

the Supreme Court ruling on affirmative action programs. These programs have been in place to assist struggling minority and women-owned businesses all over the country, people who have been denied opportunities in the past by law and who are still being denied opportunities in fact. They have been denied the opportunities to participate in this great country. We must not let the Republican angry-white-male syndrome keep others from full participation in the American dream.

We must continue to reach out to the disadvantaged, not only to blacks, but to women and also to those who have physical disabilities.

The current Supreme Court decision has turned back the clock of time. We must reverse this in order to continue the few decades of progress this country has made in the area of diversity, equality, and justice for all.

Mr. Speaker, this Nation cannot afford to go back down the road to discrimination.

WHAT ARE DETAILS OF PRESIDENT'S BUDGET PLANS?

(Mr. CHRYSLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CHRYSLER. Mr. Speaker, I would like to welcome Mr. Clinton to the balanced budget battle. You know, we are looking forward to the details of his plans. All we know at this time is that 90 percent of its cuts, \$190 billion, occur in the last year of its 10-year plan. The freshmen sent a letter to the leadership and said that we would not vote for any budget that did not put this country on the glidepath to a balanced budget by the year 2002. The leadership then sent a letter to the President and asked him if he would give us his vision, where he would like the money spent, and give us a budget that would balance. We asked for that to be done before he went to Russia, and in fact we received only the budget that gave us \$200 billion deficits for as far as the eye could see.

Well I guess at this point he has wet his finger and seen which way the political winds are blowing, and can we really take him seriously when in fact it was him and his people that worked in the Senate to kill the balanced budget amendment by getting six Democrats that had always voted for a balanced budget in the Senate to vote against the balanced budget amendment.

PRESIDENT'S BUDGET EFFORTS ARE LATE

(Mr. HAYWORTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYWORTH. Mr. Speaker, this morning the silence is deafening. Only 2 members of the new minority, with over 200 members in their ranks, only 2

members of the new minority stood here in the well of the House to champion the President's effort to balance the budget. Let me again repeat what the ranking Democrat on the House Committee on Appropriations told both the Associated Press and ABC News:

I think most of us learned some time ago that if you don't like the President's position on a particular issue, you simply need to wait a few weeks . . . If you can follow this White House on the budget, you're a whole lot smarter than I am.

So spoke the gentleman from Wisconsin [Mr. OBEY]. Small wonder then that I refer to my friends on this side of the aisle as guardians of the old order. We welcome the President's efforts, but as our own leadership said, this train left the station, and he is making a vain attempt now to latch on to the caboose.

PERMISSION FOR SUNDRY COM- MITTEES AND THEIR SUB- COMMITTEES TO SIT TODAY DURING 5-MINUTE RULE

Mr. HAYWORTH. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit today while the House is meeting in the Committee of the Whole House under the 5-minute rule.

Committee on Agriculture; Committee on Banking and Financial Services; Committee on Commerce; Committee on Economic and Educational Opportunities; Committee on Government Reform and Oversight; Committee on House Oversight; Committee on Resources; Committee on Science; and Committee on Transportation and Infrastructure.

It is my understanding that the minority has been consulted and that there is no objection to these requests.

The SPEAKER pro tempore (Mr. BUNNING). Is there objection to the request of the gentleman from Arizona?

Mr. McNULTY. Mr. Speaker, reserving the right to object, the gentleman is correct, the minority has been consulted. There is no objection.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

MODIFICATION TO DELLUMS AMENDMENT NUMBER 2 TO H.R. 1530, NATIONAL DEFENSE AU- THORIZATION ACT FOR FISCAL YEAR 1996

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that during further consideration of the bill, H.R. 1530, pursuant to House Resolution 164, my amendment at the desk which corrects a drafting error be substituted for and considered in lieu of my amendment No. 2 now printed in subpart D of part 1 of House Report 104-136.

The SPEAKER pro tempore. The Clerk will report the modification.

The Clerk read as follows:

Modification to amendment number 2 in subpart D of part 1 of House Report 104-136 offered by Mr. DELLUMS:

Page 38, line 18, insert "(a) IN GENERAL.—" before "Of the amounts".

Page 38, after line 22, insert the following:

(b) REDUCTION.—The amounts provided in subsection (a) and in section 201(4) are each hereby reduced by \$628,000,000.

(c) NATIONAL MISSILE DEFENSE AMOUNT.—Of the amount provided in subsection (a) (as reduced by subsection (b)), \$371,000,000 is for the National Missile Defense program.

At the end of title IV (page 161, after line 3), insert the following new section:

SEC. 433. ADDITIONAL MILITARY PERSONNEL AU- THORIZATION.

There is hereby authorized to be appropriated to the Department of Defense for fiscal year 1996 for military personnel the sum of \$628,000,000. Of the amount appropriated pursuant to such authorization—

(1) \$150,000,000 (or the full amount appropriated, whichever is less) shall be for increased payments for the Variable Housing Allowance program under section 403a of title 37, United States Code, by reason of the amendments made by section 604; and

(2) any remaining amount shall be allocated, in such manner as the Secretary of Defense prescribes, for payments for the Variable Housing Allowance, the Basic Allowance for Quarters, and the Basic Allowance for Subsistence in such a manner as to minimize the need for enlisted personnel to apply for food stamps.

Page 280, beginning on line 19, strike out "beginning after June 30, 1996" and inserting in lieu thereof "after September 1995".

Mr. DELLUMS (during the reading). Mr. Speaker, I ask unanimous consent that the modification be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from California?

There was no objection.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1996

The SPEAKER pro tempore. Pursuant to House Resolution 164 and rule XXIII the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 1530.

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IN THE COMMITTEE OF THE WHOLE

The CHAIRMAN. Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 1530) to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1996, and for other purposes, with Mr. EMERSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole House rose on Tuesday, June 13, 1995, the amendments en bloc offered by the gentleman from South Carolina [Mr. SPENCE] had been disposed of.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. The Chair takes this opportunity to remind all staff who now enjoy the privilege of the floor that they are to desist from audible conversations and are not to manifest any approval or disapproval of proceedings.

It is now in order to consider the amendment printed in subpart (c) of part 1 of the report.

AMENDMENT, AS MODIFIED, OFFERED BY MR. CLINGER

Mr. CLINGER. Mr. Chairman, pursuant to section 4(a) of House Resolution 164, I offer an amendment in modified form.

The CHAIRMAN. The Clerk will designate the amendment, as modified.

The text of the amendment, as modified is as follows:

Amendment, as modified, offered by Mr. CLINGER:

After the heading for title VIII (page 323, after line 15), insert the following (and conform the table of contents accordingly):

Subtitle A—Competition

SEC. 301. IMPROVEMENT OF COMPETITION REQUIREMENTS.

(a) ARMED SERVICES ACQUISITIONS.—(1) Section 2304 of title 10, United States Code, is amended to read as follows:

“§2304. Contracts: competition requirements

“(a) MAXIMUM PRACTICABLE COMPETITION.—Except as provided in subsections (b), (c), and (e) and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

“(1) shall obtain maximum practicable competition through the use of competitive procedures consistent with the need to efficiently fulfill the Government's requirements in accordance with this chapter and the Federal Acquisition Regulation; and

“(2) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

“(b) EXCLUSION OF PARTICULAR SOURCE.—The head of an agency may provide for the procurement of property or services covered by this chapter using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service. The Federal Acquisition Regulation shall set forth the circumstances under which a particular source may be excluded pursuant to this subsection.

“(c) EXCLUSION OF CONCERNS OTHER THAN SMALL BUSINESS CONCERNS AND CERTAIN OTHER ENTITIES.—The head of an agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding concerns other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644) and concerns other than small business concerns, historically Black colleges and universities, and minority institutions in furtherance of section 2323 of this title.

“(d) PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.—Procedures other than competitive procedures may be used for purchasing property and services only when the use of competitive procedures is not feasible or appropriate. Each procurement using procedures other than competitive procedures (other than a procurement for commercial items or a procurement in an amount not greater than the simplified acquisition threshold) shall be justified in writing and

approved in accordance with the Federal Acquisition Regulation.

“(e) SIMPLIFIED PROCEDURES.—(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold.

“(2) A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified procedures required by paragraph (1).

“(3) In using simplified procedures, the head of an agency shall ensure that competition is obtained to the extent practicable consistent with the particular Government requirement.

“(f) CERTAIN CONTRACTS.—For the purposes of the following laws, purchases or contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed-bid procedures:

“(1) The Walsh-Healey Act (41 U.S.C. 35–45).

“(2) The Act entitled “An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes”, approved March 3, 1931 (commonly referred to as the “Davis-Bacon Act”) (40 U.S.C. 276a–276a–5).”

(2) Chapter 137 of title 10, United States Code, is amended by inserting before section 2305 a new section—

(A) the designation and heading for which is as follows:

“§2304f. Merit-based selection”; and

(B) the text of which consists of subsection (j) of section 2304 of such title, as in effect on the day before the date of the enactment of this Act, modified—

(i) by striking out the subsection designation and the subsection heading;

(ii) in paragraphs (2)(A), (3), and (4), by striking out “subsection” and inserting in lieu thereof “section” each place it appears;

(iii) in paragraph (2)(C), by striking out “paragraph (1)” and inserting in lieu thereof “subsection (a)”;

(iv) by redesignating paragraphs (1), (2), (3), and (4) as subsections (a), (b), (c), and (d), respectively; and

(v) in subsection (b) (as so redesignated), by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively.

(3) The table of sections at the beginning of such chapter is amended by inserting before the item relating section 2305 the following new item:

“2304f. Merit-based selection.”.

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended to read as follows:

“SEC. 303. CONTRACTS: COMPETITION REQUIREMENTS.

“(a) MAXIMUM PRACTICABLE COMPETITION.—Except as provided in subsections (b), (c), and (e) and except in the case of procurement procedures otherwise expressly authorized by statute, an executive agency in conducting a procurement for property or services—

“(1) shall obtain maximum practicable competition through the use of competitive procedures consistent with the need to efficiently fulfill the Government's requirements in accordance with this chapter and the Federal Acquisition Regulation; and

“(2) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

“(b) EXCLUSION OF PARTICULAR SOURCE.—An executive agency may provide for the procurement of property or services covered by this chapter using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service. The Federal Acquisition Regulation shall set forth the circumstances under which a particular source may be excluded pursuant to this subsection.

“(c) EXCLUSION OF CONCERNS OTHER THAN SMALL BUSINESS CONCERNS AND CERTAIN OTHER ENTITIES.—An executive agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding concerns other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644) and concerns other than small business concerns, historically Black colleges and universities, and minority institutions in furtherance of section 7102 of the Federal Acquisition Streamlining Act of 1994 (15 U.S.C. 644 note).

“(d) PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.—Procedures other than competitive procedures may be used for purchasing property and services only when the use of competitive procedures is not feasible or appropriate. Each procurement using procedures other than competitive procedures (other than a procurement for commercial items or a procurement in an amount not greater than the simplified acquisition threshold) shall be justified in writing and approved in accordance with the Federal Acquisition Regulation.

“(e) SIMPLIFIED PROCEDURES.—(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold.

“(2)(A) The Administrator of General Services shall prescribe regulations that provide special simplified procedures for acquisitions of leasehold interests in real property at rental rates that do not exceed the simplified acquisition threshold.

“(B) For purposes of subparagraph (A), the rental rate or rates under a multiyear lease do not exceed the simplified acquisition threshold if the average annual amount of the rent payable for the period of the lease does not exceed the simplified acquisition threshold.

“(3) A proposed purchase or contract or for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified procedures required by paragraph (1).

“(4) In using simplified procedures, an executive agency shall ensure that competition is obtained to the extent practicable consistent with the particular Government requirement.”.

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

(A) the designation and heading for which is as follows:

“SEC. 303M. MERIT-BASED SELECTION.”; and

(B) the text of which consists of subsection (h) of section 303 of such Act, as in effect on the day before the date of the enactment of this Act, modified—

(i) by striking out the subsection designation and the subsection heading;

(ii) in paragraphs (2)(A), (3), and (4), by striking out “subsection” and inserting in lieu thereof “section” each place it appears;

(iii) in paragraph (2)(C), by striking out "paragraph (1)" and inserting in lieu thereof "subsection (a)";

(iv) by redesignating paragraphs (1), (2), (3), and (4) as subsections (a), (b), (c), and (d), respectively; and

(v) in subsection (b) (as so redesignated), by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively.

(3) The table of contents for the Federal Property and Administrative Services Act of 1949 (contained in section 1(b)) is amended—

(A) by striking out the item relating to section 303 and inserting in lieu thereof the following:

"Sec. 303. Contracts: competition requirements."; and

(B) by inserting after the item relating to section 303L the following new item:

"Sec. 303M. Merit-based selection.".

(c) REVISIONS TO PROCUREMENT NOTICE PROVISIONS.—Section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) is amended in subsection (b)(4)—

(1) by striking out "all"; and

(2) by striking out "(as appropriate) which shall be considered by the agency".

(d) REPEAL OF DUPLICATIVE PROVISIONS.—Section 8 of the Small Business Act (15 U.S.C. 637) is amended—

(1) by striking out subsections (e), (f), (g), (h), and (i); and

(2) by redesignating subsection (j) as subsection (e).

(e) EXECUTIVE AGENCY RESPONSIBILITIES.—

(1) Section 16 of the Office of Federal Procurement Policy Act (41 U.S.C. 414) is amended—

(A) by striking out "achieve" in the matter preceding paragraph (1) and inserting in lieu thereof "promote"; and

(B) by amending paragraph (1) to read as follows:

"(1) to implement maximum practicable competition in the procurement of property or services by the executive agency by establishing policies, procedures, and practices that are consistent with the need to efficiently fulfill the Government's requirements";.

(2) Section 20 of such Act (41 U.S.C. 418) is amended in subsection (a)(2)(A) by striking out "serving in a position authorized for such executive agency on the date of enactment of the Competition in Contracting Act of 1984".

SEC. 802. DEFINITION RELATING TO COMPETITION REQUIREMENTS.

(a) DEFINITION.—Paragraph (6) of section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403) is amended to read as follows:

"(6) The term 'maximum practicable competition', when used with respect to a procurement, means that the maximum number of responsible or verified sources, consistent with the particular Government requirement, are permitted to submit sealed bids or competitive proposals on the procurement.".

(b) CONFORMING AMENDMENTS.—

(1) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—The Office of Federal Procurement Policy Act is further amended—

(A) in section 4(5), by striking out "full and open" and inserting "maximum practicable"; and

(B) in section 20, by striking out "full and open" and inserting in lieu thereof "maximum practicable" each place it appears in subsection (b)(1), subsection (b)(3)(A), subsection (b)(4)(C), and subsection (c);

(2) TITLE 10.—Title 10, United States Code, is amended—

(A) in section 2302(2), by striking out "pursuant to full and open competition" and inserting in lieu thereof "using maximum practicable competition";

(B) in section 2323(e)(3), by striking out "less than full and open" and inserting in lieu thereof "procedures other than"; and

(C) in each of the following sections, by striking out "full and open" and inserting in lieu thereof "maximum practicable":

(i) Section 2302(3).

(ii) Section 2305(a)(1)(A)(i).

(iii) Section 2305(a)(1)(A)(iii).

(iv) Section 2323(i)(3)(A).

(3) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended—

(A) in section 309(b), by striking out "pursuant to full and open competition" and inserting in lieu thereof "using maximum practicable competition"; and

(B) in each of the following sections, by striking out "full and open" and inserting in lieu thereof "maximum practicable":

(i) Section 303A(a)(1)(A).

(ii) Section 303A(a)(1)(C).

(iii) Section 304B(a)(2)(B).

(iv) Section 309(c)(4).

(4) OTHER LAWS.—(A) Section 7102 of the Federal Acquisition Streamlining Act of 1994 (108 Stat. 3367; 15 U.S.C. 644 note) is amended in subsection (a)(1)(A) by striking out "less than full and open competition" and inserting in lieu thereof "procedures other than competitive procedures".

(B) Section 15(l) of the Small Business Act (15 U.S.C. 644(l)) is amended in paragraph (1) and in paragraph (2)(A) by striking out "full and open" and inserting in lieu thereof "maximum practicable" each place it appears.

SEC. 803. CONTRACT SOLICITATION AMENDMENTS.

(a) ARMED SERVICES ACQUISITIONS.—Section 2305 of title 10, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by striking out subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B) and in that subparagraph by striking out "subparagraphs (A) and (B)" and inserting in lieu thereof "subparagraph (A)"; and

(2) in subsection (b)(4)(A)(i), by striking out "all" and inserting in lieu thereof "the".

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section 303A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a) is amended—

(A) by striking out paragraph (2); and

(B) by redesignating paragraph (3) as paragraph (2) and in that paragraph by striking out "paragraphs (1) and (2)" and inserting in lieu thereof "paragraph (1)".

(2) Section 303B(d)(1)(A) of such Act (41 U.S.C. 253b) is amended by striking out "all" and inserting in lieu thereof "the".

SEC. 804. PREAWARD DEBRIEFINGS.

(a) ARMED SERVICES ACQUISITIONS.—Section 2305(b) of title 10, United States Code, is amended—

(1) by striking out subparagraph (F) of paragraph (5);

(2) by redesignating paragraph (6) as paragraph (8); and

(3) by inserting after paragraph (5) the following new paragraphs:

"(6)(A) When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes such an offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within three days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award. The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable and may refuse the request for a debriefing if it is not in the

best interests of the Government to conduct a debriefing at that time.

"(B) The contracting officer is required to debrief an excluded offeror in accordance with paragraph (5) of this section only if that offeror requested and was refused a preaward debriefing under subparagraph (A) of this paragraph.

"(C) The debriefing conducted under this subsection shall include—

"(i) the executive agency's evaluation of the significant elements in the offeror's offer;

"(ii) a summary of the rationale for the offeror's exclusion; and

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

"(D) The debriefing conducted pursuant to this subsection may not disclose the number or identity of other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors' proposals.

"(7) The contracting officer shall include a summary of any debriefing conducted under paragraph (5) or (6) in the contract file.".

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

(1) by striking out paragraph (6) of subsection (e);

(2) by redesignating subsections (f), (g), (h), and (i) as subsections (h), (i), (j), and (k), respectively; and

(3) by inserting after subsection (e) the following new subsections:

"(f)(1) When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes such an offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within 3 days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award. The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable and may refuse the request for a debriefing if it is not in the best interests of the Government to conduct a debriefing at that time.

"(2) The contracting officer is required to debrief an excluded offeror in accordance with subsection (e) of this section only if that offeror requested and was refused a preaward debriefing under paragraph (1) of this subsection.

"(3) The debriefing conducted under this subsection shall include—

"(A) the executive agency's evaluation of the significant elements in the offeror's offer;

"(B) a summary of the rationale for the offeror's exclusion; and

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

"(4) The debriefing conducted pursuant to this subsection may not disclose the number or identity of other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors' proposals.

"(g) The contracting officer shall include a summary of the any debriefing conducted under subsection (e) or (f) in the contract file.".

SEC. 805. CONTRACT TYPES.

(a) ARMED SERVICES ACQUISITIONS.—(1) Section 2306 of title 10, United States Code, is amended—

(A) by inserting before the period at the end of subsection (a) the following: “, based on market conditions, established commercial practice (if any) for the product or service being acquired, and sound business judgment”;

(B) by striking out subsections (b), (d), (e), (f), and (h); and

(C) by redesignating subsection (g) as subsection (b).

(2) The heading of such section is amended to read as follows:

“§2306. Contract types”.

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254) is amended—

(A) by inserting before the period at the end of the first sentence of subsection (a) the following: “, based on market conditions, established commercial practice (if any) for the product or service being acquired, and sound business judgment”;

(B) by striking out “Every contract award” in the second sentence of subsection (a) and all that follows through the end of the section.

(2) The heading of such section is amended to read as follows:

“SEC. 304. CONTRACT TYPES”.

(c) CONFORMING REPEALS.—(1) Sections 4540, 7212, and 9540 of title 10, United States Code, are repealed.

(2) The table of sections at the beginning of chapter 433 of such title is amended by striking out the item relating to section 4540.

(3) The table of sections at the beginning of chapter 631 of such title is amended by striking out the item relating to section 7212.

(4) The table of sections at the beginning of chapter 933 of such title is amended by striking out the item relating to section 9540.

(d) CIVIL WORKS AUTHORITY.—(1) Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

“§2332. Contracts for architectural and engineering services and construction design

“The Secretary of Defense and the Secretaries of the military departments may enter into contracts for architectural and engineering services in connection with a military construction or family housing project or for other Department of Defense or military department purposes. Such contracts shall be awarded in accordance with the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.).”

(2) The table of sections at the beginning of chapter 137 of such title is amended by adding at the end the following new item:

“2332. Contracts for architectural and engineering services and construction design.”

(3) Section 2855 of such title is repealed. The table of sections at the beginning of chapter 169 of such title is amended by striking out the item relating to such section.

SEC. 806. CONTRACTOR PERFORMANCE.

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

“SEC. 35. CONTRACTOR PERFORMANCE.

“(a) VERIFICATION AUTHORIZED.—The Federal Acquisition Regulation shall provide a contractor verification system for the procurement of particular property or services that are procured by executive agencies on a repetitive basis. Under the system, the head of an executive agency—

“(1) shall use competitive procedures to verify contractors as eligible for contracts to furnish such property or services; and

“(2) shall award verifications on the basis of the relative efficiency and effectiveness of the business practices, level of quality, and demonstrated contract performance of the responding contractors with regard to the particular property or services.

“(b) PROCUREMENT FROM VERIFIED CONTRACTORS.—The Federal Acquisition Regulation shall provide procedures under which the head of an executive agency may enter into a contract for a procurement of property or services referred to in subsection (a) on the basis of a competition among contractors verified with respect to such property or services pursuant to that subsection.

“(c) TERMINATION OF VERIFICATION.—The Federal Acquisition Regulation shall provide procedures under which the head of an executive agency—

“(1) may provide for the termination of a verification awarded a contractor under this section upon the expiration of a period specified by the head of an executive agency; and

“(2) may revoke a verification awarded a contractor under this section upon a determination that the quality of performance of the contractor does not meet standards applied by the head of the executive agency as of the time of the revocation decision.”

(b) REPEALS.—Section 2319 of title 10, United States Code, is repealed. Section 303C of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253c) is repealed.

(c) CLERICAL AMENDMENTS.—(1) The table of contents for the Office of Federal Procurement Policy Act (contained in section 1(b)) is amended by adding at the end the following new item:

“Sec. 35. Contractor performance.”

(2) The table of sections at the beginning of chapter 137 of title 10, United States Code, is amended by striking out the item relating to section 2319.

(3) The table of contents for the Federal Property and Administrative Services Act of 1949 (contained in section 1(b)) is amended by striking out the item relating to section 303C.

