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110TH CONGRESS {
1st Session

SENATE

{ REPORT
110-201

ACCOUNTABILITY IN GOVERNMENT
CONTRACTING ACT OF 2007

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 680

TO ENSURE PROPER OVERSIGHT AND ACCOUNTABILITY IN
FEDERAL CONTRACTING, AND FOR OTHER PURPOSES



OCTOBER 22, 2007.—Ordered to be printed

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OCTOBER 22, 2007.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 680]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 680), to ensure proper oversight and accountability in Federal contracting, and for other purposes, having considered the same reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

I. PURPOSE AND SUMMARY

The purpose of S. 680 is to provide for improved oversight and accountability in federal contracting. The bill creates new mechanisms for strengthening the federal government's acquisition workforce and requires changes in policies and procedures necessary to improve the overall performance of the federal government's acquisition system.

II. BACKGROUND AND NEED FOR THE LEGISLATION

TODAY'S ACQUISITION SYSTEM

The U.S. government's acquisition system is the largest in the world. The U.S. government spends in excess of \$400 billion annually on the purchase of goods, services and real property—an amount that exceeds the gross domestic product of most countries in the world. The U.S. government buys at least one of just about every product available in the market (“off-the-shelf” products), as well as goods and services that are developed specifically for use by the government in providing services for the American citizen.

To ensure integrity in the acquisition process, federal acquisition law is premised on the principles of competition and transparency. Over the past several years, though, it has become apparent to this Committee, and to many others within and outside government, that the current system faces a number of significant challenges that have called into question the government's capacity to meet current and future acquisition needs efficiently. Systemic problems include shortages of trained acquisition personnel; the absence of effective competition and the lack of transparency in too many acquisitions; poor planning and oversight of contracts by agencies; and the frequent inability, or unwillingness, of agencies to hold contractors accountable for poor acquisition outcomes. These deficiencies are all too evident in the government's response to Hurricanes Katrina and Rita, in the post-conflict reconstruction efforts in Afghanistan and Iraq, and in everyday government programs. Such problems cause the American people to question the ability of the federal government to spend taxpayer dollars wisely. The Committee unequivocally shares the views of the Comptroller General of the United States expressed before the Committee on July 17, 2007 that the government should have a zero tolerance policy for waste and mismanagement, whether in times of surplus or deficit, and that much more can and should be done to minimize misuse of funds. While the Committee believes that the majority of contracting is done properly, even a small percentage of waste results in a loss of billions of dollars every year. It is critical that Congress and the Executive Branch continuously strive to improve the acquisition system.

S. 680, the Accountability in Government Contracting Act of 2007, draws on lessons learned by the Committee through its own oversight of federal acquisition, the extensive analysis of the Government Accountability Office (GAO), numerous reports of Inspectors General and auditors across the federal government, and, as described below, the report of the Acquisition Advisory Panel. This extensive body of work leads the Committee to conclude, as has the President's Council on Integrity and Efficiency,¹ that acquisition management is one of the top management challenges facing the federal government. Many government operations on GAO's "High-Risk List"—those suffering from severe mismanagement or highly vulnerable to waste, fraud, and abuse—directly relate to acquisition, including contract management at the Departments of Defense (DOD) and Energy (DOE), and the National Aeronautics and Space Administration (NASA); DOD weapons acquisitions; the transformation of DHS; and the management of interagency contracts. The Comptroller General testified before the Committee that the government, as a whole, faces serious and systemic acquisition challenges.

In 2003 Congress created the Acquisition Advisory Panel,² which was tasked with the review of laws, regulations, and government-wide acquisition policies regarding the use of commercial practices, performance-based contracting, the performance of acquisition

¹ The President's Council on Integrity and Efficiency is comprised primarily of Presidentially-appointed Inspectors General.

² The Acquisition Advisory Panel (also referred to as the SARA Panel or the 1423 Panel) was authorized by Section 1423 of the Services Acquisition Reform Act of 2003, enacted as title XIV of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136, Nov. 23, 2003).

functions across agency lines of responsibility, and governmentwide acquisition contracts. The Panel was comprised of 14 members reflecting considerable experience and expertise in federal acquisition issues. Over a period of 18 months, the Panel held 31 public meetings, received testimony from more than 100 witnesses, and reviewed countless reports published by the GAO and agency Inspectors General, among others. In January 2007, the Panel issued its final report, which made 91 recommendations to improve the government's acquisition of services.³ The Committee carefully reviewed the Panel's report and heard testimony from the Panel's Chairman on July 17, 2007. S. 680 reflects a number of the Panel's recommendations and requires the Office of Management and Budget (OMB) to report on further actions taken to implement the Panel's recommendations.

THE ACQUISITION WORKFORCE

The acquisitions made daily across the government are accomplished by the federal government's acquisition workforce, which numbers between 130,000 and 180,000 employees, most of whom work in the DOD.⁴ While it is not known exactly how many employees are in the acquisition workforce as a whole, it is clear that in certain segments of the acquisition workforce the government is understaffed. For example, the number of contract specialists, the career series from which the vast majority of the government's contracting officers is drawn, has actually decreased since 1991, when there were over 33,000 contract specialists who awarded and managed approximately \$150 billion per year in government contracts. In 2006 there were just under 28,000 contract specialists who awarded and managed over \$400 billion.⁵

During the 1990s, the government reduced the size of its workforce as a whole, including acquisition personnel. In the acquisition arena, agencies accomplished this reduction by offering buy-outs and by decreasing efforts to recruit and train new members of the acquisition workforce. While the government has recently increased its recruitment of acquisition personnel, there is today a critical lack of acquisition employees with 5–15 years of experience. Further, the government is facing the possibility that as much as 50 percent of its more experienced workforce—those with more than 15 years of experience—will reach retirement eligibility in the next 4 years. Unless we act now to reinvigorate the workforce, the government will not have enough trained and experienced personnel to replace them.

Rapid changes in acquisition trends have also strained the workforce. Coinciding with the decrease in acquisition personnel has been the increase in reliance on services provided by the private sector. Today, more than half of the government's contract spending is for services, which cover the gamut from professional, man-

³Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress ("Acquisition Advisory Panel Report"). January 2007.

⁴The exact number of the government's acquisition workforce is difficult to determine with precision because it is made up of individuals from a variety of different career series throughout the government and because the government as a whole has not settled on a single definition of which employees are members of the acquisition workforce.

⁵Federal Acquisition Institute, Annual Report on the Federal Acquisition Workforce, Fiscal Year 2006. May 2007; Federal Procurement Data System, Trending Analysis Report for the Last 5 Years.

agement, and administrative support services, to engineering and information technology services, to military base and logistical support, to housekeeping and facility maintenance.⁶ Indeed, the government could not function without the significant contribution made by the private sector each and every day. At the same time, the increased reliance on contractors requires that the government retain sufficient in-house expertise to manage and oversee contractors. The government must also have the proper policies, processes and tools in place to ensure that contractors do not perform inherently governmental functions, and to mitigate the risk of organizational or personal conflicts of interests.

The nature of how the government buys goods and services has changed significantly since the early 1990s. At that time, the government purchased the majority of its needs using the lowest priced, technically acceptable offer, commonly referred to as the “low bid.” In the mid-1990s the government recognized that “low bid” was in many cases actually costing it more in terms of performance and the total cost of ownership of the goods and services it purchased. Senator John Glenn once quipped that when he sat on top of the rocket as he was about to be launched into space it gave him no comfort in knowing the rocket was the product of the low bidder. The government now makes extensive use of “best value” approaches for purchases, in which differences in price, technical performance and other capabilities are evaluated by government personnel when determining which approach makes the most overall sense for the government. In other trends, agencies have made greater use of government purchase cards (i.e., commercial credit cards) for smaller dollar purchases, and have increasingly relied on contracts awarded by other agencies to obtain goods and services. However, many members of the acquisition workforce were not prepared for these changes in approaches. Lack of training in these methods of acquisition, coupled with poor internal controls, has contributed to instances of fraud, waste and abuse.

The Committee believes that the government must begin investing in the acquisition workforce in order to reinvigorate the federal acquisition system. Toward that objective, the bill focuses much attention on this important issue by establishing an executive-level position to help coordinate the government’s acquisition workforce efforts; promoting a governmentwide intern program; establishing a contingency contracting corps; reemphasizing the need for training; and encouraging agencies to use the resources available to them to recruit and retain a highly skilled workforce. Other provisions of S. 680 require the Office of Federal Procurement Policy (OFPP) to develop uniform policies aimed at preventing and mitigating organizational and personal conflicts of interest, as well as ensuring that federal employees perform inherently governmental work.

COMPETITION

Principles of federal contracting have long recognized the benefits of robust competition—an ability to find out what is available to meet a particular governmental need and choosing the best solution, to motivate the private sector to develop new or innovative

⁶ Acquisition Advisory Panel Report, p. 3.

goods or services, to provide incentives to contractors to become more efficient and effective, and to ensure that the government pays reasonable prices for the goods and services it needs. The Competition in Contracting Act of 1984 (CICA) established that the government's policy is to award contracts on the basis of "full and open competition"—that is, all responsible contractors are afforded the opportunity to compete for government contracts.⁷ Since the passage of CICA the processes by which the government buys goods and services have changed for the better, but it is obvious that the government does not always obtain effective competition in its acquisitions. In particular, agencies recently have made greater use of indefinite delivery (or task order) contracts in which the agencies negotiate the basic terms and conditions up-front and then subsequently place orders for specific goods and services. The Federal Acquisition Streamlining Act of 1994 (FASA) encouraged the use of these contract types as a means of simplifying the acquisition process, but the volume and size of task orders far exceeds what was envisioned a decade ago.⁸ Too often, the Committee has learned of task orders that were not fully competed between contract holders, were awarded to a single contractor, or were outside the scope of the underlying contract. Today, it is not uncommon for a task order worth tens, or even hundreds, of millions of dollars to be awarded to a single contractor. S. 680, while recognizing that task order contracts are sometimes necessary, reemphasizes the use of competition as the mainstay of the government's acquisition system. Additionally, the bill improves the use of task order contracting by:

- requiring agencies to better define their requirements and evaluation procedures;
- providing an opportunity for contractors to receive a post-award debriefing;
- enabling contractors to protest the award of task orders meeting certain criteria;
- requiring additional guidance when agencies make use of tiered evaluations; and
- providing agencies more flexibility when determining when to record certain financial obligations on task order contracts.

