

107TH CONGRESS  
2D SESSION

# H. R. 3832

To make improvements with respect to the procurement of services for the  
Federal Government, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 2002

Mr. TOM DAVIS of Virginia introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To make improvements with respect to the procurement of  
services for the Federal Government, and for other purposes.

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

### 3   **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Services Acquisition  
5   Reform Act of 2002”.

### 6   **SEC. 2. TABLE OF CONTENTS.**

7       The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

- Sec. 101. Definition of acquisition.
- Sec. 102. Acquisition workforce training fund.
- Sec. 103. Government-industry exchange program.
- Sec. 104. Reimbursement of costs.
- Sec. 105. Conforming amendments.
- Sec. 106. Acquisition workforce recruitment and retention pilot program.
- Sec. 107. Authorization of telecommuting for Federal contractors.
- Sec. 108. Architectural and engineering acquisition workforce.

## TITLE II—ADAPTATION OF BUSINESS ACQUISITION PRACTICES

### Subtitle A—Adaptation of Business Management Practices

- Sec. 201. Chief Acquisition Officers.
- Sec. 202. Increased role for Defense Contract Management Agency.
- Sec. 203. Study on horizontal acquisition.
- Sec. 204. Statutory and regulatory review.

### Subtitle B—Payment Terms

- Sec. 211. Payment terms.

### Subtitle C—Acquisitions Generally

- Sec. 221. Increase in authorization levels of Federal purchase cards.
- Sec. 222. Reauthorization of franchise funds.
- Sec. 223. Acquisition protests.
- Sec. 224. Architectural and engineering services.

## TITLE III—CONTRACT INCENTIVES

- Sec. 301. Revisions to share-in-savings initiatives.
- Sec. 302. Incentives for contract efficiency.

## TITLE IV—ACQUISITIONS OF COMMERCIAL ITEMS

- Sec. 401. Preference for performance-based contracting.
- Sec. 402. Authorization of additional contract types in FAR part 12.
- Sec. 403. Clarification of commercial services definition.
- Sec. 404. Designation of commercial business entities.
- Sec. 405. Continuation of eligibility of contractor for award of information technology contract after providing design and engineering services.
- Sec. 406. Commercial liability.

## TITLE V—TECHNOLOGY ACCESS IN A COMMERCIAL ENVIRONMENT

- Sec. 501. Trade Agreements Act of 1979 exemption for information technology commercial items.
- Sec. 502. Authorization for acquisition of information technology by State and local governments through Federal supply schedules.
- Sec. 503. Certain research and development by civilian agencies.

## TITLE VI—INFLATIONARY ADJUSTMENTS

- Sec. 601. Simplified acquisition threshold inflation adjustment.

# **TITLE I—ACQUISITION WORKFORCE TRAINING**

## **SEC. 101. DEFINITION OF ACQUISITION.**

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

“(16) The term ‘acquisition’—

“(A) means acquiring, by contract with appropriated funds, property or services (including construction) by and for the use of the Federal Government through purchase or lease, from the point at which executive agency needs are established by the chief acquisition officer of the executive agency; and

“(B) includes—

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

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

“(iii) solicitation and selection of sources;

“(iv) award of contracts;

“(v) contract performance;

1 “(vi) contract administration; and  
2 “(vii) technical and management func-  
3 tions directly related to the process of ful-  
4 filling agency needs by contract.”.

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

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

8 (1) adapts to fundamental changes in the na-  
9 ture of Federal Government acquisition of property  
10 and services associated with the changing role of the  
11 Federal Government; and

12 (2) acquires new skills and a new mindset to  
13 enable it to contribute effectively in the changing en-  
14 vironment of the 21st century.

15 (b) AMENDMENT OF OFFICE OF FEDERAL PROCURE-  
16 MENT POLICY ACT.—Section 37 of the Office of Federal  
17 Procurement Policy Act (41 U.S.C. 433) is amended—

18 (1) by striking subsection (a) and inserting the  
19 following:

20 “(a) APPLICABILITY.—Subsections (b) through (g)  
21 do not apply to an executive agency that is subject to  
22 chapter 87 of title 10, United States Code. Subsection (h)  
23 applies to all executive agencies, the United States Postal  
24 Service, and mixed-ownership Government corporations

1 (as defined in section 9101 of title 31, United States  
2 Code).”; and

3 (2) by adding at the end of subsection (h) the  
4 following new paragraph:

5 “(3) ACQUISITION WORKFORCE TRAINING  
6 FUND.—(A) The Administrator of General Services  
7 shall establish an acquisition workforce training  
8 fund, which shall be managed by the Federal Acqui-  
9 sition Institute in support of acquisition workforce  
10 training across executive agencies other than the De-  
11 partment of Defense.

12 “(B) The training fund described in subpara-  
13 graph (A) shall be funded by depositing into the  
14 fund 5 percent of the fees collected by executive  
15 agencies under Governmentwide task-and-delivery-  
16 order contracts authorized under sections 2304a  
17 through 2304d of title 10, United States Code, sec-  
18 tions 303H through 303K of the Federal Property  
19 and Administrative Services Act of 1949 (41 U.S.C.  
20 253h–253k), Governmentwide acquisition contracts  
21 described in section 5112(e) of the Clinger-Cohen  
22 Act of 1996 (40 U.S.C. 1412(e)), multiagency acqui-  
23 sition contracts authorized under section 5124 of the  
24 Clinger-Cohen Act of 1996 (40 U.S.C. 1424), or

1 multiple-award schedule contracts awarded by the  
2 General Services Administration.

3 “(C) The head of an executive agency that ad-  
4 ministers a contract described in subparagraph (B)  
5 shall remit the amount specified to the General  
6 Services Administration at the end of each quarter  
7 of the fiscal year.

8 “(D) The Administrator of General Services  
9 and the Office of Federal Acquisition Policy shall  
10 ensure that funds collected for training under this  
11 section are not used for any purpose other than the  
12 purpose specified in subparagraph (A). Amounts de-  
13 posited into the fund shall remain available until ex-  
14 pended.”.

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

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

19 **“CHAPTER 37—ACQUISITION**  
20 **PROFESSIONAL EXCHANGE PROGRAM**

“Sec.

“3701. Definitions.

“3702. Detail authority.

“3703. Detail of employees to private sector organizations.

“3704. Transfer and detail of employees from private sector organizations.

“3705. Authority of the Office of Personnel Management.

21 **“§ 3701. Definitions**

22 “For purposes of this chapter—

1 “(1) the term ‘agency’—

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

4 “(B) does not include—

5 “(i) the General Accounting Office;

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

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

13 “(2) the term ‘detail’ means—

14 “(A) the assignment or loan of an em-  
15 ployee to a private sector organization without  
16 a change of position in the agency at which the  
17 individual is employed; or

18 “(B) the assignment or loan of an em-  
19 ployee of a private sector organization to an  
20 agency without a change of position in the pri-  
21 vate sector organization.

22 **“§ 3702. Detail authority**

23 “(a) At the request of, or with the agreement of, a  
24 private sector organization, and with the consent of the  
25 employee concerned, the head of an agency may arrange

1 for the detail of an eligible employee of the agency to a  
2 private sector organization or an eligible individual em-  
3 ployed by a private sector organization to the agency. For  
4 purposes of this section, an eligible employee or individual  
5 employed is an individual employed at the GS-11 level or  
6 above (or the equivalent) who—

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

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

11          “(3) is expected to assume increased acquisition  
12          management responsibilities.

13 An employee of an agency shall be eligible to participate  
14 under this section only if the employee is serving under  
15 a career or career-conditional appointment or an appoint-  
16 ment of equivalent tenure in the excepted service.

17          “(b) Each agency that exercises the authority pro-  
18 vided by this section shall establish a plan for imple-  
19 menting such authority. The plan shall provide for a writ-  
20 ten agreement between the agency and the employee con-  
21 cerned regarding the terms and conditions of the employ-  
22 ee’s detail. In the case of an employee of the agency, the  
23 agreement shall—



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

4           “(2) provide that, in the event the employee  
5           fails to carry out the agreement (except for good and  
6           sufficient reason, as determined by the head of the  
7           detailing agency), the employee shall be liable to the  
8           United States for payment of all expenses (excluding  
9           salary) of the detail. The amount shall be treated as  
10          a debt due to the United States.