Subtitle B—Commercial Items**SEC. 811. COMMERCIAL ITEM EXCEPTION TO REQUIREMENT FOR COST OR PRICING DATA AND INFORMATION LIMITATIONS.**

(a) ARMED SERVICES ACQUISITIONS.—(1) Subsections (b), (c), and (d) of section 2306a of title 10, United States Code, are amended to read as follows:

“(b) EXCEPTIONS.—

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

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

“(i) adequate price competition; or

“(ii) prices set by law or regulation;

“(B) for the acquisition of a commercial item; or

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

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

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

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

“(c) AUTHORITY TO REQUIRE COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.—

(1) Subject to paragraph (2), when certified cost or pricing data are not required to be submitted by subsection (a) for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of the procuring activity shall justify in writing the reason for such requirement.

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

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

(d) LIMITATIONS ON OTHER INFORMATION.—The Federal Acquisition Regulation shall include the following:

(1) Provisions concerning the types of information that contracting officers may consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost or pricing data are not required to be submitted under this section, including appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the proposed contract or subcontract for the procurement.

(2) Reasonable limitations on requests for sales data relating to commercial items.

(3) A requirement that a contracting officer shall, to the maximum extent practicable, limit the scope of any request for information relating to commercial items from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

(4) A statement that any information received relating to commercial items that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.”

(2) Section 2306a of such title is further amended—

(A) by striking out subsection (h); and

(B) by redesignating subsection (i) as subsection (h).

(3) Section 2375 of title 10, United States Code, is amended by striking out subsection (c).

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Subsections (b), (c) and (d) of section 304A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b) are amended to read as follows:

“(b) EXCEPTIONS.—

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

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

"(i) adequate price competition; or
 "(ii) prices set by law or regulation;
 "(B) for the acquisition of a commercial item; or

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

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

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

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

"(C) AUTHORITY TO REQUIRE COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.—(1) Subject to paragraph (2), when certified cost or pricing data are not required to be submitted by subsection (a) for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of the procuring activity shall justify in writing the reason for such requirement.

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

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

"(d) LIMITATIONS ON OTHER INFORMATION.—The Federal Acquisition Regulation shall include the following:

"(1) Provisions concerning the types of information that contracting officers may consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost or pricing data are not required to be submitted under this section, including appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the proposed contract or subcontract for the procurement.

"(2) Reasonable limitations on requests for sales data relating to commercial items.

"(3) A requirement that a contracting officer shall, to the maximum extent practicable, limit the scope of any request for information relating to commercial items from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

"(4) A statement that any information received relating to commercial items that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government."

(2) Section 304A of such Act is further amended—

(A) by striking out subsection (h); and
 (B) by redesignating subsection (i) as subsection (h).

SEC. 812. APPLICATION OF SIMPLIFIED PROCEDURES TO COMMERCIAL ITEMS.

(a) ARMED SERVICES ACQUISITIONS.—Section 2304(e) of title 10, United States Code, as added by section 801(a), is amended—

(1) in paragraph (1), by inserting after "special simplified procedures" the following: "for purchases of commercial items and"; and

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

"(4) The Federal Acquisition Regulation shall provide that, in the case of a purchase of commercial items in an amount greater than the simplified acquisition threshold, the head of an agency may not conduct the purchase on a sole source basis unless the need to do so is justified in writing and approved in accordance with the Federal Acquisition Regulation.

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303(e) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253), as added by section 801(b), is amended—

(1) in paragraph (1), by inserting after "special simplified procedures" the following: "for purchases of commercial items and"; and

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

"(5) The Federal Acquisition Regulation shall provide that, in the case of a purchase of commercial items in an amount greater than the simplified acquisition threshold, an executive agency may not conduct the purchase on a sole source basis unless the need to do so is justified in writing and approved in accordance with the Federal Acquisition Regulation."

(c) SIMPLIFIED NOTICE.—Section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) is amended in subsection (a)(5) (as redesignated by section 801(d))—

(1) by striking out "limited"; and
 (2) by inserting before "submission" the following: "issuance of solicitations and the".

SEC. 813. AMENDMENT TO DEFINITION OF COMMERCIAL ITEMS.

Section 4(12)(F) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)(F)) is amended by striking out "catalog".

SEC. 814. INAPPLICABILITY OF COST ACCOUNTING STANDARDS TO CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.

Subparagraph (B) of section 26(f)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)(2)) is amended—

(1) by striking out clause (i) and inserting in lieu thereof the following:

"(i) Contracts or subcontracts for the acquisition of commercial items."; and

(2) by striking out clause (iii).

Subtitle C—Additional Reform Provisions

Redesignate sections 801, 802, 803, 804, 805, 806, 807, and 808 as sections 821, 822, 823, 824, 825, 826, 827, and 828, respectively (and conform the table of contents accordingly).

Add at the end of title VIII (page 329, after line 13) the following (and conform the table of contents accordingly):

SEC. 829. GOVERNMENT RELIANCE ON THE PRIVATE SECTOR.

(a) GOVERNMENT RELIANCE ON THE PRIVATE SECTOR.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by inserting after section 16 the following new section:

"SEC. 17. GOVERNMENT RELIANCE ON THE PRIVATE SECTOR.

"It is the policy of the Federal Government to rely on the private sector to supply

the products and services the Federal Government needs."

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

"Sec. 17. Government reliance on the private sector."

SEC. 830. ELIMINATION OF CERTAIN CERTIFICATION REQUIREMENTS.

(a) ELIMINATION OF CERTAIN STATUTORY CERTIFICATION REQUIREMENTS.—(1)(A) Section 2410 of title 10, United States Code, is amended—

(i) in the heading, by striking out "certification"; and

(ii) in subsection (a)—

(I) in the heading, by striking out "CERTIFICATION";

(II) by striking out "unless" and all that follows through "that—" and inserting in lieu thereof "unless—"; and

(III) in paragraph (2), by striking out "to the best of that person's knowledge and belief".

(B) The item relating to section 2410 in the table of sections at the beginning of chapter 141 of such title is amended to read as follows:

"Sec. 2410. Requests for equitable adjustment or other relief."

(2) Section 2410b of title 10, United States Code, is amended in paragraph (2) by striking out "certification and".

(3) Section 1352(b)(2) of title 31, United States Code, is amended—

(A) by striking out subparagraph (C); and

(B) by inserting "and" after the semicolon at the end of subparagraph (A).

(4) Section 5152 of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701) is amended—

(A) in subsection (a)(1), by striking out "has certified to the contracting agency that it will" and inserting in lieu thereof "agrees to";

(B) in subsection (a)(2), by striking out "contract includes a certification by the individual" and inserting in lieu thereof "individual agrees"; and

(C) in subsection (b)(1)—

(i) by striking out subparagraph (A);

(ii) by redesignating subparagraph (B) as subparagraph (A) and in that subparagraph by striking out "such certification by failing to carry out"; and

(iii) by redesignating subparagraph (C) as subparagraph (B).

(b) ELIMINATION OF CERTAIN REGULATORY CERTIFICATION REQUIREMENTS.—

(1) CURRENT CERTIFICATION REQUIREMENTS.—Not later than 210 days after the date of the enactment of this Act, any certification required of contractors or offerors by the Federal Acquisition Regulation or an executive agency procurement regulation that is not specifically imposed by statute shall be removed by the Administrator for Federal Procurement Policy from the Federal Acquisition Regulation or such agency regulation unless—

(A) written justification for such certification is provided to the Administrator (i) by the Federal Acquisition Regulatory Council (in the case of a certification in the Federal Acquisition Regulation), or (ii) by the head of an executive agency (in the case of a certification in an executive agency procurement regulation); and

(B) the Administrator approves in writing the retention of such certification.

(2) FUTURE CERTIFICATION REQUIREMENTS.—

(A) Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425) is amended—

(i) by amending the heading to read as follows:

"SEC. 22. CONTRACT CLAUSES AND CERTIFICATIONS."

(ii) by inserting "(a) NONSTANDARD CONTRACT CLAUSES.—" before "The Federal Acquisition"; and

(iii) by adding at the end the following new subsection:

"(b) PROHIBITION ON CERTIFICATION REQUIREMENTS.—A requirement for a certification by a contractor or offeror may not be included in the Federal Acquisition Regulation or an executive agency procurement regulation unless—

"(1) the certification is specifically imposed by statute; or

"(2) written justification for such certification is provided to the Administrator for Federal Procurement Policy (A) by the Federal Acquisition Regulatory Council (in the case of a certification in the Federal Acquisition Regulation), or (B) the head of an executive agency (in the case of a certification in an executive agency procurement regulation), and the Administrator approves in writing the inclusion of such certification."

(B) The item relating to section 29 in the table of contents for the Office of Federal Procurement Policy Act (contained in section 1(b)) (41 U.S.C. 401 note) is amended to read as follows:

"Sec. 29. Contract clauses and certifications."

SEC. 831. AMENDMENT TO COMMENCEMENT AND EXPIRATION OF AUTHORITY TO CONDUCT CERTAIN TESTS OF PROCUREMENT PROCEDURES.

Subsection (j) of section 5061 of the Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 413 note) is amended to read as follows:

"(j) COMMENCEMENT AND EXPIRATION OF AUTHORITY.—The authority to conduct a test under subsection (a) in an agency and to award contracts under such a test shall take effect on August 1, 1995, and shall expire on August 1, 2000. Contracts entered into before such authority expires in an agency pursuant to a test shall remain in effect, notwithstanding the expiration of the authority to conduct the test under this section."

SEC. 832. PROCUREMENT INTEGRITY.

(a) AMENDMENT OF PROCUREMENT INTEGRITY PROVISION.—Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is amended to read as follows:

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

"(a) PROHIBITION ON DISCLOSING PROCUREMENT INFORMATION.—(1) A person described in paragraph (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

"(2) Paragraph (1) applies to any person who—

"(A) is a present or former officer or employee of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

"(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

"(b) PROHIBITION ON OBTAINING PROCUREMENT INFORMATION.—A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

"(c) PROHIBITION ON DISCLOSING OR OBTAINING PROCUREMENT INFORMATION IN CONNEC-

TION WITH A PROTEST.—(1) A person shall not, other than as provided by law, knowingly violate the terms of a protective order described in paragraph (2) by disclosing or obtaining contractor bid or proposal information or source selection information related to the procurement contract concerned.

"(2) Paragraph (1) applies to any protective order issued by the the United States Board of Contract Appeals in connection with a protest against the award or proposed award of a Federal agency procurement contract.

"(d) PENALTIES AND ADMINISTRATIVE ACTIONS.—

"(1) CRIMINAL PENALTIES.—

"(A) Whoever engages in conduct constituting an offense under subsection (a), (b), or (c) shall be imprisoned for not more than one year or fined as provided under title 18, United States Code, or both.

"(B) Whoever engages in conduct constituting an offense under subsection (a), (b), or (c) for the purpose of either—

"(i) exchanging the information covered by such subsection for anything of value, or

"(ii) obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract,

shall be imprisoned for not more than 15 years or fined as provided under title 18, United States Code, or both.

"(2) CIVIL PENALTIES.—The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under subsection (a), (b), or (c). Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty. An individual who engages in such conduct is subject to a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation which the individual received or offered for the prohibited conduct. An organization that engages in such conduct is subject to a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation which the organization received or offered for the prohibited conduct.

"(3) ADMINISTRATIVE ACTIONS.—(A) If a Federal agency receives information that a contractor or a person has engaged in conduct constituting an offense under subsection (a), (b), or (c), the Federal agency shall consider taking one or more of the following actions, as appropriate:

"(i) Cancellation of the Federal agency procurement, if a contract has not yet been awarded.

"(ii) Rescission of a contract with respect to which—

"(I) the contractor or someone acting for the contractor has been convicted for an offense under subsection (a), (b), or (c), or

"(II) the head of the agency that awarded the contract has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

"(iii) Initiation of suspension or debarment proceedings for the protection of the Government in accordance with procedures in the Federal Acquisition Regulation.

"(iv) Initiation of adverse personnel action, pursuant to the procedures in chapter 75 of title 5, United States Code, or other applicable law or regulation.

"(B) If a Federal agency rescinds a contract pursuant to subparagraph (A)(ii), the United States is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

"(C) For purposes of any suspension or debarment proceedings initiated pursuant to subparagraph (A)(iii), engaging in conduct

constituting an offense under subsection (a), (b), or (c) affects the present responsibility of a Government contractor or subcontractor.

"(e) DEFINITIONS.—As used in this section:

"(1) The term 'contractor bid or proposal information' means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

"(A) Cost or pricing data (as defined by section 2306a(h) of title 10, United States Code, with respect to procurements subject to that section, and section 304A(h) of Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b(h), with respect to procurements subject to that section).

"(B) Indirect costs and direct labor rates.

"(C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

"(D) Information marked by the contractor as 'contractor bid or proposal information', in accordance with applicable law or regulation.

"(2) The term 'source selection information' means any of the following information prepared for use by a Federal agency for the purpose of evaluating a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

"(A) Bid prices submitted in response to a Federal agency solicitation for sealed bids, or lists of those bid prices before public bid opening.

"(B) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.

"(C) Source selection plans.

"(D) Technical evaluation plans.

"(E) Technical evaluations of proposals.

"(F) Cost or price evaluations of proposals.

"(G) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

"(H) Rankings of bids, proposals, or competitors.

"(I) The reports and evaluations of source selection panels, boards, or advisory councils.

"(J) Other information marked as 'source selection information' based on a case-by-case determination by the head of the agency, his designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

"(3) The term 'Federal agency' has the meaning provided such term in section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

"(4) The term 'Federal agency procurement' means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds.

"(5) The term 'contracting officer' means a person who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to such a contract.

"(6) The term 'protest' means a written objection by an interested party to the award or proposed award of a Federal agency procurement contract, pursuant to title IV of the Federal Acquisition Reform Act of 1995.

"(f) LIMITATION ON PROTESTS.—No person may file a protest against the award or proposed award of a Federal agency procurement contract alleging an offense under subsection (a), (b), or (c), of this section, nor may the United States Board of Contract Appeals consider such an allegation in deciding a protest, unless that person reported to the Federal agency responsible for the procurement information that the person believed constituted evidence of the offense no later than 14 days after the person first discovered the possible offense.

"(g) SAVINGS PROVISIONS.—This section does not—

"(1) restrict the disclosure of information to, or its receipt by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

"(2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

"(3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency before contract award unless the Federal agency plans to resume the procurement;

"(4) prohibit individual meetings between a Federal agency employee and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;

"(5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;

"(6) authorize the withholding of information from, nor restrict its receipt by, any board of contract appeals of a Federal agency or the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

"(7) limit the applicability of any requirements, sanctions, contract penalties, and remedies established under any other law or regulation."

(b) REPEALS.—The following provisions of law are repealed:

(1) Sections 2397, 2397a, 2397b, and 2397c of title 10, United States Code.

(2) Section 33 of the Federal Energy Administration Act of 1974 (15 U.S.C. 789).

(3) Section 281 of title 18, United States Code.

(4) Subsection (c) of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428).

(5) The first section 19 of the Federal Non-nuclear Energy Research and Development Act of 1974 (42 U.S.C. 5918).

(c) CLERICAL AMENDMENTS.—

(1) The table of sections at the beginning of chapter 141 of title 10, United States Code, is amended by striking out the items relating to sections 2397, 2397a, 2397b, and 2397c.

(2) The table of sections at the beginning of chapter 15 of title 18, United States Code, is amended by striking out the item relating to section 281.

(3) Section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) is amended by redesignating subsections (d), (e), (f), and (g) as subsections (c), (d), (e), and (f), respectively.

SEC. 833. FURTHER ACQUISITION STREAMLINING PROVISIONS.

(a) PURPOSE OF OFFICE OF FEDERAL PROCUREMENT POLICY.—(1) Section 5(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 404) is amended to read as follows:

"(a) To promote economy, efficiency, and effectiveness in the procurement of property and services by the executive branch of the Federal Government, there shall be an Office of Federal Procurement Policy (hereinafter referred to as the 'Office') in the Office of Management and Budget to provide overall direction of Government-wide procurement policies, regulations, procedures, and forms for executive agencies."

(2) Sections 2 and 3 of such Act (41 U.S.C. 401 and 402) are repealed.

(b) REPEAL OF REPORT REQUIREMENT.—Section 8 of the Office of Federal Procurement Policy Act (41 U.S.C. 407) is repealed.

(c) REPEAL OF OBSOLETE PROVISIONS.—(1) Sections 10 and 11 of the Office of Federal Procurement Policy Act (41 U.S.C. 409 and 410) are repealed.

(d) CLERICAL AMENDMENTS.—The table of contents for the Office of Federal Procurement Policy Act (contained in section 1(b)) is amended by striking out the items relating to sections 2, 3, 8, 10, and 11.

SEC. 834. JUSTIFICATION OF MAJOR DEFENSE ACQUISITION PROGRAMS NOT MEETING GOALS.

Section 2220(b) of title 10, United States Code, is amended by adding at the end the following: "In addition, the Secretary shall include in such annual report a justification for the continuation of any program that—

"(1) is more than 50 percent over the cost goal established for the development, procurement, or operational phase of the program;

"(2) fails to achieve at least 50 percent of the performance capability goals established for the development, procurement, or operational phase of the program; or

"(3) is more than 50 percent behind schedule, as determined in accordance with the schedule goal established for the development, procurement, or operational phase of the program."

SEC. 835. ENHANCED PERFORMANCE INCENTIVES FOR ACQUISITION WORKFORCE.

(a) ARMED SERVICES ACQUISITIONS.—Subsection (b) of section 5001 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355; 108 Stat. 3350; 10 U.S.C. 2220 note) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by designating the second sentence as paragraph (2);

(3) by inserting "(1)" after "(b) ENHANCED SYSTEM OF PERFORMANCE INCENTIVES.—"; and

(4) by adding at the end the following:

"(3) The Secretary shall include in the enhanced system of incentives the following:

"(A) Pay bands.

"(B) Significant and material pay and promotion incentives to be awarded, and significant and material unfavorable personnel actions to be imposed, under the system exclusively, or primarily, on the basis of the contributions of personnel to the performance of the acquisition program in relation to cost goals, performance goals, and schedule goals.

"(C) Provisions for pay incentives and promotion incentives to be awarded under the system."

(b) CIVILIAN AGENCY ACQUISITIONS.—Subsection (c) of section 5051 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355; 108 Stat. 3351; 41 U.S.C. 263 note) is amended—

(1) by redesignating subparagraphs (A) and (B) of paragraph (2) as clauses (i) and (ii); respectively;

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(3) by inserting "(1)" after "(c) ENHANCED SYSTEM OF PERFORMANCE INCENTIVES.—"; and

(4) by adding at the end the following:

"(2) The Deputy Director shall include in the enhanced system of incentives under paragraph (1)(B) the following:

"(A) Pay bands.

"(B) Significant and material pay and promotion incentives to be awarded, and significant and material unfavorable personnel actions to be imposed, under the system exclusively, or primarily, on the basis of the contributions of personnel to the performance of the acquisition program in relation to cost goals, performance goals, and schedule goals.

"(C) Provisions for pay incentives and promotion incentives to be awarded under the system."

SEC. 836. RESULTS ORIENTED ACQUISITION PROGRAM CYCLE.

Section 5002(a) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355; 108 Stat. 3350) is amended—

(1) by inserting "(1)" before "to ensure"; and

(2) by striking out the period at the end and inserting in lieu thereof the following: ";

(2) to ensure that the regulations compress the time periods associated with developing, procuring, and making operational new systems; and (3) to ensure that Department of Defense directives relating to development and procurement of information systems (numbered in the 8000 series) and the Department of Defense directives numbered in the 5000 series are consolidated into one series of directives that is consistent with such compressed time periods."

SEC. 837. RAPID CONTRACTING GOAL.

(a) GOAL.—The Office of Federal Procurement Policy Act is amended by adding at the end the following new section:

"SEC. 35. RAPID CONTRACTING GOAL.

The Administrator for Federal Procurement Policy shall establish a goal of reducing by 50 percent the time necessary for executive agencies to acquire an item for the user of that item."

(b) CLERICAL AMENDMENT.—The table of contents for such Act, contained in section 1(b), is amended by adding at the end the following new item:

"Sec. 35. Rapid contracting goal."

SEC. 838. ENCOURAGEMENT OF MULTIYEAR CONTRACTING.

(a) ARMED SERVICES ACQUISITIONS.—Section 2306b(a) of title 10, United States Code, is amended in the matter preceding paragraph (1) by striking out "may" and inserting in lieu thereof "shall, to the maximum extent possible,"

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 304B(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c(a)) is amended in the matter preceding paragraph (1) by striking out "may" and inserting in lieu thereof "shall, to the maximum extent possible,"

SEC. 839. CONTRACTOR SHARE OF GAINS AND LOSSES FROM COST, SCHEDULE, AND PERFORMANCE EXPERIENCE.

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

"§ 2306c. Contractor share of gains and losses from cost, schedule, and performance experience

"The Federal Acquisition Regulation shall contain provisions to ensure that, for any cost-type contract or incentive-type contract, the contractor may be rewarded for contract performance exceeding the contract cost, schedule, or performance parameters to the benefit of the United States and may be penalized for failing to adhere to cost, schedule, or performance parameters to the detriment of the United States."

(2) The table of sections at the beginning of such chapter is amended by inserting after

the item relating to section 2306b the following new item:

“2306c. Contractor share of gains and losses from cost, schedule, and performance experience.”.

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by inserting after section 304C the following new section:

“SEC. 304D. CONTRACTOR SHARE OF GAINS AND LOSSES FROM COST, SCHEDULE, AND PERFORMANCE EXPERIENCE.”

“The Federal Acquisition Regulation shall contain provisions to ensure that, for any cost-type contract or incentive-type contract, the contractor may be rewarded for contract performance exceeding the contract cost, schedule, or performance parameters to the benefit of the United States and may be penalized for failing to adhere to cost, schedule, or performance parameters to the detriment of the United States.”.

(2) The table of contents for such Act, contained in section 1(b), is amended by inserting after the item relating to section 304C the following new item:

“Sec. 304D. Contractor share of gains and losses from cost, schedule, and performance experience.”.

SEC. 840. PHASE FUNDING OF DEFENSE ACQUISITION PROGRAMS.

Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

“§2221. Funding for results oriented acquisition program cycle

“Before initial funding is made available for the development, procurement, or operational phase of an acquisition program for which an authorization of appropriations is required by section 114 of this title, the Secretary of Defense shall submit to Congress information about the objectives and plans for the conduct of that phase and the funding requirements for the entire phase. The information shall identify the intended user of the system to be acquired under the program and shall include objective, quantifiable criteria for assessing the extent to which the objectives and goals determined pursuant to section 2435 of this title are achieved.”.

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

“2221. Funding for results oriented acquisition program cycle.”.

SEC. 841. IMPROVED DEPARTMENT OF DEFENSE CONTRACT PAYMENT PROCEDURES.

(a) REVIEW AND IMPROVEMENT OF PROCEDURES.—The Comptroller General of the United States shall review commercial practices regarding accounts payable and, considering the results of the review, develop standards for the Secretary of Defense to consider using for improving the contract payment procedures and financial management systems of the Department of Defense.