Further, this bill limits the length of contracts awarded non-competitively based on urgency to 270 days, which should be sufficient time for agencies to meet urgent needs while developing a more robust competition strategy.

TRANSPARENCY

Transparency in the government's actions is essential to increasing the American people's confidence in the federal acquisition system. While CICA established "full and open competition" as the key principle underlying federal acquisition, the law recognized that there were times when such competition was neither practicable, feasible, nor desirable. Consequently, CICA enabled agencies to

⁷ CICA, as enacted, is codified in 10 U.S.C. § 2304(a)(1) (applicable to DOD) and at 41 U.S.C. § 253(a)(1) (applicable to other executive agencies); CICA's competition requirements are implemented in the Federal Acquisition Regulation (FAR), 48 C.F.R. part 6, and agency supplemental regulations.

⁸ Pub. L. No. 103-355 (Oct. 13, 1994). FASA is codified in various sections of Title 10 of the United States Code for military agencies and Title 41 of the Code for civilian agencies.

award contracts using “other than full and open competition,” provided that the agencies justify their rationale for doing so. Contracts awarded using “other than full and open competition” are commonly, though often incorrectly, referred to as either sole source or no bid contracts, and are the subject of much criticism today. These contracts are sometimes important tools to respond to critical and urgent needs of the government and the government’s rationale for using other than full and open competition should be able to withstand public scrutiny. While the government’s justification for using such contracts is available to the public under the Freedom of Information Act (5 U.S.C. §552), the inability of the public and the Congress to see the justifications supporting these actions in a timely fashion contributes to a lack of trust and confidence in government contracting. S. 680 therefore requires agencies to publish, on their websites and at FedBizOpps, their justification and approval documents supporting the use of other than full and open competition.

S. 680 also directs agencies to improve the quality of data made available to the public. Currently, it is unclear who is responsible for ensuring that the data on government contracts are both accurate and timely; thus information that is available is not always reliable. S. 680 requires agencies to ensure that the information maintained and subsequently included in the government’s Federal Procurement Data System is both accurate and timely.

ACCOUNTABILITY

Throughout the bill, the Committee has included provisions intended to improve accountability in the acquisition process. Too frequently, the complexity and vastness of the federal acquisition system diffuses responsibility for actions among many participants, limiting the ability to hold agencies, companies, and individuals accountable for results. For example, by establishing and empowering a new Associate Administrator for Workforce Programs, the Committee intends to hold the Associate Administrator responsible for the success of the acquisition intern program and improvement in the agencies’ workforce plans. Similarly, public reporting of justification and approval documents and an enhanced right for contractors to protest the issuance of task orders will serve as incentives to sound contracting practices. By tying award fees to successful outcomes, the Committee expects that contractors will be rewarded for tangible achievements, not simply for efforts.

Additionally, S. 680 improves accountability for the management of interagency contracts by requiring OMB to submit to Congress a comprehensive report on interagency acquisitions, and, in consultation with the heads of each agency, assess whether the current and planned interagency contracts are cost-effective or redundant with other contracts. Over the past ten years, the explosive growth in interagency contracting vehicles has come, at times, at the expense of adherence to sound contracting policies and procedures. The Committee finds that information on the extent and nature of interagency contracting is incomplete and unreliable, the OMB and OFPP exert only nominal influence over interagency contracting, and agency heads are often unaware of the problems that affect their contracts until it is too late.

Other provisions in S. 680 aimed at improving accountability include requirements for the development of new rules to provide additional oversight of purchase cards use, limit the use of tiering of subcontractors, create a governmentwide definition of lead system integrator, and ensure proper use of cost-reimbursement contracts.

III. LEGISLATIVE HISTORY

S. 680 was introduced by Ranking Member Collins on February 17, 2007. The bill was read twice and referred to the Committee on Homeland Security and Governmental Affairs. S. 680 was co-sponsored by Chairman Lieberman, Senator Carper, Senator Coleman, Senator McCaskill and Senator Akaka.

The Committee held a hearing on July 17, 2007, entitled “Federal Acquisition: Ways to Strengthen Competition and Accountability.” Testimony was received from: The Honorable David M. Walker, Comptroller General, United States Government Accountability Office; Marcia G. Madsen, Chair, Acquisition Advisory Panel; and Stan Z. Soloway, President, Professional Services Council.

The Committee considered S. 680 on August 1, 2007. A managers’ amendment in the nature of a substitute was approved by voice vote. The Committee then ordered the bill reported favorably by voice vote.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 2. Table of contents

Section 3. Definitions

Section 3 provides definitions for the purposes of this Act. “Assisted acquisition” is defined as a procedure by which an agency needing supplies or services (the requesting agency) obtains them from another agency (the servicing agency). The definition makes clear that assisted acquisition includes support acquired under contract actions governed by the Economy Act (31 U.S.C. § 1535), the Federal Property and Administrative Services Act (41 U.S.C. § 251 et seq.), the Clinger-Cohen Act (division E of P.L. 104–106) (which authorized the establishment of governmentwide acquisition contracts (GWACs)) and the Government Management Reform Act (P.L. 103–356) (which created certain acquisition-related franchise funds). The Committee does not intend this definition to include what is known as “direct order direct bill” arrangements where an agency is authorized to place orders directly against another agency’s contract vehicle, for example the GSA Multiple Award Schedule Program or agency indefinite delivery/indefinite quantity (IDIQ) contracts, where an agency is delegated direct order authority by the agency awarding the contract.

A “multi-agency contract” is defined as any contract made available for use by more than one agency. This definition includes all contracts, whether single award or multiple award, and regardless of whether the contract is IDIQ or definite delivery/definite quantity.

Title I—Acquisition Workforce

Section 101. Federal acquisition workforce

Section 101 requires a number of important changes intended to improve the federal government's acquisition workforce. The Committee believes that the foundation for success of the government's acquisition system is its acquisition workforce. Further, the Committee believes that the acquisition workforce requires immediate and long-term attention to ensure there are sufficient numbers of trained and experienced acquisition workforce members to plan, award and administer acquisition programs across all agencies. Reinvigorating the federal acquisition workforce will be a long-term endeavor. Section 101 represents a first step toward ensuring that the government's acquisition workforce is managed to succeed in supporting the varied missions of federal agencies.

Throughout this section the terms "acquisition" and "contracting" are used. The use of both terms is intentional, since contracting (i.e., the negotiation of contracts) is a subset of acquisition (i.e., the entire process of acquiring and managing goods and services, from planning to negotiation to oversight). It is the Committee's intent that the focus on the acquisition workforce include not only contracting specialists and contracting officers but also program managers and other members of the acquisition team. In this regard, the Committee reiterates its belief that the acquisition workforce, in the broadest sense, includes not only the contracting officers who negotiate and award contracts, but also those personnel who define the requirements, manage programs, monitor contractor performance, and pay for the goods and services received.

Subsection 101(a) creates a new Senior Executive Service position in OFPP, the Associate Administrator for Workforce Programs (to be located at the Federal Acquisition Institute) to oversee all governmentwide acquisition workforce activities. It is not the intent of the Committee in creating this position to replace the responsibilities vested in each agency's Chief Acquisition Officer (CAO) or Senior Procurement Executive. Rather, the Committee established this position to provide a governmentwide perspective on the acquisition workforce and to ensure that the acquisition workforce is adequately staffed and appropriately trained. This provision implements a recommendation of the Acquisition Advisory Panel.

Subsection 101(b) requires the establishment of a governmentwide Acquisition Intern Program. The newly created Associate Administrator for Workforce Programs will manage and oversee this program. As written, this section does not require the creation of a new program, but rather encourages the Associate Administrator to give strong consideration to using and building upon existing programs. This provision sets a goal of including a minimum of 200 interns per year in the program, but it is the Committee's view that OFPP should seek to include a sufficient number of interns to significantly contribute to meeting the acquisition personnel needs of agencies, as identified in the succession plans required under Subsection 101(h).

Subsection 101(c) creates a Contingency Contracting Corps. Since 9/11, GAO has done numerous reviews, agency Inspectors General have issued a number of audits, and the Committee has heard a

great deal of testimony regarding the difficulties the government encounters when responding to emergency and contingency situations. The Committee finds that the lack of a sufficient number of trained contracting officers and acquisition specialists available to support the contingency mission contributes to these difficulties. Section 101(c) requires the Administrator to develop a voluntary corps of trained, equipped and deployable acquisition workforce members ready to respond when needed, much like the military reserve. The salary of each member of the Corps is to be paid by the agency which employs the member, not by the agency to which the member is deployed during a contingency operation. Expenditure of funds to train and equip the Corps is authorized. The Committee expects that lessons learned by DOD and the Federal Emergency Management Agency will guide the creation and deployment of the Corps.

Subsection 101(d) requires the head of each executive agency, after consultation with the Associate Administrator for Workforce Programs, to establish and operate acquisition and contracting training programs. The Committee expects that, to the extent practicable, training across the government will be uniform and that agencies will leverage existing training and education resources.

Subsection 101(e) requires the Administrator to issue policies to promote the development of performance standards for training and to evaluate the acquisition and training programs required under subsection 101(d). Since poor training and education lead to poor acquisition outcomes, the Committee believes that the establishment and use of governmentwide metrics for the training and education of the acquisition workforce are critical to preventing future fraud, waste and abuse. It would be appropriate for these metrics to be utilized as part of the Human Capital initiative under the President's Management Agenda Scorecard Program.

