

111TH CONGRESS
1ST SESSION

H. R. 1107

AN ACT

To enact certain laws relating to public contracts as title
41, United States Code, “Public Contracts”.

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

3 **SECTION 1. TABLE OF CONTENTS.**

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

Sec. 1. Table of contents.

- Sec. 2. Purpose; conformity with original intent.
- Sec. 3. Enactment of Title 41, United States Code.
- Sec. 4. Conforming amendment.
- Sec. 5. Conforming cross-references.
- Sec. 6. Transitional and savings provisions.
- Sec. 7. Repeals.

1 **SEC. 2. PURPOSE; CONFORMITY WITH ORIGINAL INTENT.**

2 (a) PURPOSE.—The purpose of this Act is to enact certain laws relating
3 to public contracts as title 41, United States Code, “Public Contracts”.

4 (b) CONFORMITY WITH ORIGINAL INTENT.—In the codification of laws
5 by this Act, the intent is to conform to the understood policy, intent, and
6 purpose of Congress in the original enactments, with such amendments and
7 corrections as will remove ambiguities, contradictions, and other imperfec-
8 tions, in accordance with section 205(c)(1) of House Resolution No. 988,
9 93d Congress, as enacted into law by Public Law 93–554 (2 U.S.C.
10 285b(1)).

11 **SEC. 3. ENACTMENT OF TITLE 41, UNITED STATES CODE.**

12 Certain general and permanent laws of the United States, related to pub-
13 lic contracts, are revised, codified, and enacted as title 41, United States
14 Code, “Public Contracts”, as follows:

15 **TITLE 41—PUBLIC CONTRACTS**

Subtitle	Sec.
I. FEDERAL PROCUREMENT POLICY	101
II. OTHER ADVERTISING AND CONTRACT PROVISIONS	6101
III. CONTRACT DISPUTES	7101
IV. MISCELLANEOUS	8101

16 **Subtitle I—Federal Procurement Policy**

17 DIVISION A—GENERAL

Chapter	Sec.
1. Definitions	101

18 DIVISION B—OFFICE OF FEDERAL PROCUREMENT POLICY

11. Establishment of Office and Authority and Functions of Ad- ministrator.	1101
13. Acquisition Councils	1301
15. Cost Accounting Standards	1501
17. Agency Responsibilities and Procedures	1701
19. Simplified Acquisition Procedures	1901
21. Restrictions on Obtaining and Disclosing Certain Informa- tion.	2101
23. Miscellaneous	2301

19 DIVISION C—PROCUREMENT

31. General	3101
33. Planning and Solicitation	3301
35. Truthful Cost and Pricing Data	3501
37. Awarding of Contracts	3701
39. Specific Types of Contracts	3901
41. Task and Delivery Order Contracts	4101
43. Allowable Costs	4301
45. Contract Financing	4501
47. Miscellaneous	4701

1
2

DIVISION A—GENERAL
CHAPTER 1—DEFINITIONS

SUBCHAPTER I—SUBTITLE DEFINITIONS

- Sec.
- 101. Administrator.
 - 102. Commercial component.
 - 103. Commercial item.
 - 104. Commercially available off-the-shelf item.
 - 105. Component.
 - 106. Federal Acquisition Regulation.
 - 107. Full and open competition.
 - 108. Item and item of supply.
 - 109. Major system.
 - 110. Nondevelopmental item.
 - 111. Procurement.
 - 112. Procurement system.
 - 113. Responsible source.
 - 114. Standards.
 - 115. Supplies.
 - 116. Technical data.

SUBCHAPTER II—DIVISION B DEFINITIONS

- 131. Acquisition.
- 132. Competitive procedures.
- 133. Executive agency.
- 134. Simplified acquisition threshold.

SUBCHAPTER III—DIVISION C DEFINITIONS

- 151. Agency head.
- 152. Competitive procedures.
- 153. Simplified acquisition threshold for contract in support of humanitarian or peacekeeping operation.

3

SUBCHAPTER I—SUBTITLE DEFINITIONS

4 **§ 101. Administrator**

5 In this subtitle, the term “Administrator” means the Administrator for
6 Federal Procurement Policy appointed under section 1102 of this title.

7 **§ 102. Commercial component**

8 In this subtitle, the term “commercial component” means a component
9 that is a commercial item.

10 **§ 103. Commercial item**

11 In this subtitle, the term “commercial item” means—

- 12 (1) an item, other than real property, that—
 - 13 (A) is of a type customarily used by the general public or by
 - 14 nongovernmental entities for purposes other than governmental
 - 15 purposes; and
 - 16 (B) has been sold, leased, or licensed, or offered for sale, lease,
 - 17 or license, to the general public;
- 18 (2) an item that—
 - 19 (A) evolved from an item described in paragraph (1) through
 - 20 advances in technology or performance; and

1 (B) is not yet available in the commercial marketplace but will
 2 be available in the commercial marketplace in time to satisfy the
 3 delivery requirements under a Federal Government solicitation;

4 (3) an item that would satisfy the criteria in paragraph (1) or (2)
 5 were it not for—

6 (A) modifications of a type customarily available in the commer-
 7 cial marketplace; or

8 (B) minor modifications made to meet Federal Government re-
 9 quirements;

10 (4) any combination of items meeting the requirements of paragraph
 11 (1), (2), (3), or (5) that are of a type customarily combined and sold
 12 in combination to the general public;

13 (5) installation services, maintenance services, repair services, train-
 14 ing services, and other services if—

15 (A) those services are procured for support of an item referred
 16 to in paragraph (1), (2), (3), or (4), regardless of whether the
 17 services are provided by the same source or at the same time as
 18 the item; and

19 (B) the source of the services provides similar services contem-
 20 poraneously to the general public under terms and conditions simi-
 21 lar to those offered to the Federal Government;

22 (6) services offered and sold competitively, in substantial quantities,
 23 in the commercial marketplace based on established catalog or market
 24 prices for specific tasks performed or specific outcomes to be achieved
 25 and under standard commercial terms and conditions;

26 (7) any item, combination of items, or service referred to in para-
 27 graphs (1) to (6) even though the item, combination of items, or service
 28 is transferred between or among separate divisions, subsidiaries, or af-
 29 filiates of a contractor; or

30 (8) a nondevelopmental item if the procuring agency determines, in
 31 accordance with conditions in the Federal Acquisition Regulation, that
 32 the item was developed exclusively at private expense and has been sold
 33 in substantial quantities, on a competitive basis, to multiple State and
 34 local governments.

35 **§ 104. Commercially available off-the-shelf item**

36 In this subtitle, the term “commercially available off-the-shelf item”—

37 (1) means an item that—

38 (A) is a commercial item (as described in section 103(1) of this
 39 title);

40 (B) is sold in substantial quantities in the commercial market-
 41 place; and

1 (C) is offered to the Federal Government, without modification,
2 in the same form in which it is sold in the commercial market-
3 place; but

4 (2) does not include bulk cargo, as defined in section 40102(4) of
5 title 46, such as agricultural products and petroleum products.

6 **§ 105. Component**

7 In this subtitle, the term “component” means an item supplied to the
8 Federal Government as part of an end item or of another component.

9 **§ 106. Federal Acquisition Regulation**

10 In this subtitle, the term “Federal Acquisition Regulation” means the
11 regulation issued under section 1303(a)(1) of this title.

12 **§ 107. Full and open competition**

13 In this subtitle, the term “full and open competition”, when used with
14 respect to a procurement, means that all responsible sources are permitted
15 to submit sealed bids or competitive proposals on the procurement.

16 **§ 108. Item and item of supply**

17 In this subtitle, the terms “item” and “item of supply”—

18 (1) mean an individual part, component, subassembly, assembly, or
19 subsystem integral to a major system, and other property which may
20 be replaced during the service life of the system, including spare parts
21 and replenishment spare parts; but

22 (2) do not include packaging or labeling associated with shipment or
23 identification of an item.

24 **§ 109. Major system**

25 (a) IN GENERAL.—In this subtitle, the term “major system” means a
26 combination of elements that will function together to produce the capabili-
27 ties required to fulfill a mission need. These elements may include hardware,
28 equipment, software, or a combination of hardware, equipment, and soft-
29 ware, but do not include construction or other improvements to real prop-
30 erty.

31 (b) SYSTEM DEEMED TO BE MAJOR SYSTEM.—A system is deemed to
32 be a major system if—

33 (1) the Department of Defense is responsible for the system and the
34 total expenditures for research, development, testing, and evaluation for
35 the system are estimated to exceed \$75,000,000 (based on fiscal year
36 1980 constant dollars) or the eventual total expenditure for procure-
37 ment exceeds \$300,000,000 (based on fiscal year 1980 constant dol-
38 lars);

39 (2) a civilian agency is responsible for the system and total expendi-
40 tures for the system are estimated to exceed the greater of \$750,000
41 (based on fiscal year 1980 constant dollars) or the dollar threshold for

1 a major system established by the agency pursuant to Office of Man-
 2 agement and Budget (OMB) Circular A-109, entitled “Major Systems
 3 Acquisitions”; or

4 (3) the head of the agency responsible for the system designates the
 5 system a major system.

6 **§ 110. Nondevelopmental item**

7 In this subtitle, the term “nondevelopmental item” means—

8 (1) a commercial item;

9 (2) a previously developed item of supply that is in use by a depart-
 10 ment or agency of the Federal Government, a State or local govern-
 11 ment, or a foreign government with which the United States has a mu-
 12 tual defense cooperation agreement;

13 (3) an item of supply described in paragraph (1) or (2) that requires
 14 only minor modification or modification of the type customarily avail-
 15 able in the commercial marketplace to meet the requirements of the
 16 procuring department or agency; or

17 (4) an item of supply currently being produced that does not meet
 18 the requirements of paragraph (1), (2), or (3) solely because the item
 19 is not yet in use.

20 **§ 111. Procurement**

21 In this subtitle, the term “procurement” includes all stages of the process
 22 of acquiring property or services, beginning with the process for determining
 23 a need for property or services and ending with contract completion and
 24 closeout.

25 **§ 112. Procurement system**

26 In this subtitle, the term “procurement system” means the integration of
 27 the procurement process, the professional development of procurement per-
 28 sonnel, and the management structure for carrying out the procurement
 29 function.

30 **§ 113. Responsible source**

31 In this subtitle, the term “responsible source” means a prospective con-
 32 tractor that—

33 (1) has adequate financial resources to perform the contract or the
 34 ability to obtain those resources;

35 (2) is able to comply with the required or proposed delivery or per-
 36 formance schedule, taking into consideration all existing commercial
 37 and Government business commitments;

38 (3) has a satisfactory performance record;

39 (4) has a satisfactory record of integrity and business ethics;

1 (5) has the necessary organization, experience, accounting and oper-
 2 ational controls, and technical skills, or the ability to obtain the organi-
 3 zation, experience, controls, and skills;

4 (6) has the necessary production, construction, and technical equip-
 5 ment and facilities, or the ability to obtain the equipment and facilities;
 6 and

7 (7) is otherwise qualified and eligible to receive an award under ap-
 8 plicable laws and regulations.

9 **§ 114. Standards**

10 In this subtitle, the term “standards” means the criteria for determining
 11 the effectiveness of the procurement system by measuring the performance
 12 of the various elements of the system.

13 **§ 115. Supplies**

14 In this subtitle, the term “supplies”—

15 (1) means an individual part, component, subassembly, assembly, or
 16 subsystem integral to a major system, and other property which may
 17 be replaced during the service life of the system, including spare parts
 18 and replenishment spare parts; but

19 (2) does not include packaging or labeling associated with shipment
 20 or identification of an item.

21 **§ 116. Technical data**

22 In this subtitle, the term “technical data”—

23 (1) means recorded information (regardless of the form or method
 24 of the recording) of a scientific or technical nature (including computer
 25 software documentation) relating to supplies procured by an agency;
 26 but

27 (2) does not include computer software or financial, administrative,
 28 cost or pricing, or management data or other information incidental to
 29 contract administration.

30 SUBCHAPTER II—DIVISION B DEFINITIONS

31 **§ 131. Acquisition**

32 In division B, the term “acquisition”—

33 (1) means the process of acquiring, with appropriated amounts, by
 34 contract for purchase or lease, property or services (including construc-
 35 tion) that support the missions and goals of an executive agency, from
 36 the point at which the requirements of the executive agency are estab-
 37 lished in consultation with the chief acquisition officer of the executive
 38 agency; and

39 (2) includes—

- 1 (A) the process of acquiring property or services that are al-
 2 ready in existence, or that must be created, developed, dem-
 3 onstrated, and evaluated;
- 4 (B) the description of requirements to satisfy agency needs;
- 5 (C) solicitation and selection of sources;
- 6 (D) award of contracts;
- 7 (E) contract performance;
- 8 (F) contract financing;
- 9 (G) management and measurement of contract performance
 10 through final delivery and payment; and
- 11 (H) technical and management functions directly related to the
 12 process of fulfilling agency requirements by contract.

13 **§ 132. Competitive procedures**

14 In division B, the term “competitive procedures” means procedures under
 15 which an agency enters into a contract pursuant to full and open competi-
 16 tion.

17 **§ 133. Executive agency**

18 In division B, the term “executive agency” means—

- 19 (1) an executive department specified in section 101 of title 5;
- 20 (2) a military department specified in section 102 of title 5;
- 21 (3) an independent establishment as defined in section 104(1) of title
 22 5; and
- 23 (4) a wholly owned Government corporation fully subject to chapter
 24 91 of title 31.

25 **§ 134. Simplified acquisition threshold**

26 In division B, the term “simplified acquisition threshold” means
 27 \$100,000.

28 SUBCHAPTER III—DIVISION C DEFINITIONS

29 **§ 151. Agency head**

30 In division C, the term “agency head” means the head or any assistant
 31 head of an executive agency, and may at the option of the Administrator
 32 of General Services include the chief official of any principal organizational
 33 unit of the General Services Administration.

34 **§ 152. Competitive procedures**

35 In division C, the term “competitive procedures” means procedures under
 36 which an executive agency enters into a contract pursuant to full and open
 37 competition. The term also includes—

- 38 (1) procurement of architectural or engineering services conducted in
 39 accordance with chapter 11 of title 40;

1 (2) the competitive selection of basic research proposals resulting
2 from a general solicitation and the peer review or scientific review (as
3 appropriate) of those proposals;

4 (3) the procedures established by the Administrator of General Serv-
5 ices for the multiple awards schedule program of the General Services
6 Administration if—

7 (A) participation in the program has been open to all respon-
8 sible sources; and

9 (B) orders and contracts under those procedures result in the
10 lowest overall cost alternative to meet the needs of the Federal
11 Government;

12 (4) procurements conducted in furtherance of section 15 of the Small
13 Business Act (15 U.S.C. 644) as long as all responsible business con-
14 cerns that are entitled to submit offers for those procurements are per-
15 mitted to compete; and

16 (5) a competitive selection of research proposals resulting from a
17 general solicitation and peer review or scientific review (as appropriate)
18 solicited pursuant to section 9 of that Act (15 U.S.C. 638).

19 **§ 153. Simplified acquisition threshold for contract in**
20 **support of humanitarian or peacekeeping oper-**
21 **ation**

22 (1) IN GENERAL.—In division C, the term “simplified acquisition thresh-
23 old” has the meaning provided that term in section 134 of this title, except
24 that, in the case of a contract to be awarded and performed, or purchase
25 to be made, outside the United States in support of a humanitarian or
26 peacekeeping operation, the term means an amount equal to two times the
27 amount specified for that term in section 134 of this title.

28 (2) DEFINITION.—In paragraph (1), the term “humanitarian or peace-
29 keeping operation” means a military operation in support of the provision
30 of humanitarian or foreign disaster assistance or in support of a peace-
31 keeping operation under chapter VI or VII of the Charter of the United Na-
32 tions. The term does not include routine training, force rotation, or sta-
33 tioning.

34 **DIVISION B—OFFICE OF FEDERAL PROCUREMENT POLICY**
35 **CHAPTER 11—ESTABLISHMENT OF OFFICE AND**
36 **AUTHORITY AND FUNCTIONS OF ADMINISTRATOR**

SUBCHAPTER I—GENERAL

Sec.

1101. Office of Federal Procurement Policy.

1102. Administrator.

SUBCHAPTER II—AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR

1121. General authority.

1122. Functions.

- 1123. Small business concerns.
- 1124. Tests of innovative procurement methods and procedures.
- 1125. Recipients of Federal grants or assistance.
- 1126. Policy regarding consideration of contractor past performance.
- 1127. Determining benchmark compensation amount.
- 1128. Maintaining necessary capability with respect to acquisition of architectural and engineering services.
- 1129. Center of excellence in contracting for services.
- 1130. Effect of division on other law.
- 1131. Annual report.

SUBCHAPTER I—GENERAL

§ 1101. Office of Federal Procurement Policy

(a) ORGANIZATION.—There is an Office of Federal Procurement Policy in the Office of Management and Budget.

(b) PURPOSES.—The purposes of the Office of Federal Procurement Policy are to—

(1) provide overall direction of Government-wide procurement policies, regulations, procedures, and forms for executive agencies; and

(2) promote economy, efficiency, and effectiveness in the procurement of property and services by the executive branch of the Federal Government.

(c) AUTHORIZATION OF APPROPRIATIONS.—Necessary amounts may be appropriated each fiscal year for the Office of Federal Procurement Policy to carry out the responsibilities of the Office for that fiscal year.

§ 1102. Administrator

(a) HEAD OF OFFICE.—The head of the Office of Federal Procurement Policy is the Administrator for Federal Procurement Policy.

(b) APPOINTMENT.—The Administrator is appointed by the President, by and with the advice and consent of the Senate.

SUBCHAPTER II—AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR

§ 1121. General authority

(a) OVERALL DIRECTION AND LEADERSHIP.—The Administrator shall provide overall direction of procurement policy and leadership in the development of procurement systems of the executive agencies.

(b) FEDERAL ACQUISITION REGULATION.—To the extent that the Administrator considers appropriate in carrying out the policies and functions set forth in this division, and with due regard for applicable laws and the program activities of the executive agencies, the Administrator may prescribe Government-wide procurement policies. The policies shall be implemented in a single Government-wide procurement regulation called the Federal Acquisition Regulation.

(c) POLICIES TO BE FOLLOWED BY EXECUTIVE AGENCIES.—

1 (1) AREAS OF PROCUREMENT FOR WHICH POLICIES ARE TO BE FOL-
2 LOWED.—The policies implemented in the Federal Acquisition Regula-
3 tion shall be followed by executive agencies in the procurement of—

4 (A) property other than real property in being;

5 (B) services, including research and development; and

6 (C) construction, alteration, repair, or maintenance of real prop-
7 erty.

8 (2) PROCEDURES TO ENSURE COMPLIANCE.—The Administrator
9 shall establish procedures to ensure compliance with the Federal Acqui-
10 sition Regulation by all executive agencies.

11 (3) APPLICATION OF OTHER LAWS.—The authority of an executive
12 agency under another law to prescribe policies, regulations, procedures,
13 and forms for procurement is subject to the authority conferred in this
14 section and sections 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and
15 2305 of this title.

16 (d) WHEN CERTAIN AGENCIES ARE UNABLE TO AGREE OR FAIL TO
17 ACT.—In any instance in which the Administrator determines that the De-
18 partment of Defense, the National Aeronautics and Space Administration,
19 and the General Services Administration are unable to agree on or fail to
20 issue Government-wide regulations, procedures, and forms in a timely man-
21 ner, including regulations, procedures, and forms necessary to implement
22 prescribed policy the Administrator initiates under subsection (b), the Ad-
23 ministrator, with due regard for applicable laws and the program activities
24 of the executive agencies and consistent with the policies and functions set
25 forth in this division, shall prescribe Government-wide regulations, proce-
26 dures, and forms which executive agencies shall follow in procuring items
27 listed in subsection (c)(1).

28 (e) OVERSIGHT OF PROCUREMENT REGULATIONS OF OTHER AGEN-
29 CIES.—The Administrator, with the concurrence of the Director of the Of-
30 fice of Management and Budget, and with consultation with the head of the
31 agency concerned, may deny the promulgation of or rescind any Govern-
32 ment-wide regulation or final rule or regulation of any executive agency re-
33 lating to procurement if the Administrator determines that the rule or regu-
34 lation is inconsistent with any policies, regulations, or procedures issued
35 pursuant to subsection (b).

36 (f) LIMITATION ON AUTHORITY.—The authority of the Administrator
37 under this division shall not be construed to—

38 (1) impair or interfere with the determination by executive agencies
39 of their need for, or their use of, specific property, services, or con-
40 struction, including particular specifications for the property, services,
41 or construction; or

1 (2) interfere with the determination by executive agencies of specific
2 actions in the award or administration of procurement contracts.

3 **§ 1122. Functions**

4 (a) IN GENERAL.—The functions of the Administrator include—

5 (1) providing leadership and ensuring action by the executive agen-
6 cies in establishing, developing, and maintaining the single system of
7 simplified Government-wide procurement regulations and resolving dif-
8 ferences among the executive agencies in developing simplified Govern-
9 ment-wide procurement regulations, procedures, and forms;

10 (2) coordinating the development of Government-wide procurement
11 system standards that executive agencies shall implement in their pro-
12 curement systems;

13 (3) providing leadership and coordination in formulating the execu-
14 tive branch position on legislation relating to procurement;

15 (4)(A) providing for and directing the activities of the computer-
16 based Federal Procurement Data System (including recommending to
17 the Administrator of General Services a sufficient budget for those ac-
18 tivities), which shall be located in the General Services Administration,
19 in order to adequately collect, develop, and disseminate procurement
20 data; and

21 (B) ensuring executive agency compliance with the record require-
22 ments of section 1712 of this title;

23 (5) providing for and directing the activities of the Federal Acquisi-
24 tion Institute (including recommending to the Administrator of General
25 Services a sufficient budget for those activities), which shall be located
26 in the General Services Administration, in order to—

27 (A) foster and promote the development of a professional acqui-
28 sition workforce Government-wide;

29 (B) promote and coordinate Government-wide research and
30 studies to improve the procurement process and the laws, policies,
31 methods, regulations, procedures, and forms relating to acquisition
32 by the executive agencies;

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

36 (D) periodically analyze acquisition career fields to identify crit-
37 ical competencies, duties, tasks, and related academic pre-
38 requisites, skills, and knowledge;

39 (E) coordinate and assist agencies in identifying and recruiting
40 highly qualified candidates for acquisition fields;

- 1 (F) develop instructional materials for acquisition personnel in
2 coordination with private and public acquisition colleges and train-
3 ing facilities;
- 4 (G) evaluate the effectiveness of training and career develop-
5 ment programs for acquisition personnel;
- 6 (H) promote the establishment and utilization of academic pro-
7 grams by colleges and universities in acquisition fields;
- 8 (I) facilitate, to the extent requested by agencies, interagency
9 intern and training programs; and
- 10 (J) perform other career management or research functions as
11 directed by the Administrator;
- 12 (6) administering section 1703(a) to (i) of this title;
- 13 (7) establishing criteria and procedures to ensure the effective and
14 timely solicitation of the viewpoints of interested parties in the develop-
15 ment of procurement policies, regulations, procedures, and forms;
- 16 (8) developing standard contract forms and contract language in
17 order to reduce the Federal Government's cost of procuring property
18 and services and the private sector's cost of doing business with the
19 Federal Government;
- 20 (9) providing for a Government-wide award to recognize and promote
21 vendor excellence;
- 22 (10) providing for a Government-wide award to recognize and pro-
23 mote excellence in officers and employees of the Federal Government
24 serving in procurement-related positions;
- 25 (11) developing policies, in consultation with the Administrator of
26 the Small Business Administration, that ensure that small businesses,
27 qualified HUBZone small business concerns (as defined in section 3(p)
28 of the Small Business Act (15 U.S.C. 632(p))), small businesses owned
29 and controlled by socially and economically disadvantaged individuals,
30 and small businesses owned and controlled by women are provided with
31 the maximum practicable opportunities to participate in procurements
32 that are conducted for amounts below the simplified acquisition thresh-
33 old;
- 34 (12) developing policies that will promote achievement of goals for
35 participation by small businesses, small business concerns owned and
36 controlled by service-disabled veterans, qualified HUBZone small busi-
37 ness concerns (as defined in section 3(p) of the Small Business Act (15
38 U.S.C. 632(p))), small businesses owned and controlled by socially and
39 economically disadvantaged individuals, and small businesses owned
40 and controlled by women; and

1 (13) completing action, as appropriate, on the recommendations of
2 the Commission on Government Procurement.

3 (b) CONSULTATION AND ASSISTANCE.—In carrying out the functions in
4 subsection (a), the Administrator—

5 (1) shall consult with the affected executive agencies, including the
6 Small Business Administration;

7 (2) with the concurrence of the heads of affected executive agencies,
8 may designate one or more executive agencies to assist in performing
9 those functions; and

10 (3) may establish advisory committees or other interagency groups
11 to assist in providing for the establishment, development, and mainte-
12 nance of a single system of simplified Government-wide procurement
13 regulations and to assist in performing any other function the Adminis-
14 trator considers appropriate.

15 (c) ASSIGNMENT, DELEGATION, OR TRANSFER.—

16 (1) TO ADMINISTRATOR.—Except as otherwise provided by law, only
17 duties, functions, or responsibilities expressly assigned by this division
18 shall be assigned, delegated, or transferred to the Administrator.

19 (2) BY ADMINISTRATOR.—

20 (A) WITHIN OFFICE.—The Administrator may make and au-
21 thorize delegations within the Office of Federal Procurement Pol-
22 icy that the Administrator determines to be necessary to carry out
23 this division.

24 (B) TO ANOTHER EXECUTIVE AGENCY.—The Administrator
25 may delegate, and authorize successive redelegations of, an author-
26 ity, function, or power of the Administrator under this division
27 (other than the authority to provide overall direction of Federal
28 procurement policy and to prescribe policies and regulations to
29 carry out the policy) to another executive agency with the consent
30 of the head of the executive agency or at the direction of the
31 President.

32 **§ 1123. Small business concerns**

33 In formulating the Federal Acquisition Regulation and procedures to en-
34 sure compliance with the Regulation, the Administrator, in consultation with
35 the Small Business Administration, shall—

36 (1) conduct analyses of the impact on small business concerns result-
37 ing from revised procurement regulations; and

38 (2) incorporate into revised procurement regulations simplified bid-
39 ding, contract performance, and contract administration procedures for
40 small business concerns.

1 **§ 1124. Tests of innovative procurement methods and proce-**
2 **dures**

3 (a) IN GENERAL.—The Administrator may develop innovative procure-
4 ment methods and procedures to be tested by selected executive agencies.
5 In developing a program to test innovative procurement methods and proce-
6 dures under this subsection, the Administrator shall consult with the heads
7 of executive agencies to—

8 (1) ascertain the need for and specify the objectives of the program;

9 (2) develop the guidelines and procedures for carrying out the pro-
10 program and the criteria to be used in measuring the success of the pro-
11 gram;

12 (3) evaluate the potential costs and benefits which may be derived
13 from the innovative procurement methods and procedures tested under
14 the program;

15 (4) select the appropriate executive agencies or components of execu-
16 tive agencies to carry out the program;

17 (5) specify the categories and types of products or services to be pro-
18 cured under the program; and

19 (6) develop the methods to be used to analyze the results of the pro-
20 gram.

21 (b) APPROVAL OF EXECUTIVE AGENCIES REQUIRED.—A program to test
22 innovative procurement methods and procedures may not be carried out un-
23 less approved by the heads of the executive agencies selected to carry out
24 the program.

25 (c) REQUEST FOR WAIVER OF LAW.—If the Administrator determines
26 that it is necessary to waive the application of a provision of law to carry
27 out a proposed program to test innovative procurement methods and proce-
28 dures under subsection (a), the Administrator shall transmit notice of the
29 proposed program to the Committee on Oversight and Government Reform
30 of the House of Representatives and the Committee on Homeland Security
31 and Governmental Affairs of the Senate and request that the Committees
32 take the necessary action to provide that the provision of law does not apply
33 with respect to the proposed program. The notification to Congress shall in-
34 clude—

35 (1) a description of the proposed program (including the scope and
36 purpose of the proposed program);

37 (2) the procedures to be followed in carrying out the proposed pro-
38 gram;

39 (3) the provisions of law affected and the application of any provi-
40 sion of law that must be waived in order to carry out the proposed pro-
41 gram; and

1 (4) the executive agencies involved in carrying out the proposed pro-
2 gram.

3 **§ 1125. Recipients of Federal grants or assistance**

4 (a) AUTHORITY.—With due regard to applicable laws and the program
5 activities of the executive agencies administering Federal programs of
6 grants or assistance, the Administrator may prescribe Government-wide
7 policies, regulations, procedures, and forms that the Administrator considers
8 appropriate and that executive agencies shall follow in providing for the pro-
9 curement, to the extent required under those programs, of property or serv-
10 ices referred to in section 1121(e)(1) of this title by recipients of Federal
11 grants or assistance under the programs.

12 (b) LIMITATION.—Subsection (a) does not—

13 (1) permit the Administrator to authorize procurement or supply
14 support, either directly or indirectly, to a recipient of a Federal grant
15 or assistance; or

16 (2) authorize action by a recipient contrary to State and local law
17 in the case of a program to provide a Federal grant or assistance to
18 a State or political subdivision.

19 **§ 1126. Policy regarding consideration of contractor past**
20 **performance**

21 (a) GUIDANCE.—The Administrator shall prescribe for executive agencies
22 guidance regarding consideration of the past contract performance of
23 offerors in awarding contracts. The guidance shall include—

24 (1) standards for evaluating past performance with respect to cost
25 (when appropriate), schedule, compliance with technical or functional
26 specifications, and other relevant performance factors that facilitate
27 consistent and fair evaluation by all executive agencies;

28 (2) policies for the collection and maintenance of information on past
29 contract performance that, to the maximum extent practicable, facili-
30 tate automated collection, maintenance, and dissemination of informa-
31 tion and provide for ease of collection, maintenance, and dissemination
32 of information by other methods, as necessary;

33 (3) policies for ensuring that—

34 (A) offerors are afforded an opportunity to submit relevant in-
35 formation on past contract performance, including performance
36 under contracts entered into by the executive agency concerned,
37 other departments and agencies of the Federal Government, agen-
38 cies of State and local governments, and commercial customers;
39 and

40 (B) the information submitted by offerors is considered; and

1 (4) the period for which information on past performance of offerors
2 may be maintained and considered.

3 (b) INFORMATION NOT AVAILABLE.—If there is no information on past
4 contract performance of an offeror or the information on past contract per-
5 formance is not available, the offeror may not be evaluated favorably or un-
6 favorably on the factor of past contract performance.

7 **§ 1127. Determining benchmark compensation amount**

8 (a) DEFINITIONS.—In this section:

9 (1) BENCHMARK COMPENSATION AMOUNT.—The term “benchmark
10 compensation amount”, for a fiscal year, is the median amount of the
11 compensation provided for all senior executives of all benchmark cor-
12 porations for the most recent year for which data is available at the
13 time the determination under subsection (b) is made.

14 (2) BENCHMARK CORPORATION.—The term “benchmark corpora-
15 tion”, with respect to a fiscal year, means a publicly-owned United
16 States corporation that has annual sales in excess of \$50,000,000 for
17 the fiscal year.

18 (3) COMPENSATION.—The term “compensation”, for a fiscal year,
19 means the total amount of wages, salary, bonuses, and deferred com-
20 pensation for the fiscal year, whether paid, earned, or otherwise accru-
21 ing, as recorded in an employer’s cost accounting records for the fiscal
22 year.

23 (4) FISCAL YEAR.—The term “fiscal year” means a fiscal year a
24 contractor establishes for accounting purposes.

25 (5) PUBLICLY-OWNED UNITED STATES CORPORATION.—The term
26 “publicly-owned United States corporation” means a corporation—

27 (A) organized under the laws of a State of the United States,
28 the District of Columbia, Puerto Rico, or a possession of the
29 United States; and

30 (B) whose voting stock is publicly traded.

31 (6) SENIOR EXECUTIVES.—The term “senior executives”, with re-
32 spect to a contractor, means the 5 most highly compensated employees
33 in management positions at each home office and each segment of the
34 contractor.

35 (b) DETERMINING BENCHMARK COMPENSATION AMOUNT.—For purposes
36 of section 4304(a)(16) of this title and section 2324(e)(1)(P) of title 10,
37 the Administrator shall review commercially available surveys of executive
38 compensation and, on the basis of the results of the review, determine a
39 benchmark compensation amount to apply for each fiscal year. In making
40 determinations under this subsection, the Administrator shall consult with

1 the Director of the Defense Contract Audit Agency and other officials of
2 executive agencies as the Administrator considers appropriate.

3 **§ 1128. Maintaining necessary capability with respect to ac-**
4 **quisition of architectural and engineering services**

5 The Administrator, in consultation with the Secretary of Defense, the Ad-
6 ministrator of General Services, and the Director of the Office of Personnel
7 Management, shall develop and implement a plan to ensure that the Federal
8 Government maintains the necessary capability with respect to the acquisi-
9 tion of architectural and engineering services to—

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

16 **§ 1129. Center of excellence in contracting for services**

17 The Administrator shall maintain a center of excellence in contracting for
18 services. The center shall assist the acquisition community by identifying,
19 and serving as a clearinghouse for, best practices in contracting for services
20 in the public and private sectors.

21 **§ 1130. Effect of division on other law**

22 This division does not impair or affect the authorities or responsibilities
23 relating to the procurement of real property conferred by division C of this
24 subtitle and chapters 1 to 11 of title 40.

25 **§ 1131. Annual report**

26 The Administrator annually shall submit to Congress an assessment of
27 the progress made in executive agencies in implementing the policy regard-
28 ing major acquisitions that is stated in section 3103(a) of this title. The
29 Administrator shall use data from existing management systems in making
30 the assessment.

31 **CHAPTER 13—ACQUISITION COUNCILS**

SUBCHAPTER I—FEDERAL ACQUISITION REGULATORY COUNCIL

Sec.

1301. Definition.
1302. Establishment and membership.
1303. Functions and authority.
1304. Contract clauses and certifications.

SUBCHAPTER II—CHIEF ACQUISITION OFFICERS COUNCIL

1311. Establishment and membership.
1312. Functions.

SUBCHAPTER I—FEDERAL ACQUISITION REGULATORY
COUNCIL

§ 1301. Definition

In this subchapter, the term “Council” means the Federal Acquisition Regulatory Council established under section 1302(a) of this title.