(b) GAO REPORT.—Not later than September 30, 1996, the Comptroller General shall submit to Congress a report containing the following matters:

(1) The weaknesses in the financial management processes of the Department of Defense.

(2) Deviations of the Department of Defense payment procedures and financial management systems from the standards developed pursuant to subsection (a), expressed quantitatively.

(3) The officials of the Department of Defense who are responsible for resolving the deviations.

SEC. 842. CONSIDERATION OF PAST PERFORMANCE IN ASSIGNMENT TO ACQUISITION POSITIONS.

(a) REQUIREMENT.—Section 1701(a) of title 10, United States Code, is amended by adding at the end the following: “The policies and procedures shall provide that education and training in acquisition matters, and past performance of acquisition responsibilities, are major factors in the selection of personnel for assignment to acquisition positions in the Department of Defense.”.

(b) PERFORMANCE REQUIREMENTS FOR ASSIGNMENT.—(1) Section 1723(a) of title 10, United States Code, is amended by inserting “, including requirements relating to demonstrated past performance of acquisition duties,” in the first sentence after “experience requirements”.

(2) Section 1724(a)(2) of such title is amended by inserting before the semicolon at the end the following: “and have demonstrated proficiency in the performance of acquisition duties in the contracting position or positions previously held”.

(3) Section 1735 of such title is amended—

(A) in subsection (b)—

(i) by striking out “and” at the end of paragraph (2);

(ii) by striking out the period at the end of paragraph (3) and inserting in lieu thereof “; and”;

(iii) by adding at the end the following:

“(4) must have demonstrated proficiency in the performance of acquisition duties.”;

(B) in subsection (c)—

(i) by striking out “and” at the end of paragraph (2);

(ii) by striking out the period at the end of paragraph (3) and inserting in lieu thereof “; and”;

(iii) by adding at the end the following:

“(4) must have demonstrated proficiency in the performance of acquisition duties.”;

(C) in subsection (d), by inserting before the period at the end the following: “, and have demonstrated proficiency in the performance of acquisition duties”;

(D) in subsection (e), by inserting before the period at the end the following: “, and have demonstrated proficiency in the performance of acquisition duties”.

SEC. 843. VALUE ENGINEERING FOR FEDERAL AGENCIES.

(a) USE OF VALUE ENGINEERING.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 837, is further amended by adding at the end the following new section:

“SEC. 37. VALUE ENGINEERING.

“(a) IN GENERAL.—Each executive agency shall establish and maintain effective value engineering procedures and processes.

“(b) THRESHOLD.—The procedures and processes established pursuant to subsection (a) shall be applied to those programs, projects, systems, and products of an executive agency that, in a ranking of all programs, projects, systems, and products of the agency according to greatest dollar value, are within the highest 20th percentile.

“(c) DEFINITION.—As used in this section, the term ‘value engineering’ means a team effort, performed by qualified agency or contractor personnel, directed at analyzing the functions of a program, project, system, product, item of equipment, building, facility, service, or supply for the purpose of achieving the essential functions at the lowest life-cycle cost that is consistent with required or improved performance, reliability, quality, and safety.”.

(b) CLERICAL AMENDMENT.—The table of contents for such Act, contained in section 1(b), is amended by adding at the end the following new item:

“Sec. 37. Value engineering.”.

SEC. 844. ACQUISITION WORKFORCE.

(a) ACQUISITION WORKFORCE.—(1) The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 843, is further amended by adding at the end the following new section:

“SEC. 38. ACQUISITION WORKFORCE.

“(a) APPLICABILITY.—This section does not apply to an executive agency that is subject to chapter 87 of title 10, United States Code.

“(b) MANAGEMENT POLICIES.—

“(1) POLICIES AND PROCEDURES.—The head of each executive agency, after consultation with the Administrator for Federal Procurement Policy, shall establish policies and procedures for the effective management (including accession, education, training, career development, and performance incentives) of the acquisition workforce of the agency. The development of acquisition workforce policies under this section shall be carried out consistent with the merit system principles set forth in paragraphs (1) and (2) of section 2301(b) of title 5, United States Code.

“(2) UNIFORM IMPLEMENTATION.—The head of each executive agency shall ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established are uniform in their implementation throughout the agency.

“(3) GOVERNMENTWIDE POLICIES AND EVALUATION.—The Administrator shall issue policies to promote uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission. The Administrator shall coordinate with the Deputy Director for Management of the Office of Management and Budget to ensure that such policies are consistent with the policies and procedures established and enhanced system of incentives provided pursuant to section 5051(c) of the Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 263 note). The Administrator shall evaluate the implementation of the provisions of this section by executive agencies.

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

“(d) MANAGEMENT INFORMATION SYSTEMS.—The Administrator shall ensure that the heads of executive agencies collect and maintain standardized information on the acquisition workforce related to implementation of this section. To the maximum extent practicable, such data requirements shall conform to standards established by the Office of Personnel Management for the Central Personnel Data File.

“(e) ACQUISITION WORKFORCE.—The programs established by this section shall apply to all employees in the General Schedule Contracting series (GS-1102) and the General Schedule Purchasing series (GS-1105), and to any employees regardless of series who have been appointed as contracting officers whose authority exceeds the micro-purchase threshold, as that term is defined in section 32(g). The head of each executive agency may include employees in other series who perform acquisition or acquisition-related functions.

“(f) CAREER DEVELOPMENT.—

“(1) CAREER PATHS.—The head of each executive agency shall ensure that appropriate

career paths for personnel who desire to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression to the most senior acquisition positions. The head of each executive agency shall make information available on such career paths.

“(2) CRITICAL DUTIES AND TASKS.—For each career path, the head of each executive agency shall identify the critical acquisition-related duties and tasks in which, at minimum, employees of the agency in the career path shall be competent to perform at full performance grade levels. For this purpose, the head of the executive agency shall provide appropriate coverage of the critical duties and tasks identified by the Director of the Federal Acquisition Institute.

“(3) MANDATORY TRAINING AND EDUCATION.—For each career path, the head of each executive agency shall establish requirements for the completion of course work and related on-the-job training in the critical acquisition-related duties and tasks of the career path. The head of each executive agency shall also encourage employees to maintain the currency of their acquisition knowledge and generally enhance their knowledge of related acquisition management disciplines through academic programs and other self-developmental activities.

“(4) PERFORMANCE INCENTIVES.—The head of each executive agency, acting through the senior procurement executive for the agency, shall provide for an enhanced system of incentives for the encouragement of excellence in the acquisition workforce which rewards performance of employees that contribute to achieving the agency's performance goals. The system of incentives shall include provisions that—

“(A) relate pay to performance;

“(B) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel contributed to achieving the agency's performance goals; and

“(C) provide pay and promotion incentives to be awarded, and unfavorable personnel actions to be imposed, under the system on the basis of the contributions of personnel to achieving the agency's performance goals.

“(g) QUALIFICATION REQUIREMENTS.—

“(1) GENERAL SCHEDULE CONTRACTING SERIES (GS-1102).—

“(A) ENTRY LEVEL QUALIFICATIONS.—The Director of the Office of Personnel Management shall require that, after October 1, 1996, a person may not be appointed to a position in the GS-1102 occupational series unless the person—

“(i) has received a baccalaureate degree from an accredited educational institution authorized to grant baccalaureate degrees,

“(ii) has completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education in any of the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management, or

“(iii) has passed a written test determined by the Administrator for Federal Procurement Policy, after consultation with the Director of the Office of Personnel Management, to demonstrate the judgmental skills necessary for positions in this series.

“(B) QUALIFICATIONS FOR SENIOR CONTRACTING POSITIONS.—The Director of the Office of Personnel Management shall require that, after October 1, 1996, persons may be appointed to positions at and above full performance grade levels in the GS-1102 occupational series only if those persons—

“(i) have satisfied the educational requirement either of subsection (g)(1)(A)(i) or subsection (g)(1)(A)(ii),

“(ii) have successfully completed all training required for the position under subsection (f)(3), and

“(iii) have satisfied experience and other requirements established by the Director for such positions.

However, this requirement shall apply to persons employed on October 1, 1996, in GS-1102 positions at those grade levels only as a prerequisite for promotion to a GS-1102 position at a higher grade.

“(2) GENERAL SCHEDULE PURCHASING SERIES (GS-1105).—The Director of the Office of Personnel Management shall require that, after October 1, 1996, a person may not be appointed to a position in the GS-1105 occupational series unless the person—

“(A) has successfully completed 2 years of course work from an accredited educational institution authorized to grant degrees, or

“(B) has passed a written test determined by the Administrator for Federal Procurement Policy, after consultation with the Director of the Office of Personnel Management, to demonstrate the judgmental skills necessary for positions in this series.

“(3) CONTRACTING OFFICERS.—The head of each executive agency shall require that, beginning after October 1, 1996, a person may be appointed as a contracting officer with authority to award or administer contracts for amounts above the micro-purchase threshold, as that term is defined in section 32(g), only if the person—

“(A) has successfully completed all mandatory training required of an employee in an equivalent GS-1102 or 1105 position under subsection (f)(3); and

“(B) meets experience and other requirements established by the head of the agency, based on the dollar value and complexity of the contracts that the employee will be authorized to award or administer under the appointment as a contracting officer.

“(4) EXCEPTIONS.—(A) The requirements set forth in subsection (g)(1) and (2), as applicable, shall not apply to any person employed in the GS-1101 or GS-1105 series on October 1, 1996.

“(B) Employees of an executive agency who do not satisfy the full qualification requirements for appointment as a contracting officer under subsection (g)(3) may be appointed as a contracting officer for a temporary period of time under procedures established by the agency head. The procedures shall—

“(i) require that the person have completed a significant portion of the required training,

“(ii) require a plan be established for the balance of the required training,

“(iii) specify a period of time for completion of the training, and

“(iv) include provisions for withdrawing or terminating the appointment prior to the scheduled expiration date, where appropriate.

“(5) WAIVER.—The senior procurement executive for an executive agency may waive any or all of the qualification requirements of subsections (g)(1) and (2) for a person if the person possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated job performance and qualifying experience. This authority may not be redelegated by the senior procurement executive. With respect to each waiver granted under this subsection, the senior procurement executive shall set forth in writing the rationale for the decision to waive such requirements.

“(h) PROGRAM ESTABLISHMENT AND IMPLEMENTATION.—

“(1) FUNDING LEVELS.—(A) The head of an executive agency shall request in the budget for a fiscal year for the agency—

“(i) for education and training under this section, an amount equal to no less than 2.5 percent of the base aggregate salary cost of the acquisition workforce subject to this section for that fiscal year; and

“(ii) for salaries of the acquisition workforce, an amount equal to no more than 97.5 percent of such base aggregate salary cost.

“(B) The head of the executive agency shall set forth separately the funding levels requested in the budget justification documents submitted in support of the President's budget submitted to Congress under section 1105 of title 31, United States Code.

“(C) Funds appropriated for education and training under this section may not be obligated or used for any other purpose.

“(2) INTERAGENCY AGREEMENTS.—The head of an executive agency may enter into a written agreement with another agency to participate in programs established under this section on a reimbursable basis.

“(3) TUITION ASSISTANCE.—Notwithstanding the prohibition in section 4107(b) of title 5, United States Code, the head of each executive agency may provide for tuition reimbursement and education (including a full-time course of study leading to a degree) for acquisition personnel in the agency related to the purposes of this section.

“(4) INTERN PROGRAMS.—The head of each executive agency may establish intern programs in order to recruit highly qualified and talented individuals and provide them with opportunities for accelerated promotions, career broadening assignments, and specified training for advancement to senior acquisition positions. For such programs, the head of an executive agency, without regard to the provisions of title 5, United States Code, may appoint individuals to competitive GS-5, GS-7, or GS-9 positions in the General Schedule Contracting series (GS-1102) who have graduated from baccalaureate or master's programs in purchasing or contracting from accredited educational institutions authorized to grant baccalaureate and master's degrees.

“(5) COOPERATIVE EDUCATION PROGRAM.—The head of each executive agency may establish an agencywide cooperative education credit program for acquisition positions. Under the program, the head of the executive agency may enter into cooperative arrangements with one or more accredited institutions of higher education which provide for such institutions to grant undergraduate credit for work performed in such position.

“(6) SCHOLARSHIP PROGRAM.—

“(A) ESTABLISHMENT.—Where deemed appropriate, the head of each executive agency may establish a scholarship program for the purpose of qualifying individuals for acquisition positions in the agency.

“(B) ELIGIBILITY.—To be eligible to participate in a scholarship program established under this paragraph by an executive agency, an individual must—

“(i) be accepted for enrollment or be currently enrolled as a full-time student at an accredited educational institution authorized to grant baccalaureate or graduate degrees (as appropriate);

“(ii) be pursuing a course of education that leads toward completion of a bachelor's, master's, or doctor's degree (as appropriate) in a qualifying field of study, as determined by the head of the agency;

“(iii) sign an agreement described in subparagraph (C) under which the participant agrees to serve a period of obligated service in the agency in an acquisition position in return for payment of educational assistance as provided in the agreement; and

“(iv) meet such other requirements as the head of the agency prescribes.

“(C) AGREEMENT.—An agreement between the head of an executive agency and a participant in a scholarship program established under this paragraph shall be in writing, shall be signed by the participant, and shall include the following provisions:

“(i) The agreement of the head of the agency to provide the participant with educational assistance for a specified number of school years, not to exceed 4, during which the participant is pursuing a course of education in a qualifying field of study. The assistance may include payment of tuition, fees, books, laboratory expenses, and a stipend.

“(ii) The participant’s agreement—

“(I) to accept such educational assistance,

“(II) to maintain enrollment and attendance in the course of education until completed,

“(III) while enrolled in such course, to maintain an acceptable level of academic standing (as prescribed by the head of the agency), and

“(IV) after completion of the course of education, to serve as a full-time employee in an acquisition position in the agency for a period of time of one calendar year for each school year or part thereof for which the participant was provided a scholarship under the program.

“(D) REPAYMENT.—(i) Any person participating in a program established under this paragraph shall agree to pay to the United States the total amount of educational assistance provided to the person under the program if the person is voluntarily separated from the agency or involuntarily separated for cause from the agency before the end of the period for which the person has agreed to continue in the service of the agency in an acquisition position.

“(ii) If an employee fails to fulfill the agreement to pay to the Government the total amount of educational assistance provided to the person under the program, a sum equal to the amount of the educational assistance may be recovered by the Government from the employee (or the estate of the employee) by setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and by such other method as is provided by law for the recovery of amounts owing to the Government.

“(iii) The head of an executive agency may waive in whole or in part a repayment required under this paragraph if the head of the agency determines the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

“(E) TERMINATION OF AGREEMENT.—There shall be no requirement that a position be offered to a person after such person successfully completes a course of education required by an agreement under this paragraph. If no position is offered, the agreement shall be considered terminated.”

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

“Sec. 38. Acquisition workforce.”

(b) FEDERAL ACQUISITION INSTITUTE.—Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405), is amended—

(1) in subsection (d) by amending paragraph (5) to read as follows:

“(5) providing for and directing the activities of the Federal Acquisition Institute (including recommending to the Administrator of General Services a sufficient budget for such activities), which shall be located in the General Services Administration;” and

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

“(1) The Federal Acquisition Institute shall—

“(1) recommend policies, procedures, and guidelines to the Administrator, for—

“(A) fostering and promoting the development of a professional acquisition workforce governmentwide, and

“(B) administering the provisions of section 35;

“(2) collect data and analyze acquisition workforce data from the Office of Personnel Management, the heads of executive agencies, and, through periodic surveys, from individual employees;

“(3) periodically analyze acquisition career fields to identify critical competencies, duties, tasks, and related academic prerequisites, skills, and knowledge;

“(4) coordinate and assist agencies in identifying and recruiting highly qualified candidates for acquisition fields;

“(5) develop instructional materials for acquisition personnel in coordination with private and public acquisition colleges and training facilities;

“(6) evaluate the effectiveness of training and career development programs for acquisition personnel;

“(7) promote the establishment and utilization of academic programs by colleges and universities in acquisition fields;

“(8) promote, coordinate, or conduct governmentwide research and studies to improve the acquisition process and the laws, policies, methods, regulations, procedures, and forms relating to acquisition by the executive agencies;

“(9) facilitate, to the extent requested by agencies, interagency intern and training programs; and

“(10) perform other career management or research functions as directed by the Administrator.”

(c) REPEAL OF SUPERSEDED PROVISION.—Section 502 of the Small Business and Federal Procurement Competition Enhancement Act of 1984 (41 U.S.C. 414a) is repealed.

Subtitle D—Streamlining of Dispute Resolution

PART I—GENERAL PROVISIONS

SEC. 850. DEFINITIONS.

In this subtitle:

(1) The term “Board” means the United States Board of Contract Appeals.

(2) The term “Board judge” means a member of the United States Board of Contract Appeals.

(3) The term “Chairman” means the Chairman of the United States Board of Contract Appeals.

(4) The term “executive agency” has the meaning given by section 2(2) of the Contract Disputes Act of 1978 (41 U.S.C. 601(2)).

(5) The term “alternative means of dispute resolution” has the meaning given by section 571(3) of title 5, United States Code.

(6) The term “protest” means a written objection by an interested party to any of the following:

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

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

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

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

(7) The term “interested party”, with respect to a contract or a solicitation or other request for offers, means an actual or prospective bidder or offeror whose direct economic interest would be affected by the

award of the contract or by failure to award the contract.

(8) The term “prevailing party”, with respect to a determination of the Board under section 864(b) that a decision of a contracting officer violates a statute or regulation, means a party that demonstrated such violation.

PART II—ESTABLISHMENT OF THE UNITED STATES BOARD OF CONTRACT APPEALS

SEC. 851. ESTABLISHMENT.

There is established in the executive branch of the Government an independent establishment to be known as the United States Board of Contract Appeals.

SEC. 852. MEMBERSHIP.

(a) APPOINTMENT.—(1) The Board shall consist of Board judges appointed by the Chairman, without regard to political affiliation and solely on the basis of the professional qualifications required to perform the duties and responsibilities of a Board judge, from a register of applicants maintained by the Board.

(2) The members of the Board shall be selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, United States Code, with an additional requirement that such members shall have had not fewer than five years’ experience in public contract law.

(3) Notwithstanding paragraph (2) and subject to subsection (b), the following persons shall serve as Board judges:

(A) Any full-time member of an agency board of contract appeals serving as such on the day before the effective date of this subtitle.

(B) Any person serving on the day before the date of the enactment of this Act in a position at a level of assistant general counsel or higher with authority delegated from the Comptroller General to decide bid protests under subchapter V of chapter 35 of title 31, United States Code.

(b) REMOVAL.—Members of the Board shall be subject to removal in the same manner as administrative law judges, as provided in section 7521 of title 5, United States Code.

(c) COMPENSATION.—Compensation for the Chairman and all other members of the Board shall be determined under section 5273a of title 5, United States Code.

SEC. 853. CHAIRMAN.

(a) DESIGNATION.—(1) The Chairman shall be designated by the President to serve for a term of five years. The President shall select the Chairman from among sitting Board judges each of whom has had at least five years of service—

(A) as a member of an agency board of contract appeals; or

(B) in a position at a level of assistant general counsel or higher with authority delegated from the Comptroller General to decide bid protests under subchapter V of chapter 35 of title 31, United States Code (as in effect on the day before the effective date of this subtitle).

(2) A Chairman may continue to serve after the expiration of the Chairman’s term until a successor has taken office. A Chairman may be reappointed any number of times.

(b) RESPONSIBILITIES.—The Chairman shall be responsible on behalf of the Board for the executive and administrative operation of the Board, including functions of the Board with respect to the following:

(1) The selection, appointment, and fixing of the compensation of such personnel, pursuant to part III of title 5, United States Code, as the Chairman considers necessary or appropriate, including a Clerk of the Board, a General Counsel, and clerical and legal assistance for Board judges.

(2) The supervision of personnel employed by or assigned to the Board, and the distribution of work among such personnel.

(3) The response to any request that may be made by Congress or the Office of Management and Budget.

(4) The allocation of funds among the various functions of the Board.

(5) The entering into and performance of such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and the making of such payments, as the Chairman considers necessary or appropriate to carry out functions vested in the Board.

(6) The operation of an Office of the Clerk of the Board, including the receipt of all filings made with the Board, the assignment of cases, and the maintenance of all records of the Board.

(7) The acquisition, operation, and maintenance of such automatic data processing resources as may be needed by the Board.

(8) The prescription of such rules and regulations as the Chairman considers necessary or appropriate for the administration and management of the Board.

(c) VICE CHAIRMEN.—The Chairman may designate up to four other Board judges as Vice Chairmen. The Chairman may divide the Board into two or more divisions, and, if such division is made, shall assign a Vice Chairman to head each division. The Vice Chairmen, in the order designated by the Chairman, shall act in the place and stead of the Chairman during the absence of the Chairman.

SEC. 854. RULEMAKING AUTHORITY.

(a) IN GENERAL.—The Board may establish—

(1) such procedural rules and regulations as are necessary to the exercise of its functions, including internal rules for the assignment of cases; and

(2) statements of policy of general applicability with respect to its functions.

(b) PROHIBITION ON REVIEW BY OTHER AGENCY OR PERSON.—Rules and regulations established by the Board (including forms which are a part thereof) shall not be subject to review by any other agency or person (including the Administrator of Information and Regulatory Affairs, pursuant to chapter 35 of title 44, United States Code) in advance of publication.

SEC. 855. LITIGATION AUTHORITY.

Except as provided in section 518 of title 28, United States Code, relating to litigation before the Supreme Court, attorneys designated by the Chairman may appear for, and represent the Board in, any civil action brought in connection with any function carried out by the Board.

SEC. 856. SEAL OF BOARD.

The Chairman shall cause a seal of office to be made for the Board of such design as the Board shall approve. Judicial notice shall be taken of such seal.

SEC. 857. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal year 1997 and each succeeding fiscal year such sums as may be necessary to carry out the provisions of this subtitle and to enable the Board to perform its functions. Funds appropriate pursuant to this section shall remain available until expended.

PART III—FUNCTIONS OF UNITED STATES BOARD OF CONTRACT APPEALS

SEC. 861. ALTERNATIVE DISPUTE RESOLUTION SERVICES.

(a) REQUIREMENT TO PROVIDE SERVICES UPON REQUEST.—The Board shall provide alternative means of dispute resolution for any disagreement regarding a contract or prospective contract of an executive agency

upon the request of all parties to the disagreement.

(b) PERSONNEL QUALIFIED TO ACT.—Each Board judge and each attorney employed by the Board shall be considered to be qualified to act for the purpose of conducting alternative means of dispute resolution under this section.

(c) SERVICES TO BE PROVIDED WITHOUT CHARGE.—Any services provided by the Board or any Board judge or employee pursuant to this section shall be provided without charge.

