

SERVICES ACQUISITION REFORM ACT OF 2003

MAY 19, 2003.—Ordered to be printed

Mr. TOM DAVIS of Virginia, from the Committee on Government Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1837]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 1837) to improve the Federal acquisition workforce and the process for the acquisition of services by the Federal Government, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

Sec. 1. Short title; table of contents.
Sec. 2. Executive agency defined.

TITLE I—ACQUISITION WORKFORCE AND TRAINING

Sec. 101. Definition of acquisition.
Sec. 102. Acquisition workforce training fund.
Sec. 103. Government-industry exchange program.
Sec. 104. Acquisition workforce recruitment program.
Sec. 105. Architectural and engineering acquisition workforce.

TITLE II—ADAPTATION OF BUSINESS ACQUISITION PRACTICES**Subtitle A—Adaptation of Business Management Practices**

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

Subtitle B—Other Acquisition Improvements

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

TITLE III—CONTRACT INCENTIVES

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

TITLE IV—ACQUISITIONS OF COMMERCIAL ITEMS

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

TITLE V—OTHER MATTERS

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

SEC. 2. EXECUTIVE AGENCY DEFINED.

In this Act, the term “executive agency” has the meaning given that term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)), unless specifically stated otherwise.

TITLE I—ACQUISITION WORKFORCE AND TRAINING**SEC. 101. DEFINITION OF ACQUISITION.**

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

“(16) The term ‘acquisition’—

“(A) means the process of acquiring, with appropriated funds, by contract for purchase or lease, property or services (including construction) that support the missions and goals of an executive agency, from the point at which the requirements of the executive agency are established in consultation with the chief acquisition officer of the executive agency; and

“(B) includes—

“(i) the process of acquiring property or services that are already in existence, or that must be created, developed, demonstrated, and evaluated;

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

“(iii) solicitation and selection of sources;

“(iv) award of contracts;

“(v) contract performance;

- “(vi) contract financing;
- “(vii) management and measurement of contract performance through final delivery and payment; and
- “(viii) technical and management functions directly related to the process of fulfilling agency requirements by contract.”.

SEC. 102. ACQUISITION WORKFORCE TRAINING FUND.

(a) **PURPOSES.**—The purposes of this section are to ensure that the Federal acquisition workforce—

(1) adapts to fundamental changes in the nature of Federal Government acquisition of property and services associated with the changing roles of the Federal Government; and

(2) acquires new skills and a new perspective to enable it to contribute effectively in the changing environment of the 21st century.

(b) **ESTABLISHMENT OF FUND.**—Section 37 of the Office of Federal Procurement Policy Act (41 U.S.C. 433) is amended by adding at the end of subsection (h) the following new paragraph:

“(3) **ACQUISITION WORKFORCE TRAINING FUND.**—(A) The Administrator of General Services shall establish an acquisition workforce training fund. The Administrator shall manage the fund through the Federal Acquisition Institute to support the training of the acquisition workforce of the executive agencies other than the Department of Defense. The Administrator shall consult with the Administrator for Federal Procurement Policy in managing the fund.

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

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

“(ii) Governmentwide contracts for the acquisition of information technology as defined in section 11101 of title 40, United States Code, and multiagency acquisition contracts for such technology authorized by section 11314 of such title.

“(iii) Multiple-award schedule contracts entered into by the Administrator of General Services.

“(C) The head of an executive agency that administers a contract described in subparagraph (B) shall remit to the General Services Administration the amount required to be credited to the fund with respect to such contract at the end of each quarter of the fiscal year.

“(D) The Administrator of General Services, through the Office of Federal Acquisition Policy, shall ensure that funds collected for training under this section are not used for any purpose other than the purpose specified in subparagraph (A).

“(E) Amounts credited to the fund shall be in addition to funds requested and appropriated for education and training referred to in paragraph (1).

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

SEC. 103. GOVERNMENT-INDUSTRY EXCHANGE PROGRAM.

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

“CHAPTER 38—ACQUISITION PROFESSIONAL EXCHANGE PROGRAM

“Sec.

“3801. Definitions.

“3802. General provisions.

“3803. Assignment of employees to private sector organizations.

“3804. Assignment of employees from private sector organizations.

“3805. Reporting requirement.

“3806. Regulations.

“§ 3801. Definitions

“For purposes of this chapter—

“(1) the term ‘agency’—

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

“(B) does not include—

“(i) the General Accounting Office;

“(ii) an Office of Inspector General of an establishment or a designated Federal entity established under the Inspector General Act of 1978; and

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

“(2) the term ‘detail’ means—

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

“(B) the assignment or loan of an employee of a private sector organization to an agency without a change of position from the private sector organization that employs the individual,

whichever is appropriate in the context in which such term is used.

“§ 3802. General provisions

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

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

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

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

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

“(b) AGREEMENTS.—Each agency that exercises its authority under this chapter shall provide for a written agreement between the agency and the employee concerned regarding the terms and conditions of the employee’s assignment. In the case of an employee of the agency, the agreement shall—

“(1) require the employee to serve in the civil service, upon completion of the assignment, for a period equal to the length of the assignment; and

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

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

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

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

“(e) ASSISTANCE.—The Administrator for Federal Procurement Policy, by agreement with the Office of Personnel Management, may assist in the administration of this chapter, including by maintaining lists of potential candidates for assignment under this chapter, establishing mentoring relationships for the benefit of individuals who are given assignments under this chapter, and publicizing the program.

“(f) CONSIDERATIONS.—In exercising any authority under this chapter, an agency shall take into consideration—

“(1) the need to ensure that small business concerns are appropriately represented with respect to the assignments described in sections 3803 and 3804, respectively; and

“(2) how assignments described in section 3803 might best be used to help meet the needs of the agency for the training of employees in acquisition management.

“§ 3803. Assignment of employees to private sector organizations

“(a) IN GENERAL.—An employee of an agency assigned to a private sector organization under this chapter is deemed, during the period of the assignment, to be on detail to a regular work assignment in his agency.

“(b) COORDINATION WITH CHAPTER 81.—Notwithstanding any other provision of law, an employee of an agency assigned to a private sector organization under this chapter is entitled to retain coverage, rights, and benefits under subchapter I of chapter 81, and employment during the assignment is deemed employment by the United States, except that, if the employee or the employee’s dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then, the amount of such payment or benefit shall be credited against any compensation otherwise payable under subchapter I of chapter 81.

“(c) REIMBURSEMENTS.—The assignment of an employee to a private sector organization under this chapter may be made with or without reimbursement by the private sector organization for the travel and transportation expenses to or from the place of assignment, subject to the same terms and conditions as apply with respect to an employee of a Federal agency or a State or local government under section 3375, and for the pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the agency used for paying the travel and transportation expenses or pay.

“(d) TORT LIABILITY; SUPERVISION.—The Federal Tort Claims Act and any other Federal tort liability statute apply to an employee of an agency assigned to a private sector organization under this chapter. The supervision of the duties of an employee of an agency so assigned to a private sector organization may be governed by an agreement between the agency and the organization.

“(e) SMALL BUSINESS CONCERNS.—

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

“(2) DEFINITIONS.—For purposes of this subsection—

“(A) the term ‘small business concern’ means a business concern that satisfies the definitions and standards specified by the Administrator of the Small Business Administration under section 3(a)(2) of the Small Business Act (as from time to time amended by the Administrator);

“(B) the term ‘year’ refers to the 12-month period beginning on the date of the enactment of this chapter, and each succeeding 12-month period in which any assignments under this chapter may be made; and

“(C) the assignments ‘made’ in a year are those commencing in such year.

“(3) REPORTING REQUIREMENT.—An agency which fails to comply with paragraph (1) in a year shall, within 90 days after the end of such year, submit a report to the Committees on Government Reform and Small Business of the House of Representatives and the Committees on Governmental Affairs and Small Business of the Senate. The report shall include—

“(A) the total number of assignments made under this chapter from such agency to private sector organizations in the year;

“(B) of that total number, the number (and percentage) made to small business concerns; and

“(C) the reasons for the agency’s noncompliance with paragraph (1).

“(4) EXCLUSION.—This subsection shall not apply to an agency in any year in which it makes fewer than 5 assignments under this chapter to private sector organizations.

“§ 3804. Assignment of employees from private sector organizations

“(a) IN GENERAL.—An employee of a private sector organization assigned to an agency under this chapter is deemed, during the period of the assignment, to be on detail to such agency.

“(b) TERMS AND CONDITIONS.—An employee of a private sector organization assigned to an agency under this chapter—

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

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

“(A) chapter 73;

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

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

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

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

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

“(G) section 27 of the Office of Federal Procurement Policy Act;

“(3) may not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which he is assigned; and

“(4) is subject to such regulations as the President may prescribe.

The supervision of an employee of a private sector organization assigned to an agency under this chapter may be governed by agreement between the agency and the private sector organization concerned. Such an assignment may be made with or without reimbursement by the agency for the pay, or a part thereof, of the employee

during the period of assignment, or for any contribution of the private sector organization to employee benefit systems.

“(c) COORDINATION WITH CHAPTER 81.—An employee of a private sector organization assigned to an agency under this chapter who suffers disability or dies as a result of personal injury sustained while performing duties during the assignment shall be treated, for the purpose of subchapter I of chapter 81, as an employee as defined by section 8101 who had sustained the injury in the performance of duty, except that, if the employee or the employee’s dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then, the amount of such payment or benefit shall be credited against any compensation otherwise payable under subchapter I of chapter 81.

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

“§ 3805. Reporting requirement

“(a) IN GENERAL.—The Office of Personnel Management shall, not later than April 30 and October 31 of each year, prepare and submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate a semiannual report summarizing the operation of this chapter during the immediately preceding 6-month period ending on March 31 and September 30, respectively.

“(b) CONTENT.—Each report shall include, with respect to the 6-month period to which such report relates—

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

“(2) a brief description of each assignment included under paragraph (1), including—

“(A) the name of the assigned individual, as well as the private sector organization and the agency (including the specific bureau or other agency component) to or from which such individual was assigned;

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

“(C) the duration and objectives of the individual’s assignment; and

“(3) such other information as the Office considers appropriate.

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

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

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

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

“§ 3806. Regulations

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

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

(1) an evaluation of the effectiveness of the program established by such chapter; and

(2) a recommendation as to whether such program should be continued (with or without modification) or allowed to lapse.

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

“38. Acquisition Professional Exchange Program 3801”.

(d) COORDINATION WITH ACQUISITION WORKFORCE PROVISIONS OF OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Section 37 of the Office of Federal Procurement Policy Act (41 U.S.C. 433) is amended by adding at the end the following new subsection:

“(i) AUTHORITY TO DETAIL EMPLOYEES TO NON-FEDERAL EMPLOYERS.—(1) In carrying out the provisions of this section, the Administrator, by agreement with the Director of the Office of Personnel Management, may provide for a program under

which a Federal employee may be detailed to a non-Federal employer. The Administrator, by agreement with the Director of the Office of Personnel Management, shall prescribe regulations for such program, including the conditions for service and duties as the Administrator considers necessary.

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

(e) ETHICS PROVISIONS.—

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

(2) DISCLOSURE OF CONFIDENTIAL INFORMATION.—Section 1905 of title 18, United States Code, is amended by inserting “or 38” after “chapter 37”.

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

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

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

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

(f) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

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

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

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

“(2) For purposes of this subsection, the term ‘agency’—

“(A) with respect to assignments under chapter 37 of title 5, means an agency (as defined in section 3701 of title 5) and the Office of the Chief Technology Officer of the District of Columbia; and

“(B) with respect to assignments under chapter 38 of title 5, means an agency (as defined by section 3801 of title 5).”.

(3) ELIGIBILITY FOR THRIFT SAVINGS PLAN.—Section 125(c)(1)(D) of Public Law 100–238 (101 Stat. 1757; 5 U.S.C. 8432 note) is amended by inserting “or 38” after “chapter 37”.

SEC. 104. ACQUISITION WORKFORCE RECRUITMENT PROGRAM.

(a) AUTHORITY TO CARRY OUT PROGRAM.—For purposes of sections 3304, 5333, and 5753 of title 5, United States Code, the head of a department or agency of the United States (including the Secretary of Defense) may determine that certain Federal acquisition positions are “shortage category” positions in order to recruit and appoint directly to positions of employment in the department or agency highly qualified persons, such as any person who—

(1) holds a bachelor’s degree from an accredited institution of higher education;

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

(A) a law degree; or

(B) a masters or equivalent degree in business administration, public administration, or systems engineering; or

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

(b) REQUIREMENTS.—The exercise of authority to take a personnel action under this section shall be subject to policies prescribed by the Office of Personnel Management that govern direct recruitment, including policies requiring appointment of a preference eligible who satisfies the qualification requirements.

(c) TERMINATION OF AUTHORITY.—The head of a department or agency may not appoint a person to a position of employment under this section after September 30, 2007.

(d) REPORT.—Not later than March 31, 2007, the Administrator for Federal Procurement Policy shall submit to Congress a report on the implementation of this section. The report shall include—

(1) the Administrator’s assessment of the efficacy of the exercise of the authority provided in this section in attracting employees with unusually high qualifications to the acquisition workforce; and

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

SEC. 105. ARCHITECTURAL AND ENGINEERING ACQUISITION WORKFORCE.

The Administrator for Federal Procurement Policy, in consultation with the Secretary of Defense, the Administrator of General Services, and the Director of the Office of Personnel Management, shall develop and implement a plan to ensure that the Federal Government maintains the necessary capability with respect to the acquisition of architectural and engineering services to—

- (1) ensure that Federal Government employees have the expertise to determine agency requirements for such services;
- (2) establish priorities and programs (including acquisition plans);
- (3) establish professional standards;
- (4) develop scopes of work; and
- (5) award and administer contracts for such services.

TITLE II—ADAPTATION OF BUSINESS ACQUISITION PRACTICES

Subtitle A—Adaptation of Business Management Practices

SEC. 201. CHIEF ACQUISITION OFFICERS.

(a) APPOINTMENT OF CHIEF ACQUISITION OFFICERS.—(1) Section 16 of the Office of Federal Procurement Policy Act (41 U.S.C. 414) is amended to read as follows:

“SEC. 16. CHIEF ACQUISITION OFFICERS.

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

- “(1) have acquisition management as that official’s primary duty; and
- “(2) advise and assist the head of the executive agency and other agency officials to ensure that the mission of the executive agency is achieved through the management of the agency’s acquisition activities.

“(b) AUTHORITY AND FUNCTIONS OF AGENCY CHIEF ACQUISITION OFFICERS.—The functions of each Chief Acquisition Officer shall include—

- “(1) monitoring the performance of acquisition activities and acquisition programs of the executive agency, evaluating the performance of those programs on the basis of applicable performance measurements, and advising the head of the executive agency regarding the appropriate business strategy to achieve the mission of the executive agency;
- “(2) increasing the use of full and open competition in the acquisition of property and services by the executive agency by establishing policies, procedures, and practices that ensure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government’s requirements (including performance and delivery schedules) at the best value considering the nature of the property or service procured;
- “(3) making acquisition decisions consistent with all applicable laws and establishing clear lines of authority, accountability, and responsibility for acquisition decisionmaking within the executive agency;
- “(4) managing the direction of acquisition policy for the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency;
- “(5) developing and maintaining an acquisition career management program in the executive agency to ensure that there is an adequate professional workforce; and

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

“(A) assessing the requirements established for agency personnel regarding knowledge and skill in acquisition resources management and the adequacy of such requirements for facilitating the achievement of the performance goals established for acquisition management;

“(B) in order to rectify any deficiency in meeting such requirements, developing strategies and specific plans for hiring, training, and professional development; and

- “(C) reporting to the head of the executive agency on the progress made in improving acquisition management capability.”.
- (2) The item relating to section 16 in the table of contents in section 1(b) of such Act is amended to read as follows:

“Sec. 16. Chief Acquisition Officers.”.

(b) REFERENCES TO SENIOR PROCUREMENT EXECUTIVE.—

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

(A) Subsections (a)(2)(A) and (b) of section 20 of the Office of Federal Procurement Policy Act (41 U.S.C. 418(a)(2)(A), (b)) are amended by striking “senior procurement executive” each place it appears and inserting “Chief Acquisition Officer”.

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

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

(i) by striking “SENIOR PROCUREMENT EXECUTIVE” in the heading and inserting “CHIEF ACQUISITION OFFICER”; and

(ii) by striking “senior procurement executive” each place it appears and inserting “Chief Acquisition Officer”.

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

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

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

(B) Subsections (d)(2)(B) and (f)(1) of section 2225.

(C) Section 2302c(b).

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

(E) Section 2359a(i).

(4) REFERENCES.—Any reference to a senior procurement executive of a department or agency of the United States in any other provision of law or regulation, document, or record of the United States shall be deemed to be a reference to the Chief Acquisition Officer of the department or agency.

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

SEC. 202. CHIEF ACQUISITION OFFICERS COUNCIL.

(a) ESTABLISHMENT OF COUNCIL.—The Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.) is amended by inserting after section 16 the following new section:

“SEC. 16A. CHIEF ACQUISITION OFFICERS COUNCIL.

“(a) ESTABLISHMENT.—There is established in the executive branch a Chief Acquisition Officers Council.

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

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

“(2) The Administrator for Federal Procurement Policy.

“(3) The chief acquisition officer of each executive agency.

“(4) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

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

“(c) LEADERSHIP; SUPPORT.—(1) The Administrator for Federal Procurement Policy shall lead the activities of the Council on behalf of the Deputy Director for Management.

“(2)(A) The Vice Chairman of the Council shall be selected by the Council from among its members.

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

“(3) The Administrator of General Services shall provide administrative and other support for the Council.

“(d) PRINCIPAL FORUM.—The Council is designated the principal interagency forum for monitoring and improving the Federal acquisition system.

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

“(1) Develop recommendations for the Director of the Office of Management and Budget on Federal acquisition policies and requirements.

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

“(3) Assist the Administrator in the identification, development, and coordination of multiagency projects and other innovative initiatives to improve Federal acquisition.

“(4) Promote effective business practices that ensure the timely delivery of best value products to the Federal Government and achieve appropriate public policy objectives.

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

“(6) Work with the Office of Personnel Management to assess and address the hiring, training, and professional development needs of the Federal Government related to acquisition.

“(7) Work with the Administrator and the Federal Acquisition Regulatory Council to promote the business practices referred to in paragraph (4) and other results of the functions carried out under this subsection.”.

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

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

SEC. 203. STATUTORY AND REGULATORY REVIEW.

(a) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this Act, the Administrator for Federal Procurement Policy shall establish an advisory panel to review laws and regulations regarding the use of commercial practices, performance-based contracting, the performance of acquisition functions across agency lines of responsibility, and the use of Governmentwide contracts.

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

(1) consult with the Secretary of Defense, the Administrator of General Services, the Committees on Armed Services and Government Reform of the House of Representatives, and the Committees on Armed Services and Governmental Affairs of the Senate, and

(2) ensure that the members of the panel reflect the diverse experiences in the public and private sectors.

(c) DUTIES.—The panel shall—

(1) review all Federal acquisition laws and regulations with a view toward ensuring effective and appropriate use of commercial practices and performance-based contracting; and

(2) make any recommendations for the repeal or amendment of such laws or regulations that are considered necessary as a result of such review—

(A) to eliminate any provisions in such laws or regulations that are unnecessary for the effective, efficient, and fair award and administration of contracts for the acquisition by the Federal Government of goods and services;

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

(C) to protect the best interests of the Federal Government.

(d) REPORT.—Not later than one year after the establishment of the panel, the panel shall submit to the Administrator and to the Committees on Armed Services and Government Reform of the House of Representatives and the Committees on Armed Services and Governmental Affairs of the Senate a report containing a detailed statement of the findings, conclusions, and recommendations of the panel.

Subtitle B—Other Acquisition Improvements

SEC. 211. EXTENSION OF AUTHORITY TO CARRY OUT FRANCHISE FUND PROGRAMS.

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

SEC. 212. AGENCY ACQUISITION PROTESTS.

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

“§ 2305b. Protests

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

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

“(2) The head of the acquisition activity responsible for the award of the contract may authorize the award of a contract, notwithstanding pending protest under this section, upon making a written finding that urgent and compelling circumstances do not allow for waiting for a decision on the protest.

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

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

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

“(2) The head of the acquisition activity responsible for the award of a contract may authorize performance of the contract notwithstanding a pending protest under this section upon making a written finding that urgent and compelling circumstances do not allow for waiting for a decision on the protest.

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

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

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

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2305a the following new item:

“2305b. Protests.”

(b) OTHER AGENCIES.—Title III of the Federal Property and Administrative Services Act of 1949 is amended by inserting after section 303M (41 U.S.C. 253m) the following new section:

“SEC. 303N. PROTESTS.

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

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

“(2) The head of the acquisition activity responsible for the award of a contract may authorize the award of the contract, notwithstanding a pending protest under this section, upon making a written finding that urgent and compelling circumstances do not allow for waiting for a decision on the protest.

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

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

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

“(2) The head of the acquisition activity responsible for the award of a contract may authorize performance of the contract notwithstanding a pending protest under this section upon making a written finding that urgent and compelling circumstances do not allow for waiting for a decision on the protest.

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

“(e) CONSTRUCTION.—Nothing in this section shall affect the right of an interested party to file a protest with the Comptroller General under subchapter V of chapter 35 of title 31, United States Code, or in the United States Court of Federal Claims.

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

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

- (1) in subparagraph (A), by striking “or” at the end;
- (2) by striking the period at the end of subparagraph (B) and inserting “; or”; and
- (3) by adding at the end the following new subparagraph:

“(C) in the case of a protest of the same matter regarding such contract that is submitted under section 2305b of title 10 or section 303N of the Federal Property and Administrative Services Act of 1949, the date that is 5 days after the date on which a decision on that protest is issued.”.

SEC. 213. IMPROVEMENTS IN CONTRACTING FOR ARCHITECTURAL AND ENGINEERING SERVICES.

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

“(4) SURVEYING AND MAPPING.—The term ‘surveying and mapping’ means services performed by professionals such as surveyors, photogrammetrists, hydrographers, geodesists, or cartographers in the collection, storage, retrieval, or dissemination of graphical or digital data to depict natural or manmade physical features, phenomena, or boundaries of the earth and any information related to such data, including any such data that comprises a survey, map, chart, geographic information system, remotely sensed image or data, or an aerial photograph.”.

(2) The Federal Acquisition Regulation shall be revised to include the definition added by subsection (a) of this section.

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

- (1) in paragraph (2), by striking “\$85,000” and inserting “\$300,000”; and
- (2) by adding at the end the following new paragraph:

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

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

- (1) are performed under the direct supervision of a professional engineer licensed in a State; and
- (2) are awarded in accordance with the selection procedures set forth in chapter 11 of title 40, United States Code.

SEC. 214. AUTHORIZATION OF TELECOMMUTING FOR FEDERAL CONTRACTORS.

(a) AMENDMENT TO THE FEDERAL ACQUISITION REGULATION.—Not later than 180 days after the date of the enactment of this Act, the Federal Acquisition Regulatory Council shall amend the Federal Acquisition Regulation issued in accordance with sections 6 and 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 405 and 421) to permit telecommuting by employees of Federal Government contractors in the performance of contracts entered into with executive agencies.

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

- (1) render an offeror ineligible to enter into a contract on the basis of the inclusion of a plan of the offeror to permit the offeror’s employees to telecommute; or
- (2) reduce the scoring of an offer on the basis of the inclusion in the offer of a plan of the offeror to permit the offeror’s employees to telecommute, unless the contracting officer concerned first—

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

(B) documents in writing the basis for that determination.

