individual sections and, in some cases, suggestions on how to improve them are spelled out in the enclosed comments for your consideration.

If you have any questions regarding this matter, please contact me or Mr. John R. Crane, Director, Office of Congressional Liaison, at (703) 604-8324.

Sincerely,

A handwritten signature in black ink that reads "Robert J. Lieberman". The signature is written in a cursive style with a large, prominent "R" at the beginning.

Robert J. Lieberman  
Deputy Inspector General

Enclosure

cc: Honorable Jim Turner  
Ranking Minority Member

Inspector General, Department of Defense, Comments on the  
Service Acquisition Reform Act (HR 3832)

Section 103 and 104. Government Industry Exchange Program and Reimbursement of Costs. Sections 3702 and 3703 would permit Government employees, at the GS-11 level, or an equivalent level, working in the field of Federal acquisition or acquisition management, who are considered exceptional performers by their employers, to be detailed to private sector organizations. The period of such details would be one year and could be extended for one year. In the case of the agency employee, there would be a requirement for the agency employee to serve in the civil service, upon completion of the assignment, for a period equal to the length of the detail.

We support the goal of promoting the exchange of expertise between the Government and private industry. However, we have concerns regarding the proposed initiative and urge that comments be sought from the Office of Government Ethics and Office of Personnel Management.

Section 3704 allows the private sector to transfer or detail employees to the Federal Government while the employee continues to receive benefits from the private sector. The proposal will make the private sector employee subject to many ethics provisions. However, we believe the proposal should be modified to state that the private sector employees detailed to the Department cannot perform inherently Governmental functions such as policy making, supervision of government employees and acquisition.

Section 107. Authorization of Telecommuting for Federal Contractors. This section would allow telecommuting by contractor personnel while working on a Federal contract. We are not opposed to this section; however, we were not aware of any current prohibition on telecommuting by contractor personnel and therefore question the need for this provision.

Section 202. Increased Role for Defense Contract Management Agency (DCMA). This section would require the Under Secretary of Defense for Acquisition, Technology, and Logistics to review the feasibility of establishing the Defense Contract Management Agency (DCMA) as the primary organization responsible for performing contract management services on DoD base operating service contracts in excess of \$5 million.

We do not support the proposed change. The DoD previously studied the issue when DCMA was established in the early 1990s and concluded that base operating service contracts can best be administered by the contracting organization on the base, post,

camp, or station. In recognition of this fact, the Defense Federal Acquisition Regulation Supplement (DFARS) 242.202 provides that contract administration functions for base, post, camp, and station contracts on a military installation are normally the responsibility of the installation or tenant commander. The local base commander should have the personnel responsible for management of the service contracts accountable to the commander to ensure good performance. We see no reason to revisit this issue.

Section 204. Statutory and Regulatory Review. This section requires the Administrator of the Office of Federal Procurement Policy to convene another panel of acquisition experts to review statutes and regulations that hinder commercial practices and performance based contracting, and for the panel to report its findings within one year. While we support continuing efforts to promote acquisition reform, we question whether another panel is needed at this time, particularly given the breadth of the review conducted previously by the Section 800 panel. If this provision is pursued, at least two years should be allowed for the completion of a thorough review of all procurement statutes and regulations. Our recommendation, however, is to concentrate on previously initiated reform initiatives and not charter still another panel to revisit the same laws and regulations.

Section 211. Payment Terms. This provision creates new payment provisions which differ from the Prompt Payment Act (PPA). The PPA allows the government 7 days to review and return improper invoices and 30 days to make payment from the date the invoice is received (unless otherwise specified in the contract). The proposal would create special provisions applicable only to service contractors. Given the payment requirements of the PPA, as implemented by the Office of Management and Budget at 5 Code of Federal Regulations 1315.9, we recommend this section be revised to either be consistent with the PPA, or to specifically amend the PPA. Given the problems we have observed in numerous audits regarding compliance with the PPA and related payment problems by Defense activities, we do not support creating another set of PPA exceptions which are applicable only to service contractors.

Paragraph (1) allows service contractors to submit bills electronically on a biweekly basis. The current requirement is to submit bills every 30 days.

