

109TH CONGRESS
1ST SESSION

H. R. 3838

To establish the Independent Commission to Prevent Fraud and Abuse in the Response to Hurricane Katrina, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2005

Mr. WAXMAN (for himself, Ms. PELOSI, Mr. HOYER, Mr. OBEY, Mr. THOMPSON of Mississippi, Mr. DINGELL, Mr. CONYERS, Mr. RANGEL, Mr. FRANK of Massachusetts, Mr. LANTOS, Ms. SLAUGHTER, Ms. DELAURO, Mr. EMANUEL, Mrs. MALONEY, Mr. OWENS, Mr. CUMMINGS, Ms. NORTON, Ms. WATSON, and Mr. LYNCH) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committees on Transportation and Infrastructure, Energy and Commerce, and 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

A BILL

To establish the Independent Commission to Prevent Fraud and Abuse in the Response to Hurricane Katrina, 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 “Hurricane Katrina Ac-
5 countability and Contracting Reform Act”.

1 SEC. 2. TABLE OF CONTENTS.

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

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—INDEPENDENT COMMISSION TO PREVENT FRAUD AND ABUSE IN THE RESPONSE TO HURRICANE KATRINA

- Sec. 101. Establishment of Anti-Fraud Commission.
- Sec. 102. Duties.
- Sec. 103. Composition of Commission.
- Sec. 104. Powers of Commission.
- Sec. 105. Staff of Commission.
- Sec. 106. Compensation and travel expenses.
- Sec. 107. Security clearances for Commission members and staff.
- Sec. 108. Reports of Commission; termination.
- Sec. 109. Termination.
- Sec. 110. Funding.

TITLE II—CLEAN CONTRACTING FOR HURRICANE KATRINA RELIEF AND RECOVERY

Subtitle A—Transparency and Accountability

- Sec. 201. Public availability of contract award information.
- Sec. 202. Disclosure of Government contractor overcharges.
- Sec. 203. Provision of information to Congress.

Subtitle B—Prevention of Abusive Contracting Practices

- Sec. 211. Prohibition on award of monopoly contracts.
- Sec. 212. Competition in multiple award contracts.
- Sec. 213. Prohibition on contractor conflicts of interest.
- Sec. 214. Closing the revolving door.
- Sec. 215. Repeal of \$250,000 micropurchase threshold.

Subtitle C—General Provisions

- Sec. 221. Definition of Hurricane Katrina-related contract.

1 **TITLE I—INDEPENDENT COM-**
2 **MISSION TO PREVENT FRAUD**
3 **AND ABUSE IN THE RE-**
4 **SPONSE TO HURRICANE**
5 **KATRINA**

6 **SEC. 101. ESTABLISHMENT OF ANTI-FRAUD COMMISSION.**

7 There is established in the legislative branch the
8 Independent Commission to Prevent Fraud and Abuse in
9 the Response to Hurricane Katrina (in this title referred
10 to as the “Commission”).

11 **SEC. 102. DUTIES.**

12 (a) INVESTIGATION.—The Commission shall conduct
13 a full, complete, independent, and impartial investigation
14 of—

15 (1) Federal Government contracting relating to
16 Hurricane Katrina recovery, relief, and reconstruc-
17 tion, to prevent waste, fraud, and abuse; and

18 (2) allegations of price gouging or profiteering
19 relating to Hurricane Katrina recovery, relief, or re-
20 construction.

21 (b) SPECIFIC REQUIREMENTS.—

22 (1) The investigation of the matters described
23 in subsection (a)(1) shall include, at a minimum, the
24 following:

1 (A) Review of how Federal contracts, sub-
2 contracts, grants, and cooperative agreements
3 relating to Hurricane Katrina recovery, relief,
4 and reconstruction are awarded, to determine
5 whether the Federal Government has complied
6 with competition requirements and utilized the
7 appropriate contract type.

8 (B) Review of whether the awards of Fed-
9 eral contracts, subcontracts, grants, and cooper-
10 ative agreements relating to Hurricane Katrina
11 recovery, relief, and reconstruction are based on
12 merit as opposed to relationships between
13 awardees and Federal Government officials.

14 (C) Real-time review of spending under
15 Federal contracts, subcontracts, grants, and co-
16 operative agreements for Hurricane Katrina re-
17 covery, relief, and reconstruction to determine
18 whether wasteful spending, poor contract man-
19 agement, or other abuses are occurring.

20 (D) Review of auditing and other oversight
21 procedures to ensure accountability of contrac-
22 tors, subcontractors, and government officials.