(c) GAO REPORT.—Not later than one year after the date on which the regulation required by subsection (a) is published in the Federal Register, the Comptroller General shall submit to Congress—

(1) an evaluation of—

(A) the conformance of the regulations with law; and

(B) the compliance by executive agencies with the regulations; and

(2) any recommendations that the Comptroller General considers appropriate.

(d) DEFINITION.—In this section, the term “executive agency” has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

SEC. 215. PROCEDURAL REQUIREMENTS FOR CIVILIAN AGENCIES RELATING TO PRODUCTS OF FEDERAL PRISON INDUSTRIES.

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. 318. PRODUCTS OF FEDERAL PRISON INDUSTRIES: PROCEDURAL REQUIREMENTS.

“(a) MARKET RESEARCH.—Before purchasing a product listed in the latest edition of the Federal Prison Industries catalog under section 4124(d) of title 18, United States Code, the head of an executive agency shall conduct market research to determine whether the Federal Prison Industries product is comparable to products available from the private sector that best meet the executive agency’s needs in terms of price, quality, and time of delivery.

“(b) COMPETITION REQUIREMENT.—If the head of the executive agency determines that a Federal Prison Industries product is not comparable in price, quality, or time of delivery to products available from the private sector that best meet the executive agency’s needs in terms of price, quality, and time of delivery, the agency head shall use competitive procedures for the procurement of the product or shall make an individual purchase under a multiple award contract. In conducting such a competition or making such a purchase, the agency head shall consider a timely offer from Federal Prison Industries.

“(c) IMPLEMENTATION BY HEAD OF EXECUTIVE AGENCY.—The head of an executive agency shall ensure that—

“(1) the executive agency does not purchase a Federal Prison Industries product or service unless a contracting officer of the agency determines that the product or service is comparable to products or services available from the private sector that best meet the agency’s needs in terms of price, quality, and time of delivery; and

“(2) Federal Prison Industries performs its contractual obligations to the same extent as any other contractor for the executive agency.

“(d) MARKET RESEARCH DETERMINATION NOT SUBJECT TO REVIEW.—A determination by a contracting officer regarding whether a product or service offered by Federal Prison Industries is comparable to products or services available from the private sector that best meet an executive agency’s needs in terms of price, quality, and time of delivery shall not be subject to review pursuant to section 4124(b) of title 18.

“(e) PERFORMANCE AS A SUBCONTRACTOR.—(1) A contractor or potential contractor of an executive agency may not be required to use Federal Prison Industries as a subcontractor or supplier of products or provider of services for the performance of a contract of the executive agency by any means, including means such as—

“(A) a contract solicitation provision requiring a contractor to offer to make use of products or services of Federal Prison Industries in the performance of the contract;

“(B) a contract specification requiring the contractor to use specific products or services (or classes of products or services) offered by Federal Prison Industries in the performance of the contract; or

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

“(2) In this subsection, the term ‘contractor’, with respect to a contract, includes a subcontractor at any tier under the contract.

“(f) PROTECTION OF CLASSIFIED AND SENSITIVE INFORMATION.—The head of an executive agency may not enter into any contract with Federal Prison Industries under which an inmate worker would have access to—

“(1) any data that is classified;

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

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

“(B) pipelines for the distribution of natural gas, bulk petroleum products, or other commodities; or

“(C) other utilities; or

“(3) any personal or financial information about any individual private citizen, including information relating to such person’s real property however described, without the prior consent of the individual.

“(g) DEFINITIONS.—In this section:

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

“(2) The term ‘market research’ means obtaining specific information about the price, quality, and time of delivery of products available in the private sector through a variety of means, which may include—

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

“(B) interactive communication among industry, acquisition personnel, and customers; and

“(C) interchange meetings or pre-solicitation conferences with potential offerors.”.

TITLE III—CONTRACT INCENTIVES

SEC. 301. SHARE-IN-SAVINGS INITIATIVES.

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

“§ 2332. Share-in-savings contracts

“(a) AUTHORITY TO ENTER INTO SHARE-IN-SAVINGS CONTRACTS.—(1) The head of an agency may enter into a share-in-savings contract in which the Government awards a contract to improve mission-related or administrative processes or to accelerate the achievement of its mission and share with the contractor in savings achieved through contract performance.

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

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

“(i) the level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the government from obtaining the needed performance competitively at a fair and reasonable price if the contract is limited in duration to a period of five years or less; and

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

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

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

“(5)(A) The head of the agency may retain savings realized through the use of a share-in-savings contract under this section that are in excess of the total amount of savings paid to the contractor under the contract. Except as provided in subparagraph (B), savings shall be credited to the appropriation or fund against which charges were made to carry out the contract.

“(B) Amounts retained by the agency under this subsection shall—

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

“(ii) be applied first to fund any contingent liabilities associated with share-in-savings procurements that are not fully funded.

“(b) CANCELLATION AND TERMINATION.—(1) If funds are not made available for the continuation of a share-in-savings contract entered into under this section in a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid out of—

“(A) appropriations available for the performance of the contract;

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

“(C) funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in paragraph (3).

“(2) The amount payable in the event of cancellation or termination of a share-in-savings contract shall be negotiated with the contractor at the time the contract is entered into.

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

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

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

“(ii) \$10,000,000.

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

“(c) DEFINITIONS.—In this section:

“(1) The term ‘contractor’ means a private entity that enters into a contract with an agency.

“(2) The term ‘savings’ means—

“(A) monetary savings to an agency; or

“(B) savings in time or other benefits realized by the agency, including enhanced revenues.

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

“(A) a contractor provides solutions for—

“(i) improving the agency’s mission-related or administrative processes; or

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

“(B) the head of the agency pays the contractor an amount equal to a portion of the savings derived by the agency from—

“(i) any improvements in mission-related or administrative processes that result from implementation of the solution; or

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

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

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

“(a) AUTHORITY TO ENTER INTO SHARE-IN-SAVINGS CONTRACTS.—(1) The head of an executive agency may enter into a share-in-savings contract in which the Government awards a contract to improve mission-related or administrative processes or to accelerate the achievement of its mission and share with the contractor in savings achieved through contract performance.

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

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

“(i) the level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the government from obtaining the needed performance competitively at a fair and reasonable price if the contract is limited in duration to a period of five years or less; and

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

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

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

“(5)(A) The head of the agency may retain savings realized through the use of a share-in-savings contract under this section that are in excess of the total amount of savings paid to the contractor under the contract. Except as provided in subparagraph (B), savings shall be credited to the appropriation or fund against which charges were made to carry out the contract.

“(B) Amounts retained by the agency under this subsection shall—

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

“(ii) be applied first to fund any contingent liabilities associated with share-in-savings procurements that are not fully funded.

“(b) CANCELLATION AND TERMINATION.—(1) If funds are not made available for the continuation of a share-in-savings contract entered into under this section in a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid out of—

“(A) appropriations available for the performance of the contract;

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

“(C) funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in paragraph (3).

“(2) The amount payable in the event of cancellation or termination of a share-in-savings contract shall be negotiated with the contractor at the time the contract is entered into.

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

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

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

“(ii) \$10,000,000.

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

“(c) DEFINITIONS.—In this section:

“(1) The term ‘contractor’ means a private entity that enters into a contract with an agency.

“(2) The term ‘savings’ means—

“(A) monetary savings to an agency; or

“(B) savings in time or other benefits realized by the agency, including enhanced revenues.

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

“(A) a contractor provides solutions for—

“(i) improving the agency’s mission-related or administrative processes; or

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

“(B) the head of the agency pays the contractor an amount equal to a portion of the savings derived by the agency from—

“(i) any improvements in mission-related or administrative processes that result from implementation of the solution; or

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

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

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

(2) provide guidance to executive agencies for determining mutually beneficial savings share ratios and baselines from which savings may be measured; and

(3) in consultation with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and executive agencies, develop techniques to permit an executive agency to retain a portion of the savings (after payment of the contractor’s share of the savings) derived from share-in-savings contracts as funds are appropriated to the agency in future fiscal years.

(d) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to implement the provisions enacted by this section. Such revisions shall—

(1) provide for the use of competitive procedures in the selection and award of share-in-savings contracts to—

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

- (B) otherwise yield best value to the government; and
- (2) allow appropriate regulatory flexibility to facilitate the use of share-in-savings contracts by executive agencies, including the use of innovative provisions for technology refreshment and nonstandard Federal Acquisition Regulation contract clauses.
- (e) OMB REPORT TO CONGRESS.—In consultation with executive agencies, the Director of the Office of Management and Budget shall, not later than 2 years after the completion of the revisions to the Federal Acquisition Regulation under subsection (d), submit to Congress a report containing—
 - (1) a description of the number of share-in-savings contracts entered into by each executive agency under by this section and the amendments made by this section, and, for each contract identified—
 - (A) the performance acquired;
 - (B) the total amount of payments made to the contractor; and
 - (C) the total amount of savings or other measurable benefits realized;
 - (2) a description of the ability of agencies to determine the baseline costs of a project against which savings can be measured; and
 - (3) any recommendations, as the Director deems appropriate, regarding additional changes in law that may be necessary to ensure effective use of share-in-savings contracts by executive agencies.
- (f) DEFINITIONS.—In this section, the terms “contractor”, “savings”, and “share-in-savings contract” have the meanings given those terms in section 2332 of title 10, United States Code, and section 317 of the Federal Property and Administrative Services Act of 1949 (as amended by subsections (a) and (b)).
- (g) REPEAL OF SUPERSEDED PROVISIONS.—Subsections (c), (d), (e), (f), (g), and (i) of section 210 of the E-Government Act of 2002 (Public Law 107–317; 116 Stat. 2936) are repealed.

SEC. 302. INCENTIVES FOR CONTRACT EFFICIENCY.

(a) INCENTIVES FOR CONTRACT EFFICIENCY.—The Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.) is amended by adding at the end the following new section:

“SEC. 41. INCENTIVES FOR EFFICIENT PERFORMANCE OF SERVICES CONTRACTS.

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

“(b) DEFINITION OF PERFORMANCE-BASED.—In this section, the term ‘performance-based’, with respect to a contract, task order, or contracting, means that the contract, task order, or contracting, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.”.

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

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

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

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

TITLE IV—ACQUISITIONS OF COMMERCIAL ITEMS

SEC. 401. ADDITIONAL INCENTIVE FOR USE OF PERFORMANCE-BASED CONTRACTING FOR SERVICES.

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

- (1) by redesignating subsection (b) as subsection (c); and
- (2) by inserting after subsection (a) the following new subsection:

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

“(A) the contract or task order sets forth specifically each task to be performed and, for each task—

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

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

“(B) the source of the services provides similar services to the general public under terms and conditions similar to those offered to the Federal Government.

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

“(3) Not later than two years after the date of the enactment of this subsection, the Director of the Office of Management and Budget shall prepare and submit to the Committees on Governmental Affairs and on Armed Services of the Senate and the Committees on Government Reform and on Armed Services of the House of Representatives a report on the contracts or task orders treated as contracts for commercial items using the authority of this subsection. The report shall include data on the use of such authority both government-wide and for each department and agency.

“(4) The authority under this subsection shall expire 10 years after the date of the enactment of this subsection.”

(b) **CENTER OF EXCELLENCE IN SERVICE CONTRACTING.**—Not later than 180 days after the date of the enactment of this Act, the Administrator for Federal Procurement Policy shall establish a center of excellence in contracting for services. The center of excellence shall assist the acquisition community by identifying, and serving as a clearinghouse for, best practices in contracting for services in the public and private sectors.

(c) **REPEAL OF SUPERSEDED PROVISION.**—Subsection (b) of section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–218) is repealed.

SEC. 402. AUTHORIZATION OF ADDITIONAL COMMERCIAL CONTRACT TYPES.

Section 8002(d) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355; 108 Stat. 3387; 41 U.S.C. 264 note) is amended—

(1) in paragraph (1), by striking “and”;

(2) by striking the period at the end of paragraph (2) and inserting “; and”;

and

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

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

SEC. 403. CLARIFICATION OF COMMERCIAL SERVICES DEFINITION.

Subparagraph (F) of section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)(F)) is amended—

(1) by striking “catalog or”; and

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

SEC. 404. DESIGNATION OF COMMERCIAL BUSINESS ENTITIES.

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

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

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

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

“(17) The term ‘commercial entity’ means any enterprise whose primary customers are other than the Federal Government. In order to qualify as a commercial entity, at least 90 percent (in dollars) of the sales of the enterprise over the past three business years must have been made to private sector entities.”.

(b) **COLLECTION OF DATA.**—Regulations implementing the amendments made by subsection (a) shall require agencies to collect and maintain reliable data sufficient to identify the contracts entered into or task orders awarded for items or services produced or provided by a commercial entity. The data may be collected using the Federal Procurement Data System or other reporting mechanism.

(c) **OMB REPORT.**—Not later than two years after the date of the enactment of this subsection, the Director of the Office of Management and Budget shall prepare and submit to the Committees on Governmental Affairs and on Armed Services of the Senate and the Committees on Government Reform and on Armed Services of the House of Representatives a report on the contracts entered into or task orders awarded for items or services produced or provided by a commercial entity. The re-

port shall include data on the use of such authority both government-wide and for each department and agency.

(d) COMPTROLLER GENERAL REVIEW.—The Comptroller General shall review the implementation of the amendments made by subsection (a) to evaluate the effectiveness of such implementation in increasing the availability of items and services to the Federal Government at fair and reasonable prices.

TITLE V—OTHER MATTERS

SEC. 501. AUTHORITY TO ENTER INTO CERTAIN PROCUREMENT-RELATED TRANSACTIONS AND TO CARRY OUT CERTAIN PROTOTYPE PROJECTS.

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

“SEC. 319. AUTHORITY TO ENTER INTO CERTAIN TRANSACTIONS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.

“(a) AUTHORITY.—

“(1) IN GENERAL.—The head of an executive agency who engages in basic research, applied research, advanced research, and development projects that—

“(A) are necessary to the responsibilities of such official’s executive agency in the field of research and development, and

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

“(2) PROTOTYPE PROJECTS.—The head of an executive agency may, under the authority of paragraph (1), carry out prototype projects that meet the requirements of subparagraphs (A) and (B) of paragraph (1) in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note). In applying the requirements and conditions of that section 845—

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

“(B) the Director of the Office of Management and Budget shall perform the functions of the Secretary of Defense under subsection (d) of that section.

“(3) APPLICABILITY TO SELECTED EXECUTIVE AGENCIES.—

“(A) OMB AUTHORIZATION REQUIRED.—The head of an executive agency may exercise authority under this subsection only if authorized by the Director of the Office of Management and Budget to do so.

“(B) RELATIONSHIP TO AUTHORITY OF DEPARTMENT OF HOMELAND SECURITY.—The authority under this subsection shall not apply to the Secretary of Homeland Security while section 831 of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2224) is in effect.

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

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

SEC. 502. AMENDMENTS RELATING TO FEDERAL EMERGENCY PROCUREMENT FLEXIBILITY.

(a) REPEAL OF SUNSET FOR AUTHORITIES APPLICABLE TO PROCUREMENTS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.—Section 852 of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2235) is amended by striking “, but only if a solicitation of offers for the procurement is issued during the 1-year period beginning on the date of the enactment of this Act”.

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

“(a) **THRESHOLD AMOUNTS.**—For a procurement referred to in section 852, the simplified acquisition threshold referred to in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) is deemed to be—”.

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

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

“SEC. 853. INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR CERTAIN PROCUREMENTS.”.

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

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

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

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

(B) by striking the period at the end of subparagraph (H) and inserting “; or”;

and

(C) by adding at the end the following:

“(I) the procurement is by the head of an executive agency pursuant to the special procedures provided in section 853 of the Homeland Security Act of 2002 (Public Law 107–296).”.

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

“(a) **AUTHORITY.**—With respect to a procurement referred to in section 852, the head of an executive agency may deem any item or service to be a commercial item for the purpose of Federal procurement laws.”.

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

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

SEC. 503. AUTHORITY TO MAKE INFLATION ADJUSTMENTS TO SIMPLIFIED ACQUISITION THRESHOLD.

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

SEC. 504. TECHNICAL CORRECTIONS RELATED TO DUPLICATIVE AMENDMENTS.

(a) **REPEAL OF SUPERSEDED SUBCHAPTER AND RELATED CONFORMING AMENDMENTS.**—(1) Subchapter II of chapter 35 of title 44, United States Code, is repealed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) CORRECTION OF CROSS REFERENCE.—Section 2224(c) of title 10, United States Code, as amended by section 301(c)(1)(B)(iii) of the E-Government Act of 2002 (Public Law 107–347; 116 Stat. 2955), is amended by striking “subchapter III” and inserting “subchapter II”.

SEC. 505. EXEMPTION FROM LIMITATIONS ON PROCUREMENT OF FOREIGN INFORMATION TECHNOLOGY THAT IS A COMMERCIAL ITEM.

(a) EXEMPTION.—Notwithstanding any other provision of law, in order to promote Government access to commercial information technology, the restriction on purchasing nondomestic articles, materials, and supplies set forth in the Buy American Act (41 U.S.C. 10a et seq.), and the prohibition on acquiring foreign products under section 302(a)(1) of the Trade Agreements Act of 1979 (Public Law 96–39; 19 U.S.C. 2512(a)(1)), shall not apply to the acquisition by the Federal Government of information technology (as defined in section 11101 of title 40, United States Code, that is a commercial item (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

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

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

(2) in subparagraph (B), by striking “ancillary equipment,” and inserting “ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer,”.

SEC. 506. PROHIBITION ON USE OF QUOTAS.

(a) IN GENERAL.—After the date of enactment of this Act, the Office of Management and Budget may not establish, apply, or enforce any numerical goal, target, or quota for subjecting the employees of a department or agency of the Government to public-private competitions or converting such employees or the work performed by such employees to contractor performance under Office of Management and Budget Circular A-76 or any other administrative regulation, directive, or policy unless the goal, target, or quota is based on considered research and sound analysis of past activities and is consistent with the stated mission of the department or agency.

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

(1) otherwise affect the implementation or enforcement of the Government Performance and Results Act of 1993 (107 Stat. 285); or

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

SEC. 507. PUBLIC DISCLOSURE OF NONCOMPETITIVE CONTRACTING FOR THE RECONSTRUCTION OF INFRASTRUCTURE IN IRAQ.

(a) DISCLOSURE REQUIRED.—

(1) PUBLICATION AND PUBLIC AVAILABILITY.—The head of an executive agency of the United States that enters into a contract for the repair, maintenance, or construction of infrastructure in Iraq without full and open competition shall publish in the Federal Register or Commerce Business Daily and otherwise make available to the public, not later than 30 days after the date on which the contract is entered into, the following information:

(A) The amount of the contract.

(B) A brief description of the scope of the contract.

(C) A discussion of how the executive agency identified, and solicited offers from, potential contractors to perform the contract, together with a list of the potential contractors that were issued solicitations for the offers.

(D) The justification and approval documents on which was based the determination to use procedures other than procedures that provide for full and open competition.

(2) INAPPLICABILITY TO CONTRACTS AFTER FISCAL YEAR 2013.—Paragraph (1) does not apply to a contract entered into after September 30, 2013.

(b) CLASSIFIED INFORMATION.—

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

(A) withhold from publication and disclosure under subsection (a) any document that is classified for restricted access in accordance with an Executive order in the interest of national defense or foreign policy; and

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

(2) AVAILABILITY TO CONGRESS.—In any case in which the head of an executive agency withholds information under paragraph (1), the head of such executive agency shall make available an unredacted version of the document con-

taining that information to the chairman and ranking member of each of the following committees of Congress:

(A) The Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

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

(C) Each committee that the head of the executive agency determines has legislative jurisdiction for the operations of such department or agency to which the information relates.

(c) **FISCAL YEAR 2003 CONTRACTS.**—This section shall apply to contracts entered into on or after October 1, 2002, except that, in the case of a contract entered into before the date of the enactment of this Act, subsection (a) shall be applied as if the contract had been entered into on the date of the enactment of this Act.

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

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

SEC. 508. APPLICABILITY OF CERTAIN PROVISIONS TO SOLE SOURCE CONTRACTS FOR ITEMS AND SERVICES TREATED AS COMMERCIAL ITEMS.

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

(1) cost accounting standards promulgated pursuant to section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422); and

(2) cost or pricing data requirements (commonly referred to as truth in negotiating) under section 2306a of title 10, United States Code, and section 304A of title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b).

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

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

The current acquisition system, improved though it may be through the reforms of the 80s and 90s is simply inadequate to leverage the best and most innovative services and products our vigorous private-sector economy has to offer. It has not kept up with the dynamics of an economy that has, over the last few years, become increasingly service and technology oriented.

H.R 1837 is targeted overall at the root causes of our current dilemma. The legislation will allow us to put the tools needed to access the commercial service and technology market in the hands of a trained workforce. The legislation also grants that workforce the discretion necessary to choose the best value for the government and holds them accountable for their choices.

Specifically, the legislation consists of a carefully crafted set of balanced and interrelated proposals that will address the multiple deficiencies plaguing government acquisition today; (1) the lack of up-to-date comprehensive training for our acquisition professionals, (2) the inability of the current government structure to reflect business-like practices by integrating the acquisition function into the overall agency mission and facilitating cross-agency acquisitions and information sharing, and (3) the lack of effective tools and incentives to encourage the participation of the best commercial firms in the government market.

TITLE I

H.R 1837 at title I amends federal procurement law to remedy one of the most glaring difficulties facing today's acquisition system; our inability to have the right people with the right skills to manage the acquisition of the services and technology the government needs. It will establish a sorely needed workforce training fund within the General Services Administration (GSA), financed by depositing 5 percent of the fees collected by various agencies under their government-wide contracts, including the GSA

Schedules. This will stabilize training funding and allow our hard-working acquisition professionals to get the training they need to transition to the new service oriented and technology driven federal market.

It will also create an acquisition professional exchange program to permit the exchange of high-performing acquisition professionals between the federal government and participating private-sector concerns. The program will provide both public and private sector employees with invaluable first-hand experience and insight to bring back to their respective organizations. The program will contain extensive ethics protections. It is modeled after the Digital Tech Corps Act for technology professionals that is included in the recently enacted E-Government Act of 2002 Pub L. 107-347.

Title I makes a number of other changes to help the government recruit a skilled acquisition workforce and to ensure that the government maintains an adequate workforce to acquire the architectural and engineering services it needs.

TITLE II

Title II of the legislation includes a number of provisions aimed at reforming the government's antiquated acquisition management structure and provides other improvements to the process. The legislation provides for the appointment of a Chief Acquisition Officer (CAO) (the provision is modeled on the Chief Human Capital Officer position created in the Homeland Security Act of 2002, Pub. L. 107-296) for each agency to eliminate stovepipes and serve as a focal point for acquisition in day-to-day operations, as well as in agency-wide strategic planning and performance evaluation processes. It also establishes a CAO Council modeled after the Chief Information Officers Council established in the E-Government Act of 2002, Pub. L. 107-347 to monitor and improve the federal acquisition system. In a further effort to unlock the current stove-piped structure, the legislation will provide for the creation of an advisory panel of acquisition experts with diverse experience to review current government-wide acquisition laws and regulations. The panel will make recommendations for change with a view towards ensuring the effective and appropriate use of commercial practices and encouraging the most innovative firms to compete in the government market while retaining the integrity of the acquisition process and ensuring that the government's best interests are protected.

