S. 1587

One Hundred Third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the twenty-fifth day of January, one thousand nine hundred and ninety-four

An Act

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Acquisition Streamlining Act of 1994".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—CONTRACT FORMATION

Subtitle A—Competition Statutes

PART I—ARMED SERVICES ACQUISITIONS

Subpart A—Competition Requirements

SEC. 1001. REFERENCES TO FEDERAL ACQUISITION REGULATION.

Section 2304 of title 10, United States Code, is amended—

(1) in subsection (a)(1)(A), by striking out ''modifications'' and all that follows through ''note)'' and inserting in lieu thereof ''Federal Acquisition Regulation''; and

(2) in subsection (g)(1), by striking out ''regulations modified'' and all that follows through ''note)'' and inserting in lieu thereof ''Federal Acquisition Regulation''.

SEC. 1002. ESTABLISHMENT OR MAINTENANCE OF ALTERNATIVE SOURCES OF SUPPLY.

(a) ADDITIONAL JUSTIFICATION FOR ESTABLISHING OR MAINTAINING ALTERNATIVE SOURCES.—Section 2304(b)(1) of such title is amended—

(1) by striking out ''or'' at the end of subparagraph (B);

(2) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following new subparagraphs:

''(D) would ensure the continuous availability of a reliable source of supply of such property or service;

''(E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

''(F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.''.

(b) PROHIBITION ON USE OF CLASSES OF PURCHASES OR CONTRACTS.—Section 2304(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(4) A determination under paragraph (1) may not be made for a class of purchases or contracts.''.

SEC. 1003. CLARIFICATION OF APPROVAL AUTHORITY FOR USE OF PROCEDURES OTHER THAN FULL AND OPEN COMPETITION.

Section 2304(f)(1)(B)(i) of title 10, United States Code, is amended by inserting before the semicolon at the end the following: ''or by an official referred to in clause (ii), (iii), or (iv)''.

SEC. 1004. TASK AND DELIVERY ORDER CONTRACTS.

(a) AUTHORITY.—(1) Chapter 137 of title 10, United States Code, is amended by inserting after section 2304 the following new sections:

''§ 2304a. Task and delivery order contracts: general authority

''(a) AUTHORITY TO AWARD.—Subject to the requirements of this section, section 2304c of this title, and other applicable law, the head of an agency may enter into a task or delivery order

contract (as defined in section 2304d of this title) for procurement of services or property.

"(b) SOLICITATION.—The solicitation for a task or delivery order contract shall include the following:

"(1) The period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any.

"(2) The maximum quantity or dollar value of the services or property to be procured under the contract.

"(3) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract.

"(c) APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE PROCEDURES.—The head of an agency may use procedures other than competitive procedures to enter into a task or delivery order contract under this section only if an exception in subsection (c) of section 2304 of this title applies to the contract and the use of such procedures is approved in accordance with subsection (f) of such section.

"(d) SINGLE AND MULTIPLE CONTRACT AWARDS.—(1) The head of an agency may exercise the authority provided in this section—

"(A) to award a single task or delivery order contract; or

"(B) if the solicitation states that the head of the agency has the option to do so, to award separate task or delivery order contracts for the same or similar services or property to two or more sources.

"(2) No determination under section 2304(b) of this title is required for award of multiple task or delivery order contracts under paragraph (1)(B).

"(3) The regulations implementing this subsection shall—

"(A) establish a preference for awarding, to the maximum extent practicable, multiple task or delivery order contracts for the same or similar services or property under the authority of paragraph (1)(B); and

"(B) establish criteria for determining when award of multiple task or delivery order contracts would not be in the best interest of the Federal Government.

"(e) CONTRACT MODIFICATIONS.—A task or delivery order may not increase the scope, period, or maximum value of the task or delivery order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

"(f) INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.—Except as otherwise specifically provided in section 2304b of this title, this section does not apply to a task or delivery order contract for the procurement of advisory and assistance services (as defined in section 1105(g) of title 31).

"(g) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in this section may be construed to limit or expand any authority of the head of an agency or the Administrator of General Services to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law.

"§ 2304b. Task order contracts: advisory and assistance services

"(a) AUTHORITY TO AWARD.—(1) Subject to the requirements of this section, section 2304c of this title, and other applicable law, the head of an agency may enter into a task order contract (as defined in section 2304d of this title) for procurement of advisory and assistance services.

"(2) The head of an agency may enter into a task order contract for procurement of advisory and assistance services only under the authority of this section.

"(b) LIMITATION ON CONTRACT PERIOD.—The period of a task order contract entered into under this section, including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed five years unless a longer period is specifically authorized in a law that is applicable to such contract.

"(c) CONTENT OF NOTICE.—The notice required by section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed task order contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

"(d) REQUIRED CONTENT OF SOLICITATION AND CONTRACT.—(1) The solicitation for the proposed task order contract shall include the information (regarding services) described in section 2304a(b) of this title.

"(2) A task order contract entered into under this section shall contain the same information that is required by paragraph (1) to be included in the solicitation of offers for that contract.

"(e) MULTIPLE AWARDS.—(1) The head of an agency may, on the basis of one solicitation, award separate task order contracts under this section for the same or similar services to two or more sources if the solicitation states that the head of the agency has the option to do so.

"(2) If, in the case of a task order contract for advisory and assistance services to be entered into under this section, the contract period is to exceed three years and the contract amount is estimated to exceed $10,000,000 (including all options), the solicitation shall—

"(A) provide for a multiple award authorized under paragraph (1); and

"(B) include a statement that the head of the agency may also elect to award only one task order contract if the head of the agency determines in writing that only one of the offerers is capable of providing the services required at the level of quality required.

"(3) Paragraph (2) does not apply in the case of a solicitation for which the head of the agency concerned determines in writing that, because the services required under the task order contract are unique or highly specialized, it is not practicable to award more than one contract.

"(f) CONTRACT MODIFICATIONS.—(1) A task order may not increase the scope, period, or maximum value of the task order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

"(2) Unless use of procedures other than competitive procedures is authorized by an exception in subsection (c) of section 2304

of this title and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification.

"(3) Notice regarding the modification shall be provided in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

"(g) CONTRACT EXTENSIONS.—(1) Notwithstanding the limitation on the contract period set forth in subsection (b) or in a solicitation or contract pursuant to subsection (e), a task order contract entered into by the head of an agency under this section may be extended on a sole-source basis for a period not exceeding six months if the head of such agency determines that—

"(A) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

"(B) the extension is necessary in order to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

"(2) A task order contract may be extended under the authority of paragraph (1) only once and only in accordance with the limitations and requirements of this subsection.

"(h) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the head of an agency entering into such contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

"(i) ADVISORY AND ASSISTANCE SERVICES DEFINED.—In this section, the term 'advisory and assistance services' has the meaning given such term in section 1105(g) of title 31.

"§ 2304c. Task and delivery order contracts: orders

"(a) ISSUANCE OF ORDERS.—The following actions are not required for issuance of a task or delivery order under a task or delivery order contract:

"(1) A separate notice for such order under section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

"(2) Except as provided in subsection (b), a competition (or a waiver of competition approved in accordance with section 2304(f) of this title) that is separate from that used for entering into the contract.

"(b) MULTIPLE AWARD CONTRACTS.—When multiple task or delivery order contracts are awarded under section 2304a(d)(1)(B) or 2304b(e) of this title, all contractors awarded such contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task or delivery order in excess of $2,500 that is to be issued under any of the contracts unless—

"(1) the agency's need for the services or property ordered is of such unusual urgency that providing such opportunity to all such contractors would result in unacceptable delays in fulfilling that need;

"(2) only one such contractor is capable of providing the services or property required at the level of quality required

because the services or property ordered are unique or highly specialized;

"(3) the task or delivery order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task or delivery order already issued on a competitive basis; or

"(4) it is necessary to place the order with a particular contractor in order to satisfy a minimum guarantee.

"(c) STATEMENT OF WORK.—A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.

"(d) PROTESTS.—A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.

"(e) TASK AND DELIVERY ORDER OMBUDSMAN.—Each head of an agency who awards multiple task or delivery order contracts pursuant to section 2304a(d)(1)(B) or 2304b(e) of this title shall appoint or designate a task and delivery order ombudsman who shall be responsible for reviewing complaints from the contractors on such contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders when required under subsection (b). The task and delivery order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the agency's competition advocate.

"(f) APPLICABILITY.—This section applies to task and delivery order contracts entered into under sections 2304a and 2304b of this title.

"§ 2304d. Task and delivery order contracts: definitions

"In sections 2304a, 2304b, and 2304c of this title:

"(1) The term 'task order contract' means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

"(2) The term 'delivery order contract' means a contract for property that does not procure or specify a firm quantity of property (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of property during the period of the contract.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2304 the following new items:

"2304a. Task and delivery order contracts: general authority.
"2304b. Task order contracts: advisory and assistance services.
"2304c. Task and delivery order contracts: orders.
"2304d. Task and delivery order contracts: definitions.".

(b) REPEAL OF SUPERSEDED PROVISION.—Section 2304 of title 10, United States Code, is amended by striking out subsection (j).

(c) CONFORMING AMENDMENT FOR PROFESSIONAL AND TECHNICAL SERVICES.—Section 2331 of title 10, United States Code, is amended by striking out subsection (c).

(d) PROVISIONS NOT AFFECTED.—Nothing in section 2304a, 2304b, 2304c, or 2304d of title 10, United States Code, as added

by subsection (a), and nothing in the amendments made by subsections (b) and (c), shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under—

(1) the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759)); and

(2) the Brooks Architect-Engineers Act (title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)).

SEC. 1005. ACQUISITION OF EXPERT SERVICES.

Section 2304(c)(3) of title 10, United States Code, is amended—

(1) by striking out "or (B)" and inserting in lieu thereof "(B)"; and

(2) by inserting before the semicolon at the end the following: ", or (C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify".

Subpart B—Planning, Solicitation, Evaluation, and Award

SEC. 1011. SOURCE SELECTION FACTORS.

(a) CONTENT OF SOLICITATION.—Paragraph (2) of section 2305(a) of title 10, United States Code, is amended—

(1) in subparagraph (A)(i)—

(A) by striking out "(and significant subfactors)" and inserting in lieu thereof "and significant subfactors"; and

(B) by striking out "cost- or price-related factors, and noncost- or nonprice-related factors" and inserting in lieu thereof "cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors";

(2) in subparagraph (A)(ii), by striking out "(and subfactors)" and inserting "and subfactors"; and

(3) in subparagraph (B)(ii), by amending subclause (I) to read as follows:

"(I) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and".

(b) EVALUATION FACTORS.—Such section is further amended by striking out paragraph (3) and inserting in lieu thereof the following:

"(3)(A) In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency—

"(i) shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality

of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

"(ii) shall include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

"(iii) shall disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

"(I) significantly more important than cost or price;

"(II) approximately equal in importance to cost or price; or

"(III) significantly less important than cost or price.

"(B) The regulations implementing clause (iii) of subparagraph (A) may not define the terms 'significantly more important' and 'significantly less important' as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

"(4) Nothing in this subsection prohibits an agency from—

"(A) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

"(B) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest cost or price.".

SEC. 1012. SOLICITATION PROVISION REGARDING EVALUATION OF PURCHASE OPTIONS.

Subsection (a) of section 2305 of title 10, United States Code, as amended by section 1011, is further amended by adding at the end the following new paragraph:

"(5) The head of an agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the head of the agency has determined that there is a reasonable likelihood that the options will be exercised.".

SEC. 1013. PROMPT NOTICE OF AWARD.

(a) SEALED BID PROCEDURES.—Paragraph (3) of section 2305(b) of title 10, United States Code, is amended—

(1) in the last sentence, by striking out "transmitting written notice" and inserting in lieu thereof "transmitting, in writing or by electronic means, notice"; and

(2) by adding at the end the following: "Within three days after the date of contract award, the head of the agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.".

(b) COMPETITIVE PROPOSALS PROCEDURES.—Paragraph (4)(B) of such section is amended in the second sentence—

(1) by striking out "transmitting written notice" and inserting in lieu thereof "transmitting, in writing or by electronic means, notice"; and

(2) by striking out "shall promptly notify" and inserting in lieu thereof ", within three days after the date of contract award, shall notify, in writing or by electronic means,".

SEC. 1014. POST-AWARD DEBRIEFINGS.

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

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following new paragraph (5):

"(5)(A) When a contract is awarded by the head of an agency on the basis of competitive proposals, an unsuccessful offeror, upon written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award. The head of the agency shall debrief the offeror within, to the maximum extent practicable, five days after receipt of the request by the agency.

"(B) The debriefing shall include, at a minimum—

"(i) the agency's evaluation of the significant weak or deficient factors in the offeror's offer;

"(ii) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall evaluated cost and technical rating of the offer of the debriefed offeror;

"(iii) the overall ranking of all offers;

"(iv) a summary of the rationale for the award;

"(v) in the case of a proposal that includes a commercial item that is an end item under the contract, the make and model of the item being provided in accordance with the offer of the contractor awarded the contract; and

"(vi) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

"(C) The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under section 552(b) of title 5.

"(D) Each solicitation for competitive proposals shall include a statement that information described in subparagraph (B) may be disclosed in post-award debriefings.

"(E) If, within one year after the date of the contract award and as a result of a successful procurement protest, the agency seeks to fulfill the requirement under the protested contract either on the basis of a new solicitation of offers or on the basis of new best and final offers requested for that contract, the agency shall make available to all offerors—

"(i) the information provided in debriefings under this paragraph regarding the offer of the contractor awarded the contract; and

"(ii) the same information that would have been provided to the original offerors.

"(F) The contracting officer shall include a summary of the debriefing in the contract file.".

SEC. 1015. PROTEST FILE.

Section 2305 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(e) PROTEST FILE.—(1) If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, the head of an agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31 and an actual or prospective offeror so requests, a file of the protest shall be

established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

"(2) Information exempt from disclosure under section 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

"(3) Regulations implementing this subsection shall be consistent with the regulations regarding the preparation and submission of an agency's protest file (the so-called 'rule 4 file') for protests to the General Services Board of Contract Appeals under section 111 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 759).".

SEC. 1016. AGENCY ACTIONS ON PROTESTS.

Section 2305 of title 10, United States Code, as amended by section 1015, is further amended by adding at the end the following new subsection:

"(f) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency—

"(1) may take any action set out in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31; and

"(2) may pay costs described in paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2) of such section.".

Subpart C—Kinds of Contracts

SEC. 1021. REPEAL OF REQUIREMENT FOR SECRETARIAL DETERMINATION REGARDING USE OF COST TYPE OR INCENTIVE CONTRACT.

Subsection (c) of section 2306 of title 10, United States Code, is repealed.

SEC. 1022. REVISION AND REORGANIZATION OF MULTIYEAR CONTRACTING AUTHORITY.

(a) IN GENERAL.—(1) Chapter 137 of title 10, United States Code, is amended by inserting after section 2306a the following new section:

"§ 2306b. Multiyear contracts

"(a) IN GENERAL.—To the extent that funds are otherwise available for obligation, the head of an agency may enter into multiyear contracts for the purchase of property whenever the head of that agency finds—

"(1) that the use of such a contract will result in substantial savings of the total anticipated costs of carrying out the program through annual contracts;

"(2) that the minimum need for the property to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities;

"(3) that there is a reasonable expectation that throughout the contemplated contract period the head of the agency will request funding for the contract at the level required to avoid contract cancellation;

"(4) that there is a stable design for the property to be acquired and that the technical risks associated with such property are not excessive;

"(5) that the estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic; and

"(6) in the case of a purchase by the Department of Defense, that the use of such a contract will promote the national security of the United States.

"(b) REGULATIONS.—(1) Each official named in paragraph (2) shall prescribe acquisition regulations for the agency or agencies under the jurisdiction of such official to promote the use of multiyear contracting as authorized by subsection (a) in a manner that will allow the most efficient use of multiyear contracting.

"(2)(A) The Secretary of Defense shall prescribe the regulations applicable to the Department of Defense.

"(B) The Secretary of Transportation shall prescribe the regulations applicable to the Coast Guard, except that the regulations prescribed by the Secretary of Defense shall apply to the Coast Guard when it is operating as a service in the Navy.

"(C) The Administrator of the National Aeronautics and Space Administration shall prescribe the regulations applicable to the National Aeronautics and Space Administration.

"(c) CONTRACT CANCELLATIONS.—The regulations may provide for cancellation provisions in multiyear contracts to the extent that such provisions are necessary and in the best interests of the United States. The cancellation provisions may include consideration of both recurring and nonrecurring costs of the contractor associated with the production of the items to be delivered under the contract.

"(d) PARTICIPATION BY SUBCONTRACTORS, VENDORS, AND SUPPLIERS.—In order to broaden the defense industrial base, the regulations shall provide that, to the extent practicable—

"(1) multiyear contracting under paragraph (1) shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, vendors, or suppliers; and

"(2) upon accrual of any payment or other benefit under such a multiyear contract to any subcontractor, vendor, or supplier company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

"(e) PROTECTION OF EXISTING AUTHORITY.—The regulations shall provide that, to the extent practicable, the administration of this section, and of the regulations prescribed under this section, shall not be carried out in a manner to preclude or curtail the existing ability of an agency—

"(1) to provide for competition in the production of items to be delivered under such a contract; or

"(2) to provide for termination of a prime contract the performance of which is deficient with respect to cost, quality, or schedule.

"(f) CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING.—In the event funds are not made available for the continuation of a contract made under this section into a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid from—

"(1) appropriations originally available for the performance of the contract concerned;

"(2) appropriations currently available for procurement of the type of property concerned, and not otherwise obligated; or

"(3) funds appropriated for those payments.

"(g) CONTRACT CANCELLATION CEILINGS EXCEEDING $100,000,000.—Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of $100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

"(h) DEFENSE ACQUISITIONS OF WEAPON SYSTEMS.—In the case of the Department of Defense, the authority under subsection (a) includes authority to enter into the following multiyear contracts in accordance with this section:

"(1) A multiyear contract for the purchase of a weapon system, items and services associated with a weapon system, and logistics support for a weapon system.

"(2) A multiyear contract for advance procurement of components, parts, and materials necessary to the manufacture of a weapon system, including a multiyear contract for such advance procurement that is entered into in order to achieve economic-lot purchases and more efficient production rates.

"(i) DEFENSE ACQUISITIONS SPECIFICALLY AUTHORIZED BY LAW.—(1) A multiyear contract may not be entered into for any fiscal year under this section for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority unless each of the following conditions is satisfied:

"(A) The Secretary of Defense certifies to Congress that the current five-year defense program fully funds the support costs associated with the multiyear program.

"(B) The proposed multiyear contract provides for production at not less than minimum economic rates given the existing tooling and facilities.

"(2) If for any fiscal year a multiyear contract to be entered into under this section is authorized by law for a particular procurement program and that authorization is subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appears (after negotiations with contractors) that such savings cannot be achieved, but that substantial savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President may submit to Congress a request for relief from the specified cost savings that must be achieved through multiyear contracting for that program. Any such request by the President shall include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions.

"(j) DEFENSE CONTRACT OPTIONS FOR VARYING QUANTITIES.—The Secretary of Defense may instruct the Secretary of the military department concerned to incorporate into a proposed multiyear

contract negotiated priced options for varying the quantities of end items to be procured over the period of the contract.

"(k) INAPPLICABILITY TO AUTOMATIC DATA PROCESSING CONTRACTS.—This section does not apply to contracts for the purchase of property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies.

"(l) MULTIYEAR CONTRACT DEFINED.—For the purposes of this subsection, a multiyear contract is a contract for the purchase of property or services for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2306a the following:

"2306b. Multiyear contracts.".

(b) CONFORMING CROSS REFERENCE.—Subsection (h) of section 2306 of title 10, United States Code, is amended to read as follows:

"(h) Multiyear contracting authority is provided in section 2306b of this title.".

Subpart D—Miscellaneous

SEC. 1031. REPEAL OF REQUIREMENT FOR ANNUAL REPORT BY ADVOCATES FOR COMPETITION.

Subsection (c) of section 2318 of title 10, United States Code, is repealed.

PART II—CIVILIAN AGENCY ACQUISITIONS

Subpart A—Competition Requirements

SEC. 1051. REFERENCES TO FEDERAL ACQUISITION REGULATION.

Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended—

(1) in subsection (a)(1)(A), by striking out "modifications" and all that follows through "of 1984" and inserting in lieu thereof "Federal Acquisition Regulation"; and

(2) in subsection (g)(1), by striking out "regulations modified" and all that follows through "of 1984," and inserting in lieu thereof "Federal Acquisition Regulation".

SEC. 1052. ESTABLISHMENT OR MAINTENANCE OF ALTERNATIVE SOURCES OF SUPPLY.

(a) ADDITIONAL JUSTIFICATION FOR ESTABLISHING OR MAINTAINING ALTERNATIVE SOURCES.—Section 303(b)(1) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(b)(1)) is amended—

(1) by striking out "or" at the end of subparagraph (B);

(2) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following new subparagraphs:

"(D) would ensure the continuous availability of a reliable source of supply of such property or service;

"(E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

"(F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.".

(b) PROHIBITION ON USE OF CLASSES OF PURCHASES OR CONTRACTS.—Section 303(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(b)) is amended by adding at the end the following:

"(4) A determination under paragraph (1) may not be made for a class of purchases or contracts.".

SEC. 1053. CLARIFICATION OF APPROVAL AUTHORITY FOR USE OF PROCEDURES OTHER THAN FULL AND OPEN COMPETITION.

Section 303(f)(1)(B)(i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)(i)) is amended by inserting before the semicolon at the end the following: "or by an official referred to in clause (ii), (iii), or (iv)".

SEC. 1054. TASK AND DELIVERY ORDER CONTRACTS.

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

"SEC. 303H. TASK AND DELIVERY ORDER CONTRACTS: GENERAL AUTHORITY.

"(a) AUTHORITY TO AWARD.—Subject to the requirements of this section, section 303J, and other applicable law, the head of an executive agency may enter into a task or delivery order contract (as defined in section 303K) for procurement of services or property.

"(b) SOLICITATION.—The solicitation for a task or delivery order contract shall include the following:

"(1) The period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any.

"(2) The maximum quantity or dollar value of the services or property to be procured under the contract.

"(3) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract.

"(c) APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE PROCEDURES.—The head of an executive agency may use procedures other than competitive procedures to enter into a task or delivery order contract under this section only if an exception in subsection (c) of section 303 applies to the contract and the use of such procedures is approved in accordance with subsection (f) of such section.

"(d) SINGLE AND MULTIPLE CONTRACT AWARDS.—(1) The head of an executive agency may exercise the authority provided in this section—

"(A) to award a single task or delivery order contract; or

"(B) if the solicitation states that the head of the executive agency has the option to do so, to award separate task or

delivery order contracts for the same or similar services or property to two or more sources.

"(2) No determination under section 303(b) is required for an award of multiple task or delivery order contracts under paragraph (1)(B).

"(3) The regulations implementing this subsection shall—

"(A) establish a preference for awarding, to the maximum extent practicable, multiple task or delivery order contracts for the same or similar services or property under the authority of paragraph (1)(B); and

"(B) establish criteria for determining when award of multiple task or delivery order contracts would not be in the best interest of the Federal Government.

"(e) CONTRACT MODIFICATIONS.—A task or delivery order may not increase the scope, period, or maximum value of the task or delivery order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

"(f) INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.—Except as otherwise specifically provided in section 303I, this section does not apply to a task or delivery order contract for the acquisition of advisory and assistance services (as defined in section 1105(g) of title 31, United States Code).

"(g) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in this section may be construed to limit or expand any authority of the head of an executive agency or the Administrator of General Services to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law.

"SEC. 303I. TASK ORDER CONTRACTS: ADVISORY AND ASSISTANCE SERVICES.

"(a) AUTHORITY TO AWARD.—(1) Subject to the requirements of this section, section 303J, and other applicable law, the head of an executive agency may enter into a task order contract (as defined in section 303K) for procurement of advisory and assistance services.

"(2) The head of an executive agency may enter into a task order contract for advisory and assistance services only under the authority of this section.

"(b) LIMITATION ON CONTRACT PERIOD.—The period of a task order contract entered into under this section, including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed five years unless a longer period is specifically authorized in a law that is applicable to such contract.

"(c) CONTENT OF NOTICE.—The notice required by section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed task order contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

"(d) REQUIRED CONTENT OF SOLICITATION AND CONTRACT.—(1) The solicitation shall include the information (regarding services) described in section 303H(b).

"(2) A task order contract entered into under this section shall contain the same information that is required by paragraph (1) to be included in the solicitation of offers for that contract.

"(e) MULTIPLE AWARDS.—(1) The head of an executive agency may, on the basis of one solicitation, award separate task order contracts under this section for the same or similar services to two or more sources if the solicitation states that the head of the executive agency has the option to do so.

"(2) If, in the case of a task order contract for advisory and assistance services to be entered into under the authority of this section, the contract period is to exceed three years and the contract amount is estimated to exceed $10,000,000 (including all options), the solicitation shall—

"(A) provide for a multiple award authorized under paragraph (1); and

"(B) include a statement that the head of the executive agency may also elect to award only one task order contract if the head of the executive agency determines in writing that only one of the offerers is capable of providing the services required at the level of quality required.

"(3) Paragraph (2) does not apply in the case of a solicitation for which the head of the executive agency concerned determines in writing that, because the services required under the contract are unique or highly specialized, it is not practicable to award more than one contract.

"(f) CONTRACT MODIFICATIONS.—(1) A task order may not increase the scope, period, or maximum value of the task order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

"(2) Unless use of procedures other than competitive procedures is authorized by an exception in subsection (c) of section 303 and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification.

"(3) Notice regarding the modification shall be provided in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

"(g) CONTRACT EXTENSIONS.—(1) Notwithstanding the limitation on the contract period set forth in subsection (b) or in a solicitation or contract pursuant to subsection (e), a contract entered into by the head of an executive agency under this section may be extended on a sole-source basis for a period not exceeding six months if the head of such executive agency determines that—

"(A) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

"(B) the extension is necessary in order to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

"(2) A task order contract may be extended under the authority of paragraph (1) only once and only in accordance with the limitations and requirements of this subsection.

"(h) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the head of the executive agency entering into such contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

"(i) ADVISORY AND ASSISTANCE SERVICES DEFINED.—In this section, the term 'advisory and assistance services' has the meaning given such term in section 1105(g) of title 31, United States Code.

"SEC. 303J. TASK AND DELIVERY ORDER CONTRACTS: ORDERS.

"(a) ISSUANCE OF ORDERS.—The following actions are not required for issuance of a task or delivery order under a task or delivery order contract:

"(1) A separate notice for such order under section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

"(2) Except as provided in subsection (b), a competition (or a waiver of competition approved in accordance with section 303(f)) that is separate from that used for entering into the contract.

"(b) MULTIPLE AWARD CONTRACTS.—When multiple contracts are awarded under section 303H(d)(1)(B) or 303I(e), all contractors awarded such contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task or delivery order in excess of $2,500 that is to be issued under any of the contracts unless—

"(1) the executive agency's need for the services or property ordered is of such unusual urgency that providing such opportunity to all such contractors would result in unacceptable delays in fulfilling that need;

"(2) only one such contractor is capable of providing the services or property required at the level of quality required because the services or property ordered are unique or highly specialized;

"(3) the task or delivery order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task or delivery order already issued on a competitive basis; or

"(4) it is necessary to place the order with a particular contractor in order to satisfy a minimum guarantee.

"(c) STATEMENT OF WORK.—A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.

"(d) PROTESTS.—A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.

"(e) TASK AND DELIVERY ORDER OMBUDSMAN.—The head of each executive agency who awards multiple task or delivery order contracts pursuant to section 303H(d)(1)(B) or 303I(e) shall appoint or designate a task and delivery order ombudsman who shall be responsible for reviewing complaints from the contractors on such contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders when required under subsection (b). The task and delivery order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the executive agency's competition advocate.

"(f) APPLICABILITY.—This section applies to task and delivery order contracts entered into under sections 303H and 303I.

"SEC. 303K. TASK AND DELIVERY ORDER CONTRACTS: DEFINITIONS.

"In sections 303H, 303I, and 303J:

"(1) The term 'task order contract' means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

"(2) The term 'delivery order contract' means a contract for property that does not procure or specify a firm quantity of property (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of property during the period of the contract.".

(b) PROVISIONS NOT AFFECTED.—Nothing in section 303H, 303I, 303J, or 303K of the Federal Property and Administrative Services Act of 1949, as added by subsection (a), shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under—

(1) the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759)); and

(2) the Brooks Architect-Engineers Act (title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)).

SEC. 1055. ACQUISITION OF EXPERT SERVICES.

(a) EXCEPTION TO REQUIREMENT FOR USE OF COMPETITIVE PROCEDURES.—Section 303(c)(3) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)) is amended—

(1) by striking out "or (B)" and inserting in lieu thereof "(B)"; and

(2) by inserting before the semicolon at the end the following: ", or (C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify".

(b) PROCUREMENT NOTICE.—(1) Section 18(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)) is amended—

(A) by striking out "or" at the end of subparagraph (D);

(B) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof "; or"; and

(C) by adding at the end the following:

"(F) the procurement is for the services of an expert for use in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.".

(2) Section 8(g)(1) of the Small Business Act (15 U.S.C. 637(c)) is amended—

(A) by striking out "or" at the end of subparagraph (D);

(B) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof "; or"; and

(C) by adding at the end the following:

"(F) the procurement is for the services of an expert for use in any litigation or dispute (including preparation for any foreseeable litigation or dispute) that involves or could involve the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.".

(c) REPEAL OF AMENDMENTS TO UNCODIFIED TITLE.—The following provisions of law are repealed:

(1) Section 532 of Public Law 101–509 (104 Stat. 1470) and the provision of law set out in quotes in that section.

(2) Section 529 of Public Law 102–393 (106 Stat. 1761) and the matters inserted and added by that section.

Subpart B—Planning, Solicitation, Evaluation, and Award

SEC. 1061. SOLICITATION, EVALUATION, AND AWARD.

(a) CONTENT OF SOLICITATION.—Subsection (b) of section 303A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a) is amended—

(1) in paragraph (1)—

(A) by amending subparagraph (A) to read as follows:

"(A) all significant factors and significant subfactors which the executive agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and"; and

(B) in subparagraph (B), by inserting "and subfactors" after "factors"; and

(2) in paragraph (2)(B), by amending clause (i) to read as follows:

"(i) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and".

(b) EVALUATION FACTORS.—Such section is further amended by adding at the end the following new subsections:

"(c)(1) In prescribing the evaluation factors to be included in each solicitation for competitive proposals, an executive agency—

"(A) shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

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

"(C) shall disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

"(i) significantly more important than cost or price;

"(ii) approximately equal in importance to cost or price; or

"(iii) significantly less important than cost or price.

"(2) The regulations implementing subparagraph (C) of paragraph (1) may not define the terms 'significantly more important' and 'significantly less important' as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

"(d) Nothing in this section prohibits an executive agency from—

"(1) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

"(2) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest cost or price.".

(c) EVALUATION AND AWARD.—Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended—

(1) in subsection (a), by inserting ", and award a contract," after "competitive proposals";

(2) in subsection (c), by inserting "in accordance with subsection (a)" in the second sentence after "shall evaluate the bids"; and

(3) in subsection (d)—

(A) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) An executive agency shall evaluate competitive proposals in accordance with subsection (a) and may award a contract—

"(A) after discussions with the offerors, provided that written or oral discussions have been conducted with all responsible offerors who submit proposals within the competitive range; or

"(B) based on the proposals received and without discussions with the offerors (other than discussions conducted for the purpose of minor clarification), if, as required by section 303A(b)(2)(B)(i), the solicitation included a statement that proposals are intended to be evaluated, and award made, without discussions, unless discussions are determined to be necessary.";

(B) by striking out paragraphs (2) and (3) and by redesignating paragraph (4) as paragraph (2); and

(C) in paragraph (2), as redesignated by subparagraph (B), by inserting "cost or" before "price" in the first sentence.

SEC. 1062. SOLICITATION PROVISION REGARDING EVALUATION OF PURCHASE OPTIONS.

Section 303A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a), as amended by section 1061, is further amended by adding at the end the following new subsection:

"(e) An executive agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the executive agency has determined that there is a reasonable likelihood that the options will be exercised.".

SEC. 1063. PROMPT NOTICE OF AWARD.

(a) SEALED BID PROCEDURES.—Subsection (c) of section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended—

(1) in the last sentence, by striking out "transmitting written notice" and inserting in lieu thereof "transmitting, in writing or by electronic means, notice"; and

(2) by adding at the end the following: "Within 3 days after the date of contract award, the executive agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.".

(b) COMPETITIVE PROPOSALS PROCEDURES.—Paragraph (2) of subsection (d) of such section, as redesignated by section 1061(c)(3)(B), is amended in the second sentence—

(1) by striking out "transmitting written notice" and inserting in lieu thereof "transmitting, in writing or by electronic means, notice"; and

(2) by striking out "shall promptly notify" and inserting in lieu thereof ", within 3 days after the date of contract award, shall notify, in writing or by electronic means,".

SEC. 1064. POST-AWARD DEBRIEFINGS.

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

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

(2) by inserting after subsection (d) the following new subsection (e):

"(e)(1) When a contract is awarded by the head of an executive agency on the basis of competitive proposals, an unsuccessful offeror, upon written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award. The executive agency shall debrief the offeror within, to the maximum extent practicable, 5 days after receipt of the request by the executive agency.

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

"(A) the executive agency's evaluation of the significant weak or deficient factors in the offeror's offer;

"(B) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall evaluated cost and technical rating of the offer of the debriefed offeror;

"(C) the overall ranking of all offers;

"(D) a summary of the rationale for the award;

"(E) in the case of a proposal that includes a commercial item that is an end item under the contract, the make and model of the item being provided in accordance with the offer of the contractor awarded the contract; and

"(F) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

"(3) The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose

any information that is exempt from disclosure under section 552(b) of title 5, United States Code.

"(4) Each solicitation for competitive proposals shall include a statement that information described in paragraph (2) may be disclosed in post-award debriefings.

"(5) If, within one year after the date of the contract award and as a result of a successful procurement protest, the executive agency seeks to fulfill the requirement under the protested contract either on the basis of a new solicitation of offers or on the basis of new best and final offers requested for that contract, the head of such executive agency shall make available to all offerors—

"(A) the information provided in debriefings under this subsection regarding the offer of the contractor awarded the contract; and

"(B) the same information that would have been provided to the original offerors.

"(6) The contracting officer shall include a summary of the debriefing in the contract file.".

SEC. 1065. PROTEST FILE.

Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b), as amended by section 1064(1), is further amended by adding at the end the following:

"(h) PROTEST FILE.—(1) If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, the head of an executive agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31, United States Code, and an actual or prospective offeror so requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

"(2) Information exempt from disclosure under section 552 of title 5, United States Code, may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

"(3) Regulations implementing this subsection shall be consistent with the regulations regarding the preparation and submission of an agency's protest file (the so-called 'rule 4 file') for protests to the General Services Board of Contract Appeals under section 111 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 759).".

SEC. 1066. AGENCY ACTIONS ON PROTESTS.

Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b), as amended by section 1065, is further amended by adding at the end the following new subsection:

"(i) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest, the head of an executive agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of such executive agency—

"(1) may take any action set out in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31, United States Code; and

"(2) may pay costs described in paragraph (1) of section 3554(c) of such title within the limits referred to in paragraph (2) of such section.".

Subpart C—Kinds of Contracts

SEC. 1071. REPEAL OF AGENCY HEAD DETERMINATION REGARDING USE OF COST TYPE OR INCENTIVE CONTRACT.

Section 304(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(b)) is amended by striking out the second sentence.

SEC. 1072. MULTIYEAR CONTRACTING AUTHORITY.

Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by inserting after section 304 the following new section:

"SEC. 304B. MULTIYEAR CONTRACTS.

"(a) AUTHORITY.—An executive agency may enter into a multiyear contract for the acquisition of property or services if—

"(1) funds are available and obligated for such contract, for the full period of the contract or for the first fiscal year in which the contract is in effect, and for the estimated costs associated with any necessary termination of such contract; and

"(2) the executive agency determines that—

"(A) the need for the property or services is reasonably firm and continuing over the period of the contract; and

"(B) a multiyear contract will serve the best interests of the United States by encouraging full and open competition or promoting economy in administration, performance, and operation of the agency's programs.

"(b) TERMINATION CLAUSE.—A multiyear contract entered into under the authority of this section shall include a clause that provides that the contract shall be terminated if funds are not made available for the continuation of such contract in any fiscal year covered by the contract. Amounts available for paying termination costs shall remain available for such purpose until the costs associated with termination of the contract are paid.

"(c) CANCELLATION CEILING NOTICE.—Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of $10,000,000 may be awarded, the executive agency shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the Congress, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

"(d) MULTIYEAR CONTRACT DEFINED.—For the purposes of this section, a multiyear contract is a contract for the purchase of property or services for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

"(e) RULE OF CONSTRUCTION.—Nothing in this section is intended to modify or affect any other provision of law that authorizes multiyear contracts.".

SEC. 1073. SEVERABLE SERVICES CONTRACTS CROSSING FISCAL YEARS.

Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 1054, is further amended by inserting after section 303I the following new section:

"SEC. 303L. SEVERABLE SERVICES CONTRACTS FOR PERIODS CROSSING FISCAL YEARS.

"(a) AUTHORITY.—The head of an executive agency may enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

"(b) OBLIGATION OF FUNDS.—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of subsection (a).".

SEC. 1074. ECONOMY ACT PURCHASES.

(a) REGULATIONS REQUIRED.—The Federal Acquisition Regulation shall be revised to include regulations governing the exercise of the authority under section 1535 of title 31, United States Code, for Federal agencies to purchase goods and services under contracts entered into or administered by other agencies.

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

(1) require that each purchase described in subsection (a) be approved in advance by a contracting officer of the ordering agency with authority to contract for the goods or services to be purchased or by another official in a position specifically designated by regulation to approve such purchase;

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

(A) the purchase is appropriately made under a contract that the agency filling the purchase order entered into, before the purchase order, in order to meet the requirements of such agency for the same or similar goods or services;

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

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

(3) prohibit any such purchase under a contract or other agreement entered into or administered by an agency not covered by the provisions of chapter 137 of title 10, United States Code, or title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) and not covered by the Federal Acquisition Regulation unless the purchase is approved in advance by the senior procurement official responsible for purchasing by the ordering agency; and

(4) prohibit any payment to the agency filling a purchase order of any fee that exceeds the actual cost or, if the actual cost is not known, the estimated cost of entering into and

administering the contract or other agreement under which the order is filled.

(c) MONITORING SYSTEM REQUIRED.—The Administrator for Federal Procurement Policy shall ensure that, not later than one year after the date of the enactment of this Act, systems for collecting and evaluating procurement data are capable of collecting and evaluating appropriate data on procurements conducted under the regulations prescribed pursuant to subsection (a).

(d) TERMINATION.—This section shall cease to be effective one year after the date on which final regulations prescribed pursuant to subsection (a) take effect.

PART III—ACQUISITIONS GENERALLY

SEC. 1091. POLICY REGARDING CONSIDERATION OF CONTRACTOR PAST PERFORMANCE.

(a) POLICY.—Section 2 of the Office of Federal Procurement Policy Act (41 U.S.C. 401) is amended—

(1) by striking out "and" at the end of paragraph (12);

(2) by striking out the period at the end of paragraph (13) and inserting in lieu thereof "; and"; and

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

"(14) establishing policies and procedures that encourage the consideration of the offerors' past performance in the selection of contractors.".