23 (E) Review of the inclusion and utilization
24 of small and local businesses through contracts,
25 subcontracts, or otherwise.

1 (F) Review of Federal acquisitions per-
2 sonnel overseeing contracts, subcontracts,
3 grants, and cooperative agreements for Hurri-
4 cane Katrina recovery, relief, and reconstruc-
5 tion to assess whether there are sufficient Fed-
6 eral acquisitions personnel with appropriate
7 qualifications and training for the hurricane re-
8 sponse effort.

9 (G) Review of transactions relating to
10 Hurricane Katrina relief, recovery, and recon-
11 struction that are paid for by government
12 issued credit cards.

13 (2) The investigation of the matters described
14 in subsection (a)(2) shall include, at a minimum, a
15 review of activity in the petroleum and natural gas
16 markets in the aftermath of the hurricane and op-
17 portunities for market manipulation or price gouging
18 at each point of commerce in bringing petroleum
19 and natural gas to market, including exploration, de-
20 velopment, production, refining, distribution, com-
21 modities transactions, and retail sales.

22 (c) ASSESSMENT, ANALYSIS, AND EVALUATION.—

23 During the course of its investigation, the Commission
24 shall assess, analyze, and evaluate relevant persons, poli-
25 cies, procedures, contracts, subcontracts, grants, coopera-

1 tive agreements, reports, and events, including, at a min-
2 imum, the following:

3 (1) The Department of Homeland Security, in-
4 cluding the Federal Emergency Management Agen-
5 cy.

6 (2) The Department of Defense.

7 (3) The Army Corps of Engineers.

8 (4) Other Federal agencies that award or over-
9 see contracts, subcontracts, grants, or cooperative
10 agreements for Hurricane Katrina recovery, relief,
11 or reconstruction.

12 (5) The approval process for contracts, sub-
13 contracts, grants, and cooperative agreements in the
14 Federal agencies listed in paragraphs (1) through
15 (4).

16 (6) Communications between private contrac-
17 tors, their representatives, and Federal Government
18 officials concerning potential or existing contracts or
19 subcontracts for Hurricane Katrina relief, recovery,
20 or reconstruction.

21 (7) Actual cost figures for transactions relating
22 to contracts, subcontracts, grants, and cooperative
23 agreements or paid for by government issued credit
24 cards, for Hurricane Katrina relief, recovery, or re-
25 construction.

1 (8) Pricing policies of individual companies in
2 the petroleum and natural gas industries, actual cost
3 figures for fuel and natural gas transactions, and in-
4 formation regarding decisions by companies to re-
5 duce or expand refining capacity.

6 **SEC. 103. COMPOSITION OF COMMISSION.**

7 (a) MEMBERS.—The Commission shall be composed
8 of 10 members, of whom—

9 (1) 1 member shall be appointed by the Presi-
10 dent;

11 (2) 1 member shall be jointly appointed by the
12 minority leader of the Senate and the minority lead-
13 er of the House of Representatives;

14 (3) 2 members shall be appointed by the major-
15 ity leader of the Senate;

16 (4) 2 members shall be appointed by the Speak-
17 er of the House of Representatives;

18 (5) 2 members shall be appointed by the minor-
19 ity leader of the Senate; and

20 (6) 2 members shall be appointed by the minor-
21 ity leader of the House of Representatives.

22 (b) QUALIFICATIONS; INITIAL MEETING.—

23 (1) NONGOVERNMENTAL APPOINTEES.—An in-
24 dividual appointed to the Commission may not be an

1 officer or employee of the Federal Government or
2 any State or local government.

3 (2) OTHER QUALIFICATIONS.—Individuals ap-
4 pointed to the Commission should be prominent
5 United States citizens, with national recognition and
6 significant depth of experience in such professions as
7 governmental service, public administration, govern-
8 ment contracting, economics, emergency response,
9 and energy policy.

10 (3) DEADLINE FOR APPOINTMENT.—All mem-
11 bers of the Commission shall be appointed within 21
12 days following the date of the enactment of this Act.

13 (4) CHAIRMAN AND VICE CHAIRMAN.—The
14 chairman and vice chairman of the Commission shall
15 be elected by a majority vote of the members.

16 (5) MEETINGS.—The Commission shall meet
17 and begin the operations of the Commission as soon
18 as practicable. After its initial meeting, the Commis-
19 sion shall meet upon the call of the chairman or a
20 majority of its members.

21 (c) QUORUM; VACANCIES.—Six members of the Com-
22 mission shall constitute a quorum. Any vacancy in the
23 Commission shall not affect its powers, but shall be filled
24 in the same manner in which the original appointment was
25 made.