The legislation also contains a provision that will prohibit government agencies from disqualifying from the award of a government contract a business that permits its workers to telecommute in the performance of the contract. The provision is based upon the

Freedom to Telecommute Act that passed the House last Congress by a vote of 412–0. H.R. 1837 also contains provisions that (1) provide statutory authority for agency level bid protests and clarify the relationship between agency-level and the General Accounting Office protest process, (2) extend the current authority to carry out the government’s franchise fund programs, (3) provide for a number of needed improvements in the government’s contracting for architectural and engineering services and (4) add procedural requirements for civilian agencies relating to the acquisition of products of Federal Prison Industries.

TITLE III

H.R. 1837 at title III adds tools to enable our acquisition workforce to tap into our dynamic commercial marketplace. The legislation provides for the increased authorization of the use of innovative share-in-savings contracts beyond information technology. A limited number of share-in—savings contracts are authorized for information technology in the recently passed E-Government Act. Share-in-savings contracts represent an innovative approach to encourage industry to share creative technology and management solutions so that agencies can lower costs and improve service delivery without large up-front investments. The legislation also authorizes agencies to exercise options for additional performance periods in service contracts based upon exceptional performance.

TITLE IV

H.R. 1837 updates the improvements in the acquisition of commercial items made during the reforms of the 90s. It establishes a government-wide preference for the use of performance-based service contracts by treating them in most respects as contracts for commercial items. This will authorize the use of simplified procedures for the award of performance-based service contracts and apply to those contracts, within certain limits, the current waivers of requirements and certifications. The legislation authorizes the use of time and material and labor-hour type contracts for commercial services that are commonly sold to the public through such contracts. The legislation provides a clarification of the existing statutory definition of commercial items to better reflect the commercial market for services and to include goods and services provided by a firm’s commercial entity.

TITLE V

This title of H.R. 1837 provides for various improvements to the acquisition system. It contains a provision allowing all federal agencies to use approaches other than contracts to buy research and development and prototypes for new technologies to fight terror. The Department of Defense has long had such authority. The new Department of Homeland Security has recently been granted the authority. The legislation also makes permanent the Federal Emergency Procurement Flexibility Act that was included as part of the Homeland Security Act of 2002. The Flexibility Act provides agencies with greater authority to buy the most high-tech and sophisticated products and services to support anti-terror efforts and to defend against biological, chemical, or radiological attacks. All

government agencies need this authority to respond to possible terror threats. The title also provides authority to make inflation adjustments to the existing acquisition threshold for simplified acquisition procedures and makes technical corrections to the information security provisions of the Homeland Security Act. The title further removes domestic source restrictions for commercial information technology products, prohibits the use of numerical goals, targets, or quotas for competitive sourcing unless they are based on sound research and analysis, provides for publication of information on certain contract awards for Iraq reconstruction efforts and places a \$15,000,000 ceiling on the applicability of the waiver of certification and accounting requirements for services or goods deemed commercial pursuant to the title IV provisions of H.R. 1837 encouraging the use of performance-based contracts and clarifying the definition of commercial item to include services and products of a commercial entity.

BACKGROUND AND NEED FOR THE LEGISLATION

Each year our government spends well over \$200 billion buying services and goods ranging from sophisticated information technology and management services, to grass cutting and window washing, from paper clips to advanced weapon systems. More than half that \$200 billion, over \$135 billion is now spent on services—an increase of about 24 percent since 1990—establishing services as the Nation's largest single spending category.

The acquisition process that is tasked with this daunting job is grounded on two basic, and largely mirror-image statutes. The Armed Services Procurement Act of 1947 for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard and the Federal Property and Administrative Services Act of 1949 for most civilian agencies. Additionally, the Office of Federal Procurement Policy Act provides a tie between the defense and civilian sectors through the establishment of government-wide acquisition policies and procedures; particularly the government-wide Federal Acquisition Regulation. Finally, an array of other statutes such as the Small Business Act, Buy American Act and other government-wide and agency-specific laws impact the acquisition process. These governing provisions are the culmination of a haphazard succession of reforms, reactions to perceived abuses, socio-economic programs and management initiatives stretching back to the 1700s.

The good news is that despite the lack of a long-term coherent vision for the acquisition system, recent reforms throughout the 90s have revolutionized the way the government does business with the private sector.

The bad news is the reforms were not nearly sufficient to match the best practices of industry particularly regarding the acquisition of cutting edge information technology and management services. The reforms were rooted in the late 80s and early 90s context products and major systems. The current system, improved though it may be, is simply inadequate to leverage the best and most innovative services and products our vigorous private-sector economy has to offer. It has not kept up with the dynamics of an economy that has over the last few years become increasingly service and technology oriented. We do not have the right people with the right

skills to manage acquisition of the services and technology the government so desperately needs.

The General Accounting Office, along with several civilian oversight agencies, have found prevailing weaknesses in service contracting; acquisitions are not competed sufficiently, are poorly planned, or not well managed. These enduring failures cause GAO to, year after year, place management of large procurement operations on its High Risk list. This diminishes the government's ability to be effective and efficient in managing federal programs and spending, communicating with and providing services to citizens, and protecting our homeland. Without change, the current system cannot support the President's vision, expressed in his Management Agenda, of a government that is well run, results oriented, citizen centered, and market based.

The proposals in H.R. 1837 are grounded on the Services Acquisition Reform Act of 2002 (SARA), H.R. 3832 from the last Congress and the acquisition hearings held last year by the Technology and Procurement Policy Subcommittee of the Committee on Government Reform. We have made progress since then. The Congress has passed the Homeland Security Act, Pub. L. 107-296 and the E-Government Act, Pub. L. 107-347. The Homeland Security Act contains some important procurement flexibilities, while the E-Government Act contains limited share-in-savings authority and cooperative purchasing authority to expand the General Services Administration schedule contracts to state and local governments. H.R. 1837 has benefited from the comments received from a variety of sources on the original version of SARA during last Congress's acquisition hearings and from the debates surrounding the passage of the Homeland Security and E-Government Acts.

SARA will provide our acquisition workforce with the necessary tools to succeed through a carefully crafted set of provisions along with training and insightful management based on results and accountability. SARA is targeted towards the goal of a modern, responsive, flexible, market-based acquisition system that will result in the government leveraging the best the private sector has to offer at fair and reasonable prices. SARA will address training of our acquisition workforce to meet the challenges of the new service-oriented economy, it will provide for the adoption of business-like acquisition practices within the government, facilitate the acquisition of commercial services by building on the prior reforms in the acquisition of commercial items and enable our government to access cutting-edge technology within today's commercial environment.

The federal government faces historic challenges. At the same time, it sits at the brink of unprecedented opportunity. We can and must develop new methods to harness the magic of our dynamic private market to meet the critical needs of the American people.

LEGISLATIVE HISTORY

The Services Acquisition Reform Act of 2003 (SARA), H.R. 1837 is targeted at the root causes of the dilemma facing the government's acquisition system today: (1) The lack of up-to-date comprehensive training for our acquisition professionals; (2) the inability of the current government structure to reflect business-like practices by integrating the acquisition function into the overall

agency mission and facilitating cross-agency acquisitions and information sharing; and (3) the lack of good tools and incentives to encourage the participation of the best commercial firms in the government market.

The legislation is the product of a rich hearing and comment process that has stretched over two Congresses. The provisions in the current legislation are grounded on the Services Acquisition Reform Act of 2002, H.R. 3832, introduced last Congress and the multiple hearings and debates that surrounded its consideration, as well as the debates held in connection with the passage of the Homeland Security Act and the E-Government Act. The Homeland Security Act contains some important procurement flexibilities, while the E-Government Act contains limited share-in-savings authority and cooperative purchasing authority. Consequently, the Committee has had the benefit of wealth of comments and suggestions from a variety of sources on the best reforms for the acquisition process.

On April 29, 2003, Chairman Tom Davis of the Committee on Government Reform and Representative Duncan Hunter introduced H.R. 1837 to give the government's acquisition workforce the tools needed to access the commercial service and technology markets and the discretion necessary to choose the best value for the government and be held accountable for those choices.

The bill was referred to the House Committee on Government Reform that met pursuant to notice on April 30, 2003 to hear testimony on reforms that will promote best practices in services acquisitions.

At the hearing, the Committee received testimony from William Woods, Director, Acquisition and Sourcing Management, United States General Accounting Office (GAO); Stephen Perry, Administrator of General Services; Angela Styles, Administrator of Federal Procurement Policy, Office of Management and Budget. Also testifying were Charles Tiefer, professor of law, University of Baltimore; Bruce Leinster, of IBM on behalf of the Information Technology Association of America; Edward Legasey, Executive Vice President and Chief Operating Officer of SRA International on behalf of the Professional Services Counsel and Mark Wagner, Vice President of Government Affairs, Johnson Controls Corp. on behalf of the Contract Services Association.

The government witnesses testified about the current status of government contracting for services. All praised the training provisions of the bill and spoke about the need to address the explosive growth in the federal government's services acquisitions. Administrator Styles stated that the provisions dealing with time materials and labor hour contracting were an improvement over the earlier version of the bill but added that there was need for appropriate oversight and safeguards in time material labor hour contracts. Mr. Woods of the GAO noted that SARA addressed a number of long-standing issues in service contracting and should enable agencies to improve their performance. He did however raise concern about a provision for more timely payment under service contracts, since removed in the Chairman's amendment in the nature of a substitute.

Professor Tiefer raised some concerns about the bill. He viewed the bill as removing useful regulation and creating opportunities

for possible abuse. The witnesses representing various industry groups praised the bill by pointing out that it will increase competition by making it easier for commercial firms to participate in the federal market.

This most recent hearing was the culmination of a fact gathering and comment process that began last Congress. The process featured two hearings targeted at services acquisition reform. The first hearing was held on May 22, 2001, by the Subcommittee on Technology and Procurement Policy. The Subcommittee met on that day pursuant to notice to hear testimony on services acquisition and future reforms to the federal acquisition system.

The hearing addressed and examined the progress of the acquisition reform initiatives of the early to mid-nineties. This hearing focused on the next steps in services acquisition reform. The recent reforms had to some extent streamlined the process that resulted in some cost savings, increased access to technological advancements, and reduced procurement cycles. The reforms have also improved the quality of products and services purchased by the federal government. The subcommittee reviewed the implementation of the reform efforts government-wide and examined future legislative proposals to further streamline the procurement system and to better use commercial best practices.

Testimony was received from David E. Cooper, Director, Acquisition and Sourcing Management, General Accounting Office (GAO); David R. Oliver, Jr., principal Deputy Under Secretary of Defense, Acquisition, Technology and Logistics; David A. Drabkin, Deputy Associate Administrator, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration; Dr. Steven Kelman, Albert Weatherhead professor of public management, John F. Kennedy School of Government, Harvard University; Michael W. Mutek, Senior Vice President, General Counsel, and Secretary, Raytheon Technical Services Co., representing the Professional Services Counsel; and Mark Wagner, Director of Federal Government Affairs, Johnson Controls, representing the Contact Services Association.

Generally, the comments of the witnesses were as follows: the government witnesses informed the subcommittee of their services acquisition reform efforts and their attempts to equip federal employees to take advantage of the opportunities afforded by these reforms; the testimony offered by the GAO and non-federal witnesses expressed the need to consider new reforms. GAO pointed out that, as a percentage of federal spending, services acquisition is growing and that increasing needs in information technology services and professional, administrative and management services drives this growth. Private-sector witnesses stated that the system still contained too many non-value-added requirements and processes.

There was a consensus that additional reforms were needed. Some witnesses suggested aggressive implementation of performance based contracting. Others advocated share-in-savings contracting. Almost all witnesses cited training of the acquisition workforce as critical to enhancing the effect of any reforms.

Subsequently, on November 1, 2001 the Subcommittee on Technology and Procurement Policy pursuant to notice met to review proposed legislative initiatives designed to provide the federal government greater access to the commercial marketplace and lower

the barriers agencies faced in acquiring goods and services necessary to meet their mission objectives.

The hearing reviewed proposed legislative initiatives designed to provide the federal government greater access to the commercial marketplace. The subcommittee found that such initiatives were critical as the government was not utilizing best commercial practices and many of the best commercial firms were reluctant to participate in the government market.

At the hearing, testimony was received from Stan Z. Soloway, President, Professional Services Council; Mark Wagner, Vice President, Federal Government affairs, Johnson Controls, Inc.; Renato DiPentima, President, SRA Consulting and Systems Integration, SRA International, Inc.; Charles Mather, Chief Executive Officer, Acquisition Solutions, Inc.; and Charles Tiefer, professor of law, University of Baltimore Law School. Also testifying were William T. Woods, Acting Director, Acquisition and Sourcing Management; Stephen A. Perry, Administrator of General Services; Angela B. Styles, Administrator for Federal Procurement Policy, Office of Management and Budget; Deidre A. Lee, Director, Defense Procurement, Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, Department of Defense.

The witnesses testifying on behalf of the government generally stated that there was interest in particular initiatives contained within the draft legislation. Some witnesses cautioned that there was also a need to maintain other governmental interests such as the benefits of competition and transparency. They also reported on successes and challenges in implementing earlier acquisition reforms.

The private-sector witnesses were enthusiastic in their support for the draft legislation. They lauded, in particular, the importance of an aggressive training program for the acquisition workforce contained in the draft. Several witnesses stated that a lack of adequate training led to the hampered implementation of earlier reforms. They also encouraged the increased emphasis on share-in-savings and performance based contracting and the revision of standard payment terms.

The final witness, Professor Tiefer, cautioned the subcommittee on three issues. He warned that any perceived partial repeal of the Davis-Bacon Act or the Service Contracting Act might be viewed as polarizing. He stated that allowing government contractors to create more flexible commercial business segments might lead to new instances of defective pricing. Finally, he advised that share-in-savings programs harbor some potential risks.

The information and knowledge developed in these two hearings led to the development of the Services Acquisition Reform Act (SARA) which was introduced as H.R. 3832 on March 4, 2002 by Chairman Davis. Following the introduction of H.R. 3832, the Subcommittee on Technology and Procurement Policy held a third hearing on March 7, 2002 to gather views and data on H.R. 3832 as introduced.

In his opening statement, Chairman Davis stated that over the last year he continued to find that federal agencies were failing to achieve contract management goals and efficiency in service contracting. In addition, the GAO, along with several civilian oversight agencies, had found that prevailing weaknesses exist in service

contracting. These weaknesses include acquisitions that were not competed sufficiently, were poorly planned, or were not well managed. According to the Chairman, one of SARA's goals is to streamline procurement cycles and integrate agency mission goals with acquisition goals in order to help agencies meet the challenges presented by the war on terrorism.

At the hearing, testimony was received from Dr. Steven Kelman, professor of public management, Harvard University; Steven Schooner, associate professor of law, the George Washington University Law School; Scott Dever, Vice President of Global Procurement, Hasbro, Inc.; Richard Roberts, Senior Vice President and Managing Director, Federal Services, KPMG Consulting, Inc.; Roberta StandsBlack-Carver, President and CEO, Four Winds Services, Inc.; Jerry S. Howe, Senior Vice President and General Counsel, Veridian. Also testifying were William T. Woods, Director, Acquisition and Sourcing Management, U.S. General Accounting Office (GAO); Angela B. Styles, Administrator of Federal Procurement Policy, Office of Management and Budget; Stephen Perry, Administrator of General Services; and Deidre Lee, Director of Procurement, U.S. Department of Defense.

The GAO witness expanded on its recent report on industry best practices in services acquisition. He noted that various provisions of the bill addressed aspects of the approaches followed by leading companies, particularly the provisions regarding performance-based contracting and the establishment of an agency Chief Acquisition Officer. Commissioner Perry of the General Services Administration spoke highly of SARA's commitment to training acquisition professionals as well as the concept of each agency having a Chief Acquisition Officer.

The witnesses from academia were generally supportive of the reforms laid out in H.R. 3832. Dr. Kelman stated that SARA "continues the effort to create a modern, businesslike procurement system that began a decade ago, in an exercise in bipartisanship and good government that is all-too-rare these days." Professor Schooner did comment that he would like to see even more emphasis on Congressional oversight in the procurement process.

Witnesses testifying on behalf of the private sector supported the provisions of H.R. 3832. Mr. Roberts of KPMG stated that as the nation refocused its efforts toward new challenges the federal government needed to have fast, efficient access to the best information technology solutions. He added that these solutions reside primarily in the private sector but that SARA could help the federal government benefit from them. Ms. StandsBlack Carver, CEO of a Native American-owned small business was enthusiastic in her support of the legislation. She noted that SARA would allow the federal government to take advantage of innovations offered in the services area to the benefit of the U.S. taxpayer.

The Committee relied on the testimony, reports and statements collected in the development and drafting of H.R. 3832 of the 107th Congress while crafting and reintroducing H.R. 1837 in this the 108th Congress.

SECTION-BY-SECTION

*Section 1—Short title; table of contents**Section 2—Executive agency defined*

The section would define the term “executive agency” as that term is defined in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)), unless stated otherwise.

TITLE I—ACQUISITION WORKFORCE AND TRAINING

Section 101—Definition of acquisition

The section would amend section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403) to provide a comprehensive government-wide definition of the term “acquisition.” The new definition would encompass the entire spectrum of acquisition starting with the development of an agency’s requirements through management and measurement of contract performance.

Section 102—Acquisition workforce training fund

The section would amend section 37 of the Office of Federal Procurement Policy Act (41 U.S.C. 433) to establish within the General Services Administration an acquisition workforce-training fund to be managed by the Federal Acquisition Institute (FAI). The fund is to be financed by depositing 5% of the fees collected by various executive agencies under their government-wide contracts. This will provide the stabilized funding needed by FAI to develop training resources needed to enable our acquisition professionals to transition to the new service oriented and technology driven federal market. The fund can only be used for sorely needed acquisition workforce training across the civilian government agencies.

Section 103—Government-Industry Exchange Program

The section would amend Subpart B of part III of title 5, United States Code by adding a new Chapter 38 establishing an acquisition professional exchange program to permit the temporary exchange of high-performing acquisition professionals between the federal government and participating private-sector concerns. Under the program, which is modeled after the Information Technology Exchange Program included in section 209 of the recently passed E-Government Act, Pub. L. 107–347, a participating federal employee would retain his/her federal benefits and would be deemed during the period of the assignment (for a period of between 6 months and a year, with possible extensions of up an additional year for both public and private-sector employees) to be detailed to regular work within the agency. Under the section an agency head would take necessary actions to ensure that 20 percent of those federal employees assigned to private sector firms are assigned to small businesses. Private-sector employees could be assigned to a federal agency. An assigned employee could still be paid by the private-sector employer and would be deemed a federal employee for most purposes. The section would amend a number of current government employee ethics provisions to apply to private sector employees assigned to federal agencies under the program. The Office of Personnel Management (OPM) would submit semi-annual reports to the Committees on Government Reform and Gov-

ernmental Affairs summarizing the operation of the program including the number of individuals assigned, the positions involved and the durations of the assignments. Assignments of federal employees to non-federal employers would only be made pursuant to a program developed by the Office of Federal Procurement Policy and OPM. No assignments under the section could be made after the end of a 5-year period beginning on the date of enactment. The General Accounting Office would, 4 years after enactment, report on the effectiveness of the program and whether it should be continued. Finally, the section would provide conforming amendments to title 5 and title 18, United States Code and other law in connection with the new professional exchange program.

Section 104—Acquisition Workforce Recruitment Program

The section would permit the head of an agency to determine, for purposes of sections 3304, 5333, and 5753 of title 5, United States Code, that certain Federal acquisition positions are “shortage category” positions in order to recruit and directly hire such employees with high qualifications. The actions under this section would be subject to Office of Personnel Management policies. The Administrator for Federal Procurement Policy would be required to submit a report to Congress prior to the authority’s September 2007 expiration date concerning the efficacy of the program and recommending whether the authority should be extended.

Section 105—Architectural and engineering acquisition workforce

The section would provide that the Administrator for Federal Procurement Policy in consultation with the Secretary of Defense, the Administrator of General Services and the Director of the Office of Personnel Management develop and implement a plan to assure that the federal government maintains a core in-house architectural and engineering capability to ensure that it has the capability to effectively contract for the performance of architectural and engineering services.

TITLE II—ADAPTATION OF BUSINESS ACQUISITION PRACTICES

Subtitle A—Adaptation of Business Management Practices

Section 201—Chief Acquisition Officers

The section would amend section 16 of the Office of Federal Procurement Policy Act (41 U.S.C. 414) to provide for the appointment of a non-career employee as the Chief Acquisition Officer for each executive agency other than the Department of Defense. The Department of Defense currently has a comparable position established pursuant to section 133 of title 10, United States Code. The Chief Acquisition Officer would have acquisition as the official’s primary duty and advise and assist the agency head and other senior officials to ensure that the agency mission is achieved through the management of the agency’s acquisition activities. The functions of the Chief Acquisition Officer would include monitoring the agency’s acquisition activities, evaluating them based on applicable performance measurements, increasing the use of full and open competition in agency acquisitions, making acquisition decisions

consistent with applicable laws, and establishing clear lines of authority, accountability, and responsibility for acquisition decision-making and developing and maintaining a acquisition career management program. The Chief Acquisition Officer would, as a part of the statutorily required annual strategic planning and performance evaluation process, assess agency requirements for agency personnel knowledge and skills in acquisition resources management and, if necessary, develop strategies and plan for hiring, training and professional development.

Section 202—Chief Acquisition Officers Council

The section would add a new section 16A to the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 403 et seq.) to authorize the establishment of a Chief Acquisition Officers Council to monitor and improve the federal acquisition system. The Council is to be chaired by the Deputy Director for Management (DDM) of the Office of Management and Budget (OMB) and comprised of the Administrator for Federal Procurement Policy (Administrator), the Chief Acquisition Officers created under section 16 of the OFPP Act, and any other federal officer or employee designated by the chair. The Administrator is to lead the activities of the Council on behalf of the DDM. The General Services Administration is to provide administrative and other support to the Council. The Council will, among other things, develop recommendations for OMB on acquisition policies and requirements, assist the Administrator in the identification, development, and coordination of multi-agency and other innovative acquisition initiatives, promote effective business practices to ensure timely delivery of best value products and services to the government. The Council will also work with the Office of Personnel Management to assess and address hiring, training, and professional development needs related to acquisition.

Section 203—Statutory and regulatory review

The section would provide that the Administrator for Federal Procurement Policy establish an advisory panel of at least nine experts in acquisition law and policy who represent diverse public and private sector experiences. The panel would review acquisition laws and regulations with a view toward ensuring effective and appropriate use of commercial practices and performance-based contracting and enhancing the performance of acquisition functions across agency lines, and the use of government-wide contracts. The panel would make recommendations for the repeal or amendment of laws or regulations that are unnecessary for the effective, efficient and fair award and administration of government contracts while retaining the financial and ethical integrity of the acquisition programs and ensuring that the government's best interest is protected. The report is to be completed within one year after the establishment of the panel and contain the findings and conclusions of the panel.

Subtitle B—Other Acquisition Improvements

Section 211—Extension of authority to carry out franchise fund programs

The section would amend section 403(f) of the Federal Financial Management Act of 1994 (31 U.S.C. 501 note) to reauthorize the government's franchise funds until October 1, 2006. These six franchise fund programs were authorized in the Departments of the Interior, Commerce, Health and Human Services, Treasury, and Veterans Affairs and in the Environmental Protection Agency to provide common administrative support services.