(b) GUIDANCE REQUIRED.—(1) Congress makes the following findings:

(A) Past contract performance of an offeror is one of the relevant factors that a contracting official of an executive agency should consider in awarding a contract.

(B) It is appropriate for a contracting official to consider past contract performance of an offeror as an indicator of the likelihood that the offeror will successfully perform a contract to be awarded by that official.

(2) Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405) is amended by adding at the end the following:

"(j)(1) The Administrator shall prescribe for executive agencies guidance regarding consideration of the past contract performance of offerors in awarding contracts. The guidance shall include—

"(A) standards for evaluating past performance with respect to cost (when appropriate), schedule, compliance with technical or functional specifications, and other relevant performance factors that facilitate consistent and fair evaluation by all executive agencies;

"(B) policies for the collection and maintenance of information on past contract performance that, to the maximum extent practicable, facilitate automated collection, maintenance, and dissemination of information and provide for ease of collection, maintenance, and dissemination of information by other methods, as necessary;

"(C) policies for ensuring that—

"(i) offerors are afforded an opportunity to submit relevant information on past contract performance, including performance under contracts entered into by the executive agency concerned, contracts entered into by other departments and agencies of the Federal Government, contracts

entered into by agencies of State and local governments, and contracts entered into by commercial customers; and

"(ii) such information submitted by offerors is considered; and

"(D) the period for which information on past performance of offerors may be maintained and considered.

"(2) In the case of an offeror with respect to which there is no information on past contract performance or with respect to which information on past contract performance is not available, the offeror may not be evaluated favorably or unfavorably on the factor of past contract performance.".

SEC. 1092. REPEAL OF REQUIREMENT FOR ANNUAL REPORT ON COMPETITION.

Section 23 of the Office of Federal Procurement Policy Act (41 U.S.C. 419) is repealed.

SEC. 1093. DISCOURAGEMENT OF NONSTANDARD CONTRACT CLAUSES.

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

"SEC. 29. NONSTANDARD CONTRACT CLAUSES.

"The Federal Acquisition Regulatory Council shall promulgate regulations to discourage the use of a nonstandard contract clause on a repetitive basis. The regulations shall include provisions that—

"(1) clearly define what types of contract clauses are to be treated as nonstandard clauses; and

"(2) require prior approval for the use of a nonstandard clause on a repetitive basis by an official at a level of responsibility above the contracting officer.".

Subtitle B—Truth in Negotiations

PART I—ARMED SERVICES ACQUISITIONS

SEC. 1201. STABILIZATION OF DOLLAR THRESHOLD OF APPLICABILITY.

(a) REPEAL OF REVERSION TO LOWER THRESHOLD.—Paragraph (1)(A) of section 2306a(a) of title 10, United States Code, is amended—

(1) in clause (i), by striking out "and before January 1, 1996,"; and

(2) in clause (ii), by striking out "or after December 31, 1995,".

(b) ADJUSTMENTS FOR CHANGES IN DOLLAR VALUES.—Section 2306a(a) of such title is amended by adding at the end the following new subparagraph:

"(7) Effective on October 1 of each year that is divisible by 5, each amount set forth in paragraph (1) shall be adjusted to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. Any amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.".

(c) REPEAL.—Paragraph (6) of section 2306a(a) of such title is amended—

(1) by striking out "(A)"; and

(2) by striking out subparagraph (B).

SEC. 1202. EXCEPTIONS TO COST OR PRICING DATA REQUIREMENTS.

(a) EXCEPTIONS STATED.—Subsection (b) of section 2306a of title 10, United States Code, is amended to read as follows:

"(b) EXCEPTIONS.—

"(1) IN GENERAL.—Submission of cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or modification of a contract or subcontract—

"(A) for which the price agreed upon is based on—

"(i) adequate price competition;

"(ii) established catalog or market prices of commercial items that are sold in substantial quantities to the general public; or

"(iii) prices set by law or regulation; or

"(B) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this section may be waived and justifies in writing the reasons for such determination.

"(2) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.—In the case of a modification of a contract or subcontract for a commercial item that is not covered by the prohibition on the submission of cost or pricing data in paragraph (1)(A), submission of cost or pricing data shall not be required under subsection (a) if—

"(A) the contract or subcontract being modified is a contract or subcontract for which submission of cost or pricing data may not be required by reason of paragraph (1)(A); and

"(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.".

"(3) FAR STANDARDS.— The Federal Acquisition Regulation shall provide clear standards for determining whether the exceptions provided in paragraph (1)(A) apply. In the case of the exception provided in paragraph (1)(A)(i), the regulations shall specify the criteria to be used to determine whether adequate price competition exists. In the case of the exception provided in paragraph (1)(A)(ii), the regulations shall provide that the exception applies to items that are sold in substantial quantities to the general public, without regard to the quantity of items that may be sold to the Federal Government.".

(b) CONFORMING AMENDMENT TO REFERENCE.—Subsection (a)(5) of such section is amended by striking out "subsection (b)(2)" and inserting in lieu thereof "subsection (b)(1)(B)".

SEC. 1203. RESTRICTIONS ON ADDITIONAL AUTHORITY TO REQUIRE COST OR PRICING DATA OR OTHER INFORMATION.

Subsection (c) of section 2306a of title 10, United States Code, is amended to read as follows:

"(c) RESTRICTIONS ON ADDITIONAL AUTHORITY TO REQUIRE COST OR PRICING DATA OR OTHER INFORMATION.—

"(1) AUTHORITY TO REQUIRE COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.—(A) Subject to subparagraph (B), when cost or pricing data are not required to be submitted by subsection (a) for a contract, subcontract, or modification

of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of the procuring activity shall justify in writing the reason for such requirement.

"(B) The head of the procuring activity may not require certified cost or pricing data to be submitted under this paragraph for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subsection (b)(1)(A).

"(C) The head of a procuring activity may not delegate functions under this paragraph.

"(2) AUTHORITY TO REQUIRE INFORMATION OTHER THAN CERTIFIED COST OR PRICING DATA.—When certified cost or pricing data are not required to be submitted under this section for a contract, subcontract, or modification of a contract or subcontract, the head of the procuring activity may require submission of data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract.".

SEC. 1204. ADDITIONAL SPECIAL RULES FOR COMMERCIAL ITEMS.

Section 2306a of title 10, United States Code, is amended—

(1) by redesignating subsections (d), (e), (f), and (g) as subsections (e), (f), (g), and (i), respectively; and

(2) by inserting after subsection (c) the following new subsection (d):

"(d) ADDITIONAL EXCEPTION PROVISIONS REGARDING COMMERCIAL ITEMS.—

"(1) PROCUREMENTS BASED ON ADEQUATE PRICE COMPETITION.—To the maximum extent practicable, the head of an agency shall conduct procurements of commercial items on a competitive basis. In any procurement of a commercial item conducted on a competitive basis and based upon adequate price competition, the head of the agency conducting the procurement shall not require cost or pricing data to be submitted under subsection (a) for the contract, subcontract, or modification of the contract or subcontract under the procurement. If additional information is necessary to determine the reasonableness of the price of the contract, subcontract, or modification, the head of the agency shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror.

"(2) PROCUREMENTS NOT BASED ON ADEQUATE PRICE COMPETITION.—(A)(i) In any case in which it is not practicable to conduct a procurement of a commercial item covered by subsection (a) on a competitive basis, and the procurement is not covered by an exception in subsection (b), the contracting officer shall seek to obtain from the offeror or contractor information described in clause (ii). When such information is not available from that source, the contracting officer shall seek to obtain such information from another source or sources.

"(ii) The information referred in clause (i) is information on prices at which the same item or similar items have been sold in the commercial market that is adequate for evaluating, through price analysis, the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract under the procurement.

"(B) The contracting officer shall exempt a contract, subcontract, or modification of a contract or subcontract under the procurement from the requirements of subsection (a) if the contracting officer obtains the information described in subparagraph (A)(ii) in accordance with standards and procedures set forth in the Federal Acquisition Regulation.

"(C) A contracting officer may require submission of cost or pricing data under subsection (a) only if the contracting officer makes a written determination that the agency is unable to obtain the information described in subparagraph (A)(ii).

"(3) AUTHORITY TO AUDIT.—(A) In accordance with procedures prescribed in the Federal Acquisition Regulation, the head of an agency is authorized to examine all information provided by an offeror, contractor, or subcontractor pursuant to paragraph (2)(A) and all books and records of such offeror, contractor, or subcontractor that directly relate to such information in order to determine whether the agency is receiving accurate information required under this subsection.

"(B) The right under subparagraph (A) shall expire 2 years after the date of award of the contract, or 2 years after the date of the modification of the contract, with respect to which the information was provided.

"(4) LIMITATIONS ON REQUESTS FOR DATA.—The Federal Acquisition Regulation shall include reasonable limitations on requests under this section for sales data relating to commercial items.

"(5) FORM OF INFORMATION.—In requesting information from an offeror under this subsection, a contracting officer shall, to the maximum extent practicable, limit the scope of the request to include only information that is in the form regularly maintained by the offeror in commercial operations.

"(6) CONFIDENTIALITY.—Any information received under this subsection that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.".

SEC. 1205. RIGHT OF UNITED STATES TO EXAMINE CONTRACTOR RECORDS.

Section 2306a of title 10, United States Code, is amended by striking out subsection (g), as redesignated by section 1204(1), and inserting in lieu thereof the following:

"(g) RIGHT OF UNITED STATES TO EXAMINE CONTRACTOR RECORDS.—For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section, the head of an agency shall have the authority provided by section 2313(a)(2) of this title.".

SEC. 1206. REQUIRED REGULATIONS.

Section 2306a of title 10, United States Code, as amended by sections 1204 and 1205, is further amended by inserting after subsection (g) the following new subsection:

"(h) REQUIRED REGULATIONS.—The Federal Acquisition Regulation shall contain provisions concerning the types of information that offerors must submit for a contracting officer to consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost or pricing data are not required to be submitted under this section because the price of the procurement to the United States is not expected to exceed the applicable threshold amount set forth in subsection (a) (as adjusted pursuant to paragraph (7) of such subsection). Such information, at a minimum, shall include appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the proposed contract or subcontract for the procurement.".

SEC. 1207. CONSISTENCY OF TIME REFERENCES.

Section 2306a of title 10, United States Code, as amended by section 1204(1), is further amended in subparagraphs (A)(ii) and (B)(ii) of subsection (e)(4), by inserting "or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties," after "(or price of the modification)".

SEC. 1208. EXCEPTION FOR TRANSFERS BETWEEN DIVISIONS, SUBSIDIARIES, AND AFFILIATES.

Subsection (i) of section 2306a of title 10, United States Code, as redesignated by section 1204(1), is amended to read as follows:

"(i) DEFINITIONS.—In this section:

"(1) COST OR PRICING DATA.—The term 'cost or pricing data' means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification), or, if applicable consistent with subsection (e)(1)(B), another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.

"(2) SUBCONTRACT.—The term 'subcontract' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

"(3) COMMERCIAL ITEM.—The term 'commercial item' has the meaning provided such term in section 4(12) of the Office of Federal Procurement Policy Act.".

SEC. 1209. COVERAGE OF COAST GUARD AND NASA FOR INTEREST AND PAYMENTS ON CERTAIN OVERPAYMENTS.

Paragraph (1) of subsection (f) of section 2306a of title 10, United States Code, as redesignated by section 1204(1), is amended by striking out "with the Department of Defense" in the matter preceding subparagraph (A).

SEC. 1210. REPEAL OF SUPERSEDED PROVISION.

Subsections (b) and (c) of section 803 of Public Law 101–510 (10 U.S.C. 2306a note) are repealed.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 1251. REVISION OF CIVILIAN AGENCY PROVISIONS TO ENSURE UNIFORM TREATMENT OF COST OR PRICING DATA.

(a) REVISION.—Title III of the Federal Property and Administrative Services Act of 1949 is amended—

(1) in section 304 (41 U.S.C. 254), by striking out subsection (d); and

(2) by inserting before section 304B, as added by section 1072, the following new section:

"SEC. 304A. COST OR PRICING DATA: TRUTH IN NEGOTIATIONS.

"(a) REQUIRED COST OR PRICING DATA AND CERTIFICATION.—(1) The head of an executive agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

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

"(i) in the case of a prime contract entered into after the date of the enactment of the Federal Acquisition Streamlining Act of 1994, the price of the contract to the United States is expected to exceed $500,000; and

"(ii) in the case of a prime contract entered into on or before the date of the enactment of the Federal Acquisition Streamlining Act of 1994, the price of the contract to the United States is expected to exceed $100,000.

"(B) The contractor for a prime contract under this title shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if—

"(i) in the case of a change or modification made to a prime contract referred to in subparagraph (A)(i), the price adjustment is expected to exceed $500,000;

"(ii) in the case of a change or modification made to a prime contract that was entered into on or before the date of the enactment of the Federal Acquisition Streamlining Act of 1994, and that has been modified pursuant to paragraph (6), the price adjustment is expected to exceed $500,000; and

"(iii) in the case of a change or modification not covered by clause (i) or (ii), the price adjustment is expected to exceed $100,000.

"(C) An offeror for a subcontract (at any tier) of a contract under this title shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section and—

"(i) in the case of a subcontract under a prime contract referred to in subparagraph (A)(i), the price of the subcontract is expected to exceed $500,000;

"(ii) in the case of a subcontract entered into under a prime contract that was entered into on or before the date of the enactment of the Federal Acquisition Streamlining Act of 1994, and that has been modified pursuant to paragraph (6), the price of the subcontract is expected to exceed $500,000; and

"(iii) in the case of a subcontract not covered by clause (i) or (ii), the price of the subcontract is expected to exceed $100,000.

"(D) The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if—

"(i) in the case of a change or modification to a subcontract referred to in subparagraph (C)(i) or (C)(ii), the price adjustment is expected to exceed $500,000; and

"(ii) in the case of a change or modification to a subcontract referred to in subparagraph (C)(iii), the price adjustment is expected to exceed $100,000.

"(2) A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under paragraph (1) (or required by the head of the procuring activity concerned to submit such data under subsection (c)) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

"(3) Cost or pricing data required to be submitted under paragraph (1) (or under subsection (c)), and a certification required to be submitted under paragraph (2), shall be submitted—

"(A) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a designated representative of the contracting officer); or

"(B) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

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

"(5) For purposes of paragraph (1)(C), a contractor or subcontractor granted a waiver under subsection (b)(1)(B) shall be considered as having been required to make available cost or pricing data under this section.

"(6) Upon the request of a contractor that was required to submit cost or pricing data under paragraph (1) in connection with a prime contract entered into on or before the date of the enactment of the Federal Acquisition Streamlining Act of 1994, the head of the executive agency that entered into such contract shall modify the contract to reflect subparagraphs (B)(ii) and (C)(ii) of paragraph (1). All such modifications shall be made without requiring consideration.

"(7) Effective on October 1 of each year that is divisible by 5, each amount set forth in paragraph (1) shall be adjusted to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. Any amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.

"(b) EXCEPTIONS.—

"(1) IN GENERAL.—Submission of cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or a modification of a contract or subcontract—

"(A) for which the price agreed upon is based on—

"(i) adequate price competition;

"(ii) established catalog or market prices of commercial items that are sold in substantial quantities to the general public; or

"(iii) prices set by law or regulation; or

"(B) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this section may be waived and justifies in writing the reasons for such determination.

"(2) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.—In the case of a modification of a contract or subcontract for a commercial item that is not covered by the prohibition on the submission of cost or pricing data in paragraph (1)(A), submission of cost or pricing data shall not be required under subsection (a) if—

"(A) the contract or subcontract being modified is a contract or subcontract for which submission of cost or pricing data may not be required by reason of paragraph (1)(A); and

"(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

"(3) FAR STANDARDS.—The Federal Acquisition Regulation shall provide clear standards for determining whether the exceptions provided in paragraph (1)(A) apply. In the case of the exception provided in paragraph (1)(A)(i), the regulations shall specify the criteria to be used to determine whether adequate price competition exists. In the case of the exception provided in paragraph (1)(A)(ii), the regulations shall provide that the exception applies to items that are sold in substantial quantities to the general public, without regard to the quantity of items that may be sold to the Federal Government.

"(c) RESTRICTIONS ON ADDITIONAL AUTHORITY TO REQUIRE COST OR PRICING DATA OR OTHER INFORMATION.—

"(1) AUTHORITY TO REQUIRE COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.—(A) Subject to subparagraph (B), when cost or pricing data are not required to be submitted by subsection (a) for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of the procuring activity shall justify in writing the reason for such requirement.

"(B) The head of the procuring activity may not require certified cost or pricing data to be submitted under this paragraph for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subsection (b)(1)(A).

"(C) The head of a procuring activity may not delegate the functions under this paragraph.

"(2) AUTHORITY TO REQUIRE INFORMATION OTHER THAN CERTIFIED COST OR PRICING DATA.—When certified cost or pricing

data are not required to be submitted under this section for a contract, subcontract, or modification of a contract or subcontract, the head of the procuring activity may require submission of data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract.

"(d) ADDITIONAL EXCEPTION PROVISIONS REGARDING COMMERCIAL ITEMS.—

"(1) PROCUREMENTS BASED ON ADEQUATE PRICE COMPETITION.—To the maximum extent practicable, the head of an executive agency shall conduct procurements of commercial items on a competitive basis. In any procurement of a commercial item conducted on a competitive basis and based upon adequate price competition, the head of the executive agency conducting the procurement shall not require cost or pricing data to be submitted under subsection (a) for the contract, subcontract, or modification of the contract or subcontract under the procurement. If additional information is necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract, the head of the executive agency shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror.

"(2) PROCUREMENTS NOT BASED ON ADEQUATE PRICE COMPETITION.—(A)(i) In any case in which it is not practicable to conduct a procurement of a commercial item covered by subsection (a) on a competitive basis, and the procurement is not covered by an exception in subsection (b), the contracting officer shall seek to obtain from the offeror or contractor information described in clause (ii). When such information is not available from that source, the contracting officer shall seek to obtain such information from another source or sources.

"(ii) The information referred in clause (i) is information on prices at which the same item or similar items have been sold in the commercial market that is adequate for evaluating, through price analysis, the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract under the procurement.

"(B) The contracting officer shall exempt a contract, subcontract, or modification of a contract or subcontract under the procurement from the requirements of subsection (a) if the contracting officer obtains the information described in subparagraph (A)(ii) in accordance with standards and procedures set forth in the Federal Acquisition Regulation.

"(C) A contracting officer may require submission of cost or pricing data under subsection (a) only if the contracting officer makes a written determination that the agency is unable to obtain the information described in subparagraph (A)(ii).

"(3) AUTHORITY TO AUDIT.—(A) In accordance with procedures prescribed in the Federal Acquisition Regulation, the head of an executive agency is authorized to examine all information provided by an offeror, contractor, or subcontractor pursuant to paragraph (2)(A) and all books and records of such offeror, contractor, or subcontractor that directly relate to such information in order to determine whether the agency is receiving accurate information required under this section.

"(B) The right under subparagraph (A) shall expire 2 years after the date of award of the contract, or 2 years after the date of the modification of the contract, with respect to which the information was provided.

"(4) LIMITATIONS ON REQUESTS FOR DATA.—The Federal Acquisition Regulation shall include reasonable limitations on requests under this subsection for sales data relating to commercial items.

"(5) FORM OF INFORMATION.—In requesting information from an offeror under this subsection, a contracting officer shall, to the maximum extent practicable, limit the scope of the request to include only information that is in the form regularly maintained by the offeror in commercial operations.

"(6) CONFIDENTIALITY.—Any information received under this subsection that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.

"(e) PRICE REDUCTIONS FOR DEFECTIVE COST OR PRICING DATA.—(1)(A) A prime contract (or change or modification to a prime contract) under which a certificate under subsection (a)(2) is required shall contain a provision that the price of the contract to the United States, including profit or fee, shall be adjusted to exclude any significant amount by which it may be determined by the head of the executive agency that such price was increased because the contractor (or any subcontractor required to make available such a certificate) submitted defective cost or pricing data.

"(B) For the purposes of this section, defective cost or pricing data are cost or pricing data which, as of the date of agreement on the price of the contract (or another date agreed upon between the parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding sentence the parties agree upon a date other than the date of agreement on the price of the contract, the date agreed upon by the parties shall be as close to the date of agreement on the price of the contract as is practicable.

"(2) In determining for purposes of a contract price adjustment under a contract provision required by paragraph (1) whether, and to what extent, a contract price was increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it shall be a defense that the United States did not rely on the defective data submitted by the contractor or subcontractor.

"(3) It is not a defense to an adjustment of the price of a contract under a contract provision required by paragraph (1) that—

"(A) the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcontractor because the contractor or subcontractor—

"(i) was the sole source of the property or services procured; or

"(ii) otherwise was in a superior bargaining position with respect to the property or services procured;

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

"(C) the contract was based on an agreement between the contractor and the United States about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

"(D) the prime contractor or subcontractor did not submit a certification of cost or pricing data relating to the contract as required under subsection (a)(2).

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

"(i) the contractor certifies to the contracting officer (or to a designated representative of the contracting officer) that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset; and

"(ii) the contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification), or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties, and that the data were not submitted as specified in subsection (a)(3) before such date.

"(B) A contractor shall not be allowed to offset an amount otherwise authorized to be offset under subparagraph (A) if—

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

"(ii) the United States proves that, had the cost or pricing data referred to in subparagraph (A)(ii) been submitted to the United States before the date of agreement on the price of the contract (or price of the modification) or, if applicable under paragraph (1)(B), another date agreed upon between the parties, the submission of such cost or pricing data would not have resulted in an increase in that price in the amount to be offset.

"(f) INTEREST AND PENALTIES FOR CERTAIN OVERPAYMENTS.—(1) If the United States makes an overpayment to a contractor under a contract with an executive agency subject to this section and the overpayment was due to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the United States—

"(A) for interest on the amount of such overpayment, to be computed—

"(i) for the period beginning on the date the overpayment was made to the contractor and ending on the date the contractor repays the amount of such overpayment to the United States; and

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

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

"(2) Any liability under this subsection of a contractor that submits cost or pricing data but refuses to submit the certification required by subsection (a)(2) with respect to the cost or pricing data shall not be affected by the refusal to submit such certification.

"(g) RIGHT OF UNITED STATES TO EXAMINE CONTRACTOR RECORDS.—For the purpose of evaluating the accuracy, complete-

ness, and currency of cost or pricing data required to be submitted by this section, an executive agency shall have the authority provided by section 304C(a)(2).

"(h) REQUIRED REGULATIONS.—The Federal Acquisition Regulation shall include regulations concerning the types of information that offerors must submit for a contracting officer to consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost or pricing data are not required to be submitted under this section because the price of the procurement to the United States is not expected to exceed the applicable threshold amount set forth in subsection (a) (as adjusted pursuant to paragraph (7) of such subsection). Such information, at a minimum, shall include appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of a proposed contract or subcontract for the procurement.

"(i) DEFINITIONS.—In this section:

"(1) COST OR PRICING DATA.—The term 'cost or pricing data' means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification) or, if applicable consistent with subsection (e)(1)(B), another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.

"(2) SUBCONTRACT.—The term 'subcontract' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

"(3) COMMERCIAL ITEM.—The term 'commercial item' has the meaning provided such term by section 4(12) of the Office of Federal Procurement Policy Act.".

(b) APPLICABILITY.—Subsection (a) of section 304A of the Office of Federal Procurement Policy Act, as added by subsection (a), shall apply according to the provisions thereof on and after the date of the enactment of this Act, notwithstanding section 10001(b).

SEC. 1252. REPEAL OF OBSOLETE PROVISION.

Section 303E of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253e) is repealed.

Subtitle C—Research and Development

SEC. 1301. RESEARCH PROJECTS.

(a) GENERAL AUTHORITY.—Section 2358 of title 10, United States Code, is amended to read as follows:

"§ 2358. Research and development projects

"(a) AUTHORITY.—The Secretary of Defense or the Secretary of a military department may engage in basic research, applied research, advanced research, and development projects that—

"(1) are necessary to the responsibilities of such Secretary's department in the field of research and development; and

"(2) either—

"(A) relate to weapon systems and other military needs; or

"(B) are of potential interest to the Department of Defense.

"(b) AUTHORIZED MEANS.—The Secretary of Defense or the Secretary of a military department may perform research and development projects—

"(1) by contract, cooperative agreement, or grant, in accordance with chapter 63 of title 31;

"(2) through one or more military departments;

"(3) by using employees and consultants of the Department of Defense; or

"(4) by mutual agreement with the head of any other department or agency of the Federal Government.

"(c) REQUIREMENT OF POTENTIAL DEPARTMENT OF DEFENSE INTEREST.—Funds appropriated to the Department of Defense or to a military department may not be used to finance any research project or study unless the project or study is, in the opinion of the Secretary of Defense or the Secretary of that military department, respectively, of potential interest to the Department of Defense or to such military department, respectively.

"(d) ADDITIONAL PROVISIONS APPLICABLE TO COOPERATIVE AGREEMENTS.—Additional authorities, conditions, and requirements relating to certain cooperative agreements authorized by this section are provided in section 2371 of this title.".

(b) TRANSACTIONS OTHER THAN CONTRACTS AND GRANTS.—Section 2371 of such title is amended to read as follows:

"§ 2371. Research projects: transactions other than contracts and grants

"(a) ADDITIONAL FORMS OF TRANSACTIONS AUTHORIZED.—The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) under the authority of this subsection in carrying out basic, applied, and advanced research projects. The authority under this subsection is in addition to the authority provided in section 2358 of this title to use contracts, cooperative agreements, and grants in carrying out such projects.

"(b) EXERCISE OF AUTHORITY BY SECRETARY OF DEFENSE.—In any exercise of the authority in subsection (a), the Secretary of Defense shall act through the Advanced Research Projects Agency or any other element of the Department of Defense that the Secretary may designate.

"(c) ADVANCE PAYMENTS.—The authority provided under subsection (a) may be exercised without regard to section 3324 of title 31.

"(d) RECOVERY OF FUNDS.—(1) A cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title and a transaction authorized by subsection (a) may include a clause that requires a person or other entity to make payments to the Department of Defense or any other department or agency of the Federal Government as a condition for receiving support under the agreement or other transaction.

"(2) The amount of any payment received by the Federal Government pursuant to a requirement imposed under paragraph (1) may be credited, to the extent authorized by the Secretary of Defense, to the appropriate account established under subsection (f). Amounts so credited shall be merged with other funds in the

account and shall be available for the same purposes and the same period for which other funds in such account are available.

"(e) CONDITIONS.—The Secretary of Defense shall ensure that—

"(1) to the maximum extent practicable, no cooperative agreement containing a clause under subsection (d) and no transaction entered into under subsection (a) provides for research that duplicates research being conducted under existing programs carried out by the Department of Defense;

"(2) to the extent that the Secretary determines practicable, the funds provided by the Government under a cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) do not exceed the total amount provided by other parties to the cooperative agreement or other transaction; and

"(3) a cooperative agreement containing a clause under subsection (d) or a transaction authorized under subsection (a) is used for a research project only when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.

"(f) SUPPORT ACCOUNTS.—There is hereby established on the books of the Treasury separate accounts for each of the military departments and the Advanced Research Projects Agency for support of research projects and development projects provided for in cooperative agreements containing a clause under subsection (d) and research projects provided for in transactions entered into under subsection (a). Funds in those accounts shall be available for the payment of such support.

"(g) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

"(h) ANNUAL REPORT.—Not later than 60 days after the end of each fiscal year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on all cooperative agreements entered into under section 2358 of this title during such fiscal year that contain a clause authorized by subsection (d) and on all transactions entered into under subsection (a) during such fiscal year. The report shall contain, with respect to each such cooperative agreement and transaction, the following:

"(1) A general description of the cooperative agreement or other transaction (as the case may be), including the technologies for which research is provided for under such agreement or transaction.

"(2) The potential military and, if any, commercial utility of such technologies.

"(3) The reasons for not using a contract or grant to provide support for such research.

"(4) The amount of the payments, if any, that were received by the Federal Government during the fiscal year covered by the report pursuant to a clause included in such cooperative agreement or other transaction pursuant to subsection (d).

"(5) The amount of the payments reported under paragraph (4), if any, that were credited to each account established under subsection (f).

"(i) COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS UNDER STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980.—The Secretary of Defense, in carrying out research projects through the Advanced Research Projects Agency, and the Secretary

of each military department, in carrying out research projects, may permit the director of any federally funded research and development center to enter into cooperative research and development agreements with any person, any agency or instrumentality of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of such Act (15 U.S.C. 3710, 3710a).''.

(c) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 139 of such title is amended—

(1) by striking out the item relating to section 2358 and inserting in lieu thereof the following:

''2358. Research and development projects.'';

and

(2) by striking out the item relating to section 2371 and inserting in lieu thereof the following:

''2371. Research projects: transactions other than contracts and grants.''.

Subtitle D—Procurement Protests

PART I—PROTESTS TO THE COMPTROLLER GENERAL

SEC. 1401. PROTEST DEFINED.

(a) IN GENERAL.—Paragraph (1) of section 3551 of title 31, United States Code, is amended to read as follows:

''(1) The term 'protest' means a written objection by an interested party to any of the following:

''(A) A solicitation or other request by a Federal agency for offers for a contract for the procurement of property or services.

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

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

''(D) A termination or cancellation of an award of such a contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.''.

(b) TECHNICAL AMENDMENTS.—Section 3551 of such title is further amended—

(1) in paragraph (2)—

(A) by inserting ''The term'' after ''(2)''; and

(B) by striking out ''; and'' and inserting in lieu thereof a period; and

(2) in paragraph (3), by inserting ''The term'' after ''(3)''.

SEC. 1402. REVIEW OF PROTESTS AND EFFECT ON CONTRACTS PENDING DECISION.

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

(1) in subsection (b)—

(A) in paragraph (1), by striking out ''one working day of'' and inserting in lieu thereof ''one day after''; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking out "25 working days from" and inserting in lieu thereof "35 days after"; and

(ii) in subparagraph (C), by striking out "10 working days from" and inserting in lieu thereof "20 days after"; and

(2) in subsection (c)(3), by striking out "thereafter" and inserting in lieu thereof "after the making of such finding".

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

"(d)(1) A contractor awarded a Federal agency contract may, during the period described in paragraph (4), begin performance of the contract and engage in any related activities that result in obligations being incurred by the United States under the contract unless the contracting officer responsible for the award of the contract withholds authorization to proceed with performance of the contract.

"(2) The contracting officer may withhold an authorization to proceed with performance of the contract during the period described in paragraph (4) if the contracting officer determines in writing that—

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

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

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

"(i) the contracting officer may not authorize performance of the contract to begin while the protest is pending; or

"(ii) if authorization for contract performance to proceed was not withheld in accordance with paragraph (2) before receipt of the notice, the contracting officer shall immediately direct the contractor to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the United States under that contract.

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

"(C) The head of the procuring activity may authorize the performance of the contract (notwithstanding a protest of which the Federal agency has notice under this section)—

"(i) upon a written finding that—

"(I) performance of the contract is in the best interests of the United States; or

"(II) urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General concerning the protest; and

"(ii) after the Comptroller General is notified of that finding.

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

"(A) the date that is 10 days after the date of the contract award; or

"(B) the date that is 5 days after the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required.".

SEC. 1403. DECISIONS ON PROTESTS.

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

(1) in paragraph (1), by striking out "90 working days from" and inserting in lieu thereof "125 days after";

(2) in paragraph (2), by striking out "45 calendar days from" and inserting "65 days after";

(3) by redesignating paragraph (3) as paragraph (4); and

(4) by inserting after paragraph (2) the following new paragraph (3):

"(3) An amendment to a protest that adds a new ground of protest, if timely made, should be resolved, to the maximum extent practicable, within the time limit established under paragraph (1) of this subsection for final decision of the initial protest. If an amended protest cannot be resolved within such time limit, the Comptroller General may resolve the amended protest through the express option under paragraph (2) of this subsection.".

(b) GAO RECOMMENDATIONS ON PROTESTS.—(1) Section 3554 of title 31, United States Code, is amended in subsection (b) by adding at the end the following new paragraph:

"(3) If the Federal agency fails to implement fully the recommendations of the Comptroller General under this subsection with respect to a solicitation for a contract or an award or proposed award of a contract within 60 days after receiving the recommendations, the head of the procuring activity responsible for that contract shall report such failure to the Comptroller General not later than 5 days after the end of such 60-day period.".

(2) Subsection (c) of such section is amended to read as follows:

"(c)(1) If the Comptroller General determines that a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation, the Comptroller General may recommend that the Federal agency conducting the procurement pay to an appropriate interested party the costs of—

"(A) filing and pursuing the protest, including reasonable attorneys' fees and consultant and expert witness fees; and

"(B) bid and proposal preparation.

"(2) No party (other than a small business concern (within the meaning of section 3(a) of the Small Business Act)) may be paid, pursuant to a recommendation made under the authority of paragraph (1)—

"(A) costs for consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Federal Government; or

"(B) costs for attorneys' fees that exceed $150 per hour unless the agency determines, based on the recommendation of the Comptroller General on a case by case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.

"(3) If the Comptroller General recommends under paragraph (1) that a Federal agency pay costs to an interested party, the Federal agency shall—

"(A) pay the costs promptly; or

"(B) if the Federal agency does not make such payment, promptly report to the Comptroller General the reasons for the failure to follow the Comptroller General's recommendation.

"(4) If the Comptroller General recommends under paragraph (1) that a Federal agency pay costs to an interested party, the Federal agency and the interested party shall attempt to reach an agreement on the amount of the costs to be paid. If the Federal agency and the interested party are unable to agree on the amount to be paid, the Comptroller General may, upon the request of the interested party, recommend to the Federal agency the amount of the costs that the Federal agency should pay.".

(3) Subsection (e) of such section is amended to read as follows:

"(e)(1) The Comptroller General shall report promptly to the Committee on Governmental Affairs and the Committee on Appropriations of the Senate and to the Committee on Government Operations and the Committee on Appropriations of the House of Representatives any case in which a Federal agency fails to implement fully a recommendation of the Comptroller General under subsection (b) or (c). The report shall include—

"(A) a comprehensive review of the pertinent procurement, including the circumstances of the failure of the Federal agency to implement a recommendation of the Comptroller General; and

"(B) a recommendation regarding whether, in order to correct an inequity or to preserve the integrity of the procurement process, the Congress should consider—

"(i) private relief legislation;

"(ii) legislative rescission or cancellation of funds;

"(iii) further investigation by Congress; or

"(iv) other action.

"(2) Not later than January 31 of each year, the Comptroller General shall transmit to the Congress a report containing a summary of each instance in which a Federal agency did not fully implement a recommendation of the Comptroller General under subsection (b) or (c) during the preceding year. The report shall also describe each instance in which a final decision in a protest was not rendered within 125 days after the date the protest is submitted to the Comptroller General.".

(4) Costs to which the Comptroller General declared an interested party to be entitled under section 3554 of title 31, United States Code, as in effect immediately before the enactment of this Act, shall, if not paid or otherwise satisfied by the Federal agency concerned before the date of the enactment of this Act, be paid promptly.

(c) RESTRICTION ON ACCESS TO CERTAIN INFORMATION.—Section 3553(f) of title 31, United States Code, is amended—

(1) by inserting "(1)" after "(f)"; and

(2) by adding at the end the following:

"(2)(A) The Comptroller General may issue protective orders which establish terms, conditions, and restrictions for the provision of any document to a party under paragraph (1), that prohibit or restrict the disclosure by the party of information described in subparagraph (B) that is contained in such a document.

"(B) Information referred to in subparagraph (A) is procurement sensitive information, trade secrets, or other proprietary or confidential research, development, or commercial information.

"(C) A protective order under this paragraph shall not be considered to authorize the withholding of any document or information from Congress or an executive agency.".

SEC. 1404. REGULATIONS.

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

(1) by redesignating subsection (b) as subsection (d); and

(2) by inserting after subsection (a) the following new subsection (b):

"(b) The procedures shall provide that, in the computation of any period described in this subchapter—

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

"(2) the last day after such act, event, or default be included, unless—

"(A) such last day is a Saturday, a Sunday, or a legal holiday; or

"(B) in the case of a filing of a paper at the General Accounting Office or a Federal agency, such last day is a day on which weather or other conditions cause the closing of the General Accounting Office or Federal agency, in which event the next day that is not a Saturday, Sunday, or legal holiday shall be included.".

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

"(c) The Comptroller General may prescribe procedures for the electronic filing and dissemination of documents and information required under this subchapter. In prescribing such procedures, the Comptroller General shall consider the ability of all parties to achieve electronic access to such documents and records.".

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

PART II—PROTESTS IN PROCUREMENTS OF AUTOMATIC DATA PROCESSING

SEC. 1431. REVOCATION OF DELEGATIONS OF PROCUREMENT AUTHORITY.

Section 111(b)(3) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(b)(3)) is amended by inserting before the period at the end of the third sentence the following: ", including the authority to revoke a delegation of authority with respect to a particular contract after award of the contract, except that the Administrator may revoke a delegation of authority after the contract is awarded only when there is a finding of a violation of law or regulation in connection with the contract award.".

SEC. 1432. AUTHORITY OF THE GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS.

The first sentence of section 111(f)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(1)) is amended to read as follows: "Upon request of an interested party in connection with any procurement that is subject to this section (including any such procurement that is subject to delegation of

procurement authority), the board of contract appeals of the General Services Administration (hereafter in this subsection referred to as the 'board') shall review, as provided in this subsection, any decision by a contracting officer that is alleged to violate a statute, a regulation, or the conditions of a delegation of procurement authority.".

SEC. 1433. PERIODS FOR CERTAIN ACTIONS.

(a) SUSPENSION OF PROCUREMENT AUTHORITY.—Section 111(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)) is amended—

(1) in paragraph (2)(B)—

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

(B) by inserting "(i)" after "(B)"; and

(C) by adding at the end the following:

"(ii) A suspension under this subparagraph shall not preclude the Federal agency concerned from continuing the procurement process up to but not including award of the contract unless the board determines such action is not in the best interests of the United States."; and

(2) in paragraph (3), by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A)(i) If, with respect to an award of a contract, the board receives notice of a protest under this subsection within the period described in clause (ii), the board shall, at the request of an interested party, hold a hearing to determine whether the board should suspend the procurement authority of the Administrator or the Administrator's delegation of procurement authority for the protested procurement on an interim basis until the board can decide the protest.

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

"(I) the tenth day after the date of contract award; or

"(II) the fifth day after the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required.

"(iii) The board shall hold the requested hearing within 5 days after the date of the filing of the protest or, in the case of a request for debriefing under the provisions of section 2305(b)(5) of title 10, United States Code, or section 303B(e) of this Act, within 5 days after the later of the date of the filing of the protest or the date of the debriefing.".

(b) FINAL DECISION.—Paragraph (4)(B) of such section 111(f) is amended—

(1) by striking out "45 working days" and inserting in lieu thereof "65 days"; and

(2) by adding at the end the following: "An amendment which adds a new ground of protest should be resolved, to the maximum extent practicable, within the time limits established for resolution of the initial protest.".

SEC. 1434. DISMISSALS OF PROTESTS.

Section 111(f)(4) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(4)) is amended by striking out subparagraph (C) and inserting in lieu thereof the following:

"(C) The board may dismiss a protest that the board determines—

"(i) is frivolous;

"(ii) has been brought or pursued in bad faith; or

"(iii) does not state on its face a valid basis for protest.".