1 (d) CONFLICTS OF INTEREST.—

2 (1) FINANCIAL DISCLOSURE.—Each member
3 appointed to the Commission shall submit a finan-
4 cial disclosure report pursuant to the Ethics in Gov-
5 ernment Act of 1978, notwithstanding the minimum
6 required rate of compensation or time period em-
7 ployed.

8 (2) INDEPENDENCE FROM SUBJECTS OF INVES-
9 TIGATIONS.—Each member appointed to the Com-
10 mission shall be independent of any agency, indi-
11 vidual, or institution that may be the subject of in-
12 vestigation by the Commission.

13 **SEC. 104. POWERS OF COMMISSION.**

14 (a) IN GENERAL.—

15 (1) HEARINGS AND EVIDENCE.—The Commis-
16 sion or, on the authority of the Commission, any
17 subcommittee or member thereof, may, for the pur-
18 pose of carrying out this title—

19 (A) hold such hearings and sit and act at
20 such times and places, take such testimony, re-
21 ceive such evidence, administer such oaths; and

22 (B) subject to paragraph (2)(A), require,
23 by subpoena or otherwise, the attendance and
24 testimony of such witnesses and the production

1 of such books, records, correspondence, memo-
2 randa, papers, and documents,
3 as the Commission or such designated subcommittee
4 or designated member may determine advisable.

5 (2) SUBPOENAS.—

6 (A) ISSUANCE.—

7 (i) IN GENERAL.—A subpoena may be
8 issued under this subsection only—

9 (I) by the agreement of the
10 chairman and the vice chairman; or

11 (II) by the affirmative vote of 6
12 members of the Commission.

13 (ii) SIGNATURE.—Subject to clause
14 (i), subpoenas issued under this subsection
15 may be issued under the signature of the
16 chairman or any member designated by a
17 majority of the Commission, and may be
18 served by any person designated by the
19 chairman or by a member designated by a
20 majority of the Commission.

21 (B) ENFORCEMENT.—

22 (i) IN GENERAL.—In the case of con-
23 tumacy or failure to obey a subpoena
24 issued under this subsection, the United
25 States district court for the judicial district

1 in which the subpoenaed person resides, is
2 served, or may be found, or where the sub-
3 poena is returnable, may issue an order re-
4 quiring such person to appear at any des-
5 ignated place to testify or to produce docu-
6 mentary or other evidence. Any failure to
7 obey the order of the court may be pun-
8 ished by the court as a contempt of that
9 court.

10 (ii) ADDITIONAL ENFORCEMENT.—In
11 the case of any failure of any witness to
12 comply with any subpoena or to testify
13 when summoned under authority of this
14 subsection, the Commission may, by major-
15 ity vote, certify a statement of fact consti-
16 tuting such failure to the appropriate
17 United States attorney, who may bring the
18 matter before the grand jury for its action,
19 under the same statutory authority and
20 procedures as if the United States attorney
21 had received a certification under sections
22 102 through 104 of the Revised Statutes
23 of the United States (2 U.S.C. 192
24 through 194).

1 (3) SCOPE.—In carrying out its duties under
2 this Act, the Commission may examine the actions
3 and representations of the current Administration as
4 well as prior Administrations.

5 (b) CONTRACTING.—The Commission may, to such
6 extent and in such amounts as are provided in appropria-
7 tion Acts, enter into contracts to enable the Commission
8 to discharge its duties of this Act.

9 (c) INFORMATION FROM FEDERAL AGENCIES.—

10 (1) IN GENERAL.—The Commission may secure
11 directly from any executive department, bureau,
12 agency, board, commission, office, independent es-
13 tablishment, or instrumentality of the Federal Gov-
14 ernment, information, suggestions, estimates, and
15 statistics for the purposes of this Act. Each depart-
16 ment, bureau, agency, board, commission, office,
17 independent establishment, or instrumentality shall
18 furnish such information, suggestions, estimates,
19 and statistics directly to the Commission, upon re-
20 quest made by the chairman, the chairman of any
21 subcommittee created by a majority of the Commis-
22 sion, or any member designated by a majority of the
23 Commission.

24 (2) RECEIPT, HANDLING, STORAGE, AND DIS-
25 SEMINATION.—Information shall be received, han-

1 dled, stored, and disseminated by members of the
2 Commission and its staff consistent with all applica-
3 ble statutes, regulations, and Executive orders.