Subsection 101(f) requires each Chief Acquisition Officer (subject to the authority, direction, and control of the head of the agency) to carry out the powers, functions and duties of the agency head to establish and operate the acquisition and contracting training programs required under subsection 101(d). The Committee recognizes that this training crosses a number of functional areas including the Chief Human Capital Officer, the Chief Financial Officer, the Chief Information Officer and others. However, having the responsibility for this important program dispersed across a number of areas makes management of the program and consistency of the training difficult to achieve. The Committee expects that the CAO will coordinate all training within the agency to make sure that its acquisition workforce satisfies established training requirements.

Subsection 101(g) requires the Administrator to collect and maintain standardized information on acquisition and contracting training of the acquisition workforce. The Committee notes that the Acquisition Advisory Panel outlined in its report the difficulty it had in determining who was in the acquisition workforce, as well as what competencies, skills, and training are needed by individual acquisition employees. This does not require the Administrator to create a new system for the collection of the required data, as the Administrator already manages a system, the Acquisition Career Management Information System (ACMIS). This subsection does

require that the Administrator ensure that the system allows both the President and the Congress to know who is in the Acquisition Workforce and what competencies and skills they have.

Subsection 101(h) requires each agency to develop an Acquisition Workforce Succession Plan. Each Chief Acquisition Officer, in consultation with the agency's Chief Human Capital Officer and the Associate Administrator for Acquisition Workforce Programs, will be responsible for developing the agency's plan. While this subsection requires a particular focus on program managers and warranted contracting officers, the plans should not be limited to these specific categories, and the Committee expects that agencies will tailor their plans to cover the competencies and skills they need to accomplish their specific missions. For example, it is well known that there is a shortage of cost and pricing analysts across the government both at the operational level and in the policy arena. The Committee expects that the CAOs will address these specific immediate needs and also look toward the future to predict critical shortage areas.

Subsection 101(i) authorizes appropriations in the amount of \$5,000,000 in each of fiscal years 2008 and 2009 to pay for some of the costs associated with implementing provisions of this section. The Committee recognizes that \$5,000,000 per year for two years is not sufficient to pay for all of the requirements to recruit, train, educate and retain a governmentwide acquisition workforce and expects additional funds to be budgeted and obtained at the agency level. The funds authorized are available until expended.

Subsection 101(j) makes permanent the Acquisition Workforce Training Fund. The fund was established pursuant to the Services Acquisition Reform Act of 2003 (SARA)⁹ and helps fund civilian agencies' acquisition workforce training programs by requiring agencies to contribute five percent of the fees the agencies collect for managing certain governmentwide contracts, including GSA's Multiple Award Schedule contracts. This fund was to expire on November 24, 2008; subsection 101(j) eliminates this sunset. The Committee believes the fund provides a much needed way of enabling the workforce to acquire the necessary skills and capabilities to operate effectively in today's changing acquisition environment.

Subsection 101(k) requires the Administrator to ensure that a sufficient number of acquisition workforce members are trained in the proper application of the Brooks Architect and Engineering Act (Brooks A&E Act). The Committee has heard concerns from the Architect and Engineering community that A&E services, particularly mapping and surveying services, are not being acquired consistent with the requirements of the Brooks Act. The Committee believes that by ensuring that a sufficient number of acquisition workforce members are trained on the proper application of the Brooks Act, and by the guidance required under Section 313, the problem will be resolved.

Subsection 101(l) extends for 3 years the direct-hire authority for members of the acquisition workforce. Under SARA, agencies are allowed to directly recruit and appoint highly qualified individuals to certain acquisition positions.¹⁰ The authority expired on Sep-

⁹Public Law 108-136, § 1412, Nov. 24, 2003.

¹⁰Public Law 108-136, § 1413(b), Nov. 24, 2003.

tember 30, 2007. This authority, when used in combination with other existent personnel flexibilities, is an important tool in meeting personnel needs identified in acquisition workforce succession plans of the agencies.

Subsection 101(m) adds a requirement that a Chief Acquisition Officer appointed under Section 16(a) of the Office of Federal Procurement Policy Act has an extensive management background. The appointed individual does not have to be a contracting expert or a certified program manager, but should be someone who has substantial management expertise and whose primary duties are acquisition. In those agencies where acquisition represents a major part of the agency's mission, appointing an individual who has experience in purchasing and program management, in addition to management experience, would be optimal.

Subsection 101(n) requires the Administrator, in coordination with the Director of the Office of Personnel Management (OPM), to utilize all existing authorities, including the reauthorized direct-hire authority, to recruit members of the acquisition workforce. This provision also encourages the Administrator to consider the recruitment of individuals retiring from private sector positions, consistent with existing law and conflict of interest rules. The Committee believes that there are individuals who may be willing to serve their government, particularly in the area of acquisition, upon retirement from the private sector and that this segment of the population could be a valuable resource for recruiting acquisition personnel. The Committee would like to see the Administrator work with the OPM Director to develop best practice guidelines, particularly addressing successful recruitment strategies and ways to alleviate conflict of interest concerns.

Title II—Competition and Accountability

Section 201. Requirement for purchase of property and services pursuant to multiple award contracts

Section 201 requires the Administrator to issue regulations to require competition on all multiple award task or delivery order contracts. The section also requires publication on the FedBizOpps website notice of all sole source task or delivery orders over the simplified acquisition threshold. In practical effect this section extends to civilian agencies the requirement for competition established under Section 803 of the National Defense Authorization Act for Fiscal Year 2002 that was specific to DOD's acquisition of services under multiple award contracts.¹¹ Section 201 expands the competition requirement to include property (i.e., supplies and equipment). Section 201 also establishes a new requirement for posting notice of sole source task or delivery orders as recommended by the Acquisition Advisory Panel, and requires agencies to publish the justification and approval documents supporting the issuance of a task or delivery order made to a contractor that had not been awarded on a competitive basis. The Committee has heard concerns that the requirement to post justification and approval documents might result in the disclosure of information otherwise protected from release under the Freedom of Information

¹¹ Pub. L. No. 107-107, § 803, (Dec. 28, 2001).

and Privacy Acts (5 U.S.C. §§ 552 and 552a). This section does not relieve an agency from its responsibilities to comply with the requirements of the Freedom of Information and Privacy Acts, nor was it the intent of the Committee to change the requirements for the release of personal or proprietary data.

Section 202. Statement of work for certain task or delivery orders

Section 202, based on recommendations of the Acquisition Advisory Panel, creates a new requirement for both civilian and defense agencies that a task or delivery order must include a statement of work that clearly specifies the tasks to be performed or the property to be delivered under the order. For a task or delivery order in excess of the threshold for the use of simplified procedures for commercial items, the statement of work must be made available to all eligible contractors and must set forth a clear statement of agency requirements, provide a reasonable time for response, disclose significant factors and subfactors the agency plans to use in evaluating offers, and, if the order is to be awarded on a best value basis, include a statement documenting the basis for selection. A post-award debriefing shall be available to all unsuccessful offerors. The Committee expects these post-award debriefings to be substantive, as the Committee has learned that substantive post-award debriefings benefit both the government and private sector by improving the understanding of why the government made the decisions it made and how the private sector may improve future offers. The Committee recognizes that this new requirement adds work to an already stressed acquisition workforce. However, given the number of actions and dollars being awarded through the use of task and delivery orders and the length of performance under those task and delivery orders, these changes are necessary to provide needed transparency to the use of task and delivery orders.

Section 203. Protests of task and delivery orders

Section 203 creates a new right for an interested party to protest the award of a task or delivery order exceeding a certain threshold. The Committee sets an initial threshold of \$5,000,000, but provides that the Administrator, upon finding that the threshold is unduly burdensome, may increase the threshold to an amount no higher than \$25,000,000. The Committee is aware of concerns that more orders will be protested, at a cost to both the government and the private sector. Nonetheless, the Committee finds, as did the Acquisition Advisory Panel, that the use of task and delivery order contracts has expanded significantly beyond that which was anticipated when Congress originally authorized their use under FASA. In that regard, the Panel recommended that protests be permitted on task and delivery orders exceeding \$5 million. Similarly, the Committee believes that providing contractors an opportunity to protest awards in which agencies failed to follow appropriate processes will result in more competitive and accountable procurements. Further, based on feedback from the private sector, GAO, and other experts, the Committee does not anticipate a surge in protests as a result of the addition of this right. The committee expects that both GAO and the Court of Claims will ensure that an active motion practice will be used in dealing with protests under

this section and will actively dismiss frivolous protests either on its own motion or the motion of parties before the forum.

Section 204. Publication of justification and approval documents

Section 204 requires that justification and approval documents for making other than full and open competitions be published on both the agency's website and FedBizOpps. Currently these documents are available under the Freedom of Information Act; however, the Committee has learned that the process for obtaining these documents can be cumbersome, expensive and time consuming. Providing transparency into the decisionmaking process to conduct an other than full and open competition will provide greater insight to the public of what the government is doing and why. This should improve the confidence the American public has in how the government is spending its tax dollars. As previously discussed in section 201, the Committee heard some concerns that the requirement to post the justification and approval documents might result in the disclosure of information otherwise protected from release under the Freedom of Information and Privacy Acts. The language of the section does not relieve an agency from compliance with the requirements of the Freedom of Information and Privacy Acts, nor is it the intent of the Committee to change the requirements for the protection of personal or proprietary data.

Section 205. Limitation on length of certain non-competitive contracts

Section 205 limits to 270 days the length of a contract awarded through less than full and open competition under the exception for urgent and compelling circumstances. The Committee believes this timeframe should be sufficient for agencies to obtain the goods and services needed to meet urgent needs, while also allowing sufficient time for agencies to conduct a robust competition. The Committee understands that there are some requirements that cannot be planned for in advance and that the government needs flexibility to respond in those circumstances. At the same time, it is rare that the urgent and compelling circumstances will continue to exist for an extended period of time. It is the sense of the Committee that the government should replace contracts awarded under other than full and open competition with competitively awarded contracts as soon as possible. Recognizing the unpredictability of disasters, the Committee has included an exception process as a safeguard that would allow the head of an agency, under exceptional circumstances, to extend the contract beyond 270 days. The Committee intends that the exception clause be used only when absolutely necessary.