SEC. 1435. AWARD OF COSTS.

(a) AWARD.—Section 111(f)(5) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(5)) is amended by striking out subparagraph (C) and inserting in lieu thereof the following:

"(C) Whenever the board makes such a determination, it may, in accordance with section 1304 of title 31, United States Code, further declare an appropriate prevailing party to be entitled to the cost of filing and pursuing the protest (including reasonable attorneys' fees and consultant and expert witness fees), and bid and proposal preparation. However, no party (other than a small business concern (within the meaning of section 3(a) of the Small Business Act)) may be declared entitled to costs for consultants and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Federal Government, and no party (other than a small business concern (within the meaning of section 3(a) of the Small Business Act)) may be declared entitled to attorneys' fees that exceed $150 per hour unless the board, on a case by case basis, determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.".

(b) DEFINITION OF PREVAILING PARTY.—Section 111(f)(9) of such Act (40 U.S.C. 759(f)(9)) is amended by adding at the end the following:

"(C) The term 'prevailing party', with respect to a determination of the board under paragraph (5)(B) that a challenged action of a Federal agency violates a statute or regulation or the conditions of a delegation of procurement authority issued pursuant to this section, means a party that demonstrated such violation.".

SEC. 1436. DISMISSAL AGREEMENTS.

Section 111(f)(5) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(5)), as amended by section 1435, is further amended by adding at the end the following new subparagraphs:

"(D) Any agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds shall be submitted to the board and shall be made a part of the public record (subject to any protective order considered appropriate by the board) before dismissal of the protest. If a Federal agency is a party to a settlement agreement, the submission of the agreement to the board shall include a memorandum, signed by the contracting officer concerned, that describes in detail the procurement, the grounds for protest, the Federal Government's position regarding the grounds for protest, the terms of the settlement, and the agency's position regarding the propriety of the award or proposed award of the contract at issue in the protest.

"(E) Payment of amounts due from an agency under subparagraph (C) or under the terms of a settlement agreement under subparagraph (D) shall be made from the appropriation made by section 1304 of title 31, United States Code, for the payment of

judgments. The Federal agency concerned shall reimburse that appropriation account out of funds available for the procurement.".

SEC. 1437. MATTERS TO BE COVERED IN REGULATIONS.

Section 111(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)) is further amended—

(1) by inserting after paragraph (6) the following:

"(7)(A) The board shall adopt and issue such rules and procedures as may be necessary to the expeditious disposition of protests filed under the authority of this subsection.

"(B) The procedures shall provide that, in the computation of any period described in this subsection—

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

"(ii) the last day after such act, event, or default be included, unless—

"(I) such last day is a Saturday, a Sunday, or a legal holiday; or

"(II) in the case of a filing of a paper at the board, such last day is a day on which weather or other conditions cause the closing of the board in which event the next day that is not a Saturday, Sunday, or legal holiday shall be included.

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

"(D) The procedures shall provide that if the board expressly finds that a protest or a portion of a protest is frivolous or has been brought or pursued in bad faith, or that any person has willfully abused the board's process during the course of a protest, the board may impose appropriate procedural sanctions, including dismissal of the protest."; and

(2) by striking out paragraph (8).

SEC. 1438. DEFINITION OF PROTEST.

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

(1) by striking out "subsection—" and inserting in lieu thereof "subsection:";

(2) by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A) The term 'protest' means a written objection by an interested party to any of the following:

"(i) A solicitation or other request by a Federal agency for offers for a contract for the procurement of property or services.

"(ii) The cancellation of such a solicitation or other request.

"(iii) An award or proposed award of such a contract.

"(iv) A termination or cancellation of an award of such a contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract."; and

(3) by capitalizing the first letter of the first word in subparagraph (B).

SEC. 1439. OVERSIGHT OF ACQUISITION OF AUTOMATIC DATA PROCESSING EQUIPMENT BY FEDERAL AGENCIES.

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

"(h) DATA COLLECTION.—(1) The Administrator shall collect and compile data regarding the procurement of automatic data processing equipment under this section. The data collected and compiled shall include, at a minimum, with regard to each contract for such a procurement, the following:

"(A) The procuring agency.

"(B) The contractor.

"(C) The automatic data processing equipment and services procured.

"(D) The manufacturer of the equipment procured.

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

"(F) The type of contract used.

"(G) The extent of competition for award.

"(H) Whether compatibility restrictions were used in awarding the contract.

"(I) Significant modifications of the contract.

"(J) Contract price, to the extent that the price is not proprietary information.

"(2) The head of each Federal agency shall report to the Administrator in accordance with regulations issued by the Administrator all information that the Administrator determines necessary in order to satisfy the requirements in paragraph (1).

"(3) The Administrator—

"(A) shall carry out a systematic, periodic review of information received under this subsection;

"(B) shall use such information, as appropriate, to determine the compliance of Federal agencies with the requirements of this section; and

"(C) may take appropriate corrective action regarding an agency's authority to lease and purchase automatic data processing equipment upon any substantial failure by the head of the agency to report to the Administrator in accordance with this subsection.

"(4) The Administrator shall take appropriate corrective action upon failure of a Federal agency to comply with the terms of any delegation of authority to lease or purchase automatic data processing equipment or failure to comply with any applicable law or regulation.

"(5) The Administrator shall require in the regulations implementing this subsection that (A) data collected pursuant to this subsection be drawn from existing Federal agency information; and (B) no new or additional information reporting requirements may be imposed on offerors or contractors to collect such data.".

Subtitle E—Policy, Definitions, and Other Matters

PART I—ARMED SERVICES ACQUISITIONS

SEC. 1501. REPEAL OF POLICY STATEMENT.

(a) REPEAL.—Section 2301 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 137 of such title is amended by striking out the item relating to section 2301.

SEC. 1502. DEFINITIONS.

Section 2302 of title 10, United States Code, is amended—

(1) by striking out paragraph (3) and inserting in lieu thereof the following:

"(3) The following terms have the meanings provided such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403):

"(A) The term 'procurement'.
"(B) The term 'procurement system'.
"(C) The term 'standards'.
"(D) The term 'full and open competition'.
"(E) The term 'responsible source'.
"(F) The term 'item'.
"(G) The term 'item of supply'.
"(H) The term 'supplies'.
"(I) The term 'commercial item'.
"(J) The term 'nondevelopmental item'.
"(K) The term 'commercial component'
"(L) The term 'component'."; and

(2) by striking out paragraph (7) and inserting in lieu thereof the following new paragraph (7):

"(7) The term 'simplified acquisition threshold' has the meaning provided that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403), except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means an amount equal to two times the amount specified for that term in section 4 of such Act.".

SEC. 1503. DELEGATION OF PROCUREMENT FUNCTIONS.

(a) CONSOLIDATION OF DELEGATION AUTHORITY.—(1) Section 2311 of title 10, United States Code, is amended to read as follows:

"§ 2311. Assignment and delegation of procurement functions and responsibilities

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

"(b) PROCUREMENTS FOR OR WITH OTHER AGENCIES.—Subject to subsection (a), to facilitate the procurement of property and services covered by this chapter by each agency named in section 2303 of this title for any other agency, and to facilitate joint procurement by those agencies—

"(1) the head of an agency may delegate functions and assign responsibilities relating to procurement to any officer or employee within such agency;

"(2) the heads of two or more agencies may by agreement delegate procurement functions and assign procurement responsibilities from one agency to another of those agencies or to an officer or civilian employee of another of those agencies; and

"(3) the heads of two or more agencies may create joint or combined offices to exercise procurement functions and responsibilities.

"(c) APPROVAL OF TERMINATIONS AND REDUCTIONS OF JOINT ACQUISITION PROGRAMS.—(1) The Secretary of Defense shall prescribe regulations that prohibit each military department participating in a joint acquisition program approved by the Under Secretary of Defense for Acquisition and Technology from terminating or substantially reducing its participation in such program without the approval of the Under Secretary.

"(2) The regulations shall include the following provisions:

"(A) A requirement that, before any such termination or substantial reduction in participation is approved, the proposed termination or reduction be reviewed by the Joint Requirements Oversight Council of the Department of Defense.

"(B) A provision that authorizes the Under Secretary of Defense for Acquisition and Technology to require a military department whose participation in a joint acquisition program has been approved for termination or substantial reduction to continue to provide some or all of the funding necessary for the acquisition program to be continued in an efficient manner.".

(2) The table of sections at the beginning of chapter 137 of such title is amended by striking out the item relating to section 2311 and inserting in lieu thereof the following:

"2311. Assignment and delegation of procurement functions and responsibilities.".

(b) CONFORMING REPEAL.—(1) Section 2308 of title 10, United States Code, is repealed.

(2) The table of sections at the beginning of chapter 137 of such title is amended by striking out the item related to section 2308.

SEC. 1504. DETERMINATIONS AND DECISIONS.

Section 2310 of title 10, United States Code, is amended to read as follows:

"§ 2310. Determinations and decisions

"(a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.—Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract or, except to the extent expressly prohibited by another provision of law, for a class of purchases or contracts. Such determinations and decisions are final.

"(b) WRITTEN FINDINGS REQUIRED.—(1) Each determination or decision under section 2306(g)(1), 2307(d), or 2313(c)(2)(B) of this title shall be based on a written finding by the person making the determination or decision. The finding shall set out facts and circumstances that support the determination or decision.

"(2) Each finding referred to in paragraph (1) is final. The head of the agency making such finding shall maintain a copy of the finding for not less than 6 years after the date of the determination or decision.".

SEC. 1505. RESTRICTIONS ON UNDEFINITIZED CONTRACTUAL ACTIONS.

(a) CLARIFICATION OF LIMITATION.—Subsection (b) of section 2326 of title 10, United States Code, is amended—

(1) in the subsection heading, by striking out "AND EXPENDITURE";

(2) in paragraph (1)(B), by striking out "or expended";

(3) in paragraph (2), by striking out "expend" and inserting in lieu thereof "obligate"; and

(4) in paragraph (3)—

(A) by striking out "expended" and inserting in lieu thereof "obligated"; and

(B) by striking out "expend" and inserting in lieu thereof "obligate".

(b) WAIVER AUTHORITY.—Such subsection is further amended—

(1) by redesignating paragraph (4) as paragraph (5); and

(2) by inserting after paragraph (3) the following new paragraph (4):

"(4) The head of an agency may waive the provisions of this subsection with respect to a contract of that agency if such head of an agency determines that the waiver is necessary in order to support a contingency operation.".

(c) INAPPLICABILITY OF RESTRICTIONS TO CONTRACTS WITHIN THE SIMPLIFIED ACQUISITION THRESHOLD.—Subsection (g)(1)(B) of such section is amended by striking out "small purchase threshold" and inserting in lieu thereof "simplified acquisition threshold".

SEC. 1506. REPEAL OF REQUIREMENT RELATING TO PRODUCTION SPECIAL TOOLING AND PRODUCTION SPECIAL TEST EQUIPMENT.

(a) REPEAL.—Section 2329 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 137 of such title is amended by striking out the item related to section 2329.

SEC. 1507. REGULATIONS FOR BIDS.

Section 2381(a) of title 10, United States Code, is amended by striking out "(a) The Secretary" and all that follows through the end of paragraph (1) and inserting in lieu thereof the following:

"(a) The Secretary of Defense may—

"(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and".

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 1551. DEFINITIONS.

Section 309 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259) is amended by striking out subsection (c) and inserting in lieu thereof the following:

"(c) The following terms have the meanings provided such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403):

"(1) The term 'procurement'.
"(2) The term 'procurement system'.
"(3) The term 'standards'.
"(4) The term 'full and open competition'.
"(5) The term 'responsible source'.
"(6) The term 'technical data'.
"(7) The term 'major system'.
"(8) The term 'item'.
"(9) The term 'item of supply'.
"(10) The term 'supplies'.
"(11) The term 'commercial item'.
"(12) The term 'nondevelopmental item'.
"(13) The term 'commercial component'.
"(14) The term 'component'.

"(d) The term 'simplified acquisition threshold' has the meaning provided that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403), except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means an amount equal to two times the amount specified for that term in section 4 of such Act.

"(e) The term 'Federal Acquisition Regulation' means the Federal Acquisition Regulation issued pursuant to section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1))."

SEC. 1552. DELEGATION OF PROCUREMENT FUNCTIONS.

Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by adding at the end the following new section:

"SEC. 311. ASSIGNMENT AND DELEGATION OF PROCUREMENT FUNCTIONS AND RESPONSIBILITIES.

"(a) IN GENERAL.—Except to the extent expressly prohibited by another provision of law, the head of an executive agency may delegate to any other officer or official of that agency, any power under this title.

"(b) PROCUREMENTS FOR OR WITH OTHER AGENCIES.—Subject to subsection (a), to facilitate the procurement of property and services covered by this title by each executive agency for any other executive agency, and to facilitate joint procurement by those executive agencies—

"(1) the head of an executive agency may delegate functions and assign responsibilities relating to procurement to any officer or employee within such agency;

"(2) the heads of two or more executive agencies may by agreement delegate procurement functions and assign procurement responsibilities, consistent with section 1535 of title 31, United States Code, and regulations issued under section 1074 of the Federal Acquisition Streamlining Act of 1994, from one executive agency to another of those executive agencies or to an officer or civilian employee of another of those executive agencies; and

"(3) the heads of two or more executive agencies may establish joint or combined offices to exercise procurement functions and responsibilities.".

SEC. 1553. DETERMINATIONS AND DECISIONS.

Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 1552, is further amended by adding at the end the following new section:

"SEC. 312. DETERMINATIONS AND DECISIONS.

"(a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.—Determinations and decisions required to be made under this title by the head of an executive agency may be made for an individual purchase or contract or, except to the extent expressly prohibited by another provision of law, for a class of purchases or contracts. Such determinations and decisions are final.

"(b) WRITTEN FINDINGS REQUIRED.—(1) Each determination under section 305(d) or section 304C(c)(2)(B) shall be based on a written finding by the person making the determination or decision. The finding shall set out facts and circumstances that support the determination or decision.

"(2) Each finding referred to in paragraph (1) is final.

"(3) The head of an executive agency shall maintain for a period of not less than 6 years a copy of each finding referred to in paragraph (1) that is made by a person in that executive agency. The period begins on the date of the determination or decision to which the finding relates.".

SEC. 1554. REPEAL OF PREFERENCE FOR RECYCLED TONER CARTRIDGES.

The following provisions of law, relating to a preference for procurement of recycled toner cartridges, are repealed:

(1) Section 630 of Public Law 102–393 (106 Stat. 1773) and the provision of law enclosed in quotation marks in that section (42 U.S.C. 6962(j)).

(2) Section 401 of Public Law 103–123 (107 Stat. 1238; 42 U.S.C. 6962 note).

SEC. 1555. COOPERATIVE PURCHASING.

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

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

"(2)(A) The Administrator may provide for the use of Federal supply schedules of the General Services Administration by any of the following entities upon request:

"(i) A State, any department or agency of a State, and any political subdivision of a State, including a local government.

"(ii) The Commonwealth of Puerto Rico.

"(iii) The government of an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e))).

"(B) Subparagraph (A) may not be construed to authorize an entity referred to in that subparagraph to order existing stock or inventory from federally owned and operated, or federally owned and contractor operated, supply depots, warehouses, or similar facilities.

"(C) In any case in which an entity listed in subparagraph (A) uses a Federal supply schedule, the Administrator may require the entity to reimburse the General Services Administration for any administrative costs of using the schedule.

"(3)(A) Upon the request of a qualified nonprofit agency for the blind or other severely handicapped that is to provide a commodity or service to the Federal Government under the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.), the Administrator may provide any of the services specified in subsection (a) to such agency to the extent practicable.

"(B) A nonprofit agency receiving services under the authority of subparagraph (A) shall use the services directly in making or providing an approved commodity or approved service to the Federal Government.

"(C) In this paragraph:

"(i) The term 'qualified nonprofit agency for the blind or other severely handicapped' means—

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

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

"(ii) The terms 'approved commodity' and 'approved service' mean a commodity and a service, respectively, that has been determined by the Committee for Purchase from the Blind and Other Severely Handicapped under section 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 47) to be suitable for procurement by the Federal Government.".

TITLE II—CONTRACT ADMINISTRATION

Subtitle A—Contract Payment

PART I—ARMED SERVICES ACQUISITIONS

SEC. 2001. CONTRACT FINANCING.

(a) REORGANIZATION OF PRINCIPAL AUTHORITY PROVISION.—Section 2307 of title 10, United States Code, is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

"§ 2307. Contract financing";

(2) by inserting "PAYMENT AUTHORITY.—" after "(a)" in subsection (a);

(3) by inserting "PAYMENT AMOUNT.—" after "(b)" in subsection (b);

(4) by inserting "SECURITY FOR ADVANCE PAYMENTS.—" after "(c)" in subsection (c);

(5) by inserting "CONDITIONS FOR PROGRESS PAYMENTS.—" after "(d)" in subsection (d);

(6) by inserting "ACTION IN CASE OF FRAUD.—" after "(e)" in subsection (e); and

(7) by redesignating subsections (b), (c), (d), and (e) as subsections (c), (d), (e), and (h), respectively.

(b) PERFORMANCE-BASED PAYMENTS.—Such section, as amended by subsection (a), is further amended by inserting after subsection (a) the following new subsection (b):

"(b) PERFORMANCE-BASED PAYMENTS.—Whenever practicable, payments under subsection (a) shall be made on any of the following bases:

"(1) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.

"(2) Accomplishment of events defined in the program management plan.

"(3) Other quantifiable measures of results.".

(c) TERMINOLOGY CORRECTION.—Subsection (a)(2) of such section is amended by striking out "bid".

(d) EFFECTIVE DATE OF LIEN RELATED TO ADVANCE PAYMENTS.—Such section, as amended by subsection (a)(7), is further amended in subsection (d) by inserting before the period at the end of the third sentence the following: "and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States".

(e) CONDITIONS FOR PROGRESS PAYMENTS.—Such section, as amended by subsection (a)(7), is further amended in subsection (e)—

(1) in the first sentence of paragraph (1), by striking out "work, which" and all that follows through "accomplished" and inserting in lieu thereof "work accomplished that meets standards established under the contract"; and

(2) by striking out paragraph (3) and inserting in lieu thereof the following:

"(3) This subsection applies to any contract in an amount greater than $25,000.".

(f) CONDITIONS FOR PAYMENTS FOR COMMERCIAL ITEMS.—Such section, as amended by subsection (a)(7), is further amended by inserting after subsection (e) the following new subsection (f):

"(f) CONDITIONS FOR PAYMENTS FOR COMMERCIAL ITEMS.—(1) Payments under subsection (a) for commercial items may be made under such terms and conditions as the head of the agency determines are appropriate or customary in the commercial marketplace and are in the best interests of the United States. The head of the agency shall obtain adequate security for such payments. If the security is in the form of a lien in favor of the United States, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the United States.

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

"(3) The conditions of subsections (d) and (e) need not be applied if they would be inconsistent, as determined by the head of the agency, with commercial terms and conditions pursuant to paragraphs (1) and (2).".

(g) NAVY CONTRACTS.—Such section, as amended by subsection (f), is further amended by inserting after subsection (f) the following new subsection (g):

"(g) CERTAIN NAVY CONTRACTS.—(1) The Secretary of the Navy shall provide that the rate for progress payments on any contract

awarded by the Secretary for repair, maintenance, or overhaul of a naval vessel shall be not less than—

"(A) 95 percent, in the case of a firm considered to be a small business; and

"(B) 90 percent, in the case of any other firm.

"(2) The Secretary of the Navy may advance to private salvage companies such funds as the Secretary considers necessary to provide for the immediate financing of salvage operations. Advances under this paragraph shall be made on terms that the Secretary considers adequate for the protection of the United States.

"(3) The Secretary of the Navy shall provide, in each contract for construction or conversion of a naval vessel, that, when partial, progress, or other payments are made under such contract, the United States is secured by a lien upon work in progress and on property acquired for performance of the contract on account of all payments so made. The lien is paramount to all other liens.".

(h) RELATIONSHIP TO PROMPT PAYMENT REQUIREMENTS.—The amendments made by this section are not intended to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law (as such procedures are in effect on the date of the enactment of this Act), except that the Government may accept payment terms offered by a contractor offering a commercial item.

(i) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 137 of title 10, United States Code, is amended by striking out the item relating to section 2307 and inserting in lieu thereof the following:

"2307. Contract financing.".

(j) REPEAL OF SUPERSEDED PROVISIONS.—(1) Sections 7312, 7364, and 7521 of title 10, United States Code, are repealed.

(2) Section 7522 of such title is amended—

(A) by striking out subsection (b); and

(B) by redesignating subsection (c) as subsection (b).

(3) Chapters 633, 637, and 645 of such title are amended by striking out items in the tables of sections for such chapters as follows:

(A) For chapter 633, the item relating to section 7312.

(B) For chapter 637, the item relating to section 7364.

(C) For chapter 645, the item relating to section 7521.

SEC. 2002. REPEAL OF VOUCHERING PROCEDURES SECTION.

(a) REPEAL.—Section 2355 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 139 of such title is amended by striking out the item relating to section 2355.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 2051. CONTRACT FINANCING.

(a) REORGANIZATION OF PRINCIPAL AUTHORITY PROVISION.—Section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255) is amended—

(1) by striking out the section heading and the section designation and inserting in lieu thereof the following:

"SEC. 305. CONTRACT FINANCING.";

(2) by inserting "PAYMENT AUTHORITY.—" after "(a)" in subsection (a);

(3) by inserting "PAYMENT AMOUNT.—" after "(b)" in subsection (b);

(4) by inserting "SECURITY FOR ADVANCE PAYMENTS.—" after "(c)" in subsection (c); and

(5) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively.

(b) PERFORMANCE-BASED PAYMENTS.—Such section, as amended by subsection (a), is further amended by inserting after subsection (a) the following new subsection (b):

"(b) PERFORMANCE-BASED PAYMENTS.—Whenever practicable, payments under subsection (a) shall be made on any of the following bases:

"(1) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.

"(2) Accomplishment of events defined in the program management plan.

"(3) Other quantifiable measures of results.".

(c) TERMINOLOGY CORRECTION.—Subsection (a)(2) of such section is amended by striking out "bid".

(d) EFFECTIVE DATE OF LIEN RELATED TO ADVANCE PAYMENTS.—Such section, as amended by subsection (a)(5), is further amended in subsection (d) by inserting before the period at the end of the third sentence the following: "and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States".

(e) REVISION OF CIVILIAN AGENCY PROVISION TO ENSURE UNIFORM REQUIREMENTS FOR PROGRESS PAYMENTS.—Such section is further amended by adding at the end the following new subsections:

"(e) CONDITIONS FOR PROGRESS PAYMENTS.—(1) The executive agency shall ensure that any payment for work in progress (including materials, labor, and other items) under a contract of an executive agency that provides for such payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide such information and evidence as the executive agency determines necessary to permit the executive agency to carry out the preceding sentence.

"(2) The executive agency shall ensure that progress payments referred to in paragraph (1) are not made for more than 80 percent of the work accomplished under the contract so long as the executive agency has not made the contractual terms, specifications, and price definite.

"(3) This subsection applies to any contract in an amount greater than $25,000.

"(f) CONDITIONS FOR PAYMENTS FOR COMMERCIAL ITEMS.—(1) Payments under subsection (a) for commercial items may be made under such terms and conditions as the head of the executive agency determines are appropriate or customary in the commercial marketplace and are in the best interests of the United States. The head of the executive agency shall obtain adequate security for such payments. If the security is in the form of a lien in favor of the United States, such lien is paramount to all other

liens and is effective immediately upon the first payment, without filing, notice, or other action by the United States.

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

"(3) The conditions of subsections (d) and (e) need not be applied if they would be inconsistent, as determined by the head of the executive agency, with commercial terms and conditions pursuant to paragraphs (1) and (2).".

"(g) ACTION IN CASE OF FRAUD.—(1) In any case in which the remedy coordination official of an executive agency finds that there is substantial evidence that the request of a contractor for advance, partial, or progress payment under a contract awarded by that executive agency is based on fraud, the remedy coordination official shall recommend that the executive agency reduce or suspend further payments to such contractor.

"(2) The head of an executive agency receiving a recommendation under paragraph (1) in the case of a contractor's request for payment under a contract shall determine whether there is substantial evidence that the request is based on fraud. Upon making such a determination, the head of the executive agency may reduce or suspend further payments to the contractor under such contract.

"(3) The extent of any reduction or suspension of payments by an executive agency under paragraph (2) on the basis of fraud shall be reasonably commensurate with the anticipated loss to the United States resulting from the fraud.

"(4) A written justification for each decision of the head of an executive agency whether to reduce or suspend payments under paragraph (2), and for each recommendation received by the executive agency in connection with such decision, shall be prepared and be retained in the files of the executive agency.

"(5) The head of each executive agency shall prescribe procedures to ensure that, before the head of the executive agency decides to reduce or suspend payments in the case of a contractor under paragraph (2), the contractor is afforded notice of the proposed reduction or suspension and an opportunity to submit matters to the executive agency in response to such proposed reduction or suspension.

"(6) Not later than 180 days after the date on which the head of an executive agency reduces or suspends payments to a contractor under paragraph (2), the remedy coordination official of the executive agency shall—

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

"(B) transmit a recommendation to the head of such executive agency whether the suspension or reduction should continue.

"(7) The head of each executive agency who receives recommendations made by a remedy coordination official of the executive agency to reduce or suspend payments under paragraph (2) during a fiscal year shall prepare for such year a report that contains the recommendations, the actions taken on the recommendations and the reasons for such actions, and an assessment of the effects of such actions on the Federal Government. Any

such report shall be available to any Member of Congress upon request.

"(8) The head of an executive agency may not delegate responsibilities under this subsection to any person in a position below level IV of the Executive Schedule.

"(9) In this subsection, the term 'remedy coordination official', with respect to an executive agency, means the person or entity in that executive agency who coordinates within that executive agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities.".

(f) RELATIONSHIP TO PROMPT PAYMENT REQUIREMENTS.—The amendments made by this section are not intended to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law (as such procedures are in effect on the date of the enactment of this Act), except that the Government may accept payment terms offered by a contractor offering a commercial item.

PART III—ACQUISITIONS GENERALLY

SEC. 2091. GOVERNMENT-WIDE APPLICATION OF PAYMENT PROTECTIONS FOR SUBCONTRACTORS AND SUPPLIERS.

Section 806 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190; 10 U.S.C. 2301 note) is amended by striking out subsection (c) and inserting in lieu thereof the following:

"(c) GOVERNMENT-WIDE APPLICABILITY.—The Federal Acquisition Regulatory Council (established by section 25(a) of the Office of Federal Procurement Policy Act) shall modify the Federal Acquisition Regulation (issued pursuant to section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)) to apply Government-wide the requirements that the Secretary is required under subsection (a) to prescribe in regulations applicable with respect to the Department of Defense contracts.".

Subtitle B—Cost Principles

PART I—ARMED SERVICES ACQUISITIONS

SEC. 2101. ALLOWABLE CONTRACT COSTS.

(a) EXTENSION OF COVERAGE TO COAST GUARD AND NASA; OTHER MISCELLANEOUS AMENDMENTS.—Section 2324 of title 10, United States Code, is amended as follows:

(1) Subsection (a) is amended—

(A) by inserting after "(a)" the following: "INDIRECT COST THAT VIOLATES A FAR COST PRINCIPLE.—";

(B) by striking out "Secretary of Defense" and inserting in lieu thereof "head of an agency";

(C) by striking out "Department of Defense" and inserting in lieu thereof "agency"; and

(D) by striking out "the Department of Defense Supplement" and inserting in lieu thereof "applicable agency supplement".

(2) Subsection (b) is amended—

(A) by inserting after "(b)" the following: "PENALTY FOR VIOLATION OF COST PRINCIPLE.—";

(B) in subparagraph (B) of paragraph (1) by striking out "regulations issued by the Secretary" and inserting in lieu thereof "provisions in the Federal Acquisition Regulation"; and

(C) by striking out "Secretary" each place it appears and inserting in lieu thereof "head of the agency".

(3) Subsection (c) is amended—

(A) by inserting after "(c)" the following: "WAIVER OF PENALTY.—"; and

(B) by striking out "The Secretary shall prescribe regulations providing" in the first sentence and inserting in lieu thereof "The Federal Acquisition Regulation shall provide".

(4) Subsection (d) is amended—

(A) by inserting after "(d)" the following: "APPLICABILITY OF CONTRACT DISPUTES PROCEDURE TO DISALLOWANCE OF COST AND ASSESSMENT OF PENALTY.—"; and

(B) by striking out "the Secretary" and inserting in lieu thereof "the head of an agency".

(5) Subsection (e) is amended—

(A) by inserting after "(e)" the following: "SPECIFIC COSTS NOT ALLOWABLE.—";

(B) in subparagraph (D) of paragraph (1), by striking out "regulations of the Secretary of Defense" and inserting in lieu thereof "provisions of the Federal Acquisition Regulation";

(C) in subparagraph (M) of paragraph (1), by striking out "regulations prescribed by the Secretary of Defense" and inserting in lieu thereof "the Federal Acquisition Regulation";

(D) in subparagraph (A) of paragraph (2), by inserting "of Defense" after "Secretary" the first place it occurs;

(E) in subparagraph (C) of paragraph (2), by striking out "head of the agency" in the first sentence and inserting in lieu thereof "Secretary of Defense";

(F) in subparagraph (A) of paragraph (3), by striking out "regulations prescribed by the Secretary" and inserting in lieu thereof "the Federal Acquisition Regulation"; and

(G) by amending paragraph (4) to read as follows:

"(4) The provisions of the Federal Acquisition Regulation implementing this section may establish appropriate definitions, exclusions, limitations, and qualifications.".

(6) Subsection (f) is amended—

(A) in paragraph (1)—

(i) by striking out "(1)" and all that follows through "The amendments" and inserting in lieu thereof the following: "REQUIRED REGULATIONS.—(1) The Federal Acquisition Regulation shall contain provisions on the allowability of contractor costs. Such provisions", and

(ii) by striking out "These regulations" and inserting in lieu thereof "The regulations"; and

(B) in paragraphs (2), (3), and (4)—

(i) by striking out "defense" before "contract auditor" each place it appears, and

(ii) by striking out "regulation" each place it appears and inserting in lieu thereof "Federal Acquisition Regulation".

(7) Subsection (g) is amended to read as follows:

"(g) APPLICABILITY OF REGULATIONS TO SUBCONTRACTORS.—The regulations referred to in subsections (e) and (f)(1) shall require prime contractors of a covered contract, to the maximum extent practicable, to apply the provisions of such regulations to all subcontractors of the covered contract.".

(8) Subsection (h) is amended—

(A) by inserting after "(h)" the following: "CONTRACTOR CERTIFICATION REQUIRED.—";

(B) by striking out "by the Secretary" in paragraph (1) and inserting in lieu thereof "in the Federal Acquisition Regulation"; and

(C) by striking out "Secretary of Defense" in paragraph (2) and inserting in lieu thereof "head of the agency".

(9) Subsection (i) is amended by striking out "The submission to the Department of Defense" and inserting in lieu thereof "PENALTIES FOR SUBMISSION OF COST KNOWN AS NOT ALLOWABLE.—The submission to an agency".

(10) Subsection (j) is amended—

(A) by inserting after "(j)" the following: "CONTRACTOR TO HAVE BURDEN OF PROOF.—"; and

(B) by striking out "United States Claims Court" and inserting in lieu thereof "United States Court of Federal Claims".

(11) Subsection (k) is amended—

(A) by inserting after "(k)" the following: "PROCEEDING COSTS NOT ALLOWABLE.—";

(B) in paragraph (2), by striking out "decision by the Department of Defense—" and inserting in lieu thereof "decision—"; and

(C) in paragraph (4)—

(i) by inserting after "head of the agency" the following: "or Secretary of the military department concerned",

(ii) by striking out "under regulations prescribed by such agency head" and inserting in lieu thereof "in accordance with the Federal Acquisition Regulation",

(iii) by inserting "or Secretary" after "agency head", and

(iv) by inserting before the period at the end the following: "or military department".

(b) UNALLOWABILITY OF COSTS TO INFLUENCE LOCAL LEGISLATIVE BODIES.—Subsection (e)(1)(B) of section 2324 of title 10, United States Code, is amended by striking out "or a State legislature" and inserting in lieu thereof ", a State legislature, or a legislative body of a political subdivision of a State".

(c) CLARIFICATION OF COST PRINCIPLES.—Subsection (f)(1) of such section is amended by adding at the end the following:

"(Q) Conventions.".

(d) COVERED CONTRACT DEFINED.—Such section is further amended by striking out subsections (l) and (m) and inserting in lieu thereof the following:

"(l) DEFINITIONS.—In this section:

"(1)(A) The term 'covered contract' means a contract for an amount in excess of $500,000 that is entered into by the head of an agency, except that such term does not include a fixed-price contract without cost incentives or any firm fixed-price contract for the purchase of commercial items.

"(B) Effective on October 1 of each year that is divisible by five, the amount set forth in subparagraph (A) shall be adjusted to the equivalent amount in constant fiscal year 1994 dollars. An amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but is not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.

"(2) The term 'head of the agency' or 'agency head' does not include the Secretary of a military department.

"(3) The term 'agency' means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.".

(e) REGULATIONS.—The regulations of the Secretary of Defense implementing section 2324 of title 10, United States Code, shall remain in effect until the Federal Acquisition Regulation is revised to implement the amendments made by this section.

SEC. 2102. REPEAL OF AUTHORITY FOR CONTRACT PROFIT CONTROLS DURING EMERGENCY PERIODS.

(a) REPEAL.—Section 2382 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2382.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 2151. ALLOWABLE CONTRACT COSTS.

Section 306 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256) is amended to read as follows:

"SEC. 306. ALLOWABLE COSTS.

"(a) INDIRECT COST THAT VIOLATES A FAR COST PRINCIPLE.—An executive agency shall require that a covered contract provide that if the contractor submits to the executive agency a proposal for settlement of indirect costs incurred by the contractor for any period after such costs have been accrued and if that proposal includes the submission of a cost which is unallowable because the cost violates a cost principle in the Federal Acquisition Regulation (referred to in section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)) or an executive agency supplement to the Federal Acquisition Regulation, the cost shall be disallowed.

"(b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—(1) If the executive agency determines that a cost submitted by a contractor in its proposal for settlement is expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs, the executive agency shall assess a penalty against the contractor in an amount equal to—

"(A) the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted; plus

"(B) interest (to be computed based on provisions in the Federal Acquisition Regulation) to compensate the United States for the use of any funds which a contractor has been paid in excess of the amount to which the contractor was entitled.

"(2) If the executive agency determines that a proposal for settlement of indirect costs submitted by a contractor includes a cost determined to be unallowable in the case of such contractor before the submission of such proposal, the executive agency shall assess a penalty against the contractor in an amount equal to two times the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted.

"(c) WAIVER OF PENALTY.—The Federal Acquisition Regulation shall provide for a penalty under subsection (b) to be waived in the case of a contractor's proposal for settlement of indirect costs when—

"(1) the contractor withdraws the proposal before the formal initiation of an audit of the proposal by the Federal Government and resubmits a revised proposal;

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

"(3) the contractor demonstrates, to the contracting officer's satisfaction, that—

"(A) it has established appropriate policies and personnel training and an internal control and review system that provide assurances that unallowable costs subject to penalties are precluded from being included in the contractor's proposal for settlement of indirect costs; and

"(B) the unallowable costs subject to the penalty were inadvertently incorporated into the proposal.

"(d) APPLICABILITY OF CONTRACT DISPUTES PROCEDURE TO DISALLOWANCE OF COST AND ASSESSMENT OF PENALTY.—An action of an executive agency under subsection (a) or (b)—

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

"(2) is appealable in the manner provided in section 7 of such Act (41 U.S.C. 606).

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

"(A) Costs of entertainment, including amusement, diversion, and social activities, and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

"(B) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

"(C) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or had pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

"(D) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or

foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable provisions of the Federal Acquisition Regulation.

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

"(F) Costs of alcoholic beverages.

"(G) Contributions or donations, regardless of the recipient.

"(H) Costs of advertising designed to promote the contractor or its products.

"(I) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

"(J) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

"(K) Costs incurred in making any payment (commonly known as a 'golden parachute payment') which is—

"(i) in an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

"(ii) is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

"(L) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

"(M) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined under the Federal Acquisition Regulation.

"(N) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country.

"(O) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States or a State, to the extent provided in subsection (k).

"(2)(A) Pursuant to the Federal Acquisition Regulation and subject to the availability of appropriations, an executive agency, in awarding a covered contract, may waive the application of the provisions of paragraphs (1)(M) and (1)(N) to that contract if the executive agency determines that—

"(i) the application of such provisions to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for employees of the executive agency posted outside the United States;

"(ii) the contractor has taken (or has established plans to take) appropriate actions within the contractor's control to

minimize the amount and number of incidents of the payment of severance pay by the contractor to employees under the contract who are foreign nationals; and

"(iii) the payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract or is necessary to comply with a collective bargaining agreement.

"(B) An executive agency shall include in the solicitation for a covered contract a statement indicating—

"(i) that a waiver has been granted under subparagraph (A) for the contract; or

"(ii) whether the executive agency will consider granting such a waiver, and, if the executive agency will consider granting a waiver, the criteria to be used in granting the waiver.

"(C) An executive agency shall make the final determination regarding whether to grant a waiver under subparagraph (A) with respect to a covered contract before award of the contract.

"(3) The provisions of the Federal Acquisition Regulation implementing this section may establish appropriate definitions, exclusions, limitations, and qualifications. Any submission by a contractor of costs which are incurred by the contractor and which are claimed to be allowable under Department of Energy management and operating contracts shall be considered a 'proposal for settlement of indirect costs incurred by the contractor for any period after such costs have been accrued', as used in this section.

"(f) REQUIRED REGULATIONS.—(1) The Federal Acquisition Regulation shall contain provisions on the allowability of contractor costs. Such provisions shall define in detail and in specific terms those costs which are unallowable, in whole or in part, under covered contracts. The regulations shall, at a minimum, clarify the cost principles applicable to contractor costs of the following:

"(A) Air shows.

"(B) Membership in civic, community, and professional organizations.

"(C) Recruitment.

"(D) Employee morale and welfare.

"(E) Actions to influence (directly or indirectly) executive branch action on regulatory and contract matters (other than costs incurred in regard to contract proposals pursuant to solicited or unsolicited bids).

"(F) Community relations.

"(G) Dining facilities.

"(H) Professional and consulting services, including legal services.

"(I) Compensation.

"(J) Selling and marketing.

"(K) Travel.

"(L) Public relations.

"(M) Hotel and meal expenses.

"(N) Expense of corporate aircraft.

"(O) Company-furnished automobiles.

"(P) Advertising.

"(Q) Conventions.

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

"(A) adequate documentation with respect to such costs; and

"(B) the opinion of the contract auditor on the allowability of such costs.

"(3) The Federal Acquisition Regulation shall provide that, to the maximum extent practicable, a contract auditor be present at any negotiation or meeting with the contractor regarding a determination of the allowability of indirect costs of the contractor.

"(4) The Federal Acquisition Regulation shall require that all categories of costs designated in the report of a contract auditor as questioned with respect to a proposal for settlement be resolved in such a manner that the amount of the individual questioned costs that are paid will be reflected in the settlement.

"(g) APPLICABILITY OF REGULATIONS TO SUBCONTRACTORS.—The regulations referred to in subsections (e) and (f)(1) shall require prime contractors of a covered contract, to the maximum extent practicable, to apply the provisions of such regulations to all subcontractors of the covered contract.