The DoD has over \$56 billion of service contracts. If you also count research as service contracts, then there is an additional \$21.5 billion. In FY 2001, DoD paid 11.1 million contractor and vendor invoices valued at \$150 billion. If only half of these payments were affected by this provision, DoD would have to process an additional 5.5 million invoices and receiving reports. DoD would need to increase the number of acquisition

staff reviewing invoices and receiving reports and financial staff reviewing, approving and paying the invoices. In the last decade the Defense Finance and Accounting Service (DFAS) has been reduced 37 percent, from 27,000 to 17,000 personnel and reversal of that trend would be difficult. Because of those staffing and processing costs, plus a cost due to accelerated Treasury outlays and related borrowing, the proposal is not revenue neutral.

Further, the proposal does not address the requirement for Government activities to submit receiving reports (hand copy or electronic) to the finance office before payment and the effect of the receipt date in computing interest for late payments, and payment dates. If there is no requirement for verification of the receipt of goods and services, the invoice payments should be treated as contract financing payments and the date of Government receipt and acceptance of the service would no longer be used in computing payment due dates. We do not believe it is a good public policy to pay invoices before verifying the goods or services were received.

Paragraph (2) requires that the date of the invoice shall be the date it is delivered electronically. Currently, under the PPA the date an invoice is received and date-stamped by the office designated in the contract to receive the invoice (designated billing office) is used as the invoice receipt date. Payment due dates are computed based on the later of the invoice receipt date, or the date the Government accepts performance of the service. The PPA requirements, as contained in 5 Code of Federal Regulations (C.F.R.) 1315.9 and Federal Acquisition Regulation (FAR) subpart 32.905, require the vendor to place a date on the invoice. They also require the designated billing office to date-stamp the invoice or use the transmission receipt date as the date of receipt. As mentioned above, we believe it is undesirable to modify payment dates by relaxing the requirement for the receiving report that the activity accepting the services must transmit to DFAS.

Section 221. Increase in Authorization Levels of Federal Purchase Cards. This section would increase the micro-purchase threshold from \$2,500 to \$25,000 and is not limited by its terms to purchases made with Federal purchase cards. This provision is overly broad and, with respect to purchase cards, ignores the well documented problems with implementing the widespread use of cards for micro-purchases. We recently issued Report No. 2002-029 "Summary of DoD Purchase Card Coverage" December 27, 2001. The report covered the Purchase Card Program and identified systemic issues discussed in 382 audit reports issued on the DoD Purchase Card Program from FY 1996 through FY 2001. Systemic issues, defined as problems that were reported in 10 or more reports, included lack of account reconciliation and certification, administrative controls, management oversight, property accountability, separation of

duties, and training. In addition, our on-going review on controls over the DoD Purchase Card Program has identified the need to improve oversight and management controls. Improved controls are needed regarding selecting cardholders, assigning approving officials, setting of spending limits, transactions at "blocked" businesses to which charges are not authorized, purchases declined by banks, purchases made after card accounts were closed, and management of convenience checks. We plan to issue a report with these findings in April 2002. Consequently, we do not support increasing the authorization level until improved controls are in place for purchase cards and are effective in preventing misuse.

Section 224. Architectural and Engineering Services.

Section 224(a) would add a new paragraph to the definition of Architectural and Engineering (A&E) services to make it include "surveying and mapping." Section 224(b) would amend the FAR to include the new definition in section 224(a). Section 224(c) would increase the threshold for contracts set aside for small business for A&E services from \$85,000 to \$300,000.

In FY 2001, DoD acquired \$2.1 billion of A&E services. Architectural and engineering services are awarded using a unique process which usually results in an award to the highest qualified contractor. We do not understand the need for this change in section 224(a) because the definition of A&E services at 40 USC 541 (3)(C) already includes surveying and mapping. We do not believe this amendment is necessary.

There is also no reason to increase the threshold for small business set asides for A&E services. Current legislation provides the Secretary of Defense the flexibility to vary the dollar value threshold whenever needed to ensure that small business concerns receive a reasonable share of A&E services contracts. The section 800 Panel reviewed this statute and the dollar value threshold in 1992 and the drafters of the Federal Acquisition Streamlining Act also considered the need to revise the statute. They concluded that no change was needed because the Secretary of Defense already had adequate flexibility. We are not aware of any new circumstances that would justify revisiting those determinations.

