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108TH CONGRESS
1ST SESSION

H. R. 1837

[Report No. 108–117, Parts I and II]

To improve the Federal acquisition workforce and the process for the acquisition of services by the Federal Government, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2003

Mr. TOM DAVIS of Virginia (for himself and Mr. HUNTER) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committee on Armed Services, 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

MAY 19, 2003

Reported from the Committee on Government Reform with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

MAY 19, 2003

Referred to the Committee on the Judiciary for a period ending not later than May 20, 2003 for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k), rule X

MAY 19, 2003

Referral to the Committee on Armed Services extended for a period ending not later than May 20, 2003

MAY 20, 2003

Referral to the Committee on Armed Services and the Judiciary extended for a period ending not later than July 25, 2003

JULY 25, 2003

The Committee on Armed Services discharged

JULY 25, 2003

Referral to the Committee on the Judiciary extended for a period ending not later than September 3, 2003

SEPTEMBER 3, 2003

Reported from the Committee on the Judiciary with an amendment; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on April 29, 2003]

A BILL

To improve the Federal acquisition workforce and the process for the acquisition of services by the Federal Government, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
 5 *“Services Acquisition Reform Act of 2003”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 7 *this Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Executive agency defined.

TITLE I—ACQUISITION WORKFORCE AND TRAINING

Sec. 101. Definition of acquisition.

Sec. 102. Acquisition workforce training fund.

Sec. 103. Government-industry exchange program.

Sec. 104. Acquisition workforce recruitment program.

Sec. 105. Architectural and engineering acquisition workforce.

TITLE II—ADAPTATION OF BUSINESS ACQUISITION PRACTICES

Subtitle A—Adaptation of Business Management Practices

- Sec. 201. Chief Acquisition Officers.*
Sec. 202. Chief Acquisition Officers Council.
Sec. 203. Statutory and regulatory review.

Subtitle B—Other Acquisition Improvements

- Sec. 211. Extension of authority to carry out franchise fund programs.*
Sec. 212. Agency acquisition protests.
Sec. 213. Improvements in contracting for architectural and engineering services.
Sec. 214. Authorization of telecommuting for Federal contractors.
Sec. 215. Procedural requirements for civilian agencies relating to products of Federal Prison Industries.

TITLE III—CONTRACT INCENTIVES

- Sec. 301. Share-in-savings initiatives.*
Sec. 302. Incentives for contract efficiency.

TITLE IV—ACQUISITIONS OF COMMERCIAL ITEMS

- Sec. 401. Preference for performance-based contracting.*
Sec. 402. Authorization of additional commercial contract types.
Sec. 403. Clarification of commercial services definition.
Sec. 404. Designation of commercial business entities.

TITLE V—OTHER MATTERS

- Sec. 501. Authority to enter into certain procurement-related transactions and to carry out certain prototype projects.*
Sec. 502. Amendments relating to Federal emergency procurement flexibility.
Sec. 503. Authority to make inflation adjustments to simplified acquisition threshold.
Sec. 504. Technical corrections related to duplicative amendments.
Sec. 505. Exemption from limitations on procurement of foreign information technology that is a commercial item.
Sec. 506. Prohibition on use of quotas.
Sec. 507. Public disclosure of noncompetitive contracting for the reconstruction of infrastructure in Iraq.
Sec. 508. Applicability of certain provisions to sole source contracts for goods and services treated as commercial items.

1 SEC. 2. EXECUTIVE AGENCY DEFINED.

2 *In this Act, the term “executive agency” has the mean-*
 3 *ing given that term in section 4(1) of the Office of Federal*
 4 *Procurement Policy Act (41 U.S.C. 403(1)), unless specifi-*
 5 *cally stated otherwise.*

1 **TITLE I—ACQUISITION**
2 **WORKFORCE AND TRAINING**

3 **SEC. 101. DEFINITION OF ACQUISITION.**

4 *Section 4 of the Office of Federal Procurement Policy*
5 *Act (41 U.S.C. 403) is amended by adding at the end the*
6 *following:*

7 “(16) The term ‘acquisition’—

8 “(A) means the process of acquiring, with
9 *appropriated funds, by contract for purchase or*
10 *lease, property or services (including construc-*
11 *tion) that support the missions and goals of an*
12 *executive agency, from the point at which the re-*
13 *quirements of the executive agency are estab-*
14 *lished in consultation with the chief acquisition*
15 *officer of the executive agency; and*

16 “(B) includes—

17 “(i) the process of acquiring property
18 *or services that are already in existence, or*
19 *that must be created, developed, dem-*
20 *onstrated, and evaluated;*

21 “(ii) the description of requirements to
22 *satisfy agency needs;*

23 “(iii) solicitation and selection of
24 *sources;*

25 “(iv) award of contracts;

1 “(v) contract performance;

2 “(vi) contract financing;

3 “(vii) management and measurement
4 of contract performance through final deliv-
5 ery and payment; and

6 “(viii) technical and management
7 functions directly related to the process of
8 fulfilling agency requirements by contract.”.

9 **SEC. 102. ACQUISITION WORKFORCE TRAINING FUND.**

10 (a) *PURPOSES.*—The purposes of this section are to en-
11 sure that the Federal acquisition workforce—

12 (1) adapts to fundamental changes in the nature
13 of Federal Government acquisition of property and
14 services associated with the changing roles of the Fed-
15 eral Government; and

16 (2) acquires new skills and a new perspective to
17 enable it to contribute effectively in the changing en-
18 vironment of the 21st century.

19 (b) *ESTABLISHMENT OF FUND.*—Section 37 of the Of-
20 fice of Federal Procurement Policy Act (41 U.S.C. 433) is
21 amended by adding at the end of subsection (h) the fol-
22 lowing new paragraph:

23 “(3) *ACQUISITION WORKFORCE TRAINING*
24 *FUND.*—(A) The Administrator of General Services
25 shall establish an acquisition workforce training fund.

1 *The Administrator shall manage the fund through the*
2 *Federal Acquisition Institute to support the training*
3 *of the acquisition workforce of the executive agencies*
4 *other than the Department of Defense. The Adminis-*
5 *trator shall consult with the Administrator for Fed-*
6 *eral Procurement Policy in managing the fund.*

7 “(B) *There shall be credited to the acquisition*
8 *workforce training fund 5 percent of the fees collected*
9 *by executive agencies under the following contracts:*

10 “(i) *Governmentwide task and delivery-*
11 *order contracts entered into under sections 2304a*
12 *and 2304b of title 10, United States Code, or sec-*
13 *tions 303H and 303I of the Federal Property*
14 *and Administrative Services Act of 1949 (41*
15 *U.S.C. 253h and 253i).*

16 “(ii) *Governmentwide contracts for the ac-*
17 *quisition of information technology as defined in*
18 *section 11101 of title 40, United States Code,*
19 *and multiagency acquisition contracts for such*
20 *technology authorized by section 11314 of such*
21 *title.*

22 “(iii) *Multiple-award schedule contracts en-*
23 *tered into by the Administrator of General Serv-*
24 *ices.*

1 “(C) *The head of an executive agency that ad-*
 2 *ministers a contract described in subparagraph (B)*
 3 *shall remit to the General Services Administration*
 4 *the amount required to be credited to the fund with*
 5 *respect to such contract at the end of each quarter of*
 6 *the fiscal year.*

7 “(D) *The Administrator of General Services,*
 8 *through the Office of Federal Acquisition Policy, shall*
 9 *ensure that funds collected for training under this sec-*
 10 *tion are not used for any purpose other than the pur-*
 11 *pose specified in subparagraph (A).*

12 “(E) *Amounts credited to the fund shall be in*
 13 *addition to funds requested and appropriated for edu-*
 14 *cation and training referred to in paragraph (1).*

15 “(F) *Amounts credited to the fund shall remain*
 16 *available until expended.”.*

17 **SEC. 103. GOVERNMENT-INDUSTRY EXCHANGE PROGRAM.**

18 (a) *IN GENERAL.*—*Subpart B of part III of title 5,*
 19 *United States Code, is amended by adding at the end the*
 20 *following:*

21 **“CHAPTER 38—ACQUISITION**
 22 **PROFESSIONAL EXCHANGE PROGRAM**

“Sec.

“3801. *Definitions.*

“3802. *General provisions.*

“3803. *Assignment of employees to private sector organizations.*

“3804. *Assignment of employees from private sector organizations.*

“3805. *Reporting requirement.*

“3806. *Regulations.*

1 **“§ 3801. Definitions**

2 *“For purposes of this chapter—*

3 *“(1) the term ‘agency’—*

4 *“(A) subject to subparagraph (B), means an*
5 *executive agency; and*

6 *“(B) does not include—*

7 *“(i) the General Accounting Office;*

8 *“(ii) an Office of Inspector General of*
9 *an establishment or a designated Federal*
10 *entity established under the Inspector Gen-*
11 *eral Act of 1978; and*

12 *“(iii) the Defense Contract Audit*
13 *Agency referred to in section 2313(b) of title*
14 *10; and*

15 *“(2) the term ‘detail’ means—*

16 *“(A) the assignment or loan of an employee*
17 *of an agency to a private sector organization*
18 *without a change of position from the agency*
19 *that employs the individual, or*

20 *“(B) the assignment or loan of an employee*
21 *of a private sector organization to an agency*
22 *without a change of position from the private*
23 *sector organization that employs the individual,*
24 *whichever is appropriate in the context in which such*
25 *term is used.*

1 **“§ 3802. General provisions**

2 “(a) *ASSIGNMENT AUTHORITY.*—*On request from or*
3 *with the agreement of a private sector organization, and*
4 *with the consent of the employee concerned, the head of an*
5 *agency may arrange for the assignment of an employee of*
6 *the agency to a private sector organization or an employee*
7 *of a private sector organization to the agency. An eligible*
8 *employee is an individual who—*

9 “(1) *works in the field of Federal acquisition or*
10 *acquisition management;*

11 “(2) *is considered an exceptional performer by*
12 *the individual’s current employer; and*

13 “(3) *is expected to assume increased acquisition*
14 *management responsibilities in the future.*

15 *An employee of an agency shall be eligible to participate*
16 *in this program only if the employee is employed at the*
17 *GS–11 level or above (or equivalent) and is serving under*
18 *a career or career-conditional appointment or an appoint-*
19 *ment of equivalent tenure in the excepted service.*

20 “(b) *AGREEMENTS.*—*Each agency that exercises its*
21 *authority under this chapter shall provide for a written*
22 *agreement between the agency and the employee concerned*
23 *regarding the terms and conditions of the employee’s assign-*
24 *ment. In the case of an employee of the agency, the agree-*
25 *ment shall—*

1 “(1) require the employee to serve in the civil
2 service, upon completion of the assignment, for a pe-
3 riod equal to the length of the assignment; and

4 “(2) provide that, in the event the employee fails
5 to carry out the agreement (except for good and suffi-
6 cient reason, as determined by the head of the agency
7 from which assigned) the employee shall be liable to
8 the United States for payment of all expenses of the
9 assignment.

10 An amount under paragraph (2) shall be treated as a debt
11 due the United States.

12 “(c) *TERMINATION.*—Assignments may be terminated
13 by the agency or private sector organization concerned for
14 any reason at any time.

15 “(d) *DURATION.*—Assignments under this chapter
16 shall be for a period of between 6 months and 1 year, and
17 may be extended in 3-month increments for a total of not
18 more than 1 additional year, except that no assignment
19 under this chapter may commence after the end of the 5-
20 year period beginning on the date of the enactment of this
21 chapter.