Section 212—Agency acquisition protests

The section would amend Chapter 137 of title 10, United States Code and the Federal Property and Administrative Services Act of 1949 to provide statutory authority for an agency-level acquisition protest process. It would provide for a “stay” of the award or of contract performance during the 20 working day period an agency is given to decide the protest. The “stay” could be lifted by the head of the agency procuring activity upon a written finding that urgent and compelling circumstances do not permit waiting for the decision. The section would provide that filing an agency-level protest under this section would not affect the right of an interested party to file a protest with the Comptroller General or in the United States Court of Federal Claims. The section would also amend section 3553(d)(4) of title 31, United States Code to provide that an interested party filing a protest on the same matter with the Comptroller General within 5 days of the issuance of the agency protest decision would qualify for a stay of performance in connection with such protest.

Section 213—Improvements in contracting for architectural and engineering services

The section would amend section 1102 of title 40 of the United States Code to clarify the terms “surveying and mapping” as used in the definition of architectural and engineering services to ensure that the quality-based selection process in chapter 11 of title 40 of the United States Code is used for the full spectrum of surveying and mapping services. The Federal Acquisition Regulation would also be amended to include the new clarified definition. Further, the section would amend section 2855(b) of title 10, United States Code to raise from \$85,000 to \$300,000 the threshold for a participation incentive for small business concerns in acquisitions for architectural and engineering services and to conform section 2855 to the title 40 amendments. Finally, the section would require that architectural and engineering services offered under multiple-award schedule contracts awarded by the General Services Administration or under government-wide task and delivery order contracts be performed under the supervision of a licensed professional engineer and be awarded pursuant to the quality-based selection procedures in chapter 11 of title 40 of the United States Code.

Section 214—Authorization of telecommuting for Federal contractors

The section would amend the Federal Acquisition Regulation (FAR) to provide that solicitations for federal contracts should not contain any requirement or evaluation criteria that would render an offeror ineligible for award or would reduce the scoring of the offeror's proposal based upon the offeror's inclusion of a plan to allow its employees to telecommute unless the contracting officer first determines in writing that the needs of the agency, including security needs, could not be met without the requirement. The General Accounting Office would report to Congress on the implementation one year after the FAR amendment is published.

Section 215—Procedural requirements for civilian agencies relating to products of Federal Prison Industries

The section would amend the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) to add a new section 318 to provide that before purchasing a product from the Federal Prison Industries (FPI) an agency head must conduct market research to determine whether the FPI product is comparable in terms of price, quality and time of delivery to products available from the private sector. If the agency determines that the FPI product is not comparable, the agency shall use competitive procedures or a multiple award contract to acquire the product. The agency is to consider a timely offer from FPI under such an acquisition. The section also provides that a firm contracting with an agency may not be required by that agency to use FPI as a subcontractor or supplier. Finally, the section prohibits an agency from entering into a contract with FPI under which an inmate worker would have access to classified or other sensitive data.

TITLE III—CONTRACT INCENTIVES

Section 301—Share-in-Savings Initiatives

The section would amend section 2332 title 10, United States Code and section 317 of the Federal Property and Administrative Services Act (Property Act) to authorize government-wide the use of share-in-savings contracts. These contracts represent an innovative approach to encourage industry to share creative solutions with the government. Through these contracts, agencies can lower their costs and improve service delivery without large "up front" investments as the contractor provides the technology and is compensated by receiving a portion of savings achieved. The section would amend and clarify the provisions in title 10 and the Property Act that were added to the United States Code by section 210 of the E-Government Act of 2002, Pub. L. 107-347. The new section would expand the authorization beyond information technology and provide for the use of such contracts whenever the proper approvals are granted.

The section would authorize agencies to enter into share-in-savings contracts for a term of 5 years, and with the appropriate approval, for up to 10 years, to pay contractors from the savings realized, and to retain those savings that exceed the amount paid to the contractor. The section would permit agencies to use various options for funding cancellation or termination costs and would

permit the cancellation or termination amount to be negotiated by the parties. The section would require that share-in-savings contracts include a provision containing a quantifiable baseline for savings that is approved by the agency's chief acquisition officer. The section would not permit the award of such contracts where funding for the full cost of cancellation or termination is not available unless the amount of unfunded contingent liability does not exceed the lesser of 50% of the estimated cancellation or termination costs or \$10,000,000. Any unfunded contingent liability in excess of \$5,000,000 would require approval by the Director of the Office of Management and Budget (OMB). Further, the section would require that the Federal Acquisition Regulation (FAR) be revised to implement this section and to provide for such matters as the use of competitive procedures and innovative provisions for technology refreshment, appropriate regulatory flexibility to facilitate the use of such contracts and assurance that the contractor's share of the savings reflects the risk involved and the market conditions. The Director of OMB is to provide incentives to agencies in identifying additional opportunities for the use of these contracts and guidance for determining baselines and savings share ratios. Finally, the section would require the Director of OMB to report to Congress two years after the FAR revisions are issued describing the number of share-in savings contracts entered into, the total payments made and savings achieved, agency efforts to determine baseline costs and making recommendations for changes in law needed to encourage the effective use of share-in-savings contracts.

Section 302—Incentives for contract efficiency

The section would amend the Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.) to add a new section 41 authorizing an agency to exercise an option to extend a contract for services by one or more performance periods based on exceptional performance as measured by standards set forth in the contract. The option is only to be exercised within the applicable provisions of law or regulation that set forth limitations on the duration of the contract containing the option. The contract is, to the maximum extent practicable, to be performance based.

TITLE IV—ACQUISITIONS OF COMMERCIAL ITEMS

Section 401—Additional incentive for use of performance-based contracting for services

The section would amend section 41 of the Office of Federal Procurement Policy Act (41 U.S.C. 41), as added by section 302 above, to add a new subsection that would provide that a performance-based service contract or task order may be treated as a contract for a commercial item if it defines tasks to be performed in measurable, mission related terms, identifies specific products or outputs and the source provides similar services to the public under similar terms to those offered the government. This would authorize the use of special simplified procedures provided in the Federal Acquisition Regulation for commercial items if the performance-based contract or task order is valued at \$5,000,000 or less and apply to those contracts the current waivers of requirements and certifications applicable to contracts for commercial items. Section 508

below provides that the application of the exemptions from cost accounting standards and cost or pricing data for a contract for a service treated as a commercial item under this section applies to contracts valued at up to \$15,000,000. The section further provides for agencies to collect and maintain data to identify the contracts and orders for services considered commercial items under this section and for a report to congressional committees by the Office of Management and Budget on the use of these authorities government-wide and by agency. The provision would sunset after 10 years. Finally, the section would require the Administrator for Federal Procurement Policy to establish a Center of Excellence for Service Contracting to assist the acquisition community in identifying best practices in service contracting.

Section 402—Authorization of additional commercial contract types

The section would provide that section 8002(d) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355; 41 U.S.C. 264 note) be amended to provide that the Federal Acquisition Regulation (FAR) include a provision that would provide that time and material and labor-hour contracts could be used for commercial services that are commonly sold to the general public through such contracts. Time and material and labor-hour contracts are treated in the current Part 16 of the FAR as a separate contract type, as are fixed-price contracts and cost-reimbursement contracts. While section 8002(d) provides that the FAR is to prohibit the use of cost-type contracts for commercial items, there is no comparable prohibition applicable to time and material and labor-hour contracts. Section 402 would make clear that, under the appropriate circumstances, time and material and labor-hour contracts should be specifically authorized by the FAR for commercial services.

Section 403—Clarification of commercial services definition

The section would amend section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403 (12)) (OFPP Act) to clarify the definition of commercial item to recognize the changing dynamics of the commercial marketplace for services. The new definition would eliminate the antiquated notion of an established catalogue price, but retain the requirement that commercial services have an established market price. Further and most important, the definition now recognizes that services that are sold on the basis of specific outcomes in addition to those for specific tasks fit with the OFPP Act definition of commercial services. Thus, benefits that attach to commercial items will now be available not just for services sold in the marketplace for specific tasks such as grass cutting but for more sophisticated services such as management consulting services use to improve agency processes.

Section 404—Designation of commercial business entities

The section would amend section 4 of the Office of Federal Procurement Policy Act, 41 U.S.C. 403 to add to the definition of commercial item services or goods provided or produced by a commercial entity that over the past 3 business years made 90% of its sales to private-sector entities. Section 508 below provides that the application of the exemptions from cost accounting standards and cost or pricing data for a contract for goods or services treated as

a commercial item under this section apply to contracts valued at up to \$15,000,000. The section would further provide for a report by the Office of Management and Budget on the use of the authority in this section, by agency and government-wide, and for a Comptroller General review of the implementation of the new section to determine its effectiveness in increasing the availability of goods and services to the federal government at fair and reasonable prices.

TITLE V—OTHER MATTERS

Section 501—Authority to enter into certain procurement-related transactions and to carry out certain prototype projects

The section would amend title III of the Federal Property and Administrative Services Act of 1949 (Property Act) (41 U.S.C. 251 et seq.) to authorize the head of a civilian executive agency, if authorized by the Director of the Office of Management and Budget (OMB), to enter into transactions (other than contracts, cooperative agreements, and grants) to carry out basic, applied and advanced research, and development projects that are otherwise authorized and necessary to the responsibilities of the agency that may facilitate defense against, or recovery from, terrorism or nuclear, biological, chemical, or radiological, attack. This authority would be similar to that exercised by the Secretary of Defense under section 2317 of title 10, United States Code with certain exceptions.

The section would further amend the Property Act to provide that the head of an executive agency, designated by the Director of OMB to enter into transactions (other than contracts, cooperative agreements, and grants) may, with the approval of the Director of OMB, carryout prototype projects in accordance with the same requirements and conditions for prototype projects as are provided under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2371 note).

Section 502—Amendments relating to federal emergency procurement flexibility

The section would amend section 852, and various other sections of subtitle F of The Homeland Security Act of 2002, Pub. L. 107-296 to make permanent and clarify the authorities applicable to agencies other than the Department of Homeland Security for procurements for defense against terror. The procurement flexibilities in subtitle F of the Homeland Security Act, sections 851-858, provide for special streamlined procedures for the procurement of property or services when the head of the agency determines the property or services are to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.

The section would maintain the current expanded thresholds in subtitle F, but would more closely align the accompanying provisions with those in section 833 of the Homeland Security Act that provide special streamlined acquisition authorities for the Department of Homeland Security. Specifically, section 502 would provide for the application of the expanded simplified acquisition threshold to acquisitions other than those in support of humanitarian or peacekeeping or contingency operations and eliminate notice and

reservation restrictions. The section would also provide for the application of the attributes of a commercial item to an impacted acquisition, as is the case in section 833 of the Homeland Security Act. This provision would be applied in conjunction with section 508 below which provides that the application of the exemptions from cost accounting standards and cost or pricing data for a contract for a good or service treated as a commercial item under this section applies to contracts valued at up to \$15,000,000.

Section 503—Authority to make inflation adjustments to simplified acquisition threshold

The section would provide that the Administrator for Federal Procurement Policy may adjust the simplified acquisition threshold as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403 (11)) every five years to an amount equal to \$100,000 in constant fiscal year 2003 dollars.

Section 504—Technical corrections related to duplicative amendments

The section would repeal subchapter II of chapter 35 of title 44 of the United States Code and chapter 115 of title 40 of the United States Code. The section would also conform various amendments made by the Homeland Security Act of 2002, Pub.L. 107–296, with those made by the E–Government Act of 2002, Pub.L. 107–347.

Section 505—Exemption from limitations on procurement of foreign information technology that is a commercial item

The section would provide that, in order to promote government access to commercial information technology, the Buy American Act (41 U.S.C.10a) restriction on the acquisition of nondomestic products and the Trade Agreements Act of 1979 (Public Law 96–39; 19 U.S.C. 2512 (a)(1)) prohibition on noneligible foreign products would not apply to the acquisition of commercial information technology as defined in section 11101(6) of title 40 of the United States Code. The section would also amend section 11101(6) by including in the definition of information technology, equipment, interconnected system, or subsystem of equipment used in the analysis and evaluation of data or information and adding imaging peripherals and certain devices necessary for security and surveillance.

Section 506—Prohibition on the use of quotas

The section would provide that the Office of Management and Budget (OMB) may not use a numerical goal, target, or quota for the use of public-private competitions under OMB Circular A–76 or any other related policy unless the goal, target or quota is based on considered research and sound analysis of past activities and is consistent with the agency's mission. The section further provides that it shall not affect the implementation or enforcement of the Government Performance and Results Act of 1993 (107 Stat.285) or prevent any agency from subjecting work performed by federal employees or contractors to public-private competitions or conversions.

Section 507—Public disclosure of noncompetitive contracting for the reconstruction of infrastructure in Iraq

The section would require an agency to publish, within 30 days of award, information regarding a contract for repair, maintenance, or construction of infrastructure in Iraq that was awarded by the agency without full and open competition.

Section 508—Applicability of certain provisions to sole source contracts for goods and services treated as commercial items

The section provides a ceiling of \$15,000,000 per contract for the applicability of an exemption from cost accounting standards and cost or pricing data requirements (1) to a contract for a service that is treated as a commercial item under section 401 above because it is the subject of a performance-based contract, (2) to a service or good that is treated as a commercial item because it is provided or produced by a commercial entity in accordance with section 404 above, or (3) considered to be a commercial item under the emergency procurement flexibilities in section 502 above.

EXPLANATION OF AMENDMENTS

The provisions of the substitute are explained in this report.

COMMITTEE CONSIDERATION

On May 8, 2003, the Committee met in open session and ordered favorably reported the bill, H.R. 1837, as amended, by rollcall vote, a quorum being present.

ROLLCALL VOTES

Business Meeting- H.R. 1836 and H.R. 1837 (5-7-03)

Amendment offered by Mr. Kucinich #1- Definition of interested party for purposes of Procurement proceedings concerning public-private competitions or conversions
(H.R. 1837)

COMMITTEE ON GOVERNMENT REFORM
108TH CONGRESS - 1ST SESSION
ROLL CALL

Rep.	Aye	No	Present	Dem.	Aye	No	Present
MR. DAVIS (VA) (CHAIRMAN)		X		MR. WAXMAN	X		
MR. SHAYS		X		MR. LANTOS			
MR. BURTON				MR. OWENS			
MS. ROS-LEHTINEN				MR. TOWNS	X		
MR. MCHUGH		X		MR. KANJORSKI	X		
MR. MICA		X		MR. SANDERS	X		
MR. SOUDER		X		MRS. MALONEY	X		
MR. LATOURETTE		X		MR. CUMMINGS	X		
MR. OSE		X		MR. KUCINICH	X		
MR. LEWIS (KY)	X			MR. DAVIS (IL)	X		
MRS. DAVIS (VA)		X		MR. TIERNEY	X		
MR. PLATTS		X		MR. CLAY			
MR. CANNON		X		MS. WATSON	X		
MR. PUTNAM		X		MR. LYNCH	X		
MR. SCHROCK		X		MR. VAN HOLLEN	X		
MR. DUNCAN		X		MS. SANCHEZ	X		
MR. SULLIVAN		X		MR. RUPPERSBERGER	X		
MR. DEAL		X		MS. NORTON	X		
MRS. MILLER (MI)		X		MR. COOPER	X		
MR. MURPHY		X		MR. BELL	X		
MR. TURNER (OH)		X					
MR. CARTER		X					
MR. JANKLOW		X					
MRS. BLACKBURN		X					

Totals: Ayes 18 Nays 21 Present

Business Meeting- H.R. 1836 and H.R. 1837 (5-7-03)

Amendment offered by Mrs. Maloney #1- In section 201, in section 16(a) of the matter proposed to be inserted in the Office of Federal Procurement Policy Act, strike "non-career employee" and insert "career employee" (H.R. 1837)

COMMITTEE ON GOVERNMENT REFORM

108TH CONGRESS - 1ST SESSION

ROLL CALL

Rep	Aye	No	Present	Dem	Aye	No	Present
MR. DAVIS (VA) (CHAIRMAN)		X		MR. WAXMAN	X		
MR. SHAYS		X		MR. LANTOS			
MR. BURTON				MR. OWENS			
MS. ROS-LEHTINEN				MR. TOWNS	X		
MR. MCHUGH		X		MR. KANJORSKI	X		
MR. MICA		X		MR. SANDERS	X		
MR. SOUDER		X		MRS. MALONEY	X		
MR. LATOURETTE		X		MR. CUMMINGS	X		
MR. OSE		X		MR. KUCINICH			
MR. LEWIS (KY)		X		MR. DAVIS (IL)	X		
MRS. DAVIS (VA)		X		MR. TIERNEY	X		
MR. PLATT		X		MR. CLAY			
MR. CANNON		X		MS. WATSON	X		
MR. PUTNAM		X		MR. LYNCH	X		
MR. SCHROCK		X		MR. VAN HOLLEN	X		
MR. DUNCAN		X		MS. SANCHEZ	X		
MR. SULLIVAN		X		MR. RUPPERSBERGER	X		
MR. DEAL		X		MS. NORTON	X		
MRS. MILLER (MI)		X		MR. COOPER	X		
MR. MURPHY		X		MR. BELL	X		
MR. TURNER (OH)		X					
MR. CARTER		X					
MR. JANKLOW		X					
MRS. BLACKBURN		X					

Totals: Ayes 17 Nays 22 Present

Business Meeting- H.R. 1836 and H.R. 1837 (5-7-03)

Amendment offered by Mrs. Maloney #2- Section 505. Database for Federal Debarment Officials and Contracting Officers
(H.R. 1837)

COMMITTEE ON GOVERNMENT REFORM
108TH CONGRESS - 1ST SESSION
ROLL CALL

Rep	Ayes	No	Present	Dem.	Aye	No	Present
MR. DAVIS (VA) (CHAIRMAN)		X		MR. WAXMAN	X		
MR. SHAYS		X		MR. LANTOS			
MR. BURTON				MR. OWENS	X		
MS. ROS-LEHTINEN				MR. TOWNS	X		
MR. MCHUGH		X		MR. KANJORSKI	X		
MR. MICA		X		MR. SANDERS	X		
MR. SOUDER		X		MRS. MALONEY	X		
MR. LATOURETTE		X		MR. CUMMINGS	X		
MR. OSE		X		MR. KUCINICH			
MR. LEWIS (KY)		X		MR. DAVIS (IL)	X		
MRS. DAVIS (VA)		X		MR. TIERNEY	X		
MR. PLATTS		X		MR. CLAY			
MR. CANNON		X		MS. WATSON	X		
MR. PUTNAM		X		MR. LYNCH	X		
MR. SCHROCK		X		MR. VAN HOLLEN	X		
MR. DUNCAN		X		MS. SANCHEZ	X		
MR. SULLIVAN		X		MR. RUPPERSBERGER	X		
MR. DEAL		X		MS. NORTON	X		
MRS. MILLER (MI)		X		MR. COOPER	X		
MR. MURPHY		X		MR. BELL	X		
MR. TURNER (OH)		X					
MR. CARTER		X					
MR. JANKLOW		X					
MRS. BLACKBURN		X					

Totals: Ayes 18 Nays 22 Present

Business Meeting- H.R. 1836 and H.R. 1837 (5-7-03)
 Amendment offered by Mr. Kucinich #2- Tracking the cost and quality of work performed by contractors
 (H.R. 1837)

COMMITTEE ON GOVERNMENT REFORM
 108TH CONGRESS - 1ST SESSION
 ROLL CALL

Rep.	Aye	No	Present	Dem.	Aye	No	Present
MR. DAVIS (VA) (CHAIRMAN)		X		MR. WAXMAN	X		
MR. SHAYS		X		MR. LANTOS			
MR. BURTON				MR. OWENS	X		
MS. ROS-LEHTINEN				MR. TOWNS	X		
MR. MCHUGH		X		MR. KANJORSKI	X		
MR. MICA		X		MR. SANDERS	X		
MR. SOUDER		X		MRS. MALONEY	X		
MR. LATOURETTE		X		MR. CUMMINGS	X		
MR. OSE		X		MR. KUCINICH	X		
MR. LEWIS (KY)		X		MR. DAVIS (IL)	X		
MRS. DAVIS (VA)		X		MR. TIERNEY	X		
MR. PLATT'S		X		MR. CLAY			
MR. CANNON		X		MS. WATSON	X		
MR. PUTNAM		X		MR. LYNCH	X		
MR. SCHROCK		X		MR. VAN HOLLEN	X		
MR. DUNCAN		X		MS. SANCHEZ	X		
MR. SULLIVAN		X		MR. RUPPERSBERGER	X		
MR. DEAL		X		MS. NORTON	X		
MRS. MILLER (MI)		X		MR. COOPER	X		
MR. MURPHY		X		MR. BELL	X		
MR. TURNER (OH)		X					
MR. CARTER		X					
MR. JANKLOW		X					
MRS. BLACKBURN		X					

Totals: Ayes 18 Nays 22 Present

Business Meeting- H.R. 1836 and H.R. 1837 (5-7-03)
 Amendment offered by Ms Sanchez #1- Prohibition on contracting with expatriot companies
 (H.R. 1837)

COMMITTEE ON GOVERNMENT REFORM
 108TH CONGRESS - 1ST SESSION
 ROLL CALL

Rep.	Aye	No	Present	Dem.	Aye	No	Present
MR. DAVIS (VA) (CHAIRMAN)		X		MR. WAXMAN	X		
MR. SHAYS		X		MR. LANTOS			
MR. BURTON				MR. OWENS	X		
MS. ROS-LEHTINEN				MR. TOWNS	X		
MR. MCHUGH		X		MR. KANJORSKI	X		
MR. MICA		X		MR. SANDERS	X		
MR. SOUDER		X		MRS. MALONEY	X		
MR. LATOURETTE		X		MR. CUMMINGS	X		
MR. OSE		X		MR. KUCINICH	X		
MR. LEWIS (KY)		X		MR. DAVIS (IL)	X		
MRS. DAVIS (VA)		X		MR. TIERNEY	X		
MR. PLATT		X		MR. CLAY			
MR. CANNON		X		MS. WATSON	X		
MR. PUTNAM		X		MR. LYNCH	X		
MR. SCHROCK		X		MR. VAN HOLLEN	X		
MR. DUNCAN				MS. SANCHEZ	X		
MR. SULLIVAN		X		MR. RUPPERSBERGER	X		
MR. DEAL		X		MS. NORTON	X		
MRS. MILLER (MI)		X		MR. COOPER	X		
MR. MURPHY		X		MR. BELL	X		
MR. TURNER (OH)		X					
MR. CARTER		X					
MR. JANKLOW		X					
MRS. BLACKBURN		X					

Totals: Ayes 18 Nays 21 Present

Business Meeting- H.R. 1836 and H.R. 1837 (5-7-03)
 Amendment offered by Mr. Van Hollen #1- Competition requirement
 (H.R. 1837)