Section 301. Revisions to Share-in-Savings Initiatives. The section allows use of share-in-savings contracts for up to 10 years and permits agencies to retain savings beyond the amount paid to contractors. The Clinger-Cohen Act previously authorized pilot share-in-savings programs for Information Technology projects. Because agencies get to retain funds saved and not paid to contractors, the proposal creates an environment for off budget financing of operations. The 10-year length of the contract is unnecessary and may actually impede further savings. The periodic expiration of a service contract should

provide an occasion to spur competition and permit the Government to obtain a better deal or better technology than offered by the incumbent. For example, by year 10 the technology offered by the incumbent can be 7 years out-of-date but still cheaper than the original Government operation. A 10-year contract may provide little incentive for proposing significant improvements after the initial proposal to win the contract. We also have concerns because the DoD does not yet have the ability to determine the actual current costs of operations with any certainty. The contracting officer needs a good cost baseline for calculating improvements against which benefits can be calculated. Determining the cost of operations is why public/private competitions often require 2 or more years. Until the pilot programs currently authorized are completed, and lessons learned developed, we do not support the proposal.

Section 302. Incentives for Contractor Efficiency. This section allows performance periods of 10 years for performance based service contracts.

We do not support this section because it is unnecessary. The Department can already award multiple annual options if the contractor performance is adequate. The Government also possesses other tools to incentivize exceptional contractor performance, particularly in the award of incentive and award fee provisions. We do not believe further incentives are necessary. As mentioned in comments on section 301, the threat of competition and the contractor's desire for the Government to extend the contract through the exercise of options should be adequate incentives to spur contractor performance.

Section 402. Authorization of Additional Contract Types in FAR Part 12. This section would permit use of time-and-materials, and labor hour contracts for commercial item or services using Federal Acquisition Regulation (FAR) Part 12 Commercial Item procedures.

We are opposed to this section. Time and material, and labor hour contracts are the highest risk and least preferred contract types. Under these types of contracts, contractors have little incentive to control costs or increase labor efficiencies. In FY 2001, DoD had \$4.8 billion of time and material and labor hour contracts. We believe the use of these types of contracts should be discouraged, not expanded.

Inspector General, DoD, Report No. D-2000-100 identified a multitude of pre-award and post-award problems for service contracts because of poorly defined requirements on cost and time-and-material contracts. FAR Part 16 emphasizes that there is no positive incentive to the contractor for cost control on cost or time-and-materials contracts. As a result, these types



of contracts require a high degree of labor intensive surveillance and are more susceptible to cost growth. Of the 84 cost and time-and-materials contracts reviewed, 25 percent of these actions experienced cost growth of \$80 million and almost 70 percent of these actions had inadequate surveillance. Downsizing of the acquisition workforce and streamlining have created a need to do more with less, but this proposal would expand the use of time-and-materials contracts that will add contract surveillance workload to an already strained staff and would likely only increase problems.

Section 403. Clarification of Commercial Service Definitions.  
This is a change in the definition of commercial items that would equate commercial services with commercial items. We oppose the change as it is unnecessary and confusing.

The proposal would eliminate 41 USC 403(12)(F), which defines services as commercial items only if the services are offered and sold competitively, in substantial quantities, in the commercial marketplace and are based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. It could allow a contractor to claim any service, including research and development, as commercial if the contractor claims it plans to sell the service in the future to the public.

Under the current statute, a determination must be made that the service is actually commercially available to the public. This is not a difficult test. The current definition of commercial services is a very reasonable definition with safeguards to prevent purchasing noncommercial services such as cleanup of radioactive waste by the Department of Energy or acquisition of never before performed applied research for the DoD. Inspector General, DoD, Report No. D-2001-051 "Use of Federal Acquisition Regulation Part 12 Contracts for Applied Research," February 15, 2001, explains the above examples and shows why FAR Part 12 contracts should not be used for acquiring military unique research and development. Pages 13, 14, and 15 of the report show why the Department will pay more for the same research including large profit rates.

We also believe the proposed change is inappropriate because it attempts to graft commercial services to that portion of the commercial item definition which was enacted to apply to supplies. Services were specifically and separately defined at 41 USC 403(12)(F), as what constitutes commercial services differs from supplies. We also oppose the change because the current definition regarding commercial services is more than adequate. It permits services which are sold competitively and for which a market price can be established to be treated as commercial services. This provision has permitted the Government to purchase a myriad of services as commercial

services. As discussed in Inspector General Report No. D-2001-051 (see above), the General Accounting Office has given agencies considerable discretion in determining which services are commercial in nature. We oppose a change in the definition without some showing that the current definition is inadequate.