22 “(e) *ASSISTANCE.*—The Administrator for Federal
23 Procurement Policy, by agreement with the Office of Per-
24 sonnel Management, may assist in the administration of
25 this chapter, including by maintaining lists of potential

1 candidates for assignment under this chapter, establishing
2 mentoring relationships for the benefit of individuals who
3 are given assignments under this chapter, and publicizing
4 the program.

5 “(f) *CONSIDERATIONS.*—In exercising any authority
6 under this chapter, an agency shall take into consider-
7 ation—

8 “(1) the need to ensure that small business con-
9 cerns are appropriately represented with respect to
10 the assignments described in sections 3803 and 3804,
11 respectively; and

12 “(2) how assignments described in section 3803
13 might best be used to help meet the needs of the agen-
14 cy for the training of employees in acquisition man-
15 agement.

16 **“§ 3803. Assignment of employees to private sector or-
17 ganizations**

18 “(a) *IN GENERAL.*—An employee of an agency as-
19 signed to a private sector organization under this chapter
20 is deemed, during the period of the assignment, to be on
21 detail to a regular work assignment in his agency.

22 “(b) *COORDINATION WITH CHAPTER 81.*—Notwith-
23 standing any other provision of law, an employee of an
24 agency assigned to a private sector organization under this
25 chapter is entitled to retain coverage, rights, and benefits

1 *under subchapter I of chapter 81, and employment during*
2 *the assignment is deemed employment by the United States,*
3 *except that, if the employee or the employee's dependents*
4 *receive from the private sector organization any payment*
5 *under an insurance policy for which the premium is wholly*
6 *paid by the private sector organization, or other benefit of*
7 *any kind on account of the same injury or death, then, the*
8 *amount of such payment or benefit shall be credited against*
9 *any compensation otherwise payable under subchapter I of*
10 *chapter 81.*

11 “(c) *REIMBURSEMENTS.*—*The assignment of an em-*
12 *ployee to a private sector organization under this chapter*
13 *may be made with or without reimbursement by the private*
14 *sector organization for the travel and transportation ex-*
15 *penses to or from the place of assignment, subject to the*
16 *same terms and conditions as apply with respect to an em-*
17 *ployee of a Federal agency or a State or local government*
18 *under section 3375, and for the pay, or a part thereof, of*
19 *the employee during assignment. Any reimbursements shall*
20 *be credited to the appropriation of the agency used for pay-*
21 *ing the travel and transportation expenses or pay.*

22 “(d) *TORT LIABILITY; SUPERVISION.*—*The Federal*
23 *Tort Claims Act and any other Federal tort liability statute*
24 *apply to an employee of an agency assigned to a private*
25 *sector organization under this chapter. The supervision of*

1 *the duties of an employee of an agency so assigned to a*
2 *private sector organization may be governed by an agree-*
3 *ment between the agency and the organization.*

4 “(e) *SMALL BUSINESS CONCERNS.—*

5 “(1) *IN GENERAL.—The head of each agency*
6 *shall take such actions as may be necessary to ensure*
7 *that, of the assignments made under this chapter from*
8 *such agency to private sector organizations in each*
9 *year, at least 20 percent are to small business con-*
10 *cerns.*

11 “(2) *DEFINITIONS.—For purposes of this sub-*
12 *section—*

13 “(A) *the term ‘small business concern’*
14 *means a business concern that satisfies the defi-*
15 *initions and standards specified by the Adminis-*
16 *trator of the Small Business Administration*
17 *under section 3(a)(2) of the Small Business Act*
18 *(as from time to time amended by the Adminis-*
19 *trator);*

20 “(B) *the term ‘year’ refers to the 12-month*
21 *period beginning on the date of the enactment of*
22 *this chapter, and each succeeding 12-month pe-*
23 *riod in which any assignments under this chap-*
24 *ter may be made; and*

1 *deemed, during the period of the assignment, to be on detail*
2 *to such agency.*

3 “(b) *TERMS AND CONDITIONS.*—*An employee of a pri-*
4 *vate sector organization assigned to an agency under this*
5 *chapter—*

6 “(1) *may continue to receive pay and benefits*
7 *from the private sector organization from which he is*
8 *assigned;*

9 “(2) *is deemed, notwithstanding subsection (a),*
10 *to be an employee of the agency for the purposes of—*

11 “(A) *chapter 73;*

12 “(B) *sections 201, 203, 205, 207, 208, 209,*
13 *603, 606, 607, 643, 654, 1905, and 1913 of title*
14 *18;*

15 “(C) *sections 1343, 1344, and 1349(b) of*
16 *title 31;*

17 “(D) *the Federal Tort Claims Act and any*
18 *other Federal tort liability statute;*

19 “(E) *the Ethics in Government Act of 1978;*

20 “(F) *section 1043 of the Internal Revenue*
21 *Code of 1986; and*

22 “(G) *section 27 of the Office of Federal Pro-*
23 *curement Policy Act;*

24 “(3) *may not have access to any trade secrets or*
25 *to any other nonpublic information which is of com-*

1 *mercial value to the private sector organization from*
2 *which he is assigned; and*

3 *“(4) is subject to such regulations as the Presi-*
4 *dent may prescribe.*

5 *The supervision of an employee of a private sector organiza-*
6 *tion assigned to an agency under this chapter may be gov-*
7 *erned by agreement between the agency and the private sec-*
8 *tor organization concerned. Such an assignment may be*
9 *made with or without reimbursement by the agency for the*
10 *pay, or a part thereof, of the employee during the period*
11 *of assignment, or for any contribution of the private sector*
12 *organization to employee benefit systems.*

13 *“(c) COORDINATION WITH CHAPTER 81.—An em-*
14 *ployee of a private sector organization assigned to an agen-*
15 *cy under this chapter who suffers disability or dies as a*
16 *result of personal injury sustained while performing duties*
17 *during the assignment shall be treated, for the purpose of*
18 *subchapter I of chapter 81, as an employee as defined by*
19 *section 8101 who had sustained the injury in the perform-*
20 *ance of duty, except that, if the employee or the employee’s*
21 *dependents receive from the private sector organization any*
22 *payment under an insurance policy for which the premium*
23 *is wholly paid by the private sector organization, or other*
24 *benefit of any kind on account of the same injury or death,*
25 *then, the amount of such payment or benefit shall be cred-*

1 *ited against any compensation otherwise payable under*
2 *subchapter I of chapter 81.*

3 “(d) *PROHIBITION AGAINST CHARGING CERTAIN*
4 *COSTS TO THE FEDERAL GOVERNMENT.—A private sector*
5 *organization may not charge the Federal Government, as*
6 *direct or indirect costs under a Federal contract, the costs*
7 *of pay or benefits paid by the organization to an employee*
8 *assigned to an agency under this chapter for the period of*
9 *the assignment.*

10 **“§ 3805. Reporting requirement**

11 “(a) *IN GENERAL.—The Office of Personnel Manage-*
12 *ment shall, not later than April 30 and October 31 of each*
13 *year, prepare and submit to the Committee on Government*
14 *Reform of the House of Representatives and the Committee*
15 *on Governmental Affairs of the Senate a semiannual report*
16 *summarizing the operation of this chapter during the im-*
17 *mediately preceding 6-month period ending on March 31*
18 *and September 30, respectively.*

19 “(b) *CONTENT.—Each report shall include, with re-*
20 *spect to the 6-month period to which such report relates—*

21 “(1) *the total number of individuals assigned to,*
22 *and the total number of individuals assigned from,*
23 *each agency during such period;*

24 “(2) *a brief description of each assignment in-*
25 *cluded under paragraph (1), including—*

1 “(A) the name of the assigned individual, as
2 well as the private sector organization and the
3 agency (including the specific bureau or other
4 agency component) to or from which such indi-
5 vidual was assigned;

6 “(B) the respective positions to and from
7 which the individual was assigned, including the
8 duties and responsibilities and the pay grade or
9 level associated with each; and

10 “(C) the duration and objectives of the indi-
11 vidual’s assignment; and

12 “(3) such other information as the Office con-
13 siders appropriate.

14 “(c) *PUBLICATION*.—A copy of each report submitted
15 under subsection (a)—

16 “(1) shall be published in the *Federal Register*;
17 and

18 “(2) shall be made publicly available on the
19 *Internet*.

20 “(d) *AGENCY COOPERATION*.—On request of the Office,
21 agencies shall furnish such information and reports as the
22 Office may require in order to carry out this section.

1 **“§ 3806. Regulations**

2 *“The Director of the Office of Personnel Management*
 3 *shall prescribe regulations for the administration of this*
 4 *chapter.”.*

5 **(b) REPORT.**—*Not later than 4 years after the date*
 6 *of the enactment of this Act, the General Accounting Office*
 7 *shall prepare and submit to the Committee on Government*
 8 *Reform of the House of Representatives and the Committee*
 9 *on Governmental Affairs of the Senate a report on the oper-*
 10 *ation of chapter 38 of title 5, United States Code (as added*
 11 *by this section). Such report shall include—*

12 *(1) an evaluation of the effectiveness of the pro-*
 13 *gram established by such chapter; and*

14 *(2) a recommendation as to whether such pro-*
 15 *gram should be continued (with or without modifica-*
 16 *tion) or allowed to lapse.*

17 **(c) CLERICAL AMENDMENT.**—*The table of chapters at*
 18 *the beginning of part III of title 5, United States Code,*
 19 *is amended by inserting after the item relating to chapter*
 20 *37 the following:*

“38. Acquisition Professional Exchange Program 3801”.

21 **(d) COORDINATION WITH ACQUISITION WORKFORCE**
 22 **PROVISIONS OF OFFICE OF FEDERAL PROCUREMENT POL-**
 23 **ICY ACT.**—*Section 37 of the Office of Federal Procurement*
 24 *Policy Act (41 U.S.C. 433) is amended by adding at the*
 25 *end the following new subsection:*

1 “(i) *AUTHORITY TO DETAIL EMPLOYEES TO NON-*
2 *FEDERAL EMPLOYERS.*—(1) *In carrying out the provisions*
3 *of this section, the Administrator, by agreement with the*
4 *Director of the Office of Personnel Management, may pro-*
5 *vide for a program under which a Federal employee may*
6 *be detailed to a non-Federal employer. The Administrator,*
7 *by agreement with the Director of the Office of Personnel*
8 *Management, shall prescribe regulations for such program,*
9 *including the conditions for service and duties as the Ad-*
10 *ministrator considers necessary.*

11 “(2) *An assignment described in section 3803 of title*
12 *5, United States Code, may not be made unless a program*
13 *under paragraph (1) is established, and the assignment is*
14 *made in accordance with the requirements of such pro-*
15 *gram.*”.

16 (e) *ETHICS PROVISIONS.*—

17 (1) *ONE-YEAR RESTRICTION ON CERTAIN COMMU-*
18 *NICATIONS.*—Section 207(c)(2)(A)(v) of title 18,
19 *United States Code, is amended by inserting “or 38”*
20 *after “chapter 37”.*

21 (2) *DISCLOSURE OF CONFIDENTIAL INFORMA-*
22 *TION.*—Section 1905 of title 18, *United States Code,*
23 *is amended by inserting “or 38” after “chapter 37”.*

24 (3) *CONTRACT ADVICE.*—Section 207(l) of title
25 *18, United States Code, is amended—*

1 (A) in the subsection heading, by striking
2 “DETAILS.—” and inserting “DETAILEES.—”;
3 and

4 (B) by inserting “or 38” after “chapter 37”.