11          “(c) A detail under this chapter may be terminated  
12          by the agency or private sector organization concerned for  
13          any reason at any time.

14          “(d) A detail under this chapter shall be for a period  
15          of between 6 months and 1 year and may be extended  
16          in three-month increments for a total of not more than  
17          1 year.

18          “(e) The Procurement Executives Council, by agree-  
19          ment with the Office of Personnel Management, may as-  
20          sist in the administration of this chapter, including by  
21          maintaining lists of potential candidates for detail under  
22          this chapter, establishing mentoring relationships for the  
23          benefit of individuals who are given a detail under this  
24          chapter, and publicizing the program carried out under  
25          this chapter.

1   **“§ 3703. Detail of employees to private sector organi-**  
2                               **zations**

3           “(a) An employee of an agency may be assigned to  
4 a private sector organization under this chapter as a detail  
5 to a regular work assignment.

6           “(b) Notwithstanding any other provision of law, an  
7 employee assigned under subsection (a) is entitled—

8                   “(1) to receive supplemental pay from the agen-  
9 cy in the amount equal to the difference between the  
10 rate paid by the organization to which detailed and  
11 the rate of basic pay (including locality pay, where  
12 applicable, subject to regulations of the Office of  
13 Personnel Management) payable for the employee’s  
14 Federal position, if the latter is greater;

15                   “(2) in the case of an employee who is detailed  
16 under subsection (a), to credit for the period of as-  
17 signment under this chapter toward periodic step in-  
18 creases, retention, and leave accrual;

19                   “(3) to retain coverage, rights, and benefits  
20 under chapters 87 and 89, if necessary employee de-  
21 ductions and agency contributions for the period of  
22 the assignment are deposited in the Employees’ Life  
23 Insurance Fund and the Employees Health Benefits  
24 Fund, respectively, and the period of the assignment  
25 is service as an employee under chapters 87 and 89;

1           “(4) to retain coverage, rights, and benefits  
2           under any system established by law for the retire-  
3           ment of employees, if necessary employee deductions  
4           and agency contributions in payment for the cov-  
5           erage, rights, and benefits for the period of assign-  
6           ment are deposited in the system’s fund and the pe-  
7           riod of the assignment is creditable under the sys-  
8           tem, except that such service shall not be considered  
9           creditable service for the purpose of any retirement  
10          system for Federal employees if such service forms  
11          the basis, in whole or in part, for an annuity or pen-  
12          sion under the retirement system of the private sec-  
13          tor organization; and

14          “(5) to retain coverage, rights, and benefits  
15          under subchapter I of chapter 81, and employment  
16          during the assignment is deemed employment by the  
17          United States, but if the employee or the employee’s  
18          dependents receive from the private sector organiza-  
19          tion any payment under an insurance policy for  
20          which the premium is wholly paid by the private sec-  
21          tor organization, or other benefit of any kind on ac-  
22          count of the same injury or death, the amount of  
23          such payment or benefit shall be credited against  
24          any compensation otherwise payable under sub-  
25          chapter I of chapter 81.

1 During the employee's assignment to the private sector or-  
2 ganization, the agency from which the employee is detailed  
3 shall make contributions for retirement and insurance  
4 purposes from the appropriations or funds of that agency  
5 so long as contributions are made by the employee.

6 “(c) The detail of an employee of an agency under  
7 subsection (a) may be made with or without reimburse-  
8 ment by the private sector organization for the travel and  
9 transportation expenses to or from the place of assign-  
10 ment, subject to the same terms and conditions that apply  
11 with respect to an employee of a Federal agency or a State  
12 or local government under section 3375, and for the pay,  
13 or supplemental pay, or any part thereof of the employee  
14 during assignment. Any reimbursements shall be credited  
15 to the appropriation of the agency used for paying the  
16 travel and transportation expenses or pay.

17 “(d) An employee assigned on detail under subsection  
18 (a) remains an employee of the agency from which de-  
19 tailed. The Federal Tort Claims Act and any other Fed-  
20 eral tort liability law apply to the employee. The super-  
21 vision of the duties of an employee on detail may be gov-  
22 erned by an agreement between the agency and the organi-  
23 zation to which detailed.

24 “(e) Notwithstanding any other provision of law, an  
25 employee detailed under subsection (a) is entitled to ac-

1 true annual and sick leave to the same extent as if the  
2 employee had continued working in the position from  
3 which detailed.

4 **“§ 3704. Transfer and detail of employees from pri-**  
5 **vate sector organizations**

6 “(a) Notwithstanding any other provision of law, an  
7 individual employed by a private sector organization who  
8 is assigned to an agency under section 3702(a) may be—

9 “(1) transferred to the agency and appointed  
10 without regard to the provisions of this title gov-  
11 erning appointment in the competitive service for the  
12 period of assignment; or

13 “(2) detailed to the agency.

14 “(b) An individual appointed under subsection (a)(1)  
15 is entitled to pay in accordance with chapter 51 and sub-  
16 chapter III of chapter 53 or other applicable law, and is  
17 deemed an employee of the agency for all purposes  
18 except—

19 “(1) subchapter III of chapter 83, chapter 84,  
20 or other applicable retirement system;

21 “(2) chapter 87; and

22 “(3) chapter 89 or other applicable health bene-  
23 fits system unless the appointment results in the  
24 employee’s loss of coverage in a group health bene-

1 fits plan the premium of which has been paid in  
2 whole or in part by the private sector organization.  
3 The exceptions set forth in paragraphs (1) through (3)  
4 shall not apply to non-Federal employees who are covered  
5 by chapters 83, 84, 87, and 89 by virtue of their non-  
6 Federal employment immediately before appointment  
7 under subsection (a)(1).

8 “(c) An employee of a private sector organization who  
9 is detailed to an agency under subsection (a)(2)—

10 “(1) is not entitled to pay from the agency, ex-  
11 cept to the extent that the pay for the position to  
12 which detailed (including locality pay, where applica-  
13 ble) exceeds the pay the individual was receiving  
14 from the private sector organization immediately be-  
15 fore the detail;

16 “(2) may continue to receive pay and benefits  
17 from the private sector organization from which he  
18 is detailed;

19 “(3) is deemed an employee of the agency for  
20 the purposes of—

21 “(A) chapter 73, except for section  
22 7353(a)(1);

23 “(B) sections 203, 205, 207, 208, 603,  
24 606, 607, 643, 654, 1905, and 1913 of title 18;

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

3                   “(D) the Federal Tort Claims Act and any  
4                   other Federal tort liability law;

5                   “(E) the Ethics in Government Act of  
6                   1978;

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

9                   “(G) section 27(b) of the Office of Federal  
10                  Procurement Policy Act; and

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

13       The supervision of an employee who is detailed under sub-  
14       section (a)(2) may be governed by agreement between the  
15       agency and the private sector organization concerned. A  
16       detail under subsection (a)(2) may be made with or with-  
17       out reimbursement by the agency for the pay, or a part  
18       thereof, of the employee during the period of assignment,  
19       or for any contribution of the private sector organization  
20       to employee benefit systems.

21           “(d) If a private sector organization fails to continue  
22       the employer’s contribution to private sector retirement,  
23       life insurance, and health benefit plans for an individual  
24       who is appointed in an agency under this section, the em-  
25       ployer’s contributions covering the period of the assign-

1 ment may be made from the appropriations of the agency  
2 concerned.

3 “(e) A private sector employee who is given an as-  
4 signment in an agency under subsection (a) and who suf-  
5 fers disability or dies as a result of personal injury sus-  
6 tained while performing duties during the assignment  
7 shall be treated, for the purpose of subchapter I of chapter  
8 81, as an employee as defined by section 8101 who had  
9 sustained the injury in the performance of duty, except  
10 that if the employee or the employee’s dependents receive  
11 from the private sector organization any payment under  
12 an insurance policy for which the premium is wholly paid  
13 by the private sector organization, or other benefit of any  
14 kind on account of the same injury or death, the amount  
15 of such payment or benefit shall be credited against any  
16 compensation otherwise payable under subchapter I of  
17 chapter 81.