COMMITTEE ON GOVERNMENT REFORM
 108TH CONGRESS - 1ST SESSION
 ROLL CALL

Rep	Aye	No	Present	Dem	Aye	No	Present
MR. DAVIS (VA) (CHAIRMAN)		X		MR. WAXMAN	X		
MR. SHAYS		X		MR. LANTOS			
MR. BURTON				MR. OWENS	X		
MS. ROS-LEHTINEN				MR. TOWNS	X		
MR. MCHUGH	X			MR. KANJORSKI	X		
MR. MICA		X		MR. SANDERS	X		
MR. SOUDER		X		MRS. MALONEY	X		
MR. LATOURETTE		X		MR. CUMMINGS	X		
MR. OSE		X		MR. KUCINICH	X		
MR. LEWIS (KY)		X		MR. DAVIS (IL)	X		
MRS. DAVIS (VA)		X		MR. TIERNEY	X		
MR. PLATTS		X		MR. CLAY			
MR. CANNON		X		MS. WATSON	X		
MR. PUTNAM		X		MR. LYNCH	X		
MR. SCHROCK		X		MR. VAN HOLLN	X		
MR. DUNCAN				MS. SANCHEZ	X		
MR. SULLIVAN		X		MR. RUPPERSBERGER	X		
MR. DEAL		X		MS. NORTON	X		
MRS. MILLER (MI)		X		MR. COOPER	X		
MR. MURPHY		X		MR. BELL	X		
MR. TURNER (OH)		X					
MR. CARTER		X					
MR. JANKLOW		X					
MRS. BLACKBURN		X					

Totals: Ayes 19 Nays 20 Present

Business Meeting- H.R. 1836 and H.R. 1837 (5-7-93)
H.R. 1837 (as amended) ordered reported to the House of Representatives
Final Passage

COMMITTEE ON GOVERNMENT REFORM
108TH CONGRESS - 1ST SESSION
ROLL CALL

Rep.	Aye	No	Present	Dem.	Aye	No	Present
MR. DAVIS (VA)	X			MR. WAXMAN		X	
(CHAIRMAN)							
MR. SHAYS	X			MR. LANTOS			
MR. BURTON				MR. OWENS		X	
MS. ROS-LEHTINEN				MR. TOWNS		X	
MR. MCHUGH	X			MR. KANJORSKI		X	
MR. MICA	X			MR. SANDERS		X	
MR. SOUDER	X			MRS. MALONEY		X	
MR. LATOURETTE	X			MR. CUMMINGS		X	
MR. OSE				MR. KUCINICH		X	
MR. LEWIS (KY)	X			MR. DAVIS (IL)		X	
MRS. DAVIS (VA)	X			MR. TIERNEY		X	
MR. PLATTS	X			MR. CLAY			
MR. CANNON	X			MS. WATSON		X	
MR. PUTNAM	X			MR. LYNCH		X	
MR. SCHROCK	X			MR. VAN HOLLEN		X	
MR. DUNCAN	X			MS. SANCHEZ		X	
MR. SULLIVAN	X			MR. RUPPERSBERGER		X	
MR. DEAL	X			MS. NORTON		X	
MRS. MILLER (MI)	X			MR. COOPER		X	
MR. MURPHY	X			MR. BELL		X	
MR. TURNER (OH)	X						
MR. CARTER	X						
MR. JANKLOW	X						
MRS. BLACKBURN	X						

Totals: Ayes 22 Nays 18 Present

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. The bill does not prevent legislative branch employees from receiving the benefits of this legislation.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(2) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Clause 3(c)(4) of rule XIII of the Rules of the House of Representatives requires a statement of the Committee's general performance goals and objectives for reported measures that authorize funding. This bill does not authorize funding.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 1837. The constitutional authority to regulate the civil service of the Federal government lies within the Necessary and Proper clause of Article I, Section Eight of the United States Constitution.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 1837. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Rep-

representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1837 from the Director of Congressional Budget Office:

H.R. 1837—Services Acquisition Reform Act of 2003

Summary: H.R. 1837 would amend the laws governing how the federal government procures goods and services. The provisions of the bill with the largest budgetary effects would expand the authorized uses of share-in-savings (SIS) contracts by government agencies to procure products and services and establish a fund to train federal personnel in acquisition and contracting positions.

CBO estimates that expanding the use of SIS contracts would increase direct spending outlays by about \$80 million over the 2004–2008 period and by a total of about \$450 million over the 2004–2013 period. In addition, CBO estimates that implementing H.R. 1837 would cost about \$28 million in appropriated funds over the 2004–2008 period, assuming appropriation of the necessary amounts.

H.R. 1837 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1837 is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

	By fiscal year, in millions of dollars—									
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
CHANGES IN DIRECT SPENDING										
Share-in-savings contracts:										
Estimated budget authority	5	10	25	30	45	60	75	90	100	100
Estimated outlays	2	6	14	24	34	48	62	77	91	98
CHANGES IN SPENDING SUBJECT TO APPROPRIATION										
Acquisition workforce training program:										
Estimated authorization level	5	5	5	5	5	6	6	6	6	6
Estimated outlays	3	5	5	5	5	5	6	6	6	6
Other costs:										
Estimated authorization level	1	1	1	1	1	*	*	*	*	*
Estimated outlays	1	1	1	1	1	*	*	*	*	*
Total discretionary costs:										
Estimated authorization level	6	6	6	6	6	6	6	6	6	6
Estimated outlays	4	6	6	6	6	5	6	6	6	6

Note.—* = less than \$500,000.

Basis of estimate

For this estimate, CBO assumes H.R. 1837 will be enacted by the end of fiscal year 2003. We assume that the necessary amounts will be appropriated for each year and that outlays will occur at historical rates for similar programs.

Share-in-savings contracts

Section 301 would expand the authorization for the government's use of SIS contracts to acquire goods and services. Currently, the use of these contracts is limited to purchasing information technology. The bill would allow contracts to be awarded for up to 10 years.

A SIS contract is a special contracting and funding strategy whereby a service or product required by an agency is provided by a private firm without full up-front funding. Instead, payment for this service or product is made by spending some of the estimated annual savings generated by the goods or services provided. Under H.R. 1837, agencies would be authorized to enter into SIS contracts without funds available for the termination cost of the contract provided that appropriated funds are available for the first year's payment under the contract. The bill would limit the amount of such unfunded termination liability to \$10 million per contract (or 50 percent of the termination costs, whichever is less).

Under current law agencies are authorized to use a limited pilot program to enter into SIS contracts to obtain data and information-processing equipment and services. To date, use of the pilot program has been very limited. Because H.R. 1837 would broaden the potential use of this contracting mechanism, CBO expects that its use would become more widespread as agencies became familiar with it. In the mid-1980's, a similar contracting mechanism, energy savings performance contracts (ESPCs), was authorized by the Congress. Use of ESPCs has accelerated overtime, and today federal agencies enter into around \$100 million worth of such contracts a year. Based on the experience with ESPCs, CBO expects that agencies would need a few years to become familiar with SIS contracts before use of that type of contract would become common. We estimate that agencies would agree to acquire about \$115 million in goods and services through SIS contracts over the next five years and that obligations for such acquisitions would grow to \$425 million over the following five years.

Because both ESPC and SIS contracts authorized agencies to commit federal funds in advance of appropriations, CBO considers the execution of such contracts to be a form of direct spending that should be reflected in the budget when such contracts are entered into and a new government obligation is made. CBO's estimate assumes that outlays would be recorded when the services or equipment are provided (similar to the treatment of lease-purchases).

Spending subject to appropriation

Funding for Acquisition Workforce Training Fund. The bill would authorize the establishment of an Acquisition Workforce Training Fund. Under the bill, 5 percent of the fees collected by the General Services Administration (GSA) from other, nondefense agencies that procure goods and services through GSA's governmentwide contracts would be deposited in the new fund. GSA generates most of those fees by charging other federal agencies approximately 1 percent of the cost of purchases made through GSA's supply schedule services and data processing contracts. That fee is designed to recover administrative costs incurred by GSA. In 2002, GSA collected \$88 million in fees from agencies other than the Department of Defense. Thus, CBO estimates that the bill would authorize GSA to charge agencies a fee sufficient to establish a \$5 million Acquisition Workforce Training Fund each year, as well as continuing to cover the administrative costs of GSA's governmentwide contracting programs.

Government-Industry Exchange Program. H.R. 1837 would establish an exchange program for certain types of employees be-

tween the federal government and private-sector employers to promote acquisition management skills. The bill would allow the exchange of employees for between six months and two years. Private-sector employers could be reimbursed for all or part of their employees' assignment with the federal government. Alternatively, H.R. 1837 would allow federal agencies to accept voluntary employment services from private-sector employees.

Based on information from GSA and the experience of similar exchange programs, CBO expects that few private-sector employers would be willing to part with such employees for extended periods of time. Thus, we estimate that this provision would not result in significant additional costs to the government. Any costs for reimbursing private-sector employers would be subject to the availability of appropriated funds.

Other Costs. H.R. 1837 also would establish a new advisory panel to review procurement policies, a Chief Acquisition Officers Council, and a center of excellence in the Office of Federal Procurement Policy. The bill would require implementing regulations to be issued by GSA, the Office of Personnel Management, and the Office of Management and Budget. In addition, the bill would require the General Accounting Office to prepare certain studies on procurement issues. In total, CBO estimates that implementing these provisions would cost \$1 million annually over the 2004–2008 period.

Intergovernmental and Private-sector impact: H.R. 1837 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal costs: Matthew Pickford, Lisa Driskell, and Matthew Schmit; impact on state, local, and tribal governments: Victoria Heid Hall; and impact on the private sector: Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

OFFICE OF FEDERAL PROCUREMENT POLICY ACT

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:

Sec. 1. Short title; table of contents.

* * * * *

[Sec. 16. Executive agency responsibilities.]

Sec. 16. Chief Acquisition Officers.

Sec. 16A. Chief Acquisition Officers Council.

* * * * *

[Sec. 39. Protection of constitutional rights of contractors.]

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

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

* * * * *

SEC. 4. DEFINITIONS.

As used in this Act:

(1) * * *

* * * * *

(11) The term “simplified acquisition threshold” means \$100,000, *except that such amount may be adjusted by the Administrator every five years to the amount equal to \$100,000 in constant fiscal year 2003 dollars (rounded to the nearest \$10,000).*

(12) The term “commercial item” means any of the following:

(A) * * *

* * * * *

(F) Services offered and sold competitively, in substantial quantities, in the commercial marketplace based on established **【catalog or】** market prices for specific tasks performed *or specific outcomes to be achieved* and under standard commercial terms and conditions.

* * * * *

(I) *Items or services produced or provided by a commercial entity.*

* * * * *

(16) The term “acquisition”—

(A) *means the process of acquiring, with appropriated funds, by contract for purchase or lease, property or services (including construction) that support the missions and goals of an executive agency, from the point at which the requirements of the executive agency are established in consultation with the chief acquisition officer of the executive agency; and*

(B) *includes—*

(i) *the process of acquiring property or services that are already in existence, or that must be created, developed, demonstrated, and evaluated;*

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

(iii) *solicitation and selection of sources;*

(iv) *award of contracts;*

(v) *contract performance;*

(vi) *contract financing;*

(vii) *management and measurement of contract performance through final delivery and payment; and*

(viii) *technical and management functions directly related to the process of fulfilling agency requirements by contract.*

(17) The term “commercial entity” means any enterprise whose primary customers are other than the Federal Government. In order to qualify as a commercial entity, at least 90 percent (in dollars) of the sales of the enterprise over the past

three business years must have been made to private sector entities.

* * * * *

[SEC. 16. EXECUTIVE AGENCY RESPONSIBILITIES.

[To further achieve effective, efficient, and economic administration of the Federal procurement system, the head of each executive agency shall, in accordance with applicable laws, Government-wide policies and regulations, and good business practices—

[(1) increase the use of full and open competition in the procurement of property or services by the executive agency by establishing policies, procedures, and practices that assure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements (including performance and delivery schedules) at the lowest reasonable cost considering the nature of the property or service procured;

[(2) establish clear lines of authority, accountability, and responsibility for procurement decisionmaking within the executive agency, including placing the procurement function at a sufficiently high level in the executive agency to provide—

[(A) direct access to the head of the major organizational element of the executive agency served; and

[(B) comparative equality with organizational counterparts;

[(3) designate a senior procurement executive who shall be responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency; and

[(4) develop and maintain a procurement career management program in the executive agency to assure an adequate professional work force.]

SEC. 16. CHIEF ACQUISITION OFFICERS.

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

(1) have acquisition management as that official's primary duty; and

(2) advise and assist the head of the executive agency and other agency officials to ensure that the mission of the executive agency is achieved through the management of the agency's acquisition activities.

(b) AUTHORITY AND FUNCTIONS OF AGENCY CHIEF ACQUISITION OFFICERS.—*The functions of each Chief Acquisition Officer shall include—*

(1) monitoring the performance of acquisition activities and acquisition programs of the executive agency, evaluating the performance of those programs on the basis of applicable performance measurements, and advising the head of the executive agency regarding the appropriate business strategy to achieve the mission of the executive agency;

(2) increasing the use of full and open competition in the acquisition of property and services by the executive agency by es-

tablishing policies, procedures, and practices that ensure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements (including performance and delivery schedules) at the best value considering the nature of the property or service procured;

(3) making acquisition decisions consistent with all applicable laws and establishing clear lines of authority, accountability, and responsibility for acquisition decisionmaking within the executive agency;

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

(5) developing and maintaining an acquisition career management program in the executive agency to ensure that there is an adequate professional workforce; and

(6) as part of the strategic planning and performance evaluation process required under section 306 of title 5, United States Code, and sections 1105(a)(28), 1115, 1116, and 9703 of title 31, United States Code—

(A) assessing the requirements established for agency personnel regarding knowledge and skill in acquisition resources management and the adequacy of such requirements for facilitating the achievement of the performance goals established for acquisition management;

(B) in order to rectify any deficiency in meeting such requirements, developing strategies and specific plans for hiring, training, and professional development; and

(C) reporting to the head of the executive agency on the progress made in improving acquisition management capability.

SEC. 16A. CHIEF ACQUISITION OFFICERS COUNCIL.

(a) ESTABLISHMENT.—There is established in the executive branch a Chief Acquisition Officers Council.

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

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

(2) The Administrator for Federal Procurement Policy.

(3) The chief acquisition officer of each executive agency.

(4) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

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

(c) LEADERSHIP; SUPPORT.—(1) The Administrator for Federal Procurement Policy shall lead the activities of the Council on behalf of the Deputy Director for Management.

(2)(A) The Vice Chairman of the Council shall be selected by the Council from among its members.

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

(3) The Administrator of General Services shall provide administrative and other support for the Council.

(d) *PRINCIPAL FORUM.*—The Council is designated the principal interagency forum for monitoring and improving the Federal acquisition system.

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

(1) *Develop recommendations for the Director of the Office of Management and Budget on Federal acquisition policies and requirements.*

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

(3) *Assist the Administrator in the identification, development, and coordination of multiagency projects and other innovative initiatives to improve Federal acquisition.*

(4) *Promote effective business practices that ensure the timely delivery of best value products to the Federal Government and achieve appropriate public policy objectives.*

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

(6) *Work with the Office of Personnel Management to assess and address the hiring, training, and professional development needs of the Federal Government related to acquisition.*

(7) *Work with the Administrator and the Federal Acquisition Regulatory Council to promote the business practices referred to in paragraph (4) and other results of the functions carried out under this subsection.*

SEC. 18. PROCUREMENT NOTICE.

(a) * * *

* * * * *

(c)(1) A notice is not required under subsection (a)(1) if—

(A) * * *

* * * * *

(G) 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; **[or]**

(H) the procurement is by the Secretary of Homeland Security pursuant to the special procedures provided in section 833(c) of the Homeland Security Act of 2002~~[,]~~; or

(I) the procurement is by the head of an executive agency pursuant to the special procedures provided in section 853 of the Homeland Security Act of 2002 (Public Law 107–296).

* * * * *

SEC. 20. ADVOCATES FOR COMPETITION.

(a)(1) There is established in each executive agency an advocate for competition.

(2) The head of each executive agency shall—

(A) designate for the executive agency and for each procuring activity of the executive agency one officer or employee serving in a position authorized for such executive agency on the date of enactment of the Competition in Contracting Act of 1984

(other than the [senior procurement executive] *Chief Acquisition Officer* designated pursuant to section 16(3)) to serve as the advocate for competition;

* * * * *

(b) The advocate for competition of an executive agency shall—

(1) be responsible for challenging barriers to and promoting full and open competition in the procurement of property and services by the executive agency;

(2) review the procurement activities of the executive agency;

(3) identify and report to the [senior procurement executive] *Chief Acquisition Officer* of the executive agency designated pursuant to section 16(3)—

(A) * * *

* * * * *

(4) prepare and transmit to such [senior procurement executive] *Chief Acquisition Officer* an annual report describing—

(A)

(5) recommend to the [senior procurement executive] *Chief Acquisition Officer* of the executive agency goals and the plans for increasing competition on a fiscal year basis;

(6) recommend to the [senior procurement executive] *Chief Acquisition Officer* of the executive agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in procurement programs; and

* * * * *

SEC. 27. RESTRICTIONS ON DISCLOSING AND OBTAINING CONTRACTOR BID OR PROPOSAL INFORMATION OR SOURCE SELECTION INFORMATION.

(a) PROHIBITION ON DISCLOSING PROCUREMENT INFORMATION.—

(1) A person described in paragraph (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. In the case of an employee of a private sector organization assigned to an agency under chapter 37 or 38 of title 5, United States Code, in addition to the restriction in the preceding sentence, such employee shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information during the three-year period after the end of the assignment of such employee.

* * * * *

SEC. 29. CONTRACT CLAUSES AND CERTIFICATIONS.

(a) * * *

* * * * *

(c) PROHIBITION ON CERTIFICATION REQUIREMENTS.—(1) * * *

(2)(A) A requirement for a certification by a contractor or offeror may not be included in a procurement regulation of an executive agency unless—

(i) * * *

(ii) written justification for such certification requirement is provided to the head of the executive agency by the [senior procurement executive] *Chief Acquisition Officer* of the agency, and the head of the executive agency approves in writing the inclusion of such certification requirement.

* * * * *

SEC. 37. ACQUISITION WORKFORCE.

(a) * * *

* * * * *

(c) [SENIOR PROCUREMENT EXECUTIVE] *CHIEF ACQUISITION OFFICER* AUTHORITIES AND RESPONSIBILITIES.—Subject to the authority, direction, and control of the head of an executive agency, the [senior procurement executive] *Chief Acquisition Officer* of the agency shall carry out all powers, functions, and duties of the head of the agency with respect to implementation of this section. The [senior procurement executive] *Chief Acquisition Officer* shall ensure that the policies of the head of the executive agency established in accordance with this section are implemented throughout the agency.

* * * * *

(h) EDUCATION AND TRAINING.—

(1) * * *

* * * * *

(3) *ACQUISITION WORKFORCE TRAINING FUND.*—(A) *The Administrator of General Services shall establish an acquisition workforce training fund. The Administrator shall manage the fund through the Federal Acquisition Institute to support the training of the acquisition workforce of the executive agencies other than the Department of Defense. The Administrator shall consult with the Administrator for Federal Procurement Policy in managing the fund.*

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

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

(ii) *Governmentwide contracts for the acquisition of information technology as defined in section 11101 of title 40, United States Code, and multiagency acquisition contracts for such technology authorized by section 11314 of such title.*

(iii) *Multiple-award schedule contracts entered into by the Administrator of General Services.*

(C) *The head of an executive agency that administers a contract described in subparagraph (B) shall remit to the General Services Administration the amount required to be credited to the fund with respect to such contract at the end of each quarter of the fiscal year.*

(D) *The Administrator of General Services, through the Office of Federal Acquisition Policy, shall ensure that funds collected*

for training under this section are not used for any purpose other than the purpose specified in subparagraph (A).

(E) Amounts credited to the fund shall be in addition to funds requested and appropriated for education and training referred to in paragraph (1).

(F) Amounts credited to the fund shall remain available until expended.

(i) **AUTHORITY TO DETAIL EMPLOYEES TO NON-FEDERAL EMPLOYERS.**—(1) In carrying out the provisions of this section, the Administrator, by agreement with the Director of the Office of Personnel Management, may provide for a program under which a Federal employee may be detailed to a non-Federal employer. The Administrator, by agreement with the Director of the Office of Personnel Management, shall prescribe regulations for such program, including the conditions for service and duties as the Administrator considers necessary.

(2) An assignment described in section 3803 of title 5, United States Code, may not be made unless a program under paragraph (1) is established, and the assignment is made in accordance with the requirements of such program.

* * * * *

SEC. [39.] 40. PROTECTION OF CONSTITUTIONAL RIGHTS OF CONTRACTORS.

(a) * * *

* * * * *

SEC. 41. INCENTIVES FOR EFFICIENT PERFORMANCE OF SERVICES CONTRACTS.

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

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

(A) the contract or task order sets forth specifically each task to be performed and, for each task—

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

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

(B) the source of the services provides similar services to the general public under terms and conditions similar to those offered to the Federal Government.

(2) The regulations implementing this subsection shall require agencies to collect and maintain reliable data sufficient to identify the contracts or task orders treated as contracts for commercial

items using the authority of this subsection. The data may be collected using the Federal Procurement Data System or other reporting mechanism.

(3) Not later than two years after the date of the enactment of this subsection, the Director of the Office of Management and Budget shall prepare and submit to the Committees on Governmental Affairs and on Armed Services of the Senate and the Committees on Government Reform and on Armed Services of the House of Representatives a report on the contracts or task orders treated as contracts for commercial items using the authority of this subsection. The report shall include data on the use of such authority both government-wide and for each department and agency.

(4) The authority under this subsection shall expire 10 years after the date of the enactment of this subsection.

(c) **DEFINITION OF PERFORMANCE-BASED.**—In this section, the term “performance-based”, with respect to a contract, task order, or contracting, means that the contract, task order, or contracting, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

Subpart A—General Provisions

Chap.		Sec.
21.	Definitions	2101
	* * * * *	

Subpart B—Employment and Retention

	* * * * *	
38.	Acquisition Professional Exchange Program	3801
	* * * * *	

Subpart B—Employment and Retention

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

* * * * *

SUBCHAPTER I—EMPLOYMENT AUTHORITIES

* * * * *

§ 3111. Acceptance of volunteer service

(a) * * *

* * * * *

(d) Notwithstanding section 1342 of title 31, the head of an agency may accept voluntary service for the United States under chap-

ter 37 or 38 of this title and regulations of the Office of Personnel Management.

* * * * *

CHAPTER 38—ACQUISITION PROFESSIONAL EXCHANGE PROGRAM

Sec.

3801. *Definitions.*

3802. *General provisions.*

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

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

3805. *Reporting requirement.*

3806. *Regulations.*

§ 3801. Definitions

For purposes of this chapter—

(1) the term “agency”—

(A) subject to subparagraph (B), means an executive agency; and

(B) does not include—

(i) the General Accounting Office;

(ii) an Office of Inspector General of an establishment or a designated Federal entity established under the Inspector General Act of 1978; and

(iii) the Defense Contract Audit Agency referred to in section 2313(b) of title 10; and

(2) the term “detail” means—

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

(B) the assignment or loan of an employee of a private sector organization to an agency without a change of position from the private sector organization that employs the individual,

whichever is appropriate in the context in which such term is used.

§ 3802. General provisions

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

(1) works in the field of Federal acquisition or acquisition management;

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

(3) is expected to assume increased acquisition management responsibilities in the future.

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

(b) *AGREEMENTS.*—Each agency that exercises its authority under this chapter shall provide for a written agreement between the agency and the employee concerned regarding the terms and conditions of the employee's assignment. In the case of an employee of the agency, the agreement shall—

(1) require the employee to serve in the civil service, upon completion of the assignment, for a period equal to the length of the assignment; and

(2) provide that, in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by the head of the agency from which assigned) the employee shall be liable to the United States for payment of all expenses of the assignment.