Section 206. Prohibition on award of certain large task or delivery order contracts for services

Section 206 prohibits the award of single award task or delivery order contracts for services in excess of \$100,000,000. The section provides for an exception if certain conditions are met, but the exception process is intended to be used only where appropriate, not routinely. This section applies to the underlying contract, not to individual task or delivery orders. The Committee intends that task and delivery order contracts for services adhere to the original stat-

utory intent of FASA, which requires multiple awards for advisory and assistance services. Further, the Committee intends that agencies, by awarding contracts to multiple contractors, will issue subsequent task and delivery orders consistent with applicable competition requirements, including those established under Section 201 of this bill.

Section 207. Guidance on use of tiered evaluations of offers for contracts and task orders under contracts

Section 207 requires the Administrator to issue guidance on the proper use of tiered evaluations for offers under contract solicitations and for task or delivery orders under indefinite delivery indefinite quantity contracts. Under a tiered, or cascading, evaluation an agency solicits and receives offers from both small and other than small business concerns, establishes a tiered order of precedence for evaluating offers, and, if no award can be made at the first tier evaluated, then moves on to the next lower tier, and so forth, until an award can be made. The Committee is aware that such a process has resulted in complaints from offerors of all sizes about the cost of submitting bids under such a process. The Committee is also aware that DOD finalized guidance for its personnel on the use of tiered evaluations on August 2, 2007 in response to direction provided under section 816 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163). The Committee expects that in implementing this section the Administrator will give full consideration to DOD's guidance, making appropriate changes for implementation through the Federal Acquisition Regulation (FAR).

Section 208. Guidance on use of cost-reimbursement contracts

Section 208 requires the Administrator to promulgate regulations in the FAR on the proper use of cost-reimbursement type contracts. The Committee believes that cost reimbursement type contracts are an important tool and when used properly result in good value for the taxpayer. On the other hand, the Committee has heard testimony that cost-reimbursement contracts too often suffer from the lack of clearly defined requirements and insufficient oversight, and may be used by agencies in situations in which a fixed-price type contract would be more appropriate. Section 208 requires that, at a minimum, the regulations to be promulgated will address when a cost-reimbursement type contract is appropriate, what acquisition plan findings would support use of a cost-reimbursement type contract, and the acquisition workforce resources that should be in place to ensure that a cost-reimbursement type contract can be properly awarded and managed.

Section 209. Preventing conflicts of interest

Section 209 requires the Administrator to create new uniform, governmentwide policies aimed at preventing and mitigating organizational and personal conflicts of interest. The nature of the government workplace has changed significantly over the past decade, and now it is not uncommon to find government employees and government contractors working side-by-side in delivering services to the American people. Sometimes contractors are even retained by the government to oversee other contractors. It does not appear

that the policies addressing conflicts of interest have kept pace with these changing dynamics. The Comptroller General testified before the Committee in July 2007 that there is a need to reconsider the current independence and conflict-of-interest rules relating to contractors. Additionally, the Acquisition Advisory Panel made several recommendations intended to address the risk of organizational conflicts of interests. Section 209 is a first step towards addressing these issues.

Section 210. Linking of award and incentive fees to acquisition outcomes

Section 210 requires the Administrator to develop guidance and implementation instructions to ensure that award and incentive fees in government contracts are tied to actual performance under the contract. The Committee has learned of a number of situations where companies who performed marginally or unsatisfactorily received full award or incentive fees. For example, over the past three years GAO has reported that the DOE, DOD and NASA were not making appropriate and effective use of award fees. On December 19, 2005, GAO reported that DOD frequently paid contractors the majority of potential award fees for work where performance was described as “expected, good, or satisfactory” and offered contractors one or more opportunities to earn initially unearned fees.¹² GAO concluded that such practices undermined the effectiveness of fees as a motivational tool, marginalized their use in holding contractors accountable for acquisition outcomes, and served to waste taxpayer funds. Similarly, GAO reported on January 17, 2007, that NASA personnel were not consistently following agency guidance when using award fees.¹³ The Committee finds that both the government and the contractor community would be better served by having consistent requirements throughout the government on the appropriate use of award fees, including the linkage of award fees to program outcomes. Further, the Committee understands that DOD has revised its policies and guidance to reflect GAO’s recommendations. The Administrator is urged to give full consideration to DOD’s policies and guidance when developing guidance for use by all agencies. Further, nothing in this section is intended to establish a right to award or incentive fees by the contractor in the resulting regulations.

Title III—Accountability and Administration

Section 301. Recording of obligations on task order contracts

Section 301 changes the current fiscal practice that requires an agency to obligate the full amount of the minimum guarantee, or termination liability, whichever is more, for each recipient, upon award of a task or delivery order contract. This section allows the head of an executive agency to defer recording the obligation until the issuance of the first task or delivery order issued to each company under the contract. It does require that, except in exceptional circumstances, the minimum guarantee be obligated during the

¹² GAO, Defense Acquisitions: DOD Has Paid Billions in Award and Incentive Fees Regardless of Acquisition Outcomes. GAO-06-66. Washington, D.C.: December 19, 2005.

¹³ GAO, NASA Procurement: Use of Award Fees for Achieving Program Outcomes Should Be Improved. GAO-07-58. Washington, D.C.: January 17, 2007.

same fiscal year of the initial award. This will assist agencies in budgeting their contract dollars more effectively and will help agencies avoid the situation where an agency is compelled to issue a task or delivery order in order to obligate the funds before they expire, even when the agency does not yet need the goods or services.

Section 302. Definitizing letter contracts

Section 302 requires the unilateral definitization of undefinitized contracts within 180 day after award or before 40 percent of the work has been completed (or within 180 day after award or before 50 percent of the funds under the contract have been obligated, in the case of military contracts), whichever comes first. The section further provides for disputes resulting from a unilateral definitization to be handled through the Contract Disputes Act process.

To meet urgent needs, federal agencies can authorize contractors to begin work and incur costs before reaching a final agreement on contract terms and conditions, including price. Such agreements are called letter contracts or undefinitized contract actions. The Committee is concerned that despite existing regulatory guidance on definitizing contracts, there have been multiple examples where contracts were not definitized in a timely fashion, and the government's ability to manage the contract to a successful conclusion was hampered, in some cases severely. For example, at the Committee's July 17 hearing, the Comptroller General testified that his office found that DOD failed to definitize, within required timeframes, 60 percent of the 77 contract actions GAO reviewed.¹⁴ The Comptroller General noted that the use the failure to do so can carry risk to the government and potentially waste taxpayer dollars. For example, GAO reported that DOD contracting officials were less likely to remove costs questioned by auditors if the contractor had incurred these costs before reaching agreement on the work's scope and price.¹⁵ The Committee understands that undefinitized contracts are sometimes an important tool in responding to exigent situations and does not intend to limit the use of undefinitized contracts under appropriate circumstances, but believes that allowing these contracts to go on undefinitized puts an unacceptable level of risk on the government.

Section 303. Preventing abuse of interagency contracts and assisted acquisition services

Section 303 establishes a number of requirements aimed at eliminating the redundancies in interagency contracts and assisted acquisition services and ensuring that agencies make proper use of interagency contracts. According to the Advisory Acquisition Panel, about 40 percent of the government's contract spending in fiscal year 2004 was done under interagency contracts. It is not the Committee's intent to eliminate either interagency contracting or the provision of assisted acquisition services. However, the committee firmly believes that the use of these contract vehicles requires ef-

¹⁴GAO, Defense Contracting: Use of Undefinitized Contract Actions Understated and Definitization Time Frames Often Not Met. GAO-07-559. Washington, D.C.: June 19, 2007.

¹⁵GAO, Iraq Contract Costs: DOD Consideration of Defense Contract Audit Agency's Findings. GAO-06-1132. Washington, D.C.: September 25, 2006.

fective management to make sure the government maximizes its benefits from using them. Unfortunately, GAO and some agency Inspectors General have found that agencies too often sacrifice adherence to sound contracting practices for expediency. In that regard, GAO placed management of interagency contracting on its high-risk list of government programs and activities in January 2005.¹⁶ Further, the DOD Inspector General has continued to identify problems in DOD's use of interagency contracts. The Committee believes that agencies should be able to achieve desired efficiency without abandoning good stewardship.

Subsection 303(a) requires the Director of OMB to submit a report to Congress on interagency acquisitions and to issue guidelines on their proper use, including procedures to maximize competition and minimize fraud, waste and abuse. The Director is also required to institute training requirements related to proper use of interagency contracts.

Subsection 303(b) requires that the FAR be revised to require that all assisted acquisitions be supported by a written agreement, a determination that they represent the best procurement alternative and adequate, auditable documentation.

Subsection 303(c) requires the senior procurement executive for each executive agency to provide annual reports to OMB on compliance with the guidelines established under subsection 303(a).

Subsection 303(d) requires the Administrator to provide a report to Congress on the number of interagency contracts, the level of activity in Intergovernmental Revolving Funds, and the number of enterprise-wide single agency contracts. This report is to be made available to the public. The Committee intends that the report will not include those contracts awarded by an agency for use only within that agency. The Committee expects that the Administrator, in preparing the report, will review the acquisition plan for each interagency contract for such things as: the overall quality of the plan, the business case that supported the award of the contract, whether the impact the contract would have on the government's buying power was evaluated, and whether there was consideration of the costs faced by industry in competing for multiple contracts.