§ 1302. Establishment and membership

(a) ESTABLISHMENT.—There is a Federal Acquisition Regulatory Council to assist in the direction and coordination of Government-wide procurement policy and Government-wide procurement regulatory activities in the Federal Government.

(b) MEMBERSHIP.—

(1) MAKEUP OF COUNCIL.—The Council consists of—

(A) the Administrator;

(B) the Secretary of Defense;

(C) the Administrator of National Aeronautics and Space; and

(D) the Administrator of General Services.

(2) DESIGNATION OF OTHER OFFICIALS.—

(A) OFFICIALS WHO MAY BE DESIGNATED.—Notwithstanding section 121(d)(1) and (2) of title 40, the officials specified in subparagraphs (B) to (D) of paragraph (1) may designate to serve on and attend meetings of the Council in place of that official—

(i) the official assigned by statute with the responsibility for acquisition policy in each of their respective agencies or, in the case of the Secretary of Defense, an official at an organizational level not lower than an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics; or

(ii) if no official of that agency is assigned by statute with the responsibility for acquisition policy for that agency, the official designated pursuant to section 1702(e) of this title.

(B) LIMITATION ON DESIGNATION.—No other official or employee may be designated to serve on the Council.

§ 1303. Functions and authority

(a) FUNCTIONS.—

(1) ISSUE AND MAINTAIN FEDERAL ACQUISITION REGULATION.—Subject to sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title, the Administrator of General Services, the Secretary of Defense, and the Administrator of National Aeronautics and Space, pursuant to their respective authorities under division C of this subtitle, chapters 4 and 137 of title 10, and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.), shall jointly issue and

1 maintain in accordance with subsection (d) a single Government-wide
2 procurement regulation, to be known as the Federal Acquisition Regu-
3 lation.

4 (2) LIMITATION ON OTHER REGULATIONS.—Other regulations relat-
5 ing to procurement issued by an executive agency shall be limited to—

6 (A) regulations essential to implement Government-wide policies
7 and procedures within the agency; and

8 (B) additional policies and procedures required to satisfy the
9 specific and unique needs of the agency.

10 (3) ENSURE CONSISTENT REGULATIONS.—The Administrator, in
11 consultation with the Council, shall ensure that procurement regula-
12 tions prescribed by executive agencies are consistent with the Federal
13 Acquisition Regulation and in accordance with the policies prescribed
14 pursuant to section 1121(b) of this title.

15 (4) REQUEST TO REVIEW REGULATION.—

16 (A) BASIS FOR REQUEST.—Under procedures the Administrator
17 establishes, a person may request the Administrator to review a
18 regulation relating to procurement on the basis that the regulation
19 is inconsistent with the Federal Acquisition Regulation.

20 (B) PERIOD OF REVIEW.—Unless the request is frivolous or
21 does not, on its face, state a valid basis for the review, the Admin-
22 istrator shall complete the review not later than 60 days after re-
23 ceiving the request. The time for completion of the review may be
24 extended if the Administrator determines that an additional period
25 of review is required. The Administrator shall advise the requester
26 of the reasons for the extension and the date by which the review
27 will be completed.

28 (5) WHEN REGULATION IS INCONSISTENT OR NEEDS TO BE IM-
29 PROVED.—If the Administrator determines that a regulation relating to
30 procurement is inconsistent with the Federal Acquisition Regulation or
31 that the regulation otherwise should be revised to remove an inconsis-
32 tency with the policies prescribed under section 1121(b) of this title, the
33 Administrator shall rescind or deny the promulgation of the regulation
34 or take other action authorized under sections 1121, 1122(a) to (e)(1),
35 1125, 1126, 1130, 1131, and 2305 of this title as may be necessary
36 to remove the inconsistency. If the Administrator determines that the
37 regulation, although not inconsistent with the Federal Acquisition Reg-
38 ulation or those policies, should be revised to improve compliance with
39 the Regulation or policies, the Administrator shall take action author-
40 ized under sections 1121, 1122(a) to (e)(1), 1125, 1126, 1130, 1131,
41 and 2305 as may be necessary and appropriate.

1 (6) DECISIONS TO BE IN WRITING AND PUBLICLY AVAILABLE.—The
 2 decisions of the Administrator shall be in writing and made publicly
 3 available.

4 (b) ADDITIONAL RESPONSIBILITIES OF MEMBERSHIP.—

5 (1) IN GENERAL.—Subject to the authority, direction, and control of
 6 the head of the agency concerned, each official who represents an agen-
 7 cy on the Council pursuant to section 1302(b) of this title shall—

8 (A) approve or disapprove all regulations relating to procure-
 9 ment that are proposed for public comment, prescribed in final
 10 form, or otherwise made effective by that agency before the regula-
 11 tion may be prescribed in final form, or otherwise made effective,
 12 except that the official may grant an interim approval, without re-
 13 view, for not more than 60 days for a procurement regulation in
 14 urgent and compelling circumstances;

15 (B) carry out the responsibilities of that agency set forth in
 16 chapter 35 of title 44 for each information collection request that
 17 relates to procurement rules or regulations; and

18 (C) eliminate or reduce—

19 (i) any redundant or unnecessary levels of review and ap-
 20 proval in the procurement system of that agency; and

21 (ii) redundant or unnecessary procurement regulations
 22 which are unique to that agency.

23 (2) LIMITATION ON DELEGATION.—The authority to review and ap-
 24 prove or disapprove regulations under paragraph (1)(A) may not be
 25 delegated to an individual outside the office of the official who rep-
 26 represents the agency on the Council pursuant to section 1302(b) of this
 27 title.

28 (c) GOVERNING POLICIES.—All actions of the Council and of members of
 29 the Council shall be in accordance with and furtherance of the policies pre-
 30 scribed under section 1121(b) of this title.

31 (d) GENERAL AUTHORITY WITH RESPECT TO FEDERAL ACQUISITION
 32 REGULATION.—Subject to section 1121(d) of this title, the Council shall
 33 manage, coordinate, control, and monitor the maintenance of, issuance of,
 34 and changes in, the Federal Acquisition Regulation.

35 **§ 1304. Contract clauses and certifications**

36 (a) REPETITIVE NONSTANDARD CONTRACT CLAUSES DISCOURAGED.—
 37 The Council shall prescribe regulations to discourage the use of a non-
 38 standard contract clause on a repetitive basis. The regulations shall include
 39 provisions that—

40 (1) clearly define what types of contract clauses are to be treated
 41 as nonstandard clauses; and

(2) require prior approval for the use of a nonstandard clause on a repetitive basis by an official at a level of responsibility above the contracting officer.

(b) WHEN CERTIFICATION REQUIRED.—

(1) BY LAW.—A provision of law may not be construed as requiring a certification by a contractor or offeror in a procurement made or to be made by the Federal Government unless that provision of law specifically provides that such a certification shall be required.

(2) IN FEDERAL ACQUISITION REGULATION.—A requirement for a certification by a contractor or offeror may not be included in the Federal Acquisition Regulation unless—

(A) the certification requirement is specifically imposed by statute; or

(B) written justification for the certification requirement is provided to the Administrator by the Council and the Administrator approves in writing the inclusion of the certification requirement.

(3) EXECUTIVE AGENCY PROCUREMENT REGULATION.—

(A) DEFINITION.—In subparagraph (B), the term “head of the executive agency” with respect to a military department means the Secretary of Defense.

(B) WHEN CERTIFICATION REQUIREMENT MAY BE INCLUDED IN REGULATION.—A requirement for a certification by a contractor or offeror may not be included in a procurement regulation of an executive agency unless—

(i) the certification requirement is specifically imposed by statute; or

(ii) written justification for the certification requirement is provided to the head of the executive agency by the senior procurement executive of the agency and the head of the executive agency approves in writing the inclusion of the certification requirement.

SUBCHAPTER II—CHIEF ACQUISITION OFFICERS COUNCIL

§ 1311. Establishment and membership

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

(b) MEMBERSHIP.—The members of the Council are—

(1) the Deputy Director for Management of the Office of Management and Budget;

(2) the Administrator;

(3) the Under Secretary of Defense for Acquisition, Technology, and Logistics;

1 (4) the chief acquisition officer of each executive agency that is re-
 2 quired to have a chief acquisition officer under section 1702 of this
 3 title and the senior procurement executive of each military department;
 4 and

5 (5) any other senior agency officer of each executive agency, ap-
 6 pointed by the head of the agency in consultation with the Chairman
 7 of the Council, who can effectively assist the Council in performing the
 8 functions set forth in section 1312(b) of this title and supporting the
 9 associated range of acquisition activities.

10 (c) LEADERSHIP AND SUPPORT.—

11 (1) CHAIRMAN.—The Deputy Director for Management of the Office
 12 of Management and Budget is the Chairman of the Council.

13 (2) VICE CHAIRMAN.—The Vice Chairman of the Council shall be se-
 14 lected by the Council from among its members. The Vice Chairman
 15 serves for one year and may serve multiple terms.

16 (3) LEADER OF ACTIVITIES.—The Administrator shall lead the ac-
 17 tivities of the Council on behalf of the Deputy Director for Manage-
 18 ment.

19 (4) SUPPORT.—The Administrator of General Services shall provide
 20 administrative and other support for the Council.

21 **§ 1312. Functions**

22 (a) PRINCIPAL FORUM.—The Chief Acquisition Officers Council is the
 23 principal interagency forum for monitoring and improving the Federal ac-
 24 quisition system.

25 (b) FUNCTIONS.—The Council shall perform functions that include the
 26 following:

27 (1) Develop recommendations for the Director of the Office of Man-
 28 agement and Budget on Federal acquisition policies and requirements.

29 (2) Share experiences, ideas, best practices, and innovative ap-
 30 proaches related to Federal acquisition.

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

34 (4) Promote effective business practices that ensure the timely deliv-
 35 ery of best value products to the Federal Government and achieve ap-
 36 propriate public policy objectives.

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

39 (6) Work with the Office of Personnel Management to assess and ad-
 40 dress the hiring, training, and professional development needs of the
 41 Federal Government related to acquisition.

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

CHAPTER 15—COST ACCOUNTING STANDARDS

Sec.

- 1501. Cost Accounting Standards Board.
- 1502. Cost accounting standards.
- 1503. Contract price adjustment.
- 1504. Effect on other standards and regulations.
- 1505. Examinations.
- 1506. Authorization of appropriations.

§ 1501. Cost Accounting Standards Board

(a) ORGANIZATION.—The Cost Accounting Standards Board is an independent board in the Office of Federal Procurement Policy.

(b) MEMBERSHIP.—

(1) NUMBER OF MEMBERS, CHAIRMAN, AND APPOINTMENT.—The Board consists of 5 members. One member is the Administrator, who serves as Chairman. The other 4 members, all of whom shall have experience in Federal Government contract cost accounting, are as follows:

(A) 2 representatives of the Federal Government—

(i) one of whom is a representative of the Department of Defense appointed by the Secretary of Defense; and

(ii) one of whom is an officer or employee of the General Services Administration appointed by the Administrator of General Services.

(B) 2 individuals from the private sector, each of whom is appointed by the Administrator, and—

(i) one of whom is a representative of industry; and

(ii) one of whom is particularly knowledgeable about cost accounting problems and systems.

(2) TERM OF OFFICE.—

(A) LENGTH OF TERM.—The term of office of each member, other than the Administrator, is 4 years. The terms are staggered, with the terms of 2 members expiring in the same year, the term of another member expiring the next year, and the term of the last member expiring the year after that.

(B) INDIVIDUAL REQUIRED TO REMAIN WITH APPOINTING AGENCY.—A member appointed under paragraph (1)(A) may not continue to serve after ceasing to be an officer or employee of the agency from which that member was appointed.

(3) VACANCY.—A vacancy on the Board shall be filled in the same manner in which the original appointment was made. A member ap-

1 pointed to fill a vacancy serves for the remainder of the term for which
2 that member's predecessor was appointed.

3 (c) SENIOR STAFF.—The Administrator, after consultation with the
4 Board, may—

5 (1) appoint an executive secretary and 2 additional staff members
6 without regard to the provisions of title 5 governing appointments in
7 the competitive service; and

8 (2) pay those employees without regard to the provisions of chapter
9 51 and subchapter III of chapter 53 of title 5 relating to classification
10 and General Schedule pay rates, except that those employees may not
11 receive pay in excess of the maximum rate of basic pay payable under
12 section 5376 of title 5.

13 (d) OTHER STAFF.—The Administrator may appoint, fix the compensa-
14 tion of, and remove additional employees of the Board under the applicable
15 provisions of title 5.

16 (e) DETAILED AND TEMPORARY PERSONNEL.—For service on advisory
17 committees and task forces to assist the Board in carrying out its functions
18 and responsibilities—

19 (1) the Board, with the consent of the head of a Federal agency,
20 may use, without reimbursement, personnel of that agency; and

21 (2) the Administrator, after consultation with the Board, may pro-
22 cure temporary and intermittent services of personnel under section
23 3109(b) of title 5.

24 (f) COMPENSATION.—

25 (1) OFFICERS AND EMPLOYEES OF THE GOVERNMENT.—Members of
26 the Board who are officers or employees of the Federal Government,
27 and officers and employees of other agencies of the Federal Govern-
28 ment who are used under subsection (e)(1), shall not receive additional
29 compensation for services but shall continue to be compensated by the
30 employing department or agency of the officer or employee.

31 (2) APPOINTEES FROM PRIVATE SECTOR.—Each member of the
32 Board appointed from the private sector shall receive compensation at
33 a rate not to exceed the daily equivalent of the rate for level IV of the
34 Executive Schedule for each day (including travel time) in which the
35 member is engaged in the actual performance of duties vested in the
36 Board.

37 (3) TEMPORARY AND INTERMITTENT PERSONNEL.—An individual
38 hired under subsection (e)(2) may receive compensation at a rate fixed
39 by the Administrator, but not to exceed the daily equivalent of the rate
40 for level V of the Executive Schedule for each day (including travel

1 time) in which the individual is properly engaged in the actual perform-
2 ance of duties under this chapter.

3 (4) TRAVEL EXPENSES.—While serving away from home or regular
4 place of business, Board members and other individuals serving on an
5 intermittent basis under this chapter shall be allowed travel expenses
6 in accordance with section 5703 of title 5.

7 **§ 1502. Cost accounting standards**

8 (a) AUTHORITY.—

9 (1) COST ACCOUNTING STANDARDS BOARD.—The Cost Accounting
10 Standards Board has exclusive authority to prescribe, amend, and re-
11 scind cost accounting standards, and interpretations of the standards,
12 designed to achieve uniformity and consistency in the cost accounting
13 standards governing measurement, assignment, and allocation of costs
14 to contracts with the Federal Government.

15 (2) ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY.—The
16 Administrator, after consultation with the Board, shall prescribe rules
17 and procedures governing actions of the Board under this chapter. The
18 rules and procedures shall require that any action to prescribe, amend,
19 or rescind a standard or interpretation be approved by majority vote
20 of the Board.

21 (b) MANDATORY USE OF STANDARDS.—

22 (1) SUBCONTRACT.—

23 (A) DEFINITION.—In this paragraph, the term “subcontract”
24 includes a transfer of commercial items between divisions, subsidi-
25 aries, or affiliates of a contractor or subcontractor.

26 (B) WHEN STANDARDS ARE TO BE USED.—Cost accounting
27 standards prescribed under this chapter are mandatory for use by
28 all executive agencies and by contractors and subcontractors in es-
29 timating, accumulating, and reporting costs in connection with the
30 pricing and administration of, and settlement of disputes con-
31 cerning, all negotiated prime contract and subcontract procure-
32 ments with the Federal Government in excess of the amount set
33 forth in section 2306a(a)(1)(A)(i) of title 10 as the amount is ad-
34 justed in accordance with applicable requirements of law.

35 (C) NONAPPLICATION OF STANDARDS.—Subparagraph (B) does
36 not apply to—

37 (i) a contract or subcontract for the acquisition of a com-
38 mercial item;

39 (ii) a contract or subcontract where the price negotiated is
40 based on a price set by law or regulation;

1 (iii) a firm, fixed-price contract or subcontract awarded on
 2 the basis of adequate price competition without submission of
 3 certified cost or pricing data; or

4 (iv) a contract or subcontract with a value of less than
 5 \$7,500,000 if, when the contract or subcontract is entered
 6 into, the segment of the contractor or subcontractor that will
 7 perform the work has not been awarded at least one contract
 8 or subcontract with a value of more than \$7,500,000 that is
 9 covered by the standards.

10 (2) EXEMPTIONS AND WAIVERS BY BOARD.—The Board may—

11 (A) exempt classes of contractors and subcontractors from the
 12 requirements of this chapter; and

13 (B) establish procedures for the waiver of the requirements of
 14 this chapter for individual contracts and subcontracts.

15 (3) WAIVER BY HEAD OF EXECUTIVE AGENCY.—

16 (A) IN GENERAL.—The head of an executive agency may waive
 17 the applicability of the cost accounting standards for a contract
 18 or subcontract with a value of less than \$15,000,000 if that offi-
 19 cial determines in writing that the segment of the contractor or
 20 subcontractor that will perform the work—

21 (i) is primarily engaged in the sale of commercial items;
 22 and

23 (ii) would not otherwise be subject to the cost accounting
 24 standards under this section.

25 (B) IN EXCEPTIONAL CIRCUMSTANCES.—The head of an execu-
 26 tive agency may waive the applicability of the cost accounting
 27 standards for a contract or subcontract under exceptional cir-
 28 cumstances when necessary to meet the needs of the agency. A de-
 29 termination to waive the applicability of the standards under this
 30 subparagraph shall be set forth in writing and shall include a
 31 statement of the circumstances justifying the waiver.

32 (C) RESTRICTION ON DELEGATION OF AUTHORITY.—The head
 33 of an executive agency may not delegate the authority under sub-
 34 paragraph (A) or (B) to an official in the executive agency below
 35 the senior policymaking level in the executive agency.

36 (D) CONTENTS OF FEDERAL ACQUISITION REGULATION.—The
 37 Federal Acquisition Regulation shall include—

38 (i) criteria for selecting an official to be delegated authority
 39 to grant waivers under subparagraph (A) or (B); and

40 (ii) the specific circumstances under which the waiver may
 41 be granted.

1 (E) REPORT.—The head of each executive agency shall report
2 the waivers granted under subparagraphs (A) and (B) for that
3 agency to the Board on an annual basis.

4 (e) REQUIRED BOARD ACTION FOR PRESCRIBING STANDARDS AND IN-
5 TERPRETATIONS.—Before prescribing cost accounting standards and inter-
6 pretations, the Board shall—

7 (1) take into account, after consultation and discussions with the
8 Comptroller General, professional accounting organizations, contrac-
9 tors, and other interested parties—

10 (A) the probable costs of implementation, including any infla-
11 tionary effects, compared to the probable benefits;

12 (B) the advantages, disadvantages, and improvements antici-
13 pated in the pricing and administration of, and settlement of dis-
14 putes concerning, contracts; and

15 (C) the scope of, and alternatives available to, the action pro-
16 posed to be taken;

17 (2) prepare and publish a report in the Federal Register on the
18 issues reviewed under paragraph (1);

19 (3)(A) publish an advanced notice of proposed rulemaking in the
20 Federal Register to solicit comments on the report prepared under
21 paragraph (2);

22 (B) provide all parties affected at least 60 days after publication to
23 submit their views and comments; and

24 (C) during the 60-day period, consult with the Comptroller General
25 and consider any recommendation the Comptroller General may make;
26 and

27 (4) publish a notice of proposed rulemaking in the Federal Register
28 and provide all parties affected at least 60 days after publication to
29 submit their views and comments.

30 (d) EFFECTIVE DATES.—Rules, regulations, cost accounting standards,
31 and modifications thereof prescribed or amended under this chapter shall
32 have the full force and effect of law, and shall become effective within 120
33 days after publication in the Federal Register in final form, unless the
34 Board determines that a longer period is necessary. The Board shall deter-
35 mine implementation dates for contractors and subcontractors. The dates
36 may not be later than the beginning of the second fiscal year of the con-
37 tractor or subcontractor after the standard becomes effective.

38 (e) ACCOMPANYING MATERIAL.—Rules, regulations, cost accounting
39 standards, and modifications thereof prescribed or amended under this
40 chapter shall be accompanied by prefatory comments and by illustrations,
41 if necessary.

1 (f) IMPLEMENTING REGULATIONS.—The Board shall prescribe regula-
2 tions for the implementation of cost accounting standards prescribed or in-
3 terpreted under this section. The regulations shall be incorporated into the
4 Federal Acquisition Regulation and shall require contractors and sub-
5 contractors as a condition of contracting with the Federal Government to—

6 (1) disclose in writing their cost accounting practices, including
7 methods of distinguishing direct costs from indirect costs and the basis
8 used for allocating indirect costs; and

9 (2) agree to a contract price adjustment, with interest, for any in-
10 creased costs paid to the contractor or subcontractor by the Federal
11 Government because of a change in the contractor's or subcontractor's
12 cost accounting practices or a failure by the contractor or subcon-
13 tractor to comply with applicable cost accounting standards.

14 (g) NONAPPLICABILITY OF CERTAIN SECTIONS OF TITLE 5.—Functions
15 exercised under this chapter are not subject to sections 551, 553 to 559,
16 and 701 to 706 of title 5.

17 **§ 1503. Contract price adjustment**

18 (a) DISAGREEMENT CONSTITUTES A DISPUTE.—If the Federal Govern-
19 ment and a contractor or subcontractor fail to agree on a contract price ad-
20 justment, including whether the contractor or subcontractor has complied
21 with the applicable cost accounting standards, the disagreement will con-
22 stitute a dispute under chapter 71 of this title.

23 (b) AMOUNT OF ADJUSTMENT.—A contract price adjustment undertaken
24 under section 1502(f)(2) of this title shall be made, where applicable, on
25 relevant contracts between the Federal Government and the contractor that
26 are subject to the cost accounting standards so as to protect the Federal
27 Government from payment, in the aggregate, of increased costs, as defined
28 by the Cost Accounting Standards Board. The Federal Government may not
29 recover costs greater than the aggregate increased cost to the Federal Gov-
30 ernment, as defined by the Board, on the relevant contracts subject to the
31 price adjustment unless the contractor made a change in its cost accounting
32 practices of which it was aware or should have been aware at the time of
33 the price negotiation and which it failed to disclose to the Federal Govern-
34 ment.

35 (c) INTEREST.—The interest rate applicable to a contract price adjust-
36 ment is the annual rate of interest established under section 6621 of the
37 Internal Revenue Code of 1986 (26 U.S.C. 6621) for the period. Interest
38 accrues from the time payments of the increased costs were made to the
39 contractor or subcontractor to the time the Federal Government receives full
40 compensation for the price adjustment.

1 **§ 1504. Effect on other standards and regulations**

2 (a) PREVIOUSLY EXISTING STANDARDS.—All cost accounting standards,
3 waivers, exemptions, interpretations, modifications, rules, and regulations
4 prescribed by the Cost Accounting Standards Board under section 719 of
5 the Defense Production Act of 1950 (50 U.S.C. App. 2168)—

6 (1) remain in effect until amended, superseded, or rescinded by the
7 Board under this chapter; and

8 (2) are subject to the provisions of this division in the same manner
9 as if prescribed by the Board under this division.

10 (b) INCONSISTENT AGENCY REGULATIONS.—To ensure that a regulation
11 or proposed regulation of an executive agency is not inconsistent with a cost
12 accounting standard prescribed or amended under this chapter, the Admin-
13 istrator, under the authority in sections 1121, 1122(a) to (c)(1), 1125,
14 1126, 1130, 1131, and 2305 of this title, shall rescind or deny the promul-
15 gation of the inconsistent regulation or proposed regulation and take other
16 appropriate action authorized under sections 1121, 1122(a) to (c)(1), 1125,
17 1126, 1130, 1131, and 2305.

18 (c) COSTS NOT SUBJECT TO DIFFERENT STANDARDS.—Costs that are
19 the subject of cost accounting standards prescribed under this chapter are
20 not subject to regulations established by another executive agency that dif-
21 fer from those standards with respect to the measurement, assignment, and
22 allocation of those costs.

23 **§ 1505. Examinations**

24 To determine whether a contractor or subcontractor has complied with
25 cost accounting standards prescribed under this chapter and has followed
26 consistently the contractor's or subcontractor's disclosed cost accounting
27 practices, an authorized representative of the head of the agency concerned,
28 of the offices of inspector general established under the Inspector General
29 Act of 1978 (5 U.S.C. App.), or of the Comptroller General shall have the
30 right to examine and copy documents, papers, or records of the contractor
31 or subcontractor relating to compliance with the standards.

32 **§ 1506. Authorization of appropriations**

33 Necessary amounts may be appropriated to carry out this chapter.

34 **CHAPTER 17—AGENCY RESPONSIBILITIES AND**
35 **PROCEDURES**

Sec.

- 1701. Cooperation with the Administrator.
- 1702. Chief Acquisition Officers and senior procurement executives.
- 1703. Acquisition workforce.
- 1704. Planning and policy-making for acquisition workforce.
- 1705. Advocates for competition.
- 1706. Personnel evaluation.
- 1707. Publication of proposed regulations.
- 1708. Procurement notice.
- 1709. Contracting functions performed by Federal personnel.

1710. Public-private competition required before conversion to contractor performance.
 1711. Value engineering.
 1712. Record requirements.
 1713. Procurement data.

1 **§ 1701. Cooperation with the Administrator**

2 On the request of the Administrator, each executive agency shall—

3 (1) make its services, personnel, and facilities available to the Office
 4 of Federal Procurement Policy to the greatest practicable extent for the
 5 performance of functions under this division; and

6 (2) except when prohibited by law, furnish to the Administrator, and
 7 give the Administrator access to, all information and records in its pos-
 8 session that the Administrator may determine to be necessary for the
 9 performance of the functions of the Office.

10 **§ 1702. Chief Acquisition Officers and senior procurement**
 11 **executives**

12 (a) APPOINTMENT OR DESIGNATION OF CHIEF ACQUISITION OFFICER.—
 13 The head of each executive agency described in section 901(b)(1) (other
 14 than the Department of Defense) or 901(b)(2)(C) of title 31 with a Chief
 15 Financial Officer appointed or designated under section 901(a) of title 31
 16 shall appoint or designate a non-career employee as Chief Acquisition Offi-
 17 cer for the agency.

18 (b) AUTHORITY AND FUNCTIONS OF CHIEF ACQUISITION OFFICER.—

19 (1) PRIMARY DUTY.—The primary duty of a Chief Acquisition Offi-
 20 cer is acquisition management.

21 (2) ADVICE AND ASSISTANCE.—A Chief Acquisition Officer shall ad-
 22 vise and assist the head of the executive agency and other agency offi-
 23 cials to ensure that the mission of the executive agency is achieved
 24 through the management of the agency's acquisition activities.

25 (3) OTHER FUNCTIONS.—The functions of each Chief Acquisition
 26 Officer include—

27 (A) monitoring the performance of acquisition activities and ac-
 28 quisition programs of the executive agency, evaluating the per-
 29 formance of those programs on the basis of applicable performance
 30 measurements, and advising the head of the executive agency re-
 31 garding the appropriate business strategy to achieve the mission
 32 of the executive agency;

33 (B) increasing the use of full and open competition in the acqui-
 34 sition of property and services by the executive agency by estab-
 35 lishing policies, procedures, and practices that ensure that the ex-
 36 ecutive agency receives a sufficient number of sealed bids or com-
 37 petitive proposals from responsible sources to fulfill the Federal
 38 Government's requirements (including performance and delivery

1 schedules) at the lowest cost or best value considering the nature
2 of the property or service procured;

3 (C) increasing appropriate use of performance-based contracting
4 and performance specifications;

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

9 (E) managing the direction of acquisition policy for the execu-
10 tive agency, including implementation of the unique acquisition
11 policies, regulations, and standards of the executive agency;

12 (F) developing and maintaining an acquisition career manage-
13 ment program in the executive agency to ensure that there is an
14 adequate professional workforce; and

15 (G) as part of the strategic planning and performance evalua-
16 tion process required under section 306 of title 5 and sections
17 1105(a)(28), 1115, 1116, and 9703 (added by section 5(a) of
18 Public Law 103–62 (107 Stat. 289)) of title 31—

19 (i) assessing the requirements established for agency per-
20 sonnel regarding knowledge and skill in acquisition resources
21 management and the adequacy of those requirements for fa-
22 cilitating the achievement of the performance goals estab-
23 lished for acquisition management;

24 (ii) developing strategies and specific plans for hiring,
25 training, and professional development to rectify a deficiency
26 in meeting those requirements; and

27 (iii) reporting to the head of the executive agency on the
28 progress made in improving acquisition management capa-
29 bility.

30 (c) SENIOR PROCUREMENT EXECUTIVE.—

31 (1) DESIGNATION.—The head of each executive agency shall des-
32 ignate a senior procurement executive.

33 (2) RESPONSIBILITY.—The senior procurement executive is respon-
34 sible for management direction of the procurement system of the execu-
35 tive agency, including implementation of the unique procurement poli-
36 cies, regulations, and standards of the executive agency.

37 (3) WHEN CHIEF ACQUISITION OFFICER APPOINTED OR DES-
38 IGNATED.—For an executive agency for which a Chief Acquisition Offi-
39 cer has been appointed or designated under subsection (a), the head
40 of the executive agency shall—

1 (A) designate the Chief Acquisition Officer as the senior pro-
2 curement executive for the executive agency; or

3 (B) ensure that the senior procurement executive designated
4 under paragraph (1) reports directly to the Chief Acquisition Offi-
5 cer without intervening authority.

6 **§ 1703. Acquisition workforce**

7 (a) DESCRIPTION.—For purposes of this section, the acquisition work-
8 force of an agency consists of all employees serving in acquisition positions
9 listed in subsection (g)(1)(A).

10 (b) APPLICABILITY.—

11 (1) NONAPPLICABILITY TO CERTAIN EXECUTIVE AGENCIES.—Except
12 as provided in subsection (i), this section does not apply to an executive
13 agency that is subject to chapter 87 of title 10.

14 (2) APPLICABILITY OF PROGRAMS.—The programs established by
15 this section apply to the acquisition workforce of each executive agency.

16 (c) MANAGEMENT POLICIES.—

17 (1) DUTIES OF HEAD OF EXECUTIVE AGENCY.—

18 (A) ESTABLISH POLICIES AND PROCEDURES.—After consulta-
19 tion with the Administrator, the head of each executive agency
20 shall establish policies and procedures for the effective manage-
21 ment (including accession, education, training, career development,
22 and performance incentives) of the acquisition workforce of the
23 agency. The development of acquisition workforce policies under
24 this section shall be carried out consistent with the merit system
25 principles set forth in section 2301(b) of title 5.

26 (B) ENSURE UNIFORM IMPLEMENTATION.—The head of each
27 executive agency shall ensure that, to the maximum extent prac-
28 ticable, acquisition workforce policies and procedures established
29 are uniform in their implementation throughout the agency.

30 (2) DUTIES OF ADMINISTRATOR.—The Administrator shall issue
31 policies to promote uniform implementation of this section by executive
32 agencies, with due regard for differences in program requirements
33 among agencies that may be appropriate and warranted in view of the
34 agency mission. The Administrator shall coordinate with the Deputy
35 Director for Management of the Office of Management and Budget to
36 ensure that the policies are consistent with the policies and procedures
37 established, and enhanced system of incentives provided, pursuant to
38 section 5051(e) of the Federal Acquisition Streamlining Act of 1994
39 (Public Law 103–355, 108 Stat. 3351). The Administrator shall evalu-
40 ate the implementation of this section by executive agencies.

1 (d) AUTHORITY AND RESPONSIBILITY OF SENIOR PROCUREMENT EXEC-
2 UTIVE.—Subject to the authority, direction, and control of the head of an
3 executive agency, the senior procurement executive of the agency shall carry
4 out all powers, functions, and duties of the head of the agency with respect
5 to implementing this section. The senior procurement executive shall ensure
6 that the policies of the head of the executive agency established in accord-
7 ance with this section are implemented throughout the agency.

8 (e) COLLECTING AND MAINTAINING INFORMATION.—The Administrator
9 shall ensure that the heads of executive agencies collect and maintain stand-
10 ardized information on the acquisition workforce related to implementing
11 this section. To the maximum extent practicable, information requirements
12 shall conform to standards the Director of the Office of Personnel Manage-
13 ment establishes for the Central Personnel Data File.

14 (f) CAREER DEVELOPMENT.—

15 (1) CAREER PATHS.—

16 (A) IDENTIFICATION.—The head of each executive agency shall
17 ensure that appropriate career paths for personnel who desire to
18 pursue careers in acquisition are identified in terms of the edu-
19 cation, training, experience, and assignments necessary for career
20 progression to the most senior acquisition positions. The head of
21 each executive agency shall make available information on those
22 career paths.

23 (B) CRITICAL DUTIES AND TASKS.—For each career path, the
24 head of each executive agency shall identify the critical acquisition-
25 related duties and tasks in which, at minimum, employees of the
26 agency in the career path shall be competent to perform at full
27 performance grade levels. For this purpose, the head of the execu-
28 tive agency shall provide appropriate coverage of the critical duties
29 and tasks identified by the Director of the Federal Acquisition In-
30 stitute.

31 (C) MANDATORY TRAINING AND EDUCATION.—For each career
32 path, the head of each executive agency shall establish require-
33 ments for the completion of course work and related on-the-job
34 training in the critical acquisition-related duties and tasks of the
35 career path. The head of each executive agency also shall encour-
36 age employees to maintain the currency of their acquisition knowl-
37 edge and generally enhance their knowledge of related acquisition
38 management disciplines through academic programs and other
39 self-developmental activities.

40 (2) PERFORMANCE INCENTIVES.—The head of each executive agency
41 shall provide for an enhanced system of incentives to encourage excel-

1 lence in the acquisition workforce that rewards performance of employ-
 2 ees who contribute to achieving the agency's performance goals. The
 3 system of incentives shall include provisions that—

4 (A) relate pay to performance (including the extent to which the
 5 performance of personnel in the workforce contributes to achieving
 6 the cost goals, schedule goals, and performance goals established
 7 for acquisition programs pursuant to section 3103(b) of this title);
 8 and

9 (B) provide for consideration, in personnel evaluations and pro-
 10 motion decisions, of the extent to which the performance of per-
 11 sonnel in the workforce contributes to achieving the cost goals,
 12 schedule goals, and performance goals.