4 (d) ASSISTANCE FROM FEDERAL AGENCIES.—

5 (1) GENERAL SERVICES ADMINISTRATION.—

6 The Administrator of General Services shall provide
7 to the Commission on a reimbursable basis adminis-
8 trative support and other services for the perform-
9 ance of the Commission's functions.

10 (2) OTHER DEPARTMENTS AND AGENCIES.—In

11 addition to the assistance prescribed in paragraph
12 (1), departments and agencies of the United States
13 may provide to the Commission such services, funds,
14 facilities, staff, and other support services as they
15 may determine advisable and as may be authorized
16 by law.

17 (e) GIFTS.—The Commission may accept, use, and
18 dispose of gifts or donations of services or property.

19 (f) POSTAL SERVICES.—The Commission may use
20 the United States mails in the same manner and under
21 the same conditions as departments and agencies of the
22 United States.

23 **SEC. 105. STAFF OF COMMISSION.**

24 (a) IN GENERAL.—

1 (1) APPOINTMENT AND COMPENSATION.—The
2 chairman and the vice chairman jointly, in accord-
3 ance with rules agreed upon by the Commission,
4 may appoint and fix the compensation of a staff di-
5 rector and such other personnel as may be necessary
6 to enable the Commission to carry out its functions,
7 without regard to the provisions of title 5, United
8 States Code, governing appointments in the competi-
9 tive service, and without regard to the provisions of
10 chapter 51 and subchapter III of chapter 53 of such
11 title relating to classification and General Schedule
12 pay rates, except that no rate of pay fixed under this
13 subsection may exceed the equivalent of that payable
14 for a position at level V of the Executive Schedule
15 under section 5316 of title 5, United States Code.

16 (2) PERSONNEL AS FEDERAL EMPLOYEES.—

17 (A) IN GENERAL.—The staff director and
18 any personnel of the Commission who are em-
19 ployees shall be employees under section 2105
20 of title 5, United States Code, for purposes of
21 chapters 63, 81, 83, 84, 85, 87, 89, and 90 of
22 that title.

23 (B) MEMBERS OF COMMISSION.—Subpara-
24 graph (A) shall not be construed to apply to
25 members of the Commission.

1 (b) DETAILEES.—Any Federal Government employee
2 may be detailed to the Commission without reimbursement
3 from the Commission, and such detailee shall retain the
4 rights, status, and privileges of his or her regular employ-
5 ment without interruption.

6 (c) CONSULTANT SERVICES.—The Commission is au-
7 thorized to procure the services of experts and consultants
8 in accordance with section 3109 of title 5, United States
9 Code, but at rates not to exceed the daily rate paid a per-
10 son occupying a position at level IV of the Executive
11 Schedule under section 5315 of title 5, United States
12 Code.

13 **SEC. 106. COMPENSATION AND TRAVEL EXPENSES.**

14 (a) COMPENSATION.—Each member of the Commis-
15 sion may be compensated at a rate not to exceed the daily
16 equivalent of the annual rate of basic pay in effect for
17 a position at level IV of the Executive Schedule under sec-
18 tion 5315 of title 5, United States Code, for each day dur-
19 ing which that member is engaged in the actual perform-
20 ance of the duties of the Commission.

21 (b) TRAVEL EXPENSES.—While away from their
22 homes or regular places of business in the performance
23 of services for the Commission, members of the Commis-
24 sion shall be allowed travel expenses, including per diem
25 in lieu of subsistence, in the same manner as persons em-

1 played intermittently in the Government service are al-
2 lowed expenses under section 5703(b) of title 5, United
3 States Code.

4 **SEC. 107. SECURITY CLEARANCES FOR COMMISSION MEM-**
5 **BERS AND STAFF.**

6 (a) IN GENERAL.—Subject to subsection (b), the ap-
7 propriate Federal agencies or departments shall cooperate
8 with the Commission in expeditiously providing to the
9 Commission members and staff appropriate security clear-
10 ances to the extent possible pursuant to existing proce-
11 dures and requirements.

12 (b) EXCEPTION.—No person shall be provided with
13 access to classified information under this title without the
14 appropriate required security clearance access.

15 **SEC. 108. REPORTS OF COMMISSION; TERMINATION.**

16 (a) EVIDENCE OF ABUSES.—The Commission shall
17 report to Congress and to the President any evidence of
18 waste, fraud, market manipulation, or other abuses it
19 finds, in a timely and ongoing manner.

20 (b) INTERIM REPORTS.—The Commission may sub-
21 mit to Congress and the President interim reports con-
22 taining such findings, conclusions, and recommendations
23 for corrective measures as have been agreed to by a major-
24 ity of Commission members.