18 **“§ 3705. Authority of the Office of Personnel Manage-**  
19 **ment**

20 “The Director of the Office of Personnel Manage-  
21 ment shall prescribe regulations for the administration of  
22 this chapter.”.

23 (b) CLERICAL AMENDMENT.—The table of contents  
24 for part III of title 5, United States Code, is amended



1 by inserting after the item relating to chapter 35 the fol-  
 2 lowing:

“37. Acquisition Professional Exchange Program.”.

3 **SEC. 104. REIMBURSEMENT OF COSTS.**

4 Not later than 120 days after the date of the enact-  
 5 ment of this Act, the Federal Acquisition Regulation shall  
 6 be amended to provide for reimbursement of costs associ-  
 7 ated with an employee’s participation in the program au-  
 8 thorized by chapter 37 of title 5, United States Code (as  
 9 added by section 103) as allowable training and education  
 10 costs. Such costs—

11 (1) include—

12 (A) the employee’s salary and fringe bene-  
 13 fits for a period not to exceed the period of the  
 14 employee’s assignment under such program;  
 15 and

16 (B) moving and travel expenses; and

17 (2) may be treated, for accounting purposes—

18 (A) as an indirect cost and accounted for  
 19 in—

20 (i) an established overhead account; or

21 (ii) an overhead account established  
 22 specifically for such program and allocated  
 23 exclusively to the contractor’s Federal Gov-  
 24 ernment contracts; or

1 (B) as a direct cost chargeable to fixed  
2 price or time and material contracts.

3 **SEC. 105. CONFORMING AMENDMENTS.**

4 (a) TITLE 5, U.S.C.—Title 5, United States Code,  
5 is amended—

6 (1) in section 3111, by adding at the end the  
7 following:

8 “(d) Notwithstanding section 1342 of title 31, the  
9 head of an agency may accept voluntary service for the  
10 United States under chapter 37 of this title and regula-  
11 tions of the Office of Personnel Management.”; and

12 (2) in section 4108, by striking subsection (d).

13 (b) OTHER LAWS.—Section 125(c)(1) of Public Law  
14 100–238 (5 U.S.C. 8432 note) is amended—

15 (1) in subparagraph (B), by striking “or” at  
16 the end;

17 (2) in subparagraph (C), by striking “and” at  
18 the end and inserting “or”; and

19 (3) by adding at the end the following:

20 “(D) an individual assigned from a Fed-  
21 eral agency to a private sector organization  
22 under chapter 37 of title 5, United States Code;  
23 and”.

1 **SEC. 106. ACQUISITION WORKFORCE RECRUITMENT AND**  
2 **RETENTION PILOT PROGRAM.**

3 (a) IN GENERAL.—For purposes of sections 3304,  
4 5333, and 5753 of title 5, United States Code, the head  
5 of an agency (including the Secretary of Defense) may de-  
6 termine that certain Federal acquisition positions are  
7 “shortage category” positions in order to recruit and di-  
8 rectly hire employees with high qualifications, such as em-  
9 ployees who—

10 (1) hold a bachelor’s degree from an accredited  
11 institution of higher learning, earned with a grade  
12 point average of 3.2 or higher (or the equivalent);

13 (2) hold a law or masters or equivalent degree  
14 from an accredited institution of higher education in  
15 business administration, public administration, or  
16 systems engineering; or

17 (3) have had outstanding experience with com-  
18 mercial acquisition practices, terms, and conditions.

19 (b) REQUIREMENTS.—Personnel actions under this  
20 paragraph shall be subject to policies prescribed by the  
21 Office of Personnel Management for direct recruitment,  
22 including the appointment of a preference eligible as long  
23 as preference eligibles are available who satisfy the stipu-  
24 lated high level of qualifications.

25 (c) PERIOD OF AUTHORITY.—Authority under this  
26 section shall expire on September 30, 2006. The Adminis-

1 trator of the Office of Federal Procurement Policy shall  
2 submit a report to Congress 180 days prior to the expira-  
3 tion of this authority describing the efficacy of this pro-  
4 gram in attracting employees with unusually high quali-  
5 fications to the acquisition workforce and providing a rec-  
6 ommendation on whether the authority should be ex-  
7 tended.

8 **SEC. 107. AUTHORIZATION OF TELECOMMUTING FOR FED-**  
9 **ERAL CONTRACTORS.**

10 (a) AMENDMENT TO THE FEDERAL ACQUISITION  
11 REGULATION.—Not later than 180 days after the date of  
12 the enactment of this Act, the Federal Acquisition Regula-  
13 tion issued in accordance with sections 6 and 25 of the  
14 Office of Federal Procurement Policy Act (41 U.S.C. 405  
15 and 421) shall be amended to permit the use of telecom-  
16 muting by employees of Federal contractors in the per-  
17 formance of contracts with executive agencies.

18 (b) CONTENT OF AMENDMENT.—The amendment  
19 issued pursuant to subsection (a) shall, at a minimum,  
20 provide that solicitations for the acquisition of goods or  
21 services shall not set forth any requirement or evaluation  
22 criteria that would—

23 (1) render an offeror ineligible to receive a con-  
24 tract award based on the offeror's plan to allow its  
25 employees to telecommute; or

1           (2) reduce the scoring of an offeror’s proposal  
2       based upon the contractor’s plan to allow its employ-  
3       ees to telecommute, unless the contracting officer  
4       first—

5           (A) determines that the needs of the agen-  
6       cy, including the security needs of the agency,  
7       cannot be met without any such requirement;  
8       and

9           (B) explains in writing the basis for that  
10       determination.

11       (c) GAO REPORT.—Not later than one year after the  
12       date on which the amendment required by subsection (a)  
13       is published in the Federal Register, the Comptroller Gen-  
14       eral shall submit to Congress an evaluation of—

15           (1) compliance by executive agencies with the  
16       regulations; and

17           (2) conformance of the regulations with existing  
18       law, together with any recommendations that the  
19       Comptroller General considers appropriate.

20       (d) DEFINITION.—In this section, the term “execu-  
21       tive agency” has the meaning given that term in section  
22       105 of title 5, United States Code.

1 **SEC. 108. ARCHITECTURAL AND ENGINEERING ACQUISITION WORKFORCE.**  
 2

3 The Administrator of the Office of Federal Procurement Policy, in consultation with the Secretary of Defense  
 4 and the Director of the Office of Personnel Management,  
 5 shall develop and implement a plan to assure that the Federal Government maintains a core in-house architectural  
 6 and engineering capability to—  
 7

- 8 (1) ensure expertise to determine each agency's  
 9 need for services;  
 10 (2) establish priorities and programs (including  
 11 acquisition plans);  
 12 (3) establish professional standards;  
 13 (4) develop scopes of work; and  
 14 (5) manage and award contracts for such services.  
 15  
 16

17 **TITLE II—ADAPTATION OF BUSINESS ACQUISITION PRACTICES**  
 18  
 19

20 **Subtitle A—Adaptation of Business Management Practices**  
 21

22 **SEC. 201. CHIEF ACQUISITION OFFICERS.**

23 (a) APPOINTMENT OF CHIEF ACQUISITION OFFICERS.—(1) Section 16 of the Office of Federal Procurement Policy Act (41 U.S.C. 414) is amended to read as  
 24 follows:  
 25  
 26

1 **“SEC. 16. APPOINTMENT OF CHIEF ACQUISITION OFFICERS.**

2       “(a) To further achieve effective, efficient, and eco-  
3 nomic administration of the Federal acquisition system,  
4 the head of each executive agency shall appoint a Chief  
5 Acquisition Officer for the agency.