13 (g) QUALIFICATION REQUIREMENTS.—

14 (1) IN GENERAL.—Subject to paragraph (2), the Administrator
 15 shall—

16 (A) establish qualification requirements, including education re-
 17 quirements, for—

18 (i) entry-level positions in the General Schedule Con-
 19 tracting series (GS–1102);

20 (ii) senior positions in the General Schedule Contracting
 21 series (GS–1102);

22 (iii) all positions in the General Schedule Purchasing series
 23 (GS–1105); and

24 (iv) positions in other General Schedule series in which sig-
 25 nificant acquisition-related functions are performed; and

26 (B) prescribe the manner and extent to which the qualification
 27 requirements shall apply to an individual serving in a position de-
 28 scribed in subparagraph (A) at the time the requirements are es-
 29 tablished.

30 (2) RELATIONSHIP TO REQUIREMENTS APPLICABLE TO DEFENSE AC-
 31 QUISSION WORKFORCE.—The Administrator shall establish qualifica-
 32 tion requirements and make prescriptions under paragraph (1) that are
 33 comparable to those established for the same or equivalent positions
 34 pursuant to chapter 87 of title 10 with appropriate modifications.

35 (3) APPROVAL OF REQUIREMENTS.—The Administrator shall submit
 36 any requirement established or prescription made under paragraph (1)
 37 to the Director of the Office of Personnel Management for approval.
 38 The Director is deemed to have approved the requirement or prescrip-
 39 tion if the Director does not disapprove the requirement or prescription
 40 within 30 days after receiving it.

41 (h) EDUCATION AND TRAINING.—

1 (1) FUNDING LEVELS.—The head of an executive agency shall set
2 forth separately the funding levels requested for educating and training
3 the acquisition workforce in the budget justification documents sub-
4 mitted in support of the President’s budget submitted to Congress
5 under section 1105 of title 31.

6 (2) TUITION ASSISTANCE.—The head of an executive agency may
7 provide tuition reimbursement in education (including a full-time
8 course of study leading to a degree) in accordance with section 4107
9 of title 5 for personnel serving in acquisition positions in the agency.

10 (3) RESTRICTED OBLIGATION.—Amounts appropriated for education
11 and training under this section may not be obligated for another pur-
12 pose.

13 (i) TRAINING FUND.—

14 (1) PURPOSES.—The purposes of this subsection are to ensure that
15 the Federal acquisition workforce—

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

19 (B) acquires new skills and a new perspective to enable it to
20 contribute effectively in the changing environment of the 21st cen-
21 tury.

22 (2) ESTABLISHMENT AND MANAGEMENT OF FUND.—There is an ac-
23 quisition workforce training fund. The Administrator of General Serv-
24 ices shall manage the fund through the Federal Acquisition Institute
25 to support the training of the acquisition workforce of the executive
26 agencies, except as provided in paragraph (5). The Administrator of
27 General Services shall consult with the Administrator in managing the
28 fund.

29 (3) CREDITS TO FUND.—Five percent of the fees collected by execu-
30 tive agencies (other than the Department of Defense) under the fol-
31 lowing contracts shall be credited to the fund:

32 (A) Government-wide task and delivery-order contracts entered
33 into under sections 4103 and 4105 of this title.

34 (B) Government-wide contracts for the acquisition of informa-
35 tion technology as defined in section 11101 of title 40 and multi-
36 agency acquisition contracts for that technology authorized by sec-
37 tion 11314 of title 40.

38 (C) multiple-award schedule contracts entered into by the Ad-
39 ministrator of General Services.

40 (4) REMITTANCE BY HEAD OF EXECUTIVE AGENCY.—The head of an
41 executive agency that administers a contract described in paragraph (3)

1 shall remit to the General Services Administration the amount required
2 to be credited to the fund with respect to the contract at the end of
3 each quarter of the fiscal year.

4 (5) TRANSFER AND USE OF FEES COLLECTED FROM DEPARTMENT
5 OF DEFENSE.—The Administrator of General Services shall transfer to
6 the Secretary of Defense fees collected from the Department of Defense
7 pursuant to paragraph (3). The Defense Acquisition University shall
8 use the fees for acquisition workforce training.

9 (6) AMOUNTS NOT TO BE USED FOR OTHER PURPOSES.—The Ad-
10 ministrator of General Services, through the Office of Federal
11 Procurement Policy, shall ensure that amounts collected for training
12 under this subsection are not used for a purpose other than the pur-
13 pose specified in paragraph (2).

14 (7) AMOUNTS ARE IN ADDITION TO OTHER AMOUNTS FOR EDU-
15 CATION AND TRAINING.—Amounts credited to the fund are in addition
16 to amounts requested and appropriated for education and training re-
17 ferred to in subsection (h)(1).

18 (8) AVAILABILITY OF AMOUNTS.—Amounts credited to the fund re-
19 main available to be expended only in the fiscal year for which they
20 are credited and the 2 succeeding fiscal years.

21 (j) RECRUITMENT PROGRAM.—

22 (1) SHORTAGE CATEGORY POSITIONS.—For purposes of sections
23 3304, 5333, and 5753 of title 5, the head of a department or agency
24 of the Federal Government (other than the Secretary of Defense) may
25 determine, under regulations prescribed by the Office of Personnel
26 Management, that certain Federal acquisition positions (as described in
27 subsection (g)(1)(A)) are shortage category positions in order to use
28 the authorities in those sections to recruit and appoint highly qualified
29 individuals directly to those positions in the department or agency.

30 (2) TERMINATION OF AUTHORITY.—The head of a department or
31 agency may not appoint an individual to a position of employment
32 under this subsection after September 30, 2012.

33 (k) REEMPLOYMENT WITHOUT LOSS OF ANNUITY.—

34 (1) ESTABLISHMENT OF POLICIES AND PROCEDURES.—The head of
35 each executive agency, after consultation with the Administrator and
36 the Director of the Office of Personnel Management, shall establish
37 policies and procedures under which the agency head may reemploy in
38 an acquisition-related position (as described in subsection (g)(1)(A)) an
39 individual receiving an annuity from the Civil Service Retirement and
40 Disability Fund, on the basis of the individual's service, without dis-

1 continuing the annuity. The head of each executive agency shall keep
2 the Administrator informed of the agency's use of this authority.

3 (2) CRITERIA FOR CONTINUATION OF ANNUITY.—Policies and proce-
4 dures established under paragraph (1) shall authorize the head of the
5 executive agency, on a case-by-case basis, to continue an annuity if any
6 of the following makes the reemployment of an individual essential:

7 (A) The unusually high or unique qualifications of an individual
8 receiving an annuity from the Civil Service Retirement and Dis-
9 ability Fund on the basis of the individual's service.

10 (B) The exceptional difficulty in recruiting or retaining a quali-
11 fied employee.

12 (C) A temporary emergency hiring need.

13 (3) SERVICE NOT SUBJECT TO CSRS OR FERS.—An individual reem-
14 ployed under this subsection shall not be deemed an employee for pur-
15 poses of chapter 83 or 84 of title 5.

16 (4) REPORTING REQUIREMENT.—The Administrator shall submit an-
17 nually to the Committee on Oversight and Government Reform of the
18 House of Representatives and the Committee on Homeland Security
19 and Governmental Affairs of the Senate a report on the use of the au-
20 thority under this subsection, including the number of employees reem-
21 ployed under authority of this subsection.

22 (5) SUNSET PROVISION.—The authority under this subsection ex-
23 pires on December 31, 2011.

24 **§ 1704. Planning and policy-making for acquisition work-**
25 **force**

26 (a) DEFINITIONS.—In this section:

27 (1) ASSOCIATE ADMINISTRATOR.—The term “Associate Adminis-
28 trator” means the Associate Administrator for Acquisition Workforce
29 Programs as designated by the Administrator pursuant to subsection

30 (b).

31 (2) CHIEF ACQUISITION OFFICER.—The term “Chief Acquisition Of-
32 ficer” means a Chief Acquisition Officer for an executive agency ap-
33 pointed pursuant to section 1702 of this title.

34 (b) ASSOCIATE ADMINISTRATOR FOR ACQUISITION WORKFORCE PRO-
35 GRAMS.—The Administrator shall designate a member of the Senior Execu-
36 tive Service as the Associate Administrator for Acquisition Workforce Pro-
37 grams. The Associate Administrator shall be located in the Federal Acquisi-
38 tion Institute (or its successor). The Associate Administrator shall be re-
39 sponsible for—

40 (1) supervising the acquisition workforce training fund established
41 under section 1703(i) of this title;

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

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

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

9 (5) carrying out other functions that the Administrator may assign.

10 (e) ACQUISITION AND CONTRACTING TRAINING PROGRAMS WITHIN EX-
11 ECUTIVE AGENCIES.—

12 (1) CHIEF ACQUISITION OFFICER AUTHORITIES AND RESPONSIBIL-
13 ITIES.—Subject to the authority, direction, and control of the head of
14 an executive agency, the Chief Acquisition Officer for that agency shall
15 carry out all powers, functions, and duties of the head of the agency
16 with respect to implementation of this subsection. The Chief Acquisi-
17 tion Officer shall ensure that the policies established by the head of the
18 agency in accordance with this subsection are implemented throughout
19 the agency.

20 (2) REQUIREMENT.—The head of each executive agency, after con-
21 sultation with the Associate Administrator, shall establish and operate
22 acquisition and contracting training programs. The programs shall—

23 (A) have curricula covering a broad range of acquisition and
24 contracting disciplines corresponding to the specific acquisition
25 and contracting needs of the agency involved;

26 (B) be developed and applied according to rigorous standards;
27 and

28 (C) be designed to maximize efficiency, through the use of self-
29 paced courses, online courses, on-the-job training, and the use of
30 remote instructors, wherever those features can be applied without
31 reducing the effectiveness of the training or negatively affecting
32 academic standards.

33 (d) GOVERNMENT-WIDE POLICIES AND EVALUATION.—The Adminis-
34 trator shall issue policies to promote the development of performance stand-
35 ards for training and uniform implementation of this section by executive
36 agencies, with due regard for differences in program requirements among
37 agencies that may be appropriate and warranted in view of the agency mis-
38 sion. The Administrator shall evaluate the implementation of the provisions
39 of subsection (e) by executive agencies.

40 (e) INFORMATION ON ACQUISITION AND CONTRACTING TRAINING.—The
41 Administrator shall ensure that the heads of executive agencies collect and

1 maintain standardized information on the acquisition and contracting work-
2 force related to the implementation of subsection (e).

3 (f) ACQUISITION WORKFORCE HUMAN CAPITAL SUCCESSION PLAN.—

4 (1) IN GENERAL.—Each Chief Acquisition Officer for an executive
5 agency shall develop, in consultation with the Chief Human Capital Of-
6 ficer for the agency and the Associate Administrator, a succession plan
7 consistent with the agency’s strategic human capital plan for the re-
8 cruitment, development, and retention of the agency’s acquisition work-
9 force, with a particular focus on warranted contracting officers and
10 program managers of the agency.

11 (2) CONTENT OF PLAN.—The acquisition workforce succession plan
12 shall address—

13 (A) recruitment goals for personnel from procurement intern
14 programs;

15 (B) the agency’s acquisition workforce training needs;

16 (C) actions to retain high performing acquisition professionals
17 who possess critical relevant skills;

18 (D) recruitment goals for personnel from the Federal Career In-
19 tern Program; and

20 (E) recruitment goals for personnel from the Presidential Man-
21 agement Fellows Program.

22 (g) ACQUISITION WORKFORCE DEVELOPMENT STRATEGIC PLAN.—

23 (1) PURPOSE.—The purpose of this subsection is to authorize the
24 preparation and completion of the Acquisition Workforce Development
25 Strategic Plan, which is a plan for Federal agencies other than the De-
26 partment of Defense to—

27 (A) develop a specific and actionable 5-year plan to increase the
28 size of the acquisition workforce; and

29 (B) operate a government-wide acquisition intern program for
30 the Federal agencies.

31 (2) ESTABLISHMENT OF PLAN.—The Associate Administrator shall
32 be responsible for the management, oversight, and administration of
33 the Acquisition Workforce Development Strategic Plan in cooperation
34 and consultation with the Office of Federal Procurement Policy and
35 with the assistance of the Federal Acquisition Institute.

36 (3) CRITERIA.—The Acquisition Workforce Development Strategic
37 Plan shall include an examination of the following matters:

38 (A) The variety and complexity of acquisitions conducted by
39 each Federal agency covered by the plan, and the workforce need-
40 ed to effectively carry out the acquisitions.

1 (B) The development of a sustainable funding model to support
2 efforts to hire, retain, and train an acquisition workforce of appro-
3 priate size and skill to effectively carry out the acquisition pro-
4 grams of the Federal agencies covered by the plan, including an
5 examination of interagency funding methods and a discussion of
6 how the model of the Defense Acquisition Workforce Development
7 Fund could be applied to civilian agencies.

8 (C) Any strategic human capital planning necessary to hire, re-
9 tain, and train an acquisition workforce of appropriate size and
10 skill at each Federal agency covered by the plan.

11 (D) Methodologies that Federal agencies covered by the plan
12 can use to project future acquisition workforce personnel hiring re-
13 quirements, including an appropriate distribution of such per-
14 sonnel across each category of positions designated as acquisition
15 workforce personnel under section 1703(g) of this title.

16 (E) Government-wide training standards and certification re-
17 quirements necessary to enhance the mobility and career opportu-
18 nities of the Federal acquisition workforce within the Federal
19 agencies covered by the plan.

20 (F) If the Associate Administrator recommends as part of the
21 plan a growth in the acquisition workforce of the Federal agencies
22 covered by the plan below 25 percent over the next 5 years, an
23 examination of each of the matters specified in subparagraphs (A)
24 to (E) in the context of a 5-year plan that increases the size of
25 such acquisition workforce by not less than 25 percent, or an ex-
26 planation why such a level of growth would not be in the best in-
27 terest of the Federal Government.

28 (4) DEADLINE FOR COMPLETION.—The Acquisition Workforce De-
29 velopment Strategic Plan shall be completed not later than one year
30 after October 14, 2008, and in a fashion that allows for immediate im-
31 plementation of its recommendations and guidelines.

32 (5) FUNDS.—The acquisition workforce development strategic plan
33 shall be funded from the acquisition workforce training fund under sec-
34 tion 1703(i) of this title.

35 (h) TRAINING IN THE ACQUISITION OF ARCHITECT AND ENGINEERING
36 SERVICES.—The Administrator shall ensure that a sufficient number of
37 Federal employees are trained in the acquisition of architect and engineer-
38 ing services.

39 (i) UTILIZATION OF RECRUITMENT AND RETENTION AUTHORITIES.—The
40 Administrator, in coordination with the Director of the Office of Personnel
41 Management, shall encourage executive agencies to use existing authorities,

1 including direct hire authority and tuition assistance programs, to recruit
 2 and retain acquisition personnel and consider recruiting acquisition per-
 3 sonnel who may be retiring from the private sector, consistent with existing
 4 laws and regulations.

5 **§ 1705. Advocates for competition**

6 (a) ESTABLISHMENT AND DESIGNATION.—

7 (1) ESTABLISHMENT.—Each executive agency has an advocate for
 8 competition.

9 (2) DESIGNATION.—The head of each executive agency shall—

10 (A) designate for the executive agency and for each procuring
 11 activity of the executive agency one officer or employee serving in
 12 a position authorized for the executive agency on July 18, 1984
 13 (other than the senior procurement executive designated pursuant
 14 to section 1702(c) of this title) to serve as the advocate for com-
 15 petition;

16 (B) not assign those officers or employees duties or responsibil-
 17 ities that are inconsistent with the duties and responsibilities of
 18 the advocates for competition; and

19 (C) provide those officers or employees with the staff or assist-
 20 ance necessary to carry out the duties and responsibilities of the
 21 advocate for competition, such as individuals who are specialists
 22 in engineering, technical operations, contract administration, fi-
 23 nancial management, supply management, and utilization of small
 24 and disadvantaged business concerns.

25 (b) DUTIES AND FUNCTIONS.—The advocate for competition of an execu-
 26 tive agency shall—

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

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

31 (3) identify and report to the senior procurement executive of the ex-
 32 ecutive agency—

33 (A) opportunities and actions taken to achieve full and open
 34 competition in the procurement activities of the executive agency;
 35 and

36 (B) any condition or action which has the effect of unnecessarily
 37 restricting competition in the procurement actions of the executive
 38 agency;

39 (4) prepare and transmit to the senior procurement executive an an-
 40 nual report describing—

41 (A) the advocate's activities under this section;

- 1 (B) new initiatives required to increase competition; and
 2 (C) remaining barriers to full and open competition;
 3 (5) recommend to the senior procurement executive—
 4 (A) goals and the plans for increasing competition on a fiscal
 5 year basis; and
 6 (B) a system of personal and organizational accountability for
 7 competition, which may include the use of recognition and awards
 8 to motivate program managers, contracting officers, and others in
 9 authority to promote competition in procurement programs; and
 10 (6) describe other ways in which the executive agency has empha-
 11 sized competition in programs for procurement training and research.
 12 (c) RESPONSIBILITIES.—The advocate for competition for each procuring
 13 activity is responsible for promoting full and open competition, promoting
 14 the acquisition of commercial items, and challenging barriers to acquisition,
 15 including unnecessarily restrictive statements of need, unnecessarily detailed
 16 specifications, and unnecessarily burdensome contract clauses.

17 **§ 1706. Personnel evaluation**

18 The head of each executive agency subject to division C shall ensure, with
 19 respect to the employees of that agency whose primary duties and respon-
 20 sibilities pertain to the award of contracts subject to the provisions of the
 21 Small Business and Federal Procurement Competition Enhancement Act of
 22 1984 (Public Law 98–577, 98 Stat. 3066), that the performance appraisal
 23 system applicable to those employees affords appropriate recognition to,
 24 among other factors, efforts to—

- 25 (1) increase competition and achieve cost savings through the elimi-
 26 nation of procedures that unnecessarily inhibit full and open competi-
 27 tion;
 28 (2) further the purposes of the Small Business and Federal Procure-
 29 ment Competition Enhancement Act of 1984 (Public Law 98–577, 98
 30 Stat. 3066) and the Defense Procurement Reform Act of 1984 (Public
 31 Law 98–525, title XII, 98 Stat. 2588); and
 32 (3) further other objectives and purposes of the Federal acquisition
 33 system authorized by law.

34 **§ 1707. Publication of proposed regulations**

35 (a) COVERED POLICIES, REGULATIONS, PROCEDURES, AND FORMS.—

- 36 (1) REQUIRED COMMENT PERIOD.—Except as provided in subsection
 37 (d), a procurement policy, regulation, procedure, or form (including an
 38 amendment or modification thereto) may not take effect until 60 days
 39 after it is published for public comment in the Federal Register pursu-
 40 ant to subsection (b) if it—

- 41 (A) relates to the expenditure of appropriated funds; and

1 (B)(i) has a significant effect beyond the internal operating pro-
2 cedures of the agency issuing the policy, regulation, procedure, or
3 form; or

4 (ii) has a significant cost or administrative impact on contrac-
5 tors or offerors.

6 (2) EXCEPTION.—A policy, regulation, procedure, or form may take
7 effect earlier than 60 days after the publication date when there are
8 compelling circumstances for the earlier effective date, but the effective
9 date may not be less than 30 days after the publication date.

10 (b) PUBLICATION IN FEDERAL REGISTER AND COMMENT PERIOD.—Sub-
11 ject to subsection (c), the head of the agency shall have published in the
12 Federal Register a notice of the proposed procurement policy, regulation,
13 procedure, or form and provide for a public comment period for receiving
14 and considering the views of all interested parties on the proposal. The
15 length of the comment period may not be less than 30 days.

16 (c) CONTENTS OF NOTICE.—Notice of a proposed procurement policy,
17 regulation, procedure, or form prepared for publication in the Federal Reg-
18 ister shall include—

19 (1) the text of the proposal or, if it is impracticable to publish the
20 full text of the proposal, a summary of the proposal and a statement
21 specifying the name, address, and telephone number of the officer or
22 employee of the executive agency from whom the full text may be ob-
23 tained; and

24 (2) a request for interested parties to submit comments on the pro-
25 posal and the name and address of the officer or employee of the Fed-
26 eral Government designated to receive the comments.

27 (d) WAIVER.—The requirements of subsections (a) and (b) may be waived
28 by the officer authorized to issue a procurement policy, regulation, proce-
29 dure, or form if urgent and compelling circumstances make compliance with
30 the requirements impracticable.

31 (e) EFFECTIVENESS OF POLICY, REGULATION, PROCEDURE, OR FORM.—

32 (1) TEMPORARY BASIS.—A procurement policy, regulation, proce-
33 dure, or form for which the requirements of subsections (a) and (b)
34 are waived under subsection (d) is effective on a temporary basis if—

35 (A) a notice of the policy, regulation, procedure, or form is pub-
36 lished in the Federal Register and includes a statement that the
37 policy, regulation, procedure, or form is temporary; and

38 (B) provision is made for a public comment period of 30 days
39 beginning on the date on which the notice is published.

40 (2) FINAL POLICY, REGULATION, PROCEDURE, OR FORM.—After con-
41 sidering the comments received, the head of the agency waiving the re-

1 quirements of subsections (a) and (b) under subsection (d) may issue
2 the final procurement policy, regulation, procedure, or form.

3 **§ 1708. Procurement notice**

4 (a) NOTICE REQUIREMENT.—Except as provided in subsection (b)—

5 (1) an executive agency intending to solicit bids or proposals for a
6 contract for property or services for a price expected to exceed
7 \$10,000, but not to exceed \$25,000, shall post, for not less than 10
8 days, in a public place at the contracting office issuing the solicitation
9 a notice of solicitation described in subsection (c);

10 (2) an executive agency shall publish a notice of solicitation described
11 in subsection (c) if the agency intends to—

12 (A) solicit bids or proposals for a contract for property or serv-
13 ices for a price expected to exceed \$25,000; or

14 (B) place an order, expected to exceed \$25,000, under a basic
15 agreement, basic ordering agreement, or similar arrangement; and

16 (3) an executive agency awarding a contract for property or services
17 for a price exceeding \$25,000, or placing an order exceeding \$25,000
18 under a basic agreement, basic ordering agreement, or similar arrange-
19 ment, shall furnish for publication a notice announcing the award or
20 order if there is likely to be a subcontract under the contract or order.

21 (b) EXEMPTIONS.—

22 (1) IN GENERAL.—A notice is not required under subsection (a) if—

23 (A) the proposed procurement is for an amount not greater
24 than the simplified acquisition threshold and is to be conducted
25 by—

26 (i) using widespread electronic public notice of the solicita-
27 tion in a form that allows convenient and universal user ac-
28 cess through a single, Government-wide point of entry; and

29 (ii) permitting the public to respond to the solicitation elec-
30 tronically;

31 (B) the notice would disclose the executive agency's needs and
32 disclosure would compromise national security;

33 (C) the proposed procurement would result from acceptance
34 of—

35 (i) an unsolicited proposal that demonstrates a unique and
36 innovative research concept and publication of a notice of the
37 unsolicited research proposal would disclose the originality of
38 thought or innovativeness of the proposal or would disclose
39 proprietary information associated with the proposal; or

40 (ii) a proposal submitted under section 9 of the Small
41 Business Act (15 U.S.C. 638);

1 (D) the procurement is made against an order placed under a
 2 requirements contract, a task order contract, or a delivery order
 3 contract;

4 (E) the procurement is made for perishable subsistence supplies;

5 (F) the procurement is for utility services, other than tele-
 6 communication services, and only one source is available; or

7 (G) the procurement is for the services of an expert for use in
 8 any litigation or dispute (including any reasonably foreseeable liti-
 9 gation or dispute) involving the Federal Government in a trial,
 10 hearing, or proceeding before a court, administrative tribunal, or
 11 agency, or in any part of an alternative dispute resolution process,
 12 whether or not the expert is expected to testify.

13 (2) CERTAIN PROCUREMENTS.—The requirements of subsection
 14 (a)(2) do not apply to a procurement—

15 (A) under conditions described in paragraph (2), (3), (4), (5),
 16 or (7) of section 3304(a) of this title or paragraph (2), (3), (4),
 17 (5), or (7) of section 2304(c) of title 10; or

18 (B) for which the head of the executive agency makes a deter-
 19 mination in writing, after consultation with the Administrator and
 20 the Administrator of the Small Business Administration, that it is
 21 not appropriate or reasonable to publish a notice before issuing a
 22 solicitation.

23 (3) IMPLEMENTATION CONSISTENT WITH INTERNATIONAL AGREE-
 24 MENTS.—Paragraph (1)(A) shall be implemented in a manner con-
 25 sistent with applicable international agreements.

26 (e) CONTENTS OF NOTICE.—Each notice of solicitation required by para-
 27 graph (1) or (2) of subsection (a) shall include—

28 (1) an accurate description of the property or services to be con-
 29 tracted for, which description—

30 (A) shall not be unnecessarily restrictive of competition; and

31 (B) shall include, as appropriate, the agency nomenclature, Na-
 32 tional Stock Number or other part number, and a brief description
 33 of the item's form, fit, or function, physical dimensions, predomi-
 34 nant material of manufacture, or similar information that will as-
 35 sist a prospective contractor to make an informed business judg-
 36 ment as to whether a copy of the solicitation should be requested;

37 (2) provisions that—

38 (A)(i) state whether the technical data required to respond to
 39 the solicitation will not be furnished as part of the solicitation; and

40 (ii) identify the source in the Federal Government, if any, from
 41 which the technical data may be obtained; and

1 (B)(i) state whether an offeror or its product or service must
2 meet a qualification requirement in order to be eligible for award;
3 and

4 (ii) if so, identify the office from which the qualification require-
5 ment may be obtained;

6 (3) the name, business address, and telephone number of the con-
7 tracting officer;

8 (4) a statement that all responsible sources may submit a bid, pro-
9 posal, or quotation (as appropriate) that the agency shall consider;

10 (5) in the case of a procurement using procedures other than com-
11 petitive procedures, a statement of the reason justifying the use of
12 those procedures and the identity of the intended source; and

13 (6) in the case of a contract in an amount estimated to be greater
14 than \$25,000 but not greater than the simplified acquisition threshold,
15 or a contract for the procurement of commercial items using special
16 simplified procedures—

17 (A) a description of the procedures to be used in awarding the
18 contract; and

19 (B) a statement specifying the periods for prospective offerors
20 and the contracting officer to take the necessary preaward and
21 award actions.

22 (d) ELECTRONIC PUBLICATION OF NOTICE OF SOLICITATION, AWARD, OR
23 ORDER.—A notice of solicitation, award, or order required to be published
24 under subsection (a) shall be published by electronic means. The notice
25 must be electronically accessible in a form that allows convenient and uni-
26 versal user access through the single Government-wide point of entry des-
27 ignated in the Federal Acquisition Regulation.

28 (e) TIME LIMITATIONS.—

29 (1) ISSUING NOTICE OF SOLICITATION AND ESTABLISHING DEAD-
30 LINE FOR SUBMITTING BIDS AND PROPOSALS.—An executive agency re-
31 quired by subsection (a)(2) to publish a notice of solicitation may not—

32 (A) issue the solicitation earlier than 15 days after the date on
33 which the notice is published; or

34 (B) in the case of a contract or order expected to be greater
35 than the simplified acquisition threshold, establish a deadline for
36 the submission of all bids or proposals in response to the notice
37 required by subsection (a)(2) that—

38 (i) in the case of a solicitation for research and develop-
39 ment, is earlier than 45 days after the date the notice re-
40 quired for a bid or proposal for a contract described in sub-
41 section (a)(2)(A) is published;

1 (ii) in the case of an order under a basic agreement, basic
 2 ordering agreement, or similar arrangement, is earlier than
 3 30 days after the date the notice required for an order de-
 4 scribed in subsection (a)(2)(B) is published; or

5 (iii) in any other case, is earlier than 30 days after the
 6 date the solicitation is issued.

7 (2) ESTABLISHING DEADLINE WHEN NONE PROVIDED BY STAT-
 8 UTE.—An executive agency shall establish a deadline for the submis-
 9 sion of all bids or proposals in response to a solicitation for which a
 10 deadline is not provided by statute. Each deadline for the submission
 11 of offers shall afford potential offerors a reasonable opportunity to re-
 12 spond.

13 (3) FLEXIBLE DEADLINES.—The Administrator shall prescribe regu-
 14 lations defining limited circumstances in which flexible deadlines can be
 15 used under paragraph (1) for the issuance of solicitations and the sub-
 16 mission of bids or proposals for the procurement of commercial items.

17 (f) CONSIDERATION OF CERTAIN TIMELY RECEIVED OFFERS.—An execu-
 18 tive agency intending to solicit offers for a contract for which a notice of
 19 solicitation is required to be posted under subsection (a)(1) shall ensure that
 20 contracting officers consider each responsive offer timely received from an
 21 offeror.

22 (g) AVAILABILITY OF COMPLETE SOLICITATION PACKAGE AND PAYMENT
 23 OF FEE.—An executive agency shall make available to a business concern,
 24 or the authorized representative of a concern, the complete solicitation pack-
 25 age for any on-going procurement announced pursuant to a notice of solici-
 26 tation under subsection (a). An executive agency may require the payment
 27 of a fee, not exceeding the actual cost of duplication, for a copy of the pack-
 28 age.

29 **§ 1709. Contracting functions performed by Federal per-**
 30 **sonnel**

31 (a) COVERED PERSONNEL.—Personnel referred to in subsection (b) are—

32 (1) an employee, as defined in section 2105 of title 5;

33 (2) a member of the armed forces; and

34 (3) an employee from State or local governments assigned to a Fed-
 35 eral agency pursuant to subchapter VI of chapter 33 of title 5.

36 (b) LIMITATION ON PAYMENT FOR ADVISORY AND ASSISTANCE SERV-
 37 ICES.—No individual who is not an individual described in subsection (a)
 38 may be paid by an executive agency for services to conduct evaluations or
 39 analyses of any aspect of a proposal submitted for an acquisition unless per-
 40 sonnel described in subsection (a) with adequate training and capabilities
 41 to perform the evaluations and analyses are not readily available in the

1 agency or another Federal agency. When administering this subsection, the
2 head of each executive agency shall determine in accordance with standards
3 and procedures prescribed in the Federal Acquisition Regulation whether—

4 (1) a sufficient number of personnel described in subsection (a) in
5 the agency or another Federal agency are readily available to perform
6 a particular evaluation or analysis for the head of the executive agency
7 making the determination; and

8 (2) the readily available personnel have the training and capabilities
9 necessary to perform the evaluation or analysis.

10 (e) CERTAIN RELATIONSHIP NOT AFFECTED.—This section does not af-
11 fect the relationship between the Federal Government and a Federally fund-
12 ed research and development center.

13 **§ 1710. Public-private competition required before conver-**
14 **sion to contractor performance**

15 (a) PUBLIC-PRIVATE COMPETITION.—

16 (1) WHEN CONVERSION TO CONTRACTOR PERFORMANCE IS AL-
17 LOWED.—A function of an executive agency performed by 10 or more
18 agency civilian employees may not be converted, in whole or in part,
19 to performance by a contractor unless the conversion is based on the
20 results of a public-private competition that—

21 (A) formally compares the cost of performance of the function
22 by agency civilian employees with the cost of performance by a
23 contractor;

24 (B) creates an agency tender, including a most efficient organi-
25 zation plan, in accordance with Office of Management and Budget
26 Circular A76, as implemented on May 29, 2003, or any successor
27 circular;

28 (C) includes the issuance of a solicitation;

29 (D) determines whether the submitted offers meet the needs of
30 the executive agency with respect to factors other than cost, in-
31 cluding quality, reliability, and timeliness;

32 (E) examines the cost of performance of the function by agency
33 civilian employees and the cost of performance of the function by
34 one or more contractors to demonstrate whether converting to per-
35 formance by a contractor will result in savings to the Federal Gov-
36 ernment over the life of the contract, including—

37 (i) the estimated cost to the Federal Government (based on
38 offers received) for performance of the function by a con-
39 tractor;

40 (ii) the estimated cost to the Federal Government for per-
41 formance of the function by agency civilian employees; and

1 (iii) an estimate of all other costs and expenditures that the
 2 Federal Government would incur because of the award of the
 3 contract;

4 (F) requires continued performance of the function by agency
 5 civilian employees unless the difference in the cost of performance
 6 of the function by a contractor compared to the cost of perform-
 7 ance of the function by agency civilian employees would, over all
 8 performance periods required by the solicitation, be equal to or ex-
 9 ceed the lesser of—

10 (i) 10 percent of the personnel-related costs for perform-
 11 ance of that function in the agency tender; or

12 (ii) \$10,000,000; and

13 (G) examines the effect of performance of the function by a con-
 14 tractor on the agency mission associated with the performance of
 15 the function.

16 (2) NOT A NEW REQUIREMENT.—A function that is performed by
 17 the executive agency and is reengineered, reorganized, modernized, up-
 18 graded, expanded, or changed to become more efficient, but still essen-
 19 tially provides the same service, shall not be considered a new require-
 20 ment.

21 (3) PROHIBITIONS.—In no case may a function being performed by
 22 executive agency personnel be—

23 (A) modified, reorganized, divided, or in any way changed for
 24 the purpose of exempting the conversion of the function from the
 25 requirements of this section; or

26 (B) converted to performance by a contractor to circumvent a
 27 civilian personnel ceiling.

28 (b) CONSULTING WITH AFFECTED EMPLOYEES OR THEIR REPRESENTA-
 29 TIVES.—

30 (1) CONSULTING WITH AFFECTED EMPLOYEES.—Each civilian em-
 31 ployee of an executive agency responsible for determining under Office
 32 of Management and Budget Circular A76 whether to convert to con-
 33 tractor performance any function of the executive agency—

34 (A) shall, at least monthly during the development and prepara-
 35 tion of the performance work statement and the management effi-
 36 ciency study used in making that determination, consult with civil-
 37 ian employees who will be affected by that determination and con-
 38 sider the views of the employees on the development and prepara-
 39 tion of that statement and that study; and

40 (B) may consult with the employees on other matters relating
 41 to that determination.

1 (2) CONSULTING WITH REPRESENTATIVES.—

2 (A) EMPLOYEES REPRESENTED BY A LABOR ORGANIZATION.—

3 In the case of employees represented by a labor organization ac-
4 corded exclusive recognition under section 7111 of title 5, con-
5 sultation with representatives of that labor organization shall sat-
6 isfy the consultation requirement in paragraph (1).