"(h) CONTRACTOR CERTIFICATION REQUIRED.—(1) A proposal for settlement of indirect costs applicable to a covered contract shall include a certification by an official of the contractor that, to the best of the certifying official's knowledge and belief, all indirect costs included in the proposal are allowable. Any such certification shall be in a form prescribed in the Federal Acquisition Regulation.

"(2) An executive agency may, in an exceptional case, waive the requirement for certification under paragraph (1) in the case of any contract if the agency—

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

"(B) states in writing the reasons for that determination and makes such determination available to the public.

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

"(j) CONTRACTOR TO HAVE BURDEN OF PROOF.—In a proceeding before a board of contract appeals, the United States Court of Federal Claims, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the United States is in issue, the burden of proof shall be upon the contractor to establish that those costs are reasonable.

"(k) PROCEEDING COSTS NOT ALLOWABLE.—(1) Except as otherwise provided in this subsection, costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States or a State are not allowable as reimbursable costs under a covered contract if the proceeding (A) relates to a violation of, or failure to comply with, a Federal or State statute or regulation, and (B) results in a disposition described in paragraph (2).

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

"(A) In the case of a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in paragraph (1).

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

"(C) In the case of any civil or administrative proceeding, the imposition of a monetary penalty by reason of the violation or failure referred to in paragraph (1).

"(D) A final decision—

"(i) to debar or suspend the contractor,

"(ii) to rescind or void the contract, or

"(iii) to terminate the contract for default,

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

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

"(3) In the case of a proceeding referred to in paragraph (1) that is commenced by the United States and is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the United States, the costs incurred by the contractor in connection with such proceeding that are otherwise not allowable as reimbursable costs under such paragraph may be allowed to the extent specifically provided in such agreement.

"(4) In the case of a proceeding referred to in paragraph (1) that is commenced by a State, the executive agency that awarded the covered contract involved in the proceeding may allow the costs incurred by the contractor in connection with such proceeding as reimbursable costs if the executive agency determines, in accordance with the Federal Acquisition Regulation, that the costs were incurred as a result of (A) a specific term or condition of the contract, or (B) specific written instructions of the executive agency.

"(5)(A) Except as provided in subparagraph (C), costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the United States or a State in connection with a covered contract may be allowed as reimbursable costs under the contract if such costs are not disallowable under paragraph (1), but only to the extent provided in subparagraph (B).

"(B)(i) The amount of the costs allowable under subparagraph (A) in any case may not exceed the amount equal to 80 percent of the amount of the costs incurred, to the extent that such costs are determined to be otherwise allowable and allocable under the Federal Acquisition Regulation.

"(ii) Regulations issued for the purpose of clause (i) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate.

"(C) In the case of a proceeding referred to in subparagraph (A), contractor costs otherwise allowable as reimbursable costs under this paragraph are not allowable if (i) such proceeding involves the same contractor misconduct alleged as the basis of

another criminal, civil, or administrative proceeding, and (ii) the costs of such other proceeding are not allowable under paragraph (1).

"(6) In this subsection:

"(A) The term 'proceeding' includes an investigation.

"(B) The term 'costs', with respect to a proceeding—

"(i) means all costs incurred by a contractor, whether before or after the commencement of any such proceeding; and

"(ii) includes—

"(I) administrative and clerical expenses;

"(II) the cost of legal services, including legal services performed by an employee of the contractor;

"(III) the cost of the services of accountants and consultants retained by the contractor; and

"(IV) the pay of directors, officers, and employees of the contractor for time devoted by such directors, officers, and employees to such proceeding.

"(C) The term 'penalty' does not include restitution, reimbursement, or compensatory damages.

"(l) COVERED CONTRACT DEFINED.—(1) In this section, the term 'covered contract' means a contract for an amount in excess of $500,000 that is entered into by an executive agency, except that such term does not include a fixed-price contract without cost incentives or any firm, fixed price contract for the purchase of commercial items.

"(2) Effective on October 1 of each year that is divisible by five, the amount set forth in paragraph (1) shall be adjusted to the equivalent amount in constant fiscal year 1994 dollars. An amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but is not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.".

PART III—ACQUISITIONS GENERALLY

SEC. 2191. TRAVEL EXPENSES OF GOVERNMENT CONTRACTORS.

Section 24 of the Office of Federal Procurement Policy Act (41 U.S.C. 420) is repealed.

SEC. 2192. REVISION OF COST PRINCIPLE RELATING TO ENTERTAINMENT, GIFT, AND RECREATION COSTS FOR CONTRACTOR EMPLOYEES.

(a) COSTS NOT ALLOWABLE.—(1) The costs of gifts or recreation for employees of a contractor or members of their families that are provided by the contractor to improve employee morale or performance or for any other purpose are not allowable under a covered contract unless, within 120 days after the date of the enactment of this Act, the Federal Acquisition Regulatory Council prescribes amendments to the Federal Acquisition Regulation specifying circumstances under which such costs are allowable under a covered contract.

(2) Not later than 90 days after the date of the enactment of this Act, the Federal Acquisition Regulatory Council shall amend the cost principle in the Federal Acquisition Regulation that is

set out in section 31.205–14 of title 48, Code of Federal Regulations, relating to unallowability of entertainment costs—

(A) by inserting in the cost principle a statement that costs made specifically unallowable under that cost principle are not allowable under any other cost principle; and

(B) by striking out "(but see 31.205–1 and 31.205–13)".

(b) DEFINITIONS.—In this section:

(1) The term "employee" includes officers and directors of a contractor.

(2) The term "covered contract" has the meaning given such term in section 2324(l) of title 10, United States Code (as amended by section 2101(c)), and section 306(l) of the Federal Property and Administrative Services Act of 1949 (as added by section 2151).

(c) EFFECTIVE DATE.—Any amendments to the Federal Acquisition Regulation made pursuant to subsection (a) shall apply with respect to costs incurred after the date on which the amendments made by section 2101 apply (as provided in section 10001) or the date on which the amendments made by section 2151 apply (as provided in section 10001), whichever is later.

Subtitle C—Audit and Access to Records

PART I—ARMED SERVICES ACQUISITIONS

SEC. 2201. CONSOLIDATION AND REVISION OF AUTHORITY TO EXAMINE RECORDS OF CONTRACTORS.

(a) AUTHORITY.—(1) Section 2313 of title 10, United States Code, is amended to read as follows:

"§ 2313. Examination of records of contractor

"(a) AGENCY AUTHORITY.—(1) The head of an agency, acting through an authorized representative, is authorized to inspect the plant and audit the records of—

"(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of such contracts, made by that agency under this chapter; and

"(B) a subcontractor performing any cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract or any combination of such subcontracts under a contract referred to in subparagraph (A).

"(2) The head of an agency, acting through an authorized representative, is authorized, for the purpose of evaluating the accuracy, completeness, and currency of certified cost or pricing data required to be submitted pursuant to section 2306a of this title with respect to a contract or subcontract, to examine all records of the contractor or subcontractor related to—

"(A) the proposal for the contract or subcontract;

"(B) the discussions conducted on the proposal;

"(C) pricing of the contract or subcontract; or

"(D) performance of the contract or subcontract.

"(b) DCAA SUBPOENA AUTHORITY.—(1) The Director of the Defense Contract Audit Agency (or any successor agency) may require by subpoena the production of any records of a contractor that the Secretary of Defense is authorized to audit or examine under subsection (a).

"(2) Any such subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate United States district court.

"(3) The authority provided by paragraph (1) may not be redelegated.

"(4) The Director (or any successor official) shall submit an annual report to the Secretary of Defense on the exercise of such authority during the preceding year and the reasons why such authority was exercised in any instance. The Secretary shall forward a copy of each such report to the Committees on Armed Services of the Senate and House of Representatives.

"(c) COMPTROLLER GENERAL AUTHORITY.—(1) Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and his representatives are authorized to examine any records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract.

"(2) Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the head of the agency concerned determines, with the concurrence of the Comptroller General or his designee, that the application of that paragraph to the contract or subcontract would not be in the public interest. However, the concurrence of the Comptroller General or his designee is not required—

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

"(B) where the head of the agency determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

"(3) Paragraph (1) may not be construed to require a contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another provision of law.

"(d) LIMITATION ON PREAWARD AUDITS RELATING TO INDIRECT COSTS.—The head of an agency may not perform a preaward audit to evaluate proposed indirect costs under any contract, subcontract, or modification to be entered into in accordance with this chapter in any case in which the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit conducted by any other department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.

"(e) LIMITATION.—The authority of the head of an agency under subsection (a), and the authority of the Comptroller General under subsection (c), with respect to a contract or subcontract shall expire three years after final payment under such contract or subcontract.

"(f) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to the following contracts:

"(1) Contracts for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.

"(g) FORMS OF ORIGINAL RECORD STORAGE.—Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in electronic form.

"(h) USE OF IMAGES OF ORIGINAL RECORDS.—The head of an agency shall not require a contractor or subcontractor to provide original records in an audit carried out pursuant to this section if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

"(1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves the integrity, reliability, and security of the original records.

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

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

"(i) RECORDS DEFINED.—In this section, the term 'records' includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.".

(2) The item relating to such section in the table of sections at the beginning of chapter 137 of title 10, United States Code, is amended to read as follows:

"2313. Examination of records of contractor.".

(b) REPEAL OF SUPERSEDED PROVISION.—(1) Section 2406 of title 10, United States Code, is repealed.

(2) The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2406.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 2251. AUTHORITY TO EXAMINE RECORDS OF CONTRACTORS.

(a) AUTHORITY.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by sections 1072 and 1251(a), is further amended by inserting after section 304B the following new section:

"SEC. 304C. EXAMINATION OF RECORDS OF CONTRACTOR.

"(a) AGENCY AUTHORITY.—(1) The head of an executive agency, acting through an authorized representative, is authorized to inspect the plant and audit the records of—

"(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of such contracts, made by that executive agency under this title; and

"(B) a subcontractor performing any cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract or any combination of such subcontracts under a contract referred to in subparagraph (A).

"(2) The head of an executive agency, acting through an authorized representative, is authorized, for the purpose of evaluating the accuracy, completeness, and currency of certified cost or pricing data required to be submitted pursuant to section 304B with respect

to a contract or subcontract, to examine all records of the contractor or subcontractor related to—

"(A) the proposal for the contract or subcontract;

"(B) the discussions conducted on the proposal;

"(C) pricing of the contract or subcontract; or

"(D) performance of the contract or subcontract.

"(b) SUBPOENA POWER.—(1) The Inspector General of an executive agency appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.) or, upon request of the head of an executive agency, the Director of the Defense Contract Audit Agency (or any successor agency) of the Department of Defense or the Inspector General of the General Services Administration may require by subpoena the production of records of a contractor, access to which is provided for that executive agency by subsection (a).

"(2) Any such subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate United States district court.

"(3) The authority provided by paragraph (1) may not be delegated.

"(4) In the year following a year in which authority provided in paragraph (1) is exercised for an executive agency, the head of the executive agency shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives a report on the exercise of such authority during such preceding year and the reasons why such authority was exercised in any instance.

"(c) COMPTROLLER GENERAL AUTHORITY.—(1) Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and his representatives are authorized to examine any records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract.

"(2) Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the executive agency concerned determines, with the concurrence of the Comptroller General or his designee, that the application of that paragraph to the contract or subcontract would not be in the public interest. However, the concurrence of the Comptroller General or his designee is not required—

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

"(B) where the executive agency determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

"(3) Paragraph (1) may not be construed to require a contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another provision of law.

"(d) LIMITATION ON PREAWARD AUDITS RELATING TO INDIRECT COSTS.—An executive agency may not perform a preaward audit to evaluate proposed indirect costs under any contract, subcontract, or modification to be entered into in accordance with this title

in any case in which the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit conducted by any other department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.

"(e) LIMITATION.—The authority of an executive agency under subsection (a), and the authority of the Comptroller General under subsection (c), with respect to a contract or subcontract shall expire three years after final payment under such contract or subcontract.

"(f) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to the following contracts:

"(1) Contracts for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.

"(g) FORM OF ORIGINAL RECORD STORAGE.—Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in electronic form.

"(h) USE OF IMAGES OF ORIGINAL RECORDS.—An executive agency shall not require a contractor or subcontractor to provide original records in an audit carried out pursuant to this section if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

"(1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves the integrity, reliability, and security of the original records.

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

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

"(i) RECORDS DEFINED.—In this section, the term 'records' includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.".

(b) REPEAL OF SUPERSEDED PROVISION.—Section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254) is amended by striking out subsection (c).

Subtitle D—Claims and Disputes

PART I—ARMED SERVICES ACQUISITIONS

SEC. 2301. CERTIFICATION OF CONTRACT CLAIMS.

(a) IN GENERAL.—Chapter 141 of title 10, United States Code, is amended by inserting after section 2409a the following new section 2410:

"§ 2410. Requests for equitable adjustment or other relief: certification

"(a) CERTIFICATION REQUIREMENT.—A request for equitable adjustment to contract terms or request for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.) that exceeds the simplified acquisition threshold may not be paid unless a person authorized to certify the request on behalf of the contractor certifies, at the time the request is submitted, that—

"(1) the request is made in good faith, and

"(2) the supporting data are accurate and complete to the best of that person's knowledge and belief.

"(b) RESTRICTION ON LEGISLATIVE PAYMENT OF CLAIMS.—In the case of a contract of an agency named in section 2303(a) of this title, no provision of a law enacted after September 30, 1994, that directs the payment of a particular claim under such contract, a particular request for equitable adjustment to any term of such contract, or a particular request for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.) regarding such contract may be implemented unless such provision of law—

"(1) specifically refers to this subsection; and

"(2) specifically states that this subsection does not apply with respect to the payment directed by that provision of law.

"(c) DEFINITION.—In this section, the term 'simplified acquisition threshold' has the meaning given that term in section 4(11) of the Office of Federal Procurement Policy Act.".

(b) REPEAL OF RELATED PROVISION.—Section 2410e of title 10, United States Code, is repealed.

(c) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 141 of such title is amended—

(A) by striking out the items relating to sections 2410 and 2410e; and

(B) by inserting after the item relating to section 2409a the following:

"2410. Requests for equitable adjustment or other relief: certification.".

SEC. 2302. SHIPBUILDING CLAIMS.

(a) INCREASE IN TIME PERIOD DURING WHICH ADJUSTMENTS TO SHIPBUILDING CLAIMS MAY BE MADE.—Section 2405 of title 10, United States Code, is amended in subsection (a)—

(1) by striking out "entered into after December 7, 1983,"; and

(2) by striking out "occurring more than 18 months before the submission of the claim, request, or demand." and inserting in lieu thereof the following: "that—

"(1) in the case of a contract entered into after December 7, 1983, and before the date of the enactment of the Federal Acquisition Streamlining Act of 1994, occurred more than 18 months before the submission of the claim, request, or demand; and

"(2) in the case of a contract entered into on or after the date of the enactment of the Federal Acquisition Streamlining Act of 1994, occurred more than 6 years before the submission of the claim, request, or demand.".

(b) RESUBMISSION WITH CORRECTED CERTIFICATION.—Subsection (c) of such section is amended by adding at the end the following:

"(4) This subsection applies only with respect to a claim, request, or demand submitted before the effective date of this paragraph.".

(c) APPLICABILITY.—Paragraphs (1) and (2) of section 2405(a) of title 10, United States Code, as added by subsection (a)(2), shall apply according to the provisions thereof on and after the date of the enactment of this Act, notwithstanding section 10001(b).

PART II—ACQUISITIONS GENERALLY

SEC. 2351. CONTRACT DISPUTES ACT IMPROVEMENTS.

(a) PERIOD FOR FILING CLAIMS.—Section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) is amended in subsection (a) by inserting after the second sentence the following: "Each claim by a contractor against the government relating to a contract and each claim by the government against a contractor relating to a contract shall be submitted within 6 years after the accrual of the claim. The preceding sentence does not apply to a claim by the government against a contractor that is based on a claim by the contractor involving fraud.".

(2) Notwithstanding the third sentence of section 6(a) of the Contract Disputes Act of 1978, as added by paragraph (1), if a contract in existence on the date of the enactment of this Act requires that a claim referred to in that sentence be submitted earlier than 6 years after the accrual of the claim, then the claim shall be submitted within the period required by the contract. The preceding sentence does not apply to a claim by the Federal Government against a contractor that is based on a claim by the contractor involving fraud.

(b) INCREASED THRESHOLD FOR CERTIFICATION, DECISION, AND NOTIFICATION REQUIREMENTS.—Subsection (c) of such section is amended by striking out "$50,000" each place it appears and inserting in lieu thereof "$100,000".

(c) INCREASED MAXIMUM FOR APPLICABILITY OF ACCELERATED PROCEDURES.—Section 8(f) of the Contract Disputes Act of 1978 (41 U.S.C. 607(f)) is amended by striking out "$50,000" in the first sentence and inserting in lieu thereof "$100,000".

(d) INCREASED MAXIMUM FOR APPLICABILITY OF SMALL CLAIMS PROCEDURE.—Section 9(a) of the Contract Disputes Act of 1978 (41 U.S.C. 608(a)) is amended by striking out "$10,000" in the first sentence and inserting in lieu thereof "$50,000".

(e) REQUESTS FOR ISSUANCE OF DECISIONS.—Paragraph (4) of section 6(c) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)) is amended—

(1) by striking out "agency board of contract appeals" and inserting in lieu thereof "tribunal concerned"; and

(2) by striking out "board," and inserting in lieu thereof "tribunal concerned,".

SEC. 2352. EXTENSION OF ALTERNATIVE DISPUTE RESOLUTION AUTHORITY.

(a) EXTENSION OF AUTHORITY.—Section 6(e) of the Contracts Disputes Act of 1978 (41 U.S.C. 605(e)) is amended by striking out "October 1, 1995" and inserting in lieu thereof "October 1, 1999".

(b) AVAILABILITY OF PROCEDURES TO SMALL BUSINESS GOVERNMENT CONTRACTORS.—Section 6(e) of such Act is amended by inserting after the first sentence the following: "In any case in which the contracting officer rejects a contractor's request for alternative dispute resolution proceedings, the contracting officer shall provide the contractor with a written explanation, citing one or more of the conditions in section 572(b) of title 5, United States Code, or such other specific reasons that alternative dispute resolution procedures are inappropriate for the resolution of the dispute. In any case in which a contractor rejects a request of an agency

for alternative dispute resolution proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.''.

SEC. 2353. EXPEDITED RESOLUTION OF CONTRACT ADMINISTRATION MATTERS.

(a) REGULATIONS REQUIRED.—(1) The Federal Acquisition Regulation shall include provisions that require a contracting officer—

(A) to make every reasonable effort to respond in writing within 30 days to any written request made to a contracting officer with respect to a matter relating to the administration of a contract that is received from a small business concern; and

(B) in the event that the contracting officer is unable to reply within the 30-day period, to transmit to the contractor within such period a written notification of a specific date by which the contracting officer expects to respond.

(2) The provisions shall not apply to a request for a contracting officer's decision under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be considered as creating any rights under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

(c) DEFINITION.—In this section, the term ''small business concern'' means a business concern that meets the requirements of section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated pursuant to that section.

SEC. 2354. AUTHORITY FOR DISTRICT COURTS TO OBTAIN ADVISORY OPINIONS FROM BOARDS OF CONTRACT APPEALS IN CERTAIN CASES.

Section 10 of the Contract Disputes Act of 1978 (41 U.S.C. 609) is amended by adding at the end the following new paragraph:

''(f)(1) Whenever an action involving an issue described in paragraph (2) is pending in a district court of the United States, the district court may request a board of contract appeals to provide the court with an advisory opinion on the matters of contract interpretation at issue.

''(2) An issue referred to in paragraph (1) is any issue that could be the proper subject of a final decision of a contracting officer appealable under this Act.

''(3) A district court shall direct any request under paragraph (1) to the board of contract appeals having jurisdiction under this Act to adjudicate appeals of contract claims under the contract or contracts being interpreted by the court.

''(4) After receiving a request for an advisory opinion under paragraph (1), a board of contract appeals shall provide the advisory opinion in a timely manner to the district court making the request.''.

Subtitle E—Miscellaneous

PART I—ARMED SERVICES ACQUISITIONS

SEC. 2401. CLARIFICATION OF PROVISION RELATING TO QUALITY CONTROL OF CERTAIN SPARE PARTS.

The second sentence of subsection (a) of section 2383 of title 10, United States Code, is amended to read as follows: "In establishing the appropriate qualification requirements, the Secretary of Defense shall use the Department of Defense qualification requirements that were used to qualify the original production part unless the Secretary determines in writing—

"(1) that there are other requirements sufficiently similar to those requirements that should be used instead; or

"(2) that any or all such requirements are unnecessary.".

SEC. 2402. CONTRACTOR GUARANTEES REGARDING WEAPON SYSTEMS.

(a) REPEAL OF REQUIREMENT FOR REPORT ON WAIVERS.—Subsection (e) of section 2403 of title 10, United States Code, is amended—

(1) by striking out "(1)"; and

(2) by striking out paragraph (2).

(b) PROVISIONS TO BE ADDRESSED BY REGULATIONS.—Subsection (h) of such section is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph (2):

"(2) The regulations shall include the following:

"(A) Guidelines for negotiating contractor guarantees that are reasonable and cost effective, as determined on the basis of the likelihood of defects and the estimated cost of correcting such defects.

"(B) Procedures for administering contractor guarantees.

"(C) Guidelines for determining the cases in which it may be appropriate to waive the requirements of this section.".

PART II—ACQUISITIONS GENERALLY

SEC. 2451. SECTION 3737 OF THE REVISED STATUTES: EXPANSION OF AUTHORITY TO PROHIBIT SETOFFS AGAINST ASSIGNEES; REORGANIZATION OF SECTION; REVISION OF OBSOLETE PROVISIONS.

Section 3737 of the Revised Statutes (41 U.S.C. 15) is amended to read as follows:

"SEC. 3737. (a) No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States is concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

"(b) The provisions of subsection (a) shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating $1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency, provided:

"(1) That, in the case of any contract entered into after October 9, 1940, no claim shall be assigned if it arises under a contract which forbids such assignment.

"(2) That, unless otherwise expressly permitted by such contract, any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing.

"(3) That, in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of the assignment with—

"(A) the contracting officer or the head of his department or agency;

"(B) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and

"(C) the disbursing officer, if any, designated in such contract to make payment.

"(c) Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this section shall constitute a valid assignment for all purposes.

"(d) In any case in which moneys due or to become due under any contract are or have been assigned pursuant to this section, no liability of any nature of the assignor to the United States or any department or agency thereof, whether arising from or independently of such contract, shall create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount heretofore since July 1, 1950, or hereafter received under the assignment.

"(e) Any contract of the Department of Defense, the General Services Administration, the Department of Energy, or any other department or agency of the United States designated by the President, except any such contract under which full payment has been made, may, upon a determination of need by the President, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or setoff. Each such determination of need shall be published in the Federal Register.

"(f) If a provision described in subsection (e) or a provision to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract shall not be subject to reduction or setoff for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of—

"(1) renegotiation under any renegotiation statute or under any statutory renegotiation article in the contract;

"(2) fines;

"(3) penalties (which term does not include amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract); or

"(4) taxes, social security contributions, or the withholding or non withholding of taxes or social security contributions, whether arising from or independently of such contract.

"(g) Except as herein otherwise provided, nothing in this section shall be deemed to affect or impair rights of obligations heretofore accrued.".

SEC. 2452. REPEAL OF REQUIREMENT FOR DEPOSIT OF CONTRACTS WITH GAO.

Section 3743 of the Revised Statutes (41 U.S.C. 20) is repealed.

SEC. 2453. REPEAL OF OBSOLETE DEADLINE REGARDING PROCEDURAL REGULATIONS FOR THE COST ACCOUNTING STANDARDS BOARD.

Section 26(f)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)(3)) is amended in the first sentence by striking out "Not later than 180 days after the date of the enactment of this section, the Administrator" and inserting in lieu thereof "The Administrator".

SEC. 2454. CODIFICATION OF ACCOUNTING REQUIREMENT FOR CONTRACTED ADVISORY AND ASSISTANCE SERVICES.

(a) FUNDING TO BE IDENTIFIED IN BUDGET.—Section 1105 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(g)(1) The Director of the Office of Management and Budget shall establish the funding for advisory and assistance services for each department and agency as a separate object class in each budget annually submitted to the Congress under this section.

"(2)(A) In paragraph (1), except as provided in subparagraph (B), the term 'advisory and assistance services' means the following services when provided by nongovernmental sources:

"(i) Management and professional support services.

"(ii) Studies, analyses, and evaluations.

"(iii) Engineering and technical services.

"(B) In paragraph (1), the term 'advisory and assistance services' does not include the following services:

"(i) Routine automated data processing and telecommunications services unless such services are an integral part of a contract for the procurement of advisory and assistance services.

"(ii) Architectural and engineering services, as defined in section 901 of the Brooks Architect-Engineers Act (40 U.S.C. 541).

"(iii) Research on basic mathematics or medical, biological, physical, social, psychological, or other phenomena.".

(b) REPEAL OF SOURCE LAW.—Section 512 of Public Law 102–394 (106 Stat. 1826) is repealed.

(c) REPEAL OF SUPERSEDED PROVISIONS.—(1) Section 2212 of title 10, United States Code, is repealed.

(2) Section 1114 of title 31, United States Code, is repealed.

(3)(A) The table of sections at the beginning of chapter 131 of title 10, United States Code, is amended by striking out the item relating to section 2212.

(B) The table of sections at the beginning of chapter 11 of title 31, United States Code, is amended by striking out the item relating to section 1114.

SEC. 2455. UNIFORM SUSPENSION AND DEBARMENT.

(a) REQUIREMENT FOR REGULATIONS.—Regulations shall be issued providing that provisions for the debarment, suspension, or other exclusion of a participant in a procurement activity under the Federal Acquisition Regulation, or in a nonprocurement activity under regulations issued pursuant to Executive Order No. 12549, shall have government-wide effect. No agency shall allow a party to participate in any procurement or nonprocurement activity if any agency has debarred, suspended, or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in a procurement or nonprocurement activity.

(b) AUTHORITY TO GRANT EXCEPTION.—The regulations issued pursuant to subsection (a) shall provide that an agency may grant an exception permitting a debarred, suspended, or otherwise excluded party to participate in procurement activities of that agency to the extent exceptions are authorized under the Federal Acquisition Regulation, or to participate in nonprocurement activities of that agency to the extent exceptions are authorized under regulations issued pursuant to Executive Order No. 12549.

(c) DEFINITIONS.—In this section:

(1) The term "procurement activities" means all acquisition programs and activities of the Federal Government, as defined in the Federal Acquisition Regulation.

(2) The term "nonprocurement activities" means all programs and activities involving Federal financial and nonfinancial assistance and benefits, as covered by Executive Order No. 12549 and the Office of Management and Budget guidelines implementing that order.

(3) The term "agency" means an Executive agency as defined in section 103 of title 5, United States Code.

TITLE III—SERVICE SPECIFIC AND MAJOR SYSTEMS STATUTES

Subtitle A—Major Systems Statutes

SEC. 3001. WEAPON DEVELOPMENT AND PROCUREMENT SCHEDULES.

(a) DEADLINE AND PURPOSE.—Subsection (a) of section 2431 of title 10, United States Code, is amended—

(1) in the first sentence—

(A) by striking out "at the same time" and inserting in lieu thereof "not later than 45 days after"; and

(B) by striking out "a written report" and inserting in lieu thereof "budget justification documents"; and

(2) in the second and third sentences, by striking out "report" and inserting in lieu thereof "documents".

(b) ADDITIONAL MATTERS TO BE INCLUDED.—Subsection (b) of such section is amended—

(1) by striking out "include—" and inserting in lieu thereof "include each of the following:";

(2) by capitalizing the first letter of the first word in each of paragraphs (1), (2), and (3);

(3) by striking out the semicolon at the end of paragraphs (1) and (2) and inserting in lieu thereof a period;

(4) by striking out "; and" at the end of paragraph (3) and inserting in lieu thereof a period; and

(5) by amending paragraph (4) to read as follows:

"(4)(A) The most efficient production rate, the most efficient acquisition rate, and the minimum sustaining rate, consistent with the program priority established for such weapon system by the Secretary concerned.

"(B) In this paragraph:

"(i) The term 'most efficient production rate' means the maximum rate for each budget year at which the weapon system can be produced with existing or planned plant capacity and tooling, with one shift a day running for eight hours a day and five days a week.

"(ii) The term 'minimum sustaining rate' means the production rate for each budget year that is necessary to keep production lines open while maintaining a base of responsive vendors and suppliers.".

SEC. 3002. SELECTED ACQUISITION REPORT REQUIREMENT.

(a) DEFINITION OF PROCUREMENT UNIT COST.—(1) Paragraph (2) of section 2432(a) of title 10, United States Code, is amended—

(A) in clause (A), by striking out "for a fiscal year" and all that follows through "such program in such fiscal year";

(B) in clause (B), by striking out "with such funds during such fiscal year." and inserting in lieu thereof a period; and

(C) by striking out the last sentence.

(2) Section 2433 of such title is amended—

(A) in subparagraph (B) of subsection (c)(1), by striking out "current" before "procurement unit cost";

(B) in subsection (d), by striking out "current" before "procurement unit cost" each place it appears; and

(C) in subsection (e), by striking out "current" before "procurement unit cost" both places it appears.

(b) EXCLUSION OF FIRM, FIXED-PRICE CONTRACTS.—Subsection (a) of section 2432 of such title is amended in paragraph (3) by inserting before the period at the end the following: "and that is not a firm, fixed price contract".

(c) DEFINITION OF FULL LIFE-CYCLE COST.—Such subsection is further amended in paragraph (4) by striking out "has the meaning" and all that follows through the end of the paragraph and inserting in lieu thereof the following: "means all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control.".

(d) NOTICE OF PROPOSED CHANGES IN SAR.—Subsection (c) of such section is amended in paragraph (2) by striking out the second sentence and inserting in lieu thereof the following: "Whenever the Secretary of Defense proposes to make changes in the content of a Selected Acquisition Report, the Secretary shall submit a notice of the proposed changes to such committees. The changes shall be considered approved by the Secretary, and may be incorporated into the report, only after the end of the 60-day period beginning on the date on which the notice is received by those committees.".

(e) ELIMINATION OF CERTAIN SAR REQUIREMENTS.—Such subsection is further amended in paragraph (3) by striking out subparagraph (C).

(f) UNIFORM IMPLEMENTATION OF LIFE-CYCLE COST ANALYSIS.—Such subsection is further amended—

(1) by striking out paragraph (5); and

(2) by adding at the end of subparagraph (A) of paragraph (3) the following: "The Secretary of Defense shall ensure that this subparagraph is implemented in a uniform manner, to the extent practicable, throughout the Department of Defense.".

(g) ELIMINATION OF PRELIMINARY REPORT.—Subsection (f) of such section is amended by striking out the second sentence.

(h) TERMINOLOGY CORRECTIONS.—Such section is further amended as follows:

(1) Subsection (b)(3)(A) is amended by striking out "full scale development or" in clause (i).

(2) Subsection (c)(3) is amended by striking out "full-scale engineering" in subparagraph (A) and inserting in lieu thereof "engineering and manufacturing".

(3) Subsection (h)(1) is amended by striking out "full-scale engineering" both places it appears and inserting in lieu thereof "engineering and manufacturing".

SEC. 3003. UNIT COST REPORT REQUIREMENT.

(a) REVISION OF BASELINE REPORT DEFINITIONS.—(1) Section 2433(a) of title 10, United States Code, is amended—

(A) in paragraph (2)—

(i) by striking out "Baseline Selected Acquisition Report" and inserting in lieu thereof "Baseline Estimate"; and

(ii) by striking out "Selected Acquisition Report in which" and all that follows through the end of the paragraph and inserting in lieu thereof "cost estimate included in the baseline description for the program under section 2435 of this title."; and

(B) by striking out paragraph (4).

(2) Section 2433 of such title is further amended—

(A) in subsection (c)(1), by striking out "Baseline Report" in subparagraphs (A) and (B) and inserting in lieu thereof "Baseline Estimate"; and

(B) in subsection (d), by striking out "Baseline Report" in paragraphs (1) and (2) and inserting in lieu thereof "Baseline Estimate".

(b) CONTENTS OF UNIT COST REPORT.—Section 2433(b) of such title is amended in paragraph (3) by striking out "Baseline Report was submitted." and inserting in lieu thereof "contract was entered into.".

(c) ELIMINATION OF CERTAIN UNIT COST REPORT REQUIREMENT.—Section 2433(c) of such title, as amended by subsection (a), is further amended—

(1) by striking out paragraph (2);

(2) by striking out "(1)" after "(c)"; and

(3) by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively.

(d) CONSTANT BASE YEAR DOLLARS.—Section 2433(f) of such title is amended by striking out "include expected inflation" and inserting in lieu thereof "be stated in terms of constant base year dollars (as described in section 2430 of this title)".

(e) CONTENTS OF SAR.—Subparagraph (I) of section 2433(g)(1) of such title is amended to read as follows:

"(I) The type of the Baseline Estimate that was included in the baseline description under section 2435 of this title and the date of the Baseline Estimate.".

SEC. 3004. REQUIREMENT FOR INDEPENDENT COST ESTIMATE AND MANPOWER ESTIMATE BEFORE DEVELOPMENT OR PRODUCTION.

(a) CONTENT AND SUBMISSION OF ESTIMATES.—Subsection (b) of section 2434 of title 10, United States Code, is amended to read as follows:

"(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the content and submission of the estimates required by subsection (a). The regulations shall require—

"(1) that the independent estimate of the full life-cycle cost of a program—

"(A) be prepared by an office or other entity that is not under the supervision, direction, or control of the military department, Defense Agency, or other component of the Department of Defense that is directly responsible for carrying out the development or acquisition of the program; and

"(B) include all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control; and

"(2) that the manpower estimate include an estimate of the total number of personnel required—

"(A) to operate, maintain, and support the program upon full operational deployment; and

"(B) to train personnel to carry out the activities referred to in subparagraph (A).".

(b) TERMINOLOGY CORRECTION, ETC.—Subsection (a) of such section is amended—

(1) by striking out "full-scale engineering development" and inserting in lieu thereof "engineering and manufacturing development"; and

(2) by striking out "cost of the program, together with a manpower estimate, has" and inserting in lieu thereof "full life-cycle cost of the program and a manpower estimate for the program have".

SEC. 3005. BASELINE DESCRIPTION.

(a) IN GENERAL.—Section 2435 of title 10, United States Code, is amended to read as follows:

"§ 2435. Baseline description

"(a) BASELINE DESCRIPTION REQUIREMENT.—(1) The Secretary of a military department shall establish a baseline description for each major defense acquisition program under the jurisdiction of such Secretary.

"(2) The baseline shall include sufficient parameters to describe the cost estimate (referred to as the 'Baseline Estimate' in section 2433 of this title), schedule, performance, supportability, and any other factor of such major defense acquisition program.

"(b) FUNDING LIMIT.—No amount appropriated or otherwise made available to the Department of Defense for carrying out a major defense acquisition program may be obligated after the program enters engineering and manufacturing development without an approved baseline description unless such obligation is

specifically approved by the Under Secretary of Defense for Acquisition and Technology.

"(c) SCHEDULE.—A baseline description for a major defense acquisition program shall be prepared under this section—

"(1) before the program enters demonstration and validation;

"(2) before the program enters engineering and manufacturing development; and

"(3) before the program enters production and deployment.

"(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the following:

"(1) The content of baseline descriptions under this section.

"(2) The submission to the Secretary of the military department concerned and the Under Secretary of Defense for Acquisition and Technology by the program manager for a program for which there is an approved baseline description under this section of reports of deviations from the baseline of the cost, schedule, performance, supportability, or any other factor of the program.

"(3) Procedures for review of such deviation reports within the Department of Defense.

"(4) Procedures for submission to, and approval by, the Secretary of Defense of revised baseline descriptions.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 144 of such title is amended by amending the item relating to section 2435 to read as follows:

"2435. Baseline description.".

SEC. 3006. REPEAL OF REQUIREMENT FOR COMPETITIVE PROTOTYPING FOR MAJOR PROGRAMS.

(a) REPEAL.—Section 2438 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 144 of such title is amended by striking out the item relating to section 2438.

SEC. 3007. REPEAL OF REQUIREMENT FOR COMPETITIVE ALTERNATIVE SOURCES FOR MAJOR PROGRAMS.

(a) REPEAL.—Section 2439 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 144 of such title is amended by striking out the item relating to section 2439.

Subtitle B—Testing Statutes

SEC. 3011. AUTHORITY OF DIRECTOR OF OPERATIONAL TEST AND EVALUATION TO COMMUNICATE VIEWS DIRECTLY TO SECRETARY OF DEFENSE.

Section 139(c) of title 10, United States Code, is amended by inserting after "(c)" the following: "The Director may communicate views on matters within the responsibility of the Director directly to the Secretary of Defense and the Deputy Secretary of Defense without obtaining the approval or concurrence of any other official within the Department of Defense.".

SEC. 3012. RESPONSIBILITY OF DIRECTOR OF OPERATIONAL TEST AND EVALUATION FOR LIVE FIRE TESTING.

(a) OVERSIGHT OF LIVE FIRE TESTING.—Subsection (b) of section 139 of title 10, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; and"; and

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

"(6) monitor and review the live fire testing activities of the Department of Defense provided for under section 2366 of this title.".

(b) ANNUAL REPORT ON LIVE FIRE TESTING.—Subsection (f) of such section is amended by inserting "(including live fire testing activities)" in the first sentence after "operational test and evaluation activities".

SEC. 3013. REQUIREMENT FOR UNCLASSIFIED VERSION OF ANNUAL REPORT ON OPERATIONAL TEST AND EVALUATION.

Section 139(f) of title 10, United States Code, is amended by inserting after the second sentence the following new sentence: "If the Director submits the report to Congress in a classified form, the Director shall concurrently submit an unclassified version of the report to Congress.".

SEC. 3014. SURVIVABILITY AND LETHALITY TESTING.

(a) IN GENERAL.—Section 2366(c) of title 10, United States Code, is amended—

(1) by redesignating paragraph (2) as paragraph (4);

(2) by designating the second sentence of paragraph (1) as paragraph (3) and in that paragraph by striking out "such certification" and inserting in lieu thereof "certification under paragraph (1) or (2)"; and

(3) by inserting before paragraph (3) (as so designated) the following new paragraph:

"(2) In the case of a covered system (or covered product improvement program for a covered system), the Secretary may waive the application of the survivability and lethality tests of this section to such system or program and instead allow testing of the system or program in combat by firing munitions likely to be encountered in combat at components, subsystems, and subassemblies, together with performing design analyses, modeling and simulation, and analysis of combat data. Such alternative testing may not be carried out in the case of any covered system (or covered product improvement program for a covered system) unless the Secretary certifies to Congress, before the system or program enters engineering and manufacturing development, that the survivability and lethality testing of such system or program otherwise required by this section would be unreasonably expensive and impracticable.".

(b) TERMINOLOGY CORRECTION.—Section 2366(c)(1) of such title is amended by striking out "full-scale engineering development" in the first sentence and inserting in lieu thereof "engineering and manufacturing development".

SEC. 3015. LIMITATION ON QUANTITIES TO BE PROCURED FOR LOW-RATE INITIAL PRODUCTION.