5 (4) *RESTRICTION ON DISCLOSURE OF PROCUREMENT*
6 *INFORMATION.*—Section 27 of the Office of Fed-
7 eral Procurement Policy Act (41 U.S.C. 423) is
8 amended in the last sentence of subsection (a)(1) by
9 inserting “or 38” after “chapter 37”.

10 (f) *TECHNICAL AND CONFORMING AMENDMENTS.*—

11 (1) *AMENDMENTS TO TITLE 5, UNITED STATES*
12 *CODE.*—Title 5, United States Code, is amended—

13 (A) in section 3111(d), by inserting “or 38”
14 after “chapter 37”;

15 (B) in section 7353(b)(4), by inserting “or
16 38” after “chapter 37”.

17 (2) *AMENDMENT TO TITLE 18, UNITED STATES*
18 *CODE.*—Section 209(g) of title 18, United States
19 Code, is amended—

20 (A) in paragraph (1), by inserting “or 38”
21 after “chapter 37”; and

22 (B) by amending paragraph (2) to read as
23 follows:

24 “(2) For purposes of this subsection, the term ‘agen-
25 cy’—

1 (2) holds, from an accredited law school or an
2 accredited institution of higher education—

3 (A) a law degree; or

4 (B) a masters or equivalent degree in busi-
5 ness administration, public administration, or
6 systems engineering; or

7 (3) has significant experience with commercial
8 acquisition practices, terms, and conditions.

9 (b) *REQUIREMENTS.*—The exercise of authority to take
10 a personnel action under this section shall be subject to poli-
11 cies prescribed by the Office of Personnel Management that
12 govern direct recruitment, including policies requiring ap-
13 pointment of a preference eligible who satisfies the quali-
14 fication requirements.

15 (c) *TERMINATION OF AUTHORITY.*—The head of a de-
16 partment or agency may not appoint a person to a position
17 of employment under this section after September 30, 2007.

18 (d) *REPORT.*—Not later than March 31, 2007, the Ad-
19 ministrator for Federal Procurement Policy shall submit to
20 Congress a report on the implementation of this section. The
21 report shall include—

22 (1) the Administrator’s assessment of the efficacy
23 of the exercise of the authority provided in this sec-
24 tion in attracting employees with unusually high
25 qualifications to the acquisition workforce; and

1 (2) *any recommendations considered appropriate*
2 *by the Administrator on whether the authority to*
3 *carry out the program should be extended.*

4 **SEC. 105. ARCHITECTURAL AND ENGINEERING ACQUI-**
5 **TION WORKFORCE.**

6 *The Administrator for Federal Procurement Policy, in*
7 *consultation with the Secretary of Defense, the Adminis-*
8 *trator of General Services, and the Director of the Office*
9 *of Personnel Management, shall develop and implement a*
10 *plan to ensure that the Federal Government maintains the*
11 *necessary capability with respect to the acquisition of archi-*
12 *tectural and engineering services to—*

13 (1) *ensure that Federal Government employees*
14 *have the expertise to determine agency requirements*
15 *for such services;*

16 (2) *establish priorities and programs (including*
17 *acquisition plans);*

18 (3) *establish professional standards;*

19 (4) *develop scopes of work; and*

20 (5) *award and administer contracts for such*
21 *services.*

1 **TITLE II—ADAPTATION OF BUSI-**
2 **NESS ACQUISITION PRAC-**
3 **TICES**

4 **Subtitle A—Adaptation of Business**
5 **Management Practices**

6 **SEC. 201. CHIEF ACQUISITION OFFICERS.**

7 (a) *APPOINTMENT OF CHIEF ACQUISITION OFFI-*
8 *CERS.—(1) Section 16 of the Office of Federal Procurement*
9 *Policy Act (41 U.S.C. 414) is amended to read as follows:*

10 **“SEC. 16. CHIEF ACQUISITION OFFICERS.**

11 *“(a) ESTABLISHMENT OF AGENCY CHIEF ACQUISITION*
12 *OFFICERS.—The head of each executive agency (other than*
13 *the Department of Defense) shall appoint or designate a*
14 *non-career employee as Chief Acquisition Officer for the*
15 *agency, who shall—*

16 *“(1) have acquisition management as that offi-*
17 *cial’s primary duty; and*

18 *“(2) advise and assist the head of the executive*
19 *agency and other agency officials to ensure that the*
20 *mission of the executive agency is achieved through*
21 *the management of the agency’s acquisition activities.*

22 *“(b) AUTHORITY AND FUNCTIONS OF AGENCY CHIEF*
23 *ACQUISITION OFFICERS.—The functions of each Chief Ac-*
24 *quisition Officer shall include—*

1 “(1) monitoring the performance of acquisition
2 activities and acquisition programs of the executive
3 agency, evaluating the performance of those programs
4 on the basis of applicable performance measurements,
5 and advising the head of the executive agency regard-
6 ing the appropriate business strategy to achieve the
7 mission of the executive agency;

8 “(2) increasing the use of full and open competi-
9 tion in the acquisition of property and services by the
10 executive agency by establishing policies, procedures,
11 and practices that ensure that the executive agency re-
12 ceives a sufficient number of sealed bids or competi-
13 tive proposals from responsible sources to fulfill the
14 Government’s requirements (including performance
15 and delivery schedules) at the best value considering
16 the nature of the property or service procured;

17 “(3) making acquisition decisions consistent
18 with all applicable laws and establishing clear lines
19 of authority, accountability, and responsibility for ac-
20 quisition decisionmaking within the executive agency;

21 “(4) managing the direction of acquisition policy
22 for the executive agency, including implementation of
23 the unique acquisition policies, regulations, and
24 standards of the executive agency;

1 “(5) *developing and maintaining an acquisition*
2 *career management program in the executive agency*
3 *to ensure that there is an adequate professional work-*
4 *force; and*

5 “(6) *as part of the strategic planning and per-*
6 *formance evaluation process required under section*
7 *306 of title 5, United States Code, and sections*
8 *1105(a)(28), 1115, 1116, and 9703 of title 31, United*
9 *States Code—*

10 “(A) *assessing the requirements established*
11 *for agency personnel regarding knowledge and*
12 *skill in acquisition resources management and*
13 *the adequacy of such requirements for facili-*
14 *tating the achievement of the performance goals*
15 *established for acquisition management;*

16 “(B) *in order to rectify any deficiency in*
17 *meeting such requirements, developing strategies*
18 *and specific plans for hiring, training, and pro-*
19 *fessional development; and*

20 “(C) *reporting to the head of the executive*
21 *agency on the progress made in improving ac-*
22 *quisition management capability.”.*

23 (2) *The item relating to section 16 in the table of con-*
24 *tents in section 1(b) of such Act is amended to read as fol-*
25 *lows:*

“Sec. 16. *Chief Acquisition Officers.*”.

1 (b) *REFERENCES TO SENIOR PROCUREMENT EXECU-*
2 *TIVE.—*

3 (1) *AMENDMENT TO THE OFFICE OF FEDERAL*
4 *POLICY ACT.—*

5 (A) *Subsections (a)(2)(A) and (b) of section*
6 *20 of the Office of Federal Procurement Policy*
7 *Act (41 U.S.C. 418(a)(2)(A), (b)) are amended*
8 *by striking “senior procurement executive” each*
9 *place it appears and inserting “Chief Acquisi-*
10 *tion Officer”.*

11 (B) *Subsection (c)(2)(A)(ii) of section 29 of*
12 *the Office of Federal Procurement Policy Act (41*
13 *U.S.C. 425(c)(2)(A)(ii)) is amended by striking*
14 *“senior procurement executive” and inserting*
15 *“Chief Acquisition Officer”.*

16 (C) *Subsection (c) of section 37 of the Office*
17 *of Federal Procurement Policy Act (41 U.S.C.*
18 *433(c)) is amended—*

19 (i) *by striking “SENIOR PROCURE-*
20 *MENT EXECUTIVE” in the heading and in-*
21 *serting “CHIEF ACQUISITION OFFICER”;*
22 *and*

23 (ii) *by striking “senior procurement*
24 *executive” each place it appears and insert-*
25 *ing “Chief Acquisition Officer”.*

1 (2) *AMENDMENT TO TITLE III OF THE FEDERAL*
2 *PROPERTY AND ADMINISTRATIVE SERVICES ACT OF*
3 *1949.—Sections 302C(b) and 303(f)(1)(B)(iii) of the*
4 *Federal Property and Administrative Services Act of*
5 *1949 (41 U.S.C. 252c, 253) are amended by striking*
6 *“senior procurement executive” each place it appears*
7 *and inserting “Chief Acquisition Officer”.*

8 (3) *AMENDMENT TO TITLE 10, UNITED STATES*
9 *CODE.—The following sections of title 10, United*
10 *States Code are amended by striking “senior procure-*
11 *ment executive” each place it appears and inserting*
12 *“Chief Acquisition Officer”:*

13 (A) *Section 133(c)(1).*

14 (B) *Subsections (d)(2)(B) and (f)(1) of sec-*
15 *tion 2225.*

16 (C) *Section 2302c(b).*

17 (D) *Section 2304(f)(1)(B)(iii).*

18 (E) *Section 2359a(i).*

19 (4) *REFERENCES.—Any reference to a senior*
20 *procurement executive of a department or agency of*
21 *the United States in any other provision of law or*
22 *regulation, document, or record of the United States*
23 *shall be deemed to be a reference to the Chief Acquisi-*
24 *tion Officer of the department or agency.*

1 (c) *TECHNICAL CORRECTION.*—Section 1115(a) of title
2 31, United States Code, is amended by striking “section
3 1105(a)(29)” and inserting “section 1105(a)(28)”.

4 **SEC. 202. CHIEF ACQUISITION OFFICERS COUNCIL.**

5 (a) *ESTABLISHMENT OF COUNCIL.*—The Office of Fed-
6 eral Procurement Policy Act (41 U.S.C. 403 et seq.) is
7 amended by inserting after section 16 the following new sec-
8 tion:

9 **“SEC. 16A. CHIEF ACQUISITION OFFICERS COUNCIL.**

10 “(a) *ESTABLISHMENT.*—There is established in the ex-
11 ecutive branch a Chief Acquisition Officers Council.

12 “(b) *MEMBERSHIP.*—The members of the Council shall
13 be as follows:

14 “(1) *The Deputy Director for Management of the*
15 *Office of Management and Budget, who shall act as*
16 *Chairman of the Council.*

17 “(2) *The Administrator for Federal Procurement*
18 *Policy.*

19 “(3) *The chief acquisition officer of each execu-*
20 *tive agency.*

21 “(4) *The Under Secretary of Defense for Acquisi-*
22 *tion, Technology, and Logistics.*

23 “(5) *Any other officer or employee of the United*
24 *States designated by the Chairman.*

1 “(c) *LEADERSHIP; SUPPORT.—(1) The Administrator*
2 *for Federal Procurement Policy shall lead the activities of*
3 *the Council on behalf of the Deputy Director for Manage-*
4 *ment.*

5 “(2)(A) *The Vice Chairman of the Council shall be se-*
6 *lected by the Council from among its members.*

7 “(B) *The Vice Chairman shall serve a 1-year term, and*
8 *may serve multiple terms.*

9 “(3) *The Administrator of General Services shall pro-*
10 *vide administrative and other support for the Council.*

11 “(d) *PRINCIPAL FORUM.—The Council is designated*
12 *the principal interagency forum for monitoring and im-*
13 *proving the Federal acquisition system.*

14 “(e) *FUNCTIONS.—The Council shall perform functions*
15 *that include the following:*

16 “(1) *Develop recommendations for the Director of*
17 *the Office of Management and Budget on Federal ac-*
18 *quisition policies and requirements.*

19 “(2) *Share experiences, ideas, best practices, and*
20 *innovative approaches related to Federal acquisition.*

21 “(3) *Assist the Administrator in the identifica-*
22 *tion, development, and coordination of multiagency*
23 *projects and other innovative initiatives to improve*
24 *Federal acquisition.*

1 “(4) *Promote effective business practices that en-*
2 *sure the timely delivery of best value products to the*
3 *Federal Government and achieve appropriate public*
4 *policy objectives.*

5 “(5) *Further integrity, fairness, competition,*
6 *openness, and efficiency in the Federal acquisition*
7 *system.*

8 “(6) *Work with the Office of Personnel Manage-*
9 *ment to assess and address the hiring, training, and*
10 *professional development needs of the Federal Govern-*
11 *ment related to acquisition.*

12 “(7) *Work with the Administrator and the Fed-*
13 *eral Acquisition Regulatory Council to promote the*
14 *business practices referred to in paragraph (4) and*
15 *other results of the functions carried out under this*
16 *subsection.”.*

17 **(b) CLERICAL AMENDMENT.**—*The table of contents in*
18 *section 1(b) of such Act is amended by inserting after the*
19 *item relating to section 16 the following new item:*

“Sec. 16A. Chief Acquisition Officers Council.”.