Subsection 303(e) requires the Administrator of the General Services to review existing contracts under the Multiple Award Schedules (MAS) Program, in light of the entire inventory of interagency contracts, to determine whether unnecessary duplication exists. The Committee recognizes that the GSA MAS Program is a key tool for achieving best value in acquiring goods and services. However, the Committee has received reports that duplicative schedules exist within the MAS program. The review required by this subsection is to ensure that duplications are identified and either mitigated or eliminated in order to reduce the cost to the agencies that use the MAS Program and ultimately to the taxpayer.

Subsection 303(f) requires the Administrator of OFPP to take a number of actions to improve the use of interagency contracts. Specifically, subsection 303(f) requires the Administrator to:

- issue regulations requiring that the acquisition plan supporting the award of a multi-agency contract include a busi-

¹⁶ GAO, High-Risk Series: An Update, GAO-05-207 Washington, D.C.: January 2005.

ness case analysis justifying the award and administration of the contract;

- review, in consultation with the Administrator of General Services, all multi-agency contracts and determine whether each contract is cost effective and whether any duplication exists; and

- review all interagency contracts that have been awarded and any that are proposed for award, to approve both the award and the exercise of options for all interagency contracts.

The Committee believes that OFPP needs to take a more proactive leadership role in ensuring the appropriate use of interagency contracts. The Committee remains concerned that agencies may be using interagency contracting vehicles for convenience at the expense of sound contracting practices, and that the fee-for-service environment in which assisted interagency acquisitions operate may contribute to decisions that are not in the government's best interests. The Committee expects that OFPP will work with the agencies to ensure that duplication is minimized or eliminated and that only those contracts that provide the best overall value for the government and adhere to sound contracting practices, whether awarded and managed by GSA or another agency, are permitted to continue in operation. The Committee does not know what the correct number of contracts is to obtain the best value government-wide, but the Committee does believe that the current proliferation of interagency contracts is suboptimal. The Committee recognizes that the optimal number of interagency contracts will be dependent on a number of factors, including the level of government spending, the size and complexity of the particular market, and purchasing and selling practices in the various markets. For this reason, the Committee believes that the guidance should identify the factors that should be considered in determining whether to permit a new award or allow an option to be exercised on an existing award, and should require the agency to document its assessment in its acquisition plan.

Subsection 303(g) requires the head of each executive agency, in consultation with the Administrator, to review all IDIQ contracts awarded by the agency to determine whether those contracts are cost-effective and whether any are redundant. The review required in this section is for the specific purpose of determining whether agency resources should be expended in awarding and managing these contracts, or if contracts available from other agencies offering the same or similar goods and services should be utilized to meet the agency's requirement. The required review will fully evaluate the cost to the agency of awarding and managing the contract (the fully burdened cost). In calculating the fully burdened cost, the agency must consider all of the acquisition-related costs, not just the salaries of the contracting office staff. The Committee also expects agencies to keep in mind that multiple contracts drive up the cost of the private sector in competing for those contracts, often to the detriment of smaller businesses. The Committee does not intend to limit the flexibility of an agency to fashion an acquisition solution that meets its needs, but it does intend that agencies not award new contracts or exercise the options on existing contracts of their own unless their needs cannot be reasonably and effectively met by the use of another agency's contract.

Subsection 303(h) requires OMB to modify the Federal Procurement Data System—Next Generation (FPDS—NG) to collect and publish complete and reliable order-level data on interagency contracts. The current data resident in FPDS—NG do not allow for an accurate assessment of the use of interagency contract vehicles.

Subsection 303(i) makes it clear that for purposes of this subsection a contract awarded by any agency or activity within DOD is not to be considered an interagency contract when it is used by another agency or activity of DOD.

Section 304. Purchase card waste elimination

Section 304 requires action by OMB, GSA and the Internal Revenue Service to further improve the government’s use of purchase cards. The program has grown from its inception in 1994 to processing almost \$18 billion last year, about half of that amount in “micro-purchases.”¹⁷ The Committee believes that the purchase card program is an important tool in meeting the government’s requirements in a cost effective and timely fashion. The Committee has long believed, however, that agency disciplines on use of purchase cards need to be strengthened to prevent waste, fraud, and abuse. A Committee hearing on April 28, 2004 (“Government Purchase Cards: Smarter Use Can Save Taxpayers Hundreds of Millions of Dollars”) exposed serious deficiencies in controls on purchase cards across the government. More recently, the Committee held a hearing on July 19, 2006 on purchase card use at the Department of Homeland Security (“DHS Purchase Cards: Credit Without Accountability”) and further examined purchase card use by the Federal Emergency Management Agency at a hearing on December 6, 2006 (“Hurricane Katrina: Stopping the Flood of Fraud, Waste, and Abuse”). The Committee believes that opportunities exist to discipline the use of purchase cards by leveraging the government’s buying power, ensuring that payments are not made to individuals who fail to meet their tax obligations, and improving accountability.

Subsection 304(a) requires the Director of OMB and the Administrator of General Services to issue guidance on how executive agencies can better manage purchase card transactions and to negotiate point of sale discounts when using the government purchase card for micro-purchases. It also requires agency reports on compliance with the OMB guidance and a report by OMB to Congress on its progress on improving the purchase card process and in obtaining and implementing point of sale discounts.

Subsection 304(b) requires that GSA, in conjunction with the Internal Revenue Service, develop procedures to apply the Federal Payment Levy Program to purchase card payments. The Committee is aware of the concerns raised by the banking industry concerning this requirement. However, the Committee feels strongly that purchase card payments, which total between \$6 billion and

¹⁷ Pursuant to Section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375), effective September 28, 2006, the Federal Acquisition Regulation definition of the micro-purchase threshold changed. The micro-purchase threshold for supplies, equipment and some services has increased from \$2,500 to \$3,000. The threshold for contracts involving construction, alteration or repair of public buildings or public works, including painting and decorating, subject to the Davis-Bacon Act remained at \$2,000. The micro-purchase threshold for contracts the principal purpose of which is to furnish services through the use of service employees subject to the Service Contract Act of 1965 is \$2,500.

\$9 billion annually, should not go to individuals or companies that do not meet their federal tax obligations.

Subsection 304(c) requires GSA to submit an annual report on all first and business class travel undertaken by federal travelers. This provision responds to findings by the Committee and GAO that agencies have made improper use of first and business class travel.

Section 305. Lead system integrators

Section 305 requires the Administrator to develop a government-wide definition of lead system integrators, conduct a study on their use by the government, and then issue guidance on the appropriate use of lead system integrators. The Committee believes that the use of lead system integrators can be an effective approach when developing and implementing complex solutions. As the Committee has learned firsthand during its oversight of the Coast Guard's Deepwater program, however, using a lead systems integrator does not inevitably result in good acquisition outcomes. Nor does it alleviate the government's responsibility to clearly define its requirements, maintain the in-house capacity to evaluate the contractor's proposed solutions, and provide effective oversight. The Committee finds that there is no clear guidance available to agencies on how best to decide whether or not to use a lead system integrator, or how to maximize the effectiveness of this approach. Consequently, Section 305 addresses these current shortfalls and provides a basis for making more effective and appropriate use of lead system integrators in the future.

Section 306. Limitation on tiering of subcontractors

Section 306 requires the Administrator of OFPP to develop guidance on how to properly minimize tiering of subcontractors to ensure that every layer of subcontractor adds value or serves a legitimate purpose in responding to a government requirement. The Committee is very concerned about instances, particularly in the response to Hurricane Katrina and in support of operations in Iraq and Afghanistan, where multiple tiers of subcontractors are paid on a contract when they provide little or no value to the government. The Committee does not intend to impose an absolute limit on tiering, but does intend that non-value added tiering be eliminated. The Committee is aware that DOD is in the process of finalizing regulations required by Section 852 of the National Defense Authorization Act for Fiscal Year 2007 (P.L. 109-364) to ensure that pass-through charges on contracts, subcontracts, or task or delivery orders are not excessive in relation to the cost of work performed. OFPP should consider that guidance as it develops governmentwide guidance.

Section 307. Responsibility of contractors that are serious threats to national security

Section 307 enables a contracting officer to consider whether a contractor may pose a national security threat when determining whether a contractor is responsible when awarding a federal contract, and requires the Administrator of OFPP to issue guidance to implement this section. This Committee has heard concerns that it is sometimes difficult for contracting officers to determine how to factor into a responsibility determination concerns that a company

may pose a threat to national security. The Committee firmly believes that agencies should be able to make a determination that a company is not responsible for purposes of award of a federal contract when there is reasonable and compelling evidence that the company may pose a national security risk. Finding a company “non-responsible” for award of a contract is an action not to be taken lightly by the government. By the same token, government officials must have the means to deny a contract when there is reason to believe that the company may pose a threat to national security. This section requires OFPP to issue guidance to help executive agencies determine when a company may pose a national security threat and be denied a contract on that basis. It is not the Committee’s intent that individual contracting officers be tasked with the additional burden of having to determine whether a company is or is not a serious threat to national security, and in fact the Committee believes that such a decision should be made at the highest levels of the agency.

Section 308. Required certification of program managers for Department of Homeland Security Level One programs

Section 308 requires that program managers for Level One programs in DHS (programs with an estimated value over \$100 million) be properly certified. The Committee is concerned that DHS program managers without proper certifications have been assigned to these large programs, potentially contributing to poor acquisition outcomes. The Committee recognizes that a properly certified program manager does not in and of itself guarantee satisfactory program performance. However, assigning a properly certified program manager to a program means that the individual is trained, educated, and has the necessary competencies and skills to manage major programs at DHS.

Section 309. Elimination of one-year limitation on interest due on late payments to contractors

Section 309 eliminates the limitation on payment of interest due beyond one year under the Prompt Payment Act (31 U.S.C. 3901). Currently, agencies that fail to make timely payment on proper invoices are required to pay interest on those late payments, but only for the first twelve months. The Committee believes this limitation may provide a disincentive for agencies to make timely payments owed to the providers of goods and services once the one-year timeframe has passed.