Section 2400(a) of title 10, United States Code, is amended—

(1) in paragraph (2)—

(A) by striking out "paragraph (1)" and inserting in lieu thereof "this section"; and

(B) by striking out "full-scale engineering development" and inserting in lieu thereof "engineering and manufacturing development";

(2) by redesignating paragraph (4) as paragraph (5) and in that paragraph by inserting after the first sentence the following: "If the quantity exceeds 10 percent of the total number of articles to be produced, as determined at the milestone II decision with respect to that system, the Secretary shall include in the statement the reasons for such quantity."; and

(3) by inserting after paragraph (3) the following new paragraph (4):

"(4) The quantity of articles of a major system that may be procured for low-rate initial production may not be less than one operationally configured production unit unless another quantity is established at the milestone II decision.".

Subtitle C—Service Specific Laws

SEC. 3021. GRATUITOUS SERVICES OF OFFICERS OF CERTAIN RESERVE COMPONENTS.

(a) ACCEPTANCE BY SECRETARY OF DEFENSE.—Section 10212 of title 10, United States Code, is amended—

(1) by designating the text as subsection (b); and

(2) by inserting before such subsection the following new subsection:

"(a) Notwithstanding section 1342 of title 31, the Secretary of Defense may accept the gratuitous services of an officer of a reserve component (other than an officer of the Army National Guard of the United States or the Air National Guard of the United States) in consultation upon matters relating to the armed forces.".

(b) EFFECTIVE DATE.—Notwithstanding section 10001, the amendments made by subsection (a) shall take effect on December 1, 1994, immediately after the amendments made by the Reserve Officer Personnel Management Act.

SEC. 3022. AUTHORITY TO RENT SAMPLES, DRAWINGS, AND OTHER INFORMATION TO OTHERS.

Subsection (a) of section 2539b of title 10, United States Code, as redesignated by section 1070(a)(13)(A) of the National Defense Authorization Act for Fiscal Year 1995, is amended by inserting "rent," after "sell," each place it appears in paragraphs (1) and (2).

SEC. 3023. REPEAL OF APPLICATION OF PUBLIC CONTRACTS ACT TO CERTAIN NAVAL VESSEL CONTRACTS.

(a) REPEAL.—Section 7299 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 633 of such title is amended by striking out the item relating to section 7299.

SEC. 3024. REPEAL OF REQUIREMENT FOR CONSTRUCTION OF VESSELS ON PACIFIC COAST.

(a) REPEAL.—Section 7302 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 633 of such title is amended by striking out the item relating to section 7302.

SEC. 3025. SCIENTIFIC INVESTIGATION AND RESEARCH FOR THE NAVY.

(a) REPEAL.—Section 7203 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 631 of such title is amended by striking out the item relating to section 7203.

Subtitle D—Civil Reserve Air Fleet

SEC. 3031. DEFINITIONS.

(a) CONTRACTOR DEFINED.—Section 9511(8) of title 10, United States Code, is amended—

(1) in clause (A)—

(A) by inserting "under section 9512 of this title" after "and who contracts with the Secretary"; and

(B) by striking out "or" at the end; and

(2) by inserting before the period at the end the following: ", or (C) who owns or controls, or will own or control, new or existing aircraft and who, by contract, commits some or all of such aircraft to the Civil Reserve Air Fleet".

(b) OTHER DEFINITIONS.—Section 9511 of such title is further amended—

(1) in paragraph (1)—

(A) by inserting "'civil aircraft'," before "'person',";

(B) by striking out "meaning" and inserting in lieu thereof "meanings"; and

(C) by striking out "section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)" and inserting in lieu thereof "section 40102 of title 49";

(2) by striking out paragraph (6);

(3) by redesignating paragraphs (7), (8), (9), (10), (11), and (12) as paragraphs (6), (7), (8), (9), (10), and (11), respectively; and

(4) in paragraph (11), as so redesignated—

(A) by striking out "interoperability" and inserting in lieu thereof "compatibility"; and

(B) by inserting "an aeromedical aircraft or" before "a cargo-convertible,".

(c) TECHNICAL CORRECTION.—Such section is amended by striking out "In this subchapter:" and inserting in lieu thereof "In this chapter:".

SEC. 3032. CONSOLIDATION OF PROVISIONS RELATING TO CONTRACTUAL COMMITMENT OF AIRCRAFT.

Chapter 931 of title 10, United States Code, is amended—

(1) in subsection (a) of section 9512, by inserting "AUTHORITY TO CONTRACT.—" after "(a)";

(2) in subsection (c) of section 9512, by striking out "(c)" and inserting in lieu thereof "(d) AUTHORITY TO CONTRACT AND PAY DIRECTLY.—";

(3) in subsection (b) of section 9512, by striking out "(b)" and inserting in lieu thereof "(c) TERMS AND REQUIRED REPAYMENT.—";

(4) by redesignating subsection (a) of section 9513 as subsection (b), transferring such subsection (as so redesignated) to section 9512, and inserting such subsection after subsection (a);

(5) by redesignating subsection (b) of section 9513 as subsection (e) and transferring such subsection (as so redesignated) to the end of section 9512;

(6) in subsection (b) of section 9512, as redesignated and transferred to such section by paragraph (4)—

(A) by striking out "under section 9512 of this title" and inserting in lieu thereof "entered into under this section"; and

(B) by inserting "COMMITMENT TO CIVIL RESERVE AIR FLEET.—" after "(b)";

(7) in subsection (c) of section 9512, as redesignated by paragraph (3), by striking out "the terms required by section 9513 of this title and";

(8) in subsection (e) of section 9512, as redesignated and transferred to such section by paragraph (5)—

(A) by striking out "under section 9512 of this title" and inserting in lieu thereof "entered into under this section"; and

(B) by inserting "EXCLUSIVITY OF COMMITMENT TO CIVIL RESERVE AIR FLEET.—" after "(e)"; and

(9) by striking out the heading of section 9513.

SEC. 3033. USE OF MILITARY INSTALLATIONS BY CONTRACTORS.

(a) AUTHORITY.—Chapter 931 of title 10, United States Code, as amended by section 3022, is further amended by adding at the end the following new section 9513:

"§ 9513. Use of military installations by Civil Reserve Air Fleet contractors

"(a) CONTRACT AUTHORITY.—(1) The Secretary of the Air Force—

"(A) may, by contract entered into with any contractor, authorize such contractor to use one or more Air Force installations designated by the Secretary; and

"(B) with the consent of the Secretary of another military department, may, by contract entered into with any contractor, authorize the contractor to use one or more installations, designated by the Secretary of the Air Force, that is under the jurisdiction of the Secretary of such other military department.

"(2) The Secretary of the Air Force may include in the contract such terms and conditions as the Secretary determines appropriate to promote the national defense or to protect the interests of the United States.

"(b) PURPOSES OF USE.—A contract entered into under subsection (a) may authorize use of a designated installation as a weather alternate, as a technical stop not involving the enplaning or deplaning of passengers or cargo, or, in the case of an installation

within the United States, for other commercial purposes. Notwithstanding any other provision of the law, the Secretary may establish different levels and types of uses for different installations for commercial operations not required by the Department of Defense and may provide in contracts under subsection (a) for different levels and types of uses by different contractors.

"(c) DISPOSITION OF PAYMENTS FOR USE.—Notwithstanding any other provision of law, amounts collected from the contractor for landing fees, services, supplies, or other charges authorized to be collected under the contract shall be credited to the appropriations of the armed forces having jurisdiction over the military installation to which the contract pertains. Amounts so credited to an appropriation shall be available for obligation for the same period as the appropriation to which credited.

"(d) HOLD HARMLESS REQUIREMENT.—A contract entered into under subsection (a) shall provide that the contractor agrees to indemnify and hold harmless the United States from any action, suit, or claim of any sort resulting from, relating to, or arising out of any activities conducted, or services or supplies furnished, in connection with the contract.

"(e) RESERVATION OF RIGHT TO EXCLUDE CONTRACTOR.—A contract entered into under subsection (a) shall provide that the Secretary concerned may, without providing prior notice, deny access to an installation designated under the contract when the Secretary determines that it is necessary to do so in order to meet military exigencies.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by striking out the item relating to section 9513 and inserting in lieu thereof the following:

"9513. Use of military installations by Civil Reserve Air Fleet contractors.".

Subtitle E—Miscellaneous

SEC. 3061. REGULATIONS ON PROCUREMENT, PRODUCTION, WAREHOUSING, AND SUPPLY DISTRIBUTION FUNCTIONS.

(a) IN GENERAL.—Section 2202 of title 10, United States Code, is amended to read as follows:

"§ 2202. Regulations on procurement, production, warehousing, and supply distribution functions

"The Secretary of Defense shall prescribe regulations governing the performance within the Department of Defense of the procurement, production, warehousing, and supply distribution functions, and related functions, of the Department of Defense.".

(b) CLERICAL AMENDMENT.—The item relating to section 2202 in the table of sections at the beginning of chapter 131 of such title is amended to read as follows:

"2202. Regulations on procurement, production, warehousing, and supply distribution functions.".

SEC. 3062. REPEAL OF REQUIREMENTS REGARDING PRODUCT EVALUATION ACTIVITIES.

(a) REPEAL.—Section 2369 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 139 of such title is amended by striking out the item related to section 2369.

SEC. 3063. DEPARTMENT OF DEFENSE ACQUISITION OF INTELLECTUAL PROPERTY RIGHTS.

Section 2386 of title 10, United States Code, is amended by striking out paragraphs (3) and (4) and inserting in lieu thereof the following:

"(3) Technical data and computer software.

"(4) Releases for past infringement of patents or copyrights or for unauthorized use of technical data or computer software.".

SEC. 3064. LIQUID FUELS AND NATURAL GAS: CONTRACTS FOR STORAGE, HANDLING, OR DISTRIBUTION.

Section 2388(a) of title 10, United States Code, is amended by striking out "liquid fuels and natural gas" and inserting in lieu thereof "liquid fuels or natural gas".

SEC. 3065. CODIFICATION AND REVISION OF LIMITATION ON LEASE OF VESSELS, AIRCRAFT, AND VEHICLES.

(a) LIMITATION.—(1) Chapter 141 of title 10, United States Code, is amended by inserting after section 2401 the following new section:

"§ 2401a. Lease of vessels, aircraft, and vehicles

"The Secretary of Defense or the Secretary of a military department may not enter into any contract with a term of 18 months or more, or extend or renew any contract for a term of 18 months or more, for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement, unless the Secretary has considered all costs of such contract (including estimated termination liability) and has determined in writing that the contract is in the best interest of the Government.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2401 the following new item:

"2401a. Lease of vessels, aircraft, and vehicles.".

(b) REPEAL OF SUPERSEDED PROVISION.—Section 9081 of Public Law 101–165 (103 Stat. 1147; 10 U.S.C. 2401 note) is repealed.

SEC. 3066. SOFT DRINK SUPPLIES.

Section 2424 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) Paragraphs (1) and (2) of subsection (b) do not apply to contracts for the procurement of soft drinks that are manufactured in the United States. The Secretary of Defense shall prescribe in regulations the standards and procedures for determining whether a particular drink is a soft drink and whether the drink was manufactured in the United States.".

SEC. 3067. DISBURSEMENT OF FUNDS OF MILITARY DEPARTMENT TO COVER OBLIGATIONS OF ANOTHER AGENCY OF DEPARTMENT OF DEFENSE.

Subsection (c)(2) of section 3321 of title 31, United States Code, is amended by striking out "military departments of the" and inserting in lieu thereof "The".

TITLE IV—SIMPLIFIED ACQUISITION THRESHOLD

Subtitle A—Establishment of Threshold

SEC. 4001. SIMPLIFIED ACQUISITION THRESHOLD DEFINED.

Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) is amended to read as follows:

"(11) The term 'simplified acquisition threshold' means $100,000.".

SEC. 4002. ESTABLISHMENT OF SIMPLIFIED ACQUISITION THRESHOLD FOR ARMED SERVICES.

(a) ESTABLISHMENT IN TITLE 10.—Chapter 137 of title 10, United States Code, is amended by inserting after section 2302 the following new sections:

"§ 2302a. Simplified acquisition threshold

"(a) SIMPLIFIED ACQUISITION THRESHOLD.—For purposes of acquisitions by agencies named in section 2303 of this title, the simplified acquisition threshold is as specified in section 4(11) of the Office of Federal Procurement Policy Act.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2302 the following new item:

"2302a. Simplified acquisition threshold.".

SEC. 4003. ESTABLISHMENT OF SIMPLIFIED ACQUISITION THRESHOLD FOR CIVILIAN AGENCIES.

Title III of the Federal Property and Administrative Services Act of 1949 is amended by inserting after section 302 the following new section:

"SEC. 302A. SIMPLIFIED ACQUISITION THRESHOLD.

"(a) SIMPLIFIED ACQUISITION THRESHOLD.—For purposes of acquisitions by executive agencies, the simplified acquisition threshold is as specified in section 4(11) of the Office of Federal Procurement Policy Act.".

SEC. 4004. SMALL BUSINESS RESERVATION.

Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) is amended to read as follows:

"(j)(1) Each contract for the purchase of goods and services that has an anticipated value greater than $2,500 but not greater than $100,000 shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

"(2) In carrying out paragraph (1), a contracting officer shall consider a responsive offer timely received from an eligible small business offeror.

"(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not greater than $100,000 under the authority of subsection (a) of section 8 of this Act, section 2323 of title 10, United States Code, section 712 of the

Business Opportunity Development Reform Act of 1988 (Public Law 100–656; 15 U.S.C. 644 note), or section 7102 of the Federal Acquisition Streamlining Act of 1994.".

Subtitle B—Inapplicability of Laws to Acquisitions at or Below the Simplified Acquisition Threshold

SEC. 4101. LIST OF INAPPLICABLE LAWS IN FEDERAL ACQUISITION REGULATION.

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

"SEC. 33. LIST OF LAWS INAPPLICABLE TO CONTRACTS NOT GREATER THAN THE SIMPLIFIED ACQUISITION THRESHOLD IN FEDERAL ACQUISITION REGULATION.

"(a) LIST OF INAPPLICABLE PROVISIONS OF LAW.—(1) The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. A provision of law that is properly included on the list pursuant to paragraph (2) may not be construed as applicable to such contracts or subcontracts (as the case may be) by an executive agency. Nothing in this section shall be construed to render inapplicable to contracts and subcontracts in amounts not greater than the simplified acquisition threshold any provision of law that is not included on such list.

"(2) A provision of law described in subsection (b) that is enacted after the date of the enactment of the Federal Acquisition Streamlining Act of 1994 shall be included on the list of inapplicable provisions of law required by paragraph (1), unless the Federal Acquisition Regulatory Council makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts or subcontracts in amounts not greater than the simplified acquisition threshold from the applicability of the provision.

"(b) COVERED LAW.—A provision of law referred to in subsection (a)(2) is any provision of law that, as determined by the Federal Acquisition Regulatory Council, sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law that—

"(1) provides for criminal or civil penalties; or

"(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

"(c) PETITION.—In the event that a provision of law described in subsection (b) is not included on the list of inapplicable provisions of law as required by subsection (a), and no written determination has been made by the Federal Acquisition Regulatory Council pursuant to subsection (a)(2), a person may petition the Administrator for Federal Procurement Policy to take appropriate action. The Administrator shall revise the Federal Acquisition Regulation to include the provision on the list of inapplicable provisions of

law unless the Federal Acquisition Regulatory Council makes a determination pursuant to subsection (a)(2) within 60 days after the date on which the petition is received.''.

SEC. 4102. ARMED SERVICES ACQUISITIONS.

(a) LIST OF INAPPLICABLE LAWS IN FAR.—Section 2302a of title 10, United States Code, as added by section 4002, is amended by adding at the end the following:

''(b) INAPPLICABLE LAWS.—No law properly listed in the Federal Acquisition Regulation pursuant to section 33 of the Office of Federal Procurement Policy Act shall apply to or with respect to a contract or subcontract that is not greater than the simplified acquisition threshold.''.

(b) INAPPLICABILITY OF REQUIREMENT FOR CONTRACT CLAUSE REGARDING CONTINGENT FEES.—Section 2306(b) of title 10, United States Code, is amended by adding at the end the following: ''This subsection does not apply to a contract that is for an amount not greater than the simplified acquisition threshold.''.

(c) INAPPLICABILITY OF AUTHORITY TO EXAMINE BOOKS AND RECORDS OF CONTRACTORS.—Section 2313 of title 10, United States Code, as amended by section 2201, is further amended by adding at the end of subsection (f) the following:

''(2) A contract or subcontract that is for an amount not greater than the simplified acquisition threshold.''.

(d) INAPPLICABILITY OF REQUIREMENT TO IDENTIFY SUPPLIERS AND SOURCES OF SUPPLIES.—Section 2384(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(3) The regulations prescribed pursuant to paragraph (1) do not apply to a contract for an amount not greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).''.

(e) INAPPLICABILITY OF PROHIBITION AGAINST DOING BUSINESS WITH CERTAIN OFFERORS OR CONTRACTORS.—Section 2393(d) of title 10, United States Code, is amended in the second sentence by striking out ''above'' and all that follows and inserting in lieu thereof ''greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).''.

(f) INAPPLICABILITY OF PROHIBITION ON LIMITING SUBCONTRACTOR DIRECT SALES TO THE UNITED STATES.—Section 2402 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(c) This section does not apply to a contract that is for an amount not greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).''.

(g) INAPPLICABILITY OF PROHIBITION ON PERSONS CONVICTED OF DEFENSE-RELATED FELONIES.—Section 2408(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(4) The prohibition in paragraph (1) does not apply with respect to the following:

''(A) A contract referred to in subparagraph (A), (B), (C), or (D) of such paragraph that is not greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

"(C) A subcontract referred to in such subparagraph that is under a contract described in subparagraph (A).".

(h) INAPPLICABILITY OF CONTRACTOR INVENTORY ACCOUNTING SYSTEM STANDARDS.—Section 2410b of title 10, United States Code, is amended—

(1) by inserting "(a)" before "The Secretary"; and

(2) by adding at the end the following:

"(b) The regulations prescribed pursuant to subsection (a) shall not apply to a contract that is for an amount not greater than the simplified acquisition threshold.".

(i) INAPPLICABILITY OF MISCELLANEOUS PROCUREMENT LIMITATIONS.—Section 2534 of title 10, United States Code, is amended by adding at the end the following:

"(g) INAPPLICABILITY TO CONTRACTS UNDER SIMPLIFIED ACQUISITION THRESHOLD.—This section does not apply to a contract or subcontract for an amount that does not exceed the simplified acquisition threshold.".

SEC. 4103. CIVILIAN AGENCY ACQUISITIONS.

(a) LIST OF INAPPLICABLE LAWS IN FAR.—Section 302A of the Federal Property and Administrative Services Act of 1949, as added by section 4003, is amended by adding at the end the following:

"(b) INAPPLICABLE LAWS.—No law properly listed in the Federal Acquisition Regulation pursuant to section 33 of the Office of Federal Procurement Policy Act shall apply to or with respect to a contract or subcontract that is not greater than the simplified acquisition threshold.".

(b) INAPPLICABILITY OF PROHIBITION ON LIMITING SUBCONTRACTOR DIRECT SALES TO THE UNITED STATES.—Section 303G of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253g) is amended by adding at the end the following new subsection:

"(c) This section does not apply to a contract for an amount that is not greater than the simplified acquisition threshold.".

(c) INAPPLICABILITY OF REQUIREMENT FOR CONTRACT CLAUSE REGARDING CONTINGENT FEES.—Section 304(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a)) is amended by adding at the end the following: "The preceding sentence does not apply to a contract for an amount that is not greater than the simplified acquisition threshold.".

(d) AUTHORITY TO EXAMINE BOOKS AND RECORDS OF CONTRACTORS.—Section 304C of the Federal Property and Administrative Services Act of 1949, as added by section 2251(a), is amended by adding at the end of subsection (f) the following:

"(2) A contract or subcontract that is not greater than the simplified acquisition threshold.".

SEC. 4104. ACQUISITIONS GENERALLY.

(a) REQUIREMENT FOR CONTRACT CLAUSE RELATING TO KICKBACKS.—Section 7 of the Anti-Kickback Act of 1986 (41 U.S.C. 57) is amended by adding at the end the following new subsections:

"(d) Subsections (a) and (b) do not apply to a prime contract that is not greater than $100,000.

"(e) Notwithstanding subsection (d), a prime contractor shall cooperate fully with any Federal Government agency investigating a violation of section 3.".

(b) MILLER ACT.—(1)(A) The Miller Act is amended by adding at the end the following new section:

"SEC. 5. This Act does not apply to a contract in an amount that is not greater than $100,000.".

(B) Subsection (a) of the first section of such Act is amended by striking out ", exceeding $25,000 in amount,".

(2)(A) The Federal Acquisition Regulation shall provide alternatives to payment bonds as payment protections for suppliers of labor and materials under contracts referred to in subparagraph (C).

(B) The contracting officer for a contract shall—

(i) select, from among the payment protections provided for in the Federal Acquisition Regulation pursuant to subparagraph (A), one or more payment protections which the offeror awarded the contract is to submit to the Federal Government for the protection of suppliers of labor and materials for such contract; and

(ii) specify in the solicitation of offers for such contract the payment protection or protections so selected.

(C) The regulations required under subparagraph (A) and the requirements of subparagraph (B) apply with respect to contracts referred to in subsection (a) of the first section of the Miller Act that are greater than $25,000 but not greater than $100,000.

(c) CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.—(1) Section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 329) is amended by adding at the end the following new subsection:

"(c) This title does not apply to a contract in an amount that is not greater than $100,000.".

(2) Section 107(a) of such Act (40 U.S.C. 333(a)) is amended by inserting after "It shall be a condition of each contract" the following: "(other than a contract referred to in section 103(c))".

(d) DRUG-FREE WORKPLACE ACT OF 1988.—Section 5152(a)(1) of the Drug-Free Workplace Act of 1988 (subtitle D of title V of the Anti-Drug Abuse Act of 1988; Public Law 100–690; 41 U.S.C. 701(a)(1)) is amended by striking out "of $25,000 or more from any Federal agency" and inserting in lieu thereof "greater than the simplified acquisition threshold (as defined in section 4(11) of such Act (41 U.S.C. 403(11))) by any Federal agency".

(e) SOLID WASTE DISPOSAL ACT.—Paragraph (3) of section 6002(c) of the Solid Waste Disposal Act (42 U.S.C. 6962(c)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(2) by inserting "(A)" after "(3)"; and

(4) by adding at the end the following new subparagraph:

"(B) Clause (ii) of subparagraph (A) applies only to a contract in an amount greater than $100,000.".

Subtitle C—Simplified Acquisition Procedures

SEC. 4201. SIMPLIFIED ACQUISITION PROCEDURES.

(a) REQUIREMENT FOR SIMPLIFIED PROCEDURES IN FAR.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is further amended by inserting before section 33, as added by section 4101, the following new section:

"SEC. 31. SIMPLIFIED ACQUISITION PROCEDURES.

"(a) REQUIREMENT.—In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for contracts for acquisition of property and services that are not greater than the simplified acquisition threshold.

"(b) PROHIBITION ON DIVIDING PURCHASES.—A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified acquisition procedures required by subsection (a).

"(c) PROMOTION OF COMPETITION REQUIRED.—In using simplified acquisition procedures, the head of an executive agency shall promote competition to the maximum extent practicable.

"(d) CONSIDERATION OF OFFERS TIMELY RECEIVED.—The simplified acquisition procedures contained in the Federal Acquisition Regulation shall include a requirement that a contracting officer consider each responsive offer timely received from an eligible offeror.

"(e) SPECIAL RULES FOR USE OF SIMPLIFIED ACQUISITION PROCEDURES.—

"(1) EFFECT OF INTERIM FACNET CAPABILITY.—The simplified acquisition procedures provided in the Federal Acquisition Regulation pursuant to this section may not be used by a procuring activity of an agency for contracts in amounts greater than $50,000 and not greater than the simplified acquisition threshold until a certification has been made pursuant to section 30A(a)(1) that the procuring activity has implemented an interim FACNET capability.

"(2) EFFECT OF FULL FACNET CAPABILITY.—(A)(i) In the case of a procuring activity described in clause (ii), the simplified acquisition procedures provided in the Federal Acquisition Regulation pursuant to this section may be used by the activity for contracts in amounts greater than $50,000 and not greater than the simplified acquisition threshold.

"(ii) Clause (i) applies to any procuring activity—

"(I) that has not certified, pursuant to section 30A(a)(1), that it has implemented interim FACNET capability; and

"(II) that is in an agency that has excluded the procuring activity from the agency's full FACNET certification under section 30A(a)(2) on the basis that implementation of full FACNET capability would not be cost effective or practicable in that activity.

"(B) The simplified acquisition procedures provided in the Federal Acquisition Regulation pursuant to this section may not be used by an agency after December 31, 1999, for contracts in amounts greater than $50,000 and not greater than the simplified acquisition threshold until a certification has been made pursuant to section 30A(a)(2) that the agency has implemented a full FACNET capability.

"(f) INTERIM REPORTING RULE.—Until October 1, 1999, procuring activities shall continue to report under section 19(d) procurement awards with a dollar value of at least $25,000, but less than $100,000, in conformity with the procedures for the reporting of a contract award greater than $25,000 that were in effect on October 1, 1992.".

(b) OPPORTUNITY FOR ALL RESPONSIBLE POTENTIAL OFFERORS.—Subsection (a) of section 18 of such Act is amended by adding at the end the following:

"(4) An executive agency intending to solicit offers for a contract for which a notice of solicitation is required to be posted under paragraph (1)(B) shall ensure that contracting officers consider each responsive offer timely received from an offeror.".

(c) ESTABLISHMENT OF DEADLINE FOR SUBMISSION OF OFFERS.—Subsection (a) of section 18 of such Act is further amended by adding after paragraph (4), as added by subsection (b), the following new paragraph:

"(5) An executive agency shall establish a deadline for the submission of all bids or proposals in response to a solicitation with respect to which no such deadline is provided by statute. Each deadline for the submission of offers shall afford potential offerors a reasonable opportunity to respond.".

SEC. 4202. PROCUREMENT NOTICE.

(a) CONTINUATION OF EXISTING NOTICE THRESHOLDS.—Subsection (a) of section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) is amended—

(1) in paragraph (1), by striking out "the small purchase threshold" each place it appears and inserting in lieu thereof "$25,000"; and

(2) in paragraph (3)(B), by inserting after "(B)" the following: "in the case of a contract or order expected to be greater than the simplified acquisition threshold,".

(b) CONTENT OF NOTICE.—Subsection (b) of such section is amended—

(1) by striking out "and" at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following:

"(6) in the case of a contract in an amount estimated to be greater than $25,000 but not greater than the simplified acquisition threshold—

"(A) a description of the procedures to be used in awarding the contract; and

"(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.".

(c) NOTICE NOT REQUIRED FOR PROCUREMENT MADE THROUGH FACNET.—Subsection (c)(1) of such section, as amended by section 1055(b), is further amended—

(1) by redesignating subparagraphs (A), (B), (C), (D), (E), and (F) as subparagraphs (C), (D), (E), (F), (G), and (H), respectively; and

(2) by inserting before subparagraph (C), as so redesignated, the following new subparagraphs:

"(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be made through a system with interim FACNET capability certified pursuant to section 30A(a)(1) or with full FACNET capability certified pursuant to section 30A(a)(2);

"(B)(i) the proposed procurement is for an amount not greater than $250,000 and is to be made through a system

with full FACNET capability certified pursuant to section 30A(a)(2); and

"(ii) a certification has been made pursuant to section 30A(b) that Government-wide FACNET capability has been implemented;".

(d) NOTICE UNDER THE SMALL BUSINESS ACT.—

(1) CONTINUATION OF EXISTING NOTICE THRESHOLDS.—Subsection (e) of section 8 of the Small Business Act (15 U.S.C. 637) is amended—

(A) in paragraph (1), by striking out "the small purchase threshold" each place it appears and inserting in lieu thereof "$25,000"; and

(B) in paragraph (3)(B), by inserting after "(B)" the following: "in the case of a contract or order estimated to be greater than the simplified acquisition threshold,".

(2) CONTENT OF NOTICE.—Subsection (f) of such section is amended—

(A) by striking out "and" at the end of paragraph (4);

(B) by striking out the period at the end of paragraph (5) and inserting in lieu thereof a semicolon; and

(C) by adding at the end the following:

"(6) in the case of a contract in an amount estimated to be greater than $25,000 but not greater than the simplified acquisition threshold—

"(A) a description of the procedures to be used in awarding the contract; and

"(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.".

(3) NOTICE NOT REQUIRED FOR PROCUREMENT MADE THROUGH FACNET.—Subsection (g)(1) of such section is amended—

(A) by redesignating subparagraphs (A), (B), (C), (D), (E), and (F) as subparagraphs (C), (D), (E), (F), (G), and (H), respectively; and

(B) by inserting before subparagraph (C), as so redesignated, the following new subparagraphs:

"(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be made through a system with interim FACNET capability certified pursuant to section 30A(a)(1) of the Office of Federal Procurement Policy Act or with full FACNET capability certified pursuant to section 30A(a)(2) of such Act;

"(B)(i) the proposed procurement is for an amount not greater than $250,000 and is to be made through a system with full FACNET capability certified pursuant to section 30A(a)(2) of the Office of Federal Procurement Policy Act; and

"(ii) a certification has been made pursuant to section 30A(b) of such Act that Government-wide FACNET capability has been implemented;".

SEC. 4203. IMPLEMENTATION OF SIMPLIFIED ACQUISITION PROCEDURES.

(a) IMPLEMENTATION IN TITLE 10.—(1) Chapter 137 of title 10, United States Code, is amended by inserting after section 2302a, as added by section 4002(a), the following new section:

"§ 2302b. Implementation of simplified acquisition procedures

"The simplified acquisition procedures contained in the Federal Acquisition Regulation pursuant to section 31 of the Office of Federal Procurement Policy Act shall apply as provided in such section to the agencies named in section 2303(a) of this title.".

(2) The table of sections at the beginning of chapter 137 of such title is amended by inserting after the item relating to section 2302a, as added by section 4002(b), the following new item:

"2302b. Implementation of simplified acquisition procedures.".

(b) IMPLEMENTATION IN CIVILIAN AGENCIES.—Title III of the Federal Property and Administrative Services Act of 1949 is amended by inserting after section 302A, as added by section 4003 and amended by section 4103, the following new section:

"SEC. 302B. IMPLEMENTATION OF SIMPLIFIED ACQUISITION PROCEDURES.

"The simplified acquisition procedures contained in the Federal Acquisition Regulation pursuant to section 31 of the Office of Federal Procurement Policy Act shall apply in executive agencies as provided in such section.".

Subtitle D—Micro-Purchase Procedures

SEC. 4301. PROCEDURES FOR PURCHASES BELOW MICRO-PURCHASE THRESHOLD.

(a) PROCEDURES.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by adding after section 31, as added by section 4201, the following new section:

"SEC. 32. PROCEDURES APPLICABLE TO PURCHASES BELOW MICRO-PURCHASE THRESHOLD.

"(a) REQUIREMENTS.—(1) The head of each executive agency shall ensure that procuring activities of that agency, in awarding a contract with a price exceeding the micro-purchase threshold, comply with the requirements of section 8(a) of the Small Business Act (15 U.S.C. 637(a)), section 2323 of title 10, United States Code, and section 7102 of the Federal Acquisition Streamlining Act of 1994.

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

"(b) EXCLUSION FOR MICRO-PURCHASES.—A purchase by an executive agency with an anticipated value of the micro-purchase threshold or less is not subject to section 15(j) of the Small Business Act (15 U.S.C. 644(j)) and the Buy American Act (41 U.S.C. 10a–10c).

"(c) APPLICABILITY OF CERTAIN PROVISIONS.—For purposes of section 27, an officer or employee of an executive agency, or a member of the Armed Forces of the United States, shall not be considered a procurement official if—

"(1) the contracting authority of the officer, employee, or member does not exceed $2,500; and

"(2) the head of the contracting activity concerned (or a designee of the head of the contracting activity concerned) determines that the duties of the position of that officer, employee, or member are such that is it unlikely that the officer, employee, or member will be required to conduct procurements in a total amount greater than $20,000 in any 12-month period.

"(d) PURCHASES WITHOUT COMPETITIVE QUOTATIONS.—A purchase not greater than $2,500 may be made without obtaining competitive quotations if the contracting officer determines that the price for the purchase is reasonable.

"(e) EQUITABLE DISTRIBUTION.—Purchases not greater than $2,500 shall be distributed equitably among qualified suppliers.

"(f) IMPLEMENTATION THROUGH FAR.—This section shall be implemented through the Federal Acquisition Regulation.

"(g) MICRO-PURCHASE THRESHOLD DEFINED.—For purposes of this section, the micro-purchase threshold is the amount of $2,500.".

(b) EXCEPTION TO BUY AMERICAN ACT FOR MICRO-PURCHASES.—Section 2 of the Buy American Act (41 U.S.C. 10a) is amended by adding at the end the following: "This section shall not apply to manufactured articles, materials, or supplies procured under any contract the award value of which is less than or equal to the micro-purchase threshold under section 32 of the Office of Federal Procurement Policy Act.".

(c) EFFECTIVE DATE.—Notwithstanding any other provision of law—

(1) section 32 of the Office of Federal Procurement Policy Act, as added by subsection (a); and

(2) the amendment made by subsection (b);

shall take effect on the date of the enactment of this Act and shall be implemented in the Federal Acquisition Regulation not later than 60 days after such date of enactment.

Subtitle E—Conforming Amendments

SEC. 4401. ARMED SERVICES ACQUISITIONS.

(a) SIMPLIFIED ACQUISITION PROCEDURES.—Section 2304(g) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking out "small purchases of property and services" and inserting in lieu thereof "purchases of property and services for amounts not greater than the simplified acquisition threshold";

(2) by striking out paragraph (2);

(3) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

(4) in paragraph (2), as so redesignated—

(A) by striking out "small purchase threshold" and inserting in lieu thereof "simplified acquisition threshold"; and

(B) by striking out "small purchase procedures" and inserting in lieu thereof "simplified procedures"; and

(5) in paragraph (3), as redesignated by paragraph (3), by striking out "small purchase procedures" and inserting in lieu thereof "simplified procedures".

(b) SOLICITATION CONTENT REQUIREMENT.—Section 2305(a)(2) of such title is amended by striking out "small purchases)" in

the matter preceding subparagraph (A) and inserting in lieu thereof "a purchase for an amount not greater than the simplified acquisition threshold)".

(c) COST TYPE CONTRACTS.—Section 2306(e)(2)(A) of such title is amended by striking out "small purchase threshold" and inserting in lieu thereof "simplified acquisition threshold".

(d) REPORTS OF EMPLOYEES OR FORMER EMPLOYEES OF DEFENSE CONTRACTORS.—Subsection (a)(1) of section 2397 of title 10, United States Code, is amended by striking out "small purchase threshold (as defined in section 2302(7) of this title)" and inserting in lieu thereof "simplified acquisition threshold".

(e) CROSS REFERENCE AMENDMENT.—Section 9005 of Public Law 102–396 (10 U.S.C. 2441 note) is amended in the first sentence by striking out "small purchases covered by section 2304(g)" and inserting in lieu thereof "purchases for amounts not greater than the simplified acquisition threshold covered by section 2304(g)".

SEC. 4402. CIVILIAN AGENCY ACQUISITIONS.

(a) SIMPLIFIED ACQUISITION PROCEDURES.—Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)) is amended—

(1) in paragraph (1)—

(A) by striking out "small purchases of property and services" and inserting in lieu thereof "purchases of property and services for amounts not greater than the simplified acquisition threshold", and

(B) by striking out "regulations modified, in accordance with section 2752 of the Competition in Contracting Act of 1984," and inserting in lieu thereof "Federal Acquisition Regulation";

(2) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2)(A) The Administrator of General Services shall prescribe regulations that provide special simplified procedures for acquisitions of leasehold interests in real property at rental rates that do not exceed the simplified acquisition threshold.

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

(3) in paragraph (3)—

(A) by striking out "small purchase threshold" and inserting in lieu thereof "simplified acquisition threshold"; and

(B) by striking out "small purchase procedures" and inserting in lieu thereof "simplified procedures";

(4) in paragraph (4), by striking out "small purchase procedures" and inserting in lieu thereof "the simplified procedures"; and

(5) by striking out paragraph (5).

(b) SOLICITATION CONTENT REQUIREMENT.—Section 303A(b) of such Act (41 U.S.C. 253a(b)) is amended by striking out "small purchases)" in the matter preceding paragraph (1) and inserting in lieu thereof "a purchase for an amount not greater than the simplified acquisition threshold)".

(c) COST TYPE CONTRACTS.—Section 304(b) of such Act (41 U.S.C. 254(b)) is amended in the sentence beginning with "All cost and cost-plus-a-fixed-fee" by striking out "either $25,000" and inserting in lieu thereof "either the simplified acquisition threshold".

SEC. 4403. OFFICE OF FEDERAL PROCUREMENT POLICY ACT.

Section 19(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 417(a)) is amended by striking out "procurements, other than small purchases," and inserting in lieu thereof "procurements greater than the simplified acquisition threshold".

SEC. 4404. SMALL BUSINESS ACT.

(a) DEFINITION.—Section 3(m) of the Small Business Act (15 U.S.C. 632(m)) is amended by striking out "'small purchase threshold'" and inserting in lieu thereof "'simplified acquisition threshold'".

(b) USE OF SIMPLIFIED ACQUISITION THRESHOLD TERM.—Section 8(d)(2)(A) of the Small Business Act (15 U.S.C. 637(d)(2)(A)) is amended by striking out "small purchase threshold" and inserting in lieu thereof "simplified acquisition threshold".

TITLE V—ACQUISITION MANAGEMENT

Subtitle A—Armed Services Acquisitions

SEC. 5001. PERFORMANCE BASED MANAGEMENT.

(a) POLICY AND GOALS FOR PERFORMANCE BASED MANAGEMENT OF PROGRAMS.—(1) Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2220. Performance based management: acquisition programs

"(a) ESTABLISHMENT OF GOALS.—(1) The Secretary of Defense shall approve or define the cost, performance, and schedule goals for major defense acquisition programs of the Department of Defense and for each phase of the acquisition cycle of such programs.

"(2) The Comptroller of the Department of Defense shall evaluate the cost goals proposed for each major defense acquisition program of the Department.

"(b) ANNUAL REPORTING REQUIREMENT.—The Secretary of Defense shall include in the annual report submitted to Congress pursuant to section 113(c) of this title an assessment of whether major and nonmajor acquisition programs of the Department of Defense are achieving, on average, 90 percent of cost, performance, and schedule goals established pursuant to subsection (a) and whether the average period for converting emerging technology into operational capability has decreased by 50 percent or more from the average period required for such conversion as of the date of the enactment of the Federal Acquisition Streamlining Act of 1994. The Secretary shall use data from existing management systems in making the assessment.

"(c) PERFORMANCE EVALUATION.—Whenever the Secretary of Defense, in the assessment required by subsection (b), determines that major defense acquisition programs of the Department of Defense are not achieving, on average, 90 percent of cost, perform-

ance, and schedule goals established pursuant to subsection (a), the Secretary shall ensure that there is a timely review of major defense acquisition programs and other programs as appropriate. In conducting the review, the Secretary shall—

"(1) determine whether there is a continuing need for programs that are significantly behind schedule, over budget, or not in compliance with performance or capability requirements; and

"(2) identify suitable actions to be taken, including termination, with respect to such programs.".

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

"2220. Performance based management: acquisition programs.".