(d) RECUSAL OF CERTAIN PERSONNEL UPON REQUEST.—In the event that a matter which is presented to the Board for alternative means of dispute resolution, pursuant to this section, later becomes the subject of formal proceedings before the Board, any Board judge or employee who was involved in the alternative means shall, if requested by any party to the formal proceeding, take no part in that proceeding.

SEC. 862. ALTERNATIVE DISPUTE RESOLUTION OF DISPUTES AND PROTESTS SUBMITTED TO BOARD.

With reasonable promptness after the submission to the Board of a contract dispute under section 863 or a bid protest under section 864, a Board judge to whom the contract dispute or protest is assigned shall request the parties to meet with a Board judge, or an attorney employed by the Board, for the purpose of attempting to resolve the dispute or protest through alternative means of dispute resolution. Formal proceedings in the appeal shall then be suspended until such time as any party or a Board judge to whom the dispute or protest is assigned determines that alternative means of dispute resolution are not appropriate for resolution of the dispute or protest.

SEC. 863. CONTRACT DISPUTES.

The Board shall have jurisdiction as provided by section 8(a) of the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

SEC. 864. PROTESTS.

(a) REVIEW REQUIRED UPON REQUEST.—Upon request of an interested party in connection with any procurement conducted by any executive agency, the Board shall review, as provided in this section, any decision by a contracting officer alleged to violate a statute or regulation. The authority of the Board to conduct such review shall include the authority to review regulations to determine their consistency with applicable statutes. A decision or order of the Board pursuant to this section shall not be subject to interlocutory appeal or review.

(b) STANDARD OF REVIEW.—In deciding a protest, the Board may consider all evidence that is relevant to the decision under protest. It shall accord a presumption of correctness to all facts found and determinations made by the contracting officer whose decision is being protested. The protester may rebut this presumption by showing, by a preponderance of the evidence, that a finding or determination was incorrect. The Board may find that a decision by a contracting officer violates a statute or regulation for any of the reasons stated in section 706(2) of title 5, United States Code.

(c) DETERMINATION OF WHETHER TO SUSPEND AUTHORITY TO CONDUCT PROCUREMENT IN PROTEST FILED BEFORE CONTRACT AWARD.—(1) When a protest under this section is filed before the award of a contract in a protested procurement, the Board, at the request of an interested party and within 10 days after the submission of the protest, shall hold a hearing to determine whether the Board should suspend the authority of the executive agency involved (or its head) to conduct such procurement until the Board can decide the protest.

(2) The Board shall suspend the authority of the executive agency (or its head) unless the agency concerned establishes that—

(A) absent action by the Board, contract award is likely to occur within 30 days after the hearing; and

(B) urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Board.

(3) A suspension under paragraph (2) shall not preclude the executive agency concerned from continuing the procurement process up to but not including award of the contract unless the Board determines such action is not in the best interests of the United States.

(d) DETERMINATION OF WHETHER TO SUSPEND AUTHORITY TO CONDUCT PROCUREMENT IN PROTEST FILED AFTER CONTRACT AWARD.—

(1) If, with respect to an award of a contract, the Board receives notice of a protest under this section within the period described in paragraph (2), the Board shall, at the request of an interested party, hold a hearing to determine whether the Board should suspend the authority of the executive agency involved (or its head) to conduct such procurement until the Board can decide the protest.

(2) The period referred to in paragraph (1) is the period beginning on the date on which the contract is awarded and ending at the end of the later of—

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

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

(3) The Board shall hold the requested hearing within 5 days after the date of the filing of the protest or, in the case of a request for debriefing, within 5 days after the later of the date of the filing of the protest or the date of the debriefing.

(4) The Board shall suspend the procurement authority of the executive agency involved (or its head) to acquire any goods or services under the contract which are not previously delivered and accepted unless such agency establishes that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Board.

(e) PROCEDURES.—

(1) PROCEEDINGS AND DISCOVERY.—The Board shall conduct proceedings and allow such discovery as may be required for the expeditious, fair, and reasonable resolution of the protest. The Board shall limit discovery to material which is relevant to the grounds of protest or to such affirmative defenses as the executive agency involved, or any intervenor supporting the agency, may raise.

(2) PRIORITY.—The Board shall give priority to protests filed under this section over contract disputes and alternative dispute services. Except as provided in paragraph (3), the Board shall issue its final decision within 65 days after the date of the filing of the protest, unless the Chairman determines that the specific and unique circumstances of the protest require a longer period, in which case the Board shall issue such decision within the longer period determined by the Chairman. An amendment that adds a new ground of protest should be resolved, to the maximum extent practicable, within the time limits established for resolution of the initial protest.

(3) THRESHOLD.—Any protest in which the anticipated value of the contract award that will result from the protested procurement, as estimated by the executive agency involved, is less than \$1,000,000 shall be considered under simplified rules of procedure. These rules shall provide that discovery in

such protests shall be in writing only. Such protests shall be decided by a single Board judge, whose decision shall be final and conclusive and shall not be set aside except in cases of fraud. The Board shall issue its final decision in each such protest within 35 days after the date of the filing of the protest.

(4) **CALCULATION OF TIME FOR ADR.**—In calculating time for purposes of paragraph (2) or (3) of this subsection, any days during which proceedings are suspended for the purpose of attempting to resolve the protest by alternative means of dispute resolution, up to a maximum of 20 days, shall not be counted.

(5) **DISMISSAL OF FRIVOLOUS PROTESTS.**—The Board may dismiss a protest that the Board determines is frivolous or which, on its face, does not state a valid basis for protest.

(6) **PAYMENT OF COSTS FOR FRIVOLOUS PROTESTS.**—(A) If the Board expressly finds that a protest or a portion of a protest is frivolous or does not state on its face a valid basis for protest, the Board shall declare that the protester or other interested party who joins the protest is liable to the United States for payment of the costs described in subparagraph (B) unless—

(i) special circumstances would make such payment unjust; or

(ii) the protester obtains documents or other information after the protest is filed with the Board that establishes that the protest or a portion of the protest is frivolous or does not state on its face a valid basis for protest, and the protester then promptly withdraws the protest or portion of the protest.

(B) The costs referred to in subparagraph (A) are all of the costs incurred by the United States of reviewing the protest, or of reviewing that portion of the protest for which the finding is made, including the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28, United States Code) incurred by the United States in defending the protest.

(f) **DECISIONS AND CORRECTIVE ACTIONS ON PROTESTS.**—(1) In making a decision on protests filed under this section, the Board shall accord due weight to the goals of economic and efficient procurement, and shall take due account of the rule of prejudicial error.

(2) If the Board determines that a decision of a contracting officer violates a statute or regulation, the Board may order the agency (or its head) to take such corrective action as the Board considers appropriate. Corrective action includes requiring that the Federal agency—

(A) refrain from exercising any of its options under the contract;

(B) recompet the contract immediately;

(C) issue a new solicitation;

(D) terminate the contract;

(E) award a contract consistent with the requirements of such statute and regulation;

(F) implement any combination of requirements under subparagraphs (A), (B), (C), (D), and (E); or

(G) implement such other actions as the Board determines necessary.

(3) If the Board orders corrective action after the contract award, the affected contract shall be presumed valid as to all goods or services delivered and accepted under the contract before the corrective action was ordered.

(4) Any agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds shall be submitted to the Board and shall be made a part of the public record (subject to any protective order considered appropriate by the Board) before dismissal of the protest.

(g) **AUTHORITY TO DECLARE ENTITLEMENT TO COSTS.**—(1)(A) Whenever the Board determines that a decision of a contracting officer

violates a statute or regulation, it may, in accordance with section 1304 of title 31, United States Code, further declare an appropriate prevailing party to be entitled to the costs of—

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

(ii) bid and proposal preparation.

(B) No party (other than a small business concern (within the meaning of section 3(a) of the Small Business Act)) may be declared entitled under this paragraph to costs for—

(i) consultants and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Federal Government, or

(ii) attorneys' fees that exceed \$150 per hour unless the Board, on a case by case basis, determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.

(2) Payment of amounts due from an agency under paragraph (1) or under the terms of a settlement agreement under subsection (e)(4) shall be made from the appropriation made by section 1304 of title 31, United States Code, for the payment of judgments. The executive agency concerned shall reimburse that appropriation account out of funds available for the procurement.

(h) **APPEALS.**—Except as provided in subsection (e)(3), a final decision of the Board may be appealed as set forth in section 8(d)(1) of the Contract Disputes Act of 1978 by the head of the executive agency concerned and by any interested party, including interested parties who intervene in any protest filed under this section.

(i) **ADDITIONAL RELIEF.**—Nothing contained in this section shall affect the power of the Board to order any additional relief which it is authorized to provide under any statute or regulation.

(j) **NONEXCLUSIVITY OF REMEDIES.**—Nothing contained in this section shall affect the right of any interested party to file a protest with the contracting agency or to file an action in the United States Court of Federal Claims or in a United States district court.

SEC. 865. APPLICABILITY TO CONTRACTS FOR COMMERCIAL ITEMS.

Notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430), the authority conferred on the Board by this subtitle is applicable to contracts for the procurement of commercial items.

PART IV—REPEAL OF OTHER STATUTES AUTHORIZING ADMINISTRATIVE PROTESTS

SEC. 871. REPEALS.

(a) **GSBCA PROVISIONS.**—Subsection (f) of the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949; 40 U.S.C. 759) is repealed.

(b) **GAO PROVISIONS.**—Subchapter V of chapter 35 of title 31, United States Code (31 U.S.C. 3551-3556) is repealed.

PART V—TRANSFERS AND TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

SEC. 881. TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.

(a) **TRANSFER.**—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the functions vested by law in the Comptroller General pursuant to subchapter V of chapter 35 of title 31, United States Code, and in the boards of contract appeals established pursu-

ant to section 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607) (as in effect on the day before the effective date of this Act), shall be transferred to the Board for appropriate allocation by the Chairman.

(b) **EFFECT ON PERSONNEL.**—Personnel transferred pursuant to this subtitle shall not be separated or reduced in compensation for one year after such transfer, except for cause.

(c) **REGULATIONS.**—(1) The Board shall prescribe regulations for the release of competing employees in a reduction in force that gives due effect to—

(A) efficiency or performance ratings;

(B) military preference; and

(C) tenure of employment.

(2) In prescribing the regulations, the Board shall provide for military preference in the same manner as set forth in subchapter I of chapter 35 of title 5, United States Code.

SEC. 882. TERMINATIONS AND SAVINGS PROVISIONS.

(a) **TERMINATION OF BOARDS OF CONTRACT APPEALS.**—On the effective date of this subtitle, the boards of contract appeals established pursuant to section 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607) (as in effect on the day before the effective date of this Act) shall terminate.

(b) **SAVINGS PROVISION FOR CONTRACT DISPUTE MATTERS PENDING BEFORE BOARDS.**—The provisions of this subtitle shall not affect any proceedings (other than bid protests pending before the board of contract appeals of the General Services Administration) pending on the effective date of this Act before any board of contract appeals described in subsection (a). Such proceedings shall be continued by the Board, and orders which were issued in any such proceeding by any board of contract appeals shall continue in effect until modified, terminated, superseded, or revoked by the Board, by a court of competent jurisdiction, or by operation of law.

(c) **BID PROTEST TRANSITION PROVISIONS.**—

(1) No protest may be submitted to the Comptroller General pursuant to section 3553(a) of title 31, United States Code, or to the board of contract appeals for the General Services Administration pursuant to the Brooks Automatic Data Processing Act (40 U.S.C. 759) on or after the effective date of this Act.

(2) The provisions repealed by section 871 shall continue to apply to proceedings pending on the effective date of this subtitle before the board of contract appeals of the General Services Administration and the Comptroller General pursuant to those provisions, until the board or the Comptroller General determines such proceedings have been completed.

SEC. 883. CONTRACT DISPUTE AUTHORITY OF BOARD.

(a) Section 2 of the Contract Disputes Act of 1978 (41 U.S.C. 601) is amended by striking out paragraph (6) and inserting in lieu thereof the following:

“(6) the term ‘Board’ means the United States Board of Contract Appeals; and”.

(b) Section 6(c) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)) is amended—

(1) in paragraph (4)—

(A) by striking out “the agency board of contract appeals” and inserting in lieu thereof “the United States Board of Contract Appeals”; and

(B) by striking out “the board” and inserting in lieu thereof “the Board”; and

(2) in paragraph (6)—

(A) by striking out “an agency board of contract appeals” and inserting in lieu thereof “the United States Board of Contract Appeals”; and

(B) by striking out "agency board" and inserting in lieu thereof "the Board".

(c) Section 7 of the Contract Disputes Act of 1978 (41 U.S.C. 606) is amended by striking out "an agency board of contract appeals" and inserting in lieu thereof "the United States Board of Contract Appeals".

(d) Section 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607) is amended—

(1) by amending the heading to read as follows:

"UNITED STATES BOARD OF CONTRACT
APPEALS";

(2) by striking out subsections (a), (b), and (c);

(3) in subsection (d)—

(A) by striking out the first sentence and inserting in lieu thereof the following:

"The United States Board of Contract Appeals shall have jurisdiction to decide any appeal from a decision of a contracting officer of any executive agency relative to a contract made by that agency."; and

(B) in the second sentence, by striking out "the agency board" and inserting in lieu thereof "the Board";

(4) in subsection (e), by striking out "An agency board" and inserting in lieu thereof "The United States Board of Contract Appeals";

(5) in subsection (f), by striking out "each agency board" and inserting in lieu thereof "the United States Board of Contract Appeals";

(6) in subsection (g)—

(A) in the first sentence of paragraph (1), by striking out "an agency board of contract appeals" and inserting in lieu thereof "the United States Board of Contract Appeals";

(B) by striking out paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2);

(7) by striking out subsections (h) and (i); and

(8) by redesignating subsections (d), (e), (f), and (g) (as amended) as subsections (a), (b), (c), and (d), respectively.

(e) Section 9 of the Contract Disputes Act of 1978 (41 U.S.C. 608) is amended—

(1) in subsection (a), by striking out "each agency board" and inserting in lieu thereof "the United States Board of Contract Appeals"; and

(2) in subsection (b), by striking out "the agency board" and inserting in lieu thereof "the Board".

(f) Section 10 of the Contract Disputes Act of 1978 (41 U.S.C. 609) is amended—

(1) in subsection (a)—

(A) in the first sentence of paragraph (1)—

(i) by striking out "Except as provided in paragraph (2), and in" and inserting in lieu thereof "In"; and

(ii) by striking out "an agency board" and inserting in lieu thereof "the United States Board of Contract Appeals";

(B) by striking out paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2), and in that paragraph, by striking out "or (2)";

(2) in subsection (b), by striking out "any agency board" and "the agency board" and inserting in lieu of each "the Board";

(3) in subsection (c), by striking out "an agency board" and "the agency board" and inserting in lieu of each "the Board"; and

(4) in subsection (d), by striking out "one or more agency boards" and "or among the agency boards involved" and inserting in lieu of each "the Board".

(g) Section 11 of the Contract Disputes Act of 1978 (41 U.S.C. 610) is amended—

(1) in the first sentence, by striking out "an agency board of contract appeals" and inserting in lieu thereof "the United States Board of Contract Appeals"; and

(2) in the second sentence, by striking out "the agency board through the Attorney

General; or upon application by the board of contract appeals of the Tennessee Valley Authority" and inserting in lieu thereof "the Board".

(h) Section 13 of the Contract Disputes Act of 1978 (41 U.S.C. 612) is amended—

(1) in subsection (b), by striking out "an agency board of contract appeals" and inserting in lieu thereof "the United States Board of Contract Appeals"; and

(2) in subsection (d)(2), by striking out "by the board of contract appeals for" and inserting in lieu thereof "by the Board from".

SEC. 884. REFERENCES TO AGENCY BOARDS OF CONTRACT APPEALS.

Any reference to an agency board of contract appeals in any provision of law or in any rule, regulation, or other paper of the United States shall be treated as referring to the United States Board of Contract Appeals.

SEC. 885. CONFORMING AMENDMENTS.

(a) TITLE 5.—Section 5372a of title 5, United States Code, is amended—

(1) in subsection (a)(1), by striking out "an agency board of contract appeals appointed under section 8 of the Contract Disputes Act of 1978" and inserting in lieu thereof "the United States Board of Contract Appeals";

(2) in subsection (a)(2), by striking out "an agency board of contract appeals established pursuant to section 8 of the Contract Disputes Act of 1978" and inserting in lieu thereof "the United States Board of Contract Appeals"; and

(3) in subsection (b), by striking out "an appeals board" each place it appears and inserting in lieu thereof "the appeals board".

(b) TITLE 10.—(1) Section 2305(e) of title 10, United States Code, is amended—

(A) in paragraph (1), by striking out "subchapter V of chapter 35 of title 31" and inserting in lieu thereof "title IV of the Federal Acquisition Reform Act of 1995"; and

(B) by striking out paragraph (3).

(2) Section 2305(f) of such title is amended—

(A) in paragraph (1), by striking out "in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31" and inserting in lieu thereof "section 424(f)(2) of the Federal Acquisition Reform Act of 1995"; and

(B) in paragraph (2), by striking out "paragraph (1) of section 3554(c) of title 31" and inserting in lieu thereof "section 424(g)(1)(A) of the Federal Acquisition Reform Act of 1995".

(c) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—(1) Section 303B(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b(h)) is amended—

(A) in paragraph (1), by striking out "subchapter V of chapter 35 of title 31" and inserting in lieu thereof "title IV of the Federal Acquisition Reform Act of 1995"; and

(B) by striking out paragraph (3).

(2) Section 303B(i) of such Act (41 U.S.C. 253b(i)) is amended—

(A) in paragraph (1), by striking out "in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31" and inserting in lieu thereof "section 424(f)(2) of the Federal Acquisition Reform Act of 1995"; and

(B) in paragraph (2), by striking out "paragraph (1) of section 3554(c) of title 31" and inserting in lieu thereof "section 424(g)(1)(A) of the Federal Acquisition Reform Act of 1995".

PART VI—EFFECTIVE DATE; INTERIM APPOINTMENT AND RULES

SEC. 891. EFFECTIVE DATE.

This subtitle shall take effect on October 1, 1996.

SEC. 892. INTERIM APPOINTMENT.

The Board judge serving as chairman of the board of contract appeals of the General Services Administration on the date of the enactment of this Act shall serve as Chair-

man during the two-year period beginning on the effective date of this subtitle, unless such individual resigns such position or the position otherwise becomes vacant before the expiration of such period. The authority vested in the President by section 853 shall take effect upon the expiration of such two-year period or on the date such position is vacated, whichever occurs earlier.

SEC. 893. INTERIM RULES.

(a) RULES OF PROCEDURE.—Until such date as the Board promulgates rules of procedure, the rules of procedure of the board of contract appeals of the General Services Administration, as in effect on the effective date of this Act, shall be the rules of procedure of the Board.

(b) RULES REGARDING BOARD JUDGES.—Until such date as the Board promulgates rules governing the establishment and maintenance of a register of eligible applicants and the selection of Board judges, the rules of the Armed Services Board of Contract Appeals governing the establishment and maintenance of a register of eligible applicants and the selection of board members shall be the rules of the Board governing the establishment and maintenance of a register of eligible applicants and the selection of Board judges, except that any provisions of the rules of the Armed Services Board of Contract Appeals that authorize any individual other than the chairman of such board to select a Board judge shall have no effect.

Subtitle E—Effective Dates and Implementation

SEC. 895. EFFECTIVE DATE AND APPLICABILITY.

(a) EFFECTIVE DATE.—Except as otherwise provided in this title, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) APPLICABILITY OF AMENDMENTS.—(1) An amendment made by this title shall apply, in the manner prescribed in the final regulations promulgated pursuant to section 896 to implement such amendment, with respect to any solicitation that is issued, any unsolicited proposal that is received, and any contract entered into pursuant to such a solicitation or proposal, on or after the date described in paragraph (3).

(2) An amendment made by this title shall also apply, to the extent and in the manner prescribed in the final regulations promulgated pursuant to section 896 to implement such amendment, with respect to any matter related to—

(A) a contract that is in effect on the date described in paragraph (3);

(B) an offer under consideration on the date described in paragraph (3); or

(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

(3) The date referred to in paragraphs (1) and (2) is the date specified in such final regulations. The date so specified shall be October 1, 1996, or any earlier date that is not within 30 days after the date on which such final regulations are published.

SEC. 896. IMPLEMENTING REGULATIONS.

(a) PROPOSED REVISIONS.—Proposed revisions to the Federal Acquisition Regulation and such other proposed regulations (or revisions to existing regulations) as may be necessary to implement this title shall be published in the Federal Register not later than 210 days after the date of the enactment of this Act.

(b) PUBLIC COMMENT.—The proposed regulations described in subsection (a) shall be made available for public comment for a period of not less than 60 days.

(c) FINAL REGULATIONS.—Final regulations shall be published in the Federal Register not later than 330 days after the date of enactment of this Act.

(d) MODIFICATIONS.—Final regulations promulgated pursuant to this section to implement an amendment made by this title may provide for modification of an existing contract without consideration upon the request of the contractor.

(e) SAVINGS PROVISIONS.—(1) Nothing in this title shall be construed to affect the validity of any action taken or any contract entered into before the date specified in the regulations pursuant to section 895(b)(3) except to the extent and in the manner prescribed in such regulations.

(2) Except as specifically provided in this title, nothing in this title shall be construed to require the renegotiation or modification of contracts in existence on the date of the enactment of this Act.

(3) Except as otherwise provided in this title, a law amended by this title shall continue to be applied according to the provisions thereof as such law was in effect on the day before the date of the enactment of this Act until—

(A) the date specified in final regulations implementing the amendment of that law (as promulgated pursuant to this section); or

(B) if no such date is specified in regulations, October 1, 1996.

The CHAIRMAN. Pursuant to the rule, the gentleman from Pennsylvania [Mr. CLINGER] and a Member opposed will each be recognized for 20 minutes. Is the gentlewoman from Illinois [Mrs. COLLINS] opposed to the amendment?

Mrs. COLLINS of Illinois. Yes, I am, Mr. Chairman.

The CHAIRMAN. The gentlewoman from Illinois [Mrs. COLLINS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. CLINGER].

Mr. CLINGER. I yield myself such time as I may consume.

Mr. Chairman, I rise to offer the Clinger-Spence-Kasich acquisition reform amendment to the National Defense Authorization Act for fiscal year 1996. This amendment would modernize and streamline the procurement procedures of the Department of Defense and the civilian agencies. It builds upon legislation enacted last year and represents a significant shift in the operation of our Federal procurement system to meet the needs of the American taxpayer.

This amendment has been developed from H.R. 1670, the Federal Acquisition Reform Act of 1995, a bill Mr. SPENCE and I, along with other members of our committees, have introduced. You have heard and may hear again that we are rushing through legislation that has had no hearings. This is simply not true. We held a hearing in February to solicit proposals for simplifying and streamlining the Federal procurement process. This was a followup to last year's Federal Acquisition Streamlining Act of 1994 [FASA], the bipartisan effort to reform the complex Federal procurement system.