In FY 2001 DoD acquired nearly \$20 billion of commercial items and services. The Department's purchases of commercial items and services was \$12.5 billion in FY 2000. The 61 percent increase in one year occurred with a relatively flat budget.

Section 404. Designation of Commercial Business Entities. The proposal would allow a business entity that has 85 percent of its sales to non-government customers to consider any item or service it offers or sells to be a commercial item.

We oppose the proposed change. As is the case with sections 402 and 403, it is overly broad and would eliminate many essential safeguards for the taxpayer. The proposal would require the Government to consider many potentially military or government unique items or services as commercial items. The determination of whether an item or service is commercial or not would be based not upon whether the item is sold or offered commercially, but upon a ratio of commercial to non-commercial sales by the business entity. It would permit items which are clearly not commercial items, such as military unique spare parts, to be acquired as commercial items, with none of the current statutory or regulatory protections. Moreover, given the preference in FASA for purchases of commercial items, the proposal would require the acquisition of military or government unique products because they qualify as commercial items according to the criteria in the proposed definition. The Government would have no option to purchase the items using other acquisition methods.

The proposal also would allow contractors to manipulate what is considered a commercial item by creating or reorganizing business entities or allocating contracts to different business entities in order to obtain commercial item status for what are actually military unique products. For example, a company could create a business entity which is responsible for manufacturing all of its commercial and military aircraft. If the commercial aircraft sales account for more than 85 percent of the entity's sales, the Government would be required to acquire military unique aircraft, as a commercial item. We strongly oppose any proposal which would permit the determination of what is a commercial item to be based upon realignments of contracts and organizational structures, which could be done solely for the purpose of limiting Government oversight. We believe the Congress used the appropriate criteria when it created the commercial items preference, by requiring agencies to look to the commercial marketplace to see whether an item is, will, or is intended to be offered to the general public. The

determination is based upon market research, not upon an arbitrary ratio of commercial to non-commercial sales.

The proposal is drafted in such a manner that contractors could make almost any contract for military unique items or services exempt from oversight and the traditional safeguards that Congress intended. A contractor can reorganize or reallocate its contracts initially or annually so that the large contracts for research or production of items would have to be acquired under FAR Part 12. Once a contractor has sold an item as a commercial item, it will likely argue the designation cannot be changed.

We are unaware of any empirical data demonstrating that lower contract prices or better products and services should result from the "commercial business entity" approach.

Because of the TINA, the statutory prohibition on unallowable costs, and audit access to records, DCAA audits saved the Government \$3.2 billion in FY 2001 because they precluded overpricing on contracts for military unique items. The risk is substantial that, by revising the commercial definition to include a business entity with 85 percent commercial work, the Government will pay more because we cannot use the established safeguards. Contracts for which cost or pricing data is required and contracts subject to the Cost Accounting Standards (CAS) have been reduced by legislative changes in the 1990s. We support adopting reasonable commercial approaches when there is a healthy competitive marketplace. However, when buying unique military weapons from a few dominant suppliers, we must recognize that we cannot rely on competitive market forces that do not exist. In the absence of market forces, any prudent buyer, public or private, would want objective verification that what is paid is reasonable. In those circumstances, the Department, entrusted with billions in taxpayer dollars, has a clear obligation to act as an "informed consumer" to the greatest degree possible.

Also, even on large contracts that often exceed \$1 billion, such as military fighter aircraft acquisitions, many components or services for the end item could become commercial items under this legislative proposal. This is because many components are acquired through intra-company transfers or purchases from various business entities. The company can put all components or services for the aircraft into a business entity that meets the criteria in the proposed definition and the Government will lose access to cost data for the items.

The proposal may also give a contractor that has been determined to have a commercial business entity an unfair competitive advantage over other contractors. FASA and FAR 12.101(b) require agencies to acquire commercial items or nondevelopmental items when they are available to meet the needs of the agency. If the proposed definition of a business entity is adopted, a

commercial entity would be awarded contracts and subcontracts merely because it offers the only "commercial item" meeting the buyer's needs. Alternative sources that do not meet the sales criteria in the proposed definition of a "commercial entity," could not compete.