(b) ENHANCED SYSTEM OF PERFORMANCE INCENTIVES.—Within one year after the date of the enactment of this Act, the Secretary of Defense shall review the incentives and personnel actions available to the Secretary of Defense for encouraging excellence in the management of defense acquisition programs and provide an enhanced system of incentives to facilitate the achievement of goals approved or defined pursuant to section 2220(a) of title 10, United States Code. The enhanced system of incentives shall, to the maximum extent consistent with applicable law—

(1) relate pay to performance (including the extent to which the performance of personnel in such programs contributes to achieving the cost goals, performance goals, and schedule goals established for acquisition programs of the Department of Defense pursuant to section 2220(a) of title 10, as added by subsection (a)); and

(2) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in such programs contributes to achieving the cost goals, performance goals, and schedule goals established for acquisition programs of the Department of Defense pursuant to section 2220(a) of title 10, United States Code, as added by subsection (a).

(c) RECOMMENDED LEGISLATION.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress any recommended legislation that the Secretary considers necessary to carry out section 2220 of title 10, United States Code, as added by subsection (a), and otherwise to facilitate and enhance management of Department of Defense acquisition programs on the basis of performance.

SEC. 5002. REVIEW OF ACQUISITION PROGRAM CYCLE.

(a) REVIEW.—The Secretary of Defense shall review the regulations of the Department of Defense to ensure that acquisition program cycle procedures are focused on achieving the goals that are consistent with the program baseline description established pursuant to section 2435 of title 10, United States Code.

(b) REPEALS.—Sections 835 and 836 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1717) are hereby repealed.

Subtitle B—Civilian Agency Acquisitions

SEC. 5051. PERFORMANCE BASED MANAGEMENT.

(a) POLICY AND GOALS FOR PERFORMANCE BASED MANAGEMENT OF PROGRAMS.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 301 et seq.), as amended by sections 1552 and 1553, is further amended by adding at the end the following new section:

"SEC. 313. PERFORMANCE BASED MANAGEMENT: ACQUISITION PROGRAMS.

"(a) CONGRESSIONAL POLICY.—It is the policy of Congress that the head of each executive agency should achieve, on average, 90 percent of the cost and schedule goals established for major and nonmajor acquisition programs of the agency without reducing the performance or capabilities of the items being acquired.

"(b) ESTABLISHMENT OF GOALS.—(1) The head of each executive agency shall approve or define the cost, performance, and schedule goals for major acquisition programs of the agency.

"(2) The chief financial officer of an executive agency shall evaluate the cost goals proposed for each major acquisition program of the agency.

"(c) IDENTIFICATION OF NONCOMPLIANT PROGRAMS.—Whenever it is necessary to do so in order to implement the policy set out in subsection (a), the head of an executive agency shall—

"(1) determine whether there is a continuing need for programs that are significantly behind schedule, over budget, or not in compliance with performance or capability requirements; and

"(2) identify suitable actions to be taken, including termination, with respect to such programs.".

(b) ANNUAL REPORTING REQUIREMENT.—Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405), as amended by section 1091, is further amended by adding at the end the following new subsection:

"(k) The Administrator shall submit to Congress, on an annual basis, an assessment of the progress made in executive agencies in implementing the policy stated in section 313(a) of the Federal Property and Administrative Services Act of 1949. The Administrator shall use data from existing management systems in making the assessment.".

(c) ENHANCED SYSTEM OF PERFORMANCE INCENTIVES.—Within one year after the date of the enactment of this Act, the Deputy Director for Management of the Office of Management and Budget, in consultation with appropriate officials in other departments and agencies of the Federal Government, shall, to the maximum extent consistent with applicable law—

(1) establish policies and procedures for the heads of such departments and agencies to designate acquisition positions and manage employees (including the accession, education, training and career development of employees) in the designated acquisition positions; and

(2) review the incentives and personnel actions available to the heads of departments and agencies of the Federal Government for encouraging excellence in the acquisition workforce of the Federal Government and provide an enhanced

system of incentives for the encouragement of excellence in such workforce which—

(A) relates pay to performance (including the extent to which the performance of personnel in such workforce contributes to achieving the cost goals, schedule goals, and performance goals established for acquisition programs pursuant to section 313(b) of the Federal Property and Administrative Services Act of 1949, as added by subsection (a)); and

(B) provides for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in such workforce contributes to achieving such cost goals, schedule goals, and performance goals.

(d) RECOMMENDED LEGISLATION.—Not later than one year after the date of the enactment of this Act, the Administrator for Federal Procurement Policy shall submit to Congress any recommended legislation that the Secretary considers necessary to carry out section 313 of the Federal Property and Administrative Services Act of 1949, as added by subsection (a), and otherwise to facilitate and enhance management of Federal Government acquisition programs and the acquisition workforce of the Federal Government on the basis of performance.

SEC. 5052. RESULTS-ORIENTED ACQUISITION PROCESS.

(a) DEVELOPMENT OF PROCESS REQUIRED.—The Administrator for Federal Procurement Policy, in consultation with the heads of appropriate Federal agencies, shall develop results-oriented acquisition process guidelines for implementation by agencies in acquisitions of property and services by the Federal agencies. The process guidelines shall include the identification of quantitative measures and standards for determining the extent to which an acquisition of items other than commercial items by a Federal agency satisfies the needs for which the items are being acquired.

(b) INAPPLICABILITY OF PROCESS TO DEPARTMENT OF DEFENSE.—The process guidelines developed pursuant to subsection (a) may not be applied to the Department of Defense.

Subtitle C—Pilot Programs

SEC. 5061. OFPP TEST PROGRAM FOR EXECUTIVE AGENCIES.

(a) IN GENERAL.—The Administrator for Federal Procurement Policy (in this section referred to as the "Administrator") may conduct a program of tests of alternative and innovative procurement procedures. To the extent consistent with this section, such program shall be conducted consistent with section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413). No more than 6 such tests shall be conducted under the authority of this subsection, and not more than 1 such test shall be conducted under such authority in an agency.

(b) DESIGNATION OF AGENCIES.—Each test conducted pursuant to subsection (a) shall be carried out in not more than 2 specific procuring activities in an agency designated by the Administrator. Each agency so designated shall select the procuring activities participating in the test with the approval of the Administrator and shall designate a procurement testing official who shall be

responsible for the conduct and evaluation of tests within that agency.

(c) TEST REQUIREMENTS AND LIMITATIONS.—(1) Each test conducted under subsection (a)—

(A) shall be developed and structured by the Administrator or by the agency senior procurement executive designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) in close coordination with the Administrator; and

(B) shall be limited to specific programs of agencies or specific acquisitions.

(2) The total estimated life-cycle cost to the Federal Government for each test conducted under subsection (a) may not exceed $100,000,000.

(3)(A) Except as provided in subparagraph (B), each contract awarded in conducting the tests under subsection (a) (including the cost of options if all options were to be exercised) may not exceed $5,000,000.

(B) For one of the tests conducted under subsection (a), the amount of each contract awarded in conducting the test (including options) may exceed $5,000,000.

(4) The program of tests conducted under subsection (a) shall include, either as a test or as part of a test, the use of the Federal acquisition computer network (''FACNET'') capability required by section 30 of the Office of Federal Procurement Policy Act (as added by section 9001) for procurement actions in amounts greater than the simplified acquisition threshold.

(d) LIMITATION ON TOTAL VALUE OF CONTRACTS UNDER PROGRAM.—(1) The Administrator shall ensure that the total amount obligated under contracts awarded pursuant to the program under this section does not exceed $600,000,000. In calculating such amount, the Administrator shall not include any contract awarded for the test conducted by the National Aeronautics and Space Administration pursuant to section 5062 of this Act.

(2) The Administrator shall monitor the value of contracts awarded pursuant to the program under this section.

(3) No contract may be awarded under the program under this section if the award of the contract would result in obligation of more than $600,000,000 under contracts awarded pursuant to the program under this section.

(e) PROCEDURES AUTHORIZED.—Tests conducted under this section may include any of the following procedures:

(1) Publication of agency needs before drafting of a solicitation.

(2) Issuance of draft solicitations for comment.

(3) Streamlined solicitations that specify as the evaluation factors the minimum factors necessary, require sources to submit the minimum information necessary, provide abbreviated periods for submission of offers, and specify page limitations for offers.

(4) Limitation of source selection factors to—

(A) cost to the Federal Government;

(B) past experience and performance; and

(C) quality of the content of the offer.

(5) Evaluation of proposals by small teams of highly qualified people over a period not greater than 30 days.

(6) Restriction of competitions to sources determined capable in a precompetition screening process, provided that the screening process affords all interested sources a fair opportunity to be considered.

(7) Restriction of competitions to sources of preevaluated products, provided that the preevaluation process affords all interested sources a fair opportunity to be considered.

(8) Alternative notice and publication requirements.

(9) A process in which—

(A) the competitive process is initiated by publication in the Commerce Business Daily, or by dissemination through FACNET, of a notice that—

(i) contains a synopsis of the functional and performance needs of the executive agency conducting the test, and, for purposes of guidance only, other specifications; and

(ii) invites any interested source to submit information or samples showing the suitability of its product for meeting those needs, together with a price quotation, or, if appropriate, showing the source's technical capability, past performance, product supportability, or other qualifications (including, as appropriate, information regarding rates and other cost-related factors);

(B) contracting officials develop a request for proposals (including appropriate specifications and evaluation criteria) after reviewing the submissions of interested sources and, if the officials determine necessary, after consultation with those sources; and

(C) a contract is awarded after a streamlined competition that is limited to all sources that timely provided product information in response to the notice or, if appropriate, to those sources determined most capable based on the qualification-based factors included in an invitation to submit information pursuant to subparagraph (A).

(f) MEASURABLE TEST CRITERIA.—The Administrator shall require each agency conducting a test pursuant to subsection (a) to establish, to the maximum extent practicable, measurable criteria for evaluation of the effects of the procedure or technique to be tested.

(g) TEST PLAN.—At least 270 days before a test may be conducted under this section, the Administrator shall—

(1) provide a detailed test plan, including lists of any regulations that are to be waived, and any written determination under subsection (h)(1)(B) to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate;

(2) provide a copy of the plan to the appropriate authorization and appropriations committees of the House of Representatives and the Senate; and

(3) publish the plan in the Federal Register and provide an opportunity for public comment.

(h) WAIVER OF PROCUREMENT REGULATIONS.—(1) For purposes of a test conducted under subsection (a), the Administrator may waive—

(A) any provision of the Federal Acquisition Regulation that is not required by statute; and

(B) any provision of the Federal Acquisition Regulation that is required by a provision of law described in paragraph (2), the waiver of which the Administrator determines in writing to be necessary to conduct any test of any of the procedures described in subsection (e).

(2) The provisions of law referred to in paragraph (1) are as follows:

(A) The following provisions of title 10, United States Code:

(i) Section 2304.

(ii) Section 2305.

(iii) Section 2319.

(B) Subsections (e), (f), and (g) of section 8 of the Small Business Act (15 U.S.C. 637).

(C) The following provisions of the Revised Statutes:

(i) Section 3709 (41 U.S.C. 5).

(ii) Section 3710 (41 U.S.C. 8).

(iii) Section 3735 (41 U.S.C. 13).

(D) The following provisions of the Federal Property and Administrative Services Act of 1949:

(i) Section 303 (41 U.S.C. 253).

(ii) Section 303A (41 U.S.C. 253a).

(iii) Section 303B (41 U.S.C. 253b).

(iv) Section 303C (41 U.S.C. 253c).

(v) Section 310 (41 U.S.C. 260).

(E) The following provisions of the Office of Federal Procurement Policy Act:

(i) Section 4(6) (41 U.S.C. 403(6)).

(ii) Section 18 (41 U.S.C. 416).

(3) If the Administrator determines that the conduct of a test requires the waiver of a law not listed in paragraph (2) or requires approval of an estimated dollar amount not permitted under subsection (c)(4), the Administrator may propose legislation to authorize the waiver or grant the approval. Before proposing such legislation, the Administrator may provide and publish a test plan as described in subsection (g).

(i) REPORT.—Not later than 6 months after completion of a test conducted under subsection (a), the Comptroller General shall submit to Congress a report for the test setting forth in detail the results of the test, including such recommendations as the Comptroller General considers appropriate.

(j) COMMENCEMENT AND EXPIRATION OF AUTHORITY.—(1) The Administrator may not exercise the authority to conduct a test under subsection (a) in an agency and to award contracts under such a test before the date on which the head of the agency certifies to Congress under section 30A(a)(2) of the Office of Federal Procurement Policy Act that the agency has implemented a full FACNET capability.

(2) The authority to conduct a test under subsection (a) in an agency and to award contracts under such a test shall expire 4 years after the date on which the head of the agency makes the certification referred to in paragraph (1). Contracts entered into before such authority expires in an agency pursuant to a test shall remain in effect, notwithstanding the expiration of the authority to conduct the test under this section.

(k) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the appropriation or obligation of funds for the tests conducted pursuant to subsection (a).

SEC. 5062. NASA MID-RANGE PROCUREMENT TEST PROGRAM.

(a) IN GENERAL.—The Administrator of the National Aeronautics and Space Administration (in this section referred to as the "Administrator") may conduct a test of alternative notice and publication requirements for procurements conducted by the National Aeronautics and Space Administration. To the extent consistent with this section, such program shall be conducted consistent with section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413).

(b) APPLICABILITY.—The test conducted under subsection (a) shall apply to acquisitions with an estimated annual total obligation of funds of $500,000 or less.

(c) LIMITATION ON TOTAL COST.—The total estimated life-cycle cost to the Federal Government for the test conducted under subsection (a) may not exceed $100,000,000.

(d) WAIVER OF PROCUREMENT REGULATIONS.—(1) In conducting the test under this section, the Administrator, with the approval of the Administrator for Federal Procurement Policy, may waive—

(A) any provision of the Federal Acquisition Regulation that is not required by statute; and

(B) any provision of the Federal Acquisition Regulation that is required by a provision of law described in paragraph (2), the waiver of which the Administrator determines in writing to be necessary to conduct the test.

(2) The provisions of law referred to in paragraph (1) are as follows:

(A) Subsections (e), (f), and (g) of section 8 of the Small Business Act (15 U.S.C. 637).

(B) Section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416).

(e) REPORT.—Not later than 6 months after completion of the test conducted under subsection (a), the Comptroller General shall submit to Congress a report for the test setting forth in detail the results of the test, including such recommendations as the Comptroller General considers appropriate.

(f) EXPIRATION OF AUTHORITY.—The authority to conduct the test under subsection (a) and to award contracts under such test shall expire 4 years after the date of the enactment of this Act. Contracts entered into before such authority expires shall remain in effect, notwithstanding the expiration of the authority to conduct the test under this section.

(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the appropriation or obligation of funds for the test conducted pursuant to subsection (a).

SEC. 5063. FEDERAL AVIATION ADMINISTRATION ACQUISITION PILOT PROGRAM.

(a) AUTHORITY.—The Secretary of Transportation may conduct a test of alternative and innovative procurement procedures in carrying out acquisitions for one of the modernization programs under the Airway Capital Investment Plan prepared pursuant to section 44501(b) of title 49, United States Code. In conducting such test, the Secretary shall consult with the Administrator for Federal Procurement Policy.

(b) PILOT PROGRAM IMPLEMENTATION.—(1) The Secretary of Transportation should prescribe policies and procedures for the interaction of the program manager and the end user executive

responsible for the requirement for the equipment acquired. Such policies and procedures should include provisions for enabling the end user executive to participate in acceptance testing.

(2) Not later than 45 days after the date of enactment of this Act, the Secretary of Transportation shall identify for the pilot program quantitative measures and goals for reducing acquisition management costs.

(3) The Secretary of Transportation shall establish for the pilot program a review process that provides senior acquisition officials with reports on the minimum necessary data items required to ensure the appropriate expenditure of funds appropriated for the program and that—

(A) contain essential information on program results at appropriate intervals, including the criteria to be used in measuring the success of the program; and

(B) reduce data requirements from the current program review reporting requirements.

(c) SPECIAL AUTHORITIES.—The authority provided by subsection (a) shall include authority for the Secretary of Transportation—

(1) to apply any amendment or repeal of a provision of law made in this Act to the pilot program before the effective date of such amendment or repeal; and

(2) to apply to a procurement of items other than commercial items under such program—

(A) any authority provided in this Act (or in an amendment made by a provision of this Act) to waive a provision of law in the case of commercial items, and

(B) any exception applicable under this Act (or an amendment made by a provision of this Act) in the case of commercial items,

before the effective date of such provision (or amendment) to the extent that the Secretary determines necessary to test the application of such waiver or exception to procurements of items other than commercial items.

(d) APPLICABILITY.—Subsection (c) applies with respect to—

(1) a contract that is awarded or modified after the date occurring 45 days after the date of the enactment of this Act; and

(2) a contract that is awarded before such date and is to be performed (or may be performed), in whole or in part, after such date.

(e) PROCEDURES AUTHORIZED.—The test conducted under this section may include any of the following procedures:

(1) Restriction of competitions to sources determined capable in a precompetition screening process, provided that the screening process affords all interested sources a fair opportunity to be considered.

(2) Restriction of competitions to sources of preevaluated products, provided that the preevaluation process affords all interested sources a fair opportunity to be considered.

(3) Alternative notice and publication requirements.

(4) A process in which—

(A) the competitive process is initiated by publication in the Commerce Business Daily, or by dissemination through FACNET, of a notice that—

(i) contains a synopsis of the functional and performance needs of the executive agency conducting the test, and, for purposes of guidance only, other specifications; and

(ii) invites any interested source to submit information or samples showing the suitability of its product for meeting those needs, together with a price quotation, or, if appropriate, showing the source's technical capability, past performance, product supportability, or other qualifications (including, as appropriate, information regarding rates and other cost-related factors);

(B) contracting officials develop a request for proposals (including appropriate specifications and evaluation criteria) after reviewing the submissions of interested sources and, if the officials determine necessary, after consultation with those sources; and

(C) a contract is awarded after a streamlined competition that is limited to all sources that timely provided product information in response to the notice or, if appropriate, to those sources determined most capable based on the qualification-based factors included in an invitation to submit information pursuant to subparagraph (A).

(f) WAIVER OF PROCUREMENT REGULATIONS.—(1) In conducting the test under this section, the Secretary of Transportation, with the approval of the Administrator for Federal Procurement Policy, may waive—

(A) any provision of the Federal Acquisition Regulation that is not required by statute; and

(B) any provision of the Federal Acquisition Regulation that is required by a provision of law described in paragraph (2), the waiver of which the Administrator determines in writing to be necessary to test procedures authorized by subsection (e).

(2) The provisions of law referred to in paragraph (1) are as follows:

(A) Subsections (e), (f), and (g) of section 8 of the Small Business Act (15 U.S.C. 637).

(B) The following provisions of the Federal Property and Administrative Services Act of 1949:

(i) Section 303 (41 U.S.C. 253).

(ii) Section 303A (41 U.S.C. 253a).

(iii) Section 303B (41 U.S.C. 253b).

(iv) Section 303C (41 U.S.C. 253c).

(C) The following provisions of the Office of Federal Procurement Policy Act:

(i) Section 4(6) (41 U.S.C. 403(6)).

(ii) Section 18 (41 U.S.C. 416).

(g) DEFINITION.—In this section, the term "commercial item" has the meaning provided that term in section 4(12) of the Office of Federal Procurement Policy Act.

(h) EXPIRATION OF AUTHORITY.—The authority to conduct the test under subsection (a) and to award contracts under such test shall expire 4 years after the date of the enactment of this Act. Contracts entered into before such authority expires shall remain in effect, notwithstanding the expiration of the authority to conduct the test under this section.

(i) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the appropriation or obligation of funds for the test conducted pursuant to subsection (a).

SEC. 5064. DEPARTMENT OF DEFENSE ACQUISITION PILOT PROGRAMS.

(a) IN GENERAL.—The Secretary of Defense is authorized to designate the following defense acquisition programs for participation in the defense acquisition pilot program authorized by section 809 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2430 note):

(1) FIRE SUPPORT COMBINED ARMS TACTICAL TRAINER (FSCATT).—The Fire Support Combined Arms Tactical Trainer program with respect to all contracts directly related to the procurement of a training simulation system (including related hardware, software, and subsystems) to perform collective training of field artillery gunnery team components, with development of software as required to generate the training exercises and component interfaces.

(2) JOINT DIRECT ATTACK MUNITION (JDAM I).—The Joint Direct Attack Munition program with respect to all contracts directly related to the development and procurement of a strap-on guidance kit, using an inertially guided, Global Positioning System updated guidance kit to enhance the delivery accuracy of 1000-pound and 2000-pound bombs in inventory.

(3) JOINT PRIMARY AIRCRAFT TRAINING SYSTEM (JPATS).—The Joint Primary Aircraft Training System (JPATS) with respect to all contracts directly related to the acquisition of a new primary trainer aircraft to fulfill Air Force and Navy joint undergraduate aviation training requirements, and an associated ground-based training system consisting of air crew training devices (simulators), courseware, a Training Management System, and contractor support for the life of the system.

(4) COMMERCIAL-DERIVATIVE AIRCRAFT (CDA).—

(A) All contracts directly related to the acquisition or upgrading of commercial-derivative aircraft for use in meeting airlift and tanker requirements and the air vehicle component for airborne warning and control systems.

(B) For purposes of this paragraph, the term ''commercial-derivative aircraft'' means any of the following:

(i) Any aircraft (including spare parts, support services, support equipment, technical manuals, and data related thereto) that is or was of a type customarily used in the course of normal business operations for other than Federal Government purposes, that has been issued a type certificate by the Administrator of the Federal Aviation Administration, and that has been sold or leased for use in the commercial marketplace or that has been offered for sale or lease for use in the commercial marketplace.

(ii) Any aircraft that, but for modifications of a type customarily available in the commercial marketplace, or minor modifications made to meet Federal Government requirements, would satisfy or would have satisfied the criteria in subclause (I).

(iii) For purposes of a potential complement or alternative to the C–17 program, any nondevelopmental airlift aircraft, other than the C–

17 or any aircraft derived from the C–17, shall be considered a commercial-derivative aircraft.

(5) COMMERCIAL-DERIVATIVE ENGINE (CDE).—The commercial derivative engine program with respect to all contracts directly related to the acquisition of (A) commercial derivative engines (including spare engines and upgrades), logistics support equipment, technical orders, management data, and spare parts, and (B) commercially derived engines for use in supporting the purchase of commercial-derivative aircraft for use in airlift and tanker requirements (including engine replacement and upgrades) and the air vehicle component for airborne warning and control systems. For purposes of a potential complement or alternative to the C–17 program, any nondevelopmental airlift aircraft engine shall be considered a commercial-derivative engine.

(b) PILOT PROGRAM IMPLEMENTATION.—(1) The text of section 833 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1716) is amended to read as follows:

"(a) MISSION-ORIENTED PROGRAM MANAGEMENT.—In the exercise of the authority provided in section 809 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2430 note), the Secretary of Defense should propose for one or more of the defense acquisition programs covered by the Defense Acquisition Pilot Program to utilize the concept of mission-oriented program management.

"(b) POLICIES AND PROCEDURES.—In the case of each defense acquisition program covered by the Defense Acquisition Pilot Program, the Secretary of Defense should prescribe policies and procedures for the interaction of the program manager and the commander of the operational command (or a representative) responsible for the requirement for the equipment acquired, and for the interaction with the commanders of the unified and specified combatant commands. Such policies and procedures should include provisions for enabling the user commands to participate in acceptance testing.".

(2) The text of section 837 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1718) is amended to read as follows:

"The Secretary of Defense shall take any additional actions that the Secretary considers necessary to waive regulations not required by statute that affect the efficiency of the contracting process within the Department of Defense. Such actions shall include, in the Secretary's discretion, developing methods to streamline the procurement process, streamlining the period for entering into contracts, and defining alternative techniques to reduce reliance on military specifications and standards, in contracts for the defense acquisition programs participating in the Defense Acquisition Pilot Program.".

(3) The text of section 838 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1718) is amended to read as follows:

"For at least one participating defense acquisition program for which a determination is made to make payments for work in progress under the authority of section 2307 of title 10, United States Code, the Secretary of Defense should define payment milestones on the basis of quantitative measures of results.".

(4) Not later than 45 days after the date of the enactment of the Federal Acquisition Streamlining Act of 1994, the Secretary of Defense shall identify for each defense acquisition program participating in the pilot program quantitative measures and goals for reducing acquisition management costs.

(5) For each defense acquisition program participating in the pilot program, the Secretary of Defense shall establish a review process that provides senior acquisition officials with reports on the minimum necessary data items required to ensure the appropriate expenditure of funds appropriated for the program and that—

(A) contain essential information on program results at appropriate intervals, including the criteria to be used in measuring the success of the program; and

(B) reduce data requirements from the current program review reporting requirements.

(c) SPECIAL AUTHORITY.—The authority delegated under subsection (a) may include authority for the Secretary of Defense—

(1) to apply any amendment or repeal of a provision of law made in this Act to the pilot programs before the effective date of such amendment or repeal; and

(2) to apply to a procurement of items other than commercial items under such programs—

(A) any authority provided in this Act (or in an amendment made by a provision of this Act) to waive a provision of law in the case of commercial items, and

(B) any exception applicable under this Act (or an amendment made by a provision of this Act) in the case of commercial items,

before the effective date of such provision (or amendment) to the extent that the Secretary determines necessary to test the application of such waiver or exception to procurements of items other than commercial items.

(d) APPLICABILITY.—(1) Subsection (c) applies with respect to—

(A) a contract that is awarded or modified during the period described in paragraph (2); and

(B) a contract that is awarded before the beginning of such period and is to be performed (or may be performed), in whole or in part, during such period.

(2) The period referred to in paragraph (1) is the period that begins 45 days after the date of the enactment of this Act and ends on September 30, 1998.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the appropriation or obligation of funds for the programs designated for participation in the defense acquisition pilot program under the authority of subsection (a).

Subtitle D—Miscellaneous

SEC. 5091. VENDOR AND EMPLOYEE EXCELLENCE AWARDS.

Section 6(d) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)) is amended—

(1) by striking out "and" at the end of paragraph (7);

(2) by redesignating paragraph (8) as paragraph (12); and

(3) by adding at the end the following new paragraphs:

"(8) providing for a Government-wide award to recognize and promote vendor excellence;

"(9) providing for a Government-wide award to recognize and promote excellence in officers and employees of the Federal Government serving in procurement-related positions;".

SEC. 5092. WAITING PERIOD FOR SIGNIFICANT CHANGES PROPOSED FOR ACQUISITION REGULATIONS.

(a) INCREASED PERIOD.—Section 22(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 418b) is amended—

(1) by striking out "30 days" and inserting in lieu thereof "60 days"; and

(2) by adding at the end the following: "Notwithstanding the preceding sentence, such a policy, regulation, procedure, or form may take effect earlier than 60 days after the publication date when there are compelling circumstances for the earlier effective date, but in no event may that effective date be less than 30 days after the publication date.".

(b) TECHNICAL AMENDMENT.—Section 22(d) of such Act is amended by designating the second sentence as paragraph (3).

SEC. 5093. SENSE OF CONGRESS ON NEGOTIATED RULEMAKING.

(a) FINDINGS.—The Congress finds the following:

(1) The use of negotiated rulemaking or similar policy discussion group techniques can be an appropriate tool for—

(A) fostering effective implementation of, and compliance with, laws and regulations;

(B) avoiding litigation; and

(C) achieving more productive and equitable relationships between the Federal Government and the regulated segments of the private sector.

(2) The use of negotiated rulemaking or similar techniques in Federal procurement regulations could be appropriate given the extreme complexity and intricate interactions between buyer and seller in Federal procurements.

(b) SENSE OF CONGRESS.—It is the sense of Congress that, in prescribing acquisition regulations, the Federal Acquisition Regulatory Council should consider using negotiated rulemaking procedures in appropriate circumstances in accordance with sections 561 through 570 of title 5, United States Code, or similar techniques intended to achieve the benefits described in subsection (a)(1).

TITLE VI—OTHER PROCUREMENT-RELATED MATTERS

SEC. 6001. POST-EMPLOYMENT RULES.

(a) REPEAL.—(1) Section 801 of title 37, United States Code, is repealed.

(2) The table of sections for chapter 15 of title 37, United States Code, is amended by striking out the item relating to section 801.

(b) SUSPENSION OF EFFECT OF CERTAIN PROVISION OF LAW.—Section 281 of title 18, United States Code, shall not be effective during the period beginning on the date of the enactment of this Act and ending at the end of December 31, 1996. Such section shall not apply after that date to any relationship otherwise punishable under such section that existed during such period.

SEC. 6002. CONTRACTING FUNCTIONS PERFORMED BY FEDERAL PERSONNEL.

(a) AMENDMENT OF OFPP ACT.—The Office of Federal Procurement Policy Act, as amended by section 1092, is further amended by inserting after section 22 the following new section 23:

"SEC. 23. CONTRACTING FUNCTIONS PERFORMED BY FEDERAL PERSONNEL.

"(a) LIMITATION ON PAYMENT FOR ADVISORY AND ASSISTANCE SERVICES.—(1) No person who is not a person described in subsection (b) may be paid by an executive agency for services to conduct evaluations or analyses of any aspect of a proposal submitted for an acquisition unless personnel described in subsection (b) with adequate training and capabilities to perform such evaluations and analyses are not readily available within the agency or another Federal agency, as determined in accordance with standards and procedures prescribed in the Federal Acquisition Regulation.

"(2) In the administration of this subsection, the head of each executive agency shall determine in accordance with the standards and procedures set forth in the Federal Acquisition Regulation whether—

"(A) a sufficient number of personnel described in subsection (b) within the agency or another Federal agency are readily available to perform a particular evaluation or analysis for the head of the executive agency making the determination; and

"(B) the readily available personnel have the training and capabilities necessary to perform the evaluation or analysis.

"(b) COVERED PERSONNEL.—For purposes of subsection (a), the personnel described in this subsection are as follows:

"(1) An employee, as defined in section 2105 of title 5, United States Code.

"(2) A member of the Armed Forces of the United States.

"(3) A person assigned to a Federal agency pursuant to subchapter VI of chapter 33 of title 5, United States Code.

"(c) RULE OF CONSTRUCTION.—Nothing in this section is intended to affect the relationship between the Federal Government and a federally funded research and development center.".

(b) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—The Federal Acquisition Regulatory Council established by section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall—

(1) review part 37 of title 48 of the Code of Federal Regulations as it relates to the use of advisory and assistance services; and

(2) provide guidance and promulgate regulations regarding—

(A) what actions Federal agencies are required to take to determine whether expertise is readily available within the Federal Government before contracting for advisory and technical services to conduct acquisitions; and

(B) the manner in which personnel with expertise may be shared with agencies needing expertise for such acquisitions.

SEC. 6003. REPEAL OF EXECUTED REQUIREMENT FOR STUDY AND REPORT.

Section 17 of the Office of Federal Procurement Policy Act (41 U.S.C. 415) is repealed.

SEC. 6004. INTERESTS OF MEMBERS OF CONGRESS.

Section 3741 of the Revised Statutes (41 U.S.C. 22) is amended to read as follows:

"No member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon.".

SEC. 6005. WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES OF DEPARTMENT OF DEFENSE, COAST GUARD, AND NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.

(a) WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES.—Section 2409 of title 10, United States Code, is amended to read as follows:

"§ 2409. Contractor employees: protection from reprisal for disclosure of certain information

"(a) PROHIBITION OF REPRISALS.—An employee of a contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a Member of Congress or an authorized official of an agency or the Department of Justice information relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

"(b) INVESTIGATION OF COMPLAINTS.—A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of an agency. Unless the Inspector General determines that the complaint is frivolous, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor concerned, and the head of the agency.

"(c) REMEDY AND ENFORCEMENT AUTHORITY.—(1) If the head of the agency determines that a contractor has subjected a person to a reprisal prohibited by subsection (a), the head of the agency may take one or more of the following actions:

"(A) Order the contractor to take affirmative action to abate the reprisal.

"(B) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

"(C) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

"(2) Whenever a person fails to comply with an order issued under paragraph (1), the head of the agency shall file an action

for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

"(3) Any person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Review shall conform to chapter 7 of title 5.

"(d) CONSTRUCTION.—Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

"(e) DEFINITIONS.—In this section:

"(1) The term 'agency' means an agency named in section 2303 of this title.

"(2) The term 'head of an agency' has the meaning provided by section 2302(1) of this title.".

"(3) The term 'contract' means a contract awarded by the head of an agency.

"(4) The term 'contractor' means a person awarded a contract with an agency.

"(5) The term 'Inspector General' means an Inspector General appointed under the Inspector General Act of 1978.".

(b) RELATED LAW.—(1) Section 2409a of title 10, United States Code, is repealed.

(2) The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2409a.

SEC. 6006. WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES OF CIVILIAN AGENCIES.

Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by adding at the end the following new section:

"SEC. 315. CONTRACTOR EMPLOYEES: PROTECTION FROM REPRISAL FOR DISCLOSURE OF CERTAIN INFORMATION.

"(a) PROHIBITION OF REPRISALS.—An employee of a contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a Member of Congress or an authorized official of an executive agency or the Department of Justice information relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

"(b) INVESTIGATION OF COMPLAINTS.—A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of the executive agency. Unless the Inspector General determines that the complaint is frivolous, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor concerned, and the head of the agency. In the case of an executive agency that does not have an inspector general,

the duties of the inspector general under this section shall be performed by an official designated by the head of the executive agency.

"(c) REMEDY AND ENFORCEMENT AUTHORITY.—(1) If the head of an executive agency determines that a contractor has subjected a person to a reprisal prohibited by subsection (a), the head of the executive agency may take one or more of the following actions:

"(A) Order the contractor to take affirmative action to abate the reprisal.

"(B) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

"(C) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the executive agency.

"(2) Whenever a person fails to comply with an order issued under paragraph (1), the head of the executive agency shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

"(3) Any person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Review shall conform to chapter 7 of title 5, United States Code.

"(d) CONSTRUCTION.—Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

"(e) DEFINITIONS.—In this section:

"(1) The term 'contract' means a contract awarded by the head of an executive agency.

"(2) The term 'contractor' means a person awarded a contract with an executive agency.

"(3) The term 'Inspector General' means an Inspector General appointed under the Inspector General Act of 1978.".

SEC. 6007. COMPTROLLER GENERAL REVIEW OF THE PROVISION OF LEGAL ADVICE FOR INSPECTORS GENERAL.

(a) REVIEW AND REPORT REQUIRED.—Not later than March 1, 1995, the Comptroller General of the United States shall—

(1) conduct a review of the independence of the legal services being provided to Inspectors General appointed under the Inspector General Act of 1978; and

(2) submit to Congress a report on the results of the review.

(b) MATTERS REQUIRED FOR REPORT.—The report shall include the following matters:

(1) With respect to each department or agency of the Federal Government that has an Inspector General appointed in accordance with the Inspector General Act of 1978 whose only or principal source of legal advice is the general counsel or other chief legal officer of the department or agency, an assessment of the extent of the independence of the legal advisers providing advice to the Inspector General.

(2) A comparison of the findings under the assessment referred to in paragraph (1) with findings on the same matters with respect to each Inspector General whose source of legal advice is legal counsel accountable solely to the Inspector General.

SEC. 6008. COST SAVINGS FOR OFFICIAL TRAVEL.

(a) GUIDELINES.—The Administrator of the General Services Administration shall issue guidelines to ensure that agencies promote, encourage, and facilitate the use of frequent traveler programs offered by airlines, hotels, and car rental vendors by Federal employees who engage in official air travel, for the purpose of realizing to the maximum extent practicable cost savings for official travel.

(b) REQUIREMENT.—Any awards granted under such a frequent traveler program accrued through official travel shall be used only for official travel.

(c) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall report to Congress on efforts to promote the use of frequent traveler programs by Federal employees.

SEC. 6009. PROMPT RESOLUTION OF AUDIT RECOMMENDATIONS.

Federal agencies shall resolve or take corrective action on all Office of Inspector General audit report findings within a maximum of six months after their issuance, or, in the case of audits performed by non-Federal auditors, six months after receipt of the report by the Federal Government.

TITLE VII—SMALL BUSINESS AND SOCIOECONOMIC LAWS

Subtitle A—Small Business Laws

SEC. 7101. REPEAL OF CERTAIN REQUIREMENTS.

(a) SET-ASIDE PRIORITY.—Section 15 of the Small Business Act (15 U.S.C. 644) is amended by striking out subsections (e) and (f).

(b) CERTIFICATE OF COMPETENCE.—Section 804 of Public Law 102–484 (106 Stat. 2447; 10 U.S.C. 2305 note) is repealed.

SEC. 7102. CONTRACTING PROGRAM FOR CERTAIN SMALL BUSINESS CONCERNS.

(a) PROCUREMENT PROCEDURES AUTHORIZED.—(1) To facilitate the attainment of a goal for the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals that is established for a Federal agency

pursuant to section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)), the head of the agency may enter into contracts using—

(A) less than full and open competition by restricting the competition for such awards to small business concerns owned and controlled by socially and economically disadvantaged individuals described in subsection (d)(3)(C) of section 8 of the Small Business Act (15 U.S.C. 637); and

(B) a price evaluation preference not in excess of 10 percent when evaluating an offer received from such a small business concern as the result of an unrestricted solicitation.

(2) Paragraph (1) does not apply to the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(b) IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—The Federal Acquisition Regulation shall be revised to provide for uniform implementation of the authority provided in subsection (a).

(2) MATTERS TO BE ADDRESSED.—The revisions of the Federal Acquisition Regulation made pursuant to paragraph (1) shall include—

(A) conditions for the use of advance payments;

(B) provisions for contract payment terms that provide for—

(i) accelerated payment for work performed during the period for contract performance; and

(ii) full payment for work performed;

(C) guidance on how contracting officers may use, in solicitations for various classes of products or services, a price evaluation preference pursuant to subsection (a)(1)(B), to provide a reasonable advantage to small business concerns owned and controlled by socially and economically disadvantaged individuals without effectively eliminating any participation of other small business concerns; and

(D)(i) procedures for a person to request the head of a Federal agency to determine whether the use of competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals at a contracting activity of such agency has caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity; and

(ii) guidance for limiting the use of such restricted competitions in the case of any contracting activity and class of contracts determined in accordance with such procedures to have caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity.

(c) TERMINATION.—This section shall cease to be effective at the end of September 30, 2000.

SEC. 7103. EXTENSION OF TEST PROGRAM FOR NEGOTIATION OF COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLANS.

Section 834(e) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 15 U.S.C. 637

note) is amended by striking out ''September 30, 1994.'' in the second sentence and inserting in lieu thereof ''September 30, 1998.''.

SEC. 7104. SMALL BUSINESS PROCUREMENT ADVISORY COUNCIL.

(a) ESTABLISHMENT.—There is hereby established an interagency council to be known as the ''Small Business Procurement Advisory Council'' (hereinafter in this section referred to as the ''Council'').

(b) DUTIES.—The duties of the Council are—

(1) to develop positions on proposed procurement regulations affecting the small business community; and

(2) to submit comments reflecting such positions to appropriate regulatory authorities.

(c) MEMBERSHIP.—The Council shall be composed of the following members:

(1) The Administrator of the Small Business Administration (or the designee of the Administrator).

(2) The Director of the Minority Business Development Agency.

(3) The head of each Office of Small and Disadvantaged Business Utilization (established under section 15(k) of the Small Business Act (15 U.S.C. 644(k)) in each Federal agency having procurement powers.

(d) CHAIRMAN.—The Council shall be chaired by the Administrator of the Small Business Administration.