6       “(b) A Chief Acquisition Officer appointed under sub-  
7 section (a), in accordance with applicable laws, Govern-  
8 mentwide policies and regulations, and good business  
9 practices, shall be responsible for—

10           “(1) providing advice and other assistance to  
11 the head of the executive agency and other senior  
12 management personnel of the executive agency to  
13 ensure that the agency’s mission goals are achieved  
14 through the management of the agency’s acquisition  
15 activities and acquisitions in a manner that imple-  
16 ments the policies and procedures of this division,  
17 consistent with chapter 11 of title 31, United States  
18 Code, and the priorities established by the head of  
19 the executive agency;

20           “(2) increasing the use of full and open com-  
21 petition in the acquisition of property or services by  
22 the executive agency by establishing policies, proce-  
23 dures, and practices that assure that the executive  
24 agency receives a sufficient number of sealed bids or  
25 competitive proposals from responsible sources to  
26 fulfill the Government’s requirements (including per-

1       formance and delivery schedules) at the best value  
2       considering the nature of the property or service  
3       procured;

4           “(3) making acquisition decisions consistent  
5       with all applicable law and establishing clear lines of  
6       authority, accountability, and responsibility for ac-  
7       quisition decisionmaking within the executive agen-  
8       cy;

9           “(4) managing the direction of acquisition pol-  
10      icy for the executive agency, including implementa-  
11      tion of the unique acquisition policies, regulations,  
12      and standards of the executive agency; and

13          “(5) developing and maintaining an acquisition  
14      career management program in the executive agency  
15      to assure an adequate professional workforce.

16      “(c) The Chief Acquisition Officer of an executive  
17      agency shall—

18          “(1) have acquisition management as that offi-  
19      cial’s primary duty;

20          “(2) monitor the performance of acquisition ac-  
21      tivities and acquisition programs of the agency,  
22      evaluate the performance of those programs on the  
23      basis of the applicable performance measurements,  
24      and advise the head of the agency regarding the ap-



1       appropriate business strategy to achieve the agency  
2       mission; and

3               “(3) annually, as part of the strategic planning  
4       and performance evaluation process required (sub-  
5       ject to section 1117 of title 31, United States Code)  
6       under section 306 of title 5, United States Code,  
7       and sections 1105(a)(29), 1115, 1116, 1117, and  
8       9703 of title 31, United States Code—

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

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

19              “(C) report to the head of the agency on  
20       the progress made in improving acquisition  
21       management capability.”.

22       (2) The item relating to section 16 in the table of  
23       contents of such Act is amended to read as follows:

      “Sec. 16. Chief Acquisition Officers.”.

24       (b) CONFORMING AMENDMENTS.—The Office of  
25       Federal Procurement Policy Act (41 U.S.C. 403 et seq.),

1 the Federal Property and Administrative Services Act of  
2 1949, and title 10, United States Code, are each amended  
3 by striking “senior procurement executive” each place  
4 such term appears and inserting “Chief Acquisition Offi-  
5 cer”.

6 **SEC. 202. INCREASED ROLE FOR DEFENSE CONTRACT MAN-**  
7 **AGEMENT AGENCY.**

8 The Under Secretary of Defense for Acquisition,  
9 Technology, and Logistics shall review the feasibility of  
10 establishing the Defense Contract Management Agency as  
11 the primary organization responsible for performing con-  
12 tract management services on Department of Defense  
13 base operating service contracts in excess of \$5,000,000.

14 **SEC. 203. STUDY ON HORIZONTAL ACQUISITION.**

15 Not later than 9 months after the date of the enact-  
16 ment of this Act, the Administrator of the Office of Fed-  
17 eral Procurement Policy shall submit to the Committee on  
18 Government Reform of the House of Representatives and  
19 the Committee on Governmental Affairs of the Senate a  
20 study on the laws, executive orders, and regulations that  
21 hinder the performance of acquisition functions across de-  
22 partment or agency lines and otherwise impact the use of  
23 Governmentwide contracts.

1 **SEC. 204. STATUTORY AND REGULATORY REVIEW.**

2 (a) ESTABLISHMENT.—Not later than 60 days after  
3 the date of the enactment of this Act, the Administrator  
4 of the Office of Federal Procurement Policy shall establish  
5 an advisory panel to review laws and regulations that  
6 hinder the use of commercial practices and performance-  
7 based contracting.

8 (b) MEMBERSHIP.—The panel shall be composed of  
9 at least nine individuals who are recognized experts in ac-  
10 quisition law and Government acquisition policy. In mak-  
11 ing appointments to the panel, the Administrator shall en-  
12 sure that the members of the panel reflect the diverse ex-  
13 periences in the public and private sectors.

14 (c) DUTIES.—The panel shall—

15 (1) review all Federal acquisition laws and reg-  
16 ulations with a view toward ensuring the use of  
17 greater commercial practices and performance-based  
18 contracting; and

19 (2) make any recommendations for the repeal  
20 or amendment of such laws or regulations considered  
21 necessary as a result of such review to—

22 (A) eliminate any such laws or regulations  
23 that are unnecessary for the establishment and  
24 administration of buyer and seller relationships  
25 in acquisition;

1 (B) ensure the continuing financial and  
2 ethical integrity of Government acquisition pro-  
3 grams; and

4 (C) protect the best interests of the Gov-  
5 ernment.

6 (d) REPORT.—(1) Not later than one year after the  
7 establishment of the panel, a report shall be transmitted  
8 to the Administrator and to the Committees on Govern-  
9 ment Reform and Armed Services of the House of Rep-  
10 resentatives and the Committees on Governmental Affairs  
11 and Armed Services of the Senate.

12 (2) The report shall contain a detailed statement of  
13 the findings and conclusions of the panel, the proposed  
14 codification of acquisition laws or proposed regulations  
15 prepared pursuant to subsection (c), and such additional  
16 recommendations for such legislation or regulations as the  
17 panel considers appropriate.

## 18 **Subtitle B—Payment Terms**

### 19 **SEC. 211. PAYMENT TERMS.**

20 Not later than 180 days after the date of the enact-  
21 ment of this Act, the Federal Acquisition Regulation shall  
22 be revised to provide that—

23 (1) service contractors may submit invoices for  
24 payment either biweekly or monthly, provided that

1 any biweekly invoicing must be through electronic  
2 means;

3 (2) for an electronic invoice, the date of the in-  
4 voice shall be the date the invoice is electronically  
5 delivered to the Federal Government;

6 (3) the Federal Government shall accept or re-  
7 ject an electronically delivered invoice within 5 work-  
8 ing days of the date of the invoice;

9 (4) all accepted invoices shall be paid as soon  
10 as possible, but in no event shall an accepted invoice  
11 be paid later than 30 days after the date of the in-  
12 voice; and

13 (5) payment of an invoice does not prohibit ei-  
14 ther the Government or the contractor from making  
15 corrections or adjustments to the invoice at a later  
16 date.

## 17 **Subtitle C—Acquisitions Generally**

### 18 **SEC. 221. INCREASE IN AUTHORIZATION LEVELS OF FED-** 19 **ERAL PURCHASE CARDS.**

20 Section 32 of the Office of Federal Procurement Pol-  
21 icy Act (41 U.S.C. 428) is amended by striking “\$2,500”  
22 in subsections (c), (d), and (f), and inserting “\$25,000”.

1 **SEC. 222. REAUTHORIZATION OF FRANCHISE FUNDS.**

2 Section 403(f) of the Federal Financial Management  
3 Act of 1994 (31 U.S.C. 501 note) is amended by striking  
4 “October 1, 2001” and inserting “October 1, 2005”.

5 **SEC. 223. ACQUISITION PROTESTS.**

6 (a) DEFENSE CONTRACTS.—(1) Chapter 137 of title  
7 10, United States Code, is amended by inserting after sec-  
8 tion 2305a the following new section:

9 **“§ 2305b. Protests**

10 “(a) IN GENERAL.—A protest of an acquisition of  
11 supplies or services by an agency concerning an alleged  
12 violation of an acquisition law or regulation submitted to  
13 the agency by an interested party shall be decided by the  
14 agency if submitted in accordance with this section.

15 “(b) RESTRICTIONS PENDING DECISION.—(1) A con-  
16 tract may not be awarded in an acquisition after a protest  
17 concerning the acquisition has been submitted and while  
18 the protest is pending except that the head of the acquisi-  
19 tion activity responsible for the award of the contract may  
20 authorize the award of the contract, notwithstanding the  
21 pending protest, upon a written finding that urgent and  
22 compelling circumstances do not allow for waiting for a  
23 decision.