20 **SEC. 203. STATUTORY AND REGULATORY REVIEW.**

21 **(a) ESTABLISHMENT.**—*Not later than 90 days after*
22 *the date of the enactment of this Act, the Administrator for*
23 *Federal Procurement Policy shall establish an advisory*
24 *panel to review laws and regulations regarding the use of*
25 *commercial practices, performance-based contracting, the*

1 *performance of acquisition functions across agency lines of*
2 *responsibility, and the use of Governmentwide contracts.*

3 (b) *MEMBERSHIP.*—*The panel shall be composed of at*
4 *least nine individuals who are recognized experts in acqui-*
5 *sition law and Government acquisition policy. In making*
6 *appointments to the panel, the Administrator shall—*

7 (1) *consult with the Secretary of Defense, the Ad-*
8 *ministrator of General Services, the Committees on*
9 *Armed Services and Government Reform of the House*
10 *of Representatives, and the Committees on Armed*
11 *Services and Governmental Affairs of the Senate, and*

12 (2) *ensure that the members of the panel reflect*
13 *the diverse experiences in the public and private sec-*
14 *tors.*

15 (c) *DUTIES.*—*The panel shall—*

16 (1) *review all Federal acquisition laws and regu-*
17 *lations with a view toward ensuring effective and ap-*
18 *propriate use of commercial practices and perform-*
19 *ance-based contracting; and*

20 (2) *make any recommendations for the repeal or*
21 *amendment of such laws or regulations that are con-*
22 *sidered necessary as a result of such review—*

23 (A) *to eliminate any provisions in such*
24 *laws or regulations that are unnecessary for the*
25 *effective, efficient, and fair award and adminis-*

1 *tration of contracts for the acquisition by the*
2 *Federal Government of goods and services;*

3 *(B) to ensure the continuing financial and*
4 *ethical integrity of acquisitions by the Federal*
5 *Government; and*

6 *(C) to protect the best interests of the Fed-*
7 *eral Government.*

8 *(d) REPORT.—Not later than one year after the estab-*
9 *lishment of the panel, the panel shall submit to the Admin-*
10 *istrator and to the Committees on Armed Services and Gov-*
11 *ernment Reform of the House of Representatives and the*
12 *Committees on Armed Services and Governmental Affairs*
13 *of the Senate a report containing a detailed statement of*
14 *the findings, conclusions, and recommendations of the*
15 *panel.*

16 ***Subtitle B—Other Acquisition***
17 ***Improvements***

18 ***SEC. 211. EXTENSION OF AUTHORITY TO CARRY OUT FRAN-***
19 ***CHISE FUND PROGRAMS.***

20 *Section 403(f) of the Federal Financial Management*
21 *Act of 1994 (Public Law 103–356; 31 U.S.C. 501 note) is*
22 *amended by striking “October 1, 2003” and inserting “Oc-*
23 *tober 1, 2006”.*

1 **SEC. 212. AGENCY ACQUISITION PROTESTS.**

2 (a) *DEFENSE CONTRACTS.*—(1) *Chapter 137 of title*
3 *10, United States Code, is amended by inserting after sec-*
4 *tion 2305a the following new section:*

5 **“§2305b. Protests**

6 “(a) *IN GENERAL.*—*An interested party may protest*
7 *an acquisition of supplies or services by an agency based*
8 *on an alleged violation of an acquisition law or regulation,*
9 *and a decision regarding such alleged violation shall be*
10 *made by the agency in accordance with this section.*

11 “(b) *RESTRICTION ON CONTRACT AWARD PENDING*
12 *DECISION.*—(1) *Except as provided in paragraph (2), a*
13 *contract may not be awarded by an agency after a protest*
14 *concerning the acquisition has been submitted under this*
15 *section and while the protest is pending.*

16 “(2) *The head of the acquisition activity responsible*
17 *for the award of the contract may authorize the award of*
18 *a contract, notwithstanding pending protest under this sec-*
19 *tion, upon making a written finding that urgent and com-*
20 *PELLING circumstances do not allow for waiting for a deci-*
21 *sion on the protest.*

22 “(c) *RESTRICTION ON CONTRACT PERFORMANCE*
23 *PENDING DECISION.*—(1) *Except as provided in paragraph*
24 *(2), performance of a contract may not be authorized (and*
25 *performance of the contract shall cease if performance has*
26 *already begun) in any case in which a protest of the con-*

1 *tract award is submitted under this section before the later*
2 *of—*

3 “(A) *the date that is 10 days after the date of*
4 *contract award; or*

5 “(B) *the date that is five days after an agency*
6 *debriefing date offered to an unsuccessful offeror for*
7 *any debriefing that is requested and, when requested,*
8 *is required, under section 2305(b)(5) of this title.*

9 “(2) *The head of the acquisition activity responsible*
10 *for the award of a contract may authorize performance of*
11 *the contract notwithstanding a pending protest under this*
12 *section upon making a written finding that urgent and*
13 *compelling circumstances do not allow for waiting for a de-*
14 *cision on the protest.*

15 “(d) *DEADLINE FOR DECISION.—The head of an agen-*
16 *cy shall issue a decision on a protest under this section not*
17 *later than the date that is 20 working days after the date*
18 *on which the protest is submitted to such head of an agency.*

19 “(e) *CONSTRUCTION.—Nothing in this section shall af-*
20 *fect the right of an interested party to file a protest with*
21 *the Comptroller General under subchapter V of chapter 35*
22 *of title 31 or in the United States Court of Federal Claims.*

23 “(f) *DEFINITIONS.—In this section, the terms ‘protest’*
24 *and ‘interested party’ have the meanings given such terms*
25 *in section 3551 of title 31.’.*

1 (2) *The table of sections at the beginning of such chap-*
2 *ter is amended by inserting after the item relating to section*
3 *2305a the following new item:*

“2305b. Protests.”.

4 (b) *OTHER AGENCIES.—Title III of the Federal Prop-*
5 *erty and Administrative Services Act of 1949 is amended*
6 *by inserting after section 303M (41 U.S.C. 253m) the fol-*
7 *lowing new section:*

8 **“SEC. 303N. PROTESTS.**

9 “(a) *IN GENERAL.—An interested party may protest*
10 *an acquisition of supplies or services by an executive agency*
11 *based on an alleged violation of an acquisition law or regu-*
12 *lation, and a decision regarding such alleged violation shall*
13 *be made by the agency in accordance with this section.*

14 “(b) *RESTRICTION ON CONTRACT AWARD PENDING*
15 *DECISION.—(1) Except as provided in paragraph (2), a*
16 *contract may not be awarded by an agency after a protest*
17 *concerning the acquisition has been submitted under this*
18 *section and while the protest is pending.*

19 “(2) *The head of the acquisition activity responsible*
20 *for the award of a contract may authorize the award of*
21 *the contract, notwithstanding a pending protest under this*
22 *section, upon making a written finding that urgent and*
23 *compelling circumstances do not allow for waiting for a de-*
24 *cision on the protest.*

1 “(c) *RESTRICTION ON CONTRACT PERFORMANCE*
2 *PENDING DECISION.—(1) Except as provided in paragraph*
3 *(2), performance of a contract may not be authorized (and*
4 *performance of the contract shall cease if performance has*
5 *already begun) in any case in which a protest of the con-*
6 *tract award is submitted under this section before the later*
7 *of—*

8 “(A) *the date that is 10 days after the date of*
9 *contract award; or*

10 “(B) *the date that is five days after an agency*
11 *debriefing date offered to an unsuccessful offeror for*
12 *any debriefing that is requested and, when requested,*
13 *is required, under section 303B(e) of this title.*

14 “(2) *The head of the acquisition activity responsible*
15 *for the award of a contract may authorize performance of*
16 *the contract notwithstanding a pending protest under this*
17 *section upon making a written finding that urgent and*
18 *compelling circumstances do not allow for waiting for a de-*
19 *cision on the protest.*

20 “(d) *DEADLINE FOR DECISION.—The head of an execu-*
21 *tive agency shall issue a decision on a protest under this*
22 *section not later than the date that is 20 working days after*
23 *the date on which the protest is submitted to the executive*
24 *agency.*

1 “(e) *CONSTRUCTION.*—*Nothing in this section shall af-*
2 *fect the right of an interested party to file a protest with*
3 *the Comptroller General under subchapter V of chapter 35*
4 *of title 31, United States Code, or in the United States*
5 *Court of Federal Claims.*”

6 “(f) *DEFINITIONS.*—*In this section, the terms ‘protest’*
7 *and ‘interested party’ have the meanings given such terms*
8 *in section 3551 of title 31, United States Code.”.*”

9 “(c) *CONFORMING AMENDMENT.*—*Section 3553(d)(4) of*
10 *title 31, United States Code, is amended—*

11 (1) *in subparagraph (A), by striking “or” at the*
12 *end;*

13 (2) *by striking the period at the end of subpara-*
14 *graph (B) and inserting “; or”; and*

15 (3) *by adding at the end the following new sub-*
16 *paragraph:*

17 “(C) *in the case of a protest of the same matter*
18 *regarding such contract that is submitted under sec-*
19 *tion 2305b of title 10 or section 303N of the Federal*
20 *Property and Administrative Services Act of 1949,*
21 *the date that is 5 days after the date on which a deci-*
22 *sion on that protest is issued.”.*”

1 **SEC. 213. IMPROVEMENTS IN CONTRACTING FOR ARCHI-**
2 **TECTURAL AND ENGINEERING SERVICES.**

3 (a) *CLARIFICATION OF DEFINITION OF SURVEYING*
4 *AND MAPPING.*—(1) *Section 1102 of title 40, United States*
5 *Code, is amended by adding at the end the following new*
6 *paragraph:*

7 “(4) *SURVEYING AND MAPPING.*—*The term ‘sur-*
8 *veying and mapping’ means services performed by*
9 *professionals such as surveyors, photogrammetrists,*
10 *hydrographers, geodesists, or cartographers in the col-*
11 *lection, storage, retrieval, or dissemination of graph-*
12 *ical or digital data to depict natural or manmade*
13 *physical features, phenomena, or boundaries of the*
14 *earth and any information related to such data, in-*
15 *cluding any such data that comprises a survey, map,*
16 *chart, geographic information system, remotely sensed*
17 *image or data, or an aerial photograph.”.*

18 (2) *The Federal Acquisition Regulation shall be revised*
19 *to include the definition added by subsection (a) of this sec-*
20 *tion.*

21 (b) *TITLE 10.*—*Section 2855(b) of title 10, United*
22 *States Code, is amended—*

23 (1) *in paragraph (2), by striking “\$85,000” and*
24 *inserting “\$300,000”; and*

25 (2) *by adding at the end the following new para-*
26 *graph:*

1 “(4) *The selection and competition requirements de-*
2 *scribed in subsection (a) shall apply to any contract for*
3 *architectural and engineering services (including surveying*
4 *and mapping services) that is entered into by the head of*
5 *an agency (as such term is defined in section 2302 of this*
6 *title).*”.