1 (c) FINAL REPORT.—Prior to the termination of the
2 Commission, the Commission shall submit to Congress
3 and the President a final report containing such findings,
4 conclusions, and recommendations for corrective measures
5 as have been agreed to by a majority of Commission mem-
6 bers.

7 **SEC. 109. TERMINATION.**

8 The Commission, and all the authorities of this Act,
9 shall terminate 10 months after 80 percent of the funds
10 appropriated by the 109th Congress for Hurricane
11 Katrina recovery, relief, and reconstruction have been ex-
12 pended.

13 **SEC. 110. FUNDING.**

14 (a) AUTHORIZATION OF APPROPRIATIONS.—There is
15 authorized to be appropriated funds not to exceed
16 \$5,000,000 for purposes of the activities of the Commis-
17 sion under this Act.

18 (b) DURATION OF AVAILABILITY.—Amounts made
19 available to the Commission under subsection (a) shall re-
20 main available until the termination of the Commission.

1 **TITLE II—CLEAN CONTRACTING**
2 **FOR HURRICANE KATRINA**
3 **RELIEF AND RECOVERY**
4 **Subtitle A—Transparency and**
5 **Accountability**

6 **SEC. 201. PUBLIC AVAILABILITY OF CONTRACT AWARD IN-**
7 **FORMATION.**

8 (a) REQUIREMENT.—Not later than 14 days after the
9 award of a Hurricane Katrina-related contract by an execu-
10 tive agency, the head of the executive agency shall make
11 publicly available, including by posting on the Internet in
12 a searchable database, the following information with re-
13 spect to the contract:

- 14 (1) The name and address of the contractor.
15 (2) The date of award of the contract.
16 (3) The number of offers received in response
17 to the solicitation.
18 (4) The total amount of the contract.
19 (5) The contract type.
20 (6) The items, quantities, and any stated unit
21 price of items or services to be procured under the
22 contract.
23 (7) With respect to a procurement carried out
24 using procedures other than competitive proce-
25 dures—

1 (A) the authority for using such proce-
 2 dures under section 303(c) of title III of the
 3 Federal Property and Administrative Services
 4 Act of 1949 (41 U.S.C.253(c)) or section
 5 2304(c) of title 10, United States Code; and

6 (B) the number of sources from which bids
 7 or proposals were solicited.

8 (8) The general reasons for selecting the con-
 9 tractor.

10 (b) DEFINITION.—In this section, the term “execu-
 11 tive agency” has the meaning provided in section 4 of the
 12 Office of Federal Procurement Policy Act (41 U.S.C.
 13 403).

14 (c) EFFECTIVE DATE.—This section shall apply to
 15 contracts entered into more than 90 days after the date
 16 of the enactment of this Act.

17 **SEC. 202. DISCLOSURE OF GOVERNMENT CONTRACTOR**
 18 **OVERCHARGES.**

19 (a) QUARTERLY REPORT TO CONGRESS.—The head
 20 of each Federal agency or department shall submit to the
 21 chairman and ranking member of each committee de-
 22 scribed in subsection (b) on a quarterly basis a report that
 23 includes the following:

24 (1) A list of audits or other reports issued dur-
 25 ing the applicable quarter that describe contractor

1 costs in excess of \$1,000,000 that have been identi-
2 fied as unjustified, unsupported, questioned, or un-
3 reasonable under any Hurricane Katrina-related
4 contract, task or delivery order under a Hurricane
5 Katrina-related task or delivery order contract, or
6 subcontract under a Hurricane Katrina-related con-
7 tract.

8 (2) The specific amounts of costs identified as
9 unjustified, unsupported, questioned, or unreason-
10 able and the percentage of their total value of the
11 contract, task or delivery order, or subcontract.

12 (3) A list of audits or other reports issued dur-
13 ing the applicable quarter that identify significant or
14 substantial deficiencies in any business system of
15 any contractor under any such contract, task or de-
16 livery order, or subcontract.

17 (b) COMMITTEES.—The report described in sub-
18 section (a) shall be submitted to the Committee on Gov-
19 ernment Reform of the House of Representatives, the
20 Committee on Homeland Security and Governmental Af-
21 fairs of the Senate, and other committees of jurisdiction.