During this hearing we were exposed to various proposals for reform—ranging from minor technical corrections to a complete overhaul of the system. During the last few months, Chairman SPENCE and I, in conjunction with other committee members, have poured over and carefully considered

this wealth of ideas. This effort culminated in the introduction of H.R. 1670, which is a synthesis of all of those ideas, which I think distills those ideas and takes the best and incorporates it into this bill. Subsequent to the introduction of H.R. 1670, the Committee on Government Reform and Oversight and the Committee of National Security held an unprecedented joint hearing to solicit comments specifically on this legislation from many senior industry executives and government officials.

Further, I have been working with my ranking minority member, Mrs. COLLINS, to refine the Clinger-Spence-Kasich amendment to include, for the most part, five of the six amendments she and Mrs. MALONEY offered at the Rules Committee. I think these have substantially improved the bill. The amendment which we are offering today includes that language which came about as a result of those discussions and negotiations.

While we will continue to pursue H.R. 1670 through the traditional course, and I want to emphasize that we will continue to pursue this bill through the traditional course, and along those lines we have scheduled a markup in the Government Reform and Oversight Committee for June 21, next week, we are similarly committed however to pursuing this matter as part of the National Defense Authorization Act for fiscal year 1996.

This approach is not intended to short circuit the process or to preclude anybody from having their input into the ultimate process but it is intended simply to maximize our opportunities for enactment of a significant piece of Government reform by the end of this year. And I might say that the administration is supportive of these efforts to enhance and improve the procurement reforms we made last year.

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Each year, our Government spends about \$200 billion on goods and services, and that is a substantial amount of money, ranging from weapons systems to computer systems to everyday commodities. The current system costs too much, involves way too much red-tape, and ill-serves both the taxpayer and industry.

In December 1994, a report prepared for the Secretary of Defense found that, on average, the Government pays an additional 18 percent on what it buys solely because of the requirements it imposes on its contractors. We have the most unbelievably heavy burden on our contractors. This confirmed the average estimate by major contractors surveyed by GAO that the additional costs incurred in selling to the Government are about 19 percent. While some of the Government's unique requirements certainly are needed, we do not dispute that we clearly are paying an enormous premium for them—billions of dollars annually, that we need not be spending.

And this is only part of the Government's inflated cost of doing business—

for it includes only what is paid to contractors, not the cost of the Government's own administrative system. The Government's contracting officials are confronted with numerous mandates of their own, often amounting to step-by-step prescriptions that increase staff and equipment needs, and leave little room for the exercise of business judgment, initiative, and creativity. The Clinger-Spence-Kasich acquisition reform amendment focuses on these restrictions which hamstringing the Government buyer and ultimately increase costs to the taxpayer.

In addition, as a complement to the work we started last year with FASA, our amendment moves the Federal procurement system closer to a commercial-type process.

Why should the Government be doing procurement in a wildly different way than happens in the private sector?

As 10 senior industry executives stated in a letter to Chairman SPENCE and me, our approach "will significantly lower the costs to the government—and industry—by replacing bureaucratic procedures that long ago outlived their usefulness with the type of streamlined approaches that continue to work so well in the commercial sector."

In fashioning our amendment, we were guided by a number of considerations: How to provide meaningful competition, obtain quality goods at reasonable prices, and ensure accountability of public officials for public transactions. At the same time, we are under enormous budgetary constraints that drive us to look at ways to meet our goals, yet do so in a way that is affordable and uses common sense.

The Clinger-Spence-Kasich amendment would:

Maximize competition by permitting the Government to provide for meaningful competition—not competition for competition's sake—which would allow firms to concentrate their energies and resources on Government business that they can realistically meet;

Provide a preference for expanded use of commercial products and services through simplified procedures, and the elimination of costly, time-consuming regulations designed primarily for the noncommercial environment;

Create a single, understandable reasonable approach to procurement ethics and also eliminate a cumbersome certification process that has had little value and contributed significant costs to both Government and industry;

Establish a results-oriented acquisition system which provides performance incentives—both positive and negative—for Government buyers and industry tied to cost and performance goals; and

This amendment would eliminate the guesswork from the current bid protest and dispute resolution maze by creating a single administrative entity to handle such matters with a single set of efficient procedures.

Some may say, in fact, have said, we should rest on our laurels, and let the

system absorb the changes made last year by FASA. But we must continue to push for reforms which will make the Federal procurement system work better and cost less. The Clinger/Spence/Kasich amendment provides the fundamental changes necessary to promote affordable and commonsense approaches to meet our budgetary goals and move the Federal procurement system into the 21st century.

If there has been one hallmark of this Congress, it has been to take away the regulatory overkill that we have imposed both on our Government procurement officials and also on the private sector. This amendment moves us dramatically in that direction.

Mr. Chairman, I urge my colleagues to support the Clinger-Spence-Kasich amendment.

Mr. Chairman, I reserve the balance of my time.

Mrs. COLLINS of Illinois. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, while I have been working cooperatively with Chairman CLINGER over the past several days on his Governmentwide procurement amendment, I have serious concerns about the process that brings us here today. In the first place, a Governmentwide procurement bill should not be considered on the national defense authorization bill. Second, this amendment is being considered on the floor without benefit of debate within the Government Reform and Oversight Committee.

In previous Congresses, Republicans vigorously opposed nongermane amendments. Such amendments clearly undermine the integrity of our committee process. They deprive the majority and minority Members of the House, with the most expertise on a given subject, of the opportunity to carefully consider and fully debate complicated and difficult issues before House consideration. It also takes up valuable floor time on issues which might have been and should have been resolved by the committee.

However, the rule has made Chairman CLINGER's amendment in order, so I, along with the ranking Democratic member of the Government Information and Technology Subcommittee, Representative MALONEY, have attempted to work with the chairman to improve his amendment. As a result, the modified Clinger amendment is a substantial improvement over the original amendment.

With one important exception, Chairman CLINGER has incorporated all of the proposed amendments which we offered to the Rules Committee. That one exception regards the Clinger amendment's elimination of full and open competition, which I believe will cripple the ability of small businesses to compete for Federal contracts. I will offer an amendment shortly to retain the current practice allowing all businesses to compete for Government contracts under full and open competition.

In brief, our amendments represent significant reform and enhancement of Federal procurement policy. They allow for the increasing decentralization of procurement authority, and elicit greater cost-effectiveness for the Federal Government and the taxpayer. Chairman CLINGER and I share the same goals of modernizing and streamlining Federal acquisition procedures, and I applaud his recent efforts to reach a consensus with Democratic members of the Government Reform and Oversight Committee on procurement reform legislation.

Let me briefly describe portions of my bill, H.R. 1795, that will be essentially incorporated into Chairman CLINGER's modified amendment.

First, the modified Clinger amendment now includes my amendment to improve Government procurement management practices by requiring Federal agencies to make more effective use of the cost-management tools and procedures known generally as value engineering.

Value engineering is a long-standing and widely accepted technique in both the public and private sectors that, despite its proven capabilities, remains underutilized in the Federal acquisition process.

Numerous GAO and IG reports, independent studies, and even the Presidentially appointed Grace Commission have demonstrated that Federal agencies' underutilization of value engineering has resulted in billions of dollars in lost opportunities to reduce costs to the Federal Government.

This provision will ensure better implementation of value engineering procedures, and will thereby reduce capital and operation costs, and improve and maintain optimum quality of construction, administrative, program, acquisition, and grant projects.

Second, Chairman CLINGER has accepted my amendment to retain the knowing standard for criminal violations of our procurement integrity laws, and increase the maximum criminal penalty from 5 to 15 years. This change will facilitate the Justice Department's ability to prosecute criminal and civil procurement fraud cases.

Third, Chairman CLINGER has accepted our amendment to limit sole-source contracting for commercial products. While I believe that the complete elimination of the simplified acquisition threshold contained in the Clinger amendment will raise problems, our amendment will place limits on its use and will help to ensure that an adequate level of competition is maintained with the expanded use of commercial items.

Finally, Chairman CLINGER has accepted an amendment by Representative MALONEY that improves the performance capability of the frontline contracting personnel. The amendment requires civilian agency heads to adopt education, training, and incentive features that raise the level of excellence and professionalism of the acquisition work force.

Mr. Chairman, the inclusion of these provisions in the Clinger amendment substantially improve the amendment. I commend the chairman for approaching this matter in the bipartisan spirit with which any acquisition reform effort should be undertaken.

Mr. Chairman, I reserve the balance of my time.

Mr. CLINGER. Mr. Chairman, I yield 5 minutes to my good friend, the gentleman from South Carolina [Mr. SPENCE], the coauthor of this amendment and the chairman of the Committee on National Security.

Mr. SPENCE. Mr. Chairman, I rise in strong support of the Clinger-Spence-Kasich amendment.

This legislation represents an important leap forward in reforming today's antiquated and inefficient Federal procurement system.

Last year, Congress enacted comprehensive acquisition reform legislation that is just now beginning to work itself through the regulatory process. The Federal Acquisition Streamlining Act was a good start in making needed incremental changes to the system.

I realize that some may wonder why we are launching another round of acquisition reform while the last one is still going through the implementation process. The answer is simple—we cannot afford to wait for last year's modest reforms to go into effect before fixing the fundamental problems ailing the current system.

Mr. Chairman, what is required today is fundamental reform, not incremental reform. The American taxpayer pays too much for the goods and services bought by the Federal Government. The current system results in products that are too costly, many times outdated, and of questionable quality.

This issue is of critical importance because, how the Federal Government buys goods and services affects the budgets and programs under the jurisdiction of every single committee of the House. As we all contemplate the difficult fiscal reality of moving toward a balanced budget in 7 years, we must fix today's inefficient procurement system in order to maximize return on every single Federal tax dollar.

As the Federal Government's largest single buyer, nowhere do these problems apply more than in the Department of Defense. While the bill before the House does increase spending relative to the President's budget request, even this spending level will not adequately cover the many critical military capability-, readiness-, and quality-of-life shortfalls facing the military in the years ahead.

I supported this budget as it struck a prudent balance between halting the 10-year slide in defense spending and putting us on a track toward a balanced Federal budget. But I also realize that the shortfalls created by the drastic reductions in spending of the past few years will require that we aggressively find additional findings from within the defense program.

H.R. 1530 begins this process by cutting nondefense spending, initiating a series of structural and organizational reforms and, through the Clinger-Spence-Kasich amendment, making important process reforms that will streamline acquisition procedures, reduce the costly overhead associated with Federal procurements and allow the Government to buy commercially more often.

Mr. Chairman, I recognize that some in the House are concerned about moving governmentwide legislation of this importance on the defense bill. Let me briefly address this point. For the reasons I have mentioned, both Mr. CLINGER and I are committed to having Congress pass comprehensive and fundamental acquisition reform legislation this year. To increase the likelihood of this objective, we have determined that a two-track process is in order. Putting this legislation on this bill represents one track. This approach provides the House with the option of pursuing acquisition reform legislation as part of the conference on the defense authorization bill.

The second track—and the one that both Mr. CLINGER and I prefer and are committed to vigorously pursue—is to move this legislation as a separate bill through the normal committee process. The Government Reform and Oversight Committee, which Mr. CLINGER chairs, has already scheduled a markup on H.R. 1670 as the first step in a process designed to allow the House to work its will on this important topic through the normal deliberative process. Other committees, including the National Security Committee which I chair, will subsequently have an opportunity to consider and improve upon this legislation in the normal course of events.

While the separate-bill track remains the approach of choice and I am confident that the House will allow such a separate bill to be brought to the House floor in an expeditious fashion, there is no assurance that the other body is similarly interested in quick action on this urgent priority. Therefore, we must retain all procedural options by having this second track. Regardless of which track ultimately gets used, BILL CLINGER and I are committed to bringing to the conference and defending the substance of this legislation as it continues to be refined and improved through the normal legislative process.

Mr. Chairman, while I strongly support and urge all my colleagues to support this amendment, it must also be said that it still requires further refinement in certain areas, particularly the provisions establishing a single bid protest forum. It is my intention to continue working this and other issues with BILL CLINGER and other committees of interest and jurisdiction to improve upon the remaining problem areas.

However, while we still have some fine points to work through, I am in full agreement with BILL CLINGER and

JOHN KASICH that comprehensive, fundamental reform of the Federal acquisition system is needed as quickly as possible if we are to begin reducing the size and expense of the Federal Government. The Clinger-Spence-Kasich amendment is the proper vehicle to move us toward that objective.

The gentlelady from Illinois [Mrs. COLLINS] will be offering a perfecting amendment that will walk back many of the important provisions of the Clinger-Spence-Kasich amendment. The Collins amendment, while well intentioned, would revert back to the same timid and ineffective reforms that we have engaged in for the past 10 years. What is needed is fundamental reform. Clinger-Spence-Kasich is that fundamental reform.

In closing, I urge my colleagues to defeat the Collins amendment to water down the critical provisions of the Clinger-Spence-Kasich amendment and strongly support the Clinger-Spence-Kasich amendment as an important step toward a more efficient and cost-effective Federal acquisition system.

Mrs. COLLINS of Illinois. Mr. Chairman, I yield 7 minutes to the gentlewoman from New York [Mrs. MALONEY], the ranking member of the subcommittee.

Mrs. MALONEY. Mr. Chairman, I share the chairman's commitment to modernize and streamline the procurement process, and I share his desire to dramatically improve the way the Federal Government spends more than \$200 billion of the taxpayers' dollars in private contracts.

But there are at least two fundamental problems with the substance of this amendment. First, it would weaken the requirement for full and open competition for Federal contracts, which has been Federal law since 1984. These requirements are the taxpayers' best protection against waste, fraud, and abuse.

That the Clinger amendment weakens these taxpayer protections is extremely disturbing. The inspector general of the Department of Defense agrees with my objections and so stated in a letter to the chairman dated yesterday, and I am including that letter at this point in the RECORD, as follows:

INSPECTOR GENERAL,
DEPARTMENT OF DEFENSE,
Arlington, VA, June 13, 1995.

Hon. WILLIAM F. CLINGER, Jr.,
Chairman, Committee on Government Reform
and Oversight, House of Representatives,
Washington, DC.

DEAR MR. CHAIRMAN: Although we recently provided the Department our views on H.R. 1670, "Federal Acquisition Reform Act of 1995," the enclosed comments on sections we support or find troublesome are forwarded for your consideration. We were especially troubled by proposals in Sections 201 and 203 to reduce the number of contracts subject to the Truth In Negotiations Act. The proposals reduce the ability of contracting officers to ensure the Government receives a fair price for items purchased on noncompetitive contracts.

I hope the information is helpful as the Congress continues consideration of this im-

portant issue. If we can be of further assistance, please contact me or Mr. John R. Crane, Office of Congressional Liaison, at (703) 604-8324.

Sincerely,

ELEANOR HILL,
Inspector General.

INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, COMMENTS ON H.R. 1670, FEDERAL ACQUISITION REFORM ACT OF 1995

Section 101, Improvement of Competition Requirements. Subsections (a) and (b) would amend 10 U.S.C. 2304 and 41 U.S.C. 253, respectively, to establish a statutory preference for the use of "maximum practicable competition" rather than "full and open competition." The proposed amendments would eliminate the statutory exceptions to competition and authorize DoD and civilian agencies to exclude a particular source in order to establish or maintain an alternative source of supply for a particular item or service. The proposed amendments further provide that when noncompetitive procedures are used to procure an item or service, the procurement shall be justified in writing and approved in accordance with the Federal Acquisition Regulation. We disagree with the proposed amendments. Contracting officers have flexibility to exercise sound business judgment under the current statute in determining the appropriate acquisition strategy for a procurement. There is no preference for sealed bids. Further, there are legitimate reasons, which the current statutes identify, that preclude the use of competition for some contracts. The exceptions were included in the statutes because in some agencies, there was an institutional bias against competition or a proclivity for sole-source contracting. We believe that the exceptions to competition should be retained in the statute to avoid abuse of sole-source contracting.

Subsection (c) would amend 41 U.S.C. 416 to eliminate differences in requirements for publicizing procurements between DoD and civilian agencies and the requirement that contracting officers consider each responsive offer that is received. We support amending the statute to establish uniform procurement notice requirements for DoD and civilian agencies. We do not support deleting the requirement that contracting officers consider all responsive offers. The purpose of the preaward notice is to open competition to all offerors who can meet an agency's needs.

Subsection (d) would amend 15 U.S.C. 637 to delete provisions that duplicate 41 U.S.C. 416. We support the amendment.

Subsection (e) would amend 41 U.S.C. 414 to incorporate the proposed statutory preference for "maximum practicable competition" in the executive agency responsibilities. It would also amend 41 U.S.C. 418 to delete the reference to the date of enactment of the Competition in Contracting Act. We do not support the amendment of 41 U.S.C. 414 for the reasons discussed above in Subsections (a) and (b). Also, competition is not a procurement procedure, but an objective that a procedure is designed to attain. Therefore, the word "achieve" is preferable to "promote." We do not object to the proposed amendment of 41 U.S.C. 418.

As an alternative, we like the words in Section 1012 of S. 669, "Federal Acquisition Improvement Act" that amend 10 U.S.C. 2305(b) and allow the contracting officer to limit competition to the top 3 contractors bids. The provision allows all contractors to compete initially and then narrows the field.

Section 102, Definition Relating to Competition Requirements. The section would amend 41 U.S.C. 403 to replace the definition of "full and open competition" with "maximum practicable competition" and make

similar substitutions in sections of Titles 10 and 41. We do not support the amendment. The current statutory preference for "full and open competition" requires contracting officers to use competitive procedures to the maximum extent practical. Also, see previous comments on Section 101.

Section 103, Contract Solicitation Amendments. The section would amend 10 U.S.C. 2305 to delete the provision stating that specifications included in contracts shall permit full and open competition and will include restrictive provisions only to the extent necessary to satisfy the needs of the agency or as authorized by law. Specifications express agency needs and serve as the baseline for the evaluation of offers. The current language was included in the statute because agencies used specifications to restrict competition by unnecessarily defining their needs too narrowly. Thus, we do not support the change.

Section 104, Preaward Debriefings. We agree with the proposed amendment to 10 U.S.C. 2305(b) to clarify the policy for debriefing unsuccessful offerors prior to the award of a contract. The change may also eliminate some needless protests. The contracting officer should have discretion whether a debriefing is required, particularly, for actions that do not involve significant judgments about factors other than price.

Section 105, Contract Types. The section would amend 10 U.S.C. 2306 to delete the prohibition on payment of contingency fees to obtain contracts; the 15 percent fee limit on performing cost-plus-a-fixed-fee (CPFF) contract for experimental, developmental, research work; the 10 percent fee limit for any other CPFF contract; the 6 percent fee limit for performing a CPFF contract for architectural or engineering (A&E) services; the requirement under cost reimbursable contracts for the prime contractor to provide notice of certain subcontract awards; and references to Truth In Negotiations Act (TINA) provisions and multiyear contracting authority.

We do not support deleting the prohibition on payment of contingency fees or the elimination of the limits on fees on CPFF and architectural or engineering contracts. As a matter of public policy, contractors should not pay contingency fees to someone for soliciting or brokering for them to obtain Federal contracts.

We disagree with deletion of the 6 percent fee limitation for a CPFF contract for architectural or engineering services. The statute serves its intended purpose because it limits how much the DoD can spend designing projects and prevents overspending on design efforts to the detriment of actual construction. The statute also helps to limit the Government's risk of investing in an expensive design for a project. We have audited hundreds of military construction projects and have never seen a lack of competition for the design work or higher construction prices due to the fee limits.

We also disagree with the proposed elimination of the 15 percent and 10 percent fee limits. The fee limitations provide a reasonable framework for the contracting officer to use in negotiating CPFF contracts and still allow the contracting officer flexibility to reward contractors according to different risk situations. Contractors have less financial risk on level-of-effort and completion type CPFF contracts than any of the other contract types. Eliminating the statutory limitations on fees for CPFF contracts would likely result in varying interpretations by contracting officers and higher fees on some CPFF contracts. Also, contracting officers often apply the 10 and 15 percent limitations to maximum fees on cost-plus-incentive-fee (CPIF) and cost-plus-award-fee (CPAF) con-

tracts. In 1993, there were \$112 billion in contracts by the DoD and \$47.7 billion (42 percent) were cost-type contracts, of which \$16.6 billion (14 percent) were CPFF contracts. Thus, a lot of contracts will be affected. The Section 800 Panel recommended eliminating the 6 percent limitation for architectural and engineering contracts but did not recommend eliminating the other fee limitations.

We have no objection to deleting the references to the TINA provisions or multiyear contracting authority since the provisions are in other statutes.

Section 106, Contractor Performance. The section would add a new Section 35 to 41 U.S.C. 401, et seq., that provides for a contractor verification system for the procurement of particular property or services that are procured by executive agencies on a repetitive basis. Procedures for the system would be defined in the Federal Acquisition Regulation (FAR). The section would also repeal 10 U.S.C. 2319, which provides policies on encouragement of new contractors and qualification requirements. We do not support the proposed change to eliminate the qualification requirements. Allowing new contractors to qualify helps competition in contracting, reduces costs, enhances industry responsiveness, and maintains integrity in the expenditure of public funds by ensuring that contracts are awarded on the basis of merit rather than favoritism. Under the current statute, contracting officers should also consider quality of product and contractor performance in addition to price before awarding a contract. This proposal goes away from trying to add new vendors to DoD supplier lists and appears to limit suppliers to the past DoD contractors.

Section 201, Commercial Item Exception to Requirement for Cost or Pricing Data and Information Limits. We disagree with the proposed change to the TINA, 10 U.S.C. 2306a (b)(1)(A), which deletes the section that allows the use of established catalog or market prices of commercial items that are sold in substantial quantities to the general public as an exception to the requirement for cost or pricing data. The proposed change allows the exception under (B), which is for acquisition of a commercial item. Placing the exception under commercial items allows the exception without first determining whether enough information is available to determine whether the item is actually commercial and the fairness and reasonableness of the contractor's proposed price for the exempted commercial item.

Section 1204 of the Federal Acquisition Streamlining Act (FASA) recently amended 10 U.S.C. 2306a (d)(2)(B) to allow a commercial item exemption when contracting officers are able to obtain information on prices for which the same or similar items were sold in the commercial marketplace to determine price reasonableness. We disagree with the proposed rule that would allow an exemption simply because the definition of commercial item is met. Without restrictions to only allow the exemption after the fairness of the proposed price has been determined, there are no control mechanisms to prevent the Government from being overcharged.

The proposed change in this Bill to Section 2306(c) of 10 U.S.C. would eliminate the right of the head of the procuring activity to request cost or pricing data because the item is now called commercial. The proposed change to Section 2306a(d) of 10 U.S.C. would eliminate the right for contracting officer to request limited data for commercial items and for auditors to have 2 years after award of the contract to audit the data. The proposed change also eliminates 10 U.S.C. 2306a(h), which states the FAR will contain

provisions on the types of information a contracting officer can request to be submitted to determine if a price is reasonable when the procurement is under \$500,000.