7 (B) EMPLOYEES NOT REPRESENTED BY A LABOR ORGANIZA-
8 TION.—In the case of employees other than employees referred to
9 in subparagraph (A), consultation with appropriate representatives
10 of those employees shall satisfy the consultation requirement in
11 paragraph (1).

12 (3) REGULATIONS.—The head of each executive agency shall pre-
13 scribe regulations to carry out this subsection. The regulations shall in-
14 clude provisions for the selection or designation of appropriate rep-
15 resentatives of employees referred to in paragraph (2)(B) for purposes
16 of consultation required by paragraph (1).

17 (c) CONGRESSIONAL NOTIFICATION.—

18 (1) REPORT.—Before commencing a public-private competition
19 under subsection (a), the head of an executive agency shall submit to
20 Congress a report containing the following:

21 (A) The function for which the public-private competition is to
22 be conducted.

23 (B) The location at which the function is performed by agency
24 civilian employees.

25 (C) The number of agency civilian employee positions potentially
26 affected.

27 (D) The anticipated length and cost of the public-private com-
28 petition, and a specific identification of the budgetary line item
29 from which funds will be used to cover the cost of the public-pri-
30 vate competition.

31 (E) A certification that a proposed performance of the function
32 by a contractor is not a result of a decision by an official of an
33 executive agency to impose predetermined constraints or limita-
34 tions on agency civilian employees in terms of man years, end
35 strengths, full-time equivalent positions, or maximum number of
36 employees.

37 (2) EXAMINATION OF POTENTIAL ECONOMIC EFFECT.—The report
38 required under paragraph (1) shall include an examination of the po-
39 tential economic effect of performance of the function by a contractor
40 on—

1 (A) agency civilian employees who would be affected by such a
2 conversion in performance; and

3 (B) the local community and the Federal Government, if more
4 than 50 agency civilian employees perform the function.

5 (3) OBJECTIONS TO PUBLIC-PRIVATE COMPETITION.—

6 (A) GROUNDS.—A representative individual or entity at a facil-
7 ity where a public-private competition is conducted may submit to
8 the head of the executive agency an objection to the public-private
9 competition on the grounds that—

10 (i) the report required by paragraph (1) has not been sub-
11 mitted; or

12 (ii) the certification required by paragraph (1)(E) was not
13 included in the report required by paragraph (1).

14 (B) DEADLINES.—The objection shall be in writing and shall be
15 submitted within 90 days after the following date:

16 (i) In the case of a failure to submit the report when re-
17 quired, the date on which the representative individual or an
18 official of the representative entity authorized to pose the ob-
19 jection first knew or should have known of that failure.

20 (ii) In the case of a failure to include the certification in
21 a submitted report, the date on which the report was sub-
22 mitted to Congress.

23 (C) REPORT AND CERTIFICATION REQUIRED BEFORE SOLICITA-
24 TION OR AWARD OF CONTRACT.—If the head of the executive
25 agency determines that the report required by paragraph (1) was
26 not submitted or that the required certification was not included
27 in the submitted report, the function for which the public-private
28 competition was conducted for which the objection was submitted
29 may not be the subject of a solicitation of offers for, or award of,
30 a contract until, respectively, the report is submitted or a report
31 containing the certification in full compliance with the certification
32 requirement is submitted.

33 (d) EXEMPTION FOR THE PURCHASE OF PRODUCTS AND SERVICES OF
34 THE BLIND AND OTHER SEVERELY DISABLED PEOPLE.—This section shall
35 not apply to a commercial or industrial type function of an executive agency
36 that is—

37 (1) included on the procurement list established pursuant to section
38 8503 of this title; or

39 (2) planned to be changed to performance by a qualified nonprofit
40 agency for the blind or by a qualified nonprofit agency for other se-
41 verely disabled people in accordance with chapter 85 of this title.

1 (e) INAPPLICABILITY DURING WAR OR EMERGENCY.—The provisions of
 2 this section shall not apply during war or during a period of national emer-
 3 gency declared by the President or Congress.

4 **§ 1711. Value engineering**

5 Each executive agency shall establish and maintain cost-effective proce-
 6 dures and processes for analyzing the functions of a program, project, sys-
 7 tem, product, item of equipment, building, facility, service, or supply of the
 8 agency. The analysis shall be—

9 (1) performed by qualified agency or contractor personnel; and

10 (2) directed at improving performance, reliability, quality, safety,
 11 and life cycle costs.

12 **§ 1712. Record requirements**

13 (a) MAINTAINING RECORDS ON COMPUTER.—Each executive agency shall
 14 establish and maintain for 5 years a computer file, by fiscal year, containing
 15 unclassified records of all procurements greater than the simplified acquisi-
 16 tion threshold in that fiscal year.

17 (b) CONTENTS.—The record established under subsection (a) shall in-
 18 clude, with respect to each procurement carried out using—

19 (1) competitive procedures—

20 (A) the date of contract award;

21 (B) information identifying the source to whom the contract was
 22 awarded;

23 (C) the property or services the Federal Government obtains
 24 under the procurement; and

25 (D) the total cost of the procurement; or

26 (2) procedures other than competitive procedures—

27 (A) the information described in paragraph (1);

28 (B) the reason under section 3304(a) of this title or section
 29 2304(e) of title 10 for using the procedures; and

30 (C) the identity of the organization or activity that conducted
 31 the procurement.

32 (c) SEPARATE RECORD CATEGORY FOR PROCUREMENTS RESULTING IN
 33 ONE BID OR PROPOSAL.—Information included in a record pursuant to
 34 subsection (b)(1) that relates to procurements resulting in the submission
 35 of a bid or proposal by only one responsible source shall be separately cat-
 36 egorized from the information relating to other procurements included in
 37 the record. The record of that information shall be designated “noncompeti-
 38 tive procurements using competitive procedures”.

39 (d) TRANSMISSION AND DATA ENTRY OF INFORMATION.—The head of
 40 each executive agency shall—

1 (1) ensure the accuracy of the information included in the record es-
2 tablished and maintained by the agency under subsection (a); and

3 (2) transmit in a timely manner such information to the General
4 Services Administration for entry into the Federal Procurement Data
5 System referred to in section 1122(a)(4) of this title, or any successor
6 system.

7 **§ 1713. Procurement data**

8 (a) DEFINITIONS.—In this section:

9 (1) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—The term
10 “qualified HUBZone small business concern” has the meaning given
11 that term in section 3(p) of the Small Business Act (15 U.S.C.
12 632(p)).

13 (2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SO-
14 CIALY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term
15 “small business concern owned and controlled by socially and economi-
16 cally disadvantaged individuals” has the meaning given that term in
17 section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

18 (3) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY
19 WOMEN.—The term “small business concern owned and controlled by
20 women” has the meaning given that term in section 8(d) of the Small
21 Business Act (15 U.S.C. 637(d)) and section 204 of the Women’s
22 Business Ownership Act of 1988 (Public Law 100–533, 102 Stat.
23 2692).

24 (b) REPORTING.—Each Federal agency shall report to the Office of Fed-
25 eral Procurement Policy the number of qualified HUBZone small business
26 concerns, the number of small businesses owned and controlled by women,
27 and the number of small business concerns owned and controlled by socially
28 and economically disadvantaged individuals, by gender, that are first time
29 recipients of contracts from the agency. The Office shall take appropriate
30 action to ascertain, for each fiscal year, the number of those small busi-
31 nesses that have newly entered the Federal market.

32 **CHAPTER 19—SIMPLIFIED ACQUISITION PROCEDURES**

Sec.

1901. Simplified acquisition procedures.

1902. Procedures applicable to purchases below micro-purchase threshold.

1903. Special emergency procurement authority.

1904. Certain transactions for defense against attack.

1905. List of laws inapplicable to contracts or subcontracts not greater than simplified ac-
quisition threshold.

1906. List of laws inapplicable to procurements of commercial items.

1907. List of laws inapplicable to procurements of commercially available off-the-shelf items.

1908. Inflation adjustment of acquisition-related dollar thresholds.

33 **§ 1901. Simplified acquisition procedures**

34 (a) WHEN PROCEDURES ARE TO BE USED.—To promote efficiency and
35 economy in contracting and to avoid unnecessary burdens for agencies and

1 contractors, the Federal Acquisition Regulation shall provide for special
2 simplified procedures for purchases of property and services for amounts—

3 (1) not greater than the simplified acquisition threshold; and

4 (2) greater than the simplified acquisition threshold but not greater
5 than \$5,000,000 for which the contracting officer reasonably expects,
6 based on the nature of the property or services sought and on market
7 research, that offers will include only commercial items.

8 (b) PROHIBITION ON DIVIDING PURCHASES.—A proposed purchase or
9 contract for an amount above the simplified acquisition threshold may not
10 be divided into several purchases or contracts for lesser amounts to use the
11 simplified acquisition procedures required by subsection (a).

12 (c) PROMOTION OF COMPETITION REQUIRED.—When using simplified ac-
13 quisition procedures, the head of an executive agency shall promote competi-
14 tion to the maximum extent practicable.

15 (d) CONSIDERATION OF OFFERS TIMELY RECEIVED.—The simplified ac-
16 quisition procedures contained in the Federal Acquisition Regulation shall
17 include a requirement that a contracting officer consider each responsive
18 offer timely received from an eligible offeror.

19 (e) SPECIAL RULES FOR COMMERCIAL ITEMS.—The Federal Acquisition
20 Regulation shall provide that an executive agency using special simplified
21 procedures to purchase commercial items—

22 (1) shall publish a notice in accordance with section 1708 of this title
23 and, as provided in section 1708(c)(4) of this title, permit all respon-
24 sible sources to submit a bid, proposal, or quotation (as appropriate)
25 that the agency shall consider;

26 (2) may not conduct the purchase on a sole source basis unless the
27 need to do so is justified in writing and approved in accordance with
28 section 2304(f) of title 10 or section 3304(e) of this title, as applicable;
29 and

30 (3) shall include in the contract file a written description of the pro-
31 cedures used in awarding the contract and the number of offers re-
32 ceived.

33 **§ 1902. Procedures applicable to purchases below micro-pur-**
34 **chase threshold**

35 (a) DEFINITION.—For purposes of this section, the micro-purchase
36 threshold is \$2,500.

37 (b) COMPLIANCE WITH CERTAIN REQUIREMENTS AND NONAPPLICA-
38 BILITY OF CERTAIN AUTHORITY.—

39 (1) COMPLIANCE WITH CERTAIN REQUIREMENTS.—The head of each
40 executive agency shall ensure that procuring activities of that agency,
41 when awarding a contract with a price exceeding the micro-purchase

1 threshold, comply with the requirements of section 8(a) of the Small
2 Business Act (15 U.S.C. 637(a)), section 2323 of title 10, and section
3 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law
4 103–355, 15 U.S.C. 644 note).

5 (2) NONAPPLICABILITY OF CERTAIN AUTHORITY.—The authority
6 under part 13.106(a)(1) of the Federal Acquisition Regulation (48
7 C.F.R. 13.106(a)(1)), as in effect on November 18, 1993, to make pur-
8 chases without securing competitive quotations does not apply to a pur-
9 chase with a price exceeding the micro-purchase threshold.

10 (e) NONAPPLICABILITY OF CERTAIN PROVISIONS.—An executive agency
11 purchase with an anticipated value of the micro-purchase threshold or less
12 is not subject to section 15(j) of the Small Business Act (15 U.S.C. 644(j))
13 and chapter 83 of this title.

14 (d) PURCHASES WITHOUT COMPETITIVE QUOTATIONS.—A purchase not
15 greater than \$2,500 may be made without obtaining competitive quotations
16 if an employee of an executive agency or a member of the armed forces,
17 authorized to do so, determines that the price for the purchase is reason-
18 able.

19 (e) EQUITABLE DISTRIBUTION.—Purchases not greater than \$2,500 shall
20 be distributed equitably among qualified suppliers.

21 (f) IMPLEMENTATION THROUGH FEDERAL ACQUISITION REGULATION.—
22 This section shall be implemented through the Federal Acquisition Regula-
23 tion.

24 **§ 1903. Special emergency procurement authority**

25 (a) APPLICABILITY.—The authorities provided in subsections (b) and (c)
26 apply with respect to a procurement of property or services by or for an
27 executive agency that the head of the executive agency determines are to
28 be used—

29 (1) in support of a contingency operation (as defined in section
30 101(a) of title 10); or

31 (2) to facilitate the defense against or recovery from nuclear, biologi-
32 cal, chemical, or radiological attack against the United States.

33 (b) INCREASED THRESHOLDS AND LIMITATION.—For a procurement to
34 which this section applies under subsection (a)—

35 (1) the amount specified in section 1902(a), (d), and (e) of this title
36 shall be deemed to be—

37 (A) \$15,000 in the case of a contract to be awarded and per-
38 formed, or purchase to be made, in the United States; and

39 (B) \$25,000 in the case of a contract to be awarded and per-
40 formed, or purchase to be made, outside the United States;

41 (2) the term “simplified acquisition threshold” means—

1 (A) \$250,000 in the case of a contract to be awarded and per-
2 formed, or purchase to be made, in the United States; and

3 (B) \$1,000,000 in the case of a contract to be awarded and per-
4 formed, or purchase to be made, outside the United States; and

5 (3) the \$5,000,000 limitation in sections 1901(a)(2) and 3305(a)(2)
6 of this title and section 2304(g)(1)(B) of title 10 is deemed to be
7 \$10,000,000.

8 (e) AUTHORITY TO TREAT PROPERTY OR SERVICE AS COMMERCIAL
9 ITEM.—

10 (1) IN GENERAL.—The head of an executive agency carrying out a
11 procurement of property or a service to which this section applies under
12 subsection (a)(2) may treat the property or service as a commercial
13 item for the purpose of carrying out the procurement.

14 (2) CERTAIN CONTRACTS NOT EXEMPT FROM STANDARDS OR RE-
15 QUIREMENTS.—A contract in an amount of more than \$15,000,000
16 that is awarded on a sole source basis for an item or service treated
17 as a commercial item under paragraph (1) is not exempt from—

18 (A) cost accounting standards prescribed under section 1502 of
19 this title; or

20 (B) cost or pricing data requirements (commonly referred to as
21 truth in negotiating) under chapter 35 of this title and section
22 2306a of title 10.

23 **§ 1904. Certain transactions for defense against attack**

24 (a) AUTHORITY.—

25 (1) IN GENERAL.—The head of an executive agency that engages in
26 basic research, applied research, advanced research, and development
27 projects that are necessary to the responsibilities of the executive agen-
28 cy in the field of research and development and have the potential to
29 facilitate defense against or recovery from terrorism or nuclear, biologi-
30 cal, chemical, or radiological attack may exercise the same authority
31 (subject to the same restrictions and conditions) with respect to the re-
32 search and projects as the Secretary of Defense may exercise under
33 section 2371 of title 10, except for subsections (b) and (f) of section
34 2371.

35 (2) PROTOTYPE PROJECTS.—The head of an executive agency, under
36 the authority of paragraph (1), may carry out prototype projects that
37 meet the requirements of paragraph (1) in accordance with the require-
38 ments and conditions provided for carrying out prototype projects
39 under section 845 of the National Defense Authorization Act for Fiscal
40 Year 1994 (Public Law 103–160, 10 U.S.C. 2371 note), including
41 that, to the maximum extent practicable, competitive procedures shall

1 be used when entering into agreements to carry out projects under sec-
 2 tion 845(a) of that Act and that the period of authority to carry out
 3 projects under section 845(a) of that Act terminates as provided in sec-
 4 tion 845(i) of that Act.

5 (3) APPLICATION OF REQUIREMENTS AND CONDITIONS.—In applying
 6 the requirements and conditions of section 845 of that Act under this
 7 subsection—

8 (A) section 845(c) of that Act shall apply with respect to proto-
 9 type projects carried out under paragraph (2); and

10 (B) the Director of the Office of Management and Budget shall
 11 perform the functions of the Secretary of Defense under section
 12 845(d) of that Act.

13 (4) APPLICABILITY TO SELECTED EXECUTIVE AGENCIES.—

14 (A) OFFICE OF MANAGEMENT AND BUDGET.—The head of an
 15 executive agency may exercise authority under this subsection for
 16 a project only if authorized by the Director of the Office of Man-
 17 agement and Budget.

18 (B) DEPARTMENT OF HOMELAND SECURITY.—Authority under
 19 this subsection does not apply to the Secretary of Homeland Secu-
 20 rity while section 831 of the Homeland Security Act of 2002 (6
 21 U.S.C. 391) is in effect.

22 (b) REGULATIONS.—The Director of the Office of Management and
 23 Budget shall prescribe regulations to carry out this section. No transaction
 24 may be conducted under the authority of this section before the regulations
 25 take effect.

26 (c) ANNUAL REPORT.—The annual report of the head of an executive
 27 agency that is required under section 2371(h) of title 10, as applied to the
 28 head of the executive agency by subsection (a), shall be submitted to the
 29 Committee on Homeland Security and Governmental Affairs of the Senate
 30 and the Committee on Oversight and Government Reform of the House of
 31 Representatives.

32 (d) TERMINATION OF AUTHORITY.—The authority to carry out trans-
 33 actions under subsection (a) terminates on September 30, 2008.

34 **§ 1905. List of laws inapplicable to contracts or subcontracts**
 35 **not greater than simplified acquisition threshold**

36 (a) DEFINITION.—In this section, the term “Council” has the meaning
 37 given that term in section 1301 of this title.

38 (b) INCLUSION IN FEDERAL ACQUISITION REGULATION.—

39 (1) IN GENERAL.—The Federal Acquisition Regulation shall include
 40 a list of provisions of law that are inapplicable to contracts or sub-
 41 contracts in amounts not greater than the simplified acquisition thresh-

1 old. A provision of law properly included on the list pursuant to para-
 2 graph (2) does not apply to contracts or subcontracts in amounts not
 3 greater than the simplified acquisition threshold that are made by an
 4 executive agency. This section does not render a provision of law not
 5 included on the list inapplicable to contracts and subcontracts in
 6 amounts not greater than the simplified acquisition threshold.

7 (2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law
 8 described in subsection (c) that is enacted after October 13, 1994, shall
 9 be included on the list of inapplicable provisions of laws required by
 10 paragraph (1) unless the Council makes a written determination that
 11 it would not be in the best interest of the Federal Government to ex-
 12 empt contracts or subcontracts in amounts not greater than the sim-
 13 plified acquisition threshold from the applicability of the provision.

14 (c) COVERED LAW.—A provision of law referred to in subsection (b)(2)
 15 is a provision of law that the Council determines sets forth policies, proce-
 16 dures, requirements, or restrictions for the procurement of property or serv-
 17 ices by the Federal Government, except for a provision of law that—

18 (1) provides for criminal or civil penalties; or

19 (2) specifically refers to this section and provides that, notwith-
 20 standing this section, it shall be applicable to contracts or subcontracts
 21 in amounts not greater than the simplified acquisition threshold.

22 (d) PETITION.—A person may petition the Administrator to take appro-
 23 priate action when a provision of law described in subsection (c) is not in-
 24 cluded on the list of inapplicable provisions of law as required by subsection
 25 (b) and the Council has not made a written determination pursuant to sub-
 26 section (b)(2). The Administrator shall revise the Federal Acquisition Regu-
 27 lation to include the provision on the list of inapplicable provisions of law
 28 unless the Council makes a determination pursuant to subsection (b)(2)
 29 within 60 days after the petition is received.

30 **§ 1906. List of laws inapplicable to procurements of commer-**
 31 **cial items**

32 (a) DEFINITION.—In this section, the term “Council” has the meaning
 33 given that term in section 1301 of this title.

34 (b) CONTRACTS.—

35 (1) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Fed-
 36 eral Acquisition Regulation shall include a list of provisions of law that
 37 are inapplicable to contracts for the procurement of commercial items.
 38 A provision of law properly included on the list pursuant to paragraph
 39 (2) does not apply to purchases of commercial items by an executive
 40 agency. This section does not render a provision of law not included

1 on the list inapplicable to contracts for the procurement of commercial
2 items.

3 (2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law
4 described in subsection (d) that is enacted after October 13, 1994,
5 shall be included on the list of inapplicable provisions of law required
6 by paragraph (1) unless the Council makes a written determination
7 that it would not be in the best interest of the Federal Government
8 to exempt contracts for the procurement of commercial items from the
9 applicability of the provision.

10 (c) SUBCONTRACTS.—

11 (1) DEFINITION.—In this subsection, the term “subcontract” in-
12 cludes a transfer of commercial items between divisions, subsidiaries,
13 or affiliates of a contractor or subcontractor.

14 (2) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Fed-
15 eral Acquisition Regulation shall include a list of provisions of law that
16 are inapplicable to subcontracts under a contract or subcontract for the
17 procurement of commercial items. A provision of law properly included
18 on the list pursuant to paragraph (3) does not apply to those sub-
19 contracts. This section does not render a provision of law not included
20 on the list inapplicable to subcontracts under a contract for the pro-
21 curement of commercial items.

22 (3) PROVISIONS TO BE EXCLUDED FROM LIST.—A provision of law
23 described in subsection (d) shall be included on the list of inapplicable
24 provisions of law required by paragraph (2) unless the Council makes
25 a written determination that it would not be in the best interest of the
26 Federal Government to exempt subcontracts under a contract for the
27 procurement of commercial items from the applicability of the provi-
28 sion.

29 (4) WAIVER NOT AUTHORIZED.—This subsection does not authorize
30 the waiver of the applicability of any provision of law with respect to
31 any subcontract under a contract with a prime contractor reselling or
32 distributing commercial items of another contractor without adding
33 value.

34 (d) COVERED LAW.—A provision of law referred to in subsections (b)(2)
35 and (c) is a provision of law that the Council determines sets forth policies,
36 procedures, requirements, or restrictions for the procurement of property or
37 services by the Federal Government, except for a provision of law that—

38 (1) provides for criminal or civil penalties; or

39 (2) specifically refers to this section and provides that, notwith-
40 standing this section, it shall be applicable to contracts for the procure-
41 ment of commercial items.

(e) PETITION.—A person may petition the Administrator to take appropriate action when a provision of law described in subsection (d) is not included on the list of inapplicable provisions of law as required by subsection (b) or (c) and the Council has not made a written determination pursuant to subsection (b)(2) or (c)(3). The Administrator shall revise the Federal Acquisition Regulation to include the provision on the list of inapplicable provisions of law unless the Council makes a determination pursuant to subsection (b)(2) or (c)(3) within 60 days after the petition is received.

§ 1907. List of laws inapplicable to procurements of commercially available off-the-shelf items

(a) INCLUSION IN FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts for the procurement of commercially available off-the-shelf items. A provision of law properly included on the list pursuant to paragraph (2) does not apply to contracts for the procurement of commercially available off-the-shelf items. This section does not render a provision of law not included on the list inapplicable to contracts for the procurement of commercially available off-the-shelf items.

(2) LAWS TO BE INCLUDED.—A provision of law described in subsection (b) shall be included on the list of inapplicable provisions of law required by paragraph (1) unless the Administrator makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of commercially available off-the-shelf items from the applicability of the provision.

(3) OTHER AUTHORITIES OR RESPONSIBILITIES NOT AFFECTED.—This section does not modify, supersede, impair, or restrict authorities or responsibilities under—

(A) section 15 of the Small Business Act (15 U.S.C. 644); or

(B) bid protest procedures developed under the authority of—

(i) subchapter V of chapter 35 of title 31;

(ii) section 2305(e) and (f) of title 10; or

(iii) sections 3706 and 3707 of this title.

(b) COVERED LAW.—Except as provided in subsection (a)(3), a provision of law referred to in subsection (a)(1) is a provision of law that the Administrator determines imposes Federal Government-unique policies, procedures, requirements, or restrictions for the procurement of property or services on persons whom the Federal Government has awarded contracts for the procurement of commercially available off-the-shelf items, except for a provision of law that—

(1) provides for criminal or civil penalties; or

1 (2) specifically refers to this section and provides that, notwith-
 2 standing this section, it shall be applicable to contracts for the procure-
 3 ment of commercially available off-the-shelf items.

4 **§ 1908. Inflation adjustment of acquisition-related dollar**
 5 **thresholds**

6 (a) DEFINITION.—In this section, the term “Council” has the meaning
 7 given that term in section 1301 of this title.

8 (b) APPLICATION.—

9 (1) IN GENERAL.—Except as provided in paragraph (2), the require-
 10 ment for adjustment under subsection (c) applies to a dollar threshold
 11 that is specified in law as a factor in defining the scope of the applica-
 12 bility of a policy, procedure, requirement, or restriction provided in that
 13 law to the procurement of property or services by an executive agency,
 14 as the Council determines.

15 (2) EXCEPTIONS.—Subsection (c) does not apply to dollar thresh-
 16 olds—

17 (A) in chapter 67 of this title;

18 (B) in sections 3141 to 3144, 3146, and 3147 of title 40; or

19 (C) the United States Trade Representative establishes pursu-
 20 ant to title III of the Trade Agreements Act of 1979 (19 U.S.C.
 21 2511 et seq.).

22 (3) RELATIONSHIP TO OTHER INFLATION ADJUSTMENT AUTHORI-
 23 TIES.—This section supersedes the applicability of other provisions of
 24 law that provide for the adjustment of a dollar threshold that is adjust-
 25 able under this section.

26 (c) REQUIREMENT FOR PERIODIC ADJUSTMENT.—

27 (1) BASELINE CONSTANT DOLLAR VALUE.—For purposes of para-
 28 graph (2), the baseline constant dollar value for a dollar threshold—

29 (A) in effect on October 1, 2000, that was first specified in a
 30 law that took effect on or before October 1, 2000, is the October
 31 1, 2000, constant dollar value of that dollar threshold; and

32 (B) specified in a law that takes effect after October 1, 2000,
 33 is the constant dollar value of that threshold as of the effective
 34 date of that dollar threshold pursuant to that law.

35 (2) ADJUSTMENT.—On October 1 of each year evenly divisible by 5,
 36 the Council shall adjust each acquisition-related dollar threshold pro-
 37 vided by law, as described in subsection (b)(1), to the baseline constant
 38 dollar value of that threshold.

39 (3) EXCLUSIVE MEANS OF ADJUSTMENT.—A dollar threshold adjust-
 40 able under this section shall be adjusted only as provided in this sec-
 41 tion.

1 (d) PUBLICATION.—The Council shall publish a notice of the adjusted
2 dollar thresholds under this section in the Federal Register. The thresholds
3 take effect on the date of publication.

4 (e) CALCULATION.—An adjustment under this section shall be—

5 (1) calculated on the basis of changes in the Consumer Price Index
6 for all-urban consumers published monthly by the Secretary of Labor;
7 and

8 (2) rounded, in the case of a dollar threshold that on the day before
9 the adjustment is—

10 (A) less than \$10,000, to the nearest \$500;

11 (B) not less than \$10,000, but less than \$100,000, to the near-
12 est \$5,000;

13 (C) not less than \$100,000, but less than \$1,000,000, to the
14 nearest \$50,000; and

15 (D) \$1,000,000 or more, to the nearest \$500,000.

16 (f) PETITION FOR INCLUSION OF OMITTED THRESHOLD.—

17 (1) PETITION SUBMITTED TO ADMINISTRATOR.—A person may re-
18 quest adjustment of a dollar threshold adjustable under this section
19 that is not included in a notice of adjustment published under sub-
20 section (d) by submitting a petition for adjustment to the Adminis-
21 trator.

22 (2) ACTIONS OF ADMINISTRATOR.—On receipt of a petition for ad-
23 justment of a dollar threshold under paragraph (1), the Adminis-
24 trator—

25 (A) shall determine, in writing, whether the dollar threshold is
26 required to be adjusted under this section; and

27 (B) on determining that it should be adjusted, shall publish in
28 the Federal Register a revised notice of the adjustment dollar
29 thresholds under this section that includes the adjustment of the
30 dollar threshold covered by the petition.

31 (3) EFFECTIVE DATE OF ADJUSTMENT BY PETITION.—The adjust-
32 ment of a dollar threshold pursuant to a petition under this subsection
33 takes effect on the date the revised notice adding the adjustment under
34 paragraph (2)(B) is published.

35 **CHAPTER 21—RESTRICTIONS ON OBTAINING AND**
36 **DISCLOSING CERTAIN INFORMATION**

Sec.

2101. Definitions.

2102. Prohibitions on disclosing and obtaining procurement information.

2103. Actions required of procurement officers when contacted regarding non-Federal em-
ployment.

2104. Prohibition on former official's acceptance of compensation from contractor.

2105. Penalties and administrative actions.

2106. Reporting information believed to constitute evidence of offense.

2107. Savings provisions.

1 **§ 2101. Definitions**

2 In this chapter:

3 (1) **CONTRACTING OFFICER.**—The term “contracting officer” means
4 an individual who, by appointment in accordance with applicable regu-
5 lations, has the authority to enter into a Federal agency procurement
6 contract on behalf of the Government and to make determinations and
7 findings with respect to the contract.

8 (2) **CONTRACTOR BID OR PROPOSAL INFORMATION.**—The term “con-
9 tractor bid or proposal information” means any of the following infor-
10 mation submitted to a Federal agency as part of, or in connection with,
11 a bid or proposal to enter into a Federal agency procurement contract,
12 if that information previously has not been made available to the public
13 or disclosed publicly:

14 (A) Cost or pricing data (as defined in section 2306a(h) of title
15 10 with respect to procurements subject to that section and sec-
16 tion 3501(a) of this title with respect to procurements subject to
17 that section).

18 (B) Indirect costs and direct labor rates.

19 (C) Proprietary information about manufacturing processes, op-
20 erations, or techniques marked by the contractor in accordance
21 with applicable law or regulation.

22 (D) Information marked by the contractor as “contractor bid or
23 proposal information”, in accordance with applicable law or regu-
24 lation.

25 (3) **FEDERAL AGENCY.**—The term “Federal agency” has the mean-
26 ing given that term in section 102 of title 40.

27 (4) **FEDERAL AGENCY PROCUREMENT.**—The term “Federal agency
28 procurement” means the acquisition (by using competitive procedures
29 and awarding a contract) of goods or services (including construction)
30 from non-Federal sources by a Federal agency using appropriated
31 funds.

32 (5) **OFFICIAL.**—The term “official” means—

33 (A) an officer, as defined in section 2104 of title 5;

34 (B) an employee, as defined in section 2105 of title 5; and

35 (C) a member of the uniformed services, as defined in section
36 2101(3) of title 5.

37 (6) **PROTEST.**—The term “protest” means a written objection by an
38 interested party to the award or proposed award of a Federal agency
39 procurement contract, pursuant to subchapter V of chapter 35 of title
40 31.

1 (7) SOURCE SELECTION INFORMATION.—The term “source selection
2 information” means any of the following information prepared for use
3 by a Federal agency to evaluate a bid or proposal to enter into a Fed-
4 eral agency procurement contract, if that information previously has
5 not been made available to the public or disclosed publicly:

6 (A) Bid prices submitted in response to a Federal agency solici-
7 tation for sealed bids, or lists of those bid prices before public bid
8 opening.

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

11 (C) Source selection plans.

12 (D) Technical evaluation plans.

13 (E) Technical evaluations of proposals.

14 (F) Cost or price evaluations of proposals.

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

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

19 (I) Reports and evaluations of source selection panels, boards,
20 or advisory councils.

21 (J) Other information marked as “source selection information”
22 based on a case-by-case determination by the head of the agency,
23 the head’s designee, or the contracting officer that its disclosure
24 would jeopardize the integrity or successful completion of the Fed-
25 eral agency procurement to which the information relates.

26 **§ 2102. Prohibitions on disclosing and obtaining procure-**
27 **ment information**

28 (a) PROHIBITION ON DISCLOSING PROCUREMENT INFORMATION.—

29 (1) IN GENERAL.—Except as provided by law, a person described in
30 paragraph (3) shall not knowingly disclose contractor bid or proposal
31 information or source selection information before the award of a Fed-
32 eral agency procurement contract to which the information relates.

33 (2) EMPLOYEE OF PRIVATE SECTOR ORGANIZATION.—In addition to
34 the restriction in paragraph (1), an employee of a private sector organi-
35 zation assigned to an agency under chapter 37 of title 5 shall not
36 knowingly disclose contractor bid or proposal information or source se-
37 lection information during the 3-year period after the employee’s as-
38 signment ends, except as provided by law.

39 (3) APPLICATION.—Paragraph (1) applies to a person that—

40 (A)(i) is a present or former official of the Federal Government;

41 or

1 (ii) is acting or has acted for or on behalf of, or who is advising
 2 or has advised the Federal Government with respect to, a Federal
 3 agency procurement; and

4 (B) by virtue of that office, employment, or relationship has or
 5 had access to contractor bid or proposal information or source se-
 6 lection information.

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

11 **§ 2103. Actions required of procurement officers when con-**
 12 **tacted regarding non-Federal employment**

13 (a) ACTIONS REQUIRED.—An agency official participating personally and
 14 substantially in a Federal agency procurement for a contract in excess of
 15 the simplified acquisition threshold who contacts or is contacted by a person
 16 that is a bidder or offeror in that Federal agency procurement regarding
 17 possible non-Federal employment for that official shall—

18 (1) promptly report the contact in writing to the official’s supervisor
 19 and to the designated agency ethics official (or designee) of the agency
 20 in which the official is employed; and

21 (2)(A) reject the possibility of non-Federal employment; or

22 (B) disqualify himself or herself from further personal and substan-
 23 tial participation in that Federal agency procurement until the agency
 24 authorizes the official to resume participation in the procurement, in
 25 accordance with the requirements of section 208 of title 18 and appli-
 26 cable agency regulations on the grounds that—

27 (i) the person is no longer a bidder or offeror in that Federal
 28 agency procurement; or

29 (ii) all discussions with the bidder or offeror regarding possible
 30 non-Federal employment have terminated without an agreement or
 31 arrangement for employment.

32 (b) RETENTION OF REPORTS.—The agency shall retain each report re-
 33 quired by this section for not less than 2 years following the submission of
 34 the report. The reports shall be made available to the public on request, ex-
 35 cept that any part of a report that is exempt from the disclosure require-
 36 ments of section 552 of title 5 under subsection (b)(1) of that section may
 37 be withheld from disclosure to the public.

38 (c) PERSONS SUBJECT TO PENALTIES.—The following are subject to the
 39 penalties and administrative actions set forth in section 2105 of this title:

40 (1) An official who knowingly fails to comply with the requirements
 41 of this section.

1 (2) A bidder or offeror that engages in employment discussions with
2 an official who is subject to the restrictions of this section, knowing
3 that the official has not complied with paragraph (1) or (2) of sub-
4 section (a).