24 “(2) Performance of a contract shall not be author-  
25 ized (and performance of the contract shall cease if per-  
26 formance has already begun) in any case in which a pro-

1 test of the contract award is submitted not later than 10  
2 days after the date of contract award or 5 days after an  
3 agency debriefing, whichever is later, except that the head  
4 of the acquisition activity responsible for the award of the  
5 contract may authorize performance of the contract not-  
6 withstanding the pending protest upon a written finding  
7 that urgent and compelling circumstances do not allow for  
8 waiting for a decision.

9 “(c) DEADLINE FOR DECISION.—The head of the  
10 agency shall issue a decision not later than the date that  
11 is 10 working days after the date that the protest is sub-  
12 mitted to the agency.

13 “(d) CONSTRUCTION.—Nothing contained in this sec-  
14 tion shall affect the right of an interested party to file  
15 a protest with the General Accounting Office under sub-  
16 chapter V of chapter 35 of title 31 or in the United States  
17 Court of Federal Claims.

18 “(e) DEFINITIONS.—In this section:

19 “(1) The term ‘interested party’, with respect  
20 to a contract or a solicitation or other request for of-  
21 fers described in paragraph (2), means an actual or  
22 prospective bidder or offeror whose direct economic  
23 interest would be affected by the award of the con-  
24 tract or by failure to award the contract.

1           “(2) The term ‘protest’ means a written objec-  
2           tion by an interested party to any of the following:

3                   “(A) A solicitation or other request by an  
4                   agency for offers for a contract for the acquisi-  
5                   tion of property or services.

6                   “(B) The cancellation of such a solicitation  
7                   or other request.

8                   “(C) An award or proposed award of such  
9                   a contract.

10                  “(D) A termination or cancellation of an  
11                  award of such a contract, if the written objec-  
12                  tion contains an allegation that the termination  
13                  or cancellation is based in whole or in part on  
14                  improprieties concerning the award of the con-  
15                  tract.”.

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

“2305b. Protests.”.

19           (b) OTHER AGENCIES.—(1) The Federal Property  
20 and Administrative Services Act of 1949 is amended by  
21 inserting after section 303M the following new section:

22 **“SEC. 303L. PROTESTS.**

23           “(a) IN GENERAL.—A protest of an acquisition of  
24 supplies or services by an executive agency concerning an  
25 alleged violation of an acquisition law or regulation sub-



mitted to the agency by an interested party shall be decided by the agency if submitted in accordance with this section.

“(b) RESTRICTIONS PENDING DECISION.—(1) A contract may not be awarded in an acquisition after a protest concerning the acquisition has been submitted and while the protest is pending except that the head of the acquisition activity responsible for the award of the contract may authorize the award of the contract, notwithstanding the pending protest, upon a written finding that urgent and compelling circumstances do not allow for waiting for a decision.

“(2) Performance of a contract shall not be authorized (and performance of the contract shall cease if performance has already begun) in any case in which a protest of the contract award is submitted not later than 10 days after the date of contract award or 5 days after an agency debriefing, whichever is later, except that the head of the acquisition activity responsible for the award of the contract may authorize performance of the contract notwithstanding the pending protest upon a written finding that urgent and compelling circumstances do not allow for waiting for a decision.

“(c) DEADLINE FOR DECISION.—The head of the agency shall issue a decision not later than the date that

1 is 10 working days after the date that the protest is sub-  
2 mitted to the agency.

3 “(d) CONSTRUCTION.—Nothing contained in this sec-  
4 tion shall affect the right of an interested party to file  
5 a protest with the General Accounting Office under sub-  
6 chapter V of chapter 35 of title 31, United States Code,  
7 or in the United States Court of Federal Claims.

8 “(e) DEFINITIONS.—In this section:

9 “(1) The term ‘interested party’, with respect  
10 to a contract or a solicitation or other request for of-  
11 fers described in paragraph (2), means an actual or  
12 prospective bidder or offeror whose direct economic  
13 interest would be affected by the award of the con-  
14 tract or by failure to award the contract.

15 “(2) The term ‘protest’ means a written objec-  
16 tion by an interested party to any of the following:

17 “(A) A solicitation or other request by an  
18 agency for offers for a contract for the acquisi-  
19 tion of property or services.

20 “(B) The cancellation of such a solicitation  
21 or other request.

22 “(C) An award or proposed award of such  
23 a contract.

24 “(D) A termination or cancellation of an  
25 award of such a contract, if the written objec-

1           tion contains an allegation that the termination  
 2           or cancellation is based in whole or in part on  
 3           improprieties concerning the award of the con-  
 4           tract.”.

5           (2) The table of contents in section 1(b) of such Act  
 6 is amended by inserting after the item relating to section  
 7 303M the following new item:

“303L. Protests.”.

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

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

12           (2) by striking the period at the end of sub-  
 13 paragraph (B) and inserting “; or”; and

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

16           “(C) the date that is 5 days after the date that  
 17 the agency issues its decision under section 2305b of  
 18 title 10 or section 303L of the Federal Property and  
 19 Administrative Services Act of 1949.”.

20 **SEC. 224. ARCHITECTURAL AND ENGINEERING SERVICES.**

21           (a) FEDERAL PROPERTY AND ADMINISTRATIVE  
 22 SERVICES ACT.—Section 901 of the Federal Property and  
 23 Administrative Services Act of 1949 (40 U.S.C. 541) is  
 24 amended by adding at the end the following new para-  
 25 graph:

1           “(4) The term ‘surveying and mapping’ means  
2       contracts and subcontracts for services utilizing Fed-  
3       eral funds for collecting, storing, retrieving, or dis-  
4       seminating graphical or digital data depicting nat-  
5       ural or manmade physical features, phenomena, or  
6       boundaries of the earth and any information related  
7       thereto, including but not limited to surveys, maps,  
8       charts, geographic information systems, remote sens-  
9       ing data and images, and aerial photographic serv-  
10      ices performed by professionals such as surveyors,  
11      photogrammetrists, hydrographers, geodesists, or  
12      cartographers.

13           “(5) The term ‘contract’ means a contract or  
14      subcontract awarded by an agency head, prime con-  
15      tractor, or grantee.”.

16      (b) AMENDMENT OF FAR.—The Federal Acquisition  
17      Regulation shall be revised to include the definitions added  
18      by subsection (a) of this section.

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

21           (1) in paragraph (2), by striking “\$85,000”  
22      and inserting “\$300,000”; and

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

1           “(3) The selection and competition require-  
 2           ments of this section shall apply to any contract for  
 3           architectural and engineering services (including sur-  
 4           veying and mapping services) by all military depart-  
 5           ments and defense agencies.”.

6           (d) PROFESSIONAL ENGINEERING SERVICES.—Not-  
 7           withstanding any other provision of law, no executive  
 8           agency shall establish or carry out a program to offer serv-  
 9           ices or to offer contracts for professional engineering serv-  
 10          ices unless—

11           (1) such services are performed under the direct  
 12          supervision of a professional engineer licensed in a  
 13          State; and

14           (2) such services are awarded in accordance  
 15          with the selection procedures set forth in title IX of  
 16          the Federal Property and Administrative Services  
 17          Act of 1949 (40 U.S.C. 541).

## 18                   **TITLE III—CONTRACT** 19                   **INCENTIVES**

### 20   **SEC. 301. REVISIONS TO SHARE-IN-SAVINGS INITIATIVES.**

21           (a) DEFENSE CONTRACTS.—(1) Chapter 137 of title  
 22   10, United States Code, is amended by adding at the end  
 23   the following new section:

1 **“§ 2332. Share-in-savings contracts**

2 “(a) AUTHORITY TO ENTER INTO SHARE-IN-SAV-  
3 INGS CONTRACTS.—(1) The head of an agency may enter  
4 into a share-in-savings contract for a period of not more  
5 than ten years.