7 (c) *ARCHITECTURAL AND ENGINEERING SERVICES.—*
8 *Architectural and engineering services (as defined in section*
9 *1102 of title 40, United States Code) shall not be offered*
10 *under multiple-award schedule contracts entered into by the*
11 *Administrator of General Services or under Government-*
12 *wide task and delivery-order contracts entered into under*
13 *sections 2304a and 2304b of title 10, United States Code,*
14 *or sections 303H and 303I of the Federal Property and Ad-*
15 *ministrative Services Act of 1949 (41 U.S.C. 253h and*
16 *253i) unless such services—*

17 (1) *are performed under the direct supervision of*
18 *a professional engineer licensed in a State; and*

19 (2) *are awarded in accordance with the selection*
20 *procedures set forth in chapter 11 of title 40, United*
21 *States Code.*

22 **SEC. 214. AUTHORIZATION OF TELECOMMUTING FOR FED-**
23 **ERAL CONTRACTORS.**

24 (a) *AMENDMENT TO THE FEDERAL ACQUISITION REG-*
25 *ULATION.—Not later than 180 days after the date of the*

1 *enactment of this Act, the Federal Acquisition Regulatory*
2 *Council shall amend the Federal Acquisition Regulation*
3 *issued in accordance with sections 6 and 25 of the Office*
4 *of Federal Procurement Policy Act (41 U.S.C. 405 and 421)*
5 *to permit telecommuting by employees of Federal Govern-*
6 *ment contractors in the performance of contracts entered*
7 *into with executive agencies.*

8 **(b) CONTENT OF AMENDMENT.**—*The regulation issued*
9 *pursuant to subsection (a) shall, at a minimum, provide*
10 *that solicitations for the acquisition of property or services*
11 *may not set forth any requirement or evaluation criteria*
12 *that would—*

13 (1) *render an offeror ineligible to enter into a*
14 *contract on the basis of the inclusion of a plan of the*
15 *offeror to permit the offeror’s employees to telecomm-*
16 *mute; or*

17 (2) *reduce the scoring of an offer on the basis of*
18 *the inclusion in the offer of a plan of the offeror to*
19 *permit the offeror’s employees to telecommute, unless*
20 *the contracting officer concerned first—*

21 (A) *determines that the requirements of the*
22 *agency, including the security requirements of*
23 *the agency, cannot be met if the telecommuting*
24 *is permitted; and*

1 **“SEC. 318. PRODUCTS OF FEDERAL PRISON INDUSTRIES:**
2 **PROCEDURAL REQUIREMENTS.**

3 “(a) *MARKET RESEARCH.*—Before purchasing a prod-
4 uct listed in the latest edition of the Federal Prison Indus-
5 tries catalog under section 4124(d) of title 18, United States
6 Code, the head of an executive agency shall conduct market
7 research to determine whether the Federal Prison Industries
8 product is comparable to products available from the pri-
9 vate sector that best meet the executive agency’s needs in
10 terms of price, quality, and time of delivery.

11 “(b) *COMPETITION REQUIREMENT.*—If the head of the
12 executive agency determines that a Federal Prison Indus-
13 tries product is not comparable in price, quality, or time
14 of delivery to products available from the private sector that
15 best meet the executive agency’s needs in terms of price,
16 quality, and time of delivery, the agency head shall use
17 competitive procedures for the procurement of the product
18 or shall make an individual purchase under a multiple
19 award contract. In conducting such a competition or mak-
20 ing such a purchase, the agency head shall consider a timely
21 offer from Federal Prison Industries.

22 “(c) *IMPLEMENTATION BY HEAD OF EXECUTIVE AGEN-*
23 *CY.*—The head of an executive agency shall ensure that—

24 “(1) the executive agency does not purchase a
25 Federal Prison Industries product or service unless a
26 contracting officer of the agency determines that the

1 *product or service is comparable to products or serv-*
2 *ices available from the private sector that best meet*
3 *the agency’s needs in terms of price, quality, and time*
4 *of delivery; and*

5 “(2) *Federal Prison Industries performs its con-*
6 *tractual obligations to the same extent as any other*
7 *contractor for the executive agency.*

8 “(d) *MARKET RESEARCH DETERMINATION NOT SUB-*
9 *JECT TO REVIEW.—A determination by a contracting offi-*
10 *cer regarding whether a product or service offered by Fed-*
11 *eral Prison Industries is comparable to products or services*
12 *available from the private sector that best meet an executive*
13 *agency’s needs in terms of price, quality, and time of deliv-*
14 *ery shall not be subject to review pursuant to section*
15 *4124(b) of title 18.*

16 “(e) *PERFORMANCE AS A SUBCONTRACTOR.—(1) A*
17 *contractor or potential contractor of an executive agency*
18 *may not be required to use Federal Prison Industries as*
19 *a subcontractor or supplier of products or provider of serv-*
20 *ices for the performance of a contract of the executive agency*
21 *by any means, including means such as—*

22 “(A) *a contract solicitation provision requiring*
23 *a contractor to offer to make use of products or serv-*
24 *ices of Federal Prison Industries in the performance*
25 *of the contract;*

1 “(B) a contract specification requiring the con-
2 tractor to use specific products or services (or classes
3 of products or services) offered by Federal Prison In-
4 dustries in the performance of the contract; or

5 “(C) any contract modification directing the use
6 of products or services of Federal Prison Industries in
7 the performance of the contract.

8 “(2) In this subsection, the term ‘contractor’, with re-
9 spect to a contract, includes a subcontractor at any tier
10 under the contract.

11 “(f) *PROTECTION OF CLASSIFIED AND SENSITIVE IN-*
12 *FORMATION.—The head of an executive agency may not*
13 *enter into any contract with Federal Prison Industries*
14 *under which an inmate worker would have access to—*

15 “(1) any data that is classified;

16 “(2) any geographic data regarding the location
17 of—

18 “(A) surface and subsurface infrastructure
19 providing communications or water or electrical
20 power distribution;

21 “(B) pipelines for the distribution of nat-
22 ural gas, bulk petroleum products, or other com-
23 modities; or

24 “(C) other utilities; or

1 “(3) *any personal or financial information*
2 *about any individual private citizen, including infor-*
3 *mation relating to such person’s real property how-*
4 *ever described, without the prior consent of the indi-*
5 *vidual.*

6 “(g) *DEFINITIONS.—In this section:*

7 “(1) *The term ‘competitive procedures’ has the*
8 *meaning given such term in section 4(5) of the Office*
9 *of Federal Procurement Policy Act (41 U.S.C.*
10 *403(5)).*

11 “(2) *The term ‘market research’ means obtaining*
12 *specific information about the price, quality, and*
13 *time of delivery of products available in the private*
14 *sector through a variety of means, which may in-*
15 *clude—*

16 “(A) *contacting knowledgeable individuals*
17 *in government and industry;*

18 “(B) *interactive communication among in-*
19 *dustry, acquisition personnel, and customers;*
20 *and*

21 “(C) *interchange meetings or pre-solicita-*
22 *tion conferences with potential offerors.”.*

1 **TITLE III—CONTRACT**
2 **INCENTIVES**

3 **SEC. 301. SHARE-IN-SAVINGS INITIATIVES.**

4 (a) *DEFENSE CONTRACTS.*—Section 2332 of title 10,
5 *United States Code, is amended to read as follows:*

6 **“§ 2332. Share-in-savings contracts**

7 “(a) *AUTHORITY TO ENTER INTO SHARE-IN-SAVINGS*
8 *CONTRACTS.*—(1) *The head of an agency may enter into*
9 *a share-in-savings contract in which the Government*
10 *awards a contract to improve mission-related or adminis-*
11 *trative processes or to accelerate the achievement of its mis-*
12 *sion and share with the contractor in savings achieved*
13 *through contract performance.*

14 “(2)(A) *Except as provided in subparagraph (B), a*
15 *share-in-savings contract shall be awarded for a period of*
16 *not more than five years.*

17 “(B) *A share-in-savings contract may be awarded for*
18 *a period greater than five years, but not more than 10*
19 *years, if the head of the agency determines in writing prior*
20 *to award of the contract that—*

21 “(i) *the level of risk to be assumed and the in-*
22 *vestment to be undertaken by the contractor is likely*
23 *to inhibit the government from obtaining the needed*
24 *performance competitively at a fair and reasonable*

1 *price if the contract is limited in duration to a pe-*
2 *riod of five years or less; and*

3 *“(i) the performance to be acquired is likely to*
4 *continue for a period of time sufficient to generate*
5 *reasonable benefit for the government.*

6 *“(3) Contracts awarded pursuant to the authority of*
7 *this section shall, to the maximum extent practicable, be*
8 *performance-based contracts that identify objective out-*
9 *comes and contain performance standards that will be used*
10 *to measure achievement and milestones that must be met*
11 *before payment is made.*

12 *“(4) Contracts awarded pursuant to the authority of*
13 *this section shall include a provision containing a quantifi-*
14 *able baseline that is to be the basis upon which a savings*
15 *share ratio is established that governs the amount of pay-*
16 *ment a contractor is to receive under the contract. Before*
17 *commencement of performance of such a contract, the chief*
18 *acquisition officer of the agency shall determine in writing*
19 *that the terms of the provision are quantifiable and will*
20 *likely yield value to the Government.*

21 *“(5)(A) The head of the agency may retain savings re-*
22 *alized through the use of a share-in-savings contract under*
23 *this section that are in excess of the total amount of savings*
24 *paid to the contractor under the contract. Except as pro-*
25 *vided in subparagraph (B), savings shall be credited to the*

1 *appropriation or fund against which charges were made to*
2 *carry out the contract.*

3 “(B) *Amounts retained by the agency under this sub-*
4 *section shall—*

5 “(i) *without further appropriation, remain*
6 *available until expended; and*

7 “(ii) *be applied first to fund any contingent li-*
8 *abilities associated with share-in-savings procure-*
9 *ments that are not fully funded.*

10 “(b) *CANCELLATION AND TERMINATION.—(1) If funds*
11 *are not made available for the continuation of a share-in-*
12 *savings contract entered into under this section in a subse-*
13 *quent fiscal year, the contract shall be canceled or termi-*
14 *nated. The costs of cancellation or termination may be paid*
15 *out of—*

16 “(A) *appropriations available for the perform-*
17 *ance of the contract;*

18 “(B) *appropriations available for acquisition of*
19 *the type of property or services procured under the*
20 *contract, and not otherwise obligated; or*

21 “(C) *funds subsequently appropriated for pay-*
22 *ments of costs of cancellation or termination, subject*
23 *to the limitations in paragraph (3).*

24 “(2) *The amount payable in the event of cancellation*
25 *or termination of a share-in-savings contract shall be nego-*

1 *tiated with the contractor at the time the contract is entered*
2 *into.*

3 “(3) *The head of an agency may enter into share-in-*
4 *savings contracts under this section in any given fiscal year*
5 *even if funds are not made specifically available for the full*
6 *costs of cancellation or termination of the contract if funds*
7 *are available and sufficient to make payments with respect*
8 *to the first fiscal year of the contract and the following con-*
9 *ditions are met regarding the funding of cancellation and*
10 *termination liability:*

11 “(A) *The amount of unfunded contingent liabil-*
12 *ity for the contract does not exceed the lesser of—*

13 “(i) *50 percent of the estimated costs of a*
14 *cancellation or termination; or*

15 “(ii) *\$10,000,000.*

16 “(B) *Unfunded contingent liability in excess of*
17 *\$5,000,000 has been approved by the Director of the*
18 *Office of Management and Budget or the Director’s*
19 *designee.*

20 “(c) *DEFINITIONS.—In this section:*

21 “(1) *The term ‘contractor’ means a private enti-*
22 *ty that enters into a contract with an agency.*

23 “(2) *The term ‘savings’ means—*

24 “(A) *monetary savings to an agency; or*

1 “(B) savings in time or other benefits real-
2 ized by the agency, including enhanced revenues.