5 **§ 2104. Prohibition on former official's acceptance of com-**
6 **penetration from contractor**

7 (a) PROHIBITION.—A former official of a Federal agency may not accept
8 compensation from a contractor as an employee, officer, director, or consult-
9 ant of the contractor within one year after the official—

10 (1) served, when the contractor was selected or awarded a contract,
11 as the procuring contracting officer, the source selection authority, a
12 member of the source selection evaluation board, or the chief of a fi-
13 nancial or technical evaluation team in a procurement in which that
14 contractor was selected for award of a contract in excess of
15 \$10,000,000;

16 (2) served as the program manager, deputy program manager, or ad-
17 ministrative contracting officer for a contract in excess of \$10,000,000
18 awarded to that contractor; or

19 (3) personally made for the Federal agency a decision to—

20 (A) award a contract, subcontract, modification of a contract or
21 subcontract, or a task order or delivery order in excess of
22 \$10,000,000 to that contractor;

23 (B) establish overhead or other rates applicable to one or more
24 contracts for that contractor that are valued in excess of
25 \$10,000,000;

26 (C) approve issuance of one or more contract payments in ex-
27 cess of \$10,000,000 to that contractor; or

28 (D) pay or settle a claim in excess of \$10,000,000 with that
29 contractor.

30 (b) WHEN COMPENSATION MAY BE ACCEPTED.—Subsection (a) does not
31 prohibit a former official of a Federal agency from accepting compensation
32 from a division or affiliate of a contractor that does not produce the same
33 or similar products or services as the entity of the contractor that is respon-
34 sible for the contract referred to in paragraph (1), (2), or (3) of subsection
35 (a).

36 (c) IMPLEMENTING REGULATIONS.—Regulations implementing this sec-
37 tion shall include procedures for an official or former official of a Federal
38 agency to request advice from the appropriate designated agency ethics offi-
39 cial regarding whether the official or former official is or would be precluded
40 by this section from accepting compensation from a particular contractor.

1 (d) PERSONS SUBJECT TO PENALTIES.—The following are subject to the
2 penalties and administrative actions set forth in section 2105 of this title:

3 (1) A former official who knowingly accepts compensation in viola-
4 tion of this section.

5 (2) A contractor that provides compensation to a former official
6 knowing that the official accepts the compensation in violation of this
7 section.

8 **§ 2105. Penalties and administrative actions**

9 (a) CRIMINAL PENALTIES.—A person that violates section 2102 of this
10 title to exchange information covered by section 2102 of this title for any-
11 thing of value or to obtain or give a person a competitive advantage in the
12 award of a Federal agency procurement contract shall be fined under title
13 18, imprisoned for not more than 5 years, or both.

14 (b) CIVIL PENALTIES.—The Attorney General may bring a civil action in
15 an appropriate district court of the United States against a person that en-
16 gages in conduct that violates section 2102, 2103, or 2104 of this title. On
17 proof of that conduct by a preponderance of the evidence—

18 (1) an individual is liable to the Federal Government for a civil pen-
19 alty of not more than \$50,000 for each violation plus twice the amount
20 of compensation that the individual received or offered for the prohib-
21 ited conduct; and

22 (2) an organization is liable to the Federal Government for a civil
23 penalty of not more than \$500,000 for each violation plus twice the
24 amount of compensation that the organization received or offered for
25 the prohibited conduct.

26 (c) ADMINISTRATIVE ACTIONS.—

27 (1) TYPES OF ACTION THAT FEDERAL AGENCY MAY TAKE.—A Fed-
28 eral agency that receives information that a contractor or a person has
29 violated section 2102, 2103, or 2104 of this title shall consider taking
30 one or more of the following actions, as appropriate:

31 (A) Canceling the Federal agency procurement, if a contract has
32 not yet been awarded.

33 (B) Rescinding a contract with respect to which—

34 (i) the contractor or someone acting for the contractor has
35 been convicted for an offense punishable under subsection (a);
36 or

37 (ii) the head of the agency that awarded the contract has
38 determined, based on a preponderance of the evidence, that
39 the contractor or a person acting for the contractor has en-
40 gaged in conduct constituting the offense.

1 (C) Initiating a suspension or debarment proceeding for the pro-
 2 tection of the Federal Government in accordance with procedures
 3 in the Federal Acquisition Regulation.

4 (D) Initiating an adverse personnel action, pursuant to the pro-
 5 cedures in chapter 75 of title 5 or other applicable law or regula-
 6 tion.

7 (2) AMOUNT GOVERNMENT ENTITLED TO RECOVER.—When a Fed-
 8 eral agency rescinds a contract pursuant to paragraph (1)(B), the Fed-
 9 eral Government is entitled to recover, in addition to any penalty pre-
 10 scribed by law, the amount expended under the contract.

11 (3) PRESENT RESPONSIBILITY AFFECTED BY CONDUCT.—For pur-
 12 poses of a suspension or debarment proceeding initiated pursuant to
 13 paragraph (1)(C), engaging in conduct constituting an offense under
 14 section 2102, 2103, or 2104 of this title affects the present responsi-
 15 bility of a Federal Government contractor or subcontractor.

16 **§ 2106. Reporting information believed to constitute evi-**
 17 **dence of offense**

18 A person may not file a protest against the award or proposed award of
 19 a Federal agency procurement contract alleging a violation of section 2102,
 20 2103, or 2104 of this title, and the Comptroller General may not consider
 21 that allegation in deciding a protest, unless the person, no later than 14
 22 days after the person first discovered the possible violation, reported to the
 23 Federal agency responsible for the procurement the information that the
 24 person believed constitutes evidence of the offense.

25 **§ 2107. Savings provisions**

26 This chapter does not—

27 (1) restrict the disclosure of information to, or its receipt by, a per-
 28 son or class of persons authorized, in accordance with applicable agency
 29 regulations or procedures, to receive that information;

30 (2) restrict a contractor from disclosing its own bid or proposal in-
 31 formation or the recipient from receiving that information;

32 (3) restrict the disclosure or receipt of information relating to a Fed-
 33 eral agency procurement after it has been canceled by the Federal
 34 agency before contract award unless the Federal agency plans to re-
 35 sume the procurement;

36 (4) prohibit individual meetings between a Federal agency official
 37 and an offeror or potential offeror for, or a recipient of, a contract or
 38 subcontract under a Federal agency procurement, provided that unau-
 39 thorized disclosure or receipt of contractor bid or proposal information
 40 or source selection information does not occur;

1 (5) authorize the withholding of information from, nor restrict its re-
 2 ceipt by, Congress, a committee or subcommittee of Congress, the
 3 Comptroller General, a Federal agency, or an inspector general of a
 4 Federal agency;

5 (6) authorize the withholding of information from, nor restrict its re-
 6 ceipt by, the Comptroller General in the course of a protest against the
 7 award or proposed award of a Federal agency procurement contract;
 8 or

9 (7) limit the applicability of a requirement, sanction, contract pen-
 10 alty, or remedy established under another law or regulation.

11 **CHAPTER 23—MISCELLANEOUS**

Sec.

- 2301. Use of electronic commerce in Federal procurement.
- 2302. Rights in technical data.
- 2303. Ethics safeguards related to contractor conflicts of interest.
- 2304. Conflict of interest standards for consultants.
- 2305. Authority of Director of Office of Management and Budget not affected.
- 2306. Openness of meetings.
- 2307. Comptroller General's access to information.
- 2308. Modular contracting for information technology.
- 2309. Protection of constitutional rights of contractors.
- 2310. Performance-based contracts or task orders for services to be treated as contracts for
the procurement of commercial items.
- 2311. Enhanced transparency on interagency contracting and other transactions.
- 2312. Contingency Contracting Corps.
- 2313. Database for Federal agency contract and grant officers and suspension and debar-
ment officials

12 **§ 2301. Use of electronic commerce in Federal procurement**

13 (a) DEFINITION.—For the purposes of this section, the term “electronic
 14 commerce” means electronic techniques for accomplishing business trans-
 15 actions, including electronic mail or messaging, World Wide Web technology,
 16 electronic bulletin boards, purchase cards, electronic funds transfers, and
 17 electronic data interchange.

18 (b) ESTABLISHMENT, MAINTENANCE, AND USE OF ELECTRONIC COM-
 19 MERCE PROCEDURES AND PROCESSES.—The head of each executive agency,
 20 after consulting with the Administrator, shall establish, maintain, and use,
 21 to the maximum extent that is practicable and cost-effective, procedures and
 22 processes that employ electronic commerce in the conduct and administra-
 23 tion of the procurement system of the agency.

24 (c) APPLICABLE STANDARDS.—In conducting electronic commerce, the
 25 head of an executive agency shall apply nationally and internationally recog-
 26 nized standards that broaden interoperability and ease the electronic inter-
 27 change of information.

28 (d) REQUIREMENTS OF SYSTEMS, TECHNOLOGIES, PROCEDURES, AND
 29 PROCESSES.—The head of each executive agency shall ensure that systems,
 30 technologies, procedures, and processes established pursuant to this sec-
 31 tion—

1 (1) are implemented with uniformity throughout the agency, to the
2 extent practicable;

3 (2) are implemented only after granting due consideration to the use
4 or partial use, as appropriate, of existing electronic commerce and elec-
5 tronic data interchange systems and infrastructures such as the Fed-
6 eral acquisition computer network architecture known as FACNET;

7 (3) facilitate access to Federal Government procurement opportuni-
8 ties, including opportunities for small business concerns, socially and
9 economically disadvantaged small business concerns, and business con-
10 cerns owned predominantly by women; and

11 (4) ensure that any notice of agency requirements or agency solicita-
12 tion for contract opportunities is provided in a form that allows conven-
13 ient and universal user access through a single, Government-wide point
14 of entry.

15 (e) IMPLEMENTATION.—In carrying out the requirements of this section,
16 the Administrator shall—

17 (1) issue policies to promote, to the maximum extent practicable,
18 uniform implementation of this section by executive agencies, with due
19 regard for differences in program requirements among agencies that
20 may require departures from uniform procedures and processes in ap-
21 propriate cases, when warranted because of the agency mission;

22 (2) ensure that the head of each executive agency complies with the
23 requirements of subsection (d); and

24 (3) consult with the heads of appropriate Federal agencies with ap-
25 plicable technical and functional expertise, including the Office of In-
26 formation and Regulatory Affairs, the National Institute of Standards
27 and Technology, the General Services Administration, and the Depart-
28 ment of Defense.

29 **§ 2302. Rights in technical data**

30 (a) WHERE DEFINED.—The legitimate proprietary interest of the Federal
31 Government and of a contractor in technical or other data shall be defined
32 in regulations prescribed as part of the Federal Acquisition Regulation.

33 (b) GENERAL EXTENT OF REGULATIONS.—

34 (1) OTHER RIGHTS NOT IMPAIRED.—Regulations prescribed under
35 subsection (a) may not impair a right of the Federal Government or
36 of a contractor with respect to a patent or copyright or another right
37 in technical data otherwise established by law.

38 (2) LIMITATION ON REQUIRING DATA BE PROVIDED TO THE GOV-
39 ERNMENT.—With respect to executive agencies subject to division C,
40 regulations prescribed under subsection (a) shall provide that the Fed-
41 eral Government may not require a person that has developed a prod-

1 uct (or process offered or to be offered for sale to the public) to provide
2 to the Federal Government technical data relating to the design (or de-
3 velopment or manufacture of the product or process) as a condition of
4 procurement by the Federal Government of the product or process.
5 This paragraph does not apply to data that may be necessary for the
6 Federal Government to operate and maintain the product or use the
7 process if the Federal Government obtains it as an element of perform-
8 ance under the contract.

9 (c) TECHNICAL DATA DEVELOPED WITH FEDERAL FUNDS.—

10 (1) USE BY GOVERNMENT AND AGENCIES.—Except as otherwise ex-
11 pressly provided by Federal statute, with respect to executive agencies
12 subject to division C, regulations prescribed under subsection (a) shall
13 provide that—

14 (A) the Federal Government has unlimited rights in technical
15 data developed exclusively with Federal funds if delivery of the
16 data—

17 (i) was required as an element of performance under a con-
18 tract; and

19 (ii) is needed to ensure the competitive acquisition of sup-
20 plies or services that will be required in substantial quantities
21 in the future; and

22 (B) the Federal Government and each agency of the Federal
23 Government has an unrestricted, royalty-free right to use, or to
24 have its contractors use, for governmental purposes (excluding
25 publication outside the Federal Government) technical data devel-
26 oped exclusively with Federal funds.

27 (2) REQUIREMENTS IN ADDITION TO OTHER RIGHTS OF THE GOV-
28 ERNMENT.—The requirements of paragraph (1) are in addition to and
29 not in lieu of any other rights the Federal Government may have pur-
30 suant to law.

31 (d) FACTORS TO BE CONSIDERED IN PRESCRIBING REGULATIONS.—The
32 following factors shall be considered in prescribing regulations under sub-
33 section (a):

34 (1) Whether the item or process to which the technical data pertains
35 was developed—

36 (A) exclusively with Federal funds;

37 (B) exclusively at private expense; or

38 (C) in part with Federal funds and in part at private expense.

39 (2) The statement of congressional policy and objectives in section
40 200 of title 35, the statement of purposes in section 2(b) of the Small
41 Business Innovation Development Act of 1982 (Public Law 97–219, 15

1 U.S.C. 638 note), and the declaration of policy in section 2 of the
2 Small Business Act (15 U.S.C. 631).

3 (3) The interest of the Federal Government in increasing competi-
4 tion and lowering costs by developing and locating alternative sources
5 of supply and manufacture.

6 (e) PROVISIONS REQUIRED IN CONTRACTS.—Regulations prescribed
7 under subsection (a) shall require that a contract for property or services
8 entered into by an executive agency contain appropriate provisions relating
9 to technical data, including provisions—

10 (1) defining the respective rights of the Federal Government and the
11 contractor or subcontractor (at any tier) regarding technical data to be
12 delivered under the contract;

13 (2) specifying technical data to be delivered under the contract and
14 schedules for delivery;

15 (3) establishing or referencing procedures for determining the ac-
16 ceptability of technical data to be delivered under the contract;

17 (4) establishing separate contract line items for technical data to be
18 delivered under the contract;

19 (5) to the maximum practicable extent, identifying, in advance of de-
20 livery, technical data which is to be delivered with restrictions on the
21 right of the Federal Government to use the data;

22 (6) requiring the contractor to revise any technical data delivered
23 under the contract to reflect engineering design changes made during
24 the performance of the contract and affecting the form, fit, and func-
25 tion of the items specified in the contract and to deliver the revised
26 technical data to an agency within a time specified in the contract;

27 (7) requiring the contractor to furnish written assurance, when tech-
28 nical data is delivered or is made available, that the technical data is
29 complete and accurate and satisfies the requirements of the contract
30 concerning technical data;

31 (8) establishing remedies to be available to the Federal Government
32 when technical data required to be delivered or made available under
33 the contract is found to be incomplete or inadequate or to not satisfy
34 the requirements of the contract concerning technical data; and

35 (9) authorizing the head of the agency to withhold payments under
36 the contract (or exercise another remedy the head of the agency con-
37 sidered appropriate) during any period if the contractor does not meet
38 the requirements of the contract pertaining to the delivery of technical
39 data.

1 **§ 2303. Ethics safeguards related to contractor conflicts of**
2 **interest**

3 (a) DEFINITION.—In this section, the term “relevant acquisition func-
4 tion” means an acquisition function closely associated with inherently gov-
5 ernmental functions.

6 (b) POLICY ON PERSONAL CONFLICTS OF INTEREST BY CONTRACTOR
7 EMPLOYEES.—

8 (1) DEVELOPMENT AND ISSUANCE OF POLICY.—The Administrator
9 shall develop and issue a standard policy to prevent personal conflicts
10 of interest by contractor employees performing relevant acquisition
11 functions (including the development, award, and administration of
12 Federal Government contracts) for or on behalf of a Federal agency
13 or department.

14 (2) ELEMENTS OF POLICY.—The policy shall—

15 (A) define “personal conflict of interest” as it relates to con-
16 tractor employees performing relevant acquisition functions; and

17 (B) require each contractor whose employees perform relevant
18 acquisition functions to—

19 (i) identify and prevent personal conflicts of interest for the
20 employees;

21 (ii) prohibit contractor employees who have access to non-
22 public government information obtained while performing rel-
23 evant acquisition functions from using the information for
24 personal gain;

25 (iii) report any personal conflict-of-interest violation by an
26 employee to the applicable contracting officer or contracting
27 officer’s representative as soon as it is identified;

28 (iv) maintain effective oversight to verify compliance with
29 personal conflict-of-interest safeguards;

30 (v) have procedures in place to screen for potential conflicts
31 of interest for all employees performing relevant acquisition
32 functions; and

33 (vi) take appropriate disciplinary action in the case of em-
34 ployees who fail to comply with policies established pursuant
35 to this section.

36 (3) CONTRACT CLAUSE.—

37 (A) CONTENTS.—The Administrator shall develop a personal
38 conflicts-of-interest clause or a set of clauses for inclusion in solici-
39 tations and contracts (and task or delivery orders) for the per-
40 formance of relevant acquisition functions that sets forth—

1 (i) the personal conflicts-of-interest policy developed under
2 this subsection; and

3 (ii) the contractor's responsibilities under the policy.

4 (B) EFFECTIVE DATE.—Subparagraph (A) shall take effect 300
5 days after October 14, 2008, and shall apply to—

6 (i) contracts entered into on or after that effective date;
7 and

8 (ii) task or delivery orders awarded on or after that effec-
9 tive date, regardless of whether the contracts pursuant to
10 which the task or delivery orders are awarded are entered be-
11 fore, on, or after October 14, 2008.

12 (4) APPLICABILITY.—

13 (A) CONTRACTS IN EXCESS OF THE SIMPLIFIED ACQUISITION
14 THRESHOLD.—This subsection shall apply to any contract for an
15 amount in excess of the simplified acquisition threshold (as de-
16 fined in section 134 of this title) if the contract is for the perform-
17 ance of relevant acquisition functions.

18 (B) PARTIAL APPLICABILITY.—If only a portion of a contract
19 described in subparagraph (A) is for the performance of relevant
20 acquisition functions, then this subsection applies only to that por-
21 tion of the contract.

22 (c) BEST PRACTICES.—The Administrator shall, in consultation with the
23 Director of the Office of Government Ethics, develop and maintain a reposi-
24 tory of best practices relating to the prevention and mitigation of organiza-
25 tional and personal conflicts of interest in Federal contracting.

26 **§ 2304. Conflict of interest standards for consultants**

27 (a) CONTENT OF REGULATIONS.—The Administrator shall prescribe
28 under this division Government-wide regulations that set forth—

29 (1) conflict of interest standards for persons who provide consulting
30 services described in subsection (b); and

31 (2) procedures, including registration, certification, and enforcement
32 requirements as may be appropriate, to promote compliance with the
33 standards.

34 (b) SERVICES SUBJECT TO REGULATIONS.—Regulations required by sub-
35 section (a) apply to—

36 (1) advisory and assistance services provided to the Federal Govern-
37 ment to the extent necessary to identify and evaluate the potential for
38 conflicts of interest that could be prejudicial to the interests of the
39 United States;

40 (2) services related to support of the preparation or submission of
41 bids and proposals for Federal contracts to the extent that inclusion

1 of the services in the regulations is necessary to identify and evaluate
 2 the potential for conflicts of interest that could be prejudicial to the
 3 interests of the United States; and

4 (3) other services related to Federal contracts as specified in the reg-
 5 ulations prescribed under subsection (a) to the extent necessary to
 6 identify and evaluate the potential for conflicts of interest that could
 7 be prejudicial to the interests of the United States.

8 (e) INTELLIGENCE ACTIVITIES EXEMPTION.—

9 (1) ACTIVITIES THAT MAY BE EXEMPT.—Intelligence activities as de-
 10 fined in section 3.4(e) of Executive Order No. 12333 or a comparable
 11 definitional section in any successor order may be exempt from the reg-
 12 ulations required by subsection (a).

13 (2) REPORT.—The Director of National Intelligence shall report to
 14 the Intelligence and Appropriations Committees of Congress each Jan-
 15 uary 1, delineating the activities and organizations that have been ex-
 16 empted under paragraph (1).

17 (d) PRESIDENTIAL DETERMINATION.—Before the regulations required by
 18 subsection (a) are prescribed, the President shall determine if prescribing
 19 the regulations will have a significantly adverse effect on the accomplish-
 20 ment of the mission of the Defense Department or another Federal agency.
 21 If the President determines that the regulations will have such an adverse
 22 effect, the President shall so report to the appropriate committees of the
 23 Senate and the House of Representatives, stating in full the reasons for the
 24 determination. If such a report is submitted, the requirement for the regula-
 25 tions shall be null and void.

26 **§ 2305. Authority of Director of Office of Management and**
 27 **Budget not affected**

28 This division does not limit the authorities and responsibilities of the Di-
 29 rector of the Office of Management and Budget in effect on December 1,
 30 1983.

31 **§ 2306. Openness of meetings**

32 The Administrator by regulation shall require that—

33 (1) formal meetings of the Office of Federal Procurement Policy, as
 34 designated by the Administrator, for developing procurement policies
 35 and regulations be open to the public; and

36 (2) public notice of each meeting be given not less than 10 days
 37 prior to the meeting.

38 **§ 2307. Comptroller General's access to information**

39 The Administrator and personnel in the Office of Federal Procurement
 40 Policy shall furnish information the Comptroller General may require to dis-
 41 charge the responsibilities of the Comptroller General. For this purpose, the

1 Comptroller General or his representatives shall have access to all books,
2 documents, papers, and records of the Office of Federal Procurement Pol-
3 icy.

4 **§ 2308. Modular contracting for information technology**

5 (a) USE.—To the maximum extent practicable, the head of an executive
6 agency should use modular contracting for an acquisition of a major system
7 of information technology.

8 (b) MODULAR CONTRACTING DESCRIBED.—Under modular contracting,
9 an executive agency's need for a system is satisfied in successive acquisi-
10 tions of interoperable increments. Each increment complies with common or
11 commercially accepted standards applicable to information technology so
12 that the increments are compatible with other increments of information
13 technology comprising the system.

14 (c) PROVISIONS IN FEDERAL ACQUISITION REGULATION.—The Federal
15 Acquisition Regulation shall provide that—

16 (1) under the modular contracting process, an acquisition of a major
17 system of information technology may be divided into several smaller
18 acquisition increments that—

19 (A) are easier to manage individually than would be one com-
20 prehensive acquisition;

21 (B) address complex information technology objectives incre-
22 mentally in order to enhance the likelihood of achieving workable
23 solutions for attaining those objectives;

24 (C) provide for delivery, implementation, and testing of work-
25 able systems or solutions in discrete increments, each of which
26 comprises a system or solution that is not dependent on a subse-
27 quent increment in order to perform its principal functions; and

28 (D) provide an opportunity for subsequent increments of the ac-
29 quisition to take advantage of any evolution in technology or needs
30 that occurs during conduct of the earlier increments;

31 (2) to the maximum extent practicable, a contract for an increment
32 of an information technology acquisition should be awarded within 180
33 days after the solicitation is issued and, if the contract for that incre-
34 ment cannot be awarded within that period, the increment should be
35 considered for cancellation; and

36 (3) the information technology provided for in a contract for acquisi-
37 tion of information technology should be delivered within 18 months
38 after the solicitation resulting in award of the contract was issued.

39 **§ 2309. Protection of constitutional rights of contractors**

40 (a) PROHIBITION ON REQUIRING WAIVER OF RIGHTS.—A contractor may
41 not be required, as a condition for entering into a contract with the Federal

1 Government, to waive a right under the Constitution for a purpose relating
2 to the Chemical Weapons Convention Implementation Act of 1998 (22
3 U.S.C. 6701 et seq.) or the Chemical Weapons Convention (as defined in
4 section 3 of that Act (22 U.S.C. 6701)).

5 (b) PERMISSIBLE CONTRACT CLAUSES.—Subsection (a) does not prohibit
6 an executive agency from including in a contract a clause that requires the
7 contractor to permit inspections to ensure that the contractor is performing
8 the contract in accordance with the provisions of the contract.

9 **§ 2310. Performance-based contracts or task orders for serv-**
10 **ices to be treated as contracts for the procurement**
11 **of commercial items**

12 (a) CRITERIA.—A performance-based contract for the procurement of
13 services entered into by an executive agency or a performance-based task
14 order for services issued by an executive agency may be treated as a con-
15 tract for the procurement of commercial items if—

16 (1) the value of the contract or task order is estimated not to exceed
17 \$25,000,000;

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

20 (A) defines the task in measurable, mission-related terms;

21 (B) identifies the specific end products or output to be achieved;

22 and

23 (C) contains firm, fixed prices for specific tasks to be performed
24 or outcomes to be achieved; and

25 (3) the source of the services provides similar services to the general
26 public under terms and conditions similar to those offered to the Fed-
27 eral Government.

28 (b) REGULATIONS.—Regulations implementing this section shall require
29 agencies to collect and maintain reliable data sufficient to identify the con-
30 tracts or task orders treated as contracts for commercial items using the
31 authority of this section. The data may be collected using the Federal Pro-
32 curement Data System or other reporting mechanism.

33 (c) REPORT.—Not later than 2 years after November 24, 2003, the Di-
34 rector of the Office of Management and Budget shall prepare and submit
35 to the Committees on Homeland Security and Governmental Affairs and on
36 Armed Services of the Senate and the Committees on Oversight and Gov-
37 ernment Reform and on Armed Services of the House of Representatives
38 a report on the contracts or task orders treated as contracts for commercial
39 items using the authority of this section. The report shall include data on
40 the use of the authority, both government-wide and for each department
41 and agency.

1 (d) EXPIRATION.—The authority under this section expires 10 years after
2 November 24, 2003.

3 **§ 2311. Enhanced transparency on interagency contracting**
4 **and other transactions**

5 The Director of the Office of Management and Budget shall direct appro-
6 priate revisions to the Federal Procurement Data System or any successor
7 system to facilitate the collection of complete, timely, and reliable data on
8 interagency contracting actions and on transactions other than contracts,
9 grants, and cooperative agreements issued pursuant to section 2371 of title
10 10 or similar authorities. The Director of the Office of Management and
11 Budget shall ensure that data, consistent with what is collected for contract
12 actions, is obtained on—

13 (1) interagency contracting actions, including data at the task or de-
14 livery-order level; and

15 (2) other transactions, including the initial award and any subse-
16 quent modifications awarded or orders issued (other than transactions
17 that are reported through the Federal Assistance Awards Data Sys-
18 tem).

19 **§ 2312. Contingency Contracting Corps**

20 (a) DEFINITION.—In this section, the term “Corps” means the Contingency Contracting Corps established in subsection (b).

22 (b) ESTABLISHMENT.—The Administrator of General Services, pursuant
23 to policies established by the Office of Management and Budget, and in con-
24 sultation with the Secretary of Defense and the Secretary of Homeland Se-
25 curity, shall establish a Government-wide Contingency Contracting Corps.

26 (c) Function.—The members of the Corps shall be available for deploy-
27 ment in responding to an emergency or major disaster, or a contingency op-
28 eration, both within or outside the continental United States.

29 (d) APPLICABILITY.—The authorities provided in this section apply with
30 respect to any procurement of property or services by or for an executive
31 agency that, as determined by the head of the executive agency, are to be
32 used—

33 (1) in support of a contingency operation as defined in section
34 101(a)(13) of title 10; or

35 (2) to respond to an emergency or major disaster as defined in sec-
36 tion 102 of the Robert T. Stafford Disaster Relief and Emergency As-
37 sistance Act (42 U.S.C. 5122).

38 (e) MEMBERSHIP.—Membership in the Corps shall be voluntary and open
39 to all Federal employees and members of the Armed Forces who are mem-
40 bers of the Federal acquisition workforce.

1 (f) EDUCATION AND TRAINING.—The Administrator of General Services
2 may, in consultation with the Director of the Federal Acquisition Institute
3 and the Chief Acquisition Officers Council, establish educational and train-
4 ing requirements for members of the Corps. Education and training carried
5 out pursuant to the requirements shall be paid for from funds available in
6 the acquisition workforce training fund established pursuant to section
7 1703(i) of this title.

8 (g) SALARY.—The salary for a member of the Corps shall be paid—

9 (1) in the case of a member of the Armed Forces, out of funds avail-
10 able to the Armed Force concerned; and

11 (2) in the case of a Federal employee, out of funds available to the
12 employing agency.

13 (h) AUTHORITY TO DEPLOY THE CORPS.—

14 (1) DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.—
15 The Director of the Office of Management and Budget shall have the
16 authority, upon request by an executive agency, to determine when
17 members of the Corps shall be deployed, with the concurrence of the
18 head of the agency or agencies employing the members to be deployed.

19 (2) SECRETARY OF DEFENSE.—Nothing in this section shall pre-
20 clude the Secretary of Defense or the Secretary's designee from deploy-
21 ing members of the Armed Forces or civilian personnel of the Depart-
22 ment of Defense in support of a contingency operation as defined in
23 section 101(a)(13) of title 10.

24 (i) ANNUAL REPORT.—

25 (1) IN GENERAL.—The Administrator of General Services shall pro-
26 vide to the Committee on Homeland Security and Governmental Affairs
27 and the Committee on Armed Services of the Senate and the Com-
28 mittee on Oversight and Government Reform and the Committee on
29 Armed Services of the House of Representatives an annual report on
30 the status of the Corps as of September 30 of each fiscal year.

31 (2) CONTENT.—Each report under paragraph (1) shall include the
32 number of members of the Corps, the total cost of operating the pro-
33 gram, the number of deployments of members of the program, and the
34 performance of members of the program in deployment.

35 **§ 2313. Database for Federal agency contract and grant offi-**
36 **cers and suspension and debarment officials**

37 (a) IN GENERAL.—Subject to the authority, direction, and control of the
38 Director of the Office of Management and Budget, the Administrator of
39 General Services shall establish and maintain a database of information re-
40 garding the integrity and performance of certain persons awarded Federal

1 agency contracts and grants for use by Federal agency officials having au-
2 thority over contracts and grants.

3 (b) PERSONS COVERED.—The database shall cover the following:

4 (1) Any person awarded a Federal agency contract or grant in excess
5 of \$500,000, if any information described in subsection (c) exists with
6 respect to the person.

7 (2) Any person awarded such other category or categories of Federal
8 agency contract as the Federal Acquisition Regulation may provide, if
9 any information described in subsection (c) exists with respect to the
10 person.

11 (c) INFORMATION INCLUDED.—With respect to a covered person, the
12 database shall include information (in the form of a brief description) for
13 the most recent 5-year period regarding the following:

14 (1) Each civil or criminal proceeding, or any administrative pro-
15 ceeding, in connection with the award or performance of a contract or
16 grant with the Federal Government with respect to the person during
17 the period to the extent that the proceeding results in the following dis-
18 positions:

19 (A) In a criminal proceeding, a conviction.

20 (B) In a civil proceeding, a finding of fault and liability that
21 results in the payment of a monetary fine, penalty, reimburse-
22 ment, restitution, or damages of \$5,000 or more.

23 (C) In an administrative proceeding, a finding of fault and li-
24 ability that results in—

25 (i) the payment of a monetary fine or penalty of \$5,000
26 or more; or

27 (ii) the payment of a reimbursement, restitution, or dam-
28 ages in excess of \$100,000.

29 (D) To the maximum extent practicable and consistent with ap-
30 plicable laws and regulations, in a criminal, civil, or administrative
31 proceeding, a disposition of the matter by consent or compromise
32 with an acknowledgment of fault by the person if the proceeding
33 could have led to any of the outcomes specified in subparagraph
34 (A), (B), or (C).

35 (2) Each Federal contract and grant awarded to the person that was
36 terminated in the period due to default.

37 (3) Each Federal suspension and debarment of the person.

38 (4) Each Federal administrative agreement entered into by the per-
39 son and the Federal Government in the period to resolve a suspension
40 or debarment proceeding.

1 (5) Each final finding by a Federal official in the period that the
2 person has been determined not to be a responsible source under para-
3 graph (3) or (4) of section 113 of this title.

4 (6) Other information that shall be provided for purposes of this sec-
5 tion in the Federal Acquisition Regulation.

6 (7) To the maximum extent practicable, information similar to the
7 information covered by paragraphs (1) to (4) in connection with the
8 award or performance of a contract or grant with a State government.

9 (d) REQUIREMENTS RELATING TO DATABASE INFORMATION.—

10 (1) DIRECT INPUT AND UPDATE.—The Administrator of General
11 Services shall design and maintain the database in a manner that al-
12 lows the appropriate Federal agency officials to directly input and up-
13 date information in the database relating to actions that the officials
14 have taken with regard to contractors or grant recipients.

15 (2) TIMELINESS AND ACCURACY.—The Administrator of General
16 Services shall develop policies to require—

17 (A) the timely and accurate input of information into the data-
18 base;

19 (B) the timely notification of any covered person when informa-
20 tion relevant to the person is entered into the database; and

21 (C) opportunities for any covered person to submit comments
22 pertaining to information about the person for inclusion in the
23 database.

24 (e) USE OF DATABASE.—

25 (1) AVAILABILITY TO GOVERNMENT OFFICIALS.—The Administrator
26 of General Services shall ensure that the information in the database
27 is available to appropriate acquisition officials of Federal agencies,
28 other government officials as the Administrator of General Services de-
29 termines appropriate, and, on request, the Chairman and Ranking
30 Member of the committees of Congress having jurisdiction.

31 (2) REVIEW AND ASSESSMENT OF DATA.—

32 (A) IN GENERAL.—Before awarding a contract or grant in ex-
33 cess of the simplified acquisition threshold under section 134 of
34 this title, the Federal agency official responsible for awarding the
35 contract or grant shall review the database and consider all infor-
36 mation in the database with regard to any offer or proposal, and
37 in the case of a contract, shall consider other past performance
38 information available with respect to the offeror in making any re-
39 sponsibility determination or past performance evaluation for the
40 offeror.

1 (B) DOCUMENTATION IN CONTRACT FILE.—The contract file
 2 for each contract of a Federal agency in excess of the simplified
 3 acquisition threshold shall document the manner in which the ma-
 4 terial in the database was considered in any responsibility deter-
 5 mination or past performance evaluation.

6 (f) DISCLOSURE IN APPLICATIONS.—The Federal Acquisition Regulation
 7 shall require that persons with Federal agency contracts and grants valued
 8 in total greater than \$10,000,000 shall—

9 (1) submit to the Administrator of General Services, in a manner de-
 10 termined appropriate by the Administrator of General Services, the in-
 11 formation subject to inclusion in the database as listed in subsection
 12 (c) current as of the date of submittal of the information under this
 13 subsection; and

14 (2) update the information submitted under paragraph (1) on a
 15 semiannual basis.