We disagree with the changes, which create intolerable loopholes to the TINA. The FASA changes enacted last year to allow the current 10 U.S.C. 2306a exemption for commercial items has not yet been implemented and its effect cannot be judged. Also, the ability to request limited data for commercial items and allow 2-year audit rights was placed in the FASA as a compromise last year to allow for limited tests or reviews, without penalties to contractors, to determine whether fair prices were being received under the commercial item exemption. Without this audit provision, there is no way to evaluate properly the FASA change related to commercial items. We believe that changing the provision of a law designed to streamline the purchase of commercial items before the law has been implemented is premature.

The Defense Contract Audit Agency and this office identified \$2,017 million in FY 1994 in direct monetary benefits related to the TINA. Those benefits were from identified contract over-pricing that resulted in price reductions or administrative and criminal collections for overpricing. The Coopers and Lybrand/TASC study on contract cost drivers stated that TINA adds about 1.3 percent to contract costs. If this cost driver estimate is near accurate, then TINA added about \$660 million in costs to DoD contracts in FY 1994, but there were \$2 billion in benefits. This is a benefit to cost ration of 3 to 1. However, the greatest benefits from TINA are intangible, and we cannot estimate the intangible but positive effect of the TINA on keeping contract prices fair for the Government. Just the fact that the law exists and there are audit and investigative agencies creates an atmosphere of voluntary contract compliance.

Section 202, Application of Simplified Procedures to Commercial Items. The proposed change to 10 U.S.C. 2304(e)(1) would amend Sections 101 (a) and (b) of this Bill to specify that simplified acquisition procedures may be used for purchases of commercial items regardless of dollar value. The section would also amend 41 U.S.C. 416, as amended by Section 101(c), to conform notice requirements for commercial items to the use of simplified procedures. We strongly support the concept of making the purchase of commercial items easier. The Deputy Inspector General, DoD, testified last year that because of the restrictive acquisition laws, the Department purchased very limited quantities of common commercial items, such as clothing and textiles, wood products, meat and seafoods from the top 10 commercial producers. The Department purchased these commercial items from smaller companies that specialized in satisfying the Department's acquisition rules and selling to the Department. To really reduce costs, you need to exempt commercial item purchases from all Buy-American, small business and other socioeconomic statutes.

Section 203, Amendment to Definition of Commercial Items. We disagree with the proposed change. As written in Part (F) of the FASA (41 U.S.C. 422(f)(2)), the procurement of commercial services is limited to established catalog prices for the services. At present, the statute Part (E) provides for acquisition of installation, maintenance, repair and training services as commercial services. The proposed change in Part (F) allows a definition of commercial services as services based on established prices. There is no definition of "established prices," and the terms are much broader than the current terms "established catalog prices." The new

terms could result in almost any service fitting that description and, thus, being considered a commercial product. Established prices may merely represent prices traditionally offered the Government and may not reflect lower prices offered affiliates and commercial customers for sales of like quantities under similar terms and conditions. Unless the prices for the specific tasks are published in a catalog, the Government would be unable to determine whether standard commercial terms, conditions and prices are offered.

According to a March 1993 OMB report, service contract costs were \$103 billion for the Government and \$81 billion in the DoD for 1993. The proposed change would permit the acquisition of all professional and technical services as a commercial service and exempt \$100 billion of service contracts from contracting officer and auditor requests for a contractor's catalog, pricing data or cost data to perform pricing or cost analyses. Without any restrictions or exclusions, the language is too broad and is very likely to result in increased prices and a reduction in competition. The DoD has not yet implemented the (D) and (F) provisions of the FASA to judge their effect. We believe it is too early to change a provision of law designed to streamline the purchase of services before the law has been implemented.

Section 204, Inapplicability of Cost Accounting Standards to Contracts and Subcontracts for Commercial Items. We disagree with excluding the requirement to comply with Cost Accounting Standards (CAS) if the contract for commercial items provides for Government financing through progress payments or public vouchers. In order to receive financing, the contractor must demonstrate that his accounting practices adequately assign costs to contracts. Therefore, any contract for commercial items that provides for Government financing should include the provisions of the CAS.

Section 301, Government Reliance on the Private Sector. The section would add a Section 17 to the Office of Federal Procurement Policy Act that states it is the policy of the Government to rely on commercial sources to supply its needs. We have no objection to the amendment. The policy is already stated in Executive Order and administrative regulations (Office of Management and Budget Circular No. A-76).

Section 302, Elimination of Certain Certification Requirements. We do not agree with the proposed amendment to 10 U.S.C. 2410 to delete the certification requirement for contractor requests for equitable adjustment and relief under Public Law 85-804. The claims are subject to audit and inaccurate, incomplete or misleading data could be a basis for denial of the claim and other sanctions. We also do not agree with the proposed amendment to 10 U.S.C. 2410b to delete the certification for contractor inventory accounting systems. Contractor representations are one of the basis that help DoD personnel decide whether to reduce the need for systems audits to establish whether the systems meet standards. We do not object to the amendment of 31 U.S.C. 1352(b)(2) to delete the certification requirement regarding the prohibition on use of appropriated funds for lobbying (Byrd Amendment) and 41 U.S.C. 701 to delete the certification requirement from the Drug-Free Workplace Act. We do not support the proposed requirement in subsection (b) that not later than 210 days after the date of the enactment of the Act, any certification required of contractors or offerors by the FAR that is not specifically imposed by statute would be removed from the FAR or such agency regulation unless written justification for such certification is provided to the Administrator, Office of Fed-

eral Procurement Policy (OFPP) by the FAR Council and the Administrator approves in writing the retention of the certification. Instead, we support a provision that would vest agency heads with nondelegatable authority to decide when agencies may impose such certifications. We believe there is a need for certifications from contractors where funds or safety are involved because they enhance the efficiency and trust in the contracting process.

Section 303, Amendment to Commencement and Expiration of Authority to Conduct Certain Tests of Procurement Procedures. The change is to subsection (j) of Section 5061 of the FASA. Section 5061 covers the OFPP Test Program for Executive Agencies. The OFPP test programs were limited by the FASA to under \$100 million in procurements, allowed OFPP to test innovative procurement policies, and waive any nonstatutory rule in the FAR and 13 statutes. Subsection (j) does not allow use of the test programs in any agency until the agency certifies to Congress full Federal Acquisition computer Network (FACNET) capability. We agree with the change because it allows use of the test programs prior to full FACNET capability. The DoD does not project obtaining full FACNET capability until late 1997.

Section 304, International Competitiveness. The proposed change deletes the requirement for recoupment of a proportionate amount of nonrecurring costs for research, development and production of major defense equipment. The premise is that doing so will facilitate the transfer of technology between Government and commercial markets; aid integration of contractor's Government and commercial operations; increase U.S. competitiveness in worldwide markets; and enhance national security by preserving the industrial base. We disagree with the change and offer an alternative. The current law and regulations allow the change to be waived if the charge is an impediment to the sale. Requests for waivers are invariably granted. Some personnel refer to the charge as a tax when, in fact, it is a refund to the U.S. Treasury of a proportionate amount of research and development funds provided to the contractor to develop the item. The non-recurring cost collections added about \$181 million to the U.S. Treasury in FY 1994 and the Defense Security Assistance Agency projects that an additional \$1 billion will be collected during FYs 1995 to 2000. If the provision of noncollection applies to only new sales, then \$148 million (\$25 million in 1998, \$48 million in 1999 and \$70 million in 2000) of the \$1 billion will not be collected during these years. However, between 2001 and 2005, nothing will be collected. If recoupments are stopped, another source of revenue will be needed to offset the noncollection. It has also been stated that repeal is needed to improve the competitiveness of U.S. companies selling military hardware. Recent sales figures show that in 1993 the U.S. accounted for 53 percent of all military hardware sold to other nations. During the 1991 to 1993 period, the U.S. supplied about \$34 billion of military equipment to foreign countries and all other nations combined provided \$34 billion. Since the U.S. sales of military hardware exceed all other countries combined, there is no need for additional across-the-board help when it can be done through waivers, on a case-by-case basis, to help competitiveness.

Section 305, Procurement Integrity. We agree with the proposed repeal of 10 U.S.C. 2397, Employees or former employees of defense contractors: reports; 10 U.S.C. 2397a, Requirements relating to private employment contacts between certain Department of Defense procurement officials and Defense contractors; 10 U.S.C. 2397b, certain former Department of Defense procurement offi-

cials: limitations on employment by contractors; 10 U.S.C. 2397c, Defense contractors: requirements concerning former Department of Defense officials; and 18 U.S.C. 281, Restrictions on retired military officers regarding certain matters affecting the Government. The provisions of Title 10 relate solely to the Department of Defense and impose various post-employment restrictions and reporting requirements. The provision of Title 18 imposes criminal penalties for violations of post-employment restrictions by retired military officers. It is currently suspended. The complexity of the current restrictions have frustrated the ability of the contracting work force—in Government and industry—to abide by them. The current statutory certification requirements are unlikely to deter conduct to be proscribed. Moreover, the certifications create considerable administrative burden.

Section 306, Further Acquisition Streamlining Provisions. We do not support amending 41 U.S.C. 404 to define the purpose of the OFPP and repealing 41 U.S.C. 401 and 402, which currently define the purpose and responsibilities of the OFPP. The change replaces specific language with vague, general language and we see no benefit to the change. We also disagree with the repeal of the reporting requirement in 41 U.S.C. 407(a), which requires the Administrator of OFPP submit an annual report to the Congress on the major activities of his office. We believe this requirement should be retained because it assists the Congress in carrying out its oversight responsibilities. We agree with the repeal 41 U.S.C. 407(b), which requires the Administrator to transmit a report to the Congress on proposed policies and regulations. Repeal would reduce the administrative burden created by this reporting requirement. We agree with repeal of the obsolete provisions in 41 U.S.C. 409 and 410, which cover the 1983 appropriations and rules for the OFPP.

Section 401-452, Establishment of the United States Board of Contract Appeals. The new consolidated Board will be established in the executive branch and be composed by judges from all the Boards of Contract Appeal (BCAs) and assistant general counsels from the General Accounting Office (GAO) that now hear bid protests. The proposed change terminates all of the existing BCAs in the different departments.

Functions of the new Board include the following:

1. Required to provide alternative disputes resolution services for contract disputes.
2. Adjudicate contract disputes under the Contract Disputes Act (CDA).
3. Resolve bid protests through use of the following procedures: may consider all relevant evidence; preponderance of the evidence standard; has authority to suspend procurement pending protest; costs can be paid to U.S. on frivolous protests; successful protestor can be awarded costs; and nonexclusivity of remedies. A contractor can still protest to an agency, a District Court or a Court of Federal Claims. However, it repeals authority of the General Services Administration Board of Contract Appeals (GSBCA) and the GAO to hear protests.

We have no opinion on these sections since it is unclear if efficiency or costs savings will result from this proposed legislation, and we have no basis to make such a determination.

Second, the Clinger amendment allows a simplified acquisition procedure for the purchase of these so-called commercial products no matter what the dollar value. Last year we passed a landmark bill with bipartisan support that raised the threshold for simplified

procedures to \$100,000, thus allowing officials to purchase basic goods like salad dressing or paperclips without undue red tape.

This amendment would eliminate the threshold altogether, and while I might, in fact, support raising the threshold, I cannot in good conscience support eliminating the threshold and thereby depriving the taxpayers of the assurance that when it buys a multi-million-dollar product the American people are still getting the best possible product at the best possible price.

The Department of Defense's inspector general has strong reservations concerning the Clinger amendment's definitions of commercial items because there is no definition for established prices for commercial services afforded other customers, a determination of lower prices cannot be made and, therefore, may end up costing more for the Government. The IG's concern underscores mine that waiver of full and open competition is available for products and services within the broad spectrum of the term commercial items.

The term simplified procedures only tells procurement agents that they need to have competition to the maximum extent practicable. This is a far cry from a requirement for full and open competition when buying a multi-million-dollar item. Waiving a requirement of full and open competition may be fine for small purchases, but I believe that allowing contracting officials to spend as much taxpayer money as they want with limited competition may lead to serious problems.

Also of major importance is the process under which we are considering the Clinger amendment on the floor today without a markup or even a committee report explaining the provisions of this legislation. In fact, Mr. Chairman, when a bill of this magnitude and complexity is brought directly to the floor, it can only raise the suspicion in the minds of the public that we might be trying to push something through that cannot stand the scrutiny of public debate.

I am certainly confident that everyone concerned has the best interests of the Nation at heart, but strange procedures like this will lead to questions however unjustified, when the subject is how \$200 billion will be spent.

Let me be clear that there are many provisions of this amendment that I do support, including those that I drafted to improve the acquisition work force. I thank the chairman, the gentleman from Pennsylvania [Mr. CLINGER], and his staff for working closely with the gentlewoman from Illinois [Mrs. COLLINS] and myself and for accepting many of our amendments.

□ 1100

The acquisition work force, a major thrust, is needed because a major thrust of almost all recent procurement reform is placing more responsibility and decisionmaking power with

the front-line procurement official, the contracting officer. But at the same time we are giving more responsibility to those officials, we are also witnessing a significant downsizing of the work force. Therefore, these reform initiatives will be successful only if we have a highly trained and motivated corps of professionals.

Currently, there are no professional requirements for contracting officers; in fact, one need not have a college education even though they are making decisions about how to spend millions of taxpayer dollars. For the first time, we will have mandatory qualifications that include a requirement that contracting officers, at a minimum, possess a college degree. But while these changes will make this a better amendment than before, the fact that the Clinger amendment weakens full and open competition for Federal contracts makes it impossible for me to give my support.

As I said earlier, the simple fact is that the best protection that the taxpayers have against the danger of waste and corruption in procurement is the requirement that contracts be awarded using competitive procedures. This ensures that the American people get the best product for the lowest price, but by removing the requirement for competition and replacing it with some nebulous definition of "maximum extent practicable," we are only inviting lawsuits and other trouble for the American taxpayer.

I will discuss some of these issues further in supporting the amendment which the gentlewoman from Illinois [Mrs. COLLINS] will offer to the Clinger amendment to remedy some of these flaws. Under different circumstances and with a few fundamental changes, the Clinger amendment could represent an excellent second step to follow the changes made last year by Congress and those made by Vice President GORE, but until those changes are made, I must oppose the amendment.

Mr. CLINGER. Mr. Chairman, I yield 4 minutes to the gentleman from New Hampshire [Mr. ZELIFF], a very valued member of the committee and supporter of this amendment.

Mr. ZELIFF. Mr. Chairman, I rise in support of this amendment to the defense authorization bill to cut redtape and simplify the Federal acquisition system. For too long, Federal procurement has meant costly, time-consuming regulations that waste millions of taxpayers' dollars. This amendment takes a much-needed giant step toward reinjecting both common and economic sense into the Federal acquisition process.

I am proud to join as a cosponsor of this amendment with the distinguished chairman of the Government Reform and Oversight, National Security, and Budget Committees, respectively, as well as my distinguished colleague from New Hampshire, Congressman CHARLIE BASS. Chairmen CLINGER, SPENCE, and KASICH—and their staffs—

deserve tremendous credit for forging this consensus amendment.

It is important to note that this amendment has the support of the committee chairs charged with reforming and cutting the size of Government, with authorizing our military with the means to secure our Nation, and with cutting our Federal budget.

In short, this amendment cuts Government waste, enhances national security, and makes financial sense. Clearly, the time is now to pass this amendment.

When it comes to acquisition reform, we appropriately should focus on the Department of Defense. DOD spends nearly 80 percent of the roughly \$200 billion per year spent by the Federal Government on good and services. That is nearly \$160 billion a year.

Under the current acquisition rules, DOD pays an additional 18 to 19 percent in costs generated by existing redtape. That is an added \$28 to \$30 billion in unnecessary costs per year—that leaves a lot of room for improvement.

This amendment goes a long way toward cutting those unnecessary costs by building on the reforms passed last year in the Federal Acquisition Streamlining Act [FASA] of 1994.

Chairman BILL CLINGER led the fight to pass those reforms last year—the first in nearly a decade—as he is leading the fight this year to continue the job.

Today's amendment will give the taxpayer more bang for the buck. It requires more efficient competition, expanded use of off-the-shelf commercial products, results-oriented performance incentives, and streamlining of the dispute resolution and bid protest process.

When you have a system as bloated and inefficient as the Federal acquisition system, even today's reforms may not be enough. While scuttling the system all together may be tempting, I would urge my colleagues to support this amendment. It recognizes the need for major reform by requiring dramatic yet prudent change.

I share Chairman JOHN KASICH's concern that the culture surrounding the Federal procurement process, especially within DOD, must be reassessed and fundamentally changed.

As a small businessman, I have learned that at the end of each day, you need to balance your books if you want to stay in business. Our Government and the Federal acquisition process need to be reintroduced to these basic business practices. We need to incorporate these lessons from the private sector. This amendment pushes us in that direction.

Finally, a subcommittee chairman charged with overseeing the economy and efficiency of DOD, I share Chairman SPENCE's desire to achieve greater efficiency without sacrificing one ounce of security. This amendment cuts costs without cutting military readiness.

Mr. Chairman, today's amendment calls for fundamental change that is

long overdue in the Federal acquisition system. Many among us, Republicans and Democrats, have been working to improve the way our Government does business. We are blessed with a wealth of ideas and energy in this Congress.

My fellow colleagues, let us seize this moment and channel our energy into a positive, constructive force. Let us pass this amendment and improve the Federal acquisition system. That is what the American people expect—and I am confident that is what we will deliver.

Mrs. COLLINS of Illinois. I yield 4 minutes to the gentlewoman from Kansas [Mrs. MEYERS], the chair of the Committee on Small Business.

(Mrs. MEYERS of Kansas asked and was given permission to consent to revise and extend her remarks.)

Mrs. MEYERS of Kansas. Mr. Chairman, I rise reluctantly to oppose the Clinger amendment and enthusiastically in support of the Collins amendment. The Clinger amendment does several things. First, it repeals the requirement for full and open competition. Next, the Clinger amendment would permit the use of so-called simplified procedures for the procurement of commercial products without any dollar limitation. Currently, these simplified procedures can be used only for small purchases, those less than \$25,000. After implementing regulations are issued on the Federal Acquisition Streamlining Act [FASA] from last year, authority to use simplified procedures will increase to \$100,000. Let me repeat, the Clinger amendment would permit the use of simplified procedures for the purchase of commercial products, without dollar limitation.

Mr. Chairman, I am also concerned about the Clinger amendment for procedural reasons. This sweeping procurement legislation should not be considered at the last minute as a floor amendment to the DOD authorization bill. It has had one hearing. It has not had a markup. The sponsor urges that the text of the amendment being considered is merely a placeholder, subject to future revision. I remain concerned, given the changes that this legislation makes and how those changes would affect small business.

In its present form, this legislation, the Federal Acquisition Reform Act of 1995, is a disaster for small business. This legislative alert is now being circulated at the 1995 White House Conference on Small Business, which is taking place this week. I am informed that it is being distributed by the Small Business Working Group on Procurement Reform, which includes NFIB, National Small Business United, the Small Business Legislative Council, and other groups. It expresses great concern about the this legislation and this process. It says that this legislation, now being considered in the form of the Clinger amendment, would take away small businesses' right to bid on contracting opportunities being offered by the government by repealing the

full and open competition standard of the 1984 Competition in Contracting Act.

When I was elected in 1984, all during that long, hot summer and fall, all I heard about was the \$435 hammers and the \$7,600 coffee pots. The full and open competition standard was put in legislation to do away with those and similar sole-source procurement excesses. Now we are considering legislation to repeal it.

Small business sees this effort as a mechanism to again deprive them of the opportunity to bid. The legislative alert specifically highlights that the legislation before us as the Clinger amendment would repeal current protections requiring a contracting officer to justify the proposed award of a contract through less than full and open competition. The Clinger amendment would repeal statutory protections for the prequalification of contractors. It would repeal the provisions of the Small Business Act that require notice of contracting opportunities in the Commerce Business Daily—or local posting for small purchases—and assure adequate time to submit an offer.

The legislation contained in the Clinger amendment would authorize awards of contracts for commercial items without dollar limitation through simplified procedures currently used for only small purchases. I approve of the use of simplified procedures for commercial items under \$25,000 or even under \$100,000, but not without any dollar limitation. Under simplified procedures, a person sitting in the Pentagon could make a telephone solicitation of three firms of the contracting officer's choosing, and that would be recognized as competitive.

Mr. Chairman, as a result of last year's Federal Acquisition Streamlining Act, commercial items are broadly defined to include not only items sold in the marketplace, but even unbuilt items that are, "intended to be offered in the future." The Clinger amendment legislation would also broaden the definition of commercial items to cover a broad range of services.

Mr. Chairman, I think that the Clinger amendment locks out small business. The Collins amendment strikes the most egregious provisions of the Clinger amendment. I would urge my colleagues to vote for the Collins amendment and against the Clinger amendment.

Mr. CLINGER. Mr. Chairman, I yield myself 30 seconds to respond.

Mr. Chairman, the task force alert which was referred to by the gentlewoman from Kansas [Mrs. MEYERS] unfortunately, I regret to say, is full of misinformation and disinformation, and I think that may be partially our fault for not have been—but I think we will have an opportunity before we go to markup next week to correct some of the misinformation that is included in that markup, and we will certainly do that. I stress again we are going to markup next week. If there are these

problems that are alluded to, we can address those at that time.

Mr. Chairman, I yield 2 minutes to the gentleman from Oklahoma [Mr. WATTS], a member of the Committee on National Security.

Mr. WATTS of Oklahoma. Mr. Chairman, I believe Congress is finally doing something positive for small business. The Clinger-Spence-Kasich amendment to H.R. 1530 slashes bureaucracy and creates an accommodating marketplace environment. It does this by increasing the use of commercial practices, streamlining the lengthy dispute process, and enhancing competition.

It will be easier for the Federal Government to contract with the private sector, easier for the private sector to carry out its responsibilities, and easier for the user—our soldiers, sailors, airmen, and marines—to receive the goods and services necessary to fight and win the battles that lie before them.

Last month, the National Security and Government Oversight Committees held a joint hearing. In that session, a senior official of a minority-owned information technology firm testified that Congress needs to streamline the currently cumbersome and costly acquisition process. This amendment moves us in that direction by eliminating administrative burdens normally associated with the contracting process. For example, the use of cost accounting standards on commercial items would become a thing of the past. Cost accounting standards are complex rules for collecting and reporting costs. How much will this save? Hundreds of thousands of dollars in costs will no longer be paid to company employees and watchdogs whose primary role is to collect, organize, and report costs to government buyers.

We can no longer tolerate the archaic approach at work within the Federal acquisition process. We have before us the opportunity to lower the cost of doing business and expedite deliveries to the military consumer. This chance should not be overlooked. I ask my colleagues to please join me in supporting this amendment.