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

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

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

(e) *ASSISTANCE.*—The Administrator for Federal Procurement Policy, by agreement with the Office of Personnel Management, may assist in the administration of this chapter, including by maintaining lists of potential candidates for assignment under this chapter, establishing mentoring relationships for the benefit of individuals who are given assignments under this chapter, and publicizing the program.

(f) *CONSIDERATIONS.*—In exercising any authority under this chapter, an agency shall take into consideration—

(1) the need to ensure that small business concerns are appropriately represented with respect to the assignments described in sections 3803 and 3804, respectively; and

(2) how assignments described in section 3803 might best be used to help meet the needs of the agency for the training of employees in acquisition management.

§3803. Assignment of employees to private sector organizations

(a) *IN GENERAL.*—An employee of an agency assigned to a private sector organization under this chapter is deemed, during the period of the assignment, to be on detail to a regular work assignment in his agency.

(b) *COORDINATION WITH CHAPTER 81.*—Notwithstanding any other provision of law, an employee of an agency assigned to a private sector organization under this chapter is entitled to retain coverage, rights, and benefits under subchapter I of chapter 81, and employment during the assignment is deemed employment by the United States, except that, if the employee or the employee's dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then, the amount of such payment or

benefit shall be credited against any compensation otherwise payable under subchapter I of chapter 81.

(c) **REIMBURSEMENTS.**—The assignment of an employee to a private sector organization under this chapter may be made with or without reimbursement by the private sector organization for the travel and transportation expenses to or from the place of assignment, subject to the same terms and conditions as apply with respect to an employee of a Federal agency or a State or local government under section 3375, and for the pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the agency used for paying the travel and transportation expenses or pay.

(d) **TORT LIABILITY; SUPERVISION.**—The Federal Tort Claims Act and any other Federal tort liability statute apply to an employee of an agency assigned to a private sector organization under this chapter. The supervision of the duties of an employee of an agency so assigned to a private sector organization may be governed by an agreement between the agency and the organization.

(e) **SMALL BUSINESS CONCERNS.**—

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

(2) **DEFINITIONS.**—For purposes of this subsection—

(A) the term “small business concern” means a business concern that satisfies the definitions and standards specified by the Administrator of the Small Business Administration under section 3(a)(2) of the Small Business Act (as from time to time amended by the Administrator);

(B) the term “year” refers to the 12-month period beginning on the date of the enactment of this chapter, and each succeeding 12-month period in which any assignments under this chapter may be made; and

(C) the assignments “made” in a year are those commencing in such year.

(3) **REPORTING REQUIREMENT.**—An agency which fails to comply with paragraph (1) in a year shall, within 90 days after the end of such year, submit a report to the Committees on Government Reform and Small Business of the House of Representatives and the Committees on Governmental Affairs and Small Business of the Senate. The report shall include—

(A) the total number of assignments made under this chapter from such agency to private sector organizations in the year;

(B) of that total number, the number (and percentage) made to small business concerns; and

(C) the reasons for the agency’s noncompliance with paragraph (1).

(4) **EXCLUSION.**—This subsection shall not apply to an agency in any year in which it makes fewer than 5 assignments under this chapter to private sector organizations.

§ 3804. Assignment of employees from private sector organizations

(a) *IN GENERAL.*—An employee of a private sector organization assigned to an agency under this chapter is deemed, during the period of the assignment, to be on detail to such agency.

(b) *TERMS AND CONDITIONS.*—An employee of a private sector organization assigned to an agency under this chapter—

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

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

(A) chapter 73;

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

(C) sections 1343, 1344, and 1349(b) of title 31;

(D) the Federal Tort Claims Act and any other Federal tort liability statute;

(E) the Ethics in Government Act of 1978;

(F) section 1043 of the Internal Revenue Code of 1986; and

(G) section 27 of the Office of Federal Procurement Policy Act;

(3) may not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which he is assigned; and

(4) is subject to such regulations as the President may prescribe.

The supervision of an employee of a private sector organization assigned to an agency under this chapter may be governed by agreement between the agency and the private sector organization concerned. Such an assignment may be made with or without reimbursement by the agency for the pay, or a part thereof, of the employee during the period of assignment, or for any contribution of the private sector organization to employee benefit systems.

(c) *COORDINATION WITH CHAPTER 81.*—An employee of a private sector organization assigned to an agency under this chapter who suffers disability or dies as a result of personal injury sustained while performing duties during the assignment shall be treated, for the purpose of subchapter I of chapter 81, as an employee as defined by section 8101 who had sustained the injury in the performance of duty, except that, if the employee or the employee's dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then, the amount of such payment or benefit shall be credited against any compensation otherwise payable under subchapter I of chapter 81.

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

§ 3805. Reporting requirement

(a) *IN GENERAL.*—The Office of Personnel Management shall, not later than April 30 and October 31 of each year, prepare and submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate a semiannual report summarizing the operation of this chapter during the immediately preceding 6-month period ending on March 31 and September 30, respectively.

(b) *CONTENT.*—Each report shall include, with respect to the 6-month period to which such report relates—

(1) the total number of individuals assigned to, and the total number of individuals assigned from, each agency during such period;

(2) a brief description of each assignment included under paragraph (1), including—

(A) the name of the assigned individual, as well as the private sector organization and the agency (including the specific bureau or other agency component) to or from which such individual was assigned;

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

(C) the duration and objectives of the individual's assignment; and

(3) such other information as the Office considers appropriate.

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

(1) shall be published in the Federal Register; and

(2) shall be made publicly available on the Internet.

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

§ 3806. Regulations

The Director of the Office of Personnel Management shall prescribe regulations for the administration of this chapter.

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Subpart F—Labor-Management and Employee Relations

* * * * *

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

* * * * *

SUBCHAPTER V—MISCONDUCT

* * * * *

§ 7353. Gifts to Federal employees

(a) * * *

(b)(1) * * *

* * * * *

(4) Nothing in this section precludes an employee of a private sector organization, while assigned to an agency under chapter 37 or 38, from continuing to receive pay and benefits from such organization in accordance with such chapter.

* * * * *

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

* * * * *

CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

* * * * *

§ 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches

(a) * * *

* * * * *

(c) ONE-YEAR RESTRICTIONS ON CERTAIN SENIOR PERSONNEL OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES.—

(1) * * *

(2) PERSONS TO WHOM RESTRICTIONS APPLY.—(A) Paragraph

(1) shall apply to a person (other than a person subject to the restrictions of subsection (d))—

(i) * * *

* * * * *

(v) assigned from a private sector organization to an agency under chapter 37 or 38 of title 5.

* * * * *

(1) CONTRACT ADVICE BY FORMER [DETAILS] *DETAILEES*.—Whoever, being an employee of a private sector organization assigned to an agency under chapter 37 or 38 of title 5, within one year after the end of that assignment, knowingly represents or aids, counsels, or assists in representing any other person (except the United States) in connection with any contract with that agency shall be punished as provided in section 216 of this title.

* * * * *

§ 209. Salary of Government officials and employees payable only by United States

(a) * * *

* * * * *

(g)(1) This section does not prohibit an employee of a private sector organization, while assigned to an agency under chapter 37 or

38 of title 5, from continuing to receive pay and benefits from such organization in accordance with such chapter.

[(2) For purposes of this subsection, the term “agency” means an agency (as defined by section 3701 of title 5) and the Office of the Chief Technology Officer of the District of Columbia.]

(2) *For purposes of this subsection, the term “agency”—*

(A) with respect to assignments under chapter 37 of title 5, means an agency (as defined in section 3701 of title 5) and the Office of the Chief Technology Officer of the District of Columbia; and

(B) with respect to assignments under chapter 38 of title 5, means an agency (as defined by section 3801 of title 5).

* * * * *

CHAPTER 93—PUBLIC OFFICERS AND EMPLOYEES

* * * * *

§ 1905. Disclosure of confidential information generally

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311–1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 or 38 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

* * * * *

SECTION 125 OF THE ACT OF JANUARY 8, 1988

(Public Law 100–238)

A bill making technical corrections relating to the Federal Employees’ Retirement System, and for other purposes.

SEC. 125. ELIGIBILITY OF CERTAIN INDIVIDUALS TO PARTICIPATE IN THE THRIFT SAVINGS PLAN.

(a) * * *

* * * * *

(c) **APPLICABILITY.**—This section applies with respect to—

(1) any individual participating in the Civil Service Retirement System or the Federal Employees' Retirement System as—

(A) * * *

* * * * *

(D) an individual assigned from a Federal agency to a private sector organization under chapter 37 *or* 38 of title 5, United States Code; and

* * * * *

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

TITLE III—PROCUREMENT PROCEDURE

* * * * *

SEC. 302C. IMPLEMENTATION OF FACNET CAPABILITY.

(a) * * *

(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] *Chief Acquisition Officer* designated for the executive agency under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

* * * * *

SEC. 303. COMPETITION REQUIREMENTS.

(a) * * *

* * * * *

(f)(1) Except as provided in paragraph (2), an executive agency may not award a contract using procedures other than competitive procedures unless—

(A) * * *

(B) the justification is approved—

(i) * * *

* * * * *

(iii) in the case of a contract for an amount exceeding \$50,000,000, by the [senior procurement executive] *Chief Acquisition Officer* of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) (without further delegation); and

* * * * *

SEC. 303N. PROTESTS.

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

(b) *RESTRICTION ON CONTRACT AWARD PENDING DECISION.*—(1) Except as provided in paragraph (2), a contract may not be award-

ed by an agency after a protest concerning the acquisition has been submitted under this section and while the protest is pending.

(2) The head of the acquisition activity responsible for the award of a contract may authorize the award of the contract, notwithstanding a pending protest under this section, upon making a written finding that urgent and compelling circumstances do not allow for waiting for a decision on the protest.

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

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

or

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

(2) The head of the acquisition activity responsible for the award of a contract may authorize performance of the contract notwithstanding a pending protest under this section upon making a written finding that urgent and compelling circumstances do not allow for waiting for a decision on the protest.

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

(e) **CONSTRUCTION.**—Nothing in this section shall affect the right of an interested party to file a protest with the Comptroller General under subchapter V of chapter 35 of title 31, United States Code, or in the United States Court of Federal Claims.

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

* * * * *

[SEC. 317. SHARE-IN-SAVINGS CONTRACTS.

[(a) AUTHORITY TO ENTER INTO SHARE-IN-SAVINGS CONTRACTS.—

(1) The head of an executive agency may enter into a share-in-savings contract for information technology (as defined in section 11101(6) of title 40, United States Code) in which the Government awards a contract to improve mission-related or administrative processes or to accelerate the achievement of its mission and share with the contractor in savings achieved through contract performance.

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

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

[(i) the level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the govern-

ment from obtaining the needed information technology competitively at a fair and reasonable price if the contract is limited in duration to a period of five years or less; and

[(ii) usage of the information technology to be acquired is likely to continue for a period of time sufficient to generate reasonable benefit for the government.

[(3) Contracts awarded pursuant to the authority of this section shall, to the maximum extent practicable, be performance-based contracts that identify objective outcomes and contain performance standards that will be used to measure achievement and milestones that must be met before payment is made.

[(4) Contracts awarded pursuant to the authority of this section shall include a provision containing a quantifiable baseline that is to be the basis upon which a savings share ratio is established that governs the amount of payment a contractor is to receive under the contract. Before commencement of performance of such a contract, the senior procurement executive of the agency shall determine in writing that the terms of the provision are quantifiable and will likely yield value to the Government.

[(5)(A) The head of the agency may retain savings realized through the use of a share-in-savings contract under this section that are in excess of the total amount of savings paid to the contractor under the contract, but may not retain any portion of such savings that is attributable to a decrease in the number of civilian employees of the Federal Government performing the function. Except as provided in subparagraph (B), savings shall be credited to the appropriation or fund against which charges were made to carry out the contract and shall be used for information technology.

[(B) Amounts retained by the agency under this subsection shall—

[(i) without further appropriation, remain available until expended; and

[(ii) be applied first to fund any contingent liabilities associated with share-in-savings procurements that are not fully funded.

[(b) CANCELLATION AND TERMINATION.—(1) If funds are not made available for the continuation of a share-in-savings contract entered into under this section in a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid out of—

[(A) appropriations available for the performance of the contract;

[(B) appropriations available for acquisition of the information technology procured under the contract, and not otherwise obligated; or

[(C) funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in paragraph (3).

[(2) The amount payable in the event of cancellation or termination of a share-in-savings contract shall be negotiated with the contractor at the time the contract is entered into.

[(3)(A) Subject to subparagraph (B), the head of an executive agency may enter into share-in-savings contracts under this section in any given fiscal year even if funds are not made specifically available for the full costs of cancellation or termination of the con-

tract if funds are available and sufficient to make payments with respect to the first fiscal year of the contract and the following conditions are met regarding the funding of cancellation and termination liability:

[(i) The amount of unfunded contingent liability for the contract does not exceed the lesser of—

[(I) 25 percent of the estimated costs of a cancellation or termination; or

[(II) \$5,000,000.

[(ii) Unfunded contingent liability in excess of \$1,000,000 has been approved by the Director of the Office of Management and Budget or the Director's designee.

[(B) The aggregate number of share-in-savings contracts that may be entered into under subparagraph (A) by all executive agencies to which this chapter applies in a fiscal year may not exceed 5 in each of fiscal years 2003, 2004, and 2005.

[(c) DEFINITIONS.—In this section:

[(1) The term “contractor” means a private entity that enters into a contract with an agency.

[(2) The term “savings” means—

[(A) monetary savings to an agency; or

[(B) savings in time or other benefits realized by the agency, including enhanced revenues (other than enhanced revenues from the collection of fees, taxes, debts, claims, or other amounts owed the Federal Government).

[(3) The term “share-in-savings contract” means a contract under which—

[(A) a contractor provides solutions for—

[(i) improving the agency's mission-related or administrative processes; or

[(ii) accelerating the achievement of agency missions; and

[(B) the head of the agency pays the contractor an amount equal to a portion of the savings derived by the agency from—

[(i) any improvements in mission-related or administrative processes that result from implementation of the solution; or

[(ii) acceleration of achievement of agency missions.

[(d) TERMINATION.—No share-in-savings contracts may be entered into under this section after September 30, 2005.]

SEC. 317. SHARE-IN-SAVINGS CONTRACTS.

(a) *AUTHORITY TO ENTER INTO SHARE-IN-SAVINGS CONTRACTS.—*

(1) *The head of an executive agency may enter into a share-in-savings contract in which the Government awards a contract to improve mission-related or administrative processes or to accelerate the achievement of its mission and share with the contractor in savings achieved through contract performance.*

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

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

(i) the level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the government from obtaining the needed performance competitively at a fair and reasonable price if the contract is limited in duration to a period of five years or less; and

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

(3) Contracts awarded pursuant to the authority of this section shall, to the maximum extent practicable, be performance-based contracts that identify objective outcomes and contain performance standards that will be used to measure achievement and milestones that must be met before payment is made.

(4) Contracts awarded pursuant to the authority of this section shall include a provision containing a quantifiable baseline that is to be the basis upon which a savings share ratio is established that governs the amount of payment a contractor is to receive under the contract. Before commencement of performance of such a contract, the chief acquisition officer of the agency shall determine in writing that the terms of the provision are quantifiable and will likely yield value to the Government.

(5)(A) The head of the agency may retain savings realized through the use of a share-in-savings contract under this section that are in excess of the total amount of savings paid to the contractor under the contract. Except as provided in subparagraph (B), savings shall be credited to the appropriation or fund against which charges were made to carry out the contract.

(B) Amounts retained by the agency under this subsection shall—

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

(ii) be applied first to fund any contingent liabilities associated with share-in-savings procurements that are not fully funded.

(b) CANCELLATION AND TERMINATION.—(1) If funds are not made available for the continuation of a share-in-savings contract entered into under this section in a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid out of—

(A) appropriations available for the performance of the contract;

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

(C) funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in paragraph (3).

(2) The amount payable in the event of cancellation or termination of a share-in-savings contract shall be negotiated with the contractor at the time the contract is entered into.

(3) The head of an executive agency may enter into share-in-savings contracts under this section in any given fiscal year even if funds are not made specifically available for the full costs of cancellation or termination of the contract if funds are available and sufficient to make payments with respect to the first fiscal year of

the contract and the following conditions are met regarding the funding of cancellation and termination liability:

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

(i) 50 percent of the estimated costs of a cancellation or termination; or

(ii) \$10,000,000.

(B) Unfunded contingent liability in excess of \$5,000,000 has been approved by the Director of the Office of Management and Budget or the Director's designee.

(c) DEFINITIONS—In this section:

(1) The term “contractor” means a private entity that enters into a contract with an agency.

(2) The term “savings” means—

(A) monetary savings to an agency; or

(B) savings in time or other benefits realized by the agency, including enhanced revenues.

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

(A) a contractor provides solutions for—

(i) improving the agency's mission-related or administrative processes; or

(ii) accelerating the achievement of agency missions; and

(B) the head of the agency pays the contractor an amount equal to a portion of the savings derived by the agency from—

(i) any improvements in mission-related or administrative processes that result from implementation of the solution; or

(ii) acceleration of achievement of agency missions.

SEC. 318. PRODUCTS OF FEDERAL PRISON INDUSTRIES: PROCEDURAL REQUIREMENTS.

(a) MARKET RESEARCH.—Before purchasing a product listed in the latest edition of the Federal Prison Industries catalog under section 4124(d) of title 18, United States Code, the head of an executive agency shall conduct market research to determine whether the Federal Prison Industries product is comparable to products available from the private sector that best meet the executive agency's needs in terms of price, quality, and time of delivery.

(b) COMPETITION REQUIREMENT.—If the head of the executive agency determines that a Federal Prison Industries product is not comparable in price, quality, or time of delivery to products available from the private sector that best meet the executive agency's needs in terms of price, quality, and time of delivery, the agency head shall use competitive procedures for the procurement of the product or shall make an individual purchase under a multiple award contract. In conducting such a competition or making such a purchase, the agency head shall consider a timely offer from Federal Prison Industries.

(c) IMPLEMENTATION BY HEAD OF EXECUTIVE AGENCY.—The head of an executive agency shall ensure that—

(1) the executive agency does not purchase a Federal Prison Industries product or service unless a contracting officer of the agency determines that the product or service is comparable to

products or services available from the private sector that best meet the agency's needs in terms of price, quality, and time of delivery; and

(2) Federal Prison Industries performs its contractual obligations to the same extent as any other contractor for the executive agency.

(d) MARKET RESEARCH DETERMINATION NOT SUBJECT TO REVIEW.—A determination by a contracting officer regarding whether a product or service offered by Federal Prison Industries is comparable to products or services available from the private sector that best meet an executive agency's needs in terms of price, quality, and time of delivery shall not be subject to review pursuant to section 4124(b) of title 18.

(e) PERFORMANCE AS A SUBCONTRACTOR.—(1) A contractor or potential contractor of an executive agency may not be required to use Federal Prison Industries as a subcontractor or supplier of products or provider of services for the performance of a contract of the executive agency by any means, including means such as—

(A) a contract solicitation provision requiring a contractor to offer to make use of products or services of Federal Prison Industries in the performance of the contract;

(B) a contract specification requiring the contractor to use specific products or services (or classes of products or services) offered by Federal Prison Industries in the performance of the contract; or

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

(2) In this subsection, the term "contractor", with respect to a contract, includes a subcontractor at any tier under the contract.

(f) PROTECTION OF CLASSIFIED AND SENSITIVE INFORMATION.—The head of an executive agency may not enter into any contract with Federal Prison Industries under which an inmate worker would have access to—

(1) any data that is classified;

(2) any geographic data regarding the location of—

(A) surface and subsurface infrastructure providing communications or water or electrical power distribution;

(B) pipelines for the distribution of natural gas, bulk petroleum products, or other commodities; or

(C) other utilities; or

(3) any personal or financial information about any individual private citizen, including information relating to such person's real property however described, without the prior consent of the individual.

(g) DEFINITIONS.—In this section:

(1) The term "competitive procedures" has the meaning given such term in section 4(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(5)).

(2) The term "market research" means obtaining specific information about the price, quality, and time of delivery of products available in the private sector through a variety of means, which may include—

(A) contacting knowledgeable individuals in government and industry;

- (B) interactive communication among industry, acquisition personnel, and customers; and
- (C) interchange meetings or pre-solicitation conferences with potential offerors.

SEC. 319. AUTHORITY TO ENTER INTO CERTAIN TRANSACTIONS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.

(a) AUTHORITY.—

(1) *IN GENERAL.*—The head of an executive agency who engages in basic research, applied research, advanced research, and development projects that—

(A) are necessary to the responsibilities of such official's executive agency in the field of research and development, and

(B) have the potential to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack,

may exercise the same authority (subject to the same restrictions and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code, except for subsections (b) and (f) of such section 2371.

(2) *PROTOTYPE PROJECTS.*—The head of an executive agency may, under the authority of paragraph (1), carry out prototype projects that meet the requirements of subparagraphs (A) and (B) of paragraph (1) in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2371 note). In applying the requirements and conditions of that section 845—

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

(B) the Director of the Office of Management and Budget shall perform the functions of the Secretary of Defense under subsection (d) of that section.

(3) APPLICABILITY TO SELECTED EXECUTIVE AGENCIES.—

(A) *OMB AUTHORIZATION REQUIRED.*—The head of an executive agency may exercise authority under this subsection only if authorized by the Director of the Office of Management and Budget to do so.

(B) *RELATIONSHIP TO AUTHORITY OF DEPARTMENT OF HOMELAND SECURITY.*—The authority under this subsection shall not apply to the Secretary of Homeland Security while section 831 of the Homeland Security Act of 2002 (Public Law 107-296; 116 Stat. 2224) is in effect.

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

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

* * * * *

TITLE 10, UNITED STATES CODE

* * * * *

PART I—ORGANIZATION AND GENERAL MILITARY POWERS

* * * * *

CHAPTER 1—DEFINITIONS

* * * * *

§ 133. Under Secretary of Defense for Acquisition, Technology, and Logistics

(a) * * *

* * * * *

(c) The Under Secretary—

(1) is the [senior procurement executive] *Chief Acquisition Officer* for the Department of Defense for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3));

* * * * *

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

* * * * *

CHAPTER 131—PLANNING AND COORDINATION

Sec.

2201. Apportionment of funds: authority for exemption; excepted expenses.

* * * * *

【2224a. Information security: continued applicability of expiring Governmentwide requirements to the Department of Defense.】

* * * * *

§ 2224. Defense Information Assurance Program

(a) * * *

* * * * *

(c) PROGRAM STRATEGY.—In carrying out the program, the Secretary shall develop a program strategy that encompasses those actions necessary to assure the readiness, reliability, continuity, and integrity of Defense information systems, networks, and infrastructure, including through compliance with subtitle II of chapter 35 of title 44, including through compliance with subchapter 【III】 II of chapter 35 of title 44. The program strategy shall include the following:

(1) * * *

* * * * *

§ 2224a. Information security: continued applicability of expiring Governmentwide requirements to the Department of Defense

[(a) IN GENERAL.—The provisions of subchapter II of chapter 35 of title 44 shall continue to apply through September 30, 2004, with respect to the Department of Defense, notwithstanding the expiration of authority under section 3536 of such title.

[(b) RESPONSIBILITIES.—In administering the provisions of subchapter II of chapter 35 of title 44 with respect to the Department of Defense after the expiration of authority under section 3536 of such title, the Secretary of Defense shall perform the duties set forth in that subchapter for the Director of the Office of Management and Budget.]