6 “(2) An agency may retain savings realized through  
7 the use of a share-in-savings contract under this section  
8 that are in excess of the total amount of savings paid to  
9 the contractor under the contract. Amounts retained by  
10 the agency under this subsection shall, without further ap-  
11 propriation, remain available until expended.

12 “(3)(A) If funds are not made available for the con-  
13 tinuation of a share-in-savings contract entered into under  
14 this section in a subsequent fiscal year, the contract shall  
15 be canceled or terminated. The costs of cancellation or ter-  
16 mination may be paid out of—

17 “(i) appropriations available for the perform-  
18 ance of the contract;

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

22 “(iii) funds appropriated for payments of costs  
23 of cancellation or termination.

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

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

3 “(C) An agency may enter into a share-in-savings  
 4 contract under this section even if funds are not made spe-  
 5 cifically available for the costs of cancellation or termi-  
 6 nation of the contract if funds are available and sufficient  
 7 to make payments with respect to the first fiscal year of  
 8 the contract.

9 “(b) DEFINITIONS.—In this section:

10 “(1) The term ‘contractor’ means a private en-  
 11 tity that enters into a contract with an agency.

12 “(2) The term ‘savings’ means—

13 “(A) monetary savings to an agency; or

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

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

19 “(A) a contractor provides solutions for—

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

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

1           “(B) the agency pays the contractor an  
 2           amount equal to a portion of the savings de-  
 3           rived by the agency from—

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

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

10       (2) The table of sections at the beginning of such  
 11 chapter is amended by adding at the end the following  
 12 new item:

“2332. Share-in-savings contracts.”.

13       (b) OTHER CONTRACTS.—(1) Title III of the Federal  
 14 Property and Administrative Services Act of 1949 is  
 15 amended by adding at the end the following:

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

17       “(a) AUTHORITY TO ENTER INTO SHARE-IN-SAV-  
 18 INGS CONTRACTS.—(1) An executive agency may enter  
 19 into a share-in-savings contract for a period of not more  
 20 than ten years.

21       “(2) An executive agency may retain savings realized  
 22 through the use of a share-in-savings contract under this  
 23 section that are in excess of the total amount of savings  
 24 paid to the contractor under the contract. Amounts re-  
 25 tained by the executive agency under this subsection shall,



1 without further appropriation, remain available until ex-  
2 pended.

3 “(3)(A) If funds are not made available for the con-  
4 tinuation of a share-in-savings contract entered into under  
5 this section in a subsequent fiscal year, the contract shall  
6 be canceled or terminated. The costs of cancellation or ter-  
7 mination may be paid out of—

8 “(i) appropriations available for the perform-  
9 ance of the contract;

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

13 “(iii) funds appropriated for payments of costs  
14 of cancellation or termination.

15 “(B) The amount payable in the event of cancellation  
16 or termination of a share-in-savings contract shall be ne-  
17 gotiated with the contractor at the time the contract is  
18 entered into.

19 “(C) An executive agency may enter into a share-in-  
20 savings contract under this section even if funds are not  
21 made specifically available for the costs of cancellation or  
22 termination of the contract if funds are available and suf-  
23 ficient to make payments with respect to the first fiscal  
24 year of the contract.

25 “(b) DEFINITIONS.—In this section:

1           “(1) The term ‘contractor’ means a private en-  
2           tity that enters into a contract with an executive  
3           agency.

4           “(2) The term ‘savings’ means—

5                   “(A) monetary savings to an executive  
6           agency; or

7                   “(B) savings in time or other benefits real-  
8           ized by the executive agency, including en-  
9           hanced revenues.

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

12                   “(A) a contractor provides solutions for—

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

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

18                   “(B) the executive agency pays the con-  
19           tractor an amount equal to a portion of the sav-  
20           ings derived by the agency from—

21                           “(i) any improvements in mission-re-  
22                   lated or administrative processes that re-  
23                   sult from implementation of the solution;  
24                   or

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

3 (2) The table of contents in section 1(b) of such Act  
4 is amended by adding at the end the following new item:

“Sec. 317. Share-in-savings contracts.”.

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

7 (1) in consultation with executive agencies—

8 (A) identify potential opportunities for the  
9 use of share-in-savings contracts; and

10 (B) encourage the use of share-in-savings  
11 contracts for projects for which significant sav-  
12 ings are expected; and

13 (2) in consultation with Congress and executive  
14 agencies, develop techniques—

15 (A) to provide incentives for the use of  
16 share-in-savings contracts; and

17 (B) to permit an executive agency to retain  
18 a portion of the savings (after payment of the  
19 contractor’s share of the savings) derived from  
20 such contracts as funds are appropriated to the  
21 agency in future years.

22 (d) GUIDANCE AND REGULATIONS.—(1) Not later  
23 than 180 days after the date of the enactment of this sec-  
24 tion, the Federal Acquisition Regulation shall be revised  
25 to implement the provisions enacted by this section.

1       (2) Not later than 180 days after the enactment of  
2 this section, the Director of the Office of Management and  
3 Budget shall issue guidance on the use by executive agen-  
4 cies of share-in-savings contracts. Such guidance shall—

5           (A) provide for the use of competitive proce-  
6 dures for the selection and award of share-in-savings  
7 contracts;

8           (B) allow maximum regulatory flexibility to fa-  
9 cilitate the use of share-in-savings contracts by exec-  
10 utive agencies, including the use of nonstandard  
11 Federal Acquisition Regulation contract clauses; and

12          (C) provide guidance to executive agencies for  
13 determining mutually beneficial savings share ratios  
14 and baselines from which savings may be measured.

15       (e) REPORT TO CONGRESS.—In consultation with ex-  
16 ecutive agencies, the Director of the Office of Management  
17 and Budget shall, not later than 2 years after the date  
18 of the enactment of this section, submit to Congress a re-  
19 port describing—

20           (1) the number of share-in-savings contracts  
21 entered into by each executive agency under the pro-  
22 visions enacted by this section; and

23           (2) any recommendations regarding additional  
24 changes in law necessary to encourage increased use  
25 of share-in-savings contracts by executive agencies.

1 (f) DEFINITIONS.—In this section, the terms “con-  
2 tractor”, “savings”, and “share-in-savings contract” have  
3 the meanings given those terms under section 317 of the  
4 Federal Property and Administrative Services Act of 1949  
5 (as added by subsection (b)).

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

7 (a) DEFENSE CONTRACTS.—(1) Chapter 137 of title  
8 10, United States Code, is further amended by adding at  
9 the end the following new section:

10 **“§ 2333. Incentives for contract efficiency**

11 “(a) AUTHORITY TO ENTER INTO 10-YEAR SERVICE  
12 CONTRACTS.—An agency may enter into contracts for the  
13 performance of services to the government for periods of  
14 not more than ten years if such contracts are perform-  
15 ance-based.

16 “(b) EXTENSIONS.—An agency may enter into con-  
17 tracts for the performance of services to the government  
18 that provide for the contract to be extended by additional  
19 performance periods in instances of exceptional perform-  
20 ance by the contractor. A contract that provides for such  
21 extensions shall be performance-based, and must include  
22 performance parameters that can be used to measure per-  
23 formance under the contract. The entire term of the con-  
24 tract, including the additional performance periods, may  
25 not exceed ten years.

1       “(c) OTHER CONTRACTS.—An agency may enter into  
 2 a level-of-effort contract that provides for savings realized  
 3 through cost efficiencies to be shared with the contractor  
 4 in an amount sufficient to encourage the contractor to in-  
 5 vest in methods of performance that are likely to reduce  
 6 the overall cost of contract performance.”.

7       (2) The table of contents at the beginning of such  
 8 chapter is amended by adding at the end the following  
 9 new item:

“Sec. 2333. Incentives for contract efficiency.”.

10       (b) OTHER CONTRACTS.—(1) Title III of the Federal  
 11 Property and Administrative Services Act of 1949 is fur-  
 12 ther amended by adding at the end the following new sec-  
 13 tion:

14       **“SEC. 318. INCENTIVES FOR CONTRACT EFFICIENCY.**

15       “(a) AUTHORITY TO ENTER INTO 10-YEAR SERVICE  
 16 CONTRACTS.—An executive agency may enter into con-  
 17 tracts for the performance of services for the Government  
 18 for periods of not more than ten years if such contracts  
 19 are performance-based.