(e) MEETINGS.—The Council shall meet at the call of the chairman as necessary to consider proposed procurement regulations affecting the small business community.

(f) CONSIDERATION OF COUNCIL COMMENTS.—The Federal Acquisition Regulatory Council and other appropriate regulatory authorities shall consider comments submitted in a timely manner pursuant to subsection (b)(2).

SEC. 7105. EXTENSION OF DEFENSE CONTRACT GOAL TO COAST GUARD AND NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.

Section 2323 of title 10, United States Code, is amended to read as follows:

''§ 2323. Contract goal for small disadvantaged businesses and certain institutions of higher education

''(a) GOAL.—(1) Except as provided in subsection (d), a goal of 5 percent of the amount described in subsection (b) shall be the objective of the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration in each fiscal year for the total combined amount obligated for contracts and subcontracts entered into with—

''(A) small business concerns, including mass media and advertising firms, owned and controlled by socially and economically disadvantaged individuals (as such term is used in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and regulations issued under that section), the majority of the earnings of which directly accrue to such individuals;

''(B) historically Black colleges and universities, including any nonprofit research institution that was an integral part of such a college or university before November 14, 1986; and

''(C) minority institutions (as defined in section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)),

which, for the purposes of this section, shall include Hispanic-serving institutions (as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

"(2) The head of the agency shall establish a specific goal within the overall 5 percent goal for the award of prime contracts and subcontracts to historically Black colleges and universities and minority institutions in order to increase the participation of such colleges and universities in the program provided for by this section.

"(3) The Federal Acquisition Regulation (issued under section 25(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)) shall provide procedures or guidelines for contracting officers to set goals which agency prime contractors that are required to submit subcontracting plans under section 8(d)(4)(B) of the Small Business Act (15 U.S.C. 637(d)(4)(B)) in furtherance of the agency's program to meet the 5 percent goal specified in paragraph (1) should meet in awarding subcontracts, including subcontracts to minority-owned media, to entities described in that paragraph.

"(b) AMOUNT.—With respect to the Department of Defense, the requirements of subsection (a) for any fiscal year apply to the combined total of the following amounts:

"(A) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for procurement.

"(B) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for research, development, test, and evaluation.

"(C) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for military construction.

"(D) Funds obligated for contracts entered into with the Department of Defense for operation and maintenance.

"(2) With respect to the Coast Guard, the requirements of subsection (a) for any fiscal year apply to the total value of all prime contract and subcontract awards entered into by the Coast Guard for such fiscal year.

"(3) With respect to the National Aeronautics and Space Administration, the requirements of subsection (a) for any fiscal year apply to the total value of all prime contract and subcontract awards entered into by the National Aeronautics and Space Administration for such fiscal year.

"(c) TYPES OF ASSISTANCE.—(1) To attain the goal specified in subsection (a)(1), the head of an agency shall provide technical assistance to the entities referred to in that subsection and, in the case of historically Black colleges and universities and minority institutions, shall also provide infrastructure assistance.

"(2) Technical assistance provided under this section shall include information about the program, advice about agency procurement procedures, instruction in preparation of proposals, and other such assistance as the head of the agency considers appropriate. If the resources of the agency are inadequate to provide such assistance, the head of the agency may enter into contracts with minority private sector entities with experience and expertise in the design, development, and delivery of technical assistance services to eligible individuals, business firms and institutions, acquisition agencies, and prime contractors. Agency contracts with such entities shall be awarded annually, based upon, among other things, the number of minority small business concerns, historically

Black colleges and universities, and minority institutions that each such entity brings into the program.

"(3) Infrastructure assistance provided by the Department of Defense under this section to historically Black colleges and universities and to minority institutions may include programs to do the following:

"(A) Establish and enhance undergraduate, graduate, and doctoral programs in scientific disciplines critical to the national security functions of the Department of Defense.

"(B) Make Department of Defense personnel available to advise and assist faculty at such colleges and universities in the performance of defense research and in scientific disciplines critical to the national security functions of the Department of Defense.

"(C) Establish partnerships between defense laboratories and historically Black colleges and universities and minority institutions for the purpose of training students in scientific disciplines critical to the national security functions of the Department of Defense.

"(D) Award scholarships, fellowships, and the establishment of cooperative work-education programs in scientific disciplines critical to the national security functions of the Department of Defense.

"(E) Attract and retain faculty involved in scientific disciplines critical to the national security functions of the Department of Defense.

"(F) Equip and renovate laboratories for the performance of defense research.

"(G) Expand and equip Reserve Officer Training Corps activities devoted to scientific disciplines critical to the national security functions of the Department of Defense.

"(H) Provide other assistance as the Secretary determines appropriate to strengthen scientific disciplines critical to the national security functions of the Department of Defense or the college infrastructure to support the performance of defense research.

"(4) The head of the agency shall, to the maximum extent practical, carry out programs under this section at colleges, universities, and institutions that agree to bear a substantial portion of the cost associated with the programs.

"(d) APPLICABILITY.—Subsection (a) does not apply to the Department of Defense—

"(1) to the extent to which the Secretary of Defense determines that compelling national security considerations require otherwise; and

"(2) if the Secretary notifies Congress of such determination and the reasons for such determination.

"(e) COMPETITIVE PROCEDURES AND ADVANCE PAYMENTS.—To attain the goal of subsection (a):

"(1)(A) The head of the agency shall—

"(i) ensure that substantial progress is made in increasing awards of agency contracts to entities described in subsection (a)(1);

"(ii) exercise his utmost authority, resourcefulness, and diligence;

"(iii) in the case of the Department of Defense, actively monitor and assess the progress of the military depart-

ments, Defense Agencies, and prime contractors of the Department of Defense in attaining such goal; and

"(iv) in the case of the Coast Guard and the National Aeronautics and Space Administration, actively monitor and assess the progress of the prime contractors of the agency in attaining such goal.

"(B) In making the assessment under clauses (iii) and (iv) of subparagraph (A), the head of the agency shall evaluate the extent to which use of the authority provided in paragraphs (2) and (3) and compliance with the requirement in paragraph (4) is effective for facilitating the attainment of the goal.

"(2) To the extent practicable and when necessary to facilitate achievement of the 5 percent goal described in subsection (a), the head of an agency shall make advance payments under section 2307 of this title to contractors described in subsection (a). The Federal Acquisition Regulation shall provide guidance to contracting officers for making advance payments to entities described in subsection (a)(1) under such section.

"(3) To the extent practicable and when necessary to facilitate achievement of the 5 percent goal described in subsection (a), the head of an agency may enter into contracts using less than full and open competitive procedures (including awards under section 8(a) of the Small Business Act) and partial set asides for entities described in subsection (a)(1), but shall pay a price not exceeding fair market cost by more than 10 percent in payment per contract to contractors or subcontractors described in subsection (a). The head of an agency shall adjust the percentage specified in the preceding sentence for any industry category if available information clearly indicates that nondisadvantaged small business concerns in such industry category are generally being denied a reasonable opportunity to compete for contracts because of the use of that percentage in the application of this paragraph.

"(4) To the extent practicable, the head of an agency shall maximize the number of minority small business concerns, historically Black colleges and universities, and minority institutions participating in the program.

"(5) Each head of an agency shall prescribe regulations which provide for the following:

"(A) Procedures or guidance for contracting officers to provide incentives for prime contractors referred to in subsection (a)(3) to increase subcontractor awards to entities described in subsection (a)(1).

"(B) A requirement that contracting officers emphasize the award of contracts to entities described in subsection (a)(1) in all industry categories, including those categories in which such entities have not traditionally dominated.

"(C) Guidance to agency personnel on the relationship among the following programs:

"(i) The program implementing this section.

"(ii) The program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

"(iii) The small business set-aside program established under section 15(a) of the Small Business Act (15 U.S.C. 644(a)).

"(D) With respect to an agency procurement which is reasonably likely to be set aside for entities described

in subsection (a)(1), a requirement that (to the maximum extent practicable) the procurement be designated as such a set-aside before the solicitation for the procurement is issued.

"(E) Policies and procedures which, to the maximum extent practicable, will ensure that current levels in the number or dollar value of contracts awarded under the program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and under the small business set-aside program established under section 15(a) of the Small Business Act (15 U.S.C. 644(a)) are maintained and that every effort is made to provide new opportunities for contract awards to eligible entities, in order to meet the goal of subsection (a).

"(F) Implementation of this section in a manner which will not alter the procurement process under the program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

"(G) A requirement that one factor used in evaluating the performance of a contracting officer be the ability of the officer to increase contract awards to entities described in subsection (a)(1).

"(H) Increased technical assistance to entities described in subsection (a)(1).

"(f) PENALTIES AND REGULATIONS RELATING TO STATUS.—(1) Whoever for the purpose of securing a contract or subcontract under subsection (a) misrepresents the status of any concern or person as a small business concern owned and controlled by a minority (as described in subsection (a)), shall be punished by imprisonment for not more than one year, or a fine under title 18, or both.

"(2) The Federal Acquisition Regulation shall prohibit awarding a contract under this section to an entity described in subsection (a)(1) unless the entity agrees to comply with the requirements of section 15(o)(1) of the Small Business Act (15 U.S.C. 644(o)(1)).

"(g) INDUSTRY CATEGORIES.—(1) To the maximum extent practicable, the head of the agency shall—

"(A) ensure that no particular industry category bears a disproportionate share of the contracts awarded to attain the goal established by subsection (a); and

"(B) ensure that contracts awarded to attain the goal established by subsection (a) are made across the broadest possible range of industry categories.

"(2) Under procedures prescribed by the head of the agency, a person may request the Secretary to determine whether the use of small disadvantaged business set asides by a contracting activity of the agency has caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity for the purposes of this section. Upon making a determination that a particular industry category is bearing a disproportionate share, the head of the agency shall take appropriate actions to limit the contracting activity's use of set asides in awarding contracts in that particular industry category.

"(h) COMPLIANCE WITH SUBCONTRACTING PLAN REQUIREMENTS.—(1) The Federal Acquisition Regulation shall contain regulations to ensure that potential contractors submitting sealed bids

or competitive proposals to the agency for procurement contracts to be awarded under the program provided for by this section are complying with applicable subcontracting plan requirements of section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

"(2) The regulations required by paragraph (1) shall ensure that, with respect to a sealed bid or competitive proposal for which the bidder or offeror is required to negotiate or submit a subcontracting plan under section 8(d) of the Small Business Act (15 U.S.C. 637(d)), the subcontracting plan shall be a factor in evaluating the bid or proposal.

"(i) ANNUAL REPORT.—(1) Not later than December 15 of each year, the head of the agency shall submit to Congress a report on the progress of the agency toward attaining the goal of subsection (a) during the preceding fiscal year.

"(2) The report required under paragraph (1) shall include the following:

"(A) A full explanation of any progress toward attaining the goal of subsection (a).

"(B) A plan to achieve the goal, if necessary.

"(3) The report required under paragraph (1) shall also include the following:

"(A) The aggregate differential between the fair market price of all contracts awarded pursuant to subsection (e)(3) and the estimated fair market price of all such contracts had such contracts been entered into using full and open competitive procedures.

"(B) An analysis of the impact that subsection (a) shall have on the ability of small business concerns not owned and controlled by socially and economically disadvantaged individuals to compete for contracts with the agency.

"(C) A description of the percentage of contracts (actions), the total dollar amount (size of action), and the number of different entities relative to the attainment of the goal of subsection (a), separately for Black Americans, Native Americans, Hispanic Americans, Asian Pacific Americans, and other minorities.

"(j) DEFINITIONS.—In this section:

"(1) The term 'agency' means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

"(2) The term 'head of an agency' means the Secretary of Defense, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration.

"(k) EFFECTIVE DATE.—(1) This section applies in the Department of Defense to each of fiscal years 1987 through 2000.

"(2) This section applies in the Coast Guard and the National Aeronautics and Space Administration in each of fiscal years 1995 through 2000.".

SEC. 7106. PROCUREMENT GOALS FOR SMALL BUSINESS CONCERNS OWNED BY WOMEN.

(a) GOALS.—Section 15 of the Small Business Act (15 U.S.C. 644) is amended—

(1) by striking out "and small business concerns owned and controlled by socially and economically disadvantaged individuals" each place it appears in the first sentence and fourth sentences of subsection (g)(1), the second sentence of

subsection (g)(2), and paragraphs (1), (2)(A), (2)(D), and (2)(E) of subsection (h) and inserting in lieu thereof ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women";

(2) in subsection (g)—

(A) by inserting after the third sentence of paragraph (1) the following: "The Government-wide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.";

(B) in the first sentence of paragraph (2), by striking out "and by small business concerns owned and controlled by socially and economically disadvantaged individuals," and inserting in lieu thereof ", by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women"; and

(C) in the fourth sentence of paragraph (2), by inserting after "including participation by small business concerns owned and controlled by socially and economically disadvantaged individuals" the following: "and participation by small business concerns owned and controlled by women"; and

(3) in subsection (h)(2)(F), by striking out "women-owned small business enterprises" and inserting in lieu thereof "small business concerns owned and controlled by women".

(b) SUBCONTRACT PARTICIPATION.—Section 8(d) of such Act (15 U.S.C. 637(d)) is amended—

(1) by striking out "and small business concerns owned and controlled by socially and economically disadvantaged individuals" both places it appears in paragraph (1), both places it appears in paragraph (3)(A), in paragraph (4)(D), in subparagraphs (A), (C), and (F) of paragraph (6), and in paragraph (10)(B) and inserting in lieu thereof ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women";

(2) by striking out subparagraph (D) in paragraph (3) and inserting in lieu thereof the following:

"(E) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.";

(3) in paragraph (3), by inserting after subparagraph (C) the following new subparagraph (D):

"(D) The term 'small business concern owned and controlled by women' shall mean a small business concern—

"(i) which is at least 51 per centum owned by one or more women; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more women; and

"(ii) whose management and daily business operations are controlled by one or more women."; and

(4) in paragraph (4)(E), by inserting "and for small business concerns owned and controlled by women" after "as defined in paragraph (3) of this subsection".

(c) MISREPRESENTATIONS OF STATUS.—(1) Subsection (d)(1) of section 16 of such Act (15 U.S.C. 645) is amended by striking out "or 'small business concern owned and controlled by socially and economically disadvantaged individuals'" and inserting in lieu thereof ", a 'small business concern owned and controlled by socially and economically disadvantaged individuals', or a 'small business concerns owned and controlled by women'".

(2) Subsection (e) of such section is amended by striking out "or 'small business concern owned and controlled by socially and economically disadvantaged individuals'" and inserting in lieu thereof ", a 'small business concern owned and controlled by socially and economically disadvantaged individuals', or a 'small business concerns owned and controlled by women'".

(d) DEFINITION.—Section 3 of such Act (15 U.S.C. 632) is amended by adding at the end the following new subsection:

"(n) For the purposes of this Act, a small business concern is a small business concern owned and controlled by women if—

"(1) at least 51 percent of small business concern is owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

"(2) the management and daily business operations of the business are controlled by one or more women.".

SEC. 7107. DEVELOPMENT OF DEFINITIONS REGARDING CERTAIN SMALL BUSINESS CONCERNS.

(a) REVIEW REQUIRED.—(1) The Administrator for Federal Procurement Policy shall conduct a comprehensive review of Federal laws, as in effect on November 1, 1994, to identify and catalogue all of the provisions in such laws that define (or describe for definitional purposes) the small business concerns set forth in paragraph (2) for purposes of authorizing the participation of such small business concerns as prime contractors or subcontractors in—

(A) contracts awarded directly by the Federal Government or subcontracts awarded under such contracts; or

(B) contracts and subcontracts funded, in whole or in part, by Federal financial assistance under grants, cooperative agreements, or other forms of Federal assistance.

(2) The small business concerns referred to in paragraph (1) are as follows:

(A) Small business concerns owned and controlled by socially and economically disadvantaged individuals.

(B) Minority-owned small business concerns.

(C) Small business concerns owned and controlled by women.

(D) Woman-owned small business concerns.

(b) MATTERS TO BE DEVELOPED.—On the basis of the results of the review carried out under subsection (a), the Administrator for Federal Procurement Policy shall develop—

(1) uniform definitions for the small business concerns referred to in subsection (a)(2);

(2) uniform agency certification standards and procedures for—

(A) determinations of whether a small business concern qualifies as a small business concern referred to in subsection (a)(2) under an applicable standard for purposes of contracts and subcontracts referred to in subsection (a)(1); and

(B) reciprocal recognition by an agency of a decision of another agency regarding whether a small business concern qualifies as a small business concern referred to in subsection (a)(2) for such purposes; and

(3) such other related recommendations as the Administrator determines appropriate consistent with the review results.

(c) PROCEDURES AND SCHEDULE.—(1) The Administrator for Federal Procurement Policy shall provide for the participation in the review and activities under subsections (a) and (b) by representatives of—

(A) the Small Business Administration (including the Office of the Chief Counsel for Advocacy);

(B) the Minority Business Development Agency of the Department of Commerce;

(C) the Department of Transportation;

(D) the Environmental Protection Agency; and

(E) such other executive departments and agencies as the Administrator considers appropriate.

(2) In carrying out subsections (a) and (b), the Administrator shall consult with representatives of organizations representing—

(A) minority-owned business enterprises;

(B) women-owned business enterprises; and

(C) other organizations that the Administrator considers appropriate.

(3) Not later than 60 days after the date of the enactment of this Act, the Administrator shall publish in the Federal Register a notice which—

(A) lists the provisions of law identified in the review carried out under subsection (a);

(B) describes the matters to be developed on the basis of the results of the review pursuant to subsection (b);

(C) solicits public comment regarding the matters described in the notice pursuant to subparagraphs (A) and (B) for a period of not less than 60 days; and

(D) addresses such other matters as the Administrator considers appropriate to ensure the comprehensiveness of the review and activities under subsections (a) and (b).

(d) REPORT.—Not later than May 1, 1996, the Administrator for Federal Procurement Policy shall submit to the Committees on Small Business of the Senate and the House of Representatives a report on the results of the review carried out under subsection (a) and the actions taken under subsection (b). The report shall include a discussion of the results of the review, a description of the consultations conducted and public comments received, and the Administrator's recommendations with regard to the matters identified under subsection (b).

SEC. 7108. FUNCTIONS OF OFFICE OF FEDERAL PROCUREMENT POLICY RELATING TO SMALL BUSINESS.

(a) POLICIES.—Section 6(d) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)) is amended by adding after paragraph (9), as added by section 5091, the following new paragraphs:

"(10) developing policies, in consultation with the Administrator of the Small Business Administration, that ensure that small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women are provided with the maximum practicable opportunities to participate in procurements that are conducted for amounts below the simplified acquisition threshold;

"(11) developing policies that will promote achievement of goals for participation by small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, and small business owned and controlled by women; and".

(b) EDUCATION AND TRAINING.—Section 6(d)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(5)) is amended—

(1) by striking out "and" at the end of subparagraph (A);

(2) by striking out the semicolon at the end of subparagraph (B) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new subparagraph:

"(C) establish policies and procedures for the establishment and implementation of education and training programs authorized by this Act, including the establishment and implementation of training, in conjunction with the General Services Administration, for critical procurement personnel designed to increase the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals, women, and other minorities in procurement activities conducted by an executive agency.".

Subtitle B—Socioeconomic Laws

SEC. 7201. ACQUISITIONS GENERALLY.

The Act of June 30, 1936 (41 U.S.C. 35 et seq.), commonly referred to as the "Walsh-Healey Act", is amended—

(1) in the first section, by striking out subsection (a) and redesignating subsections (b), (c), (d), and (e), as subsections (a), (b), (c), and (d), respectively;

(2) in section 10(b) by striking out "manufacturer of, or regular dealer in," and inserting in lieu thereof "supplier of";

(3) in section 10(c) by striking out " 'regular dealer', 'manufacturer',"; and

(4) by adding at the end the following new sections:

"SEC. 11. (a) The Secretary of Labor may prescribe in regulations the standards for determining whether a contractor is a manufacturer of or a regular dealer in materials, supplies, articles, or equipment to be manufactured or used in the performance of a contract entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all

the stock of which is beneficially owned by the United States, for the manufacture or furnishing of materials, supplies, articles, and equipment.

"(b) Any interested person shall have the right of judicial review of any legal question regarding the interpretation of the terms 'regular dealer' and 'manufacturer', as defined pursuant to subsection (a).".

SEC. 7202. PROHIBITION ON USE OF FUNDS FOR DOCUMENTING ECONOMIC OR EMPLOYMENT IMPACT OF CERTAIN ACQUISITION PROGRAMS.

(a) REVISION AND CODIFICATION.—(1) Subchapter I of chapter 134 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2247. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs

"No funds appropriated by the Congress may be obligated or expended to assist any contractor of the Department of Defense in preparing any material, report, lists, or analysis with respect to the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed.".

(2) The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

"2247. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.".

(b) REPEAL OF SUPERSEDED LAW.—Section 9048 of Public Law 102–396 (106 Stat. 1913) is repealed.

SEC. 7203. MERIT-BASED AWARD OF CONTRACTS AND GRANTS.

(a) ARMED SERVICES ACQUISITIONS.—(1) Section 2304 of title 10, United States Code, as amended by section 1005, is further amended—

(A) in subsection (c)(5), by inserting "subject to subsection (j)," after "(5)"; and

(B) by adding at the end the following new subsection:

"(j)(1) It is the policy of Congress that an agency named in section 2303(a) of this title should not be required by legislation to award a new contract to a specific non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be procured through merit-based selection procedures.

"(2) A provision of law may not be construed as requiring a new contract to be awarded to a specified non-Federal Government entity unless that provision of law—

"(A) specifically refers to this subsection;

"(B) specifically identifies the particular non-Federal Government entity involved; and

"(C) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in paragraph (1).

"(3) For purposes of this subsection, a contract is a new contract unless the work provided for in the contract is a continuation

of the work performed by the specified entity under a preceding contract.

"(4) This subsection shall not apply with respect to any contract that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 2303(a) of this title and to report on such matters to the Congress or any agency of the Federal Government.".

(2) Chapter 139 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2374. Merit-based award of grants for research and development

"(a) It is the policy of Congress that an agency named in section 2303(a) of this title should not be required by legislation to award a new grant for research, development, test, or evaluation to a non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be awarded through merit-based selection procedures.

"(b) A provision of law may not be construed as requiring a new grant to be awarded to a specified non-Federal Government entity unless that provision of law—

"(1) specifically refers to this subsection;

"(2) specifically identifies the particular non-Federal Government entity involved; and

"(3) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in subsection (a).

"(c) For purposes of this section, a grant is a new grant unless the work provided for in the grant is a continuation of the work performed by the specified entity under a preceding grant.

"(d) This section shall not apply with respect to any grant that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 2303(a) of this title and to report on such matters to the Congress or any agency of the Federal Government.".

(3) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2374. Merit-based award of grants for research and development.".

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

(A) in subsection (c)(5), by inserting "subject to subsection (h)," after "(5)"; and

(B) by adding at the end the following new subsection:

"(h)(1) It is the policy of Congress that an executive agency should not be required by legislation to award a new contract to a specific non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be procured through merit-based selection procedures.

"(2) A provision of law may not be construed as requiring a new contract to be awarded to a specified non-Federal Government entity unless that provision of law—

"(A) specifically refers to this subsection;

"(B) specifically identifies the particular non-Federal Government entity involved; and

"(C) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in paragraph (1).

"(3) For purposes of this subsection, a contract is a new contract unless the work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract.

"(4) This subsection shall not apply with respect to any contract that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an executive agency and to report on such matters to the Congress or any agency of the Federal Government.".

(2) Title III of such Act, as amended by section 6006, is further amended by adding at the end the following new section:

"SEC. 316. MERIT-BASED AWARD OF GRANTS FOR RESEARCH AND DEVELOPMENT

"(a) POLICY.—It is the policy of Congress that an executive agency should not be required by legislation to award a new grant for research, development, test, or evaluation to a non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be awarded through merit-based selection procedures.

"(b) RULE OF CONSTRUCTION.—A provision of law may not be construed as requiring a new grant to be awarded to a specified non-Federal Government entity unless that provision of law—

"(1) specifically refers to this subsection;

"(2) specifically identifies the particular non-Federal Government entity involved; and

"(3) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in subsection (a).

"(c) NEW GRANT DEFINED.—For purposes of this section, a grant is a new grant unless the work provided for in the grant is a continuation of the work performed by the specified entity under a preceding grant.

"(d) INAPPLICABILITY TO CERTAIN GRANTS.—This section shall not apply with respect to any grant that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an executive agency and to report on such matters to Congress or any agency of the Federal Government.".

SEC. 7204. MAXIMUM PRACTICABLE OPPORTUNITIES FOR APPRENTICES ON FEDERAL CONSTRUCTION PROJECTS.

It is the sense of the House of Representatives that—

(1) contractors performing Federal construction contracts should, to the maximum extent practicable, give preference in the selection of subcontractors to subcontractors participating in apprenticeship programs registered with the Department of Labor or with a State apprenticeship agency recognized by such Department; and

(2) contractors and subcontractors performing Federal construction contracts should provide maximum practicable opportunities for employment of apprentices who are participating in or who have completed such apprenticeship programs.

SEC. 7205. REPEAL OF OBSOLETE PROVISION.

Section 308 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 258) is repealed.

SEC. 7206. REPEAL OF OBSOLETE AND REDUNDANT PROVISIONS OF LAW.

(a) REPEAL OF REQUIREMENT FOR POLICY GUIDANCE.—Title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the "Buy American Act", is amended in section 4(g) (41 U.S.C. 10b–1(g)) by striking out paragraphs (2)(C) and (3).

(b) REPEAL OF REPORTING REQUIREMENT.—Section 9096(b) of Public Law 102–396 (106 Stat. 1924; 41 U.S.C. 10b–2(b)) is repealed.

(c) REPEAL OF STUDIES OF WAIVERS.—Section 306 of the Trade Agreements Act of 1979 (19 U.S.C. 2516) is repealed.

Subtitle C—Waiver of Application of Prevailing Wage-Setting Requirements to Volunteers

SEC. 7301. SHORT TITLE.

This subtitle may be cited as the "Community Improvement Volunteer Act of 1994".

SEC. 7302. PURPOSE.

It is the purpose of this subtitle to promote and provide opportunities for people who wish to volunteer their services to State or local governments, public agencies, or nonprofit charitable organizations in the construction, repair or alteration (including painting and decorating) of public buildings and public works that are funded, in whole or in part, with Federal financial assistance authorized under certain Federal programs and that might not otherwise be possible without the use of volunteers.

SEC. 7303. WAIVER FOR INDIVIDUALS WHO PERFORM VOLUNTEER SERVICES FOR PUBLIC ENTITIES.

(a) IN GENERAL.—The requirement that certain laborers and mechanics be paid in accordance with the wage-setting provisions of the Act of March 3, 1931 (commonly known as the "Davis-Bacon Act") (40 U.S.C. 276a et seq.) as set forth in any of the Acts or provisions described in section 7305 shall not apply to an individual—

(1) who volunteers—

(A) to perform a service directly to a State or local government or a public agency for civic, charitable, or humanitarian reasons, without promise, expectation, or receipt of compensation for services rendered, other than expenses, reasonable benefits, or a nominal fee (as defined in subsection (b)), but solely for the personal purpose or pleasure of the individual; and

(B) to provide such services freely and without pressure or coercion, direct or implied, from any employer;

(2) whose contribution of service is not for the direct or indirect benefit of any contractor otherwise performing or seeking to perform work on the same project for which the individual is volunteering;

(3) who is not employed by and does not provide services to a contractor or subcontractor at any time on the federally assisted or insured project for which the individual is volunteering; and

(4) who is not otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.

(b) EXPENSES.—Payments of expenses, reasonable benefits, or a nominal fee may be provided to volunteers described in subsection (a) only in accordance with regulations issued by the Secretary of Labor. In prescribing the regulations, the Secretary shall take into consideration criteria such as the total amount of payments made (relating to expenses, benefits, or fees) in the context of the economic realities. The regulations shall include provisions that provide that—

(1) a payment for an expense may be received by a volunteer for items such as uniform allowances, protective gear and clothing, reimbursement for approximate out-of-pocket expenses, or for the cost or expense of meals and transportation;

(2) a reasonable benefit may include the inclusion of a volunteer in a group insurance plan (such as a liability, health, life, disability, or worker's compensation plan) or pension plan, or the awarding of a length of service award; and

(3) a nominal fee may not be used as a substitute for compensation and may not be connected to productivity.

The decision as to what constitutes a nominal fee for purposes of paragraph (3) shall be determined based on the context of the economic realities of the situation involved and shall be made by the Secretary of Labor.

(c) ECONOMIC REALITY.—For purposes of subsection (b), in determining whether an expense, benefit, or fee described in such subsection may be paid to volunteers in the context of the economic realities of the particular situation, the Secretary of Labor may not permit any such expense, benefit, or fee that has the effect of undermining labor standards by creating downward pressure on prevailing wages in the local construction industry.

SEC. 7304. WAIVER FOR INDIVIDUALS WHO PERFORM VOLUNTEER SERVICES FOR NONPROFIT ENTITIES.

The requirement that certain laborers and mechanics be paid in accordance with the wage-setting provisions of the Act of March 3, 1931 (commonly known as the "Davis-Bacon Act") (40 U.S.C. 276a et seq.) as set forth in any of the Acts or provisions described in section 7305 shall not apply to any individual—

(1) who volunteers—

(A) to perform a service directly to a public or private nonprofit recipient of Federal assistance for civic, charitable, or humanitarian reasons, without promise, expectation, or receipt of compensation for services rendered, but solely for the personal purpose or pleasure of the individual; and

(B) to provide such services freely and without pressure or coercion, direct or implied, from any employer;

(2) whose contribution of service is not for the direct or indirect benefit of any contractor otherwise performing or seeking to perform work on the same project for which the individual is volunteering;

(3) who is not employed by and does not provide services to a contractor or subcontractor at any time on the federally assisted or insured project for which the individual is volunteering; and

(4) who is not otherwise employed by the recipient of Federal assistance to perform the same type of services as those for which the individual proposes to volunteer.

SEC. 7305. CONTRACTS AFFECTED.

For purposes of sections 7303 and 7304, the Acts or provisions described in this section are—

(1) the Library Services and Construction Act (20 U.S.C. 351 et seq.);

(2) the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.);

(3) section 329 of the Public Health Service Act (42 U.S.C. 254b);

(4) section 330 of the Public Health Service Act (42 U.S.C. 254c);

(5) the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.); and

(6) the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.).

SEC. 7306. REPORT.

Not later than December 31, 1997, the Secretary of Labor shall prepare and submit to the appropriate committees of Congress a report that—

(1) to the maximum extent practicable—

(A) identifies and assesses the barriers that prevent private for-profit entities from using volunteers permitted under this subtitle; and

(B) assesses whether private for-profit entities should be permitted to use volunteers on projects relating to the construction, repair, or alteration of public buildings and public works if—

(i) such volunteers are performing services for civic, charitable, humanitarian or educational reasons;

(ii) the contribution of such services is not for the direct or indirect benefit of the private for-profit entity that is performing or seeking to perform work on such projects; and

(iii) such projects would not otherwise be possible without the use of volunteers; and

(2) contains recommendations with respect to other Acts related to the Davis-Bacon Act that may be considered in legislation to permit volunteer work.

TITLE VIII—COMMERCIAL ITEMS

Subtitle A—Definitions and Regulations

SEC. 8001. DEFINITIONS.

(a) DEFINITIONS.—Section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403) is amended by adding at the end the following new paragraphs:

"(12) The term 'commercial item' means any of the following:

"(A) Any item, other than real property, that is of a type customarily used by the general public or by nongovernmental entities for purposes other than governmental purposes, and that—

"(i) has been sold, leased, or licensed to the general public; or

"(ii) has been offered for sale, lease, or license to the general public.

"(B) Any item that evolved from an item described in subparagraph (A) through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Federal Government solicitation.

"(C) Any item that, but for—

"(i) modifications of a type customarily available in the commercial marketplace, or

"(ii) minor modifications made to meet Federal Government requirements,

would satisfy the criteria in subparagraph (A) or (B).

"(D) Any combination of items meeting the requirements of subparagraph (A), (B), (C), or (E) that are of a type customarily combined and sold in combination to the general public.

"(E) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in subparagraph (A), (B), (C), or (D) and if the source of such services—

"(i) offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

"(ii) offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public.

"(F) Services offered and sold competitively, in substantial quantities, in the commercial marketplace based on established catalog prices for specific tasks performed and under standard commercial terms and conditions.

"(G) Any item, combination of items, or service referred to in subparagraphs (A) through (F) notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.

"(H) A nondevelopmental item, if the procuring agency determines, in accordance with conditions set forth in the Federal Acquisition Regulation, that the item was developed exclusively at private expense and has been sold in substantial quantities, on a competitive basis, to multiple State and local governments.

"(13) The term 'nondevelopmental item' means any of the following:

"(A) Any commercial item.

"(B) Any previously developed item of supply that is in use by a department or agency of the United States, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement.

"(C) Any item of supply described in subparagraph (A) or (B) that requires only minor modification or modification of the type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency.

"(D) Any item of supply currently being produced that does not meet the requirements of subparagraph (A), (B), or (C) solely because the item is not yet in use.

"(14) The term 'component' means any item supplied to the Federal Government as part of an end item or of another component.

"(15) The term 'commercial component' means any component that is a commercial item.".

(b) STYLISTIC AMENDMENTS.—Such section is further amended—

(1) by striking out "Act—" in the matter preceding paragraph (1) and inserting in lieu thereof "Act:";

(2) by capitalizing the first letter of the first word in each of paragraphs (1) through (11);

(3) by striking out the semicolon at the end of each of paragraphs (1), (2), (3), (5), (6), (7), (8), and (9) and inserting in lieu thereof a period; and

(4) by striking out "; and" at the end of paragraphs (4) and (10) and inserting in lieu thereof a period.

SEC. 8002. REGULATIONS ON ACQUISITION OF COMMERCIAL ITEMS.

(a) IN GENERAL.—The Federal Acquisition Regulation shall provide regulations to implement paragraphs (12) through (15) of section 4 of the Office of Federal Procurement Policy Act, chapter 140 of title 10, United States Code, and sections 314 through 314B of the Federal Property and Administrative Services Act of 1949.

(b) CONTRACT CLAUSES.—(1) The regulations prescribed under subsection (a) shall contain a list of contract clauses to be included in contracts for the acquisition of commercial end items. Such list shall, to the maximum extent practicable, include only those contract clauses—

(A) that are required to implement provisions of law or executive orders applicable to acquisitions of commercial items or commercial components, as the case may be; or

(B) that are determined to be consistent with standard commercial practice.

(2) Such regulations shall provide that a prime contractor shall not be required by the Federal Government to apply to any of its divisions, subsidiaries, affiliates, subcontractors, or suppliers that are furnishing commercial items any contract clause except those—

(A) that are required to implement provisions of law or executive orders applicable to subcontractors furnishing commercial items or commercial components, as the case may be; or

(B) that are determined to be consistent with standard commercial practice.

(3) To the maximum extent practicable, only the contract clauses listed pursuant to paragraph (1) may be used in a contract, and only the contract clauses referred to in paragraph (2) may be required to be used in a subcontract, for the acquisition of commercial items or commercial components by or for an executive agency.

(4) The Federal Acquisition Regulation shall provide standards and procedures for waiving the use of contract clauses required pursuant to paragraph (1), other than those required by law, including standards for determining the cases in which a waiver is appropriate.

(5) For purposes of this subsection, the term ''subcontract'' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(c) MARKET ACCEPTANCE.—(1) The Federal Acquisition Regulation shall provide that under appropriate conditions the head of an executive agency may require offerors to demonstrate that the items offered—

(A) have either—

(i) achieved commercial market acceptance; or

(ii) been satisfactorily supplied to an executive agency under current or recent contracts for the same or similar requirements; and

(B) otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation relating to the contract.

(2) The Federal Acquisition Regulation shall provide guidance to ensure that the criteria for determining commercial market acceptance include the consideration of—

(A) the minimum needs of the executive agency concerned; and

(B) the entire relevant commercial market, including small businesses.

(d) USE OF FIRM, FIXED PRICE CONTRACTS.—The Federal Acquisition Regulation shall include, for acquisitions of commercial items—

(1) a requirement that firm, fixed price contracts or fixed price with economic price adjustment contracts be used to the maximum extent practicable; and

(2) a prohibition on use of cost type contracts.

(e) CONTRACT QUALITY REQUIREMENTS.—The regulations prescribed under subsection (a) shall include provisions that—

(1) permit, to the maximum extent practicable, a contractor under a commercial items acquisition to use the existing quality assurance system of the contractor as a substitute for compliance with an otherwise applicable requirement for the Government to inspect or test the commercial items before the contractor's tender of those items for acceptance by the Government;

(2) require that, to the maximum extent practicable, the executive agency take advantage of warranties (including extended warranties) offered by offerors of commercial items and use such warranties for the repair and replacement of commercial items; and

(3) set forth guidance regarding the use of past performance of commercial items and sources as a factor in contract award decisions.

(f) DEFENSE CONTRACT CLAUSES.—(1) Section 824(b) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 10 U.S.C. 2325 note) shall cease to be effective on the date on which the regulations implementing this section become effective.

(2) Notwithstanding subsection (b), a contract of the Department of Defense entered into before the date on which section 824(b) ceases to be effective under paragraph (1), and a subcontract entered into before such date under such a contract, may include clauses developed pursuant to paragraphs (2) and (3) of section 824(b) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 10 U.S.C. 2325 note).

SEC. 8003. LIST OF INAPPLICABLE LAWS IN FEDERAL ACQUISITION REGULATION.

(a) LIST.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), is amended by adding after section 33, as added by section 4101, the following new section:

"SEC. 34. LIST OF LAWS INAPPLICABLE TO PROCUREMENTS OF COMMERCIAL ITEMS IN FEDERAL ACQUISITION REGULATION.

"(a) LIST OF INAPPLICABLE PROVISIONS OF LAW.—(1) The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts for the procurement of commercial items. A provision of law that is properly included on the list pursuant to paragraph (2) may not be construed as applicable to purchases of commercial items by an executive agency. Nothing in this section shall be construed to render inapplicable to contracts for the procurement of commercial items any provision of law that is not included on such list.

"(2) A provision of law described in subsection (c) that is enacted after the date of the enactment of the Federal Acquisition Streamlining Act of 1994 shall be included on the list of inapplicable provisions of law required by paragraph (1), unless the Federal Acquisition Regulatory Council makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of commercial items from the applicability of the provision.

"(b) SUBCONTRACTS.—(1) The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to subcontracts under either a contract for the procurement of commercial items or a subcontract for the procurement of commercial items. A provision of law that is properly included on the list pursuant to paragraph (2) may not be construed as applicable to such subcontracts. Nothing in this section shall be construed to render inapplicable to subcontracts under a contract for the procurement of commercial items any provision of law that is not included on such list.

"(2) A provision of law described in subsection (c) shall be included on the list of inapplicable provisions of law required by paragraph (1) unless the Federal Acquisition Regulatory Council makes a written determination that it would not be in the best interest of the Federal Government to exempt subcontracts under

a contract for the procurement of commercial items from the applicability of the provision.

"(3) Nothing in this subsection shall be construed to authorize the waiver of the applicability of any provision of law with respect to any subcontract under a contract with a prime contractor reselling or distributing commercial items of another contractor without adding value.

"(4) In this subsection, the term 'subcontract' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

"(c) COVERED LAW.—A provision of law referred to in subsections (a)(2) and (b) is any provision of law that, as determined by the Federal Acquisition Regulatory Council, sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law that—

"(1) provides for criminal or civil penalties; or

"(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts for the procurement of commercial items.