22 **SEC. 203. PROVISION OF INFORMATION TO CONGRESS.**

23 (a) PROVISION OF INFORMATION TO CONGRESS.—
24 Upon request of the chairman or ranking member of a
25 committee described in subsection (b), the head of an exec-

1 utive agency shall provide, with respect to any Hurricane
2 Katrina-related contract or task or delivery order under
3 a Hurricane Katrina-related task or delivery order con-
4 tract entered into by the agency, within 14 days after re-
5 ceipt of the request, unredacted copies of any documents
6 relating to the contract or task or delivery order, including
7 any documents required to be maintained in the con-
8 tracting office contract file, the contract administration of-
9 fice contract file, and the paying office contract file pursu-
10 ant to subpart 4.8 of the Federal Acquisition Regulation,
11 including—

- 12 (1) copies of the contract and all modifications;
- 13 (2) orders issued under the contract;
- 14 (3) justifications and approvals;
- 15 (4) any government estimate of contract price;
- 16 (5) source selection documentation;
- 17 (6) cost or price analysis;
- 18 (7) audit reports;
- 19 (8) justification for type of contract;
- 20 (9) authority for deviations from regulations,
21 statutory requirements, or other restrictions;
- 22 (10) bills, invoices, vouchers, and supporting
23 documents; and
- 24 (11) records of payments or receipts.

1 (b) COMMITTEES.—The committees referred to in
2 subsection (a) are the following:

3 (1) The Committee on Homeland Security and
4 Governmental Affairs of the Senate and the Com-
5 mittee on Government Reform of the House of Rep-
6 resentatives.

7 (2) The Committees on Appropriations of the
8 Senate and House of Representatives.

9 (3) Each committee that the head of the execu-
10 tive agency determines has legislative jurisdiction for
11 the operations of the department or agency to which
12 the contract, task or delivery order, or other infor-
13 mation referred to in subsection (a) relates.

14 **Subtitle B—Prevention of Abusive**
15 **Contracting Practices**

16 **SEC. 211. PROHIBITION ON AWARD OF MONOPOLY CON-**
17 **TRACTS.**

18 (a) PROHIBITION.—The Federal Government may
19 not enter into a Hurricane Katrina-related contract if the
20 contract is a monopoly contract.

21 (b) MONOPOLY CONTRACT.—In this section, the term
22 “monopoly contract” means a task or delivery order con-
23 tract (as defined in section 303K of the Federal Property
24 and Administrative Services Act of 1949 (41 U.S.C. 253k)
25 or section 2304d of title 10, United States Code) that is

1 a Hurricane Katrina-related contract in an amount esti-
2 mated to exceed \$10,000,000 (including all options)
3 awarded to a single contractor.

4 (c) EXCEPTION.—

5 (1) IN GENERAL.—Notwithstanding subsection

6 (a), a monopoly contract may be awarded if—

7 (A) the head of the agency—

8 (i) makes a determination described in
9 paragraph (2); and

10 (ii) justifies the determination in writ-
11 ing and certifies the accuracy and com-
12 pleteness of the justification;

13 (B) the justification is approved as de-
14 scribed in 303(f)(1)(B) of the Federal Property
15 and Administrative Services Act of 1949 (41
16 U.S.C. 253(f)(1)(B)) or section 2304(f)(1)(B)
17 of title 10, United States Code; and

18 (C) a statement describing the determina-
19 tion, justification, and approval are submitted
20 to the chairman and ranking member of the
21 committees described in paragraph (3).

22 (2) A determination described in this paragraph
23 is a determination in writing that—

24 (A) for one of the reasons set forth in sec-
25 tion 303(c) of the Federal Property and Admin-

1 administrative Services Act of 1949 (41 U.S.C.
2 253(c)) or section 2304(c) of title 10, United
3 States Code, a single task or delivery order con-
4 tract is in the best interest of the Federal Gov-
5 ernment; or

6 (B) the task orders expected under the
7 contract are so integrally related that only a
8 single contractor can reasonably perform the
9 work.

10 (3) The committees described in this paragraph
11 are the Committee on Government Reform of the
12 House of Representatives, the Committee on Home-
13 land Security and Governmental Affairs of the Sen-
14 ate, the Committees on Appropriations of the House
15 of Representatives and the Senate, and other com-
16 mittees of jurisdiction.

17 (4) In the case of a determination described in
18 paragraph (2)(A) that is for the reason set forth in
19 section 303(c)(2) of the Federal Property and Ad-
20 ministrative Services Act of 1949 or section
21 2304(c)(2) of title 10, United States Code, the jus-
22 tification and approval required under paragraph (1)
23 may be made after a contract is awarded, but not
24 later than 30 days after the date of the award.