Section 310. Ensuring that federal employees perform inherently governmental work

Section 310 requires the Administrator of OFPP to analyze the services being purchased by the government, to issue guidelines to ensure that only federal employees perform inherently governmental services, and to report to Congress on the actions taken to implement this section. The Committee is concerned that, with the changing nature of the federal workplace, guidelines to ensure that inherently governmental work is performed by federal employees, and not contracted out, may be outdated. The Comptroller General testified on July 17, 2007 that he believed there was a need to focus greater attention on what types of functions and activities

should be contracted out and which ones should not be, and to identify the factors that prompt the government to use contractors in circumstances where the proper choice might be the use of civil servants or military personnel. The Comptroller General's views closely followed those of the Acquisition Advisory Panel, which recommended that OFPP update the principles for agencies to apply in determining which functions must be performed by government employees and to ensure that agencies ensure that such functions be adequately staffed with qualified federal employees. Consequently, the Committee believes that the actions required under Section 310 will help mitigate the risk of contractors performing inherently governmental functions.

Section 311. Report on Acquisition Advisory Panel report implementation

Section 311 requires the Director of OMB to provide a report to Congress on the implementation of the recommendations of the Acquisition Advisory Panel. Section 311 should not be construed as mandating the implementation of all of the Panel's recommendations, but the Committee expects that OMB will discuss the steps it is taking, or plans to take, for those recommendations it is implementing, and will provide the rationale for each recommendation that OMB does not intend to implement.

Section 312. Report by the Government Accountability Office

Section 312 requires GAO to submit various reports to Congress to assess further areas within the acquisition system that need improvement. The Committee has been clear on the importance it places on the government's acquisition workforce and the importance of being able to leverage that workforce across the government, as well as leveraging contracting vehicles. Toward those objectives, the Committee mandates that GAO report on: (1) the two statutory standards concerning the qualification of acquisition workforce members and whether they should be replaced by a single standard, (2) the institutions providing acquisition training and education within the government and whether there should be a single institution for acquisition training and education, and (3) the implementation of provisions concerning the appointment of Chief Acquisition Officers. The reports provided by GAO will serve as a foundation for further improvements in the government's acquisition workforce. This section also requires GAO to review the determinations made under subsection 303(g) of this statute relative to IDIQ contracts and the implementation of requirements related to such determinations. The review of the implementation of subsection 303(g) is intended to stress the importance the Committee places on reviewing and eliminating redundant interagency contracts.

Section 313. Mapping and surveying services

Section 313 requires OFPP to develop guidance on contracting for mapping and surveying services under the Brooks A&E Act. The Committee is aware that there may be some confusion over the rules applicable to the purchasing of mapping and surveying services. The Committee does not believe the law is ambiguous on the requirements, rather that the implementing guidance may not be

as clear as it could be. The changes to that guidance required in this section and the subsequent training of the acquisition workforce on the new guidance should correct the issues surrounding the acquisition of mapping and surveying services.

Section 314. Timely and accurate transmission of information included in Federal Procurement Data System

Section 314 makes it clear that it is the responsibility of the head of each executive agency to ensure that the procurement data reported to Federal Procurement Data System–Next Generation (FPDS–NG) is timely and accurate. Despite being the government’s principal source of data on contracting actions, it is clear that the data are not currently being reported in a timely fashion and are not always accurate. For example, GAO expressed concerns on September 17, 2005 about whether FPDS–NG had achieved the intended improvements in the timeliness and accuracy of data, as well as ease of use and access to data.¹⁸ Similarly, the Acquisition Advisory Panel found, among other limitations, that the competition data on orders were unreliable and that the system did not support efforts to conduct spending analyses or strategic decision making. Further, the Panel found that there was no individual specifically assigned responsibility for assuring the accurate and timely submission of data. It is essential to the agency’s management of its contract dollars, to the governmentwide effort to leverage its buying power, and to the public’s right to transparency, that FPDS–NG have timely and accurate data. Consequently, Section 314 implements one of the Panel’s recommendations.

V. EVALUATION OF REGULATORY IMPACT

[Pursuant to the requirement of paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate the Committee has considered the regulatory impact of this bill. CBO states that there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on State, local, or tribal governments. The legislation contains no other regulatory impact.]

VI. ESTIMATED COST OF LEGISLATION

OCTOBER 16, 2007.

Hon. JOSEPH I. LIEBERMAN, *Chairman,*
Committee on Homeland Security and Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 680, the Accountability in Government Contracting Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PETER R. ORSZAG.

Enclosure.

¹⁸ GAO, *Improvements Needed to the Federal Procurement Data System–Next Generation*, GAO–05–960R, Washington, D.C.: September 27, 2005.

S. 680—Accountability in Government Contracting Act of 2007

Summary: S. 680 would address federal acquisition practices, amend rules regarding the use of noncompetitive contracts, and impose additional reporting requirements on federal agencies regarding noncompetitive and sole-source contracts. The bill also would authorize appropriations for contract oversight, training, planning, and administration.

Assuming appropriation of the amounts authorized or estimated to be necessary, CBO estimates that implementing the legislation would result in additional discretionary outlays of \$14 million in 2008 and nearly \$70 million over the 2008–2012 period. Implementing the contracting reforms contained in the bill would increase discretionary costs (for contract administration) but also could result in lower procurement costs to the federal government for goods and services. CBO cannot estimate the net effect of those changes in contracting procedures. Any costs or savings realized by federal agencies under the bill would depend on future changes in the level of discretionary appropriations.

In addition, CBO estimates that enacting S. 680 would increase direct spending by \$80 million over the 2008–2012 period and by \$180 million over the 2008–2017 period because it would authorize federal agencies to defer the recording of obligations on certain types of contracts.

S. 680 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 S. 680 is shown in the following table. The cost of this legislation falls within all budget functions.

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Federal Acquisition Workforce:					
Estimated Authorization Level	5	5	5	5	5
Estimated Outlays	4	5	5	5	5
Regulations and Reports:					
Estimated Authorization Level	12	10	8	8	8
Estimated Outlays	10	10	8	8	8
Total Changes:					
Estimated Authorization Level	17	15	13	13	13
Estimated Outlays	14	15	13	13	13
CHANGES IN DIRECT SPENDING ¹					
Delay in Recording Obligations:					
Estimated Budget Authority	20	20	20	20	20
Estimated Outlays	0	20	20	20	20

¹ CBO estimates that enacting S. 680 would increase direct spending by \$20 million a year over the 2009–2017 period.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2008, that the amounts authorized or estimated to be necessary will be appropriated for each fiscal year, and that spending will follow historical patterns for similar activities.

Spending subject to appropriation

Federal Acquisition Workforce. Title I would authorize the appropriation of \$5 million for each of fiscal years 2008 and 2009 for a

new Acquisition Workforce Training Fund. That amount would be used by the General Services Administration (GSA) to train personnel and to establish new procurement positions. CBO estimates that similar amounts would be needed in subsequent years to continue performing those activities. Assuming appropriation of the amounts authorized for 2008 and 2009 and estimated to be necessary for subsequent years for those purposes, we estimate that implementing title I would cost \$4 million in 2008 and \$24 million over the 2008–2012 period.

Regulations and Reports. S. 680 would require government agencies, including the Office of Federal Procurement Policy, GSA, and the Government Accountability Office, to prepare program guidance, regulations, and reports on many types of contracts, including multiple-award contracting, cost-reimbursement contracts, and other acquisition practices. Based on the cost of similar activities, CBO estimates that implementing those provisions would cost \$10 million in 2008 and about \$45 million over the 2008–2012 period, mostly for additional administrative and personnel expenses.

Federal Contracting Rules. S. 680 would amend various rules on using noncompetitive and sole-source contracts, including restrictions on the contract period for noncompetitive contracts and limits on the use of sole-source contracts.

Imposing restrictions on the length of noncompetitive contracts and limiting the use of sole-source contracts could increase the costs of administering contracts but also could lower procurement costs by encouraging the use of other acquisition practices. The circumstances involving the use of such contracts by federal agencies and the potential to use alternative types of contracts in those situations varies greatly. CBO does not have sufficient information relating to the use of such contracts to determine the magnitude of any costs or savings that could result from implementing those provisions.

Direct spending

CBO estimates that enacting S. 680 would increase direct spending by \$20 million annually because it would authorize executive agencies to enter into contracts for certain types of purchases before receiving appropriations for those acquisitions.

Specifically, the bill would permit agencies to defer recording obligations on task-order and delivery-order contracts until purchase orders for the goods or services have been issued. The new contracting authority authorized by S. 680 could be used with contracts that include federal guarantees for minimum purchases.

Under existing federal contracting practices, agencies record obligations for acquisitions when they enter into contracts. In order to execute such contracts, an agency must have sufficient funds available from current appropriations to liquidate the entire amount of the obligation, including minimum-purchase guarantees, which are contractual obligations of the government.

In contrast, S. 680 would authorize an agency to defer recording obligations for some of the amounts covered by a contract until after that contract has been executed, effectively allowing the agency to incur a contractual obligation in one year and liquidate it with funds appropriated in subsequent years. The ability to pay for

current obligations with future appropriations constitutes contract authority, a form of direct spending.

Minimum-purchase guarantees are one type of contractual obligation that could be affected by the bill. The Federal Procurement Data System shows that the federal government awarded contracts that involved task-order or delivery-order provisions worth nearly \$200 billion in 2005 (the most current information available in that system). Many such contracts include minimum-purchase provisions. Although there is no government-wide information on the value of minimum-purchase contracts, CBO estimates that minimum-purchase guarantees account for 1 percent, or \$200 million, of the value of all task-order or delivery-order contracts. The authority to delay recording contract obligations under the bill likely would be used infrequently (because the legislation notes that its use should be restricted to “extraordinary circumstances”). Consequently, CBO estimates that direct spending would increase by \$20 million a year over the 2009–2017 period under this provision of the legislation.