16 (g) RULEMAKING.—The Administrator of General Services shall prescribe
 17 regulations that may be necessary to carry out this section.

18 DIVISION C—PROCUREMENT

19 CHAPTER 31—GENERAL

Sec.

3101. Applicability.

3102. Delegation and assignment of powers, functions, and responsibilities.

3103. Acquisition programs.

3104. Small business concerns.

3105. New contracts and grants and merit-based selection procedures.

3106. Erection, repair, or furnishing of public buildings and improvements not authorized,
 and certain contracts not permitted, by this division.

20 § 3101. Applicability

21 (a) IN GENERAL.—An executive agency shall make purchases and con-
 22 tracts for property and services in accordance with this division and imple-
 23 menting regulations of the Administrator of General Services.

24 (b) SIMPLIFIED ACQUISITION THRESHOLD AND PROCEDURES.—

25 (1) SIMPLIFIED ACQUISITION THRESHOLD.—

26 (A) DEFINITION.—For purposes of an acquisition by an execu-
 27 tive agency, the simplified acquisition threshold is as specified in
 28 section 134 of this title.

29 (B) INAPPLICABLE LAWS.—A law properly listed in the Federal
 30 Acquisition Regulation pursuant to section 1905 of this title does
 31 not apply to or with respect to a contract or subcontract that is
 32 not greater than the simplified acquisition threshold.

33 (2) SIMPLIFIED ACQUISITION PROCEDURES.—Simplified acquisition
 34 procedures contained in the Federal Acquisition Regulation pursuant to
 35 section 1901 of this title apply in executive agencies as provided in sec-
 36 tion 1901.

1 (c) EXCEPTIONS.—

2 (1) IN GENERAL.—This division does not apply—

3 (A) to the Department of Defense, the Coast Guard, and the
4 National Aeronautics and Space Administration; or

5 (B) except as provided in paragraph (2), when this division is
6 made inapplicable pursuant to law.

7 (2) APPLICABILITY OF CERTAIN LAWS RELATED TO ADVERTISING,
8 OPENING OF BIDS, AND LENGTH OF CONTRACT.—Sections 6101, 6103,
9 and 6304 of this title do not apply to the procurement of property or
10 services made by an executive agency pursuant to this division. How-
11 ever, when this division is made inapplicable by any law, sections 6101
12 and 6103 of this title apply in the absence of authority conferred by
13 statute to procure without advertising or without regard to section
14 6101 of this title. A law that authorizes an executive agency (other
15 than an executive agency exempted from this division by this sub-
16 section) to procure property or services without advertising or without
17 regard to section 6101 of this title is deemed to authorize the procure-
18 ment pursuant to the provisions of this division relating to procedures
19 other than sealed-bid procedures.

20 **§ 3102. Delegation and assignment of powers, functions, and**
21 **responsibilities**

22 (a) IN GENERAL.—Except to the extent expressly prohibited by another
23 law, the head of an executive agency may delegate to another officer or offi-
24 cial of that agency any power under this division.

25 (b) PROCUREMENTS FOR OR WITH ANOTHER AGENCY.—Subject to sub-
26 section (a), to facilitate the procurement of property and services covered
27 by this division by an executive agency for another executive agency, and
28 to facilitate joint procurement by executive agencies—

29 (1) the head of an executive agency may delegate functions and as-
30 sign responsibilities relating to procurement to any officer or employee
31 within the agency;

32 (2) the heads of 2 or more executive agencies, consistent with section
33 1535 of title 31 and regulations prescribed under section 1074 of the
34 Federal Acquisition Streamlining Act of 1994 (Public Law 103–355,
35 31 U.S.C. 1535 note), may by agreement delegate procurement func-
36 tions and assign procurement responsibilities from one executive agency
37 to another of those executive agencies or to an officer or civilian em-
38 ployee of another of those executive agencies; and

39 (3) the heads of 2 or more executive agencies may establish joint or
40 combined offices to exercise procurement functions and responsibilities.

1 **§ 3103. Acquisition programs**

2 (a) CONGRESSIONAL POLICY.—It is the policy of Congress that the head
3 of each executive agency should achieve, on average, 90 percent of the cost,
4 performance, and schedule goals established for major acquisition programs
5 of the agency.

6 (b) ESTABLISHMENT OF GOALS.—

7 (1) BY HEAD OF EXECUTIVE AGENCY.—The head of each executive
8 agency shall approve or define the cost, performance, and schedule
9 goals for major acquisition programs of the agency.

10 (2) BY CHIEF FINANCIAL OFFICER.—The chief financial officer of an
11 executive agency shall evaluate the cost goals proposed for each major
12 acquisition program of the agency.

13 (c) IDENTIFICATION OF NONCOMPLIANT PROGRAMS.—When it is nec-
14 essary to implement the policy set out in subsection (a), the head of an ex-
15 ecutive agency shall—

16 (1) determine whether there is a continuing need for programs that
17 are significantly behind schedule, over budget, or not in compliance
18 with performance or capability requirements; and

19 (2) identify suitable actions to be taken, including termination, with
20 respect to those programs.

21 **§ 3104. Small business concerns**

22 It is the policy of Congress that a fair proportion of the total purchases
23 and contracts for property and services for the Federal Government shall
24 be placed with small business concerns.

25 **§ 3105. New contracts and grants and merit-based selection
26 procedures**

27 (a) CONGRESSIONAL POLICY.—It is the policy of Congress that—

28 (1) an executive agency should not be required by legislation to
29 award—

30 (A) a new contract to a specific non-Federal Government entity;

31 or

32 (B) a new grant for research, development, test, or evaluation
33 to a non-Federal Government entity; and

34 (2) a program, project, or technology identified in legislation be pro-
35 cured or awarded through merit-based selection procedures.

36 (b) NEW CONTRACT AND NEW GRANT DESCRIBED.—For purposes of
37 this section—

38 (1) a contract is a new contract unless the work provided for in the
39 contract is a continuation of the work performed by the specified entity
40 under a prior contract; and

1 (2) a grant is a new grant unless the work provided for in the grant
2 is a continuation of the work performed by the specified entity under
3 a prior grant.

4 (e) REQUIREMENTS FOR AWARDING NEW CONTRACT OR NEW GRANT.—
5 A provision of law may not be construed as requiring a new contract or a
6 new grant to be awarded to a specified non-Federal Government entity un-
7 less the provision of law specifically—

8 (1) refers to this section;

9 (2) identifies the particular non-Federal Government entity involved;
10 and

11 (3) states that the award to that entity is required by the provision
12 of law in contravention of the policy set forth in subsection (a).

13 (d) EXCEPTION.—This section does not apply to a contract or grant that
14 calls on the National Academy of Sciences to investigate, examine, or experi-
15 ment on a subject of science or art of significance to an executive agency
16 and to report on those matters to Congress or an agency of the Federal
17 Government.

18 **§ 3106. Erection, repair, or furnishing of public buildings**
19 **and improvements not authorized, and certain**
20 **contracts not permitted, by this division**

21 This division does not—

22 (1) authorize the erection, repair, or furnishing of a public building
23 or public improvement; or

24 (2) permit a contract for the construction or repair of a building,
25 road, sidewalk, sewer, main, or similar item using procedures other
26 than sealed-bid procedures under section 3301(b)(1)(A) of this title if
27 the conditions set forth in section 3301(b)(1)(A) of this title apply or
28 the contract is to be performed outside the United States.

29 **CHAPTER 33—PLANNING AND SOLICITATION**

Sec.

3301. Full and open competition.

3302. Requirements for purchase of property and services pursuant to multiple award con-
contracts.

3303. Exclusion of particular source or restriction of solicitation to small business concerns.

3304. Use of noncompetitive procedures.

3305. Simplified procedures for small purchases.

3306. Planning and solicitation requirements.

3307. Preference for commercial items.

3308. Planning for future competition in contracts for major systems.

3309. Design-build selection procedures.

3310. Quantities to order.

3311. Qualification requirement.

30 **§ 3301. Full and open competition**

31 (a) IN GENERAL.—Except as provided in sections 3303, 3304(a), and
32 3305 of this title and except in the case of procurement procedures other-

1 wise expressly authorized by statute, an executive agency in conducting a
2 procurement for property or services shall—

3 (1) obtain full and open competition through the use of competitive
4 procedures in accordance with the requirements of this division and the
5 Federal Acquisition Regulation; and

6 (2) use the competitive procedure or combination of competitive pro-
7 cedures that is best suited under the circumstances of the procurement.

8 (b) APPROPRIATE COMPETITIVE PROCEDURES.—

9 (1) USE OF SEALED BIDS.—In determining the competitive proce-
10 dures appropriate under the circumstance, an executive agency shall—

11 (A) solicit sealed bids if—

12 (i) time permits the solicitation, submission, and evaluation
13 of sealed bids;

14 (ii) the award will be made on the basis of price and other
15 price-related factors;

16 (iii) it is not necessary to conduct discussions with the re-
17 sponding sources about their bids; and

18 (iv) there is a reasonable expectation of receiving more
19 than one sealed bid; or

20 (B) request competitive proposals if sealed bids are not appro-
21 priate under subparagraph (A).

22 (2) SEALED BID NOT REQUIRED.—Paragraph (1)(A) does not re-
23 quire the use of sealed-bid procedures in cases in which section 204(e)
24 of title 23 applies.

25 (c) EFFICIENT FULFILLMENT OF GOVERNMENT REQUIREMENTS.—The
26 Federal Acquisition Regulation shall ensure that the requirement to obtain
27 full and open competition is implemented in a manner that is consistent
28 with the need to efficiently fulfill the Federal Government’s requirements.

29 **§ 3302. Requirements for purchase of property and services**
30 **pursuant to multiple award contracts**

31 (a) DEFINITIONS.—In this section:

32 (1) EXECUTIVE AGENCY.— The term “executive agency” has the
33 same meaning given in section 133 of this title.

34 (2) INDIVIDUAL PURCHASE.—The term “individual purchase” means
35 a task order, delivery order, or other purchase.

36 (3) MULTIPLE AWARD CONTRACT.—The term “multiple award con-
37 tract” means—

38 (A) a contract that is entered into by the Administrator of Gen-
39 eral Services under the multiple award schedule program referred
40 to in section 2302(2)(C) of title 10;

1 (B) a multiple award task order contract that is entered into
 2 under the authority of sections 2304a to 2304d of title 10, or
 3 chapter 41 of this title; and

4 (C) any other indefinite delivery, indefinite quantity contract
 5 that is entered into by the head of an executive agency with 2 or
 6 more sources pursuant to the same solicitation.

7 (4) SOLE SOURCE TASK OR DELIVERY ORDER.—The term “sole
 8 source task or delivery order” means any order that does not follow
 9 the competitive procedures in paragraph (2) or (3) of subsection (c).

10 (b) REGULATIONS REQUIRED.—The Federal Acquisition Regulation shall
 11 require enhanced competition in the purchase of property and services by
 12 all executive agencies pursuant to multiple award contracts.

13 (c) CONTENT OF REGULATIONS.—

14 (1) IN GENERAL.—The regulations required by subsection (b) shall
 15 provide that each individual purchase of property or services in excess
 16 of the simplified acquisition threshold that is made under a multiple
 17 award contract shall be made on a competitive basis unless a con-
 18 tracting officer—

19 (A) waives the requirement on the basis of a determination
 20 that—

21 (i) one of the circumstances described in paragraphs (1) to
 22 (4) of section 4106(e) of this title or section 2304e(b) of title
 23 10 applies to the individual purchase; or

24 (ii) a law expressly authorizes or requires that the purchase
 25 be made from a specified source; and

26 (B) justifies the determination in writing.

27 (2) COMPETITIVE BASIS PROCEDURES.—For purposes of this sub-
 28 section, an individual purchase of property or services is made on a
 29 competitive basis only if it is made pursuant to procedures that—

30 (A) require fair notice of the intent to make that purchase (in-
 31 cluding a description of the work to be performed and the basis
 32 on which the selection will be made) to be provided to all contrac-
 33 tors offering the property or services under the multiple award
 34 contract; and

35 (B) afford all contractors responding to the notice a fair oppor-
 36 tunity to make an offer and have that offer fairly considered by
 37 the official making the purchase.

38 (3) EXCEPTION TO NOTICE REQUIREMENT.—

39 (A) IN GENERAL.—Notwithstanding paragraph (2), and subject
 40 to subparagraph (B), notice may be provided to fewer than all
 41 contractors offering the property or services under a multiple

1 award contract as described in subsection (a)(3)(A) if notice is
2 provided to as many contractors as practicable.

3 (B) LIMITATION ON EXCEPTION.—A purchase may not be made
4 pursuant to a notice that is provided to fewer than all contractors
5 under subparagraph (A) unless—

6 (i) offers were received from at least 3 qualified contrac-
7 tors; or

8 (ii) a contracting officer of the executive agency determines
9 in writing that no additional qualified contractors were able
10 to be identified despite reasonable efforts to do so.

11 (d) PUBLIC NOTICE REQUIREMENTS RELATED TO SOLE SOURCE TASK
12 OR DELIVERY ORDERS.—

13 (1) PUBLIC NOTICE REQUIRED.—The Federal Acquisition Regulation
14 shall require the head of each executive agency to—

15 (A) publish on FedBizOpps notice of all sole source task or de-
16 livery orders in excess of the simplified acquisition threshold that
17 are placed against multiple award contracts not later than 14 days
18 after the orders are placed, except in the event of extraordinary
19 circumstances or classified orders; and

20 (B) disclose the determination required by subsection (c)(1) re-
21 lated to sole source task or delivery orders in excess of the sim-
22 plified acquisition threshold placed against multiple award con-
23 tracts through the same mechanism and to the same extent as the
24 disclosure of documents containing a justification and approval re-
25 quired by section 2304(f)(1) of title 10 and section 3304(e)(1) of
26 this title, except in the event of extraordinary circumstances or
27 classified orders.

28 (2) EXEMPTION.—This subsection does not require the public avail-
29 ability of information that is exempt from public disclosure under sec-
30 tion 552(b) of title 5.

31 (e) APPLICABILITY.—The regulations required by subsection (b) shall
32 apply to all individual purchases of property or services that are made under
33 multiple award contracts on or after the effective date of the regulations,
34 without regard to whether the multiple award contracts were entered into
35 before, on, or after the effective date.

36 **§ 3303. Exclusion of particular source or restriction of solici-**
37 **tation to small business concerns**

38 (a) EXCLUSION OF PARTICULAR SOURCE.—

39 (1) CRITERIA FOR EXCLUSION.—An executive agency may provide
40 for the procurement of property or services covered by section 3301 of
41 this title using competitive procedures but excluding a particular source

1 to establish or maintain an alternative source of supply for that prop-
 2 erty or service if the agency head determines that to do so would—

3 (A) increase or maintain competition and likely result in re-
 4 duced overall cost for the procurement, or for an anticipated pro-
 5 curement, of the property or services;

6 (B) be in the interest of national defense in having a facility
 7 (or a producer, manufacturer, or other supplier) available for fur-
 8 nishing the property or service in case of a national emergency or
 9 industrial mobilization;

10 (C) be in the interest of national defense in establishing or
 11 maintaining an essential engineering, research, or development ca-
 12 pability to be provided by an educational or other nonprofit insti-
 13 tution or a Federally funded research and development center;

14 (D) ensure the continuous availability of a reliable source of
 15 supply of the property or service;

16 (E) satisfy projected needs for the property or service deter-
 17 mined on the basis of a history of high demand for the property
 18 or service; or

19 (F) satisfy a critical need for medical, safety, or emergency sup-
 20 plies.

21 (2) DETERMINATION FOR CLASS DISALLOWED.—A determination
 22 under paragraph (1) may not be made for a class of purchases or con-
 23 tracts.

24 (b) EXCLUSION OF OTHER THAN SMALL BUSINESS CONCERNS.—An ex-
 25 ecutive agency may provide for the procurement of property or services cov-
 26 ered by section 3301 of this title using competitive procedures, but exclud-
 27 ing other than small business concerns in furtherance of sections 9 and 15
 28 of the Small Business Act (15 U.S.C. 638, 644).

29 (c) NONAPPLICATION OF JUSTIFICATION AND APPROVAL REQUIRE-
 30 MENTS.—A contract awarded pursuant to the competitive procedures re-
 31 ferred to in subsections (a) and (b) is not subject to the justification and
 32 approval required by section 3304(e)(1) of this title.

33 **§ 3304. Use of noncompetitive procedures**

34 (a) WHEN NONCOMPETITIVE PROCEDURES MAY BE USED.—An execu-
 35 tive agency may use procedures other than competitive procedures only
 36 when—

37 (1) the property or services needed by the executive agency are avail-
 38 able from only one responsible source and no other type of property
 39 or services will satisfy the needs of the executive agency;

40 (2) the executive agency's need for the property or services is of such
 41 an unusual and compelling urgency that the Federal Government would

1 be seriously injured unless the executive agency is permitted to limit
2 the number of sources from which it solicits bids or proposals;

3 (3) it is necessary to award the contract to a particular source—

4 (A) to maintain a facility, producer, manufacturer, or other sup-
5 plier available for furnishing property or services in case of a na-
6 tional emergency or to achieve industrial mobilization;

7 (B) to establish or maintain an essential engineering, research,
8 or development capability to be provided by an educational or
9 other nonprofit institution or a Federally funded research and de-
10 velopment center;

11 (C) to procure the services of an expert for use, in any litigation
12 or dispute (including any reasonably foreseeable litigation or dis-
13 pute) involving the Federal Government, in any trial, hearing, or
14 proceeding before a court, administrative tribunal, or agency,
15 whether or not the expert is expected to testify; or

16 (D) to procure the services of an expert or neutral for use in
17 any part of an alternative dispute resolution or negotiated rule-
18 making process, whether or not the expert is expected to testify;

19 (4) the terms of an international agreement or treaty between the
20 Federal Government and a foreign government or an international or-
21 ganization, or the written directions of a foreign government reimburs-
22 ing the executive agency for the cost of the procurement of the prop-
23 erty or services for that government, have the effect of requiring the
24 use of procedures other than competitive procedures;

25 (5) subject to section 3105 of this title, a statute expressly author-
26 izes or requires that the procurement be made through another execu-
27 tive agency or from a specified source, or the agency's need is for a
28 brand-name commercial item for authorized resale;

29 (6) the disclosure of the executive agency's needs would compromise
30 the national security unless the agency is permitted to limit the number
31 of sources from which it solicits bids or proposals; or

32 (7) the head of the executive agency (who may not delegate the au-
33 thority under this paragraph)—

34 (A) determines that it is necessary in the public interest to use
35 procedures other than competitive procedures in the particular
36 procurement concerned; and

37 (B) notifies Congress in writing of that determination not less
38 than 30 days before the award of the contract.

39 (b) PROPERTY OR SERVICES DEEMED AVAILABLE FROM ONLY ONE
40 SOURCE.—For the purposes of subsection (a)(1), in the case of—

1 (1) a contract for property or services to be awarded on the basis
2 of acceptance of an unsolicited research proposal, the property or serv-
3 ices are deemed to be available from only one source if the source has
4 submitted an unsolicited research proposal that demonstrates a unique
5 and innovative concept, the substance of which is not otherwise avail-
6 able to the Federal Government and does not resemble the substance
7 of a pending competitive procurement; or

8 (2) a follow-on contract for the continued development or production
9 of a major system or highly specialized equipment, the property may
10 be deemed to be available only from the original source and may be
11 procured through procedures other than competitive procedures when
12 it is likely that award to a source other than the original source would
13 result in—

14 (A) substantial duplication of cost to the Federal Government
15 that is not expected to be recovered through competition; or

16 (B) unacceptable delay in fulfilling the executive agency's needs.

17 (c) PROPERTY OR SERVICES NEEDED WITH UNUSUAL AND COMPELLING
18 URGENCY.—

19 (1) ALLOWABLE CONTRACT PERIOD.—The contract period of a con-
20 tract described in paragraph (2) that is entered into by an executive
21 agency pursuant to the authority provided under subsection (a)(2)—

22 (A) may not exceed the time necessary—

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

25 (ii) for the executive agency to enter into another contract
26 for the required goods or services through the use of competi-
27 tive procedures; and

28 (B) may not exceed one year unless the head of the executive
29 agency entering into the contract determines that exceptional cir-
30 cumstances apply.

31 (2) APPLICABILITY OF ALLOWABLE CONTRACT PERIOD.—This sub-
32 section applies to any contract in an amount greater than the sim-
33 plified acquisition threshold.

34 (d) OFFER REQUESTS TO POTENTIAL SOURCES.—An executive agency
35 using procedures other than competitive procedures to procure property or
36 services by reason of the application of paragraph (2) or (6) of subsection
37 (a) shall request offers from as many potential sources as is practicable
38 under the circumstances.

39 (e) JUSTIFICATION FOR USE OF NONCOMPETITIVE PROCEDURES.—

1 (1) PREREQUISITES FOR AWARDING CONTRACT.—Except as provided
2 in paragraphs (3) and (4), an executive agency may not award a con-
3 tract using procedures other than competitive procedures unless—

4 (A) the contracting officer for the contract justifies the use of
5 those procedures in writing and certifies the accuracy and com-
6 pleteness of the justification;

7 (B) the justification is approved, in the case of a contract for
8 an amount—

9 (i) exceeding \$500,000 but equal to or less than
10 \$10,000,000, by the advocate for competition for the pro-
11 curing activity (without further delegation) or by an official
12 referred to in clause (ii) or (iii);

13 (ii) exceeding \$10,000,000 but equal to or less than
14 \$50,000,000, by the head of the procuring activity or by a
15 delegate who, if a member of the armed forces, is a general
16 or flag officer or, if a civilian, is serving in a position in which
17 the individual is entitled to receive the daily equivalent of the
18 maximum annual rate of basic pay payable under section
19 5376 of title 5 (or in a comparable or higher position under
20 another schedule); or

21 (iii) exceeding \$50,000,000, by the senior procurement ex-
22 ecutive of the agency designated pursuant to section 1702(c)
23 of this title (without further delegation); and

24 (C) any required notice has been published with respect to the
25 contract pursuant to section 1708 of this title and the executive
26 agency has considered all bids or proposals received in response
27 to that notice.

28 (2) ELEMENTS OF JUSTIFICATION.—The justification required by
29 paragraph (1)(A) shall include—

30 (A) a description of the agency's needs;

31 (B) an identification of the statutory exception from the re-
32 quirement to use competitive procedures and a demonstration,
33 based on the proposed contractor's qualifications or the nature of
34 the procurement, of the reasons for using that exception;

35 (C) a determination that the anticipated cost will be fair and
36 reasonable;

37 (D) a description of the market survey conducted or a state-
38 ment of the reasons a market survey was not conducted;

39 (E) a listing of any sources that expressed in writing an interest
40 in the procurement; and

1 (F) a statement of any actions the agency may take to remove
2 or overcome a barrier to competition before a subsequent procure-
3 ment for those needs.

4 (3) JUSTIFICATION ALLOWED AFTER CONTRACT AWARDED.—In the
5 case of a procurement permitted by subsection (a)(2), the justification
6 and approval required by paragraph (1) may be made after the con-
7 tract is awarded.

8 (4) JUSTIFICATION NOT REQUIRED.—The justification and approval
9 required by paragraph (1) are not required if—

10 (A) a statute expressly requires that the procurement be made
11 from a specified source;

12 (B) the agency's need is for a brand-name commercial item for
13 authorized resale;

14 (C) the procurement is permitted by subsection (a)(7); or

15 (D) the procurement is conducted under chapter 85 of this title
16 or section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

17 (5) RESTRICTIONS ON EXECUTIVE AGENCIES.—

18 (A) CONTRACTS AND PROCUREMENT OF PROPERTY OR SERV-
19 ICES.—In no case may an executive agency—

20 (i) enter into a contract for property or services using pro-
21 cedures other than competitive procedures on the basis of the
22 lack of advance planning or concerns related to the amount
23 available to the agency for procurement functions; or

24 (ii) procure property or services from another executive
25 agency unless the other executive agency complies fully with
26 the requirements of this division in its procurement of the
27 property or services.

28 (B) ADDITIONAL RESTRICTION.—The restriction set out in sub-
29 paragraph (A)(ii) is in addition to any other restriction provided
30 by law.

31 (f) PUBLIC AVAILABILITY OF JUSTIFICATION AND APPROVAL REQUIRED
32 FOR USING NONCOMPETITIVE PROCEDURES.—

33 (1) TIME REQUIREMENT.—

34 (A) WITHIN 14 DAYS AFTER CONTRACT AWARD.—Except as pro-
35 vided in subparagraph (B), in the case of a procurement permitted
36 by subsection (a), the head of an executive agency shall make pub-
37 licly available, within 14 days after the award of the contract, the
38 documents containing the justification and approval required by
39 subsection (e)(1) with respect to the procurement.

1 (B) WITHIN 30 DAYS AFTER CONTRACT AWARD.—In the case of
 2 a procurement permitted by subsection (a)(2), subparagraph (A)
 3 shall be applied by substituting “30 days” for “14 days”.

4 (2) AVAILABILITY ON WEBSITES.—The documents referred to in sub-
 5 paragraph (A) of paragraph (1) shall be made available on the website
 6 of the agency and through a Government-wide website selected by the
 7 Administrator.

8 (3) EXCEPTION TO AVAILABILITY AND APPROVAL REQUIREMENT.—
 9 This subsection does not require the public availability of information
 10 that is exempt from public disclosure under section 552(b) of title 5.

11 **§ 3305. Simplified procedures for small purchases**

12 (a) AUTHORIZATION.—To promote efficiency and economy in contracting
 13 and to avoid unnecessary burdens for agencies and contractors, the Federal
 14 Acquisition Regulation shall provide for special simplified procedures for
 15 purchases of property and services for amounts—

16 (1) not greater than the simplified acquisition threshold; and

17 (2) greater than the simplified acquisition threshold but not greater
 18 than \$5,000,000 for which the contracting officer reasonably expects,
 19 based on the nature of the property or services sought and on market
 20 research, that offers will include only commercial items.

21 (b) LEASEHOLD INTERESTS IN REAL PROPERTY.—The Administrator of
 22 General Services shall prescribe regulations that provide special simplified
 23 procedures for acquisitions of leasehold interests in real property at rental
 24 rates that do not exceed the simplified acquisition threshold. The rental rate
 25 under a multiyear lease does not exceed the simplified acquisition threshold
 26 if the average annual amount of the rent payable for the period of the lease
 27 does not exceed the simplified acquisition threshold.

28 (c) PROHIBITION ON DIVIDING CONTRACTS.—A proposed purchase or
 29 contract for an amount above the simplified acquisition threshold may not
 30 be divided into several purchases or contracts for lesser amounts to use the
 31 simplified procedures required by subsection (a).

32 (d) PROMOTION OF COMPETITION.—In using the simplified procedures,
 33 an executive agency shall promote competition to the maximum extent prac-
 34 ticable.

35 (e) COMPLIANCE WITH SPECIAL REQUIREMENTS OF FEDERAL ACQUISITION
 36 REGULATION.—An executive agency shall comply with the Federal Ac-
 37 quisition Regulation provisions referred to in section 1901(e) of this title.

38 **§ 3306. Planning and solicitation requirements**

39 (a) PLANNING AND SPECIFICATIONS.—

40 (1) PREPARING FOR PROCUREMENT.—In preparing for the procure-
 41 ment of property or services, an executive agency shall—

1 (A) specify its needs and solicit bids or proposals in a manner
2 designed to achieve full and open competition for the procurement;

3 (B) use advance procurement planning and market research;
4 and

5 (C) develop specifications in the manner necessary to obtain full
6 and open competition with due regard to the nature of the prop-
7 erty or services to be acquired.

8 (2) REQUIREMENTS OF SPECIFICATIONS.—Each solicitation under
9 this division shall include specifications that—

10 (A) consistent with this division, permit full and open competi-
11 tion; and

12 (B) include restrictive provisions or conditions only to the extent
13 necessary to satisfy the needs of the executive agency or as au-
14 thorized by law.

15 (3) TYPES OF SPECIFICATIONS.—For the purposes of paragraphs (1)
16 and (2), the type of specification included in a solicitation shall depend
17 on the nature of the needs of the executive agency and the market
18 available to satisfy those needs. Subject to those needs, specifications
19 may be stated in terms of—

20 (A) function, so that a variety of products or services may qual-
21 ify;

22 (B) performance, including specifications of the range of accept-
23 able characteristics or of the minimum acceptable standards; or

24 (C) design requirements.

25 (b) CONTENTS OF SOLICITATION.—In addition to the specifications de-
26 scribed in subsection (a), each solicitation for sealed bids or competitive pro-
27 posals (other than for a procurement for commercial items using special
28 simplified procedures or a purchase for an amount not greater than the sim-
29 plified acquisition threshold) shall at a minimum include—

30 (1) a statement of—

31 (A) all significant factors and significant subfactors that the ex-
32 ecutive agency reasonably expects to consider in evaluating sealed
33 bids (including price) or competitive proposals (including cost or
34 price, cost-related or price-related factors and subfactors, and
35 noncost-related or nonprice-related factors and subfactors); and

36 (B) the relative importance assigned to each of those factors
37 and subfactors; and

38 (2)(A) in the case of sealed bids—

39 (i) a statement that sealed bids will be evaluated without discus-
40 sions with the bidders; and

41 (ii) the time and place for the opening of the sealed bids; or

1 (B) in the case of competitive proposals—

2 (i) either a statement that the proposals are intended to be eval-
 3 uated with, and the award made after, discussions with the
 4 offerors, or a statement that the proposals are intended to be eval-
 5 uated, and the award made, without discussions with the offerors
 6 (other than discussions conducted for the purpose of minor clari-
 7 fication) unless discussions are determined to be necessary; and

8 (ii) the time and place for submission of proposals.

9 (c) EVALUATION FACTORS.—

10 (1) IN GENERAL.—In prescribing the evaluation factors to be in-
 11 cluded in each solicitation for competitive proposals, an executive agen-
 12 cy shall—

13 (A) establish clearly the relative importance assigned to the
 14 evaluation factors and subfactors, including the quality of the
 15 product or services to be provided (including technical capability,
 16 management capability, prior experience, and past performance of
 17 the offeror);

18 (B) include cost or price to the Federal Government as an eval-
 19 uation factor that must be considered in the evaluation of pro-
 20 posals; and

21 (C) disclose to offerors whether all evaluation factors other than
 22 cost or price, when combined, are—

23 (i) significantly more important than cost or price;

24 (ii) approximately equal in importance to cost or price; or

25 (iii) significantly less important than cost or price.

26 (2) RESTRICTION ON IMPLEMENTING REGULATIONS.—Regulations
 27 implementing paragraph (1)(C) may not define the terms “significantly
 28 more important” and “significantly less important” as specific numeric
 29 weights that would be applied uniformly to all solicitations or a class
 30 of solicitations.

31 (d) ADDITIONAL INFORMATION IN SOLICITATION.—This section does not
 32 prohibit an executive agency from—

33 (1) providing additional information in a solicitation, including nu-
 34 meric weights for all evaluation factors and subfactors on a case-by-
 35 case basis; or

36 (2) stating in a solicitation that award will be made to the offeror
 37 that meets the solicitation’s mandatory requirements at the lowest cost
 38 or price.

39 (e) LIMITATION ON EVALUATION OF PURCHASE OPTIONS.—An executive
 40 agency, in issuing a solicitation for a contract to be awarded using sealed
 41 bid procedures, may not include in the solicitation a clause providing for the

1 evaluation of prices for options to purchase additional property or services
 2 under the contract unless the executive agency has determined that there
 3 is a reasonable likelihood that the options will be exercised.

4 (f) AUTHORIZATION OF TELECOMMUTING FOR FEDERAL CONTRAC-
 5 TORS.—

6 (1) DEFINITION.—In this subsection, the term “executive agency”
 7 has the meaning given that term in section 133 of this title.

8 (2) FEDERAL ACQUISITION REGULATION TO ALLOW TELECOM-
 9 MUTING.—The Federal Acquisition Regulation issued in accordance
 10 with sections 1121(b) and 1303(a)(1) of this title shall permit telecom-
 11 muting by employees of Federal Government contractors in the per-
 12 formance of contracts entered into with executive agencies.

13 (3) SCOPE OF ALLOWANCE.—The Federal Acquisition Regulation at
 14 a minimum shall provide that a solicitation for the acquisition of prop-
 15 erty or services may not set forth any requirement or evaluation cri-
 16 teria that would—

17 (A) render an offeror ineligible to enter into a contract on the
 18 basis of the inclusion of a plan of the offeror to allow the offeror’s
 19 employees to telecommute, unless the contracting officer concerned
 20 first determines that the requirements of the agency, including se-
 21 curity requirements, cannot be met if telecommuting is allowed
 22 and documents in writing the basis for the determination; or

23 (B) reduce the scoring of an offer on the basis of the inclusion
 24 in the offer of a plan of the offeror to allow the offeror’s employ-
 25 ees to telecommute, unless the contracting officer concerned first
 26 determines that the requirements of the agency, including security
 27 requirements, would be adversely impacted if telecommuting is al-
 28 lowed and documents in writing the basis for the determination.

29 **§ 3307. Preference for commercial items**

30 (a) RELATIONSHIP OF PROVISIONS OF LAW TO PROCUREMENT OF COM-
 31 MERCIAL ITEMS.—

32 (1) THIS DIVISION.—Unless otherwise specifically provided, all other
 33 provisions in this division also apply to the procurement of commercial
 34 items.

35 (2) LAWS LISTED IN FEDERAL ACQUISITION REGULATION.—A con-
 36 tract for the procurement of a commercial item entered into by the
 37 head of an executive agency is not subject to a law properly listed in
 38 the Federal Acquisition Regulation pursuant to section 1906 of this
 39 title.

40 (b) PREFERENCE.—The head of each executive agency shall ensure that,
 41 to the maximum extent practicable—

1 (1) requirements of the executive agency with respect to a procure-
2 ment of supplies or services are stated in terms of—

3 (A) functions to be performed;

4 (B) performance required; or

5 (C) essential physical characteristics;

6 (2) those requirements are defined so that commercial items or, to
7 the extent that commercial items suitable to meet the executive agen-
8 cy's needs are not available, nondevelopmental items other than com-
9 mercial items may be procured to fulfill those requirements; and

10 (3) offerors of commercial items and nondevelopmental items other
11 than commercial items are provided an opportunity to compete in any
12 procurement to fill those requirements.