20       “(b) EXTENSIONS.—An executive agency may enter  
 21 into contracts for the performance of services to the Gov-  
 22 ernment that provide for the contract to be extended by  
 23 additional performance periods in instances of exceptional  
 24 performance by the contractor. A contract that provides  
 25 for such extensions shall be performance-based, and must

1 include performance parameters that can be used to meas-  
 2 ure performance under the contract. The entire term of  
 3 the contract, including the additional performance periods,  
 4 may not exceed ten years.

5 “(c) OTHER CONTRACTS.—An executive agency may  
 6 enter into a level-of-effort type contract that provides for  
 7 savings realized through cost efficiencies to be shared with  
 8 the contractor in an amount sufficient to encourage the  
 9 contractor to invest in methods of performance that are  
 10 likely to reduce the overall cost of contract performance.”.

11 (2) The table of contents in section 1(b) of such Act  
 12 is further amended by adding at the end the following new  
 13 item:

“Sec. 318. Incentives for contract efficiency.”.

## 14 **TITLE IV—ACQUISITIONS OF** 15 **COMMERCIAL ITEMS**

### 16 **SEC. 401. PREFERENCE FOR PERFORMANCE-BASED CON-** 17 **TRACTING.**

18 (a) IN GENERAL.—In the administration of the pref-  
 19 erences established by the Federal Acquisition Regulation  
 20 under section 821(a) of the Floyd D. Spence National De-  
 21 fense Authorization Act for Fiscal Year 2001 (as enacted  
 22 into law by Public Law 106–398; 114 Stat. 1654A–218),  
 23 a performance-based service contract or performance-  
 24 based task order may be treated as a contract for the ac-  
 25 quisition of commercial items if—

1 (1) the contract or task order sets forth specifi-  
2 cally each task to be performed and, for each task—

3 (A) defines the task in measurable, mis-  
4 sion-related terms; and

5 (B) identifies the specific end products or  
6 output to be achieved; and

7 (2) the source of the services provides similar  
8 services to the general public under terms and condi-  
9 tions similar to those offered to the Federal Govern-  
10 ment.

11 (b) INCENTIVE FOR USE OF PERFORMANCE-BASED  
12 SERVICE CONTRACTS.—(1) A performance-based service  
13 contract or performance-based task order of a covered  
14 agency may be treated as a contract for the acquisition  
15 of commercial items if—

16 (A) the contract or task order is valued at  
17 \$5,000,000 or less;

18 (B) the contract or task order sets forth specifi-  
19 cally each task to be performed and, for each task—

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

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

24 (C) the source of the services provides similar  
25 services to the general public under terms and condi-



1        tions similar to those offered to the Federal Govern-  
2        ment.

3        (2) The special simplified procedures provided in the  
4        Federal Acquisition Regulation pursuant to section  
5        2304(g)(1)(B) of title 10, United States Code, and section  
6        303(g)(1)(B) of the Federal Property and Administrative  
7        Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall not  
8        apply to a performance-based service contract or perform-  
9        ance-based task order that is treated as a contract for the  
10       acquisition of commercial items under subsection (a).

11       (3) Not later than 2 years after the date of the enact-  
12       ment of this Act, the Comptroller General shall submit  
13       a report on the implementation of this subsection to the  
14       congressional defense committees, the Committee on Gov-  
15       ernment Reform of the House of Representatives, and the  
16       Committee on Governmental Affairs of the Senate.

17       (4) The authority under this subsection shall not  
18       apply to contracts entered into or task orders issued more  
19       than 3 years after the date of the enactment of this Act.

20       (c) CENTER OF EXCELLENCE IN SERVICE CON-  
21       TRACTING.—Not later than 180 days after the date of the  
22       enactment of this Act, the Administrator of the Office of  
23       Federal Procurement Policy shall establish a center of ex-  
24       cellence in contracting for services. The center of excel-  
25       lence shall assist the acquisition community by identifying,

1 and serving as a clearinghouse for, best practices in con-  
 2 tracting for services in the public and private sectors.

3 (d) DEFINITIONS.—In this section:

4 (1) The term “performance-based”, with re-  
 5 spect to a contract, a task order, or contracting,  
 6 means that the contract, task order, or contracting,  
 7 respectively, includes the use of performance work  
 8 statements that set forth contract requirements in  
 9 clear, specific, and objective terms with measurable  
 10 outcomes.

11 (2) The term “commercial item” has the mean-  
 12 ing given the term in section 4(12) of the Office of  
 13 Federal Procurement Policy Act (41 U.S.C.  
 14 403(12)).

15 (3) The term “covered agency” means an exec-  
 16 utive agency to which title III of the Federal Prop-  
 17 erty and Administrative Services Act of 1949 applies  
 18 under section 302(a) of that Act (41 U.S.C. 252(a)).

19 **SEC. 402. AUTHORIZATION OF ADDITIONAL CONTRACT**  
 20 **TYPES IN FAR PART 12.**

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

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

1           (2) by redesignating paragraph (2) as para-  
2           graph (3); and

3           (3) by inserting after paragraph (1) the fol-  
4           lowing new paragraph (2):

5           “(2) a provision which allows use of time and  
6           material, labor-hour or similar contract types, for  
7           services in appropriate circumstances;”.

8   **SEC. 403. CLARIFICATION OF COMMERCIAL SERVICES DEF-**  
9                           **INITION.**

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

12               (1) in subparagraphs (A), (B), and (C), by in-  
13               serting “or service” after “item”;

14               (2) in subparagraph (D), by inserting “or serv-  
15               ices” after “items”; and

16               (3) by striking subparagraph (F) and redesign-  
17               nating the subsequent subparagraphs accordingly.

18   **SEC. 404. DESIGNATION OF COMMERCIAL BUSINESS ENTI-**  
19                           **TIES.**

20          (a) IN GENERAL.—Section 4 of the Office of Federal  
21   Procurement Policy Act (41 U.S.C. 403) is amended—

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

24               “(H) Products or services produced or pro-  
25               vided by a commercial entity.”; and

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

3           “(16) The term ‘commercial entity’ means any  
4 enterprise whose primary customers are other than  
5 the United States Federal Government. In order to  
6 qualify as a commercial entity, at least 85 percent  
7 (in dollars) of the sales of the enterprise over the  
8 past three business years must have been made to  
9 nongovernment entities or under part 12 of the Fed-  
10 eral Acquisition Regulation.”.

11       (b) COMPTROLLER GENERAL REVIEW.—The Comp-  
12 troller General shall review the implementation of the  
13 amendments made by subsection (a) to determine the suc-  
14 cess of such implementation.

15 **SEC. 405. CONTINUATION OF ELIGIBILITY OF CONTRACTOR**  
16 **FOR AWARD OF INFORMATION TECHNOLOGY**  
17 **CONTRACT AFTER PROVIDING DESIGN AND**  
18 **ENGINEERING SERVICES.**

19       (a) IN GENERAL.—Notwithstanding any other provi-  
20 sion of law, a contractor that provides architectural design  
21 and engineering services for an information system under  
22 an information technology program of an executive agency  
23 is not, solely by reason of having provided services, ineli-  
24 gible for award of a contract for acquisition of information

1 technology under that program or for a subcontract under  
2 such a contract.

3 (b) DEFINITIONS.—In this section:

4 (1) The term “architectural design and engi-  
5 neering services” includes, but is not limited to,  
6 business process reengineering, determining speci-  
7 fications, developing work statements, determining  
8 parameters, identifying and resolving interface prob-  
9 lems, developing test requirements, evaluating test  
10 data, designing, and supervising design activities.

11 (2) The term “information system” has the  
12 meaning given that term in section 5002 of the  
13 Clinger-Cohen Act of 1996 (40 U.S.C. 1401).