Another reason for caution is that several recent audits have shown that industry, with lax oversight from the Department, has at times insisted that military unique items be acquired as commercial items. Higher costs resulted. Inspector General, DoD, Report No. D-2001-129, "Contracting Officer Determinations of Price Reasonableness When Cost or Pricing Data were Not Obtained," May 30, 2001, shows examples of overpricing on pages 5, 6, 10, 11, and 17 where contractors improperly claimed commercial item designations for military unique items acquired on a sole-source basis. For example, page 17 shows how the price of a military unique item for the F-14 Tomcat wing fuselages increased from \$55 to \$800 (1,454 percent) because the contractor claimed the item was commercial and refused to provide cost and pricing data. Yet, the DoD is the only buyer for this item. Overall, the report identified \$23 million of overpricing on 52 contracts. The proposed change would legitimize overpricing by eliminating the current safeguards to prevent and identify overpricing. In addition, Inspector General, DoD, Report No. D-2001-051, discussed in Section 403, shows why FAR Part 12 contracts should not be used for acquiring military unique research and development.

Section 405. Continuation of Eligibility of Contractor for Award of Information Technology Contract after providing Design and Engineering Services. This section states that a contractor that provides architectural design and engineering services for an information technology program is not, solely by reason of having provided the services, ineligible for award of a contract for procurement of information technology under that program or for a subcontract under such a program. This provision would change FAR Part 9.5's organizational conflict of interest provisions for service contractors. FAR Part 9.5 addresses the legitimate needs of the Government to preclude conflicts of interest. It also provides agencies adequate flexibility by permitting conflicts to be waived if in the Government's best interest. The proposal treats information technology contracts different for no apparent purpose and creates an unnecessary and inappropriate exception to existing organizational conflict of interest policies. Because of those concerns, we do not support this section.

Section 406. Commercial Liability. This section mandates that contracts for the acquisition of services or property contain provisions that bar payment of consequential damages "in cases of contractor liability with respect to the contract" and limit "direct damages in case of contractor liability with respect to

the contract...not [to] exceed the cost of the service that was not performed or the product that was not delivered..."

We oppose the provision. There is no definition of direct or consequential damage, nor a definition or description of what "with respect to the contract" means. Parties to contracts need to know precisely their respective obligations and liabilities. Contractors need such information in order to purchase adequate insurance to cover potential liabilities.

We oppose the bar to payment of consequential damages "with respect to the contract" as it is unclear whether contractors will be exempt from consequential damages only with respect to the Government, or also to third parties who may be injured as a result of negligence or malfeasance by the contractor or its employees in performance of the contract. The Government should be able to pursue consequential damages which result from a contractor's negligence or failure to perform. The provision might bar the Government from establishing liquidated damages which are based upon consequential damages from a contractor's failure to adequately perform. In some family quarters maintenance contracts, for example, a contractor must repaint a set of vacated family quarters within two days or it will be assessed liquidated consequential damages for each additional day the quarters are not available for occupancy. The consequential damages are based on the government's costs to house a service member on the local economy. These damages provide an incentive (and penalty) for the contractor to complete the painting on time. We also oppose the limitation on direct damages to the cost of the services not performed or the product not delivered. The government's damages should not be so limited. A contractor might refuse to perform, and the government's recovery would be limited by the proposal's damages cap, irrespective of the additional costs to the government in obtaining another contractor to perform the function at the last moment.

We believe this provision does not provide an incentive for quality performance by service contractors. We also question why legislative relief is necessary, as there is case law regarding a contractor's liability for damages, to include consequential damages. To the extent necessary, contractors can continue to protect themselves through the purchase of insurance.

Section 503 and 504. Certain Research and Development by Civilian Agencies and Authority for Carrying Out Certain Prototype Projects. These sections authorize civilian agencies to use other transaction authority for research and prototypes.

The Department of Defense has had authority to use other transaction authority for basic, applied and advanced research since 1989, and for prototypes since 1994. The purpose of other

transactions was to attract nontraditional Defense contractors who had research or promising technologies of value to the military, and who did not want to enter into a FAR contract, cooperative agreement or grant. Consequently, the other transaction, which bypasses many federal statutes and regulations, was authorized to give the Department additional flexibility in acquiring innovations and research. In time, other transactions were also authorized for the development of prototypes.