13 (e) IMPLEMENTATION.—The head of each executive agency shall ensure
14 that procurement officials in that executive agency, to the maximum extent
15 practicable—

16 (1) acquire commercial items or nondevelopmental items other than
17 commercial items to meet the needs of the executive agency;

18 (2) require that prime contractors and subcontractors at all levels
19 under contracts of the executive agency incorporate commercial items
20 or nondevelopmental items other than commercial items as components
21 of items supplied to the executive agency;

22 (3) modify requirements in appropriate cases to ensure that the re-
23 quirements can be met by commercial items or, to the extent that com-
24 mercial items suitable to meet the executive agency's needs are not
25 available, nondevelopmental items other than commercial items;

26 (4) state specifications in terms that enable and encourage bidders
27 and offerors to supply commercial items or, to the extent that commer-
28 cial items suitable to meet the executive agency's needs are not avail-
29 able, nondevelopmental items other than commercial items in response
30 to the executive agency solicitations;

31 (5) revise the executive agency's procurement policies, practices, and
32 procedures not required by law to reduce any impediments in those
33 policies, practices, and procedures to the acquisition of commercial
34 items; and

35 (6) require training of appropriate personnel in the acquisition of
36 commercial items.

37 (d) MARKET RESEARCH.—

38 (1) WHEN TO BE USED.—The head of an executive agency shall con-
39 duct market research appropriate to the circumstances—

40 (A) before developing new specifications for a procurement by
41 that executive agency; and

1 (B) before soliciting bids or proposals for a contract in excess
2 of the simplified acquisition threshold.

3 (2) USE OF RESULTS.—The head of an executive agency shall use
4 the results of market research to determine whether commercial items
5 or, to the extent that commercial items suitable to meet the executive
6 agency’s needs are not available, nondevelopmental items other than
7 commercial items are available that—

8 (A) meet the executive agency’s requirements;

9 (B) could be modified to meet the executive agency’s require-
10 ments; or

11 (C) could meet the executive agency’s requirements if those re-
12 quirements were modified to a reasonable extent.

13 (3) ONLY MINIMUM INFORMATION REQUIRED TO BE SUBMITTED.—
14 In conducting market research, the head of an executive agency should
15 not require potential sources to submit more than the minimum infor-
16 mation that is necessary to make the determinations required in para-
17 graph (2).

18 (e) REGULATIONS.—

19 (1) IN GENERAL.—The Federal Acquisition Regulation shall provide
20 regulations to implement this section, sections 102, 103, 105, and 110
21 of this title, and chapter 140 of title 10.

22 (2) CONTRACT CLAUSES.—

23 (A) DEFINITION.—In this paragraph, the term “subcontract”
24 includes a transfer of commercial items between divisions, subsidi-
25 aries, or affiliates of a contractor or subcontractor.

26 (B) LIST OF CLAUSES TO BE INCLUDED.—The regulations pre-
27 scribed under paragraph (1) shall contain a list of contract clauses
28 to be included in contracts for the acquisition of commercial end
29 items. To the maximum extent practicable, the list shall include
30 only those contract clauses that are—

31 (i) required to implement provisions of law or executive or-
32 ders applicable to acquisitions of commercial items or com-
33 mercial components; or

34 (ii) determined to be consistent with standard commercial
35 practice.

36 (C) REQUIREMENTS OF PRIME CONTRACTOR.—The regulations
37 shall provide that the Federal Government shall not require a
38 prime contractor to apply to any of its divisions, subsidiaries, af-
39 filiates, subcontractors, or suppliers that are furnishing commer-
40 cial items any contract clause except those that are—

1 (i) required to implement provisions of law or executive or-
 2 ders applicable to subcontractors furnishing commercial items
 3 or commercial components; or

4 (ii) determined to be consistent with standard commercial
 5 practice.

6 (D) CLAUSES THAT MAY BE USED IN A CONTRACT.—To the
 7 maximum extent practicable, only the contract clauses listed pur-
 8 suant to subparagraph (B) may be used in a contract, and only
 9 the contract clauses referred to in subparagraph (C) may be re-
 10 quired to be used in a subcontract, for the acquisition of commer-
 11 cial items or commercial components by or for an executive agen-
 12 cy.

13 (E) WAIVER OF CONTRACT CLAUSES.—The Federal Acquisition
 14 Regulation shall provide standards and procedures for waiving the
 15 use of contract clauses required pursuant to subparagraph (B),
 16 other than those required by law, including standards for deter-
 17 mining the cases in which a waiver is appropriate.

18 (3) MARKET ACCEPTANCE.—

19 (A) REQUIREMENT OF OFFERORS.—The Federal Acquisition
 20 Regulation shall provide that under appropriate conditions the
 21 head of an executive agency may require offerors to demonstrate
 22 that the items offered—

23 (i) have achieved commercial market acceptance or been
 24 satisfactorily supplied to an executive agency under current or
 25 recent contracts for the same or similar requirements; and

26 (ii) otherwise meet the item description, specifications, or
 27 other criteria prescribed in the public notice and solicitation
 28 relating to the contract.

29 (B) REGULATION TO PROVIDE GUIDANCE ON CRITERIA.—The
 30 Federal Acquisition Regulation shall provide guidance to ensure
 31 that the criteria for determining commercial market acceptance in-
 32 clude the consideration of—

33 (i) the minimum needs of the executive agency concerned;

34 and

35 (ii) the entire relevant commercial market, including small
 36 businesses.

37 (4) PROVISIONS RELATING TO TYPES OF CONTRACTS.—

38 (A) TYPES OF CONTRACTS THAT MAY BE USED.—The Federal
 39 Acquisition Regulation shall include, for acquisitions of commercial
 40 items—

1 (i) a requirement that firm, fixed price contracts or fixed
2 price with economic price adjustment contracts be used to the
3 maximum extent practicable;

4 (ii) a prohibition on use of cost type contracts; and

5 (iii) subject to subparagraph (B), authority for use of a
6 time-and-materials or labor-hour contract for the procurement
7 of commercial services that are commonly sold to the general
8 public through those contracts and are purchased by the pro-
9 curing agency on a competitive basis.

10 (B) WHEN TIME-AND-MATERIALS OR LABOR-HOUR CONTRACT
11 MAY BE USED.—A time-and-materials or labor-hour contract may
12 be used pursuant to the authority referred to in subparagraph
13 (A)(iii)—

14 (i) only for a procurement of commercial services in a cat-
15 egory of commercial services described in subparagraph (C);
16 and

17 (ii) only if the contracting officer for the procurement—

18 (I) executes a determination and findings that no
19 other contract type is suitable;

20 (II) includes in the contract a ceiling price that the
21 contractor exceeds at its own risk; and

22 (III) authorizes a subsequent change in the ceiling
23 price only on a determination, documented in the con-
24 tract file, that it is in the best interest of the procuring
25 agency to change the ceiling price.

26 (C) CATEGORIES OF COMMERCIAL SERVICES.—The categories of
27 commercial services referred to in subparagraph (B) are as fol-
28 lows:

29 (i) Commercial services procured for support of a commer-
30 cial item, as described in section 103(5) of this title.

31 (ii) Any other category of commercial services that the Ad-
32 ministrator for Federal Procurement Policy designates in the
33 Federal Acquisition Regulation for the purposes of this sub-
34 paragraph on the basis that—

35 (I) the commercial services in the category are of a
36 type of commercial services that are commonly sold to
37 the general public through use of time-and-materials or
38 labor-hour contracts; and

39 (II) it would be in the best interests of the Federal
40 Government to authorize use of time-and-materials or

1 labor-hour contracts for purchases of the commercial
2 services in the category.

3 (5) CONTRACT QUALITY REQUIREMENTS.—Regulations prescribed
4 under paragraph (1) shall include provisions that—

5 (A) allow, to the maximum extent practicable, a contractor
6 under a commercial items acquisition to use the existing quality
7 assurance system of the contractor as a substitute for compliance
8 with an otherwise applicable requirement for the Federal Govern-
9 ment to inspect or test the commercial items before the contrac-
10 tor’s tender of those items for acceptance by the Federal Govern-
11 ment;

12 (B) require that, to the maximum extent practicable, the execu-
13 tive agency take advantage of warranties (including extended war-
14 ranties) offered by offerors of commercial items and use those
15 warranties for the repair and replacement of commercial items;
16 and

17 (C) set forth guidance regarding the use of past performance of
18 commercial items and sources as a factor in contract award deci-
19 sions.

20 **§ 3308. Planning for future competition in contracts for**
21 **major systems**

22 (a) DEVELOPMENT CONTRACT.—

23 (1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—In pre-
24 paring a solicitation for the award of a development contract for a
25 major system, the head of an agency shall consider requiring in the so-
26 licitation that an offeror include in its offer proposals described in
27 paragraph (2). In determining whether to require the proposals, the
28 head of the agency shall consider the purposes for which the system
29 is being procured and the technology necessary to meet the system’s
30 required capabilities. If the proposals are required, the head of the
31 agency shall consider them in evaluating the offeror’s price.

32 (2) CONTENTS OF PROPOSALS.—The proposals that the head of an
33 agency is to consider requiring in a solicitation for the award of a de-
34 velopment contract are the following:

35 (A) Proposals to incorporate in the design of the major system
36 items that are currently available within the supply system of the
37 Federal agency responsible for the major system, available else-
38 where in the national supply system, or commercially available
39 from more than one source.

40 (B) With respect to items that are likely to be required in sub-
41 stantial quantities during the system’s service life, proposals to in-

1 corporate in the design of the major system items that the Federal
2 Government will be able to acquire competitively in the future.

3 (b) PRODUCTION CONTRACT.—

4 (1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—In pre-
5 paring a solicitation for the award of a production contract for a major
6 system, the head of an agency shall consider requiring in the solicita-
7 tion that an offeror include in its offer proposals described in para-
8 graph (2). In determining whether to require the proposals, the head
9 of the agency shall consider the purposes for which the system is being
10 procured and the technology necessary to meet the system's required
11 capabilities. If the proposals are required, the head of the agency shall
12 consider them in evaluating the offeror's price.

13 (2) CONTENT OF PROPOSALS.—The proposals that the head of an
14 agency is to consider requiring in a solicitation for the award of a pro-
15 duction contract are proposals identifying opportunities to ensure that
16 the Federal Government will be able to obtain on a competitive basis
17 items procured in connection with the system that are likely to be re-
18 procured in substantial quantities during the service life of the system.
19 Proposals submitted in response to this requirement may include the
20 following:

21 (A) Proposals to provide to the Federal Government the right
22 to use technical data to be provided under the contract for com-
23 petitive procurement of the item, together with the cost to the
24 Federal Government of acquiring the data and the right to use the
25 data.

26 (B) Proposals for the qualification or development of multiple
27 sources of supply for the item.

28 (c) CONSIDERATION OF FACTORS AS OBJECTIVES IN NEGOTIATIONS.—
29 If the head of an agency is making a noncompetitive award of a develop-
30 ment contract or a production contract for a major system, the factors spec-
31 ified in subsections (a) and (b) to be considered in evaluating an offer for
32 a contract may be considered as objectives in negotiating the contract to
33 be awarded.

34 **§ 3309. Design-build selection procedures**

35 (a) AUTHORIZATION.—Unless the traditional acquisition approach of de-
36 sign-bid-build established under sections 1101 to 1104 of title 40 or another
37 acquisition procedure authorized by law is used, the head of an executive
38 agency shall use the two-phase selection procedures authorized in this sec-
39 tion for entering into a contract for the design and construction of a public
40 building, facility, or work when a determination is made under subsection

41 (b) that the procedures are appropriate for use.

1 (b) CRITERIA FOR USE.—A contracting officer shall make a determina-
2 tion whether two-phase selection procedures are appropriate for use for en-
3 tering into a contract for the design and construction of a public building,
4 facility, or work when—

5 (1) the contracting officer anticipates that 3 or more offers will be
6 received for the contract;

7 (2) design work must be performed before an offeror can develop a
8 price or cost proposal for the contract;

9 (3) the offeror will incur a substantial amount of expense in pre-
10 paring the offer; and

11 (4) the contracting officer has considered information such as the
12 following:

13 (A) The extent to which the project requirements have been
14 adequately defined.

15 (B) The time constraints for delivery of the project.

16 (C) The capability and experience of potential contractors.

17 (D) The suitability of the project for use of the two-phase selec-
18 tion procedures.

19 (E) The capability of the agency to manage the two-phase selec-
20 tion process.

21 (F) Other criteria established by the agency.

22 (c) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of
23 the following:

24 (1) DEVELOPMENT OF SCOPE OF WORK STATEMENT.—The agency
25 develops, either in-house or by contract, a scope of work statement for
26 inclusion in the solicitation that defines the project and provides pro-
27 spective offerors with sufficient information regarding the Federal Govern-
28 ment's requirements (which may include criteria and preliminary de-
29 sign, budget parameters, and schedule or delivery requirements) to en-
30 able the offerors to submit proposals that meet the Federal Govern-
31 ment's needs. If the agency contracts for development of the scope of
32 work statement, the agency shall contract for architectural and engi-
33 neering services as defined by and in accordance with sections 1101 to
34 1104 of title 40.

35 (2) SOLICITATION OF PHASE-ONE PROPOSALS.—The contracting offi-
36 cer solicits phase-one proposals that—

37 (A) include information on the offeror's—

38 (i) technical approach; and

39 (ii) technical qualifications; and

40 (B) do not include—

41 (i) detailed design information; or

1 (ii) cost or price information.

2 (3) EVALUATION FACTORS.—The evaluation factors to be used in
3 evaluating phase-one proposals are stated in the solicitation and include
4 specialized experience and technical competence, capability to perform,
5 past performance of the offeror’s team (including the architect-engineer
6 and construction members of the team), and other appropriate factors,
7 except that cost-related or price-related evaluation factors are not per-
8 mitted. Each solicitation establishes the relative importance assigned to
9 the evaluation factors and subfactors that must be considered in the
10 evaluation of phase-one proposals. The agency evaluates phase-one pro-
11 posals on the basis of the phase-one evaluation factors set forth in the
12 solicitation.

13 (4) SELECTION BY CONTRACTING OFFICER.—

14 (A) NUMBER OF OFFERORS SELECTED AND WHAT IS TO BE
15 EVALUATED.—The contracting officer selects as the most highly
16 qualified the number of offerors specified in the solicitation to pro-
17 vide the property or services under the contract and requests the
18 selected offerors to submit phase-two competitive proposals that
19 include technical proposals and cost or price information. Each so-
20 licitation establishes with respect to phase two—

21 (i) the technical submission for the proposal, including de-
22 sign concepts or proposed solutions to requirements addressed
23 within the scope of work, or both; and

24 (ii) the evaluation factors and subfactors, including cost or
25 price, that must be considered in the evaluations of proposals
26 in accordance with subsections (b) to (d) of section 3306 of
27 this title.

28 (B) SEPARATE EVALUATIONS.—The contracting officer sepa-
29 rately evaluates the submissions described in clauses (i) and (ii)
30 of subparagraph (A).

31 (5) AWARDING OF CONTRACT.—The agency awards the contract in
32 accordance with chapter 37 of this title.

33 (d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED
34 FOR PHASE-TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation
35 issued pursuant to the procedures described in subsection (c) shall state the
36 maximum number of offerors that are to be selected to submit competitive
37 proposals pursuant to subsection (c)(4). The maximum number specified in
38 the solicitation shall not exceed 5 unless the agency determines with respect
39 to an individual solicitation that a specified number greater than 5 is in the
40 Federal Government’s interest and is consistent with the purposes and ob-
41 jectives of the two-phase selection process.

1 (e) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—The Federal Ac-
2 quisition Regulation shall include guidance—

3 (1) regarding the factors that may be considered in determining
4 whether the two-phase contracting procedures authorized by subsection

5 (a) are appropriate for use in individual contracting situations;

6 (2) regarding the factors that may be used in selecting contractors;
7 and

8 (3) providing for a uniform approach to be used Government-wide.

9 **§ 3310. Quantities to order**

10 (a) FACTORS AFFECTING QUANTITY TO ORDER.—Each executive agency
11 shall procure supplies in a quantity that—

12 (1) will result in the total cost and unit cost most advantageous to
13 the Federal Government, where practicable; and

14 (2) does not exceed the quantity reasonably expected to be required
15 by the agency.

16 (b) OFFEROR'S OPINION OF QUANTITY.—Each solicitation for a contract
17 for supplies shall, if practicable, include a provision inviting each offeror re-
18 sponding to the solicitation to state an opinion on whether the quantity of
19 supplies proposed to be procured is economically advantageous to the Fed-
20 eral Government and, if applicable, to recommend a quantity that would be
21 more economically advantageous to the Federal Government. Each rec-
22 ommendation shall include a quotation of the total price and the unit price
23 for supplies procured in each recommended quantity.

24 **§ 3311. Qualification requirement**

25 (a) DEFINITION.—In this section, the term “qualification requirement”
26 means a requirement for testing or other quality assurance demonstration
27 that must be completed by an offeror before award of a contract.

28 (b) ACTIONS BEFORE ENFORCING QUALIFICATION REQUIREMENT.—Ex-
29 cept as provided in subsection (c), the head of an agency, before enforcing
30 any qualification requirement, shall—

31 (1) prepare a written justification stating the necessity for estab-
32 lishing the qualification requirement and specify why the qualification
33 requirement must be demonstrated before contract award;

34 (2) specify in writing and make available to a potential offeror on
35 request all requirements that a prospective offeror, or its product, must
36 satisfy to become qualified, with those requirements to be limited to
37 those least restrictive to meet the purposes necessitating the establish-
38 ment of the qualification requirement;

39 (3) specify an estimate of the cost of testing and evaluation likely
40 to be incurred by a potential offeror to become qualified;

1 (4) ensure that a potential offeror is provided, on request, a prompt
 2 opportunity to demonstrate at its own expense (except as provided in
 3 subsection (d)) its ability to meet the standards specified for qualifica-
 4 tion using—

5 (A) qualified personnel and facilities—

6 (i) of the agency concerned;

7 (ii) of another agency obtained through interagency agree-
 8 ment; or

9 (iii) under contract; or

10 (B) other methods approved by the agency (including use of ap-
 11 proved testing and evaluation services not provided under contract
 12 to the agency);

13 (5) if testing and evaluation services are provided under contract to
 14 the agency for the purposes of paragraph (4), provide to the extent
 15 possible that those services be provided by a contractor that—

16 (A) is not expected to benefit from an absence of additional
 17 qualified sources; and

18 (B) is required in the contract to adhere to any restriction on
 19 technical data asserted by the potential offeror seeking qualifica-
 20 tion; and

21 (6) ensure that a potential offeror seeking qualification is promptly
 22 informed whether qualification is attained and, if not attained, is
 23 promptly furnished specific information about why qualification was
 24 not attained.

25 (e) APPLICABILITY, WAIVER AUTHORITY, AND REFERRAL OF OFFERS.—

26 (1) APPLICABILITY.—Subsection (b) does not apply to a qualification
 27 requirement established by statute prior to October 30, 1984.

28 (2) WAIVER AUTHORITY.—

29 (A) SUBMISSION OF DETERMINATION OF
 30 UNREASONABLENESS.—Except as provided in subparagraph (C), if
 31 it is unreasonable to specify the standards for qualification that
 32 a prospective offeror or its product must satisfy, a determination
 33 to that effect shall be submitted to the advocate for competition
 34 of the procuring activity responsible for the purchase of the item
 35 subject to the qualification requirement.

36 (B) AUTHORITY TO GRANT WAIVER.—After considering any
 37 comments of the advocate for competition reviewing the deter-
 38 mination, the head of the procuring activity may waive the re-
 39 quirements of paragraphs (2) to (5) of subsection (b) for up to
 40 2 years with respect to the item subject to the qualification re-
 41 quirement.

1 (C) NONAPPLICABILITY TO QUALIFIED PRODUCTS LIST.—Waiv-
2 er authority under this paragraph does not apply with respect to
3 a qualified products list.

4 (3) SUBMISSION AND CONSIDERATION OF OFFER NOT TO BE DE-
5 NIED.—A potential offeror may not be denied the opportunity to sub-
6 mit and have considered an offer for a contract solely because the po-
7 tential offeror has not been identified as meeting a qualification re-
8 quirement if the potential offeror can demonstrate to the satisfaction
9 of the contracting officer that the potential offeror or its product meets
10 the standards established for qualification or can meet those standards
11 before the date specified for award of the contract.

12 (4) REFERRAL TO SMALL BUSINESS ADMINISTRATION NOT RE-
13 QUIRED.—This subsection does not require the referral of an offer to
14 the Small Business Administration pursuant to section 8(b)(7) of the
15 Small Business Act (15 U.S.C. 637(b)(7)) if the basis for the referral
16 is a challenge by the offeror to either the validity of the qualification
17 requirement or the offeror's compliance with that requirement.

18 (5) DELAY OF PROCUREMENT NOT REQUIRED.—The head of an
19 agency need not delay a proposed procurement to comply with sub-
20 section (b) or to provide a potential offeror with an opportunity to dem-
21 onstrate its ability to meet the standards specified for qualification.

22 (d) FEWER THAN 2 ACTUAL MANUFACTURERS.—

23 (1) SOLICITATION AND TESTING OF ADDITIONAL SOURCES OR PROD-
24 UCTS.—If the number of qualified sources or qualified products avail-
25 able to compete actively for an anticipated future requirement is fewer
26 than 2 actual manufacturers or the products of 2 actual manufactur-
27 ers, respectively, the head of the agency concerned shall—

28 (A) publish notice periodically soliciting additional sources or
29 products to seek qualification, unless the contracting officer deter-
30 mines that doing so would compromise national security; and

31 (B) subject to paragraph (2), bear the cost of conducting the
32 specified testing and evaluation (excluding the cost associated with
33 producing the item or establishing the production, quality control,
34 or other system to be tested and evaluated) for a small business
35 concern or a product manufactured by a small business concern
36 that has met the standards specified for qualification and that
37 could reasonably be expected to compete for a contract for that
38 requirement.

39 (2) WHEN AGENCY MAY BEAR COST.—The head of the agency con-
40 cerned may bear the cost under paragraph (1)(B) only if the head of
41 the agency determines that the additional qualified sources or products

1 are likely to result in cost savings from increased competition for future
 2 requirements sufficient to offset (within a reasonable period of time
 3 considering the duration and dollar value of anticipated future require-
 4 ments) the cost incurred by the agency.

5 (3) CERTIFICATION REQUIRED.—The head of the agency shall re-
 6 quire a prospective contractor requesting the Federal Government to
 7 bear testing and evaluation costs under paragraph (1)(B) to certify its
 8 status as a small business concern under section 3 of the Small Busi-
 9 ness Act (15 U.S.C. 632).

10 (e) EXAMINATION AND REVALIDATION OF QUALIFICATION REQUIRE-
 11 MENT.—Within 7 years after the establishment of a qualification require-
 12 ment, the need for the requirement shall be examined and the standards of
 13 the requirement revalidated in accordance with the requirements of sub-
 14 section (b). This subsection does not apply in the case of a qualification re-
 15 quirement for which a waiver is in effect under subsection (c)(2).

16 (f) WHEN ENFORCEMENT OF QUALIFICATION REQUIREMENT NOT AL-
 17 LOWED.—Except in an emergency as determined by the head of the agency,
 18 after the head of the agency determines not to enforce a qualification re-
 19 quirement for a solicitation, the agency may not enforce the requirement un-
 20 less the agency complies with the requirements of subsection (b).

21 **CHAPTER 35—TRUTHFUL COST AND PRICING DATA**

Sec.

3501. General.

3502. Required cost or pricing data and certification.

3503. Exceptions.

3504. Cost or pricing data on below-threshold contracts.

3505. Submission of other information.

3506. Price reductions for defective cost or pricing data.

3507. Interest and penalties for certain overpayments.

3508. Right to examine contractor records.

3509. Notification of violations of Federal criminal law or overpayments.

22 **§ 3501. General**

23 (a) DEFINITIONS.—In this chapter:

24 (1) COMMERCIAL ITEM.—The term “commercial item” has the
 25 meaning provided the term by section 103 of this title.

26 (2) COST OR PRICING DATA.—The term “cost or pricing data”
 27 means all facts that, as of the date of agreement on the price of a con-
 28 tract (or the price of a contract modification) or, if applicable con-
 29 sistent with section 3506(a)(2) of this title, another date agreed upon
 30 between the parties, a prudent buyer or seller would reasonably expect
 31 to affect price negotiations significantly. The term does not include in-
 32 formation that is judgmental, but does include factual information from
 33 which a judgment was derived.

1 (3) SUBCONTRACT.—The term “subcontract” includes a transfer of
2 commercial items between divisions, subsidiaries, or affiliates of a con-
3 tractor or a subcontractor.

4 (b) REGULATIONS.—

5 (1) MINIMIZING ABUSE OF COMMERCIAL SERVICES ITEM AUTHOR-
6 ITY.—The Federal Acquisition Regulation shall ensure that services
7 that are not offered and sold competitively in substantial quantities in
8 the commercial marketplace, but are of a type offered and sold com-
9 petitively in substantial quantities in the commercial marketplace, may
10 be treated as commercial items for purposes of this chapter only if the
11 contracting officer determines in writing that the offeror has submitted
12 sufficient information to evaluate, through price analysis, the reason-
13 ableness of the price for the services.

14 (2) INFORMATION TO SUBMIT.—To the extent necessary to make a
15 determination under paragraph (1), the contracting officer may request
16 the offeror to submit—

17 (A) prices paid for the same or similar commercial items under
18 comparable terms and conditions by both government and com-
19 mercial customers; and

20 (B) if the contracting officer determines that the information
21 described in subparagraph (A) is not sufficient to determine the
22 reasonableness of price, other relevant information regarding the
23 basis for price or cost, including information on labor costs, mate-
24 rial costs, and overhead rates.

25 **§ 3502. Required cost or pricing data and certification**

26 (a) WHEN REQUIRED.—The head of an executive agency shall require
27 offerors, contractors, and subcontractors to make cost or pricing data avail-
28 able as follows:

29 (1) OFFEROR FOR PRIME CONTRACT.—An offeror for a prime con-
30 tract under this division to be entered into using procedures other than
31 sealed-bid procedures shall be required to submit cost or pricing data
32 before the award of a contract if—

33 (A) in the case of a prime contract entered into after October
34 13, 1994, the price of the contract to the Federal Government is
35 expected to exceed \$500,000; and

36 (B) in the case of a prime contract entered into on or before
37 October 13, 1994, the price of the contract to the Federal Govern-
38 ment is expected to exceed \$100,000.

39 (2) CONTRACTOR.—The contractor for a prime contract under this
40 division shall be required to submit cost or pricing data before the pric-
41 ing of a change or modification to the contract if—

1 (A) in the case of a change or modification made to a prime
2 contract referred to in paragraph (1)(A), the price adjustment is
3 expected to exceed \$500,000;

4 (B) in the case of a change or modification made to a prime
5 contract that was entered into on or before October 13, 1994, and
6 that has been modified pursuant to subsection (f), the price ad-
7 justment is expected to exceed \$500,000; and

8 (C) in the case of a change or modification not covered by sub-
9 paragraph (A) or (B), the price adjustment is expected to exceed
10 \$100,000.

11 (3) OFFEROR FOR SUBCONTRACT.—An offeror for a subcontract (at
12 any tier) of a contract under this division shall be required to submit
13 cost or pricing data before the award of the subcontract if the prime
14 contractor and each higher-tier subcontractor have been required to
15 make available cost or pricing data under this chapter and—

16 (A) in the case of a subcontract under a prime contract referred
17 to in paragraph (1)(A), the price of the subcontract is expected
18 to exceed \$500,000;

19 (B) in the case of a subcontract entered into under a prime con-
20 tract that was entered into on or before October 13, 1994, and
21 that has been modified pursuant to subsection (f), the price of the
22 subcontract is expected to exceed \$500,000; and

23 (C) in the case of a subcontract not covered by subparagraph
24 (A) or (B), the price of the subcontract is expected to exceed
25 \$100,000.

26 (4) SUBCONTRACTOR.—The subcontractor for a subcontract covered
27 by paragraph (3) shall be required to submit cost or pricing data before
28 the pricing of a change or modification to the subcontract if—

29 (A) in the case of a change or modification to a subcontract re-
30 ferred to in paragraph (3)(A) or (B), the price adjustment is ex-
31 pected to exceed \$500,000; and

32 (B) in the case of a change or modification to a subcontract re-
33 ferred to in paragraph (3)(C), the price adjustment is expected to
34 exceed \$100,000.

35 (b) CERTIFICATION.—A person required, as an offeror, contractor, or
36 subcontractor, to submit cost or pricing data under subsection (a) (or re-
37 quired by the head of the procuring activity concerned to submit the data
38 under section 3504 of this title) shall be required to certify that, to the best
39 of the person's knowledge and belief, the cost or pricing data submitted are
40 accurate, complete, and current.

1 (c) TO WHOM SUBMITTED.—Cost or pricing data required to be sub-
 2 mitted under subsection (a) (or under section 3504 of this title), and a cer-
 3 tification required to be submitted under subsection (b), shall be sub-
 4 mitted—

5 (1) in the case of a submission by a prime contractor (or an offeror
 6 for a prime contract), to the contracting officer for the contract (or a
 7 designated representative of the contracting officer); or

8 (2) in the case of a submission by a subcontractor (or an offeror for
 9 a subcontract), to the prime contractor.

10 (d) APPLICATION OF CHAPTER.—Except as provided under section 3503
 11 of this title, this chapter applies to contracts entered into by the head of
 12 an executive agency on behalf of a foreign government.

13 (e) SUBCONTRACTS NOT AFFECTED BY WAIVER.—A waiver of require-
 14 ments for submission of certified cost or pricing data that is granted under
 15 section 3503(a)(3) of this title in the case of a contract or subcontract does
 16 not waive the requirement under subsection (a)(3) of this section for sub-
 17 mission of cost or pricing data in the case of subcontracts under that con-
 18 tract or subcontract unless the head of the procuring activity granting the
 19 waiver determines that the requirement under subsection (a)(3) of this sec-
 20 tion should be waived in the case of those subcontracts and justifies in writ-
 21 ing the reason for the determination.

22 (f) MODIFICATIONS TO PRIOR CONTRACTS.—On the request of a con-
 23 tractor that was required to submit cost or pricing data under subsection
 24 (a) in connection with a prime contract entered into on or before October
 25 13, 1994, the head of the executive agency that entered into the contract
 26 shall modify the contract to reflect paragraphs (2)(B) and (3)(B) of sub-
 27 section (a). All those modifications shall be made without requiring consid-
 28 eration.

29 (g) ADJUSTMENT OF AMOUNTS.—Effective on October 1 of each year
 30 that is divisible by 5, each amount set forth in subsection (a) shall be ad-
 31 justed to the amount that is equal to the fiscal year 1994 constant dollar
 32 value of the amount set forth. Any amount, as so adjusted, that is not even-
 33 ly divisible by \$50,000 shall be rounded to the nearest multiple of \$50,000.
 34 In the case of an amount that is evenly divisible by \$25,000 but not evenly
 35 divisible by \$50,000, the amount shall be rounded to the next higher mul-
 36 tiple of \$50,000.

37 **§ 3503. Exceptions**

38 (a) IN GENERAL.—Submission of certified cost or pricing data shall not
 39 be required under section 3502 of this title in the case of a contract, a sub-
 40 contract, or a modification of a contract or subcontract—

41 (1) for which the price agreed on is based on—

- 1 (A) adequate price competition; or
 2 (B) prices set by law or regulation;
 3 (2) for the acquisition of a commercial item; or
 4 (3) in an exceptional case when the head of the procuring activity,
 5 without delegation, determines that the requirements of this chapter
 6 may be waived and justifies in writing the reasons for the determina-
 7 tion.

8 (b) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.—In the case of a modification of a contract or subcontract for
 9 a commercial item that is not covered by the exception to the submission
 10 of certified cost or pricing data in paragraph (1) or (2) of subsection (a),
 11 submission of certified cost or pricing data shall not be required under section
 12 3502 of this title if—

- 14 (1) the contract or subcontract being modified is a contract or subcontract for which submission of certified cost or pricing data may not
 15 be required by reason of paragraph (1) or (2) of subsection (a); and
 16 (2) the modification would not change the contract or subcontract
 17 from a contract or subcontract for the acquisition of a commercial item
 18 to a contract or subcontract for the acquisition of an item other than
 19 a commercial item.
 20

21 **§ 3504. Cost or pricing data on below-threshold contracts**

22 (a) AUTHORITY TO REQUIRE SUBMISSION.—Subject to subsection (b),
 23 when certified cost or pricing data are not required to be submitted by section
 24 3502 of this title for a contract, subcontract, or modification of a contract
 25 or subcontract, the data may nevertheless be required to be submitted
 26 by the head of the procuring activity, but only if the head of the procuring
 27 activity determines that the data are necessary for the evaluation by the
 28 agency of the reasonableness of the price of the contract, subcontract, or
 29 modification of a contract or subcontract. In any case in which the head
 30 of the procuring activity requires the data to be submitted under this section,
 31 the head of the procuring activity shall justify in writing the reason
 32 for the requirement.

33 (b) EXCEPTION.—The head of the procuring activity may not require certified cost or pricing data to be submitted under this section for any contract or subcontract, or modification of a contract or subcontract, covered
 34 by the exceptions in section 3503(a)(1) or (2) of this title.
 35

36 (c) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring
 37 activity may not delegate the functions under this section.
 38

39 **§ 3505. Submission of other information**

40 (a) AUTHORITY TO REQUIRE SUBMISSION.—When certified cost or pricing
 41 data are not required to be submitted under this chapter for a contract,

1 subcontract, or modification of a contract or subcontract, the contracting of-
 2 ficer shall require submission of data other than certified cost or pricing
 3 data to the extent necessary to determine the reasonableness of the price
 4 of the contract, subcontract, or modification of the contract or subcontract.
 5 Except in the case of a contract or subcontract covered by the exceptions
 6 in section 3503(a)(1) of this title, the contracting officer shall require that
 7 the data submitted include, at a minimum, appropriate information on the
 8 prices at which the same item or similar items have previously been sold
 9 that is adequate for evaluating the reasonableness of the price for the pro-
 10 curement.

11 (b) LIMITATIONS ON AUTHORITY.—The Federal Acquisition Regulation
 12 shall include the following provisions regarding the types of information that
 13 contracting officers may require under subsection (a):

14 (1) REASONABLE LIMITATIONS.—Reasonable limitations on requests
 15 for sales data relating to commercial items.