1 (d) MULTIPLE AWARDS.—This section applies to a
2 task order contract that is a Hurricane Katrina-related
3 contract for the procurement of advisory and assistance
4 services under section 303I of the Federal Property and
5 Administrative Services Act of 1949 (41 U.S.C. 253i) or
6 section 2304a of title 10, United States Code, notwith-
7 standing section 303I(e) of such Act or section 2304a(d)
8 of such title, respectively.

9 **SEC. 212. COMPETITION IN MULTIPLE AWARD CONTRACTS.**

10 (a) COMPETITION REQUIRED.—The Federal Govern-
11 ment shall use competition in the purchase of goods and
12 services pursuant to any Hurricane Katrina-related con-
13 tract that is a multiple award contract in accordance with
14 this section.

15 (b) SPECIFIC REQUIREMENTS.—Each individual pur-
16 chase of goods or services by an executive agency or mili-
17 tary department in excess of \$100,000 that is made under
18 a Hurricane Katrina-related contract that is a multiple
19 award contract shall be made on a competitive basis unless
20 a contracting officer of the executive agency or military
21 department concerned—

22 (1) waives the requirement on the basis of a de-
23 termination that—

24 (A)(i) in the case of a contract entered
25 into by an executive agency, one of the cir-

1 cumstances described in paragraphs (1)
2 through (4) of section 303J(b) of the Federal
3 Property and Administrative Services Act of
4 1949 (41 U.S.C. 253j(b)) applies to such indi-
5 vidual purchase; or

6 (ii) in the case of a contract entered into
7 by a military department, one of the cir-
8 cumstances described in paragraphs (1)
9 through (4) of section 2304c(b) of title 10,
10 United States Code, applies to such individual
11 purchase; or

12 (B) a statute expressly authorizes or re-
13 quires that the purchase be made from a speci-
14 fied source; and

15 (2) justifies the determination in writing.

16 (c) DEFINITIONS.—In this section:

17 (1) The term “individual purchase” means a
18 task order, delivery order, or other purchase.

19 (2) The term “multiple award contract”
20 means—

21 (A) a contract that is entered into by the
22 Administrator of General Services under the
23 multiple award schedule program referred to in
24 section 309(b)(3) of the Federal Property and
25 Administrative Services Act of 1949 (41 U.S.C.

1 259(b)(3)) or section 2302(2)(C) of title 10,
2 United States Code;

3 (B) a multiple award task order contract
4 that is entered into under the authority of sec-
5 tions 2304a through 2304d of title 10, United
6 States Code, or sections 303H through 303K of
7 the Federal Property and Administrative Serv-
8 ices Act of 1949 (41 U.S.C. 253h through
9 253k); and

10 (C) any other indefinite delivery, indefinite
11 quantity contract that is entered into by the
12 head of an executive agency with two or more
13 sources pursuant to the same solicitation.

14 **SEC. 213. PROHIBITION ON CONTRACTOR CONFLICTS OF**
15 **INTEREST.**

16 (a) PROHIBITION.—An agency may not enter into a
17 Hurricane Katrina-related contract for the performance of
18 a function relating to contract oversight with any con-
19 tractor with a conflict of interest.

20 (b) DEFINITIONS.—In this section:

21 (1) The term “function relating to contract
22 oversight” includes the following specific functions:

23 (A) Evaluation of a contractor’s perform-
24 ance.

25 (B) Evaluation of contract proposals.

1 (C) Development of statements of work.

2 (D) Services in support of acquisition plan-
3 ning.

4 (E) Contract management.

5 (2) The term “conflict of interest” includes
6 cases in which the contractor performing the func-
7 tion relating to contract oversight, or any related en-
8 tity—

9 (A) is performing all or some of the work
10 to be overseen;

11 (B) has a separate ongoing business rela-
12 tionship, such as a joint venture or contract,
13 with any of the contractors to be overseen;

14 (C) would be placed in a position to affect
15 the value or performance of work it or any re-
16 lated entity is doing under any other Govern-
17 ment contract;

18 (D) has a reverse role with the contractor
19 to be overseen under one or more separate Gov-
20 ernment contracts; and

21 (E) has some other relationship with the
22 contractor to be overseen that could reasonably
23 appear to bias the contractor’s judgment.

24 (3) The term “related entity”, with respect to
25 a contractor, means any subsidiary, parent, affiliate,

1 joint venture, or other entity related to the con-
 2 tractor.

3 (c) CONTRACTS RELATING TO INHERENTLY GOV-
 4 ERNMENTAL FUNCTIONS.—An agency may not enter into
 5 a Hurricane Katrina-related contract for the performance
 6 of inherently governmental functions for contract over-
 7 sight (as described in subpart 7.5 of part 7 of the Federal
 8 Acquisition Regulation).