* * * * *

§ 2225. Information technology purchases: tracking and management

(a) * * *

* * * * *

(d) LIMITATION ON CERTAIN PURCHASES.—No purchase of information technology products or services in excess of the simplified acquisition threshold shall be made for the Department of Defense from a Federal agency outside the Department of Defense unless—

(1) * * *

(2)(A) * * *

(B) in the case of a purchase by a military department, the purchase is approved by the [senior procurement executive] *Chief Acquisition Officer* of the military department.

* * * * *

(f) DEFINITIONS.—In this section:

(1) The term “[senior procurement executive] *Chief Acquisition Officer*”, with respect to a military department, means the official designated as the [senior procurement executive] *Chief Acquisition Officer* for the military department for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

* * * * *

CHAPTER 137—PROCUREMENT GENERALLY

Sec.

2302. Definitions.

* * * * *

2305b. *Protests.*

* * * * *

§ 2302c. Implementation of electronic commerce capability

(a) * * *

(b) DESIGNATION OF AGENCY OFFICIAL.—The head of each agency named in paragraph (5) or (6) of section 2303(a) this title shall des-

ignate a program manager to implement the electronic commerce capability for that agency. The program manager shall report directly to an official at a level not lower than the [senior procurement executive] *Chief Acquisition Officer* designated for the agency under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

* * * * *

§ 2304. Contracts: competition requirements

(a) * * *

* * * * *

(f)(1) Except as provided in paragraph (2), the head of an agency may not award a contract using procedures other than competitive procedures unless—

(A) * * *

(B) the justification is approved—

(i) * * *

* * * * *

(iii) in the case of a contract for an amount exceeding \$50,000,000, by the [senior procurement executive] *Chief Acquisition Officer* of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) (without further delegation) or in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting in his capacity as the [senior procurement executive] *Chief Acquisition Officer* for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(B); and

* * * * *

§ 2305b. Protests

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

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

(2) The head of the acquisition activity responsible for the award of the contract may authorize the award of a contract, notwithstanding pending protest under this section, upon making a written finding that urgent and compelling circumstances do not allow for waiting for a decision on the protest.

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

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

or

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

(2) The head of the acquisition activity responsible for the award of a contract may authorize performance of the contract notwithstanding a pending protest under this section upon making a written finding that urgent and compelling circumstances do not allow for waiting for a decision on the protest.

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

(e) CONSTRUCTION.—Nothing in this section shall affect the right of an interested party to file a protest with the Comptroller General under subchapter V of chapter 35 of title 31 or in the United States Court of Federal Claims.

(f) DEFINITIONS.—In this section, the terms “protest” and “interested party” have the meanings given such terms in section 3551 of title 31.

* * * * *

§ 2332. Share-in-savings contracts

[(a) AUTHORITY TO ENTER INTO SHARE-IN-SAVINGS CONTRACTS.—

(1) The head of an agency may enter into a share-in-savings contract for information technology (as defined in section 11101(6) of title 40) in which the Government awards a contract to improve mission-related or administrative processes or to accelerate the achievement of its mission and share with the contractor in savings achieved through contract performance.

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

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

[(i)] the level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the government from obtaining the needed information technology competitively at a fair and reasonable price if the contract is limited in duration to a period of five years or less; and

[(ii)] usage of the information technology to be acquired is likely to continue for a period of time sufficient to generate reasonable benefit for the government.

[(3)] Contracts awarded pursuant to the authority of this section shall, to the maximum extent practicable, be performance-based contracts that identify objective outcomes and contain performance standards that will be used to measure achievement and milestones that must be met before payment is made.

[(4)] Contracts awarded pursuant to the authority of this section shall include a provision containing a quantifiable baseline that is to be the basis upon which a savings share ratio is established that governs the amount of payment a contractor is to receive under the contract. Before commencement of performance of such a contract,

the senior procurement executive of the agency shall determine in writing that the terms of the provision are quantifiable and will likely yield value to the Government.

[(5)(A) The head of the agency may retain savings realized through the use of a share-in-savings contract under this section that are in excess of the total amount of savings paid to the contractor under the contract, but may not retain any portion of such savings that is attributable to a decrease in the number of civilian employees of the Federal Government performing the function. Except as provided in subparagraph (B), savings shall be credited to the appropriation or fund against which charges were made to carry out the contract and shall be used for information technology.

[(B) Amounts retained by the agency under this subsection shall—

[(i) without further appropriation, remain available until expended; and

[(ii) be applied first to fund any contingent liabilities associated with share-in-savings procurements that are not fully funded.

[(b) CANCELLATION AND TERMINATION.—(1) If funds are not made available for the continuation of a share-in-savings contract entered into under this section in a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid out of—

[(A) appropriations available for the performance of the contract;

[(B) appropriations available for acquisition of the information technology procured under the contract, and not otherwise obligated; or

[(C) funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in paragraph (3).

[(2) The amount payable in the event of cancellation or termination of a share-in-savings contract shall be negotiated with the contractor at the time the contract is entered into.

[(3)(A) Subject to subparagraph (B), the head of an agency may enter into share-in-savings contracts under this section in any given fiscal year even if funds are not made specifically available for the full costs of cancellation or termination of the contract if funds are available and sufficient to make payments with respect to the first fiscal year of the contract and the following conditions are met regarding the funding of cancellation and termination liability:

[(i) The amount of unfunded contingent liability for the contract does not exceed the lesser of—

[(I) 25 percent of the estimated costs of a cancellation or termination; or

[(II) \$5,000,000.

[(ii) Unfunded contingent liability in excess of \$1,000,000 has been approved by the Director of the Office of Management and Budget or the Director's designee.

[(B) The aggregate number of share-in-savings contracts that may be entered into under subparagraph (A) by all agencies to which this chapter applies in a fiscal year may not exceed 5 in each of fiscal years 2003, 2004, and 2005.

[(c) DEFINITIONS.—In this section:

[(1) The term “contractor” means a private entity that enters into a contract with an agency.

[(2) The term “savings” means—

[(A) monetary savings to an agency; or

[(B) savings in time or other benefits realized by the agency, including enhanced revenues (other than enhanced revenues from the collection of fees, taxes, debts, claims, or other amounts owed the Federal Government).

[(3) The term “share-in-savings contract” means a contract under which—

[(A) a contractor provides solutions for—

[(i) improving the agency’s mission-related or administrative processes; or

[(ii) accelerating the achievement of agency missions; and

[(B) the head of the agency pays the contractor an amount equal to a portion of the savings derived by the agency from—

[(i) any improvements in mission-related or administrative processes that result from implementation of the solution; or

[(ii) acceleration of achievement of agency missions.

[(d) TERMINATION.—No share-in-savings contracts may be entered into under this section after September 30, 2005.]

§ 2332. Share-in-savings contracts

(a) *AUTHORITY TO ENTER INTO SHARE-IN-SAVINGS CONTRACTS.—*

(1) *The head of an agency may enter into a share-in-savings contract in which the Government awards a contract to improve mission-related or administrative processes or to accelerate the achievement of its mission and share with the contractor in savings achieved through contract performance.*

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

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

(i) the level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the government from obtaining the needed performance competitively at a fair and reasonable price if the contract is limited in duration to a period of five years or less; and

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

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

(4) *Contracts awarded pursuant to the authority of this section shall include a provision containing a quantifiable baseline that is to be the basis upon which a savings share ratio is established that*

governs the amount of payment a contractor is to receive under the contract. Before commencement of performance of such a contract, the chief acquisition officer of the agency shall determine in writing that the terms of the provision are quantifiable and will likely yield value to the Government.

(5)(A) The head of the agency may retain savings realized through the use of a share-in-savings contract under this section that are in excess of the total amount of savings paid to the contractor under the contract. Except as provided in subparagraph (B), savings shall be credited to the appropriation or fund against which charges were made to carry out the contract.

(B) Amounts retained by the agency under this subsection shall—

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

(ii) be applied first to fund any contingent liabilities associated with share-in-savings procurements that are not fully funded.

(b) CANCELLATION AND TERMINATION.—(1) If funds are not made available for the continuation of a share-in-savings contract entered into under this section in a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid out of—

(A) appropriations available for the performance of the contract;

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

(C) funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in paragraph (3).

(2) The amount payable in the event of cancellation or termination of a share-in-savings contract shall be negotiated with the contractor at the time the contract is entered into.

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

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

(i) 50 percent of the estimated costs of a cancellation or termination; or

(ii) \$10,000,000.

(B) Unfunded contingent liability in excess of \$5,000,000 has been approved by the Director of the Office of Management and Budget or the Director's designee.

(c) DEFINITIONS.—In this section:

(1) The term “contractor” means a private entity that enters into a contract with an agency.

(2) The term “savings” means—

(A) monetary savings to an agency; or

(B) savings in time or other benefits realized by the agency, including enhanced revenues.

(3) *The term “share-in-savings contract” means a contract under which—*

(A) *a contractor provides solutions for—*

(i) *improving the agency’s mission-related or administrative processes; or*

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

(B) *the head of the agency pays the contractor an amount equal to a portion of the savings derived by the agency from—*

(i) *any improvements in mission-related or administrative processes that result from implementation of the solution; or*

(ii) *acceleration of achievement of agency missions.*

* * * * *

CHAPTER 138—COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES

* * * * *

§ 2359a. Technology Transition Initiative

(a) * * *

* * * * *

(i) **DEFINITION.**—In this section, the term “acquisition executive”, with respect to a military department or Defense Agency, means the official designated as the [senior procurement executive] *Chief Acquisition Officer* for that military department or Defense Agency for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

* * * * *

CHAPTER 169—MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

* * * * *

§ 2855. Law applicable to contracts for architectural and engineering services and construction design

(a) * * *

(b)(1) * * *

(2) The initial threshold amount under paragraph (1) is **[\$85,000]** *\$300,000*. The Secretary of Defense may revise that amount in order to ensure that small business concerns receive a reasonable share of contracts referred to in subsection (a).

* * * * *

(4) *The selection and competition requirements described in subsection (a) shall apply to any contract for architectural and engineering services (including surveying and mapping services) that is entered into by the head of an agency (as such term is defined in section 2302 of this title).*

* * * * *

TITLE 31, UNITED STATES CODE

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SUBTITLE II—THE BUDGET PROCESS

* * * * *

§ 1115. Performance plans

(a) In carrying out the provisions of **section 1105(a)(29)** *section 1105(a)(28)*, the Director of the Office of Management and Budget shall require each agency to prepare an annual performance plan covering each program activity set forth in the budget of such agency. Such plan shall—

(1) * * *

* * * * *

SUBTITLE III—FINANCIAL MANAGEMENT

* * * * *

CHAPTER 35—ACCOUNTING AND COLLECTION

* * * * *

SUBCHAPTER V—PROCUREMENT PROTEST SYSTEM

* * * * *

§ 3553. Review of protests; effect on contracts pending decision

(a) * * *

* * * * *

(d)(1) * * *

* * * * *

(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 **[.]; or**

(C) *in the case of a protest of the same matter regarding such contract that is submitted under section 2305b of title 10 or section 303N of the Federal Property and Administrative Services Act of 1949, the date that is 5 days after the date on which a decision on that protest is issued.*

* * * * *

**SECTION 403 OF THE FEDERAL FINANCIAL
MANAGEMENT ACT OF 1994**

SEC. 403. FRANCHISE FUND PILOT PROGRAMS.

(a) * * *

* * * * *

(f) **TERMINATION.**—The provisions of this section shall expire on October 1, ~~2003~~ 2006.

TITLE 40, UNITED STATES CODE

* * * * *

**SUBTITLE I—FEDERAL PROPERTY AND
ADMINISTRATIVE SERVICES**

* * * * *

**CHAPTER 11—SELECTION OF ARCHITECTS AND
ENGINEERS**

* * * * *

§ 1102. Definitions

In this chapter, the following definitions apply:

(1) * * *

* * * * *

(4) *SURVEYING AND MAPPING.*—The term “surveying and mapping” means services performed by professionals such as surveyors, photogrammetrists, hydrographers, geodesists, or cartographers in the collection, storage, retrieval, or dissemination of graphical or digital data to depict natural or manmade physical features, phenomena, or boundaries of the earth and any information related to such data, including any such data that comprises a survey, map, chart, geographic information system, remotely sensed image or data, or an aerial photograph.

* * * * *

**SUBTITLE III—INFORMATION TECHNOLOGY
MANAGEMENT**

CHAPTER	Sec.
111. GENERAL	11101

* * * * *

[115. INFORMATION TECHNOLOGY ACQUISITION PILOT PROGRAM	11501]
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CHAPTER 111—GENERAL

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§ 11101. Definitions

In this subtitle, the following definitions apply:

(1) * * *

* * * * *

(6) INFORMATION TECHNOLOGY.—The term “information technology”—

(A) with respect to an executive agency means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, *analysis, evaluation*, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use—

(i) of that equipment; or

(ii) of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(B) includes computers, [ancillary equipment,] *ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer*, software, firmware and similar procedures, services (including support services), and related resources; but

* * * * *

[CHAPTER 115—INFORMATION TECHNOLOGY ACQUISITION PILOT PROGRAM

[SUBCHAPTER I—CONDUCT OF PILOT PROGRAM

[Sec.

[11501. Authority to conduct pilot program.

[11502. Evaluation criteria and plans.

[11503. Report.

[11504. Recommended legislation.

[11505. Rule of construction.

[SUBCHAPTER I—CONDUCT OF PILOT PROGRAM

[§ 11501. Authority to conduct pilot program

[(a) IN GENERAL.—

[(1) PURPOSE.—In consultation with the Administrator for the Office of Information and Regulatory Affairs, the Administrator for Federal Procurement Policy may conduct a pilot program pursuant to the requirements of section 11521 of this title to test alternative approaches for the acquisition of information technology by executive agencies.

[(2) MULTIAGENCY, MULTI-ACTIVITY CONDUCT OF EACH PROGRAM.—Except as otherwise provided in this chapter, the pilot program conducted under this chapter shall be carried out in not more than two procuring activities in each of the executive agencies that are designated by the Administrator for Federal Procurement Policy in accordance with this chapter to carry out the pilot program. With the approval of the Administrator for Federal Procurement Policy, the head of each designated executive agency shall select the procuring activities of the ex-

executive agency that are to participate in the test and shall designate a procurement testing official who shall be responsible for the conduct and evaluation of the pilot program within the executive agency.

[(b) LIMITATION ON AMOUNT.—The total amount obligated for contracts entered into under the pilot program conducted under this chapter may not exceed \$750,000,000. The Administrator for Federal Procurement Policy shall monitor those contracts and ensure that contracts are not entered into in violation of this subsection.

[(c) PERIOD OF PROGRAMS.—

[(1) IN GENERAL.—Subject to paragraph (2), the pilot program may be carried out under this chapter for the period, not in excess of five years, the Administrator for Federal Procurement Policy determines is sufficient to establish reliable results.

[(2) CONTINUING VALIDITY OF CONTRACTS.—A contract entered into under the pilot program before the expiration of that program remains in effect according to the terms of the contract after the expiration of the program.

[(§ 11502. Evaluation criteria and plans

[(a) MEASURABLE TEST CRITERIA.—To the maximum extent practicable, the head of each executive agency conducting the pilot program under section 11501 of this title shall establish measurable criteria for evaluating the effects of the procedures or techniques to be tested under the program.

[(b) TEST PLAN.—Before the pilot program may be conducted under section 11501 of this title, the Administrator for Federal Procurement Policy shall submit to Congress a detailed test plan for the program, including a detailed description of the procedures to be used and a list of regulations that are to be waived.

[(§ 11503. Report

[(a) REQUIREMENT.—Not later than 180 days after the completion of the pilot program under this chapter, the Administrator for Federal Procurement Policy shall—

[(1) submit to the Director of the Office of Management and Budget a report on the results and findings under the program; and

[(2) provide a copy of the report to Congress.

[(b) CONTENT.—The report shall include—

[(1) a detailed description of the results of the program, as measured by the criteria established for the program; and

[(2) a discussion of legislation that the Administrator recommends, or changes in regulations that the Administrator considers necessary, to improve overall information resources management in the Federal Government.

[(§ 11504. Recommended legislation

[(If the Director of the Office of Management and Budget determines that the results and findings under the pilot program under this chapter indicate that legislation is necessary or desirable to improve the process for acquisition of information technology, the

Director shall transmit the Director's recommendations for that legislation to Congress.

【§ 11505. Rule of construction

【This chapter does not authorize the appropriation or obligation of amounts for the pilot program authorized under this chapter.】

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SECTION 210 OF THE E-GOVERNMENT ACT OF 2002

SEC. 210. SHARE-IN-SAVINGS INITIATIVES.

(a) * * *

* * * * *

【(c) DEVELOPMENT OF INCENTIVES.—The Director of the Office of Management and Budget shall, in consultation with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and executive agencies, develop techniques to permit an executive agency to retain a portion of the savings (after payment of the contractor's share of the savings) derived from share-in-savings contracts as funds are appropriated to the agency in future fiscal years.

【(d) REGULATIONS.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to implement the provisions enacted by this section. Such revisions shall—

【(1) provide for the use of competitive procedures in the selection and award of share-in-savings contracts to—

【(A) ensure the contractor's share of savings reflects the risk involved and market conditions; and

【(B) otherwise yield greatest value to the government; and

【(2) allow appropriate regulatory flexibility to facilitate the use of share-in-savings contracts by executive agencies, including the use of innovative provisions for technology refreshment and nonstandard Federal Acquisition Regulation contract clauses.

【(e) ADDITIONAL GUIDANCE.—The Administrator of General Services shall—

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

【(2) in consultation with the Director of the Office of Management and Budget, provide guidance to executive agencies for determining mutually beneficial savings share ratios and baselines from which savings may be measured.

【(f) OMB REPORT TO CONGRESS.—In consultation with executive agencies, the Director of the Office of Management and Budget shall, not later than 2 years after the date of the enactment of this Act, submit to Congress a report containing—

【(1) a description of the number of share-in-savings contracts entered into by each executive agency under by this section and the amendments made by this section, and, for each contract identified—

【(A) the information technology acquired;

- [(B) the total amount of payments made to the contractor; and
- [(C) the total amount of savings or other measurable benefits realized;
- [(2) a description of the ability of agencies to determine the baseline costs of a project against which savings can be measured; and
- [(3) any recommendations, as the Director deems appropriate, regarding additional changes in law that may be necessary to ensure effective use of share-in-savings contracts by executive agencies.
- [(g) GAO REPORT TO CONGRESS.—The Comptroller General shall, not later than 6 months after the report required under subsection (f) is submitted to Congress, conduct a review of that report and submit to Congress a report containing—
 - [(1) the results of the review;
 - [(2) an independent assessment by the Comptroller General of the effectiveness of the use of share-in-savings contracts in improving the mission-related and administrative processes of the executive agencies and the achievement of agency missions; and
 - [(3) a recommendation on whether the authority to enter into share-in-savings contracts should be continued.]]

* * * * *

[(i) DEFINITIONS.—In this section, the terms “contractor”, “savings”, and “share-in-savings contract” have the meanings given those terms in section 317 of the Federal Property and Administrative Services Act of 1949 (as added by subsection (b)).]

SECTION 821 OF THE FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001

SEC. 821. IMPROVEMENTS IN PROCUREMENTS OF SERVICES.

(a) * * *

[(b) INCENTIVE FOR USE OF PERFORMANCE-BASED SERVICE CONTRACTS.—(1) A Department of Defense performance-based service contract or performance-based task order may be treated as a contract for the procurement of commercial items if—

[(A) the contract or task order is valued at \$5,000,000 or less;

[(B) the contract or task order sets forth specifically each task to be performed and, for each task—

[(i) defines the task in measurable, mission-related terms;

[(ii) identifies the specific end products or output to be achieved; and

[(iii) contains a firm fixed price; and

[(C) the source of the services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government.

[(2) The special simplified procedures provided in the Federal Acquisition Regulation pursuant to section 2304(g)(1)(B) of title 10, United States Code, shall not apply to a performance-based service

contract or performance-based task order that is treated as a contract for the procurement of commercial items under paragraph (1).

[(3) Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall submit a report on the implementation of this subsection to the congressional defense committees.

[(4) The authority under this subsection shall not apply to contracts entered into or task orders issued more than 3 years after the date of the enactment of this Act.]

* * * * *

SECTION 8002 FEDERAL ACQUISITION STREAMLINING ACT OF 1994

SEC. 8002. REGULATIONS ON ACQUISITION OF COMMERCIAL ITEMS.

(a) * * *

* * * * *

(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[.]; and

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

* * * * *

HOMELAND SECURITY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

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

Sec. 1. Short title; table of contents.

* * * * *

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

* * * * *

Subtitle F—Federal Emergency Procurement Flexibility

Sec. 851. Definition.

* * * * *

[Sec. 853. Increased simplified acquisition threshold for procurements in support of humanitarian or peacekeeping operations or contingency operations.]

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

* * * * *

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

* * * * *

Subtitle F—Federal Emergency Procurement Flexibility

* * * * *

SEC. 852. PROCUREMENTS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.

The authorities provided in this subtitle apply to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack[, but only if a solicitation of offers for the procurement is issued during the 1-year period beginning on the date of the enactment of this Act].

[SEC. 853. INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR PROCUREMENTS IN SUPPORT OF HUMANITARIAN OR PEACEKEEPING OPERATIONS OR CONTINGENCY OPERATIONS.

[(a) **TEMPORARY THRESHOLD AMOUNTS.**—For a procurement referred to in section 852 that is carried out in support of a humanitarian or peacekeeping operation or a contingency operation, the simplified acquisition threshold definitions shall be applied as if the amount determined under the exception provided for such an operation in those definitions were—]

SEC. 853. INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR CERTAIN PROCUREMENTS.

(a) *THRESHOLD AMOUNTS.*—*For a procurement referred to in section 852, the simplified acquisition threshold referred to in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) is deemed to be—*

(1) * * *

* * * * *

[(b) **SIMPLIFIED ACQUISITION THRESHOLD DEFINITIONS.**—In this section, the term “simplified acquisition threshold definitions” means the following:

[(1) Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

[(2) Section 309(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(d)).

[(3) Section 2302(7) of title 10, United States Code.

[(c) **SMALL BUSINESS RESERVE.**—For a procurement carried out pursuant to subsection (a), section 15(j) of the Small Business Act (15 U.S.C. 644(j)) shall be applied as if the maximum anticipated

value identified therein is equal to the amounts referred to in subsection (a).】

* * * * *

SEC. 855. APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES TO CERTAIN PROCUREMENTS.

【(a) AUTHORITY.—

【(1) IN GENERAL.—The head of an executive agency may apply the provisions of law listed in paragraph (2) to a procurement referred to in section 852 without regard to whether the property or services are commercial items.

【(2) COMMERCIAL ITEM LAWS.—The provisions of law referred to in paragraph (1) are as follows:

【(A) Sections 31 and 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 427, 430).

【(B) Section 2304(g) of title 10, United States Code.

【(C) Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)).】

(a) *AUTHORITY.— With respect to a procurement referred to in section 852, the head of an executive agency may deem any item or service to be a commercial item for the purpose of Federal procurement laws.*

(b) INAPPLICABILITY OF LIMITATION ON USE OF SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—The \$5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)), section 2304(g)(1)(B) of title 10, United States Code, and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall not apply to purchases of property or services 【to which any of the provisions of law referred to in subsection (a) are applied】 under the authority of this section.