□ 1115

AMENDMENT OFFERED BY MRS. COLLINS OF ILLINOIS TO THE AMENDMENT OFFERED BY MR. CLINGER, AS MODIFIED

Mrs. COLLINS of Illinois. Mr. Chairman, I offer an amendment to the amendment, as modified.

The CHAIRMAN. The Clerk will designate the amendment to the amendment.

The text of the amendment to the amendment is as follows:

Amendment offered by Mrs. COLLINS of Illinois to the amendment offered by Mr. CLINGER, as modified: Strike out sections 801, 802, 803, and 806 in the matter proposed to be inserted, and insert in lieu of section 801 the following:

SEC. 801. COMPETITION PROVISIONS.

(a) CONFERENCE BEFORE SUBMISSION OF BIDS OR PROPOSALS.—(1) Section 2305(a) of title 10, United State Code, is amended by adding at the end the following paragraph:

"(6) To the extent practicable, for each procurement of property or services by an agency, the head of the agency shall provide for a conference on the procurement to be held for anyone interested in submitting a bid or proposal in response to the solicitation for the procurement. The purpose of the conference shall be to inform potential bidders and offerors of the needs of the agency and the qualifications considered necessary by the agency to compete successfully in the procurement."

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

"(f) To the extent practicable, for each procurement of property or services by an agency, an executive agency shall provide for a conference on the procurement to be held for anyone interested in submitting a bid or proposal in response to the solicitation for the procurement. The purpose of the conference shall be to inform potential bidders and offerors of the needs of the executive agency and the qualifications considered necessary by the executive agency to compete successfully in the procurement."

(b) DESCRIPTION OF SOURCE SELECTION PLAN IN SOLICITATION.—(1) Section 2305(a) of title 10, United States Code, is further amended in paragraph (2)—

(A) by striking out "and" after the semicolon at the end of subparagraph (A);

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

(C) by adding at the end the following new subparagraph:

"(C) a description, in as much detail as is practicable, of the source selection plan of the agency, or a notice that such plan is available upon request."

(2) Section 303A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a) is further amended in subsection (b)—

(A) by striking out "and" after the semicolon at the end of paragraph (1);

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

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

"(3) a description, in as much detail as is practicable, of the source selection plan of the executive agency, or a notice that such plan is available upon request."

(c) DISCUSSIONS NOT NECESSARY WITH EVERY OFFEROR.—(1) Section 2305(b)(4)(A)(i) of title 10, United States Code, is amended by inserting before the semicolon the following: "and provided that discussions need not be conducted with an offeror merely to permit that offeror to submit a technically acceptable revised proposal".

(2) Section 303B(d)(1)(A) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended by inserting before the semicolon the following: "and provided that discussions need not be conducted with an offeror merely to permit that offeror to submit a technically acceptable revised proposal".

(d) PRELIMINARY ASSESSMENTS OF COMPETITIVE PROPOSALS.—(1) Section 2305(b)(2) of title 10, United States Code, is amended by adding at the end the following: "With respect to competitive proposals, the head of the agency may make a preliminary assessment of a proposal received, rather than a complete evaluation of the proposal received, rather than a complete evaluation of the proposal and may eliminate the proposal from further consideration if the head of the agency determines the proposal has no chance for contract award."

(2) Section 303B of the Federal Property and Administrative Services Act of 1949 (41

U.S.C. 253b) is amended by adding at the end the following: "With respect to competitive proposals, the head of the agency may make a preliminary assessment of a proposal, and may eliminate the proposal from further consideration if the head of the agency determines the proposal has no chance for contract award."

(e) FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall be revised to reflect the amendments made by subsections (a) < (b), (c), and (d).

The CHAIRMAN. Under the rule, the gentlewoman from Illinois [Mrs. COLLINS] is recognized for 20 minutes, and a Member in opposition will be recognized for 20 minutes.

PARLIAMENTARY INQUIRY

Mrs. COLLINS of Illinois. Mr. Chairman, I understood that we had a 4 remaining minutes on the other discussion. Do I now have 24 minutes, remaining?

The CHAIRMAN. The gentlewoman has 20 minutes, in addition to her remaining time.

Mrs. COLLINS of Illinois. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my amendment does three things: First it strikes from Chairman CLINGER's amendment his repeal of full and open competition for Federal contracts. Second, it strikes an unnecessary system of Federal agency verification, whereby agency bureaucrats determine which firms are allowed to bid for Federal contracts. Third, it moves us closer to commercial buying practices, by empowering agency officials to have more open communication with the private sector. My position is supported by the Small Business Administration and the National Federal of Independent Businesses.

The cornerstone of our free enterprise system is full and open competition. The competitive market ensures fair prices to the Government. If a vendor's product costs too much it will not survive. At the same time full and open competition provides the opportunity for all vendors, particularly small businesses, to participate in the Federal marketplace, to be judged on merit. This creates incentives for the development of new and innovative products. Clearly these market forces are essential if we are to position our country for economic leadership into the next century.

Chairman CLINGER's amendment detours from the well-lighted road of full and open competition, and into the uncharted wilderness of maximum practicable competition. While it is unclear from the bill exactly what is meant by this new standard, I am concerned that we will be changing the playing field to significantly limit the ability of small businesses to compete for Federal contracts.

Prior to 1984 Federal agencies used maximum practicable competition to award sole source contracts because agency bureaucrats complained that full and open competition would be too complicated and time consuming. They

said it was less risky and more manageable to do business with a few selected vendors, instead of encouraging new and innovative qualified companies to enter the Federal marketplace.

That lack of competition resulted in widespread waste and abuse in every Federal agency. As a result, in 1984, Congress passed the Competition in Contracting Act, which established the current standard of full and open competition which has saved the Federal Government billions of dollars. Now, the same old tired, fallacious arguments which were used to limit competition before we passed the Competition in Contracting Act, have resurfaced with the Clinger amendment.

Now, I can understand why agency bureaucrats would only want competition to the maximum extent practicable. It is certainly much easier and less time consuming to do business with only a few selected well-known big companies. Agency officials get to know the people in these companies, and yes, the old-boy network does have its advantages. The question is: do we really want our country to go backwards as we move into the more enlightened information age? I do not think so; I certainly hope not.

Over the past 5 years many of the major innovative and technological advances that our country has made have come from small businesses. For example, one need only to look at the remarkable rise of companies like Microsoft and Apple computers. Just a few years ago they were new, small companies; today they successfully compete with computer giants like IBM.

Over the next 10 years, 85 percent of all new jobs in the United States will come from small businesses. Such businesses are in every district of every Member in this House. By returning to Chairman CLINGER's standard of "maximum practicable competition," we will establish procurement policy which locks small businesses out of the Federal marketplace and significantly undermine our Nation's competitiveness.

Joshua Smith, who chaired President Bush's Commission on Minority Business, testified several years ago before the Government Operations Committee that emphasizing subjectivity in awarding contracts creates a "breeding ground for prejudice," because contracting officers, if given the choice, will usually go with a well-established, large firm instead of a small business offering a lower price.

Much of the stated justification for this change in standard is to give agency employees more power to exclude noncompetitive companies; but under the current full and open competition standard most of that authority already exists. For example under existing law, companies can be excluded: First if they lack sufficient capital to perform the contract; second, if they lack a satisfactory performance record; third, if they lack sufficient technical

skill or experience; fourth, if they are not able to meet the delivery or performance schedule. In addition, Federal agencies have the authority to limit competition under special circumstances.

Giving agencies the further authority to limit competition in noncommercial items is bad public policy. Suppose, for example that a contracting officer decides to cut off competition after receiving three competitive bids and bids four, five, and six were all technically better than any of the first three and offered at a lower price. The Clinger amendment could mean that Federal taxpayers will get stuck with paying higher prices for inferior products. That is not what I call procurement reform.

Several years ago the Federal Aviation Administration ran a noncompetitive procurement known as corn. At the insistence of the Government Operations Committee, the FAA was forced to run a real competitive procurement procedure that actually resulted in a savings of \$1 billion to the taxpayers. Under the proposed maximum practicable competition standard, such savings would have been lost.

Now, I agree with Chairman CLINGER that there does appear to be a problem of many companies having technical weaknesses which are evident to the agencies early in the process. However when agency procurement officers fail to so advise these companies of their little chance of winning, in a timely fashion, a lot of their money is wasted in a futile effort to win a contract.

This point was made by Sterling Phillips, chief operating officer for TRICOR Industries, who testified at our hearing that:

Our interests, and those of the taxpayer, would have been served much better by telling us early in the cycle that our solution, or our company, was simply not qualified to win.

There also seems to be a problem with the lack of dialog between agencies and businesses prior to bidding. In the private sector, buyers and sellers talk to each other all the time. In the Federal Government we limit that discussion.

Mr. Edward Cypert, vice president of TRW clarified this problem when he testified:

It seems like when we have an opportunity to sit down and discuss the requirements and to find what the requirement base is going to be where, we understand it on both sides. Both what is going to be imposed and what is going to be built leads us into a position where not only is the process shortened, but the response is better, it is more on target, you can get to the price and the performance that you want.

I agree with these two industry concerns. Therefore, my amendment provides for prebid or preproposal conferences which should disclose as much information as possible regarding the qualifications necessary to successfully win a contract.

In order to give companies a better understanding of how agencies will

evaluate bids, my amendment would require that solicitation describe the agency source selection plan in as much detail as practicable. If companies are better informed about how bids will be evaluated, they will be better able to give the Federal Government exactly what it needs and at the best price.

Finally, my amendment empowers Federal agencies by giving them the authority to eliminate from cost and technical discussions and evaluations any proposal that clearly has no chance for award. In this way companies should be informed early in the process that they have no chance to win a bid. This will cut down on time and significantly reduce costs.

Mr. Chairman, full and open competition is the key to efficiency and fairness in Federal procurement. It creates a level playing field upon which all qualified vendors, particularly small businesses, have a fair chance to compete for a share of the hundreds of billions of dollars spent by the Federal Government in procurement each year. In return, the Government receives the maximum benefit from the innovations and expertise offered by companies large and small. We should maintain this standard, and make the targeted changes contained in my amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. CLINGER. Mr. Chairman, I claim the time in opposition to the amendment.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. CLINGER] is recognized for 20 minutes.

Mr. CLINGER. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania [Mr. FOX].

Mr. FOX of Pennsylvania. Mr. Chairman, I rise in opposition to the amendment being offered by the gentlewoman from Illinois. Her amendment, although well intended, is misdirected in that it seeks to address in piecemeal fashion, and with process-oriented requirements, the restrictions that have been imposed upon the acquisition system by the current rigid competition standard.

Unfortunately, the amendment misses the point. There is simply no need for any of the patchwork provisions in this amendment if the source of the problems—the current competition standard—is addressed as it is in the Clinger-Spence-Kasich amendment.

Once again, Congress is striving to make the system work better and cost less, not impose more inflexibility upon a system already filled with too many exceptions to its rules. If we provide the needed flexibility as proposed by the Clinger-Spence-Kasich amendment, there will be little need for more legislative fixes.

I respectfully urge my colleagues to vote "no" on the Collins amendment.

Mrs. COLLINS of Illinois. Mr. Chairman, I yield 6 minutes to the gentleman from South Carolina [Mr. SPRATT].

(Mr. SPRATT asked and was given permission to revise and extend his remarks.)

Mr. SPRATT. Mr. Chairman, I spent 2 years of my life in defense procurement and what I learned mostly is how little I know. But I do know this: I would tread lightly when departing from the standard of full and open competition. So I rise to raise a caution flag as to the language in the bill before us and to commend the gentlewoman from Illinois [Mrs. COLLINS] our ranking member, for the amendment she is now offering, which I support.

For those Members of this body who do not remember the passage of CICA, who were not here, CICA is the Competition in Contracting Act, I think it is important to recall some of its successes.

CICA was a landmark piece of legislation which originated in the Congress, and originated in response to widely perceived abuses in the defense procurement arena which I need not enumerate here. CICA said in effect if we can have full and open competition, that we do not have to have post-award audits, because we can tell the public this has been vigorously competed and awarded in that manner. So it narrowed the exceptions to the use of full and open competition from 17 to 7. It required competition advocates to be established at each procurement activity as a way of checking routine use or abuse of any one of the exceptions to full and open competition. In effect, these advocates also served the role of breaking the code on how to do business with the Defense Department for firms that have not been bidders in the past. It required that notices of intent to procure be published daily in the Commerce Business Daily so that industry as a whole, the whole spectrum, would know of upcoming procurements, not just some selected groups. It reformed the protest procedure so that losing bidders could self-police the system, make it more competitive.

What are the results after about 10 years?

□ 1130

As a result of CICA, the Competition in Contracting Act, the Navy more than doubled the annual value of its competitive awards going from \$9 billion in fiscal 1982 to \$21 billion in fiscal 1994. The Army increased the percentage of its competitive actions from 40 percent in 1982 to 88 percent in fiscal year 1994. At a time when the investment accounts, procurement and R&D were declining, those are significant results, Mr. Chairman. I would not like to see us make the mistake today of turning back from this vigorous competition which we have been able to build into our system.

Yet we have here before us an act which uses a new term, maximum practicable competition. I am told it was used in prior law. But when the gentlewoman from Illinois [Mrs. COLLINS], as the ranking member, was going

through this legislation in the process of the first hearing on it and she simply asked a question for starters to the board of industry people who were testifying, what does it mean, not one of them could articulate a definition that was usable in practice.

Then it provides, in addition to narrowing down competition from free and open to maximum practicable, it provides for a verification system so that certain contractors will become select contractors, and an elite set, a club of contractors. That is a very important and potentially dangerous step. It is potentially a move away from free and open competition all the way to cartelization. This is not streamlining potentially. It is potentially setting up a cartelized club of competitors, the established defense contractors.

So I ask the question: What is the definition? What are the criteria for getting in this select club, being a verified contractor? Once again, we could not get from the witnesses before us an elaboration of what this meant. It is all left to the discretion of the procurement agencies.

Let me tell you, we have found in the past that these procuring officers and these procuring activities and these procurement agencies do indeed wanted to streamline what they do. They would like to simplify. Vigorous competition comes down as a burden on their back to bear. They like to make it as simple and direct as possible.

But we have to be careful here that, as we move to streamline, before just willy-nilly putting provisions like these in the code and turning back on something that has worked well, we will move, I fear, from competition to cartelization.

There are other things in here: commercial exceptions for commercial buying which I support but we need better definition. We are moving away from using GAO and the dispute resolution process to a new appellate procedure. I have not any idea whether that is a good idea or not. I will say to the chairman I was there until midday with the hearing. I could not stay for the rest of the hearing. It may well have been worked out then. I am not criticizing him or the committee. I am simply raising a caution flag saying, let us be diligent, let us be careful, let us do the right thing here.

Our objective in this bill and in the years ahead is to defend the country for about \$250 to \$260 billion. That is a lot less money than it used to be, but it is still a lot of money. If we are not—we simply cannot do what we need to do, fund four military services, if we spend the money the way we spent it in the 1980's. We have to spend it smarter than we did in the 1980's. We should take care here that we do not build into title 10 of the code a bias toward high cost contractors who bid without the fear or discipline of rigorous competition and charge us more than we have to pay, or we will undo the whole quest that lies before us in this bill.

So the gentlewoman and I are saying is that, when we go into the markup, I support the gentlewoman's amendment, I think it is a substantially positive improvement to this bill and hope everybody will vote for it. But as we go into the markup of this bill, I think it still needs a thorough scrubbing.

Mr. CLINGER. Mr. Chairman, I yield 1 minute to the gentleman from Georgia [Mr. CHAMBLISS], a very excellent freshman member of the Committee on National Security.

Mr. CHAMBLISS. Mr. Chairman, I rise in opposition to the Collins amendment.

Mr. Chairman, the Clinger-Spence acquisition reform amendment will finish the job begun by the Congress last year. Consider the changes proposed by the amendment:

Changing competition requirements so that they are reasonable, establishing commercial-like procedures for Government procurement, reforming procurement integrity so that it no longer stifles the process—making American companies more competitive on the international market—streamlining the burdensome certification process, and consolidating the many dispute resolution mechanisms into a single review board.

These are all commonsense answers to the very real problem of red tape and an overly bureaucratic procurement process. This Congress is finally applying real-world family and business practices to our budgets and our administration of Federal programs. Why not apply these standards to Federal purchasers?

I commend Chairmen SPENCE and CLINGER for working so hard to bring this needed change to Government. Support the Clinger-Spence amendment.

Mrs. COLLINS of Illinois. Mr. Chairman, I yield 2 minutes to the gentlewoman from New York [Mrs. MALONEY], the ranking member of the subcommittee.

(Mrs. MALONEY asked and was given permission to revise and extend her remarks.)

Mrs. MALONEY. Mr. Chairman, I thank the gentlewoman for yielding time to me.

Mr. Chairman, I rise in strong support of the Collins amendment.

This amendment preserves the standard of full and open competition in Federal procurement, but it does so while adding needed reforms to the process, which bring Government acquisition closer to commercial buying practices.

Full and open competition is at the heart of the free-market system. In the Federal procurement process, it guarantees that the Government gets the best value for the goods and services that it purchases. The full and open competition standard has been law for over a decade. It was enacted as part of the Competition in Contracting Act of 1984. That bill was a response to the fraud and abuse which characterized Federal procurement at the time.

We all are familiar with the scandals of the late 1970's, the \$1,000 hammers, the \$500 scarves. Chairman CLINGER's amendment would replace the full and open competition standard with something called maximum practicable competition. What is that? In fact, not one witness at the only hearing held on the legislation could define what maximum practicable competition meant.

I find this lack of definition extremely troubling. How can we debate something when we do not even know what it means?

Mr. Edward Black at our hearing on this amendment called this lack of definition, and I quote, "a breeding ground for litigation."

Which is hardly simplified procedure.

Doing business with only a few well-known firms is certainly easier than considering all responsible sources, but such a system would certainly cost the American taxpayer money in the form of higher prices. Adopting the proposed standard of maximum practicable competition would also make it much harder for small businesses to compete for Government contracts.

Small businesses make up the heart of our economy, generating 85 percent of all new jobs. Putting small businesses at a disadvantage in the Federal procurement system is not only unfair, it makes no economic sense.

Mr. CLINGER. Mr. Chairman, I yield 2 minutes to the gentleman from New Hampshire [Mr. BASS], another valued freshman member of our committee and a strong supporter of the Clinger amendment.

Mr. BASS. Mr. Chairman, I rise in opposition to the amendment offered by the gentlewoman from Illinois and in favor of the Clinger-Spence-Kasich amendment as it has been originally offered.

The Collins amendment strikes three of the four sections in the Clinger-Spence-Kasich amendment and waters down the remaining section, section 801. The provisions of the original amendment that we are considering here today are not new. They have been around essentially in their present form since the mid-1980's. As it is, we have debated now the concept of trying to make it possible not only to have competition in procurement but to allow for normal business people like me or anybody else to be involved in the process. The fact is, that the Clinger-Spence-Kasich amendment provides flexibility for vendors and buyers. It eliminates delays in procurement, and it reduces the overall cost of a \$200 billion procurement system that we have in place today.

What the Collins amendment would do would go back 90 or 98 percent of the way to the present system that we have today. I would submit to my colleagues that the arguments that we hear about increased competition are really the results of micromanaging. What happens is that we cannot compete unless we have experts and professionals who know how to deal with the

cumbersome and difficult process. Although it may seem like we are loosening up the rules, what we are in effect doing is providing this needed flexibility so that more people can become involved in the process.

The fact is that we, the sponsors of the Clinger-Spence-Kasich amendment, believe that individuals should have more flexibility to set the rules so that more individuals can compete in the process and that we can reduce the costs and get more vendors involved in the process in the first place.

So it is for this reason that I rise in opposition to the Collins amendment and in strong support of the Clinger-Spence-Kasich amendment.

The CHAIRMAN. The gentlewoman from Illinois [Mrs. COLLINS] has 2½ minutes remaining, and the gentleman from Pennsylvania [Mr. CLINGER] has 16 minutes remaining. The gentlewoman from Illinois [Mrs. COLLINS] has the right to close.

Mr. CLINGER. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. HUNTER], a leader on the Committee on National Security.

Mr. HUNTER. Mr. Chairman, I thank the gentleman for yielding.

My colleagues, for those who have complained about the \$600 hammer, you are buying the \$600 hammer today. You are paying for it. The difference is you are paying for part of it from the vendor and you are paying for the rest of it in the 300,000-person army that is the Pentagon bureaucracy that oversees this so-called competition.

We are only spending about \$40 billion a year in major weapons procurement. We are spending \$30 billion a year, almost as much, in this army of personnel who are needed to oversee this very complex, heavily-regulated paperwork heavy system that we have created. So you are buying a \$600 hammer, do not fool yourself. You are buying it right now.

That means when you buy an aircraft that cost \$200 million, you pay the Pentagon \$100 million for the service of purchasing the aircraft. We are not going to be able to cut down this army, which is incidentally twice the size of the U.S. Marine Corps, if we do not cut the corresponding amount of paperwork at the same time.

Please defeat the Collins amendment.

Mr. CLINGER. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia [Mr. DAVIS], chairman of the Subcommittee on the District of Columbia and a very valued member of the full committee.

Mr. DAVIS. Mr. Chairman, I thank the gentleman for yielding time to me.

I rise to speak today to oppose the Collins amendment. I do not think I have heard so much misunderstanding or misinformation about any amendment in my brief tenure here in the House as I heard today.

I was a procurement lawyer for 15 years for both small businesses and large businesses, general counsel for each. And this has nothing to do with

the \$7,000 toilet seats or the \$600 hammer. Some of these came well after the 1984 CCA Act and Procurement Integrity Act to try to get at those later. I am happy to see both sides are going to agree that those ought to be repealed here today.

The rhetoric here today has been that this legislation hurts small business and that the Collins amendment somehow fixes this by restoring us back to the status quo.

Actually, I think the opposite is the case. Proponents of the amendment will argue that it leads to more sole sourcing. We have got plenty of sole sourcing right now. Nothing in the Clinger amendment also allows or permits, let alone mandates, that a company be excluded from competition because of its size.

You can be eliminated because of your capability, but that is in the current law as well. That happens under current law and the Collins amendment as well. So if a company is not in the competitive range, the key here is that this defines that competitive range a little earlier. But any small business who wants to bid has ample access to the competition under this bill.

Nothing here states or allows or mandates that big companies, well-known big companies bid on these projects and not small companies. That is just rhetoric. There is nothing here that states that or indicates that at all.

□ 1145

The current code has seven justifications or exceptions to allow sole source, but you can still have it, and we do very often. Under the Clinger amendment, we still have approvals and justifications for the sole source here, but what we have done, instead of pages of statute going through this, we give the contracting officer more discretion, and that contracting officer's discretion is then subject to review as well. So there are plenty of protections for businesses who think they are in the competitive range but are found otherwise by the contracting officer.

The standard of the Clinger amendment is a dynamic one, not a statutory, static-driven one. We talk about reinventing Government and empowering the employee at the window or at the customer service desk to make the decisions. That is what the Clinger amendment is all about. That is what the Collins amendment eliminates.