14 **SEC. 406. COMMERCIAL LIABILITY.**

15 (a) LIMITATION.—The Office of Federal Procure-  
16 ment Policy Act (41 U.S.C. 403 et seq.) is further amend-  
17 ed by inserting after section 29 the following new section:

18 **“SEC. 29A. LIMITATION OF CONTRACTOR LIABILITY.**

19 “The Federal Acquisition Regulation shall provide  
20 that an executive agency shall include in all contracts and  
21 solicitations for contracts for the acquisition of property  
22 or services a provision that—

23 “(1) bars payment of consequential damages in  
24 cases of contractor liability with respect to the con-  
25 tract; and

1 “(2) places a cap on payment of direct damages  
 2 in cases of contractor liability with respect to the  
 3 contract that does not exceed the cost of the service  
 4 that was not performed or of the product that was  
 5 not delivered.”.

6 (b) CONFORMING AMENDMENT.—The table of con-  
 7 tents of such Act is amended by inserting after the item  
 8 relating to section 29 the following new item:

“Sec. 29A. Limitation of contractor liability.”.

9 **TITLE V—TECHNOLOGY ACCESS**  
 10 **IN A COMMERCIAL ENVIRON-**  
 11 **MENT**

12 **SEC. 501. TRADE AGREEMENTS ACT OF 1979 EXEMPTION**  
 13 **FOR INFORMATION TECHNOLOGY COMMER-**  
 14 **CIAL ITEMS.**

15 (a) IN GENERAL.—Notwithstanding any other provi-  
 16 sion of law, in order to promote Government access to  
 17 commercial information technology, the restriction on pur-  
 18 chasing nondomestic products set forth in the Buy Amer-  
 19 ican Act (41 U.S.C. 10a) and the prohibition on acquiring  
 20 noneligible foreign products under section 302(a)(1) of the  
 21 Trade Agreements Act of 1979 (Public Law 96–39; 19  
 22 U.S.C. 2512(a)(1)), shall not apply to the Federal Govern-  
 23 ment’s acquisition of commercial item information tech-  
 24 nology (as those terms are defined in section 5002 of the  
 25 Clinger-Cohen Act of 1996 (40 U.S.C. 1401)).

1 (b) DEFINITION.—Section 5002(3)(B) of the Clinger-  
2 Cohen Act of 1996 (40 U.S.C. 1401(3)(B)) is amended  
3 by inserting “(including imaging peripherals, input, out-  
4 put, and storage devices necessary for security and surveil-  
5 lance)” after “ancillary equipment”.

6 **SEC. 502. AUTHORIZATION FOR ACQUISITION OF INFORMA-**  
7 **TION TECHNOLOGY BY STATE AND LOCAL**  
8 **GOVERNMENTS THROUGH FEDERAL SUPPLY**  
9 **SCHEDULES.**

10 (a) AUTHORITY TO USE CERTAIN SUPPLY SCHED-  
11 ULES.—Section 201(b) of the Federal Property and Ad-  
12 ministrative Services Act of 1949 (40 U.S.C. 481(b)) is  
13 amended by adding at the end the following new para-  
14 graph:

15 “(4)(A) The Administrator may provide for the use  
16 by State or local governments of Federal supply schedules  
17 of the General Services Administration for automated data  
18 processing equipment (including firmware), software, sup-  
19 plies, support equipment, and services (as contained in  
20 Federal supply classification code group 70).

21 “(B) In any case of the use by a State or local gov-  
22 ernment of a Federal supply schedule pursuant to sub-  
23 paragraph (A), participation by a firm that sells to the  
24 Federal Government through the supply schedule shall be

1 voluntary with respect to a sale to the State or local gov-  
 2 ernment through such supply schedule.

3 “(C) As used in this paragraph, the term ‘State or  
 4 local government’ includes any State, local, regional, or  
 5 tribal government, or any instrumentality thereof (includ-  
 6 ing any accredited public school district or public edu-  
 7 cational institution).”.

8 (b) PROCEDURES.—Not later than 30 days after the  
 9 date of the enactment of this Act, the Administrator of  
 10 General Services shall establish procedures to implement  
 11 section 201(b)(4) of the Federal Property and Administra-  
 12 tive Services Act of 1949 (as added by subsection (a)).

13 (c) REPORT.—Not later than December 31, 2004, the  
 14 Administrator shall submit to the Committee on Govern-  
 15 ment Reform of the House of Representatives and the  
 16 Committee on Governmental Affairs of the Senate a report  
 17 on the implementation and effects of the amendment made  
 18 by subsection (a).

19 **SEC. 503. CERTAIN RESEARCH AND DEVELOPMENT BY CI-**  
 20 **VILIAN AGENCIES.**

21 (a) AUTHORITY.—Title III of the Federal Property  
 22 and Administrative Services Act of 1949 (41 U.S.C. 251  
 23 et seq.) is further amended by adding at the end the fol-  
 24 lowing new section:



1 **“SEC. 319. RESEARCH AND DEVELOPMENT TO FACILITATE**  
2 **DEFENSE AGAINST, OR RECOVERY FROM,**  
3 **TERRORISM OR NUCLEAR, BIOLOGICAL,**  
4 **CHEMICAL, RADIOLOGICAL, OR TECHNO-**  
5 **LOGICAL ATTACK.**

6 “(a) **AUTHORITY.**—(1) The head of an executive  
7 agency may engage in basic research, applied research, ad-  
8 vanced research, and development projects that—

9 “(A) are necessary to the responsibilities of  
10 such official’s executive agency in the field of re-  
11 search and development; and

12 “(B) have the potential to facilitate defense  
13 against, or recovery from, terrorism or nuclear, bio-  
14 logical, chemical, radiological, or technological at-  
15 tack.

16 “(2) To engage in projects authorized under para-  
17 graph (1), the head of an executive agency may exercise  
18 the same authority (subject to the same restrictions and  
19 conditions) as the Secretary of Defense may exercise  
20 under sections 2358 and 2371 of title 10, United States  
21 Code, except for subsections (b), (f), and (g) of such sec-  
22 tion 2371.

23 “(3) The head of an executive agency may exercise  
24 authority under this subsection only if authorized by the  
25 Director of the Office of Management and Budget to do  
26 so.

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

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

11       (b) CLERICAL AMENDMENT.—The table of contents  
 12 in section 1(b) of such Act is further amended by adding  
 13 at the end the following new item:

“Sec. 319. Research and development to facilitate defense against, or recovery from, terrorism or nuclear, biological, chemical, or radiological, or technological attack.”.

14   **SEC. 504. AUTHORITY FOR CARRYING OUT CERTAIN PRO-**  
 15                           **TOTYPE PROJECTS.**

16       (a) IN GENERAL.—The head of an executive agency  
 17 designated by the Director of the Office of Management  
 18 and Budget to do so may, under the authority of section  
 19 319 of the Federal Property and Administrative Services  
 20 Act of 1949 (as added by section 503), carry out prototype  
 21 projects that meet the requirements of subparagraphs (A)  
 22 and (B) of subsection (a)(1) of such section in accordance  
 23 with the same requirements and conditions as are provided  
 24 for carrying out prototype projects under section 845 of

1 the National Defense Authorization Act for Fiscal Year  
 2 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

3 (b) CONFORMING AUTHORITY.—In the application of  
 4 the requirements and conditions of section 845 of the Na-  
 5 tional Defense Authorization Act for Fiscal Year 1994  
 6 (Public Law 103–160; 10 U.S.C. 2371 note) to the admin-  
 7 istration of authority under subsection (a)—

8 (1) subsection (c) of such section shall apply  
 9 with respect to prototype projects carried out under  
 10 this subsection; and

11 (2) the Director of the Office of Management  
 12 and Budget shall perform the function of the Sec-  
 13 retary of Defense under subsection (d) of such sec-  
 14 tion.

## 15 **TITLE VI—INFLATIONARY** 16 **ADJUSTMENTS**

### 17 **SEC. 601. SIMPLIFIED ACQUISITION THRESHOLD INFLA-** 18 **TION ADJUSTMENT.**

19 The Administrator of the Office of Federal Procure-  
 20 ment Policy may adjust the simplified acquisition thresh-  
 21 old (as defined in section 4(11) of the Office of Federal  
 22 Procurement Policy Act (41 U.S.C. 403(11))) every three  
 23 years to account for changes in inflation.