* * * * *

SEC. 857. REVIEW AND REPORT BY COMPTROLLER GENERAL.

(a) REQUIREMENTS.—Not later than March 31, 【2004】 2006, the Comptroller General shall—

(1) * * *

* * * * *

CHAPTER 35 OF TITLE 44, UNITED STATES CODE

CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

SUBCHAPTER I—FEDERAL INFORMATION POLICY

Sec.
3501. Purposes.

* * * * *

SUBCHAPTER II—INFORMATION SECURITY

【Sec.
3531. Purposes.
3532. Definitions.
3533. Authority and functions of the Director.
3534. Federal agency responsibilities.

- [3535. Annual independent evaluation.
- [3536. National security systems.
- [3537. Authorization of appropriations.
- [3538. Effect on existing law.]

[SUBCHAPTER III—INFORMATION SECURITY]

Sec.

3541. Purposes.

* * * * *

[SUBCHAPTER II—INFORMATION SECURITY]

[§ 3531. Purposes

【The purposes of this subchapter are to—

【(1) provide a comprehensive framework for ensuring the effectiveness of information security controls over information resources that support Federal operations and assets;

【(2) recognize the highly networked nature of the current Federal computing environment and provide effective governmentwide management and oversight of the related information security risks, including coordination of information security efforts throughout the civilian, national security, and law enforcement communities;

【(3) provide for development and maintenance of minimum controls required to protect Federal information and information systems;

【(4) provide a mechanism for improved oversight of Federal agency information security programs;

【(5) acknowledge that commercially developed information security products offer advanced, dynamic, robust, and effective information security solutions, reflecting market solutions for the protection of critical information infrastructures important to the national defense and economic security of the nation that are designed, built, and operated by the private sector; and

【(6) recognize that the selection of specific technical hardware and software information security solutions should be left to individual agencies from among commercially developed products.

[§ 3532. Definitions

【(a) IN GENERAL.—Except as provided under subsection (b), the definitions under section 3502 shall apply to this subchapter.

【(b) ADDITIONAL DEFINITIONS.—As used in this subchapter—

【(1) the term “information security” means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

【(A) integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

【(B) confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information;

【(C) availability, which means ensuring timely and reliable access to and use of information; and

- [(D) authentication, which means utilizing digital credentials to assure the identity of users and validate their access;
- [(2) the term “national security system” means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency, the function, operation, or use of which—
 - [(A) involves intelligence activities;
 - [(B) involves cryptologic activities related to national security;
 - [(C) involves command and control of military forces;
 - [(D) involves equipment that is an integral part of a weapon or weapons system; or
 - [(E) is critical to the direct fulfillment of military or intelligence missions provided that this definition does not apply to a system that is used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications);
- [(3) the term “information technology” has the meaning given that term in section 11101 of title 40; and
- [(4) the term “information system” means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, and includes—
 - [(A) computers and computer networks;
 - [(B) ancillary equipment;
 - [(C) software, firmware, and related procedures;
 - [(D) services, including support services; and
 - [(E) related resources.

[(§ 3533. Authority and functions of the Director

- [(a) The Director shall oversee agency information security policies and practices, by—
 - [(1) promulgating information security standards under section 11331 of title 40;
 - [(2) overseeing the implementation of policies, principles, standards, and guidelines on information security;
 - [(3) requiring agencies, consistent with the standards promulgated under such section 11331 and the requirements of this subchapter, to identify and provide information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of—
 - [(A) information collected or maintained by or on behalf of an agency; or
 - [(B) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;
 - [(4) coordinating the development of standards and guidelines under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) with agencies and offices operating or exercising control of national security sys-

tems (including the National Security Agency) to assure, to the maximum extent feasible, that such standards and guidelines are complementary with standards and guidelines developed for national security systems;

[(5) overseeing agency compliance with the requirements of this subchapter, including through any authorized action under section 11303(b)(5) of title 40, to enforce accountability for compliance with such requirements;

[(6) reviewing at least annually, and approving or disapproving, agency information security programs required under section 3534(b);

[(7) coordinating information security policies and procedures with related information resources management policies and procedures; and

[(8) reporting to Congress no later than March 1 of each year on agency compliance with the requirements of this subchapter, including—

[(A) a summary of the findings of evaluations required by section 3535;

[(B) significant deficiencies in agency information security practices;

[(C) planned remedial action to address such deficiencies; and

[(D) a summary of, and the views of the Director on, the report prepared by the National Institute of Standards and Technology under section 20(d)(9) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).

[(b) Except for the authorities described in paragraphs (4) and (7) of subsection (a), the authorities of the Director under this section shall not apply to national security systems.

[(§ 3534. Federal agency responsibilities

[(a) The head of each agency shall—

[(1) be responsible for—

[(A) providing information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of—

[(i) information collected or maintained by or on behalf of the agency; and

[(ii) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

[(B) complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines, including—

[(i) information security standards promulgated by the Director under section 11331 of title 40; and

[(ii) information security standards and guidelines for national security systems issued in accordance with law and as directed by the President; and

[(C) ensuring that information security management processes are integrated with agency strategic and operational planning processes;

[(2) ensure that senior agency officials provide information security for the information and information systems that support the operations and assets under their control, including through—

[(A) assessing the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of such information or information systems;

[(B) determining the levels of information security appropriate to protect such information and information systems in accordance with standards promulgated under section 11331 of title 40 for information security classifications and related requirements;

[(C) implementing policies and procedures to cost-effectively reduce risks to an acceptable level; and

[(D) periodically testing and evaluating information security controls and techniques to ensure that they are effectively implemented;

[(3) delegate to the agency Chief Information Officer established under section 3506 (or comparable official in an agency not covered by such section) the authority to ensure compliance with the requirements imposed on the agency under this subchapter, including—

[(A) designating a senior agency information security officer who shall—

[(i) carry out the Chief Information Officer's responsibilities under this section;

[(ii) possess professional qualifications, including training and experience, required to administer the functions described under this section;

[(iii) have information security duties as that official's primary duty; and

[(iv) head an office with the mission and resources to assist in ensuring agency compliance with this section;

[(B) developing and maintaining an agencywide information security program as required by subsection (b);

[(C) developing and maintaining information security policies, procedures, and control techniques to address all applicable requirements, including those issued under section 3533 of this title, and section 11331 of title 40;

[(D) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities; and

[(E) assisting senior agency officials concerning their responsibilities under paragraph (2);

[(4) ensure that the agency has trained personnel sufficient to assist the agency in complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines; and

[(5) ensure that the agency Chief Information Officer, in coordination with other senior agency officials, reports annually to the agency head on the effectiveness of the agency information security program, including progress of remedial actions.

[(b) Each agency shall develop, document, and implement an agencywide information security program, approved by the Director under section 3533(a)(5), to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source, that includes—

[(1) periodic assessments of the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the agency;

[(2) policies and procedures that—

[(A) are based on the risk assessments required by paragraph (1);

[(B) cost-effectively reduce information security risks to an acceptable level;

[(C) ensure that information security is addressed throughout the life cycle of each agency information system; and

[(D) ensure compliance with—

[(i) the requirements of this subchapter;

[(ii) policies and procedures as may be prescribed by the Director, and information security standards promulgated under section 11331 of title 40;

[(iii) minimally acceptable system configuration requirements, as determined by the agency; and

[(iv) any other applicable requirements, including standards and guidelines for national security systems issued in accordance with law and as directed by the President;

[(3) subordinate plans for providing adequate information security for networks, facilities, and systems or groups of information systems, as appropriate;

[(4) security awareness training to inform personnel, including contractors and other users of information systems that support the operations and assets of the agency, of—

[(A) information security risks associated with their activities; and

[(B) their responsibilities in complying with agency policies and procedures designed to reduce these risks;

[(5) periodic testing and evaluation of the effectiveness of information security policies, procedures, and practices, to be performed with a frequency depending on risk, but no less than annually, of which such testing—

[(A) shall include testing of management, operational, and technical controls of every information system identified in the inventory required under section 3505(c); and

[(B) may include testing relied on in a evaluation under section 3535;

[(6) a process for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the agency;

[(7) procedures for detecting, reporting, and responding to security incidents, including—

- [(A) mitigating risks associated with such incidents before substantial damage is done; and
 - [(B) notifying and consulting with, as appropriate—
 - [(i) law enforcement agencies and relevant Offices of Inspector General;
 - [(ii) an office designated by the President for any incident involving a national security system; and
 - [(iii) any other agency or office, in accordance with law or as directed by the President; and
 - [(8) plans and procedures to ensure continuity of operations for information systems that support the operations and assets of the agency.
- [(c) Each agency shall—
 - [(1) report annually to the Director, the Committees on Government Reform and Science of the House of Representatives, the Committees on Governmental Affairs and Commerce, Science, and Transportation of the Senate, the appropriate authorization and appropriations committees of Congress, and the Comptroller General on the adequacy and effectiveness of information security policies, procedures, and practices, and compliance with the requirements of this subchapter, including compliance with each requirement of subsection (b);
 - [(2) address the adequacy and effectiveness of information security policies, procedures, and practices in plans and reports relating to—
 - [(A) annual agency budgets;
 - [(B) information resources management under subchapter 1 of this chapter;
 - [(C) information technology management under subtitle III of title 40;
 - [(D) program performance under sections 1105 and 1115 through 1119 of title 31, and sections 2801 and 2805 of title 39;
 - [(E) financial management under chapter 9 of title 31, and the Chief Financial Officers Act of 1990 (31 U.S.C. 501 note; Public Law 101–576) (and the amendments made by that Act);
 - [(F) financial management systems under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note); and
 - [(G) internal accounting and administrative controls under section 3512 of title 31, United States Code, (known as the “Federal Managers Financial Integrity Act”); and
 - [(3) report any significant deficiency in a policy, procedure, or practice identified under paragraph (1) or (2)—
 - [(A) as a material weakness in reporting under section 3512 of title 31; and
 - [(B) if relating to financial management systems, as an instance of a lack of substantial compliance under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note).
- [(d)(1) In addition to the requirements of subsection (c), each agency, in consultation with the Director, shall include as part of the performance plan required under section 1115 of title 31 a description of—

[(A) the time periods; and

[(B) the resources, including budget, staffing, and training, that are necessary to implement the program required under subsection (b).

[(2) The description under paragraph (1) shall be based on the risk assessments required under subsection (b)(2)(1).

[(e) Each agency shall provide the public with timely notice and opportunities for comment on proposed information security policies and procedures to the extent that such policies and procedures affect communication with the public.

§ 3535. Annual independent evaluation

[(a)(1) Each year each agency shall have performed an independent evaluation of the information security program and practices of that agency to determine the effectiveness of such program and practices.

[(2) Each evaluation by an agency under this section shall include—

[(A) testing of the effectiveness of information security policies, procedures, and practices of a representative subset of the agency's information systems;

[(B) an assessment (made on the basis of the results of the testing) of compliance with—

[(i) the requirements of this subchapter; and

[(ii) related information security policies, procedures, standards, and guidelines; and

[(C) separate presentations, as appropriate, regarding information security relating to national security systems.

[(b) Subject to subsection (c)—

[(1) for each agency with an Inspector General appointed under the Inspector General Act of 1978, the annual evaluation required by this section shall be performed by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and

[(2) for each agency to which paragraph (1) does not apply, the head of the agency shall engage an independent external auditor to perform the evaluation.

[(c) For each agency operating or exercising control of a national security system, that portion of the evaluation required by this section directly relating to a national security system shall be performed—

[(1) only by an entity designated by the agency head; and

[(2) in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

[(d) The evaluation required by this section—

[(1) shall be performed in accordance with generally accepted government auditing standards; and

[(2) may be based in whole or in part on an audit, evaluation, or report relating to programs or practices of the applicable agency.

[(e) Each year, not later than such date established by the Director, the head of each agency shall submit to the Director the results of the evaluation required under this section.

[(f) Agencies and evaluators shall take appropriate steps to ensure the protection of information which, if disclosed, may adversely affect information security. Such protections shall be commensurate with the risk and comply with all applicable laws and regulations.

[(g)(1) The Director shall summarize the results of the evaluations conducted under this section in the report to Congress required under section 3533(a)(8).

[(2) The Director's report to Congress under this subsection shall summarize information regarding information security relating to national security systems in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

[(3) Evaluations and any other descriptions of information systems under the authority and control of the Director of Central Intelligence or of National Foreign Intelligence Programs systems under the authority and control of the Secretary of Defense shall be made available to Congress only through the appropriate oversight committees of Congress, in accordance with applicable laws.

[(h) The Comptroller General shall periodically evaluate and report to Congress on—

[(1) the adequacy and effectiveness of agency information security policies and practices; and

[(2) implementation of the requirements of this subchapter.

§ 3536. Expiration

[This subchapter shall not be in effect after May 31, 2003.]

§ 3537. Authorization of appropriations

[There are authorized to be appropriated to carry out the provisions of this subchapter such sums as may be necessary for each of fiscal years 2003 through 2007.]

§ 3538. Effect on existing law

[Nothing in this subchapter, section 11331 of title 40, or section 20 of the National Standards and Technology Act (15 U.S.C. 278g–3) may be construed as affecting the authority of the President, the Office of Management and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 552a of title 5, the disclosure of information under section 552 of title 5, the management and disposition of records under chapters 29, 31, or 33 of title 44, the management of information resources under subchapter I of chapter 35 of this title, or the disclosure of information to Congress or the Comptroller General of the United States.]

SUBCHAPTER [III] II—INFORMATION SECURITY

§ 3541. Purposes

The purposes of this subchapter are to—

(1) * * *

* * * * *

§ 3549. Effect on existing law

Nothing in this subchapter, section 11331 of title 40, or section 20 of the National Standards and Technology Act (15 U.S.C. 278g–3) may be construed as affecting the authority of the President, the Office of Management and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 552a of title 5, the disclosure of information under section 552 of title 5, the management and disposition of records under chapters 29, 31, or 33 of title 44, the management of information resources under subchapter I of chapter 35 of this title, or the disclosure of information to the Congress or the Comptroller General of the United States. [While this subchapter is in effect, subchapter II of this chapter shall not apply.]

* * * * *

MINORITY VIEWS

The Services Acquisition Reform Act (SARA), as reported by the Government Reform Committee on May 7, 2003, affects how the federal government procures federal goods and services worth billions of dollars. The aim of the legislation is to “streamline” the procurement process. But in key areas, its effect will be to impede the government’s ability to protect against waste, fraud, and abuse in federal contracting.

On the plus side, the legislation creates a chief acquisition officer and establishes a training fund for acquisition personnel. These steps will help promote a professional, well-trained federal acquisition workforce.

There are, however, significant problems with the legislation:

- **Contractor Involvement in Federal Acquisition Decisions.** The government-industry exchange program for acquisition personnel created by the bill could give private contractors undue influence over the federal contracting process.

- **“Share in Savings” Contracts.** The bill permanently authorizes a complicated and largely untested contract type called share-in-savings. These contracts are difficult to administer and are designed to escape congressional oversight.

- **Inadequate Protections Against Waste, Fraud, and Abuse.** The bill would weaken current law by allowing the government to enter into sole-source contracts for up to \$15 million without verifying that the prices charged are fair and reasonable.

- **“Other Transaction” Authority.** SARA greatly expands “other transaction” authority, which allows agencies to enter into contracts without regard to most federal procurement laws.

Moreover, key amendments on important acquisition issues offered by Democratic members were rejected during the Committee consideration.

I. MAJOR ISSUES

A. Contractor Involvement in Federal Acquisition Decisions

Section 103 of SARA establishes a government-industry exchange program for acquisition personnel. This legislation is patterned on an exchange program for information technology managers enacted as part of the E-Government Act of 2003 (P.L. 107–347).

In the case of information technology managers, an exchange program may make sense. But acquisition personnel have a unique oversight role in ensuring that contractors are not overpaid and that the work performed meets federal standards. Turning these functions over to private sector employees puts the proverbial fox in charge of the henhouse. Even if private sector contractors follow conflict of interest laws and do not work on projects involving their private employers, their involvement is still inappropriate. Only

persons who work for the government or are being paid by the government should be involved in making decisions about how much specific contractors are paid.

During the markup, Rep. Waxman offered an amendment to stroke this provision, which was defeated.

B. "Share in Savings" Contracts

Section 301 of the bill authorizes a contract type called "share-in-savings." Under these contracts, the contractor agrees to bear the initial project costs, including capital outlays, until the client agency begins to achieve specified "savings" or "enhanced revenues" from the work. Payment is based on a percentage of the savings or revenues realized by the agency.

These contracts are largely untested, both in the public and private sector. For this reason, after extensive negotiations, the E-Government Act of 2003 (P.L. 107-347) authorized 15 share-in-savings contracts in military departments and 15 in civilian agencies over a three-year period. The idea was that these 30 contracts would serve as "pilot projects."

SARA eliminates these carefully negotiated limits and gives all agencies permanent authority to enter into an unlimited number of share-in-savings contracts before any of the pilots have even begun. Moreover, SARA eliminates other safeguards in the E-Government Act, such as the requirement that "share in savings" contracts could not be used in revenue enhancement. Revenue enhancing contracts raise a host of complicated issues, such as ensuring that share-in-savings contracts for debt collection activities do not create rogue bounty hunters.

One of the major concerns about these contracts is that they are a form of "back-door" appropriating. For other contracts, agencies must come to Congress for budget authority for the contracts. But section 301 specifically waives this requirement if the government's potential liability under the contract is \$10 million or less. This removes an important element of oversight and accountability.

The Administration stated in testimony before the Government Committee last year that there is no reason to expand authority for share-in-saving beyond a pilot project "until there are demonstrable benefits. To date, we have not seen results."¹

Rep. Waxman offered an amendment to delete this section, which was defeated.

C. Waiver of Safeguards against Waste, Fraud, and Abuse

Sections 401, 404, and 502 of the bill allow the use of commercial acquisition procedures for goods and services that the bill defines as commercial in nature, but which in reality are not. Specifically:

- Section 401 treats any service contract that contains "performance-based" terms as a "commercial item," even if the contract is a sole-source contract for a unique government service.
- Section 404 treats any contract with a contractor that does 90 percent of its business with the private sector as a "commercial

¹Testimony of Angela Styles, Administrator of the Office of Federal Procurement Policy, House Subcommittee on Technology and Procurement Policy, Hearing on the Services Acquisition Reform Act, 107th Cong. (Mar. 7, 2002).

item,” even if the contract is a sole-source contract for a unique government product or service.

- Section 502 treats any contract for goods or services needed to defined or respond to a terrorist attack as a commercial item.

Some of the major safeguards at the government’s disposal to ensure the efficient and effective use of taxpayer dollars are waived by these provisions. This waiver occurs because the safeguards are not available to the government when using commercial procedures. Among the most important of these safeguards are the Truth in Negotiations Act (TINA) and Cost Accounting Standards (CAS). TINA requires contractors to provide the government with accurate, timely, and complete pricing data for sole-source contracts over \$550,000. CAS requires that contractors consistently and accurately account for their costs. These standards are essential for ensuring that the federal taxpayer is not overcharged for costs such as overhead or executive pensions.

An amendment to the bill was offered by Rep. Waxman that would have ensured that no sole-source contract would be exempt from TINA and CAS. Rep. Davis, however, offered a second degree amendment, which passed over Rep. Waxman’s objections, which limits the applicability of the Waxman amendment to contracts over \$15 million.

D. “Other Transaction” Authority

Section 501 of SARA would extend to all civilian agencies “other transaction” authority for research and development projects related to defense against terrorism. This authority permits agencies to enter into contracts without regard to almost all federal statutes and regulations, including the Federal Acquisition Regulation, the Federal Property Act, the Competition in Contracting Act, the Federal Acquisition Streamlining Act, and the Federal Grant and Cooperative Agreement Act, as well as the Truth in Negotiations Act and Cost Accounting Standards.

In the recently passed Homeland Security Act, the new Department of Homeland Security was given this authority for five years. The effect of the SARA provision is to repeal this time limit and to extend use of the authority to all agencies.

“Other transaction” authority was originally granted to the Department of Defense to attract nontraditional contractors. The DOD IG has found, however, that this authority has not attracted a significant number of nontraditional defense contractors; to the contrary, traditional contractors have received 94.5 percent of “other transaction” contracts awarded by the Defense Department.²

Moreover, the DOD IG has reported that these arrangements are subject to waste, fraud, and abuse. According to the IG, these special contracts “do not provide the government a number of significant protections, ensure the prudent expenditure of taxpayer dollars, or prevent fraud.”³

²Testimony for the record of Robert J. Lieberman, Deputy Inspector General, Department of Defense, Subcommittee on Technology and Procurement Policy, Hearing on the Services Acquisition Reform Act, 107th Cong. (Mar. 7, 2002).

³Id.

Rep. Maloney offered an amendment to reapply certain basic procurement statutes if other transaction authority is used. The amendment was defeated.

II. ACCEPTED DEMOCRATIC AMENDMENTS

In a few important areas, Democratic amendments were adopted by the Committee:

- **Definition of Commercial Services.** An amendment to section 403 by Rep. Waxman was adopted. Section 403 amends the Office of Federal Procurement Policy Act to replace the current definition of “commercial services.” As amended by the Waxman amendment, the new definition is “services offered and sold competitively, in substantial quantities, in the commercial marketplace based on established market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions.” The revised definition changes existing law by eliminating the requirement that commercial services be based on a catalogue price and permitting them to be sold based on specific outcomes to be achieved.
- **Disclosure of Iraqi Contracts.** An amendment by Rep. Maloney to require public disclosure of information regarding contracts for Iraqi reconstruction activities, if such contracts are not entered into using full and open competition, was offered and adopted.

III. REJECTED DEMOCRATIC AMENDMENTS

Several key Democratic amendments were defeated on a party-line vote:

- **Contract Tracking.** Rep. Kucinich offered an amendment to create a comprehensive, governmentwide system to track the cost and quality of agency contracting efforts, focusing on contracts entered into as the result of a public-private competition.
- **Competition Requirement.** Rep. Van Hollen offered an amendment to require any decision by an agency to transfer the performance of a function from federal employees to a contractor to be based on the results of a public-private competition process.
- **Standing.** Rep. Kucinich offered an amendment to give federal employees or their representatives standing to appeal the results of an A-76 decision transferring federal jobs to private contractors.
- **Corporate Expatriate.** Rep. Sanchez offered an amendment to prohibit agencies from entering into any contract with a subsidiary of a publicly traded corporation if the corporation is incorporated in a tax haven country but the United States is the principal market for the public trading of the corporation’s stock.
- **Debarment.** Rep. Maloney offered an amendment to allow debarment officials across agencies to share information regarding contractors’ activities.
- **Chief Acquisition Officer.** Rep. Maloney offered an amendment to ensure the bill’s position of Chief Acquisition Officer is held by a career professional.

IV. CONCLUSION

While we support the goal of streamlining federal procurement laws, we cannot support SARA in its current form. Unfortunately,

as reported by the Committee, the bill exposes the taxpayer to new forms of waste, fraud, and abuse in federal contracting.

HENRY A. WAXMAN.
TOM LANTOS.
MAJOR R. OWENS.
EDOLPHUS TOWNS.
PAUL E. KANJORSKI.
BERNARD SANDERS.
CAROLYN B. MALONEY.
ELIJAH E. CUMMINGS.
DENNIS J. KUCINICH.
DANNY K. DAVIS.
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