3 “(3) The term ‘share-in-savings contract’ means
4 a contract under which—

5 “(A) a contractor provides solutions for—

6 “(i) improving the agency’s mission-re-
7 lated or administrative processes; or

8 “(ii) accelerating the achievement of
9 agency missions; and

10 “(B) the head of the agency pays the con-
11 tractor an amount equal to a portion of the sav-
12 ings derived by the agency from—

13 “(i) any improvements in mission-re-
14 lated or administrative processes that result
15 from implementation of the solution; or

16 “(ii) acceleration of achievement of
17 agency missions.”.

18 (b) OTHER CONTRACTS.—Section 317 of the Federal
19 Property and Administrative Services Act of 1949 is
20 amended to read as follows:

21 **“SEC. 317. SHARE-IN-SAVINGS CONTRACTS.**

22 “(a) AUTHORITY TO ENTER INTO SHARE-IN-SAVINGS
23 CONTRACTS.—(1) The head of an executive agency may
24 enter into a share-in-savings contract in which the Govern-
25 ment awards a contract to improve mission-related or ad-

1 *ministrative processes or to accelerate the achievement of*
2 *its mission and share with the contractor in savings*
3 *achieved through contract performance.*

4 “(2)(A) *Except as provided in subparagraph (B), a*
5 *share-in-savings contract shall be awarded for a period of*
6 *not more than five years.*

7 “(B) *A share-in-savings contract may be awarded for*
8 *a period greater than five years, but not more than 10*
9 *years, if the head of the agency determines in writing prior*
10 *to award of the contract that—*

11 “(i) *the level of risk to be assumed and the in-*
12 *vestment to be undertaken by the contractor is likely*
13 *to inhibit the government from obtaining the needed*
14 *performance competitively at a fair and reasonable*
15 *price if the contract is limited in duration to a pe-*
16 *riod of five years or less; and*

17 “(ii) *the performance to be acquired is likely to*
18 *continue for a period of time sufficient to generate*
19 *reasonable benefit for the government.*

20 “(3) *Contracts awarded pursuant to the authority of*
21 *this section shall, to the maximum extent practicable, be*
22 *performance-based contracts that identify objective out-*
23 *comes and contain performance standards that will be used*
24 *to measure achievement and milestones that must be met*
25 *before payment is made.*

1 “(4) Contracts awarded pursuant to the authority of
2 this section shall include a provision containing a quantifi-
3 able baseline that is to be the basis upon which a savings
4 share ratio is established that governs the amount of pay-
5 ment a contractor is to receive under the contract. Before
6 commencement of performance of such a contract, the chief
7 acquisition officer of the agency shall determine in writing
8 that the terms of the provision are quantifiable and will
9 likely yield value to the Government.

10 “(5)(A) The head of the agency may retain savings re-
11 alized through the use of a share-in-savings contract under
12 this section that are in excess of the total amount of savings
13 paid to the contractor under the contract. Except as pro-
14 vided in subparagraph (B), savings shall be credited to the
15 appropriation or fund against which charges were made to
16 carry out the contract.

17 “(B) Amounts retained by the agency under this sub-
18 section shall—

19 “(i) without further appropriation, remain
20 available until expended; and

21 “(ii) be applied first to fund any contingent li-
22 abilities associated with share-in-savings procure-
23 ments that are not fully funded.

24 “(b) CANCELLATION AND TERMINATION.—(1) If funds
25 are not made available for the continuation of a share-in-

1 *savings contract entered into under this section in a subse-*
2 *quent fiscal year, the contract shall be canceled or termi-*
3 *nated. The costs of cancellation or termination may be paid*
4 *out of—*

5 “(A) *appropriations available for the perform-*
6 *ance of the contract;*

7 “(B) *appropriations available for acquisition of*
8 *the type of property or services procured under the*
9 *contract, and not otherwise obligated; or*

10 “(C) *funds subsequently appropriated for pay-*
11 *ments of costs of cancellation or termination, subject*
12 *to the limitations in paragraph (3).*

13 “(2) *The amount payable in the event of cancellation*
14 *or termination of a share-in-savings contract shall be nego-*
15 *tiated with the contractor at the time the contract is entered*
16 *into.*

17 “(3) *The head of an executive agency may enter into*
18 *share-in-savings contracts under this section in any given*
19 *fiscal year even if funds are not made specifically available*
20 *for the full costs of cancellation or termination of the con-*
21 *tract if funds are available and sufficient to make payments*
22 *with respect to the first fiscal year of the contract and the*
23 *following conditions are met regarding the funding of can-*
24 *cancellation and termination liability:*

1 “(A) *The amount of unfunded contingent liability*
2 *for the contract does not exceed the lesser of—*

3 “(i) *50 percent of the estimated costs of a*
4 *cancellation or termination; or*

5 “(ii) *\$10,000,000.*

6 “(B) *Unfunded contingent liability in excess of*
7 *\$5,000,000 has been approved by the Director of the*
8 *Office of Management and Budget or the Director’s*
9 *designee.*

10 “(c) *DEFINITIONS.—In this section:*

11 “(1) *The term ‘contractor’ means a private enti-*
12 *ty that enters into a contract with an agency.*

13 “(2) *The term ‘savings’ means—*

14 “(A) *monetary savings to an agency; or*

15 “(B) *savings in time or other benefits real-*
16 *ized by the agency, including enhanced revenues.*

17 “(3) *The term ‘share-in-savings contract’ means*
18 *a contract under which—*

19 “(A) *a contractor provides solutions for—*

20 “(i) *improving the agency’s mission-re-*
21 *lated or administrative processes; or*

22 “(ii) *accelerating the achievement of*
23 *agency missions; and*

1 “(B) the head of the agency pays the con-
2 tractor an amount equal to a portion of the sav-
3 ings derived by the agency from—

4 “(i) any improvements in mission-re-
5 lated or administrative processes that result
6 from implementation of the solution; or

7 “(ii) acceleration of achievement of
8 agency missions.”.

9 (c) *DEVELOPMENT OF INCENTIVES.*—The Director of
10 the Office of Management and Budget shall—

11 (1) identify potential opportunities for the use of
12 share-in-savings contracts;

13 (2) provide guidance to executive agencies for de-
14 termining mutually beneficial savings share ratios
15 and baselines from which savings may be measured;
16 and

17 (3) in consultation with the Committee on Gov-
18 ernmental Affairs of the Senate, the Committee on
19 Government Reform of the House of Representatives,
20 and executive agencies, develop techniques to permit
21 an executive agency to retain a portion of the savings
22 (after payment of the contractor’s share of the sav-
23 ings) derived from share-in-savings contracts as funds
24 are appropriated to the agency in future fiscal years.

1 (d) *REGULATIONS.*—Not later than 180 days after the
2 date of the enactment of this Act, the Federal Acquisition
3 Regulation shall be revised to implement the provisions en-
4 acted by this section. Such revisions shall—

5 (1) provide for the use of competitive procedures
6 in the selection and award of share-in-savings con-
7 tracts to—

8 (A) ensure the contractor’s share of savings
9 reflects the risk involved and market conditions;
10 and

11 (B) otherwise yield best value to the govern-
12 ment; and

13 (2) allow appropriate regulatory flexibility to fa-
14 cilitate the use of share-in-savings contracts by execu-
15 tive agencies, including the use of innovative provi-
16 sions for technology refreshment and nonstandard
17 Federal Acquisition Regulation contract clauses.

18 (e) *OMB REPORT TO CONGRESS.*—In consultation
19 with executive agencies, the Director of the Office of Man-
20 agement and Budget shall, not later than 2 years after the
21 completion of the revisions to the Federal Acquisition Regu-
22 lation under subsection (d), submit to Congress a report
23 containing—

24 (1) a description of the number of share-in-sav-
25 ings contracts entered into by each executive agency

1 *under by this section and the amendments made by*
2 *this section, and, for each contract identified—*

3 *(A) the performance acquired;*

4 *(B) the total amount of payments made to*
5 *the contractor; and*

6 *(C) the total amount of savings or other*
7 *measurable benefits realized;*

8 *(2) a description of the ability of agencies to de-*
9 *termine the baseline costs of a project against which*
10 *savings can be measured; and*

11 *(3) any recommendations, as the Director deems*
12 *appropriate, regarding additional changes in law*
13 *that may be necessary to ensure effective use of share-*
14 *in-savings contracts by executive agencies.*

15 *(f) DEFINITIONS.—In this section, the terms “con-*
16 *tractor”, “savings”, and “share-in-savings contract” have*
17 *the meanings given those terms in section 2332 of title 10,*
18 *United States Code, and section 317 of the Federal Property*
19 *and Administrative Services Act of 1949 (as amended by*
20 *subsections (a) and (b)).*

21 *(g) REPEAL OF SUPERSEDED PROVISIONS.—Sub-*
22 *sections (c), (d), (e), (f), (g), and (i) of section 210 of the*
23 *E-Government Act of 2002 (Public Law 107–317; 116 Stat.*
24 *2936) are repealed.*

1 **SEC. 302. INCENTIVES FOR CONTRACT EFFICIENCY.**

2 (a) *INCENTIVES FOR CONTRACT EFFICIENCY.*—*The Of-*
3 *fice of Federal Procurement Policy Act (41 U.S.C. 403 et*
4 *seq.) is amended by adding at the end the following new*
5 *section:*

6 **“SEC. 41. INCENTIVES FOR EFFICIENT PERFORMANCE OF**
7 **SERVICES CONTRACTS.**

8 “(a) *OPTIONS FOR SERVICES CONTRACTS.*—*An option*
9 *included in a contract for services to extend the contract*
10 *by one or more periods may provide that it be exercised*
11 *on the basis of exceptional performance by the contractor.*
12 *A contract that contains such an option provision shall in-*
13 *clude performance standards for measuring performance*
14 *under the contract, and to the maximum extent practicable*
15 *be performance-based. Such option provision shall only be*
16 *exercised in accordance with applicable provisions of law*
17 *or regulation that set forth restrictions on the duration of*
18 *the contract containing the option.*

19 “(b) *DEFINITION OF PERFORMANCE-BASED.*—*In this*
20 *section, the term ‘performance-based’, with respect to a con-*
21 *tract, task order, or contracting, means that the contract,*
22 *task order, or contracting, respectively, includes the use of*
23 *performance work statements that set forth contract require-*
24 *ments in clear, specific, and objective terms with measur-*
25 *able outcomes.”.*

1 (b) *CLERICAL AND TECHNICAL AMENDMENTS.—(1)*
 2 *The table of contents in section 1(b) of such Act is amended*
 3 *by striking the last item and inserting the following:*

“Sec. 40. *Protection of constitutional rights of contractors.*

“Sec. 41. *Incentives for efficient performance of services contracts.*”.