9 **SEC. 214. CLOSING THE REVOLVING DOOR.**

10 (a) STRENGTHENING THE PROHIBITION ON FORMER
 11 OFFICIAL’S ACCEPTANCE OF COMPENSATION FROM CON-
 12 TRACTOR.—

13 (1) Paragraph (1) of section 27(d) of the Office
 14 of Federal Procurement Policy Act (41 U.S.C.
 15 423(d)(1)) is amended—

16 (A) in subparagraph (C), by striking “per-
 17 sonally made for the Federal agency—” and in-
 18 serting “participated personally and substan-
 19 tially in—”; and

20 (B) in the text preceding subparagraph
 21 (A)—

22 (i) by striking “one year” and insert-
 23 ing “two years”; and

24 (ii) by striking “or consultant” and
 25 inserting “consultant, lawyer, or lobbyist”.

1 (2) Paragraph (2) of section 27(d) of such Act
2 (41 U.S.C. 423(d)(2)) is amended to read as follows:

3 “(2) For purposes of paragraph (1), the term ‘con-
4 tractor’ includes any division, affiliate, subsidiary, parent,
5 joint venture, or other related entity of the contractor.”.

6 (b) PREVENTION OF FORMER EMPLOYEES OF PRI-
7 VATE CONTRACTORS FROM AWARDING GOVERNMENT
8 CONTRACTS TO THEIR FORMER EMPLOYERS.—Section 27
9 of such Act (41 U.S.C. 423) is amended by adding at the
10 end the following new subsection:

11 “(i) PROHIBITION ON INVOLVEMENT BY CERTAIN
12 FORMER CONTRACTOR EMPLOYEES IN PROCURE-
13 MENTS.—A former employee of a nongovernment entity
14 who becomes an employee of the Federal Government shall
15 not be personally and substantially involved with any Fed-
16 eral agency procurement involving the employee’s former
17 nongovernment entity employer, including any division, af-
18 filiate, subsidiary, parent, joint venture, or other related
19 entity of the former employer, for a period of 5 years be-
20 ginning on the date the employee leaves the employ of the
21 nongovernment entity. In this subsection the term ‘non-
22 government entity’ means any entity that is not part of
23 the Federal Government or any State or local govern-
24 ment.”.

1 (c) REQUIREMENT FOR FEDERAL PROCUREMENT
2 OFFICERS TO DISCLOSE JOB OFFERS MADE TO REL-
3 ATIVES.—Section 27(c)(1) of such Act (41 U.S.C.
4 423(c)(1)) is amended by inserting after “that official”
5 the following: “or for a relative of that official (as defined
6 in section 3110 of title 5, United States Code),”.

7 (d) REVISED PENALTIES.—Paragraph (1) of section
8 27(e) of such Act (41 U.S.C. (e)(1)) is amended to read
9 as follows:

10 “(1) CRIMINAL PENALTIES.—Whoever engages
11 in conduct constituting a violation of—

12 “(A) subsection (a) or (b) for the purpose
13 of either—

14 “(i) exchanging the information cov-
15 ered by such subsection for anything of
16 value, or

17 “(ii) obtaining or giving anyone a
18 competitive advantage in the award of a
19 Federal agency procurement contract; or

20 “(B) subsection (c) or (d);

21 shall be imprisoned for not more than 5 years or
22 fined as provided under title 18, United States Code,
23 or both.”.

1 **SEC. 215. REPEAL OF \$250,000 MICROPURCHASE THRESH-**
 2 **OLD.**

3 Section 101 of the Second Emergency Supplemental
 4 Appropriations Act to Meet Immediate Needs Arising
 5 From the Consequences of Hurricane Katrina, 2005 (Pub-
 6 lic Law 109–62) is amended—

7 (1) by striking paragraph (2); and

8 (2)(A) by striking “operations—

9 “(1) the emergency”;

10 (B) by inserting in lieu of the matter struck by
 11 subparagraph (A) “operations, the emergency”; and

12 (C) by striking “; and” and inserting a period.

13 **Subtitle C—General Provisions**

14 **SEC. 221. DEFINITION OF HURRICANE KATRINA-RELATED**
 15 **CONTRACT.**

16 In this title, the term “Hurricane Katrina-related
 17 contract” or “Hurricane Katrina-related task or delivery
 18 order contract” means a contract for the procurement of
 19 property or services to be used in support of Hurricane
 20 Katrina rescue, relief, recovery, or reconstruction oper-
 21 ations. The term includes any subcontracts under such a
 22 contract.

○