Intergovernmental and private-sector impact: S. 680 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Previous CBO estimates: On March 14, 2007, CBO provided a cost estimate for H.R. 1362, the Accountability in Contracting Act, as ordered reported by the House Committee on Armed Services on March 13, 2007. On March 12, 2007, CBO provided a cost estimate for H.R. 1362 as ordered reported by the House Committee on Oversight and Government Reform on March 8, 2007. All three pieces of legislation address government contracting but have different provisions, particularly relating to contract management and deferral of obligations. The House Oversight and Government Reform version of H.R. 1362 would authorize additional appropriations for contract management. The House Armed Services version of H.R. 1362 did not contain that authorization of appropriations. Additionally, neither House version contains provisions on deferring the recording of obligations. Our cost estimates reflect those differences.

Estimate prepared by: Federal Spending: Matthew Pickford and David Newman; Impact on State, Local, and Tribal Governments: Elizabeth Cove; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the following 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):

TITLE 10—ARMED FORCES

Subtitle A—General Military Law

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

CHAPTER 137—PROCUREMENT GENERALLY

§ 2304. Contracts: competition requirements

(a) * * *

* * * * *

(d)(1) For the purposes of applying subsection (c)(1)—

* * * * *

(3)(A) *The contract period of a contract described in subparagraph (B) that is entered into by an agency pursuant to the authority provided under subsection (c)(2)—*

(i) may not exceed the time necessary—

(I) to meet the unusual and compelling requirements of the work to be performed under the contract; and

(II) for the agency to enter into another contract for the required goods or services through the use of competitive procedures; and

(ii) may not exceed 270 days unless the head of the agency entering into such contract determines that exceptional circumstances apply.

(B) This paragraph applies to any contract in an amount greater than the simplified acquisition threshold (as defined by section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)).

(e) * * *

(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) * * *

(ii) * * *

(iii) in the case of a contract for an amount exceeding \$75,000,000, by the senior procurement executive of the agency designated pursuant to section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c)) (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 for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(B) []; and [] ;

(C) any required notice has been published with respect to such contract pursuant to section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and all bids or proposals received in response to that notice have been considered by the head of the agency []; and

(D) the justification and approval documents are made publicly available on the Internet website of the agency and FedBizOpps.

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

(a) * * *

* * * * *

(d) SINGLE AND MULTIPLE CONTRACT AWARDS.—

(1) The head of an agency may exercise the authority provided in this section—

* * * * *

(4)(A) No task or delivery order contract for services in an amount estimated to exceed \$100,000,000 (including all options) may be awarded to a single contractor unless the head of the agency determines in writing that—

(i) because of the size, scope, or method of performance of the requirement, it would not be practical to award multiple task or delivery order contracts;

(ii) the task orders expected under the contract are so integrally related that only a single contractor can reasonably perform the work; or

(iii) for any other reason, it is necessary in the public interest to award the contract to a single contractor.

(B) The head of the agency shall notify Congress within 30 days of any determination under subparagraph (A)(iii).

(C) The head of the agency shall post the justification and approval documents related to a determination under subparagraph (A) on the Internet website of the agency and on the Federal Business Opportunities (FedBizOpps) Internet website.

(e) * * *

(f) * * *

(g) AUTHORITY TO DEFER RECORDING OBLIGATIONS ON TASK OR DELIVERY ORDER CONTRACTS.—

(1) Subject to paragraphs (2) and (3), the head of an agency may defer the recording of an obligation, including an obligation in the amount of the guaranteed minimum, under a contract awarded under this section until the issuance of a task or delivery order.

(2) The amount of the guaranteed minimum under a contract must be obligated during the same fiscal year during which the contract is awarded unless waived by the head of the agency for exceptional circumstances.

(3) The amount of the guaranteed minimum under a contract may be satisfied by multiple task or delivery orders, but the full value of each individual task or delivery order must be obligated when such order is issued.

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

[(h)] (i) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in this section may be construed to limit or expand any

authority of the head of an agency or the Administrator of General Services to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law.

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

(a) * * *

* * * * *

(f) AUTHORITY TO DEFER RECORDING OBLIGATIONS ON TASK OR DELIVERY ORDER CONTRACTS.—

(1) *Subject to paragraphs (2) and (3), the head of an agency may defer the recording of an obligation, including an obligation in the amount of the guaranteed minimum, under a contract awarded under this section until the issuance of a task or delivery order.*

(2) *The amount of the guaranteed minimum under a contract must be obligated during the same fiscal year during which the contract is awarded unless waived by the head of the agency for exceptional circumstances.*

(3) *The amount of the guaranteed minimum under a contract may be satisfied by multiple task or delivery orders, but the full value of each individual task or delivery order must be obligated when such order is issued.*

[(f)] (g) CONTRACT MODIFICATIONS.—

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

(2) Unless use of procedures other than competitive procedures is authorized by an exception in subsection (c) of section 2304 of this title and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification.

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

[(g)] (h) CONTRACT EXTENSIONS.—

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

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

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

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

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

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

§ 2304c. Task and delivery order contracts: orders

(a) * * *

(b) * * *

(c) [STATEMENT OF WORK.] *STATEMENT OF WORK AND SELECTION BASIS.*—

[A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.]

(1) *IN GENERAL.*—A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.

(2) *TASK OR DELIVERY ORDERS IN EXCESS OF THE THRESHOLD FOR USE OF SIMPLIFIED PROCEDURES FOR COMMERCIAL ITEMS.*—The statement of work for a task or delivery order in excess of the threshold for use of simplified procedures for commercial items under a task or delivery order contract shall be made available to each contractor awarded such contract and shall—

(A) include a clear statement of the agency’s requirements;

(B) permit a reasonable response period;

(C) disclose the significant factors and sub-factors that the agency expects to consider in evaluating proposals, including cost, price, past performance, and the relative importance of those and other factors;

(D) in the case of an award that is to be made on a best value basis, include a written statement documenting the basis for the award and the relative importance of quality, past performance, and price or cost factors; and

(E) provide an opportunity for a post-award debriefing consistent with the requirements of section 2305(b)(5) of this title.

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

(1) a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued; or

(2) a protest by an interested party of an order valued at greater than the threshold established pursuant to section 203(c) of the Accountability in Government Contracting Act of 2007.

* * * * *

§2334. Definitizing of letter contracts

The head of an agency shall unilaterally determine all missing terms in an undefinitized letter contract that have not been agreed upon within 180 days after such letter contract has been entered into or before the funds obligated under such letter contract exceed 50 percent of the not-to-exceed cost of the contract. Any terms so determined shall be subject to the contract disputes process.

TITLE 31—MONEY AND FINANCE**Subtitle III—Financial Management****CHAPTER 39—PROMPT PAYMENT****§ 3901. Definitions and application**

(a) * * *

* * * * *

(d)(1) * * *

(2) * * *

(3)(A) Except as provided in subparagraph (B), an interest penalty under this chapter does not continue to accrue [for more than one year or] after a claim for an interest penalty is filed in the manner described in paragraph (2)[, whichever is earlier].

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949 (41 U.S.C. 251, et seq.)

* * * * *

SEC. 303. COMPETITION REQUIREMENTS (41 U.S.C. 253).

(a) * * *

* * * * *

(d) PROPERTY OR SERVICES DEEMED AVAILABLE FROM ONLY ONE SOURCE; NONDELEGABLE AUTHORITY.—

(1) * * *

(2) * * *

(3)(A) *The contract period of a contract described in subparagraph (B) that is entered into by an executive agency pursuant to the authority provided under subsection (c)(2)—*

(i) may not exceed the time necessary—

(I) to meet the unusual and compelling requirements of the work to be performed under the contract; and

(II) for the executive agency to enter into another contract for the required goods or services through the use of competitive procedures; and

(ii) may not exceed 270 days unless the head of the executive agency entering into such contract determines that exceptional circumstances apply.

(B) This paragraph applies to any contract in an amount greater than the simplified acquisition threshold (as defined by section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)).

(e) * * *

(f) JUSTIFICATION FOR USE OF NONCOMPETITIVE PROCEDURES.—

(1) * * *

(A) * * *

(B) the justification is approved—

(i) * * *

(ii) * * *

(iii) in the case of a contract for an amount exceeding \$50,000,000, by the senior procurement executive of the agency designated pursuant to section 414(3) of this title (without further delegation)【; and】;

(C) any required notice has been published with respect to such contract pursuant to section 416 of this title and all bids or proposals received in response to such notice have been considered by such executive agency【.】; and

(D) the justification and approval documents are made publicly available on the Internet website of the agency and FedBizOpps.

* * * * *

SEC. 303H. TASK AND DELIVERY ORDER CONTRACTS: GENERAL AUTHORITY (41 U.S.C. 253h).

(a) * * *

* * * * *

(d) SINGLE AND MULTIPLE CONTRACT AWARDS.—

(1) * * *

* * * * *

(4)(A) No task or delivery order contract for services in an amount estimated to exceed \$100,000,000 (including all options) may be awarded to a single contractor unless the head of the executive agency determines in writing that—

(i) because of the size, scope, or method of performance of the requirement, it would not be practical to award multiple task or delivery order contracts;

(ii) the task orders expected under the contract are so integrally related that only a single contractor can reasonably perform the work; or

(iii) for any other reason, it is necessary in the public interest to award the contract to a single contractor.

(B) The head of the executive agency shall notify Congress within 30 days of any determination under subparagraph (A)(iii).

(C) The head of the executive agency shall post the justification and approval documents related to a determination under subparagraph (A) on the Internet website of the agency and on the Federal Business Opportunities (FedBizOpps) Internet website.

(e) * * *

(f) AUTHORITY TO DEFER RECORDING OBLIGATIONS ON TASK OR DELIVERY ORDER CONTRACTS.—

(1) Subject to paragraphs (2) and (3), the head of an executive agency may defer the recording of an obligation, including an obligation in the amount of the guaranteed minimum, under a

contract awarded under this section until the issuance of a task or delivery order.

(2) The amount of the guaranteed minimum under a contract must be obligated during the same fiscal year during which the contract is awarded unless waived by the head of the executive agency for exceptional circumstances.