4 (2) *The section before section 41 of such Act (as added*
 5 *by subsection (a)) is redesignated as section 40.*

6 ***TITLE IV—ACQUISITIONS OF***
 7 ***COMMERCIAL ITEMS***

8 ***SEC. 401. ADDITIONAL INCENTIVE FOR USE OF PERFORM-***
 9 ***ANCE-BASED CONTRACTING FOR SERVICES.***

10 (a) *OTHER CONTRACTS.—Section 41 of the Office of*
 11 *Federal Procurement Policy Act, as added by section 302,*
 12 *is amended—*

13 (1) *by redesignating subsection (b) as subsection*
 14 *(c); and*

15 (2) *by inserting after subsection (a) the following*
 16 *new subsection:*

17 “(b) *INCENTIVE FOR USE OF PERFORMANCE-BASED*
 18 *SERVICES CONTRACTS.—(1) A performance-based contract*
 19 *for the procurement of services entered into by an executive*
 20 *agency or a performance-based task order for services issued*
 21 *by an executive agency may be treated as a contract for*
 22 *the procurement of commercial items if—*

23 “(A) *the contract or task order sets forth specifi-*
 24 *cally each task to be performed and, for each task—*

1 “(i) defines the task in measurable, mission-
2 related terms; and

3 “(ii) identifies the specific end products or
4 output to be achieved; and

5 “(B) the source of the services provides similar
6 services to the general public under terms and condi-
7 tions similar to those offered to the Federal Govern-
8 ment.

9 “(2) The regulations implementing this subsection
10 shall require agencies to collect and maintain reliable data
11 sufficient to identify the contracts or task orders treated as
12 contracts for commercial items using the authority of this
13 subsection. The data may be collected using the Federal Pro-
14 curement Data System or other reporting mechanism.

15 “(3) Not later than two years after the date of the en-
16 actment of this subsection, the Director of the Office of Man-
17 agement and Budget shall prepare and submit to the Com-
18 mittees on Governmental Affairs and on Armed Services of
19 the Senate and the Committees on Government Reform and
20 on Armed Services of the House of Representatives a report
21 on the contracts or task orders treated as contracts for com-
22 mercial items using the authority of this subsection. The
23 report shall include data on the use of such authority both
24 government-wide and for each department and agency.

1 “(3) authority for use of a time and materials
2 contract or a labor-hour contract for the procurement
3 of commercial services that are commonly sold to the
4 general public through such contracts.”

5 **SEC. 403. CLARIFICATION OF COMMERCIAL SERVICES DEFINITION.**
6

7 Subparagraph (F) of section 4(12) of the Office of Fed-
8 eral Procurement Policy Act (41 U.S.C. 403(12)(F)) is
9 amended—

10 (1) by striking “catalog or”; and

11 (2) by inserting “or specific outcomes to be
12 achieved” after “performed”.

13 **SEC. 404. DESIGNATION OF COMMERCIAL BUSINESS ENTITIES.**
14

15 (a) *IN GENERAL.*—Section 4 of the Office of Federal
16 Procurement Policy Act (41 U.S.C. 403), as amended by
17 section 101, is further amended—

18 (1) by adding at the end of paragraph (12) the
19 following new subparagraph:

20 “(I) Items or services produced or provided
21 by a commercial entity.”; and

22 (2) by adding at the end the following new para-
23 graph:

24 “(17) The term ‘commercial entity’ means any
25 enterprise whose primary customers are other than

1 *the Federal Government. In order to qualify as a*
2 *commercial entity, at least 90 percent (in dollars) of*
3 *the sales of the enterprise over the past three business*
4 *years must have been made to private sector enti-*
5 *ties.”.*

6 (b) *COLLECTION OF DATA.—Regulations imple-*
7 *menting the amendments made by subsection (a) shall re-*
8 *quire agencies to collect and maintain reliable data suffi-*
9 *cient to identify the contracts entered into or task orders*
10 *awarded for items or services produced or provided by a*
11 *commercial entity. The data may be collected using the Fed-*
12 *eral Procurement Data System or other reporting mecha-*
13 *nism.*

14 (c) *OMB REPORT.—Not later than two years after the*
15 *date of the enactment of this subsection, the Director of the*
16 *Office of Management and Budget shall prepare and submit*
17 *to the Committees on Governmental Affairs and on Armed*
18 *Services of the Senate and the Committees on Government*
19 *Reform and on Armed Services of the House of Representa-*
20 *tives a report on the contracts entered into or task orders*
21 *awarded for items or services produced or provided by a*
22 *commercial entity. The report shall include data on the use*
23 *of such authority both government-wide and for each de-*
24 *partment and agency.*

1 (d) *COMPTROLLER GENERAL REVIEW.*—The Comp-
 2 troller General shall review the implementation of the
 3 amendments made by subsection (a) to evaluate the effec-
 4 tiveness of such implementation in increasing the avail-
 5 ability of items and services to the Federal Government at
 6 fair and reasonable prices.

7 **TITLE V—OTHER MATTERS**

8 **SEC. 501. AUTHORITY TO ENTER INTO CERTAIN PROCURE-**
 9 **MENT-RELATED TRANSACTIONS AND TO**
 10 **CARRY OUT CERTAIN PROTOTYPE PROJECTS.**

11 *Title III of the Federal Property and Administrative*
 12 *Services Act of 1949 (41 U.S.C. 251 et seq.) as amended*
 13 *by section 215, is further amended by adding at the end*
 14 *the following new section:*

15 **“SEC. 319. AUTHORITY TO ENTER INTO CERTAIN TRANS-**
 16 **ACTIONS FOR DEFENSE AGAINST OR RECOV-**
 17 **ERY FROM TERRORISM OR NUCLEAR, BIO-**
 18 **LOGICAL, CHEMICAL, OR RADIOLOGICAL AT-**
 19 **TACK.**

20 “(a) *AUTHORITY.*—

21 “(1) *IN GENERAL.*—The head of an executive
 22 agency who engages in basic research, applied re-
 23 search, advanced research, and development projects
 24 that—

1 “(A) are necessary to the responsibilities of
2 such official’s executive agency in the field of re-
3 search and development, and

4 “(B) have the potential to facilitate defense
5 against or recovery from terrorism or nuclear,
6 biological, chemical, or radiological attack,
7 may exercise the same authority (subject to the same
8 restrictions and conditions) with respect to such re-
9 search and projects as the Secretary of Defense may
10 exercise under section 2371 of title 10, United States
11 Code, except for subsections (b) and (f) of such section
12 2371.

13 “(2) *PROTOTYPE PROJECTS.*—The head of an ex-
14 ecutive agency may, under the authority of paragraph
15 (1), carry out prototype projects that meet the re-
16 quirements of subparagraphs (A) and (B) of para-
17 graph (1) in accordance with the requirements and
18 conditions provided for carrying out prototype
19 projects under section 845 of the National Defense Au-
20 thorization Act for Fiscal Year 1994 (Public Law
21 103–160; 10 U.S.C. 2371 note). In applying the re-
22 quirements and conditions of that section 845—

23 “(A) subsection (c) of that section shall
24 apply with respect to prototype projects carried
25 out under this paragraph; and

1 “(B) *the Director of the Office of Manage-*
2 *ment and Budget shall perform the functions of*
3 *the Secretary of Defense under subsection (d) of*
4 *that section.*

5 “(3) *APPLICABILITY TO SELECTED EXECUTIVE*
6 *AGENCIES.—*

7 “(A) *OMB AUTHORIZATION REQUIRED.—*
8 *The head of an executive agency may exercise*
9 *authority under this subsection only if author-*
10 *ized by the Director of the Office of Management*
11 *and Budget to do so.*

12 “(B) *RELATIONSHIP TO AUTHORITY OF DE-*
13 *PARTMENT OF HOMELAND SECURITY.—The au-*
14 *thority under this subsection shall not apply to*
15 *the Secretary of Homeland Security while sec-*
16 *tion 831 of the Homeland Security Act of 2002*
17 *(Public Law 107–296; 116 Stat. 2224) is in ef-*
18 *fect.*

19 “(b) *ANNUAL REPORT.—The annual report of the head*
20 *of an executive agency that is required under subsection (h)*
21 *of section 2371 of title 10, United States Code, as applied*
22 *to the head of the executive agency by subsection (a), shall*
23 *be submitted to the Committee on Governmental Affairs of*
24 *the Senate and the Committee on Government Reform of*
25 *the House of Representatives.*

1 “(c) *REGULATIONS.*—*The Director of the Office of*
2 *Management and Budget shall prescribe regulations to*
3 *carry out this section.*”.

4 **SEC. 502. AMENDMENTS RELATING TO FEDERAL EMER-**
5 **GENCY PROCUREMENT FLEXIBILITY.**

6 (a) *REPEAL OF SUNSET FOR AUTHORITIES APPLICA-*
7 *BLE TO PROCUREMENTS FOR DEFENSE AGAINST OR RE-*
8 *COVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL,*
9 *CHEMICAL, OR RADIOLOGICAL ATTACK.*—*Section 852 of the*
10 *Homeland Security Act of 2002 (Public Law 107–296; 116*
11 *Stat. 2235) is amended by striking “, but only if a sollicita-*
12 *tion of offers for the procurement is issued during the 1-*
13 *year period beginning on the date of the enactment of this*
14 *Act*”.

15 (b) *APPLICABILITY OF INCREASED SIMPLIFIED ACQUI-*
16 *SITION THRESHOLD.*—(1) *The matter preceding paragraph*
17 *(1) of section 853(a) of the Homeland Security Act of 2002*
18 *(Public Law 107–296; 116 Stat. 2235) is amended to read*
19 *as follows:*

20 “(a) *THRESHOLD AMOUNTS.*—*For a procurement re-*
21 *ferred to in section 852, the simplified acquisition threshold*
22 *referred to in section 4(11) of the Office of Federal Procure-*
23 *ment Policy Act (41 U.S.C. 403(11)) is deemed to be—*”.

24 (2) *Subsections (b) and (c) of section 853 of such Act*
25 *are repealed.*

1 (3) *The heading of section 853 of such Act is amended*
2 *to read as follows:*

3 **“SEC. 853. INCREASED SIMPLIFIED ACQUISITION THRESH-**
4 **OLD FOR CERTAIN PROCUREMENTS.”.**

5 (4) *The table of contents in section 1(b) of such Act*
6 *is amended by striking the item relating to section 853 and*
7 *inserting the following:*

“Sec. 853. Increased simplified acquisition threshold for certain procurements.”.