The DoD Inspector General has conducted a number of audits regarding other transactions:

Inspector General, DoD, Report No. D-2001-115, "Audit of Reconnaissance, Surveillance, and Targeting Vehicle Program," May 8, 2001

Inspector General, DoD, Report No. D-2000-070, "Evolved Expendable Launch Vehicle Program Other Transactions," December 30, 1999 (Report is FOUO ("For Official Use Only") and copies may be obtained by authorized personnel by contacting 703-604-8937.)

Inspector General, DoD, Report No. D-2000-065, "Costs Charged to Other Transactions," December 27, 1999

Inspector General, DoD, Report No. 98-191, "Financial and Cost Aspects of Other Transactions," August 24, 1998

Inspector General, DoD, Report No. 97-114, "Award and Administration of Contracts, Grants and Other Transactions Issued by the Defense Advanced Research Project Agency," March 28, 1997

Based upon our most recent audits of prototype other transactions, we have found that other transactions have not attracted a significant number of nontraditional Defense contractors to do business with the Government. Available data for FY 1994 through FY 2001 illustrates this point. Traditional Defense contractors have received 94.5 percent of the \$5.7 billion in funds for 209 prototype other transactions.

We find this trend disturbing, as other transactions do not provide the government a number of significant protections, ensure the prudent expenditure of taxpayer dollars, or prevent fraud. Procurement statutes and the FAR provide contracting officers the tools to negotiate fair and reasonable prices, and to ensure that taxpayer dollars are expended for costs which are allowable and consistent with federal procurement policies. TINA, CAS, and the various audit provisions are among the tools that have provided contracting officers' visibility into contractor costs and help the government ensure that prices negotiated and eventually paid are reasonable. These provisions have served the interests of the government and the taxpayer for

many decades. Congress has given agencies the authority to waive some of these protections, in certain circumstances, in connection with FAR contracts. Thus, the current methods of acquiring goods and services from contractors already provide considerable flexibility to accommodate the needs of the parties.

The traditional protections for the public trust do not exist, for the most part, for other transactions. In only one significant area, namely providing the Comptroller General access to records in connection with prototype other transactions in excess of \$5 million, do other transactions provide visibility into performance costs. Other measures for ensuring visibility into costs and ensuring prices are reasonable have not been enacted for other transactions.

Based upon the DoD experience, we believe other transactions should be considered only when it is clear that the Government is unable to acquire goods, services, and needed technologies through existing vehicles. If other transactions are authorized for civilian agencies, we strongly recommend such legislation be tailored so that the other transactions vehicle is only used to attract companies which have not traditionally done business with the Government and for technologies, research capabilities or other processes which are needed by the federal agency and are not available through traditional acquisition vehicles.

For research other transactions, we recommend the agency head be required to make a determination that an other transaction is necessary to induce a nontraditional contractor to provide technologies, research capabilities, or other processes which are needed by the agency. The determination should also include a finding that a contract, grant, or cooperative agreement are not appropriate or feasible, and that waivers to TINA, CAS, and other Federal statutes or procurement policies are not sufficient. Other transactions for prototype should be limited to developing items which are ripe for development as the result of research conducted pursuant to a research other transaction. We also recommend that audit access rights be given to the Government, to include the Comptroller General, the agency Inspectors General, and departmental contract audit agencies, such as the Defense Contract Audit Agency.

If enacted, other transaction authority for civilian agencies should be provided as a pilot program of limited duration to ascertain whether it actually attracts significant numbers of nontraditional government contractors, whether it results in the acquisition of needed technologies and services, and whether additional safeguards should be enacted.

We recommend for prototype other transactions that Section 845(c) "Comptroller General Review" be extended to include Inspectors General. This is a good management control

because it currently allows access to records to audit other transactions.

Section 601. Simplified Acquisition Threshold (SAT)  
Inflationary Adjustment. This section allows inflationary adjustment of the SAT (currently \$100,000) every 3 years.

Adjusting the SAT would have merit, but we suggest it be revised in a different manner. For the TINA, FASA set the threshold at \$500,000, and the threshold is currently revised for inflation every 5 years with minimum changes in multiples of \$50,000. The TINA is currently \$550,000. We recommend the SAT be revised in years divisible by 5 with changes in increments of at least \$10,000 based on the percentage change in inflation. This would ensure changes to all thresholds would occur on a consistent basis.