The issue, really, is, one, who is better equipped to handle complex, diverse, and specialized procurements, a one-size-fits-all Federal statute, or the Government buyer who is responsible for procuring a specialized service with a dwindling agency budget and procuring it within that budget?

Small businesses and large businesses waste millions annually chasing rainbows, going after procurements that they cannot perform or that they cannot possibly win due to misinformation and by opening up the process to an ex-

tent early on that forces them to spend money, where if they knew more, they probably would not get into it. They are going after contracts they do not have a chance to win.

Getting that word earlier in the process is good public policy, and it is good for business, all business, large business, minority businesses, small businesses. Passing the Collins amendment is a return to a longer procurement process, a more costly procurement process, for Government and for business, and more bid protests and delays in final awards. That is a step backward at this time, when we are tightening our belts at the agency level, the Federal level, and it is also a step backward for businesses who want to go after meaningful competition and go after contracts that they can afford to compete in and win.

I think this is an outstanding acquisition reform amendment of the gentleman from Pennsylvania [Mr. CLINGER] and the gentleman from South Carolina [Mr. SPENCE], and I am happy to support it as it is, and I oppose the Collins amendment.

Mr. CLINGER. Mr. Chairman, may I inquire of the gentlewoman from Illinois if she has additional speakers?

Mrs. COLLINS of Illinois. I would say to the gentleman from Pennsylvania, I have one additional speaker, and I would like to close after the gentleman has finished.

Mr. CLINGER. The gentlewoman has one additional speaker and then she will close?

Mrs. COLLINS of Illinois. I have one additional speaker that will close.

Mr. CLINGER. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from Massachusetts [Mr. BLUTE], a member of the committee.

Mr. BLUTE. Mr. Chairman, I rise today in opposition to the Collins amendment, and urge my colleagues to vote against it. The amendment furthers the notion that Congress is in the business of micromanaging the operations of the executive branch and dilutes the fundamental reforms included in the Clinger-Spence-Kasich amendment. The Clinger-Spence-Kasich amendment would provide the much-needed flexibility to Government buyers to seek meaningful competition among sources who meet or exceed the government's requirements. To do this, we are eliminating much of the current maze of statutory requirements and restrictions which, over the years, have been imposed on our government purchasers.

To some, this is alarming—we are moving away from a well-known system to one that requires thought and creativity. We expect our Government buyers to make rational business judgments instead of blindly following arcane procedures when making purchasing decisions.

Unfortunately, Mrs. COLLINS' amendment would counter our drive to

streamline and simplify the system. Instead, her amendment adds more requirements and more direction and more micromanaging.

Mr. Chairman, I urge my colleagues to vote "no" on the Collins amendment and to support the Clinger amendment.

Mr. CLINGER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I must reluctantly rise in opposition to the amendment of my ranking minority member, the gentlewoman from Illinois [Mrs. COLLINS]. I certainly am very grateful and appreciate her willingness to address the problem. She has made a very good faith and a very instructive effort to address the problem within the procurement system, and I also commend her for her sensitivity to issues which were raised at the hearings. However, I cannot support the approach. I think this does represent a fundamental difference in dealing with this question of acquisition reform.

The Clinger-Spence-Kasich amendment would provide, I think, very much needed flexibility to Government buyers to maximize competition in a way that is consistent with their particular and unique requirements. To do this, we would eliminate much of the current underbrush, thicket if you will, of statutory requirements and restrictions which over the years have been placed on government purchasers.

To some, I can understand, this is alarming. We are moving away from a very well-known system to one that requires perhaps more thought, more creativity, would eliminate sort of the knee-jerk reaction to look at the regulations and say "This is what we have to do." We will now be expecting our Government buyers to use their heads, their heads, instead of a rule book while making purchasing decisions. I think the Clinton administration would call this empowering of the government work force to do their jobs. This is what we have tried to do in this amendment, stop micromanaging, stop trying to predict everything that a purchaser might have to deal with, give them some flexibility to ensure that the Government gets its money's worth.

Unfortunately, the amendment of the gentlewoman from Illinois would strike from our amendment all the provisions which eliminate the statutory underbrush and drive the fundamental changes. Instead, her amendment really adds more of the same, more requirements and direction to the government purchaser. The objective, I think, is meritorious. The objective is one we are both trying to achieve. My only objection is that we are adding additional requirements on the purchaser, things they have to comply with, levels they have to meet before they can make that decision.

Some have raised the issue that our amendment may unfairly exclude small businesses from the Government marketplace. That, Mr. Chairman, is simply wrong. As I have alluded to in

the handout from the Small Business Task Force, it is really full of misinformation, and I am hopeful that we can address their concerns and the misinformation which they are promulgating here during the time we have before markup next week.

This will not exclude small businesses from the marketplace. It really is wrong. This amendment does not in any way inhibit small businesses from participating in the Federal marketplace. It does not amend or change any small business, small disadvantaged business, or woman-owned business program. Some would have liked to have addressed those issues, and we did not deliberately, we stayed away from getting into that whole thicket.

It does not eliminate notification of Federal contracting opportunities, and it does not, I would stress again, it does not encourage sole source contracting. Again, while I do commend the gentlewoman from Illinois for her effort, and we have been working in a very cooperative effort on this whole question of procurement reform, both in the last Congress and in this Congress, and I have been very grateful for the cooperative effort that we have seen, I have to oppose her amendment. It is one that we both feel strongly on our sides of it, because it does treat, in my view, symptoms of the problem, instead of attacking its source.

There is simply no need for any of the patchwork provisions that I think are in the Collins amendment if the source of the problem, which is the current competition standard, is refined by the Clinger-Spence-Kasich amendment.

I would just say, Mr. Chairman, that it has been suggested that this is some attempt to sort of backdoor the process, to jam the circuits, to ramrod something through here without due consideration. Respectfully, with regard to some in the full committee's concern about the process, I respect that, but I would just assure all those that have been concerned about that, that is not this gentleman's intention.

My intention is to assure that we will have action on procurement reform in this Congress. I can only absolutely assure myself and the other Members that we will have action on it, if it is included in this bill. If it goes as a freestanding bill, I cannot be assured that the other body will deal with this in that fashion, so the purpose of this is really to establish the fact that we will have action on procurement reform, which I think we all want, that we are all desirous of moving beyond what we did last year.

What I have always committed to, however, is that as we move through this process, and as we go next week to a markup in the committee, that we will have an opportunity to consider these matters further. I have also pledged that if there are amendments as we go through the process, either at the committee, and then the bill will be back here on the floor, I have re-

quested the majority leader to provide time for us to consider this measure as a freestanding bill in this session.

When we have completed the process here, all of the amendments that may be adopted in that exercise will be included, and I would pledge this, and the chairman agrees to that, will be included in any conference report that comes out of the DOD authorization.

I will just reiterate again, this is not an attempt to short-circuit the process, it is not an attempt to defeat the good intentions that people have, it is merely an attempt to ensure that all of us get what we all want, which is procurement reform.

Mrs. COLLINS of Illinois. Mr. Chairman, will the gentleman yield?

Mr. CLINGER. I am happy to yield to the gentlewoman from Illinois.

Mrs. COLLINS of Illinois. Mr. Chairman, I still must express my concern, because the gentleman has said repeatedly today that we are going to take this procurement bill up in committee on the 21st day of June, which is next week. We are talking about procurement now. As far as I am concerned, it is a backdoor procedure, because we have not had a markup on the procurement bill. We have not had a markup on this section of the bill that the gentleman wants to be put into the defense authorization bill.

It seems to me that without having had any kind of markup at all, or when we do go to markup, as the gentleman has said, we will inherit whatever amendments that will have been passed today on procurement as an integral part of the bill which we will be remarking up on June 21 of next week, which is backward. It is not the legislative process that we have always worked on in this House of Representatives. We have put the cart before the horse, and the cart is running away with it.

Mr. CLINGER. If I may reclaim my time, Mr. Chairman, I would just again reiterate that if in fact we are going to make changes, and they may well happen, that I would pledge to the gentlewoman and to all the Members that those changes will be incorporated in the ultimate product that comes out of this process.

Mr. Chairman, I would at this time urge the defeat of the Collins amendment, well-intentioned as it may be, and urge the support of the Clinger-Spence-Kasich amendment.

Mr. Chairman, I yield back the balance of my time.

Mrs. COLLINS of Illinois. Mr. Chairman, I would ask the Chair how much time I have remaining.

The CHAIRMAN. The gentlewoman from Illinois [Mrs. COLLINS] has 2½ minutes remaining.

Mrs. COLLINS of Illinois. Mr. Chairman, I yield 2 minutes to close to the gentlewoman from Kansas [Mrs. MEYERS], chairman of the Committee on Small Business.

(Mrs. MEYERS of Kansas asked and was given permission to revise and extend her remarks.)

Mrs. MEYERS of Kansas. Mr. Chairman, there has been a good debate today, and a lot of comments about \$435 hammers, but the fact is that the Clinger amendment does away with full and open competition. And, the Clinger amendment would permit the use of simplified procedures, three phone calls, for commercial items, without any dollar limitation.

The gentleman from Pennsylvania [Mr. CLINGER] said that he will go to markup next week, but he will go to markup if his amendment passes with these provisions already in the DOD authorization bill, provisions which small business opposes. By adopting the Collins amendment, the bill will go to markup, but the House will preserve full and open competition, and eliminate other changes approved by small business.

The Small Business Working Group on Procurement Reform opposes the Clinger amendment. The Small Business Working Group includes NFIB, National Small Business United, the Small Business Legislative Council, the National Association of Women Business Owners, and several other groups.

The Associated General Contractors have written a letter in opposition to the Clinger amendment.

Listen to what they say: "The Clinger amendment as a freestanding bill was introduced May 18 and was the subject of one hearing, which did not include testimony from the construction industry, and has not moved through the markup process. Changing the competition standard away from full and open competition to something less invites potential for subjectivity, favoritism, and abuse. Please, vote "no" on the Clinger amendment. I am sure they would support the Collins amendment, which preserves full and open competition, and would want the Federal Acquisition Reform Act to go to markup with the changes reflected in the Collins amendment.

The landmark Competition in Contracting Act of 1984, CICA, which established the full and open competition standard, and prescribed deterrents to noncompetitive contracting, has increased competition in the award of Government contracts. Prior to CICA 60 percent of Government contracts were sole sourced. Today, more than 70 percent are competitive.

Now the Clinger amendment wants to go back to the pre-CICA standard. Competition increases quality and checks cost growth. Work by the GAO, the Department of Defense IG, and the major DOD buying activities all demonstrate savings averaging 25 percent when a buy is competitive, rather than sole-source.

Evidence of excessive competition has never been established by anything more than isolated anecdotal examples. In contrast, the Advisory Panel on Codifying and Streamlining Defense Acquisition Laws, this is a group comprised of recognized procurement ex-

perts from Government and the private sector, which made an 18-month study and an 1,800-page report, that provided the analytical foundation for last year's Federal Acquisition Streamlining Act, specifically reviewed and rejected the idea of abandoning the full and open competition standard.

□ 1200

Mr. Chairman, I would urge my colleagues to vote for the Collins amendment and oppose the Clinger amendment.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. It is the Chair's understanding that the original amendment offered by the gentleman from Pennsylvania [Mr. CLINGER] was in a modified form which was at the desk with the concurrence of the gentleman from Illinois [Mrs. COLLINS] pursuant to section 4(a) of House Resolution 164.

The question is on the amendment offered by the gentlewoman from Illinois [Mrs. COLLINS] to the amendment, as modified, offered by the gentleman from Pennsylvania [Mr. CLINGER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mrs. COLLINS of Illinois. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 213, noes 207, not voting 14, as follows:

[Roll No. 371]

AYES—213

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Barton
Becerra
Beilenson
Bentsen
Bereuter
Berman
Bevill
Bilirakis
Boehlert
Bonior
Borski
Boucher
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Bunn
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Condit
Conyers
Costello
Coyne
Cramer
Danner
de la Garza
DeFazio
DeLauro
Dellums
Deutsch

Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Ehlers
Ehrlich
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Forbes
Ford
Frank (MA)
Franks (NJ)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gilchrist
Gilman
Gonzalez
Gordon
Green
Gunderson
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Houghton
Hoyer
Jackson-Lee

Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Jones
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Klink
LaHood
Lantos
Leach
Levin
Lewis (GA)
Lightfoot
Lincoln
Lipinski
LoBiondo
Lofgren
Longley
Lowey
Luther
Maloney
Manton
Manzullo
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Meyers
Mfume

Miller (CA)
Minge
Mink
Moakley
Mollohan
Montgomery
Morella
Nadler
Neal
Ney
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Pomeroy
Porter
Poshard

Rahall
Reed
Reynolds
Richardson
Riggs
Rivers
Roberts
Roemer
Rose
Roukema
Roybal-Allard
Rush
Sabó
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Spratt
Stark
Stenholm
Stokes
Studds

Stupak
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Upton
Velazquez
Vento
Volkmer
Vucanovich
Ward
Waters
Watt (NC)
Waxman
Whitfield
Wise
Woolsey
Wyden
Wynn
Zimmer

NOES—207

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Bass
Bateman
Bilbray
Bliley
Blute
Boehner
Bonilla
Bono
Brownback
Bryant (TN)
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combust
Cooley
Cox
Crane
Crapo
Cremins
Cubin
Cunningham
Davis
Deal
DeLay
Dickey
Dicks
Doolittle
Dornan
Dreier
Duncan
Dunn
Emerson
English
Ensinger
Everett
Ewing
Fawell
Flanagan
Foley
Fowler
Fox
Franks (CT)
Frelinghuysen

Frisa
Funderburk
Gallegly
Ganske
Gekas
Gillmor
Goodlatte
Goodling
Goss
Graham
Greenwood
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Kasich
Kim
King
Kingston
Klug
Knollenberg
Kolbe
Largent
Latham
LaTourette
Laughlin
Lazio
Lewis (CA)
Lewis (KY)
Linder
Livingston
Lucas
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Mica
Miller (FL)
Molinari
Moorhead
Moran
Murtha
Myers
Nethercutt
Neumann

Norwood
Nussle
Oxley
Packard
Parker
Paxon
Petri
Pickett
Pombo
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stockman
Stump
Talant
Tanner
Tate
Tauzin
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Visclosky
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Wicker
Williams
Wolf
Young (AK)
Young (FL)
Zeliff

NOT VOTING—14

Bishop	Kleccka	Sisisky
Diaz-Balart	LaFalce	Smith (TX)
Fields (TX)	Mineta	Wilson
Geren	Myrick	Yates
Hastert	Rangel	

□ 1223

The Clerk announced the following pair:

On this vote:

Mr. Mineta for, with Mrs. Myrick against.

Messrs. HALL of Texas, YOUNG of Alaska, DUNCAN, ALLARD, and SCARBOROUGH changed their vote from "aye" to "no."

Messrs. BEVILL, ROBERTS, MARTINI, BUNN, GENE GREEN of Texas, RIGGS, and LONGLEY changed their vote from "no" to "aye."

So, the amendment to the amendment, as modified, was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. HASTERT. Mr. Chairman, on rollcall No. 371, I was unavoidably detained.

Had I been present, I would have voted "no."

The CHAIRMAN. The Chair will allocate the remaining time.

The gentlewoman from Illinois [Mrs. COLLINS] has 4 minutes remaining, the gentleman from Pennsylvania [Mr. CLINGER] has 30 seconds remaining, and the gentleman from Pennsylvania has the right to close.

Mrs. COLLINS of Illinois. Mr. Chairman, inasmuch as my amendment has passed, I have no comments at this point in time and will vote for the Clinger amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. CLINGER. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. CLINGER], as modified, as amended.

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CLINGER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 420, noes 1, not voting 13, as follows:

[Roll No. 372]

AYES—420

Abercrombie	Barton	Bono
Ackerman	Bass	Borski
Allard	Bateman	Boucher
Andrews	Becerra	Brewster
Archer	Beilenson	Browder
Arney	Bentsen	Brown (CA)
Bachus	Bereuter	Brown (FL)
Baesler	Berman	Brown (OH)
Baker (CA)	Bevill	Brownback
Baker (LA)	Bilbray	Bryant (TN)
Baldacci	Bilirakis	Bryant (TX)
Ballenger	Bliley	Bunn
Barcia	Bunning	Burr
Barr	Boehlert	Burton
Barrett (NE)	Boehner	Buyer
Barrett (WI)	Bonilla	Callahan
Bartlett	Bonior	

Calvert	Gillmor	McCrery	Shadegg	Talent	Vucanovich
Camp	Gilman	McDade	Shaw	Tanner	Waldholtz
Canady	Gonzalez	McDermott	Shays	Tate	Walsh
Cardin	Goodlatte	McHale	Shuster	Tauzin	Wamp
Castle	Goodling	McHugh	Sisisky	Taylor (MS)	Ward
Chabot	Gordon	McInnis	Skaggs	Taylor (NC)	Watt (NC)
Chambliss	Goss	McIntosh	Skeen	Tejeda	Watts (OK)
Chapman	Graham	McKeon	Skelton	Thomas	Waxman
Chenoweth	Green	McKinney	Slaughter	Thompson	Weldon (FL)
Christensen	Greenwood	McNulty	Smith (MI)	Thornberry	Weldon (PA)
Chrysler	Gunderson	Meehan	Smith (NJ)	Thornton	Weller
Clay	Gutierrez	Meek	Smith (WA)	Thurman	White
Clayton	Gutknecht	Menendez	Solomon	Tiahrt	Whitfield
Clement	Hall (OH)	Metcalf	Souder	Torkildsen	Wicker
Clinger	Hall (TX)	Meyers	Spence	Torres	Williams
Clyburn	Hamilton	Mfume	Spratt	Torricelli	Wise
Coble	Hancock	Mica	Stark	Towns	Wolf
Coburn	Hansen	Miller (CA)	Stearns	Trafficant	Woolsey
Coleman	Harman	Miller (FL)	Stenholm	Tucker	Wyden
Collins (GA)	Hastings (FL)	Mineta	Stockman	Upton	Wynn
Collins (IL)	Hastings (WA)	Minge	Stokes	Velazquez	Young (AK)
Collins (MI)	Hayes	Mink	Studds	Vento	Young (FL)
Combest	Hayworth	Moakley	Stump	Visclosky	Zeliff
Condit	Hefley	Molinari	Stupak	Volkmer	Zimmer
Conyers	Hefner	Mollohan			
Cooley	Heineman	Montgomery			
Costello	Herger	Moorhead			
Cox	Hilleary	Moran			
Coyne	Hilliard	Morella			
Cramer	Hinchee	Myers			
Crane	Hobson	Nadler			
Crapo	Hoekstra	Neal			
Creameans	Hoke	Nethercutt			
Cubin	Holden	Neumann			
Cunningham	Horn	Ney			
Danner	Hostettler	Norwood			
Davis	Houghton	Nussle			
de la Garza	Hoyer	Oberstar			
Deal	Hunter	Obey			
DeFazio	Hutchinson	Olver			
DeLauro	Hyde	Ortiz			
DeLay	Inglis	Orton			
Dellums	Istook	Owens			
Deutsch	Jackson-Lee	Oxley			
Diaz-Balart	Jacobs	Packard			
Dickey	Jefferson	Pallone			
Dicks	Johnson (CT)	Pastor			
Dingell	Johnson (SD)	Paxon			
Dixon	Johnson, E. B.	Payne (NJ)			
Doggett	Johnson, Sam	Payne (VA)			
Dooley	Johnston	Pelosi			
Doolittle	Jones	Peterson (FL)			
Dornan	Kanjorski	Peterson (MN)			
Doyle	Kaptur	Petri			
Dreier	Kasich	Pickett			
Duncan	Kelly	Pombo			
Dunn	Kennedy (MA)	Pomeroy			
Durbin	Kennedy (RI)	Porter			
Edwards	Kennelly	Portman			
Ehlers	Kildee	Poshard			
Ehrlich	Kim	Pryce			
Emerson	King	Quillen			
Engel	Kingston	Quinn			
English	Klink	Radanovich			
Ensign	Klug	Rahall			
Eshoo	Knollenberg	Ramstad			
Evans	Kolbe	Rangel			
Everett	LaHood	Reed			
Ewing	Lantos	Regula			
Farr	Largent	Reynolds			
Fattah	Latham	Richardson			
Fawell	LaTourette	Riggs			
Fazio	Laughlin	Rivers			
Fields (LA)	Lazio	Roberts			
Filner	Leach	Roemer			
Flake	Levin	Rogers			
Flanagan	Lewis (CA)	Rohrabacher			
Foglietta	Lewis (GA)	Ros-Lehtinen			
Foley	Lewis (KY)	Rose			
Forbes	Lightfoot	Roth			
Ford	Lincoln	Roukema			
Fowler	Linder	Roybal-Allard			
Fox	Lipinski	Royce			
Frank (MA)	Livingston	Rush			
Franks (CT)	LoBiondo	Sabo			
Franks (NJ)	Lofgren	Salmon			
Frelinghuysen	Longley	Sanders			
Frisa	Lowey	Sanford			
Frost	Lucas	Sawyer			
Funderburk	Luther	Saxton			
Furse	Maloney	Scarborough			
Galleghy	Manton	Schaefer			
Ganske	Manzullo	Schiff			
Gedjenson	Markey	Schroeder			
Gekas	Martini	Schumer			
Gephardt	Mascara	Scott			
Geren	Matsui	Seastrand			
Gibbons	McCarthy	Sensenbrenner			
Gilchrest	McCollum	Serrano			

NOES—1

Martinez

NOT VOTING—13

Bishop	Murtha	Waters
Fields (TX)	Myrick	Wilson
Hastert	Parker	Yates
Kleccka	Smith (TX)	
LaFalce	Walker	

□ 1245

So the amendment, as modified, as amended, was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. HASTERT. Mr. Chairman, on rollcall No. 372, I was unavoidably detained.

Had I been present, I would have voted "aye."

I ask unanimous consent that my statement appear in the RECORD immediately following that rollcall vote.

The CHAIRMAN. It is now in order to debate the subject matter of ballistic missile defense.

The gentleman from South Carolina [Mr. SPENCE], and the gentleman from California [Mr. DELLUMS] will each be recognized for 30 minutes.

The Chair recognizes the gentleman from South Carolina.

Mr. SPENCE. Mr. Chairman, I yield myself such time as I may consume.

(Mr. SPENCE asked and was given permission to revise and extend his remarks.)

Mr. SPENCE. Mr. Chairman, H.R. 1530, the National Defense Authorization Act for fiscal year 1996, includes several important recommendations concerning ballistic missile defense. These actions are consistent with the committee's effort to bolster the modernization accounts that have been dramatically underfunded by the Clinton administration after a decade of decline.

First, the bill provides increased funding for theater and national missile defense systems—those designed to protect our troops deployed overseas as well as Americans at home. These additional funds are necessary to accelerate critical BMD programs that have been delayed as a result of significant cuts in the missile defense budget implemented by the Clinton administration over the past 3 years.