8 (5) *Section 18(c)(1) of the Office of Federal Procure-*
9 *ment Policy Act (41 U.S.C. 416(c)(1)) is amended—*

10 (A) *by striking “or” at the end of subparagraph*
11 *(G);*

12 (B) *by striking the period at the end of subpara-*
13 *graph (H) and inserting “; or”; and*

14 (C) *by adding at the end the following:*

15 *“(I) the procurement is by the head of an execu-*
16 *tive agency pursuant to the special procedures pro-*
17 *vided in section 853 of the Homeland Security Act of*
18 *2002 (Public Law 107–296).”.*

19 (c) **APPLICABILITY OF CERTAIN COMMERCIAL ITEMS**
20 **AUTHORITIES.**—(1) *Subsection (a) of section 855 of the*
21 *Homeland Security Act of 2002 (Public Law 107–296; 116*
22 *Stat. 2236) is amended to read as follows:*

23 *“(a) AUTHORITY.—With respect to a procurement re-*
24 *ferred to in section 852, the head of an executive agency*

1 *may deem any item or service to be a commercial item for*
2 *the purpose of Federal procurement laws.”.*

3 (2) *Subsection (b)(1) of section 855 of such Act is*
4 *amended by striking “to which any of the provisions of law*
5 *referred to in subsection (a) are applied”.*

6 (d) *EXTENSION OF DEADLINE FOR REVIEW AND RE-*
7 *PORT.—Section 857(a) of the Homeland Security Act of*
8 *2002 (Public Law 107–296; 116 Stat. 2237) is amended*
9 *by striking “2004” and inserting “2006”.*

10 **SEC. 503. AUTHORITY TO MAKE INFLATION ADJUSTMENTS**
11 **TO SIMPLIFIED ACQUISITION THRESHOLD.**

12 *Section 4(11) of the Office of Federal Procurement Pol-*
13 *icy Act (41 U.S.C. 403(11)) is amended by inserting before*
14 *the period at the end the following: “, except that such*
15 *amount may be adjusted by the Administrator every five*
16 *years to the amount equal to \$100,000 in constant fiscal*
17 *year 2003 dollars (rounded to the nearest \$10,000)”.*

18 **SEC. 504. TECHNICAL CORRECTIONS RELATED TO DUPLICA-**
19 **TIVE AMENDMENTS.**

20 (a) *REPEAL OF SUPERSEDED SUBCHAPTER AND RE-*
21 *LATED CONFORMING AMENDMENTS.—(1) Subchapter II of*
22 *chapter 35 of title 44, United States Code, is repealed.*

23 (2) *Subchapter III of such chapter is redesignated as*
24 *subchapter II.*

1 (3) Section 3549 of title 44, United States Code, is
2 amended by striking the sentence beginning with “While
3 this subchapter”.

4 (4) The table of sections at the beginning of chapter
5 35 of title 44, United States Code, is amended—

6 (A) by striking the items relating to sections
7 3531 through 3538; and

8 (B) by striking the heading “SUBCHAPTER
9 III—INFORMATION SECURITY”.

10 (5) Section 2224a of title 10, United States Code, is
11 repealed, and the table of sections at the beginning of chap-
12 ter 131 of such title is amended by striking the item relating
13 to such section.

14 (b) *CONFORMING AMENDMENTS RELATED TO REPEALS*
15 *OF SHARE-IN-SAVINGS AND SOLUTIONS-BASED CON-*
16 *TRACTING PILOT PROGRAMS.*—(1) Chapter 115 of title 40,
17 United States Code, is repealed.

18 (2) The table of chapters at the beginning of subtitle
19 III of such title is amended by striking the item relating
20 to chapter 115.

21 (c) *AMENDMENTS MADE BY E-GOVERNMENT ACT*
22 *MADE APPLICABLE.*—The following provisions of law shall
23 read as if the amendments made by title X of the Homeland
24 Security Act of 2002 (Public Law 107–296) to such provi-
25 sions did not take effect:

1 (1) *Section 2224 of title 10, United States Code.*

2 (2) *Sections 20 and 21 of the National Institute*
3 *of Standards and Technology Act (15 U.S.C. 278g-3*
4 *and 278g-4).*

5 (3) *Sections 11331 and 11332 of title 40, United*
6 *States Code.*

7 (4) *Subtitle G of title X of the Floyd D. Spence*
8 *National Defense Authorization Act for Fiscal Year*
9 *2001 (Public Law 106-398; 44 U.S.C. 3531 note).*

10 (5) *Sections 3504(g), 3505, and 3506(g) of title*
11 *44, United States Code.*

12 (d) *CORRECTION OF CROSS REFERENCE.—Section*
13 *2224(c) of title 10, United States Code, as amended by sec-*
14 *tion 301(c)(1)(B)(iii) of the E-Government Act of 2002*
15 *(Public Law 107-347; 116 Stat. 2955), is amended by strik-*
16 *ing “subchapter III” and inserting “subchapter II”.*

17 **SEC. 505. EXEMPTION FROM LIMITATIONS ON PROCURE-**
18 **MENT OF FOREIGN INFORMATION TECH-**
19 **NOLOGY THAT IS A COMMERCIAL ITEM.**

20 (a) *EXEMPTION.—Notwithstanding any other provi-*
21 *sion of law, in order to promote Government access to com-*
22 *mercial information technology, the restriction on pur-*
23 *chasing nondomestic articles, materials, and supplies set*
24 *forth in the Buy American Act (41 U.S.C. 10a et seq.), and*
25 *the prohibition on acquiring foreign products under section*

1 302(a)(1) of the Trade Agreements Act of 1979 (Public Law
2 96–39; 19 U.S.C. 2512(a)(1)), shall not apply to the acqui-
3 sition by the Federal Government of information technology
4 (as defined in section 11101 of title 40, United States Code,
5 that is a commercial item (as defined in section 4(12) of
6 the Office of Federal Procurement Policy Act (41 U.S.C.
7 403(12))).

8 (b) *DEFINITION.*—Section 11101(6) of title 40, United
9 States Code, is amended—

10 (1) in subparagraph (A), by inserting after
11 “storage,” the following: “analysis, evaluation,”; and

12 (2) in subparagraph (B), by striking “ancillary
13 equipment,” and inserting “ancillary equipment (in-
14 cluding imaging peripherals, input, output, and stor-
15 age devices necessary for security and surveillance),
16 peripheral equipment designed to be controlled by the
17 central processing unit of a computer,”.

18 **SEC. 506. PROHIBITION ON USE OF QUOTAS.**

19 (a) *IN GENERAL.*—After the date of enactment of this
20 Act, the Office of Management and Budget may not estab-
21 lish, apply, or enforce any numerical goal, target, or quota
22 for subjecting the employees of a department or agency of
23 the Government to public-private competitions or con-
24 verting such employees or the work performed by such em-
25 ployees to contractor performance under Office of Manage-

1 *ment and Budget Circular A-76 or any other administra-*
2 *tive regulation, directive, or policy unless the goal, target,*
3 *or quota is based on considered research and sound analysis*
4 *of past activities and is consistent with the stated mission*
5 *of the department or agency.*

6 (b) *LIMITATIONS.—Subsection (a) shall not—*

7 (1) *otherwise affect the implementation or en-*
8 *forcement of the Government Performance and Results*
9 *Act of 1993 (107 Stat. 285); or*

10 (2) *prevent any agency of the Executive branch*
11 *from subjecting work performed by Federal employees*
12 *or private contractors to public-private competition*
13 *or conversions.*

14 **SEC. 507. PUBLIC DISCLOSURE OF NONCOMPETITIVE CON-**
15 **TRACTING FOR THE RECONSTRUCTION OF IN-**
16 **FRASTRUCTURE IN IRAQ.**

17 (a) *DISCLOSURE REQUIRED.—*

18 (1) *PUBLICATION AND PUBLIC AVAILABILITY.—*
19 *The head of an executive agency of the United States*
20 *that enters into a contract for the repair, mainte-*
21 *nance, or construction of infrastructure in Iraq with-*
22 *out full and open competition shall publish in the*
23 *Federal Register or Commerce Business Daily and*
24 *otherwise make available to the public, not later than*

1 30 days after the date on which the contract is en-
2 tered into, the following information:

3 (A) *The amount of the contract.*

4 (B) *A brief description of the scope of the*
5 *contract.*

6 (C) *A discussion of how the executive agen-*
7 *cy identified, and solicited offers from, potential*
8 *contractors to perform the contract, together with*
9 *a list of the potential contractors that were*
10 *issued solicitations for the offers.*

11 (D) *The justification and approval docu-*
12 *ments on which was based the determination to*
13 *use procedures other than procedures that pro-*
14 *vide for full and open competition.*

15 (2) *INAPPLICABILITY TO CONTRACTS AFTER FIS-*
16 *CAL YEAR 2013.—Paragraph (1) does not apply to a*
17 *contract entered into after September 30, 2013.*

18 (b) *CLASSIFIED INFORMATION.—*

19 (1) *AUTHORITY TO WITHHOLD.—The head of an*
20 *executive agency may—*

21 (A) *withhold from publication and disclo-*
22 *sure under subsection (a) any document that is*
23 *classified for restricted access in accordance with*
24 *an Executive order in the interest of national de-*
25 *fense or foreign policy; and*

1 (B) redact any part so classified that is in
2 a document not so classified before publication
3 and disclosure of the document under subsection
4 (a).

5 (2) AVAILABILITY TO CONGRESS.—In any case
6 in which the head of an executive agency withholds
7 information under paragraph (1), the head of such
8 executive agency shall make available an unredacted
9 version of the document containing that information
10 to the chairman and ranking member of each of the
11 following committees of Congress:

12 (A) The Committee on Governmental Af-
13 fairs of the Senate and the Committee on Gov-
14 ernment Reform of the House of Representatives.

15 (B) The Committees on Appropriations of
16 the Senate and House of Representatives.

17 (C) Each committee that the head of the ex-
18 ecutive agency determines has legislative juris-
19 diction for the operations of such department or
20 agency to which the information relates.

21 (c) FISCAL YEAR 2003 CONTRACTS.—This section shall
22 apply to contracts entered into on or after October 1, 2002,
23 except that, in the case of a contract entered into before
24 the date of the enactment of this Act, subsection (a) shall

1 *be applied as if the contract had been entered into on the*
2 *date of the enactment of this Act.*

3 (d) *RELATIONSHIP TO OTHER DISCLOSURE LAWS.—*
4 *Nothing in this section shall be construed as affecting obli-*
5 *gations to disclose United States Government information*
6 *under any other provision of law.*

7 (e) *DEFINITIONS.—In this section, the terms “executive*
8 *agency” and “full and open competition” have the mean-*
9 *ings given such terms in section 4 of the Office of Federal*
10 *Procurement Policy Act (41 U.S.C. 403).*

11 **SEC. 508. APPLICABILITY OF CERTAIN PROVISIONS TO SOLE**
12 **SOURCE CONTRACTS FOR ITEMS AND SERV-**
13 **ICES TREATED AS COMMERCIAL ITEMS.**

14 (a) *IN GENERAL.—No contract awarded on a sole*
15 *source basis for the procurement of items or services that*
16 *are treated as or deemed to be commercial items pursuant*
17 *to the amendments made by section 401, 404, or 502 of this*
18 *Act shall be exempt from—*

19 (1) *cost accounting standards promulgated pur-*
20 *suant to section 26 of the Office of Federal Procure-*
21 *ment Policy Act (41 U.S.C. 422); and*

22 (2) *cost or pricing data requirements (commonly*
23 *referred to as truth in negotiating) under section*
24 *2306a of title 10, United States Code, and section*

1 *304A of title III of the Federal Property and Admin-*
2 *istrative Services Act of 1949 (41 U.S.C. 254b).*

3 *(b) LIMITATION.—This section shall not apply to any*
4 *contract in an amount less than \$15,000,000.*

Union Calendar No. 140

108TH CONGRESS
1ST SESSION

H. R. 1837

[Report No. 108-117, Parts I and II]

A BILL

To improve the Federal acquisition workforce and the process for the acquisition of services by the Federal Government, and for other purposes.

SEPTEMBER 3, 2003

Reported from the Committee on the Judiciary with an amendment; committed to the Committee of the Whole House on the State of the Union and ordered to be printed