"(d) PETITION.—In the event that a provision of law described in subsection (c) is not included on the list of inapplicable provisions of law as required by subsection (a) or (b), and no written determination has been made by the Federal Acquisition Regulatory Council pursuant to subsection (a)(2) or (b)(2), a person may petition the Administrator for Federal Procurement Policy to take appropriate action. The Administrator shall revise the Federal Acquisition Regulation to include the provision on the list of inapplicable provisions of law unless the Federal Acquisition Regulatory Council makes a determination pursuant to subsection (a)(2) or (b)(2) within 60 days after the date on which the petition is received.".

(b) EFFECTIVE DATE OF PETITION PROVISION.—No petition may be filed under section 34(d) of the Office of Federal Procurement Policy Act, as added by subsection (a), until after the date occurring 6 months after the date of the enactment of this Act.

Subtitle B—Armed Services Acquisitions

SEC. 8101. ESTABLISHMENT OF NEW CHAPTER IN TITLE 10.

(a) ESTABLISHMENT.—Part IV of subtitle A of title 10, United States Code, is amended by inserting after chapter 139 the following new chapter 140:

"CHAPTER 140—PROCUREMENT OF COMMERCIAL ITEMS

(b) CLERICAL AMENDMENT.—The tables of chapters at the beginning of subtitle A of title 10, United States Code, and the beginning of part IV of such subtitle are amended by inserting after the item relating to chapter 139 the following new item:

SEC. 8102. RELATIONSHIP TO OTHER PROVISIONS OF LAW.

Chapter 140 of title 10, United States Code, as added by section 8101, is amended by adding after the table of sections the following:

"§ 2375. Relationship of commercial item provisions to other provisions of law

"(a) APPLICABILITY OF TITLE.—Unless otherwise specifically provided, nothing in this chapter shall be construed as providing that any other provision of this title relating to procurement is inapplicable to the procurement of commercial items.

"(b) LIST OF LAWS INAPPLICABLE TO CONTRACTS FOR THE ACQUISITION OF COMMERCIAL ITEMS.—No contract for the procurement of a commercial item entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation (pursuant to section 34 of the Office of Federal Procurement Policy Act).

"(c) CROSS REFERENCE TO EXCEPTION TO COST OR PRICING DATA REQUIREMENTS FOR COMMERCIAL ITEMS.—For provisions relating to exceptions for requirements for cost or pricing data for contracts for the procurement of commercial items, see section 2306a(d) of this title.".

SEC. 8103. DEFINITIONS.

Chapter 140 of title 10, United States Code, as amended by section 8102, is further amended by adding after section 2375 the following new section:

"§ 2376. Definitions

"In this chapter:

"(1) The terms 'commercial item', 'nondevelopmental item', 'component', and 'commercial component' have the meanings provided in section 4 of the Office of Federal Procurement Policy Act.

"(2) The term 'head of an agency' means the Secretary of Defense, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration.

"(3) The term 'agency' means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.".

SEC. 8104. PREFERENCE FOR ACQUISITION OF COMMERCIAL ITEMS.

(a) IN GENERAL.—Chapter 140 of title 10, United States Code, as amended by section 8103, is further amended by adding after section 2376 the following new section:

"§ 2377. Preference for acquisition of commercial items

"(a) PREFERENCE.—The head of an agency shall ensure that, to the maximum extent practicable—

"(1) requirements of the agency with respect to a procurement of supplies or services are stated in terms of—

"(A) functions to be performed;

"(B) performance required; or

"(C) essential physical characteristics;

"(2) such requirements are defined so that commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items, may be procured to fulfill such requirements; and

"(3) offerors of commercial items and nondevelopmental items other than commercial items are provided an opportunity to compete in any procurement to fill such requirements.

"(b) IMPLEMENTATION.—The head of an agency shall ensure that procurement officials in that agency, to the maximum extent practicable—

"(1) acquire commercial items or nondevelopmental items other than commercial items to meet the needs of the agency;

"(2) require prime contractors and subcontractors at all levels under the agency contracts to incorporate commercial items or nondevelopmental items other than commercial items as components of items supplied to the agency;

"(3) modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items;

"(4) state specifications in terms that enable and encourage bidders and offerors to supply commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items in response to the agency solicitations;

"(5) revise the agency's procurement policies, practices, and procedures not required by law to reduce any impediments in those policies, practices, and procedures to the acquisition of commercial items; and

"(6) require training of appropriate personnel in the acquisition of commercial items.

"(c) PRELIMINARY MARKET RESEARCH.—(1) The head of an agency shall conduct market research appropriate to the circumstances—

"(A) before developing new specifications for a procurement by that agency; and

"(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold.

"(2) The head of an agency shall use the results of market research to determine whether there are commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items available that—

"(A) meet the agency's requirements;

"(B) could be modified to meet the agency's requirements; or

"(C) could meet the agency's requirements if those requirements were modified to a reasonable extent.

"(3) In conducting market research, the head of an agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2).".

(b) REPEAL OF SUPERSEDED PROVISION.—(1) Section 2325 of title 10, United States Code, is repealed.

(2) The table of sections at the beginning of chapter 137 of such title is amended by striking out the item relating to section 2325.

SEC. 8105. INAPPLICABILITY OF CERTAIN PROVISIONS OF LAW.

(a) INAPPLICABILITY OF REQUIREMENT FOR CONTRACT CLAUSE REGARDING CONTINGENT FEES.—Section 2306(b) of title 10, United States Code, as amended by section 4102(b), is further amended by inserting before the period at the end of the sentence added by that section the following: "or to a contract for the acquisition of commercial items".

(b) INAPPLICABILITY OF REQUIREMENT TO IDENTIFY SUPPLIERS AND SOURCES OF SUPPLIES.—Paragraph (2) of section 2384(b) of title 10, United States Code, is amended to read as follows:

"(2) The regulations prescribed pursuant to paragraph (1) do not apply to a contract that requires the delivery of supplies that are commercial items, as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).".

(c) INAPPLICABILITY OF PROHIBITION AGAINST DOING BUSINESS WITH CERTAIN OFFERORS OR CONTRACTORS.—Section 2393(d) of title 10, United States Code, as amended by section 4102(e), is further amended by adding at the end the following: "The requirement shall not apply in the case of a subcontract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).".

(d) REPORTS BY EMPLOYEES OR FORMER EMPLOYEES OF DEFENSE CONTRACTORS.—Section 2397(a)(1) of title 10, United States Code, as amended by section 4401(d), is further amended by adding at the end the following: "The term does not include a contract for the purchase of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).".

(e) LIMITS ON EMPLOYMENT FOR CERTAIN FORMER DOD OFFICIALS.—Section 2397b(f) of title 10, United States Code, is amended in paragraph (2)(B)—

(A) by striking out "or" at the end of clause (i);

(B) by striking out the period at the end of clause (ii) and inserting in lieu thereof "; or"; and

(C) by adding at the end the following new clause:

"(iii) any person who contracts to supply the Department of Defense only commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))".

(f) DEFENSE CONTRACTOR REQUIREMENTS CONCERNING FORMER DOD OFFICIALS.—Section 2397c of title 10, United States Code, is amended by adding at the end the following:

"(e) This section does not apply to contracts for the purchase of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).".

(g) INAPPLICABILITY OF PROHIBITION ON LIMITATION OF SUBCONTRACTOR DIRECT SALES.—Section 2402 of title 10, United States Code, as amended by section 4102(f), is further amended by adding at the end the following new subsection:

"(d)(1) An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under such contract that restricts sales by such subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the United States in violation of the provision included in such contract pursuant to subsection (a) if the agreement does not result in the United States being treated differently with regard to the restriction than

any other prospective purchaser of such commercial items from that subcontractor.

"(2) In paragraph (1), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))."

(h) INAPPLICABILITY OF PROHIBITION ON PERSONS CONVICTED OF DEFENSE-RELATED FELONIES.—Paragraph (4) of section 2408(a) of title 10, United States Code, as added by section 4102(g), is amended—

(1) by inserting after subparagraph (A) the following:

"(B) A contract referred to in such subparagraph that is for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))."; and

(2) by inserting "or (B)" before the period at the end of subparagraph (C).

(i) INAPPLICABILITY OF CONTRACTOR INVENTORY ACCOUNTING SYSTEM STANDARDS.—Section 2410b of title 10, United States Code, is amended by adding after subsection (b), as added by section 4102(h), the following:

"(c) The regulations prescribed pursuant to subsection (a) shall not apply to a contract for the purchase of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))."

(j) INAPPLICABILITY OF REPORTING REQUIREMENT REGARDING DEALINGS WITH TERRORIST COUNTRIES.—Section 843(a) of Public Law 103–160 (107 Stat. 1720) is amended by adding at the end the following:

"(3) This section does not apply with respect to a contract for the procurement of a commercial item (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))."

(k) AMENDMENTS TO ARMED SERVICES PROVISION.—Section 806 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190; 10 U.S.C. 2301 note) is amended by striking out subsection (b) and inserting in lieu thereof the following:

"(b) INAPPLICABILITY TO CERTAIN CONTRACTS.—Regulations prescribed under this section shall not apply to a contract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act)."

SEC. 8106. PRESUMPTION THAT TECHNICAL DATA UNDER CONTRACTS FOR COMMERCIAL ITEMS ARE DEVELOPED EXCLUSIVELY AT PRIVATE EXPENSE.

(a) REGULATIONS REQUIRED TO INCLUDE PRESUMPTION OF DEVELOPMENT AT PRIVATE EXPENSE.—Paragraph (1) of section 2320(b) of title 10, United States Code, is amended by inserting before the semicolon at the end the following: "and providing that, in the case of a contract for a commercial item, the item shall be presumed to be developed at private expense unless shown otherwise in accordance with section 2321(f)".

(b) ASSERTION OF RESTRICTION PRESUMED JUSTIFIED.—Section 2321 of title 10, United States Code, is amended—

(1) by redesignating subsections (f), (g), (h), and (i) as subsections (g), (h), (i), and (j); and

(2) by inserting after subsection (e) the following new subsection:

"(f) PRESUMPTION OF DEVELOPMENT EXCLUSIVELY AT PRIVATE EXPENSE FOR COMMERCIAL ITEMS CONTRACTS.—In the case of a challenge to a use or release restriction that is asserted with respect to technical data of a contractor or subcontractor under a contract for commercial items, the contracting officer shall presume that the contractor or subcontractor has justified the restriction on the basis that the item was developed exclusively at private expense, whether or not the contractor or subcontractor submits a justification in response to the notice provided pursuant to subsection (d)(3). In such a case, the challenge to the use or release restriction may be sustained only if information provided by the Department of Defense demonstrates that the item was not developed exclusively at private expense.".

Subtitle C—Civilian Agency Acquisitions

SEC. 8201. RELATIONSHIP TO OTHER PROVISIONS OF LAW.

Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 5051(a), is further amended by adding after section 313 the following new section:

"SEC. 314. RELATIONSHIP OF COMMERCIAL ITEM PROVISIONS TO OTHER PROVISIONS OF LAW.

"(a) APPLICABILITY OF TITLE.—Unless otherwise specifically provided, nothing in this section, section 314A, or section 314B shall be construed as providing that any other provision of this title relating to procurement is inapplicable to the procurement of commercial items.

"(b) LIST OF LAWS INAPPLICABLE TO CONTRACTS FOR THE ACQUISITION OF COMMERCIAL ITEMS.—No contract for the procurement of a commercial item entered into by the head of an executive agency shall be subject to any law properly listed in the Federal Acquisition Regulation (pursuant to section 34 of the Office of Federal Procurement Policy Act).".

SEC. 8202. DEFINITIONS.

Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 8201, is further amended by adding after section 314 the following new section:

"SEC. 314A. DEFINITIONS.

"As used in this title, the terms 'commercial item', 'nondevelopmental item', 'component', and 'commercial component' have the meanings provided in section 4 of the Office of Federal Procurement Policy Act.".

SEC. 8203. PREFERENCE FOR ACQUISITION OF COMMERCIAL ITEMS.

Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 8202, is further amended by adding after section 314A the following new section:

"SEC. 314B. PREFERENCE FOR ACQUISITION OF COMMERCIAL ITEMS.

"(a) PREFERENCE.—The head of each executive agency shall ensure that, to the maximum extent practicable—

"(1) requirements of the executive agency with respect to a procurement of supplies or services are stated in terms of—

"(A) functions to be performed;

"(B) performance required; or

"(C) essential physical characteristics;

"(2) such requirements are defined so that commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available, nondevelopmental items other than commercial items, may be procured to fulfill such requirements; and

"(3) offerors of commercial items and nondevelopmental items other than commercial items are provided an opportunity to compete in any procurement to fill such requirements.

"(b) IMPLEMENTATION.—The head of each executive agency shall ensure that procurement officials in that executive agency, to the maximum extent practicable—

"(1) acquire commercial items or nondevelopmental items other than commercial items to meet the needs of the executive agency;

"(2) require prime contractors and subcontractors at all levels under the executive agency contracts to incorporate commercial items or nondevelopmental items other than commercial items as components of items supplied to the executive agency;

"(3) modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available, nondevelopmental items other than commercial items;

"(4) state specifications in terms that enable and encourage bidders and offerors to supply commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available, nondevelopmental items other than commercial items in response to the executive agency solicitations;

"(5) revise the executive agency's procurement policies, practices, and procedures not required by law to reduce any impediments in those policies, practices, and procedures to the acquisition of commercial items; and

"(6) require training of appropriate personnel in the acquisition of commercial items.

"(c) PRELIMINARY MARKET RESEARCH.—(1) The head of an executive agency shall conduct market research appropriate to the circumstances—

"(A) before developing new specifications for a procurement by that executive agency; and

"(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold.

"(2) The head of an executive agency shall use the results of market research to determine whether there are commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available, nondevelopmental items other than commercial items available that—

"(A) meet the executive agency's requirements;

"(B) could be modified to meet the executive agency's requirements; or

"(C) could meet the executive agency's requirements if those requirements were modified to a reasonable extent.

"(3) In conducting market research, the head of an executive agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2).".

SEC. 8204. INAPPLICABILITY OF CERTAIN PROVISIONS OF LAW.

(a) INAPPLICABILITY OF PROHIBITION ON LIMITING SUBCONTRACTOR DIRECT SALES TO THE UNITED STATES.—Section 303G of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253g), as amended by section 4103(b), is further amended by adding at the end the following new subsection:

"(d) An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under such contract that restricts sales by such subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the United States in violation of the provision included in such contract pursuant to subsection (a) if the agreement does not result in the Federal Government being treated differently with regard to the restriction than any other prospective purchaser of such commercial items from that subcontractor.".

(b) INAPPLICABILITY OF REQUIREMENT FOR CONTRACT CLAUSE REGARDING CONTINGENT FEES.—Section 304(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a)), as amended by section 4103(c), is further amended by inserting before the period at the end of the sentence added by section 4103(c) the following: "or to a contract for the acquisition of commercial items".

Subtitle D—Acquisitions Generally

SEC. 8301. INAPPLICABILITY OF CERTAIN PROVISIONS OF LAW.

(a) FEDERAL WATER POLLUTION CONTROL ACT.—Section 508 of the Federal Water Pollution Control Act (33 U.S.C. 1368) is amended by adding at the end the following new subsection:

"(f)(1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.

"(2) In paragraph (1), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).".

(b) CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.—The Contract Work Hours and Safety Standards Act (title I of the Work Hours and Safety Act of 1962 (40 U.S.C. 327 et seq.)) is amended by adding at the end the following new section:

"SEC. 108. (a) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement in this title.

"(b) In subsection (a), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))."

(c) ANTI-KICKBACK ACT OF 1986.—(1) Section 7 of the Anti-Kickback Act of 1986 (41 U.S.C. 57), as amended by section 4104(a), is further amended by inserting before the period at the end of subsection (d) the following: "or to a prime contract for the acquisition of commercial items (as defined in section 4(12) of such Act (41 U.S.C. 403(12)))."

(2) Section 8 of such Act (41 U.S.C. 58) is amended by adding at the end the following: "This section does not apply with respect to a prime contract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))."

(d) COST ACCOUNTING STANDARDS BOARD.—Section 26(f)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)(2)) is amended—

(1) by inserting "(A)" after "(2)";

(2) by striking out ", other than contracts or subcontracts" and all that follows and inserting in lieu thereof a period; and

(3) by inserting at the end the following:

"(B) Subparagraph (A) does not apply to the following contracts or subcontracts:

"(i) Contracts or subcontracts where the price negotiated is based on established catalog or market prices of commercial items sold in substantial quantities to the general public.

"(ii) Contracts or subcontracts where the price negotiated is based on prices set by law or regulation.

"(iii) Any other firm fixed-price contract or subcontract (without cost incentives) for commercial items.

"(C) In this paragraph, the term 'subcontract' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor."

(e) CERTIFICATION REQUIREMENTS.—Subsection (e)(1)(B) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is amended by inserting after "certifies in writing to such contracting officer" the following: ", except in the case of a contract for the procurement of commercial items,".

(f) DRUG-FREE WORKPLACE ACT OF 1988.—Section 5152(a)(1) of the Drug-Free Workplace Act of 1988 (subtitle D of title V of Public Law 100–690; 41 U.S.C. 701 et seq.), as amended by section 4104(d), is further amended by inserting after the matter inserted by such section 4104(d) the following: ", other than a contract for the procurement of commercial items as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403),".

(g) CLEAN AIR ACT.—The Federal Acquisition Regulation may not contain a requirement for a certification by a contractor under a contract for the acquisition of commercial items, or a requirement that such a contract include a contract clause, in order to implement a prohibition or requirement of section 306 of the Clean Air Act (42 U.S.C. 7606) or a prohibition or requirement issued in the implementation of that section, since there is nothing in such section 306 that requires such a certification or contract clause.

(h) FLY AMERICAN REQUIREMENTS.—Section 40118 of title 49, United States Code, is amended by adding at the end the following new subsection:

"(f)(1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the transportation of commercial items in order to implement a requirement in this section.

"(2) In paragraph (1), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).".

SEC. 8302. FLEXIBLE DEADLINES FOR SUBMISSION OF OFFERS OF COMMERCIAL ITEMS.

Section 18(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)), as amended by section 4201(c), is further amended by adding at the end the following new paragraph:

"(6) The Administrator shall prescribe regulations defining limited circumstances in which flexible deadlines can be used under paragraph (3) for the submission of bids or proposals for the procurement of commercial items.".

SEC. 8303. ADDITIONAL RESPONSIBILITIES FOR ADVOCATES FOR COMPETITION.

(a) RESPONSIBILITIES OF THE ADVOCATE FOR COMPETITION.—Section 20(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(c)) is amended to read as follows:

"(c) The advocate for competition for each procuring activity shall be responsible for promoting full and open competition, promoting the acquisition of commercial items, and challenging barriers to such acquisition, including such barriers as unnecessarily restrictive statements of need, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.".

(b) REPEAL OF SUPERSEDED PROVISION.—Section 28 of such Act (41 U.S.C. 424) is repealed.

SEC. 8304. PROVISIONS NOT AFFECTED.

Nothing in this title shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under—

(1) section 2323 of title 10, United States Code, or section 7102 of the Federal Acquisition Streamlining Act of 1994;

(2) the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759));

(3) Brooks Architect-Engineers Act (title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.));

(4) subsections (a) and (d) of section 8 of the Small Business Act (15 U.S.C. 637 (a) and (d)); or

(5) the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c).

SEC. 8305. COMPTROLLER GENERAL REVIEW OF FEDERAL GOVERNMENT USE OF MARKET RESEARCH.

(a) REPORT REQUIRED.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Congress a report on the use of market research by the Federal Government in support of the procurement of commercial items and nondevelopmental items.

(b) CONTENT OF REPORT.—The report shall include the following:

(1) A review of existing Federal Government market research efforts to gather data concerning commercial and other nondevelopmental items.

(2) A review of the feasibility of creating a Government-wide data base for storing, retrieving, and analyzing market data, including use of existing Federal Government resources.

(3) Any recommendations for changes in law or regulations that the Comptroller General considers appropriate.

TITLE IX—FEDERAL ACQUISITION COMPUTER NETWORK

SEC. 9001. FEDERAL ACQUISITION COMPUTER NETWORK ARCHITECTURE AND IMPLEMENTATION.

(a) FEDERAL ACQUISITION COMPUTER NETWORK ARCHITECTURE.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by adding after section 29, as added by section 1093, the following new sections:

"SEC. 30. FEDERAL ACQUISITION COMPUTER NETWORK (FACNET) ARCHITECTURE.

"(a) IN GENERAL.—(1) The Administrator shall establish a program for the development and implementation of a Federal acquisition computer network architecture (hereinafter in this section referred to as 'FACNET') that will be Government-wide and provide interoperability among users. The Administrator shall assign a program manager for FACNET and shall provide for overall direction of policy and leadership in the development, coordination, installation, operation, and completion of implementation of FACNET by executive agencies.

"(2) In carrying out paragraph (1), the Administrator shall consult with the heads of appropriate Federal agencies with applicable technical and functional expertise, including the Office of Information and Regulatory Affairs, the National Institute of Standards and Technology, the General Services Administration, and the Department of Defense.

"(3) Government-wide FACNET capability (as defined in section 30A(b)) shall be implemented not later than January 1, 2000.

"(b) FUNCTIONS OF FACNET.—The FACNET architecture shall provide for the following functions:

"(1) GOVERNMENT FUNCTIONS.—Allow executive agencies to do the following electronically:

"(A) Provide widespread public notice of solicitations for contract opportunities issued by an executive agency.

"(B) Receive responses to solicitations and associated requests for information through such system.

"(C) Provide public notice of contract awards (including price) through such system.

"(D) In cases in which it is practicable, receive questions regarding solicitations through such system.

"(E) In cases in which it is practicable, issue orders to be made through such system.

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

"(G) Archive data relating to each procurement action made using such system.

"(2) PRIVATE SECTOR USER FUNCTIONS.—Allow private sector users to do the following electronically:

"(A) Access notice of solicitations for contract opportunities issued by an executive agency.

"(B) Access and review solicitations issued by an executive agency.

"(C) Respond to solicitations issued by the executive agency.

"(D) In cases in which it is practicable, receive orders from the executive agency.

"(E) Access information on contract awards (including price) made by the executive agency.

"(F) In cases in which it is practicable, receive payment by bank card, electronic funds transfer, or other automated means.

"(3) GENERAL FUNCTIONS.—

"(A) Allow the electronic interchange of procurement information between the private sector and the Federal Government and among Federal agencies.

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

"(C) Allow convenient and universal user access through any point of entry.

"(c) NOTICE AND SOLICITATION REGULATIONS.—In connection with implementation of the architecture referred to in subsection (a), the Federal Acquisition Regulatory Council shall ensure that the Federal Acquisition Regulation contains appropriate notice and solicitation provisions applicable to acquisitions conducted through a FACNET capability. The provisions shall specify the required form and content of notices of acquisitions and the minimum periods for notifications of solicitations and for deadlines for the submission of offers under solicitations. Each minimum period specified for a notification of solicitation and each deadline for the submission of offers under a solicitation shall afford potential offerors a reasonable opportunity to respond.

"(d) ARCHITECTURE DEFINED.—For purposes of this section, the term 'architecture' means the conceptual framework that—

"(1) uses a combination of commercial hardware and commercial software to enable contractors to conduct business with the Federal Government by electronic means; and

"(2) includes a description of the functions to be performed to achieve the mission of streamlining procurement through electronic commerce, the system elements and interfaces needed to perform the functions, and the designation of performance levels of those system elements.

"SEC. 30A. FEDERAL ACQUISITION COMPUTER NETWORK IMPLEMENTATION.

"(a) CERTIFICATION OF FACNET CAPABILITY IN PROCURING ACTIVITIES AND AGENCIES.—(1) When the senior procurement executive of an executive agency or, in the case of the Department

of Defense, the Under Secretary of Defense for Acquisition and Technology, determines that a procuring activity of the executive agency has implemented an interim FACNET capability (as defined in subsection (c)), the executive or the Under Secretary shall certify to the Administrator that such activity has implemented an interim FACNET capability.

"(2) When the head of an executive agency, with the concurrence of the Administrator for Federal Procurement Policy, determines that the executive agency has implemented a full FACNET capability (as defined in subsection (d)), the head of the executive agency shall certify to Congress that the executive agency has implemented a full FACNET capability.

"(3) The head of each executive agency shall provide for implementation of both interim FACNET capability and full FACNET capability, with priority on providing convenient and universal user access as required by section 30(b)(3)(C), in that executive agency as soon as practicable after the date of the enactment of the Federal Acquisition Streamlining Act of 1994.

"(b) CERTIFICATION OF GOVERNMENT-WIDE FACNET CAPABILITY.—When the Administrator for Federal Procurement Policy determines that the Federal Government is making at least 75 percent of eligible contracts in amounts greater than the micro-purchase threshold and not greater than the simplified acquisition threshold entered into by the Government during the preceding fiscal year through a system with full FACNET capability, the Administrator shall certify to Congress that the Government has implemented a Government-wide FACNET capability.

"(c) IMPLEMENTATION OF INTERIM FACNET CAPABILITY.—A procuring activity shall be considered to have implemented an interim FACNET capability if—

"(1) with respect to each procurement expected to be in an amount greater than the micro-purchase threshold and not greater than the simplified acquisition threshold, the procuring activity has implemented the FACNET functions described in paragraphs (1)(A), (1)(B), (2)(A), (2)(B), and (2)(C) of section 30(b); and

"(2) for each such procurement (other than a procurement for which notice is not required under section 18(c) or with respect to which the head of the procuring activity determines that it is not cost effective or practicable), the procuring activity issues notices of solicitations and receives responses to solicitations through a system having those functions.

"(d) IMPLEMENTATION OF FULL FACNET CAPABILITY.—An executive agency shall be considered to have implemented a full FACNET capability if (except in the case of procuring activities (or portions thereof) of the executive agency for which the head of the executive agency determines that implementation is not cost effective or practicable)—

"(1) the executive agency has implemented all of the FACNET functions described in section 30(b); and

"(2) more than 75 percent of the eligible contracts in amounts greater than the micro-purchase threshold and not greater than the simplified acquisition threshold entered into by the executive agency during the preceding fiscal year have been made through a system with those functions.

"(e) ELIGIBLE CONTRACTS.—For purposes of subsections (b) and (d), a contract is eligible if it is not in any class of contracts

determined by the Federal Acquisition Regulatory Council (pursuant to section 9004 of the Federal Acquisition Streamlining Act of 1994) to be unsuitable for acquisition through a system with full FACNET capability.".

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

(1) in subsection (a)(1)(A), by striking out "notice" in the matter following clause (ii) and inserting in lieu thereof "notice of solicitation"; and

(2) in subsection (d), by striking out "a notice under subsection (e)" in the first sentence and inserting in lieu thereof "a notice of solicitation under subsection (a)".

SEC. 9002. IMPLEMENTATION OF FACNET CAPABILITY IN ARMED SERVICES.

(a) IMPLEMENTATION IN TITLE 10.—Chapter 137 of title 10, United States Code, is amended by inserting after section 2302b, as added by section 4203, the following new section:

"§ 2302c. Implementation of FACNET capability

"(a) IMPLEMENTATION OF FACNET CAPABILITY.—(1) The head of each agency named in section 2303 of this title shall implement the Federal acquisition computer network ('FACNET') capability required by section 30 of the Office of Federal Procurement Policy Act. In the case of the Department of Defense, the implementation shall be by the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, for the Department of Defense as a whole. For purposes of this section, the term 'head of an agency' does not include the Secretaries of the military departments.

"(2) In implementing the FACNET capability pursuant to paragraph (1), the head of an agency shall consult with the Administrator for Federal Procurement Policy.

"(b) DESIGNATION OF AGENCY OFFICIAL.—The head of each agency named in paragraph (5) or (6) of section 2303 of this title shall designate a program manager to have responsibility for implementation of FACNET capability for that agency and otherwise to implement this section. Such program manager shall report directly to the senior procurement executive designated for the agency under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 137 of such title is amended by inserting after the item relating to section 2302b the following new item:

"2302c. Implementation of FACNET capability.".

(c) EFFECTIVE DATE.—A FACNET capability may be implemented and used in an agency before the promulgation of regulations implementing this section (as provided in section 10002). If such implementation and use occurs, the period for submission of bids or proposals under section 18(a)(3)(B) of the Office of Federal Procurement Policy Act, in the case of a solicitation through FACNET, may be less than the period otherwise applicable under that section, but shall be at least 10 days. The preceding sentence shall not be in effect after September 30, 1995.

SEC. 9003. IMPLEMENTATION OF FACNET CAPABILITY IN CIVILIAN AGENCIES.

Title III of the Federal Property and Administrative Services Act of 1949 is amended by inserting after section 302B, as added by section 4203, the following new section:

"SEC. 302C. IMPLEMENTATION OF FACNET CAPABILITY.

"(a) IMPLEMENTATION OF FACNET CAPABILITY.—(1) The head of each executive agency shall implement the Federal acquisition computer network ('FACNET') capability required by section 30 of the Office of Federal Procurement Policy Act.

"(2) In implementing the FACNET capability pursuant to paragraph (1), the head of an executive agency shall consult with the Administrator for Federal Procurement Policy.

"(b) DESIGNATION OF AGENCY OFFICIAL.—The head of each executive agency shall designate a program manager to have responsibility for implementation of FACNET capability for that agency and otherwise to implement this section. Such program manager shall report directly to the senior procurement executive designated for the executive agency under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).".

SEC. 9004. GAO DETERMINATION OF ELIGIBLE AGENCY CONTRACTS.

(a) REPORT ON CONTRACTS NOT SUITABLE FOR ACQUISITION THROUGH FULL FACNET CAPABILITY.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General shall submit to the Administrator for Federal Procurement Policy and the congressional committees referred to in subsection (d) a report on the classes of contracts in amounts greater than the micro-purchase threshold and not greater than the simplified acquisition threshold that are not suitable for acquisition through a system with full FACNET capability.

(b) FAR COUNCIL DETERMINATIONS.—Not earlier than 3 years after the date of the enactment of this Act, and after consideration of the report of the Comptroller General required by subsection (a), the Federal Acquisition Regulatory Council (established by section 25 of the Office of Federal Procurement Policy Act) may make a determination that a class or classes of contracts in amounts greater than the micro-purchase threshold and not greater than the simplified acquisition threshold are not suitable for acquisition through a system with full FACNET capability. Any such determination shall be submitted to the congressional committees referred to in subsection (d). Each determination under this subsection shall take effect 60 days after the date on which it is submitted to those committees.

(c) APPLICABILITY OF DETERMINATIONS.—Each determination under subsection (b) shall apply for purposes of determining eligible contracts under section 30A(e) of the Office of Federal Procurement Policy Act, as added by section 9001.

(d) COMMITTEES.—The report required by subsection (a), and any determination made under subsection (b), shall be submitted to the Committees on Governmental Affairs, on Armed Services, and on Small Business of the Senate and the Committees on Government Operations, on Armed Services, and on Small Business of the House of Representatives.

(e) DEFINITIONS.—In this section:

(1) The term "simplified acquisition threshold" has the meaning provided by section 4(11) of the Office of Federal Procurement Policy Act, as amended by section 4001.

(2) The term "micro-purchase threshold" has the meaning provided by section 32(g) of the Office of Federal Procurement Policy Act, as added by section 4301.

(3) The term "full FACNET capability" has the meaning described in section 30A(d) of the Office of Federal Procurement Policy Act, as added by section 9001(a).

TITLE X—EFFECTIVE DATES AND IMPLEMENTATION

SEC. 10001. EFFECTIVE DATE AND APPLICABILITY.

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

(b) APPLICABILITY OF AMENDMENTS.—(1) An amendment made by this Act shall apply, in the manner prescribed in the final regulations promulgated pursuant to section 10002 to implement such amendment, with respect to any solicitation that is issued, any unsolicited proposal that is received, and any contract entered into pursuant to such a solicitation or proposal, on or after the date described in paragraph (3).

(2) An amendment made by this Act shall also apply, to the extent and in the manner prescribed in the final regulations promulgated pursuant to section 10002 to implement such amendment, with respect to any matter related to—

(A) a contract that is in effect on the date described in paragraph (3);

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

(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

(3) The date referred to in paragraphs (1) and (2) is the date specified in such final regulations. The date so specified shall be October 1, 1995, or any earlier date that is not within 30 days after the date on which such final regulations are published.

(c) IMMEDIATE APPLICABILITY OF CERTAIN AMENDMENTS.—Notwithstanding subsection (b), the amendments made by the following provisions of this Act apply on and after the date of the enactment of this Act: sections 1001, 1021, 1031, 1051, 1071, 1092, 1201, 1506(a), 1507, 1554, 2002(a), 2191, 3062(a), 3063, 3064, 3065(a)(1), 3065(b), 3066, 3067, 6001(a), 7101, 7103, 7205, and 7206, the provisions of subtitles A, B, and C of title III, and the provisions of title V.

SEC. 10002. IMPLEMENTING REGULATIONS.

(a) PROPOSED REVISIONS.—Proposed revisions to the Federal Acquisition Regulation and such other proposed regulations (or revisions to existing regulations) as may be necessary to implement this Act shall be published in the Federal Register not later than 210 days after the date of the enactment of this Act.

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

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

(d) MODIFICATIONS.—Final regulations promulgated pursuant to this section to implement an amendment made by this Act may provide for modification of an existing contract without consideration upon the request of the contractor.

(e) REQUIREMENT FOR CLARITY.—Officers and employees of the Federal Government who prescribe regulations to implement this Act and the amendments made by this Act shall make every effort practicable to ensure that the regulations are concise and are easily understandable by potential offerors as well as by Government officials.

(f) SAVINGS PROVISIONS.—(1) Nothing in this Act shall be construed to affect the validity of any action taken or any contract entered into before the date specified in the regulations pursuant to section 10001(b)(3) except to the extent and in the manner prescribed in such regulations.

(2) Except as specifically provided in this Act, nothing in this Act shall be construed to require the renegotiation or modification of contracts in existence on the date of the enactment of this Act.

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

(A) the date specified in final regulations implementing the amendment of that law (as promulgated pursuant to this section); or

(B) if no such date is specified in regulations, October 1, 1995.

SEC. 10003. EVALUATION BY THE COMPTROLLER GENERAL.

(a) EVALUATION RELATING TO ISSUANCE OF REGULATIONS.—Not later than 180 days after the issuance in final form of revisions to the Federal Acquisition Regulation pursuant to section 10002, the Comptroller General shall submit to Congress a report evaluating compliance with such section.

(b) EVALUATION OF IMPLEMENTATION OF REGULATIONS.—Not later than 18 months after issuance in final form of revisions to the Federal Acquisition Regulation pursuant to section 10002, the Comptroller General shall submit to the committees referred to in subsection (c) a report evaluating the effectiveness of the regulations implementing this Act in streamlining the acquisition system and fulfilling the other purposes of this Act.

(c) COMMITTEES DESIGNATED TO RECEIVE THE REPORTS.—The Comptroller General shall submit the reports required by this section to—

(1) the Committees on Governmental Affairs, on Armed Services, and on Small Business of the Senate; and

(2) the Committees on Government Operations, on Armed Services, and on Small Business of the House of Representatives.

SEC. 10004. DATA COLLECTION THROUGH THE FEDERAL PROCUREMENT DATA SYSTEM.

(a) DATA COLLECTION REQUIRED.—The Federal Procurement Data System described in section 6(d)(4)(A) of the Office of Federal

Procurement Policy Act (41 U.S.C. 405(d)(4)(A)) shall be modified to collect from contracts in excess of the simplified acquisition threshold data identifying the following matters:

(1) Contract awards made pursuant to competitions conducted pursuant to section 2323 of title 10, United States Code, or section 7102 of the Federal Acquisition Streamlining Act of 1994.

(2) Awards to business concerns owned and controlled by women.

(3) Number of offers received in response to a solicitation.

(4) Task order contracts.

(5) Contracts for the acquisition of commercial items.

(b) DEFINITION.—In this section, the term ''simplified acquisition threshold'' has the meaning given such term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

SEC. 10005. TECHNICAL AND CLERICAL AMENDMENTS.

(a) TABLE OF CONTENTS AMENDMENTS.—

(1) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—The first section of the Office of Federal Procurement Policy Act (41 U.S.C. 401 note) is amended to read as follows:

''SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

''(a) SHORT TITLE.—This Act may be cited as the 'Office of Federal Procurement Policy Act'.

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

(2) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—The first section of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 471 et seq.) is amended to read as follows:

"SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

"(a) SHORT TITLE.—This Act may be cited as the 'Federal Property and Administrative Services Act of 1949'.

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

(b) AMENDMENTS FOR STYLISTIC CONSISTENCY.—

(1) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended so that the section designation and section heading of each section of such Act is in the same form and typeface as the section designation and heading of this section.

(2) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—The Federal Property and Administrative Services Act of 1949 (41 U.S.C. 471 et seq.) is amended so that the section designation and section heading of each section of such Act is in the same form and typeface as the section designation and heading of this section.

(c) REPEALS OF EXECUTED PROVISIONS.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended—

(1) by striking out section 13; and

(2) by striking out the first section 15 (which made amendments to the Federal Property and Administrative Services Act of 1949).

(d) CROSS REFERENCE CORRECTIONS.—Section 3552 of title 31, United States Code, is amended—

(1) by striking out "section 111(h)" and inserting in lieu thereof "section 111(f)"; and

(2) by striking out "759(h)" and inserting in lieu thereof "759(f)".

(e) CONSISTENCY OF TERMINOLOGY WITH CUSTOMARY USAGE.—Section 304(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(b)) is amended by striking out "per centum" each place it appears and inserting in lieu thereof "percent".

(f) ENACTMENT OF POPULAR NAMES OF CERTAIN ACTS.—

(1) MILLER ACT.—The Act of August 24, 1935 (40 U.S.C. 270a–270d), commonly referred to as the "Miller Act", is amended by adding at the end the following new section:

"SEC. 6. This Act may be cited as the 'Miller Act'.".

(2) BROOKS ARCHITECT-ENGINEERS ACT.—Title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541–544) is amended by adding at the end the following new section:

"SEC. 905. SHORT TITLE.

"This title may be cited as the 'Brooks Architect-Engineers Act'.".

(3) BROOKS AUTOMATIC DATA PROCESSING ACT.—Section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759), as amended by section 1439, is further amended by adding at the end the following new subsection:

"(i) This section may be cited as the 'Brooks Automatic Data Processing Act'.".

(4) BUY AMERICAN ACT.—The Act of March 3, 1933 (41 U.S.C. 10a–10c), commonly referred to as the "Buy American Act", is amended by adding at the end the following new section:

"SEC. 5. This Act may be cited as the 'Buy American Act'.".

(5) WALSH-HEALEY ACT.—The Act of June 30, 1936 (41 U.S.C. 35 et seq.), commonly referred to as the "Walsh-Healey Act", as amended by section 7201, is further amended by adding at the end the following new section:

"SEC. 12. This Act may be cited as the 'Walsh-Healey Act'.".

(6) JAVITS-WAGNER-O'DAY ACT.—The Act entitled 'An Act to create a Committee on Purchases of Blind-made Products, and for other purposes', approved June 25, 1938 (41 U.S.C. 46–48c), that was revised and reenacted in the Act of June 23, 1971 (85 Stat. 77), is amended by adding at the end the following new section:

"SHORT TITLE

"SEC. 7. This Act may be cited as the 'Javits-Wagner-O'Day Act'.".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.