(3) The amount of the guaranteed minimum under a contract may be satisfied by multiple task or delivery orders, but the full value of each individual task or delivery order must be obligated when such order is issued.

[(f)] (g) INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.—Except as otherwise specifically provided in section 253i of this title, this section does not apply to a task or delivery order contract for the acquisition of advisory and assistance services (as defined in section 1105(g) of Title 31).

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

SEC. 303I. TASK ORDER CONTRACTS: ADVISORY AND ASSISTANCE SERVICES (41 U.S.C. 253i).

(a) * * *

* * * * *

(h) AUTHORITY TO DEFER RECORDING OBLIGATIONS ON TASK OR DELIVERY ORDER CONTRACTS.—

(1) Subject to paragraphs (2) and (3), the head of an executive agency may defer the recording of an obligation, including an obligation in the amount of the guaranteed minimum, under a contract awarded under this section until the issuance of a task or delivery order.

(2) The amount of the guaranteed minimum under a contract must be obligated during the same fiscal year during which the contract is awarded unless waived by the head of the executive agency for exceptional circumstances.

(3) The amount of the guaranteed minimum under a contract may be satisfied by multiple task or delivery orders, but the full value of each individual task or delivery order must be obligated when such order is issued.

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

[(i)] (j) “ADVISORY AND ASSISTANCE SERVICES” DEFINED.—In this section, the term “advisory and assistance services” has the meaning given such term in section 1105(g) of Title 31.

SEC. 303J. TASK AND DELIVERY ORDER CONTRACTS: ORDERS (41 U.S.C. 253j).

(a) * * *

* * * * *

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

(1) *IN GENERAL.*—A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.

(2) *TASK OR DELIVERY ORDERS IN EXCESS OF THE THRESHOLD FOR USE OF SIMPLIFIED PROCEDURES FOR COMMERCIAL ITEMS.*—The statement of work for a task or delivery order in excess of the threshold for use of simplified procedures for commercial items under a task or delivery order contract shall be made available to each contractor awarded such contract and shall—

(A) include a clear statement of the executive agency's requirements;

(B) permit a reasonable response period;

(C) disclose the significant factors and sub-factors that the executive agency expects to consider in evaluating proposals, including cost, price, past performance, and the relative importance of those and other factors;

(D) in the case of an award that is to be made on a best value basis, include a written statement documenting the basis for the award and the relative importance of quality, past performance, and price or cost factors; and

(E) provide an opportunity for a post-award debriefing consistent with the requirements of section 303B(e).

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

(1) a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued; or

(2) a protest by an interested party of an order valued at greater than the threshold established pursuant to section 203(c) of the Accountability in Government Contracting Act of 2007.

* * * * *

SEC. 318. DEFINITIZING OF LETTER CONTRACTS.

The head of an executive agency shall unilaterally determine all missing terms in an undefinitized letter contract that have not been agreed upon within 180 days after such letter contract has been entered into or before 40 percent of the work under such letter contract has been completed. Any terms so determined shall be subject to the contract disputes process.

THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT (41 U.S.C. 401, et seq.)

* * * * *

SEC. 6. AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR (41 U.S.C. 405).

(a) * * *

* * * * *

(1) *The Administrator shall designate a member of the Senior Executive Service as the Associate Administrator for Workforce Programs. The Associate Administrator for Workforce Programs shall be located in the Federal Acquisition Institute, or its successor. The Associate Administrator shall be responsible for—*

(1) *supervising the acquisition workforce training fund established under section 37(h)(3);*

(2) *administering the government-wide acquisition intern program established under section 43;*

(3) *developing, in coordination with Chief Acquisition Officers and Chief Human Capital Officers, a human capital strategic plan for the acquisition workforce of the Federal Government;*

(4) *reviewing and providing input to individual agency acquisition workforce succession plans;*

(5) *recommending to the Administrator and other senior government officials appropriate programs, policies, and practices to increase the quantity and quality of the Federal acquisition workforce; and*

(6) *carrying out such other functions as the Administrator may assign.*

SEC. 16. CHIEF ACQUISITION OFFICERS AND SENIOR PROCUREMENT EXECUTIVES (41 U.S.C. 414).

(a) **ESTABLISHMENT OF AGENCY CHIEF ACQUISITION OFFICERS.—**

(1) * * *

(2) *Chief Acquisition Officers shall be appointed from among persons who have an extensive management background.*

* * * * *

SEC. 19. RECORD REQUIREMENTS.

(a) * * *

* * * * *

(d) **TRANSMISSION AND DATA [SYSTEM] ENTRY OF INFORMATION.—****[**The information included in the record established and maintained under subsection (a) of this section shall be transmitted to the General Services Administration and shall be entered in the Federal Procurement Data System referred to in section 405(d)(4) of this title.**]** *The head of each executive agency shall ensure the accuracy of the information included in the record established and maintained by such agency under subsection (a) and shall timely transmit such information to the General Services Administration for entry into the Federal Procurement Data System referred to in section 6(d)(4), or any successor system.*

* * * * *

SEC. 37. ACQUISITION WORKFORCE.

(a) * * *

* * * * *

(h) **EDUCATION AND TRAINING.—**

(1) * * *

(2) * * *

(3) ACQUISITION WORKFORCE TRAINING FUND.—

(A) * * *

* * * * *

(G) Amounts credited to the fund shall remain available to be expended only in the fiscal year for which credited and the two succeeding fiscal years.

[(H) This paragraph shall cease to be effective five years after November 24, 2003.]

* * * * *

SEC. 43. GOVERNMENT-WIDE ACQUISITION INTERN PROGRAM.

(a) *ESTABLISHMENT OF PROGRAM.*—The Administrator shall establish a government-wide Acquisition Intern Program to strengthen the Federal acquisition workforce to carry out its key missions through the Federal procurement process. The Administrator shall have a goal of involving not less than 200 college graduates per year in the Acquisition Intern Program.

(b) *ADMINISTRATION OF PROGRAMS.*—The Associate Administrator for Acquisition Workforce Programs designated under section 6(l) shall be responsible for the management, oversight, and administration of the Acquisition Intern Program and shall give strong consideration to utilizing existing similar programs and seek to build upon those programs instead of replacing them or creating new programs.

(c) *TERMS OF ACQUISITION INTERN PROGRAM.*—

(1) *BUSINESS-RELATED COURSE WORK REQUIREMENT.*—

(A) *IN GENERAL.*—Each participant in the Acquisition Intern Program shall have completed 24 credit hours of business-related college course work by not later than 3 years after admission into the program.

(B) *CERTIFICATION CRITERIA.*—The Administrator shall establish criteria for certifying the completion of the course work requirement under subparagraph (A).

(2) *STRUCTURE OF PROGRAM.*—The Acquisition Intern Program shall consist of one year of preparatory education and training in Federal procurement followed by 3 years of on-the-job training and development focused on Federal procurement but including rotational assignments in other functional areas.

(3) *EMPLOYMENT STATUS OF INTERNS.*—Interns participating in the Acquisition Intern Program shall be considered probationary employees without civil service protections under chapter 33 of title 5, United States Code. In administering any personnel ceiling applicable to an executive agency or a unit of an executive agency, an individual assigned as an intern under the program shall not be counted.

(4) *AGENCY MANAGEMENT OF PROGRAM.*—The Chief Acquisition Officer of each executive agency, in consultation with the Chief Human Capital Officer of such agency, shall establish a central intern management function in the agency to supervise and manage interns participating in the Acquisition Intern Program.

SEC. 44. CONTINGENCY CONTRACTING CORPS.

(a) *ESTABLISHMENT.*—The Administrator shall establish a government-wide Contingency Contracting Corps (in this section, referred

to as the ‘Corps’). The members of the Corps shall be available for deployment in responding to disasters, natural and man-made, and contingency operations both within and outside the continental United States.

(b) *MEMBERSHIP.*—Membership in the Corps shall be voluntary and open to all Federal employees, including uniformed members of the Armed Services, who are currently members of the Federal acquisition workforce.

(c) *EDUCATION AND TRAINING.*—The Administrator may establish additional educational and training requirements, and may pay for these additional requirements from funds available in the acquisition workforce training fund.

(d) *CLOTHING AND EQUIPMENT.*—The Administrator shall identify any necessary clothing and equipment requirements, and may pay for this clothing and equipment from funds available in the acquisition workforce training fund.

(e) *SALARY.*—The salaries for members of the Corps shall be paid by their parent agencies out of existing appropriations.

(f) *AUTHORITY TO DEPLOY THE CORPS.*—The Administrator, or the Administrator’s designee, shall have the authority to determine when members of the Corps shall be deployed, in consultation with the head of the agency or agencies employing the members to be deployed.

(g) *ANNUAL REPORT.*—

(1) *IN GENERAL.*—The Administrator shall provide to the Committee on Homeland Security and Governmental Affairs and the Committee on Armed Services of the Senate and the Committee on Oversight and Government Reform and the Committee on Armed Services of the House of Representatives an annual report on the status of the Contingency Contracting Corps.

(2) *CONTENT.*—At a minimum, each report under paragraph (1) shall include the number of members of the Contingency Contracting Corps, the fully burdened cost of operating the program, the number of deployments of members of the program, and the performance of members of the program in deployment.

THE SERVICES ACQUISITION REFORM ACT OF 2003 (Title XIV of Public Law 108–136)

SEC. 1413. ACQUISITION WORKFORCE RECRUITMENT PROGRAM.

(a) *DETERMINATION OF SHORTAGE CATEGORY POSITIONS.*—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 (other than the Secretary of Defense) may determine, under regulations prescribed by the Office of Personnel Management, that certain Federal acquisition positions (as described in section 37(g)(1)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 433(g)(1)(A)) are shortage category positions in order to use the authorities in those sections to recruit and appoint highly qualified persons directly to such positions in the department or agency.

(b) 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】** *September 30, 2010*.