16 (2) LIMITATION ON SCOPE OF REQUEST.—A requirement that a con-
 17 tracting officer limit, to the maximum extent practicable, the scope of
 18 any request for information relating to commercial items from an offer-
 19 or to only that information that is in the form regularly maintained
 20 by the offeror in commercial operations.

21 (3) INFORMATION NOT TO BE DISCLOSED.—A statement that any in-
 22 formation received relating to commercial items that is exempt from
 23 disclosure under section 552(b) of title 5 shall not be disclosed by the
 24 Federal Government.

25 **§ 3506. Price reductions for defective cost or pricing data**

26 (a) PROVISION REQUIRING ADJUSTMENT.—

27 (1) IN GENERAL.—A prime contract (or change or modification to
 28 a prime contract) under which a certificate under section 3502(b) of
 29 this title is required shall contain a provision that the price of the con-
 30 tract to the Federal Government, including profit or fee, shall be ad-
 31 justed to exclude any significant amount by which it may be deter-
 32 mined by the head of the executive agency that the price was increased
 33 because the contractor (or any subcontractor required to make the cer-
 34 tificate available) submitted defective cost or pricing data.

35 (2) WHAT CONSTITUTES DEFECTIVE COST OR PRICING DATA.—For
 36 the purposes of this chapter, defective cost or pricing data are cost or
 37 pricing data that, as of the date of agreement on the price of the con-
 38 tract (or another date agreed on between the parties), were inaccurate,
 39 incomplete, or noncurrent. If for purposes of the preceding sentence the
 40 parties agree on a date other than the date of agreement on the price

1 of the contract, the date agreed on by the parties shall be as close to
2 the date of agreement on the price of the contract as is practicable.

3 (b) VALID DEFENSE.—In determining for purposes of a contract price
4 adjustment under a contract provision required by subsection (a) whether,
5 and to what extent, a contract price was increased because the contractor
6 (or a subcontractor) submitted defective cost or pricing data, it is a defense
7 that the Federal Government did not rely on the defective data submitted
8 by the contractor or subcontractor.

9 (c) INVALID DEFENSES.—It is not a defense to an adjustment of the
10 price of a contract under a contract provision required by subsection (a)
11 that—

12 (1) the price of the contract would not have been modified even if
13 accurate, complete, and current cost or pricing data had been sub-
14 mitted by the contractor or subcontractor because the contractor or
15 subcontractor—

16 (A) was the sole source of the property or services procured; or

17 (B) otherwise was in a superior bargaining position with respect
18 to the property or services procured;

19 (2) the contracting officer should have known that the cost or pricing
20 data in issue were defective even though the contractor or subcon-
21 tractor took no affirmative action to bring the character of the data
22 to the attention of the contracting officer;

23 (3) the contract was based on an agreement between the contractor
24 and the Federal Government about the total cost of the contract and
25 there was no agreement about the cost of each item procured under
26 the contract; or

27 (4) the prime contractor or subcontractor did not submit a certifi-
28 cation of cost or pricing data relating to the contract as required by
29 section 3502(b) of this title.

30 (d) OFFSETS.—

31 (1) WHEN ALLOWED.—A contractor shall be allowed to offset an
32 amount against the amount of a contract price adjustment under a
33 contract provision required by subsection (a) if—

34 (A) the contractor certifies to the contracting officer (or to a
35 designated representative of the contracting officer) that, to the
36 best of the contractor's knowledge and belief, the contractor is en-
37 titled to the offset; and

38 (B) the contractor proves that the cost or pricing data were
39 available before the date of agreement on the price of the contract
40 (or price of the modification), or, if applicable, consistent with
41 subsection (a)(2), another date agreed on by the parties, and that

1 the data were not submitted as specified in section 3502(c) of this
2 title before that date.

3 (2) WHEN NOT ALLOWED.—A contractor shall not be allowed to off-
4 set an amount otherwise authorized to be offset under paragraph (1)
5 if—

6 (A) the certification under section 3502(b) of this title with re-
7 spect to the cost or pricing data involved was known to be false
8 when signed; or

9 (B) the Federal Government proves that, had the cost or pricing
10 data referred to in paragraph (1)(B) been submitted to the Fed-
11 eral Government before date of agreement on the price of the con-
12 tract (or price of the modification), or, if applicable, under sub-
13 section (a)(2), another date agreed on by the parties, the submis-
14 sion of the cost or pricing data would not have resulted in an in-
15 crease in that price in the amount to be offset.

16 **§ 3507. Interest and penalties for certain overpayments**

17 (a) IN GENERAL.—If the Federal Government makes an overpayment to
18 a contractor under a contract with an executive agency subject to this chap-
19 ter and the overpayment was due to the submission by the contractor of
20 defective cost or pricing data, the contractor shall be liable to the Federal
21 Government—

22 (1) for interest on the amount of the overpayment, to be computed—

23 (A) for the period beginning on the date the overpayment was
24 made to the contractor and ending on the date the contractor re-
25 pays the amount of the overpayment to the Federal Government;
26 and

27 (B) at the current rate prescribed by the Secretary of the
28 Treasury under section 6621 of the Internal Revenue Code of
29 1986 (26 U.S.C. 6621); and

30 (2) if the submission of the defective data was a knowing submission,
31 for an additional amount equal to the amount of the overpayment.

32 (b) LIABILITY NOT AFFECTED BY REFUSAL TO SUBMIT CERTIFI-
33 CATION.—Any liability under this section of a contractor that submits cost
34 or pricing data but refuses to submit the certification required by section
35 3502(b) of this title with respect to the cost or pricing data is not affected
36 by the refusal to submit the certification.

37 **§ 3508. Right to examine contractor records**

38 For the purpose of evaluating the accuracy, completeness, and currency
39 of cost or pricing data required to be submitted by this chapter, an execu-
40 tive agency shall have the authority provided by section 4706(b)(2) of this
41 title.

1 **§ 3509. Notification of violations of Federal criminal law or**
 2 **overpayments**

3 (a) DEFINITION.—In this section, the term “covered contract” means any
 4 contract in an amount greater than \$5,000,000 and more than 120 days
 5 in duration.

6 (b) FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Reg-
 7 ulation shall include, pursuant to FAR Case 2007–006 (as published at 72
 8 Fed. Reg. 64019, November 14, 2007) or any follow-on FAR case, provi-
 9 sions that require timely notification by Federal contractors of violations of
 10 Federal criminal law or overpayments in connection with the award or per-
 11 formance of covered contracts or subcontracts, including those performed
 12 outside the United States and those for commercial items.

13 **CHAPTER 37—AWARDING OF CONTRACTS**

Sec.

- 3701. Basis of award and rejection.
- 3702. Sealed bids.
- 3703. Competitive proposals.
- 3704. Post-award debriefings.
- 3705. Pre-award debriefings.
- 3706. Encouragement of alternative dispute resolution.
- 3707. Antitrust violations.
- 3708. Protests.

14 **§ 3701. Basis of award and rejection**

15 (a) AWARD.—An executive agency shall evaluate sealed bids and competi-
 16 tive proposals, and award a contract, based solely on the factors specified
 17 in the solicitation.

18 (b) REJECTION.—All sealed bids or competitive proposals received in re-
 19 sponse to a solicitation may be rejected if the agency head determines that
 20 rejection is in the public interest.

21 **§ 3702. Sealed bids**

22 (a) OPENING OF BIDS.—Sealed bids shall be opened publicly at the time
 23 and place stated in the solicitation.

24 (b) CRITERIA FOR AWARDING CONTRACT.—The executive agency shall
 25 evaluate the bids in accordance with section 3701(a) of this title without
 26 discussions with the bidders and, except as provided in section 3701(b) of
 27 this title, shall award a contract with reasonable promptness to the respon-
 28 sible source whose bid conforms to the solicitation and is most advantageous
 29 to the Federal Government, considering only price and the other price-re-
 30 lated factors included in the solicitation.

31 (c) NOTICE OF AWARD.—The award of a contract shall be made by trans-
 32 mitting, in writing or by electronic means, notice of the award to the suc-
 33 cessful bidder. Within 3 days after the date of contract award, the executive
 34 agency shall notify, in writing or by electronic means, each bidder not
 35 awarded the contract that the contract has been awarded.

§ 3703. Competitive proposals

(a) EVALUATION AND AWARD.—An executive agency shall evaluate competitive proposals in accordance with section 3701(a) of this title and may award a contract—

(1) after discussions with the offerors, provided that written or oral discussions have been conducted with all responsible offerors who submit proposals within the competitive range; or

(2) based on the proposals received and without discussions with the offerors (other than discussions conducted for the purpose of minor clarification), if, as required by section 3306(b)(2)(B)(i) of this title, the solicitation included a statement that proposals are intended to be evaluated, and award made, without discussions unless discussions are determined to be necessary.

(b) LIMIT ON NUMBER OF PROPOSALS.—If the contracting officer determines that the number of offerors that would otherwise be included in the competitive range under subsection (a)(1) exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of proposals in the competitive range, in accordance with the criteria specified in the solicitation, to the greatest number that will permit an efficient competition among the offerors rated most highly in accordance with those criteria.

(c) CRITERIA FOR AWARDED CONTRACT.—Except as otherwise provided in section 3701(b) of this title, the executive agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the Federal Government, considering only cost or price and the other factors included in the solicitation.

(d) NOTICE OF AWARD.—The executive agency shall award the contract by transmitting, in writing or by electronic means, notice of the award to that source and, within 3 days after the date of contract award, shall notify, in writing or by electronic means, all other offerors of the rejection of their proposals.

§ 3704. Post-award debriefings

(a) REQUEST FOR DEBRIEFING.—When a contract is awarded by the head of an executive agency on the basis of competitive proposals, an unsuccessful offeror, on written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award.

(b) WHEN DEBRIEFING TO BE CONDUCTED.—The executive agency shall debrief the offeror within, to the maximum extent practicable, 5 days after receipt of the request by the executive agency.

1 (e) INFORMATION TO BE PROVIDED.—The debriefing shall include, at a
2 minimum—

3 (1) the executive agency’s evaluation of the significant weak or defi-
4 cient factors in the offeror’s offer;

5 (2) the overall evaluated cost and technical rating of the offer of the
6 contractor awarded the contract and the overall evaluated cost and
7 technical rating of the offer of the debriefed offeror;

8 (3) the overall ranking of all offers;

9 (4) a summary of the rationale for the award;

10 (5) in the case of a proposal that includes a commercial item that
11 is an end item under the contract, the make and model of the item
12 being provided in accordance with the offer of the contractor awarded
13 the contract; and

14 (6) reasonable responses to relevant questions posed by the debriefed
15 offeror as to whether source selection procedures set forth in the solici-
16 tation, applicable regulations, and other applicable authorities were fol-
17 lowed by the executive agency.

18 (d) INFORMATION NOT TO BE INCLUDED.—The debriefing may not in-
19 clude point-by-point comparisons of the debriefed offeror’s offer with other
20 offers and may not disclose any information that is exempt from disclosure
21 under section 552(b) of title 5.

22 (e) INCLUSION OF STATEMENT IN SOLICITATION.—Each solicitation for
23 competitive proposals shall include a statement that information described
24 in subsection (e) may be disclosed in post-award debriefings.

25 (f) AFTER SUCCESSFUL PROTEST.—If, within one year after the date of
26 the contract award and as a result of a successful procurement protest, the
27 executive agency seeks to fulfill the requirement under the protested con-
28 tract either on the basis of a new solicitation of offers or on the basis of
29 new best and final offers requested for that contract, the head of the execu-
30 tive agency shall make available to all offerors—

31 (1) the information provided in debriefings under this section regard-
32 ing the offer of the contractor awarded the contract; and

33 (2) the same information that would have been provided to the origi-
34 nal offerors.

35 (g) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall
36 include a summary of the debriefing in the contract file.

37 **§ 3705. Pre-award debriefings**

38 (a) REQUEST FOR DEBRIEFING.—When the contracting officer excludes
39 an offeror submitting a competitive proposal from the competitive range (or
40 otherwise excludes that offeror from further consideration prior to the final
41 source selection decision), the excluded offeror may request in writing, with-

1 in 3 days after the date on which the excluded offeror receives notice of its
2 exclusion, a debriefing prior to award.

3 (b) WHEN DEBRIEFING TO BE CONDUCTED.—The contracting officer
4 shall make every effort to debrief the unsuccessful offeror as soon as prac-
5 ticable but may refuse the request for a debriefing if it is not in the best
6 interests of the Federal Government to conduct a debriefing at that time.

7 (c) PRECONDITION FOR POST-AWARD DEBRIEFING.—The contracting of-
8 ficer is required to debrief an excluded offeror in accordance with section
9 3704 of this title only if that offeror requested and was refused a pre-award
10 debriefing under subsections (a) and (b).

11 (d) INFORMATION TO BE PROVIDED.—The debriefing conducted under
12 this section shall include—

13 (1) the executive agency’s evaluation of the significant elements in
14 the offeror’s offer;

15 (2) a summary of the rationale for the offeror’s exclusion; and

16 (3) reasonable responses to relevant questions posed by the debriefed
17 offeror as to whether source selection procedures set forth in the solici-
18 tation, applicable regulations, and other applicable authorities were fol-
19 lowed by the executive agency.

20 (e) INFORMATION NOT TO BE DISCLOSED.—The debriefing conducted
21 pursuant to this section may not disclose the number or identity of other
22 offerors and shall not disclose information about the content, ranking, or
23 evaluation of other offerors’ proposals.

24 (f) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall
25 include a summary of the debriefing in the contract file.

26 **§ 3706. Encouragement of alternative dispute resolution**

27 The Federal Acquisition Regulation shall include a provision encouraging
28 the use of alternative dispute resolution techniques to provide informal, ex-
29 peditious, and inexpensive procedures for an offeror to consider using before
30 filing a protest, prior to the award of a contract, of the exclusion of the
31 offeror from the competitive range (or otherwise from further consideration)
32 for that contract.

33 **§ 3707. Antitrust violations**

34 If the agency head considers that a bid or proposal evidences a violation
35 of the antitrust laws, the agency head shall refer the bid or proposal to the
36 Attorney General for appropriate action.

37 **§ 3708. Protests**

38 (a) PROTEST FILE.—

39 (1) ESTABLISHMENT AND ACCESS.—If, in the case of a solicitation
40 for a contract issued by, or an award or proposed award of a contract
41 by, the head of an executive agency, a protest is filed pursuant to the

1 procedures in subchapter V of chapter 35 of title 31, and an actual
 2 or prospective offeror requests, a file of the protest shall be established
 3 by the procuring activity and reasonable access shall be provided to ac-
 4 tual or prospective offerors.

5 (2) REDACTED INFORMATION.—Information exempt from disclosure
 6 under section 552 of title 5 may be redacted in a file established pursu-
 7 ant to paragraph (1) unless an applicable protective order provides oth-
 8 erwise.

9 (b) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest,
 10 the head of an executive agency determines that a solicitation, proposed
 11 award, or award does not comply with the requirements of law or regula-
 12 tion, the head of the executive agency may—

13 (1) take any action set out in subparagraphs (A) to (F) of subsection
 14 (b)(1) of section 3554 of title 31; and

15 (2) pay costs described in paragraph (1) of section 3554(c) of title
 16 31 within the limits referred to in paragraph (2) of section 3554(c).

17 **CHAPTER 39—SPECIFIC TYPES OF CONTRACTS**

Sec.

3901. Contracts awarded using procedures other than sealed-bid procedures.

3902. Severable services contracts for periods crossing fiscal years.

3903. Multiyear contracts.

3904. Contract authority for severable services contracts and multiyear contracts.

3905. Cost contracts.

3906. Cost-reimbursement contracts.

18 **§ 3901. Contracts awarded using procedures other than** 19 **sealed-bid procedures**

20 (a) AUTHORIZED TYPES.—Except as provided in section 3905 of this
 21 title, contracts awarded after using procedures other than sealed-bid proce-
 22 dures may be of any type which in the opinion of the agency head will pro-
 23 mote the best interests of the Federal Government.

24 (b) REQUIRED WARRANTY.—

25 (1) CONTENT.—Every contract awarded after using procedures other
 26 than sealed-bid procedures shall contain a suitable warranty, as deter-
 27 mined by the agency head, by the contractor that no person or selling
 28 agency has been employed or retained to solicit or secure the contract
 29 on an agreement or understanding for a commission, percentage, bro-
 30 kerage, or contingent fee, except for bona fide employees or bona fide
 31 established commercial or selling agencies the contractor maintains to
 32 secure business.

33 (2) REMEDY FOR BREACH OR VIOLATION.—For the breach or viola-
 34 tion of the warranty, the Federal Government may annul the contract
 35 without liability or deduct from the contract price or consideration the
 36 full amount of the commission, percentage, brokerage, or contingent
 37 fee.

1 (3) NONAPPLICATION.—Paragraph (1) does not apply to a contract
2 for an amount that is not greater than the simplified acquisition
3 threshold or to a contract for the acquisition of commercial items.

4 **§ 3902. Severable services contracts for periods crossing fis-**
5 **cal years**

6 (a) AUTHORITY TO ENTER INTO CONTRACT.—The head of an executive
7 agency may enter into a contract for the procurement of severable services
8 for a period that begins in one fiscal year and ends in the next fiscal year
9 if (without regard to any option to extend the period of the contract) the
10 contract period does not exceed one year.

11 (b) OBLIGATION OF FUNDS.—Funds made available for a fiscal year may
12 be obligated for the total amount of a contract entered into under the au-
13 thority of this section.

14 **§ 3903. Multiyear contracts**

15 (a) DEFINITION.—In this section, a multiyear contract is a contract for
16 the purchase of property or services for more than one, but not more than
17 5, program years.

18 (b) AUTHORITY TO ENTER INTO CONTRACT.—An executive agency may
19 enter into a multiyear contract for the acquisition of property or services
20 if—

21 (1) funds are available and obligated for the contract, for the full
22 period of the contract or for the first fiscal year in which the contract
23 is in effect, and for the estimated costs associated with a necessary ter-
24 mination of the contract; and

25 (2) the executive agency determines that—

26 (A) the need for the property or services is reasonably firm and
27 continuing over the period of the contract; and

28 (B) a multiyear contract will serve the best interests of the Fed-
29 eral Government by encouraging full and open competition or pro-
30 moting economy in administration, performance, and operation of
31 the agency's programs.

32 (c) TERMINATION CLAUSE.—A multiyear contract entered into under the
33 authority of this section shall include a clause that provides that the con-
34 tract shall be terminated if funds are not made available for the continu-
35 ation of the contract in a fiscal year covered by the contract. Funds avail-
36 able for paying termination costs shall remain available for that purpose
37 until the costs associated with termination of the contract are paid.

38 (d) CANCELLATION CEILING NOTICE.—Before a contract described in
39 subsection (b) that contains a clause setting forth a cancellation ceiling in
40 excess of \$10,000,000 may be awarded, the executive agency shall give writ-
41 ten notification of the proposed contract and of the proposed cancellation

1 ceiling for that contract to Congress. The contract may not be awarded until
2 the end of the 30-day period beginning on the date of the notification.

3 (e) CONTINGENCY CLAUSE FOR APPROPRIATION OF FUNDS.—A
4 multiyear contract may provide that performance under the contract after
5 the first year of the contract is contingent on the appropriation of funds
6 and (if the contract does so provide) that a cancellation payment shall be
7 made to the contractor if the funds are not appropriated.

8 (f) OTHER LAW NOT AFFECTED.—This section does not modify or affect
9 any other provision of law that authorizes multiyear contracts.

10 **§ 3904. Contract authority for severable services contracts**
11 **and multiyear contracts**

12 (a) COMPTROLLER GENERAL.—The Comptroller General may use avail-
13 able funds to enter into contracts for the procurement of severable services
14 for a period that begins in one fiscal year and ends in the next fiscal year
15 and to enter into multiyear contracts for the acquisition of property and
16 nonaudit-related services to the same extent as executive agencies under sec-
17 tions 3902 and 3903 of this title.

18 (b) LIBRARY OF CONGRESS.—The Library of Congress may use available
19 funds to enter into contracts for the lease or procurement of severable serv-
20 ices for a period that begins in one fiscal year and ends in the next fiscal
21 year and to enter into multiyear contracts for the acquisition of property
22 and services pursuant to sections 3902 and 3903 of this title.

23 (c) CHIEF ADMINISTRATIVE OFFICER OF THE HOUSE OF REPRESENTA-
24 TIVES.—The Chief Administrative Officer of the House of Representatives
25 may enter into—

26 (1) contracts for the procurement of severable services for a period
27 that begins in one fiscal year and ends in the next fiscal year to the
28 same extent as the head of an executive agency under the authority of
29 section 3902 of this title; and

30 (2) multiyear contracts for the acquisitions of property and
31 nonaudit-related services to the same extent as executive agencies
32 under the authority of section 3903 of this title.

33 (d) CONGRESSIONAL BUDGET OFFICE.—The Congressional Budget Office
34 may use available funds to enter into contracts for the procurement of sev-
35 erable services for a period that begins in one fiscal year and ends in the
36 next fiscal year and may enter into multiyear contracts for the acquisition
37 of property and services to the same extent as executive agencies under the
38 authority of sections 3902 and 3903 of this title.

39 (e) SECRETARY AND SERGEANT AT ARMS AND DOORKEEPER OF THE
40 SENATE.—Subject to regulations prescribed by the Committee on Rules and

1 Administration of the Senate, the Secretary and the Sergeant at Arms and
2 Doorkeeper of the Senate may enter into—

3 (1) contracts for the procurement of severable services for a period
4 that begins in one fiscal year and ends in the next fiscal year to the
5 same extent and under the same conditions as the head of an executive
6 agency under the authority of section 3902 of this title; and

7 (2) multiyear contracts for the acquisition of property and services
8 to the same extent and under the same conditions as executive agencies
9 under the authority of section 3903 of this title.

10 (f) CAPITOL POLICE.—The United States Capitol Police may enter into—

11 (1) contracts for the procurement of severable services for a period
12 that begins in one fiscal year and ends in the next fiscal year to the
13 same extent as the head of an executive agency under the authority of
14 section 3902 of this title; and

15 (2) multiyear contracts for the acquisitions of property and
16 nonaudit-related services to the same extent as executive agencies
17 under the authority of section 3903 of this title.

18 (g) ARCHITECT OF THE CAPITOL.—The Architect of the Capitol may
19 enter into—

20 (1) contracts for the procurement of severable services for a period
21 that begins in one fiscal year and ends in the next fiscal year to the
22 same extent as the head of an executive agency under the authority of
23 section 3902 of this title; and

24 (2) multiyear contracts for the acquisitions of property and
25 nonaudit-related services to the same extent as executive agencies
26 under the authority of section 3903 of this title.

27 (h) SECRETARY OF THE SMITHSONIAN INSTITUTION.—The Secretary of
28 the Smithsonian Institution may enter into—

29 (1) contracts for the procurement of severable services for a period
30 that begins in one fiscal year and ends in the next fiscal year under
31 the authority of section 3902 of this title; and

32 (2) multiyear contracts for the acquisition of property and services
33 under the authority of section 3903 of this title.

34 **§ 3905. Cost contracts**

35 (a) COST-PLUS-A-PERCENTAGE-OF-COST CONTRACTS DISALLOWED.—
36 The cost-plus-a-percentage-of-cost system of contracting shall not be used.

37 (b) COST-PLUS-A-FIXED-FEE CONTRACTS.—

38 (1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the
39 fee in a cost-plus-a-fixed-fee contract shall not exceed 10 percent of the
40 estimated cost of the contract, not including the fee, as determined by
41 the agency head at the time of entering into the contract.

1 (2) EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.—The
2 fee in a cost-plus-a-fixed-fee contract for experimental, developmental,
3 or research work shall not exceed 15 percent of the estimated cost of
4 the contract, not including the fee.

5 (3) ARCHITECTURAL OR ENGINEERING SERVICES.—The fee in a
6 cost-plus-a-fixed-fee contract for architectural or engineering services
7 relating to any public works or utility project may include the contrac-
8 tor’s costs and shall not exceed 6 percent of the estimated cost, not
9 including the fee, as determined by the agency head at the time of en-
10 tering into the contract, of the project to which the fee applies.

11 (c) NOTIFICATION.—All cost and cost-plus-a-fixed-fee contracts shall pro-
12 vide for advance notification by the contractor to the procuring agency of
13 any subcontract on a cost-plus-a-fixed-fee basis and of any fixed-price sub-
14 contract or purchase order which exceeds in dollar amount either the sim-
15 plified acquisition threshold or 5 percent of the total estimated cost of the
16 prime contract.

17 (d) RIGHT TO AUDIT.—A procuring agency, through any authorized rep-
18 resentative thereof, has the right to inspect the plans and to audit the books
19 and records of a prime contractor or subcontractor engaged in the perform-
20 ance of a cost or cost-plus-a-fixed-fee contract.

21 **§ 3906. Cost-reimbursement contracts**

22 (a) DEFINITION.—In this section, the term “executive agency” has the
23 same meaning given in section 133 of this title.

24 (b) REGULATIONS ON THE USE OF COST-REIMBURSEMENT CON-
25 TRACTS.—The Federal Acquisition Regulation shall address the use of cost-
26 reimbursement contracts.

27 (c) CONTENT.—The regulations promulgated under subsection (b) shall
28 include guidance regarding—

29 (1) when and under what circumstances cost-reimbursement con-
30 tracts are appropriate;

31 (2) the acquisition plan findings necessary to support a decision to
32 use cost-reimbursement contracts; and

33 (3) the acquisition workforce resources necessary to award and man-
34 age cost-reimbursement contracts.

35 (d) ANNUAL REPORT.—

36 (1) IN GENERAL.—The Director of the Office of Management and
37 Budget shall submit an annual report to Congressional committees
38 identified in subsection (e) on the use of cost-reimbursement contracts
39 and task or delivery orders by all executive agencies.

40 (2) CONTENTS.—The report shall include—

1 (A) the total number and value of contracts awarded and orders
2 issued during the covered fiscal year;

3 (B) the total number and value of cost-reimbursement contracts
4 awarded and orders issued during the covered fiscal year; and

5 (C) an assessment of the effectiveness of the regulations pro-
6 mulgated pursuant to subsection (b) in ensuring the appropriate
7 use of cost-reimbursement contracts.

8 (3) TIME REQUIREMENTS.—

9 (A) DEADLINE.—The report shall be submitted no later than
10 March 1 and shall cover the fiscal year ending September 30 of
11 the prior year.

12 (B) LIMITATION.—The report shall be submitted from March 1,
13 2009, until March 1, 2014.

14 (e) CONGRESSIONAL COMMITTEES.—The report required by subsection
15 (d) shall be submitted to—

16 (1) the Committee on Oversight and Government Reform of the
17 House of Representatives;

18 (2) the Committee on Homeland Security and Governmental Affairs
19 of the Senate;

20 (3) the Committees on Appropriations of the House of Representa-
21 tives and the Senate; and

22 (4) in the case of the Department of Defense and the Department
23 of Energy, the Committees on Armed Services of the Senate and the
24 House of Representatives.

25 **CHAPTER 41—TASK AND DELIVERY ORDER CONTRACTS**

Sec.

4101. Definitions.

4102. Authorities or responsibilities not affected.

4103. General authority.

4104. Guidance on use of task and delivery order contracts.

4105. Advisory and assistance services.

4106. Orders.

26 **§ 4101. Definitions**

27 In this chapter:

28 (1) DELIVERY ORDER CONTRACT.—The term “delivery order con-
29 tract” means a contract for property that—

30 (A) does not procure or specify a firm quantity of property
31 (other than a minimum or maximum quantity); and

32 (B) provides for the issuance of orders for the delivery of prop-
33 erty during the period of the contract.

34 (2) TASK ORDER CONTRACT.—The term “task order contract”
35 means a contract for services that—

36 (A) does not procure or specify a firm quantity of services
37 (other than a minimum or maximum quantity); and

1 (B) provides for the issuance of orders for the performance of
2 tasks during the period of the contract.

3 **§ 4102. Authorities or responsibilities not affected**

4 This chapter does not modify or supersede, and is not intended to impair
5 or restrict, authorities or responsibilities under sections 1101 to 1104 of
6 title 40.

7 **§ 4103. General authority**

8 (a) AUTHORITY TO AWARD.—Subject to the requirements of this section,
9 section 4106 of this title, and other applicable law, the head of an executive
10 agency may enter into a task or delivery order contract for procurement of
11 services or property.

12 (b) SOLICITATION.—The solicitation for a task or delivery order contract
13 shall include—

14 (1) the period of the contract, including the number of options to
15 extend the contract and the period for which the contract may be ex-
16 tended under each option;

17 (2) the maximum quantity or dollar value of the services or property
18 to be procured under the contract; and

19 (3) a statement of work, specifications, or other description that rea-
20 sonably describes the general scope, nature, complexity, and purposes
21 of the services or property to be procured under the contract.

22 (c) APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE PRO-
23 CEDURES.—The head of an executive agency may use procedures other than
24 competitive procedures to enter into a task or delivery order contract under
25 this section only if an exception in section 3304(a) of this title applies to
26 the contract and the use of those procedures is approved in accordance with
27 section 3304(e) of this title.

28 (d) SINGLE AND MULTIPLE CONTRACT AWARDS.—

29 (1) EXERCISE OF AUTHORITY.—The head of an executive agency
30 may exercise the authority provided in this section—

31 (A) to award a single task or delivery order contract; or

32 (B) if the solicitation states that the head of the executive agen-
33 cy has the option to do so, to award separate task or delivery
34 order contracts for the same or similar services or property to 2
35 or more sources.

36 (2) DETERMINATION NOT REQUIRED.—No determination under sec-
37 tion 3303 of this title is required for an award of multiple task or de-
38 livery order contracts under paragraph (1)(B).

39 (3) SINGLE SOURCE AWARD FOR TASK OR DELIVERY ORDER CON-
40 TRACTS EXCEEDING \$100,000,000.—

1 (A) WHEN SINGLE AWARDS ARE ALLOWED.—No task or deliv-
 2 ery order contract in an amount estimated to exceed \$100,000,000
 3 (including all options) may be awarded to a single source unless
 4 the head of the executive agency determines in writing that—

5 (i) the task or delivery orders expected under the contract
 6 are so integrally related that only a single source can reason-
 7 ably perform the work;

8 (ii) the contract provides only for firm, fixed price task or-
 9 ders or delivery orders for—

10 (I) products for which unit prices are established in
 11 the contract; or

12 (II) services for which prices are established in the
 13 contract for the specific tasks to be performed;

14 (iii) only one source is qualified and capable of performing
 15 the work at a reasonable price to the Federal Government; or

16 (iv) because of exceptional circumstances, it is necessary in
 17 the public interest to award the contract to a single source.

18 (B) NOTIFICATION OF CONGRESS.—The head of the executive
 19 agency shall notify Congress within 30 days after any determina-
 20 tion under subparagraph (A)(iv).

21 (4) REGULATIONS.—Regulations implementing this subsection shall
 22 establish—

23 (A) a preference for awarding, to the maximum extent prac-
 24 ticable, multiple task or delivery order contracts for the same or
 25 similar services or property under paragraph (1)(B); and

26 (B) criteria for determining when award of multiple task or de-
 27 livery order contracts would not be in the best interest of the Fed-
 28 eral Government.

29 (e) CONTRACT MODIFICATIONS.—A task or delivery order may not in-
 30 crease the scope, period, or maximum value of the task or delivery order
 31 contract under which the order is issued. The scope, period, or maximum
 32 value of the contract may be increased only by modification of the contract.

33 (f) INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE
 34 SERVICES.—Except as otherwise specifically provided in section 4105 of this
 35 title, this section does not apply to a task or delivery order contract for the
 36 acquisition of advisory and assistance services (as defined in section 1105(g)
 37 of title 31).

38 (g) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in
 39 this section may be construed to limit or expand any authority of the head
 40 of an executive agency or the Administrator of General Services to enter

1 into schedule, multiple award, or task or delivery order contracts under any
2 other provision of law.

3 **§ 4104. Guidance on use of task and delivery order contracts**

4 (a) GUIDANCE IN FEDERAL ACQUISITION REGULATION.—The Federal
5 Acquisition Regulation issued in accordance with sections 1121(b) and
6 1303(a)(1) of this title shall provide guidance to agencies on the appropriate
7 use of task and delivery order contracts in accordance with this chapter and
8 sections 2304a to 2304d of title 10.

9 (b) CONTENT OF REGULATIONS.—The regulations issued pursuant to
10 subsection (a) at a minimum shall provide specific guidance on—

11 (1) the appropriate use of Government-wide and other multiagency
12 contracts entered into in accordance with this chapter and sections
13 2304a to 2304d of title 10; and

14 (2) steps that agencies should take in entering into and admin-
15 istering multiple award task and delivery order contracts to ensure
16 compliance with the requirement in—

17 (A) section 11312 of title 40 for capital planning and invest-
18 ment control in purchases of information technology products and
19 services;

20 (B) section 4106(e) of this title and section 2304e(b) of title 10
21 to ensure that all contractors are afforded a fair opportunity to
22 be considered for the award of task and delivery orders; and

23 (C) section 4106(e) of this title and section 2304e(c) of title 10
24 for a statement of work in each task or delivery order issued that
25 clearly specifies all tasks to be performed or property to be deliv-
26 ered under the order.

27 (c) FEDERAL SUPPLY SCHEDULES PROGRAM.—The Administrator for
28 Federal Procurement Policy shall consult with the Administrator of General
29 Services to assess the effectiveness of the multiple awards schedule program
30 of the General Services Administration referred to in section 152(3) of this
31 title that is administered as the Federal Supply Schedules program. The as-
32 sessment shall include examination of—

33 (1) the administration of the program by the Administrator of Gen-
34 eral Services; and

35 (2) the ordering and program practices followed by Federal customer
36 agencies in using schedules established under the program.

37 **§ 4105. Advisory and assistance services**

38 (a) DEFINITION.—In this section, the term “advisory and assistance serv-
39 ices” has the same meaning given that term in section 1105(g) of title 31.

40 (b) AUTHORITY TO AWARD.—

1 (1) IN GENERAL.—Subject to the requirements of this section, sec-
2 tion 4106 of this title, and other applicable law, the head of an execu-
3 tive agency may enter into a task order contract for procurement of
4 advisory and assistance services.

5 (2) ONLY UNDER THIS SECTION.—The head of an executive agency
6 may enter into a task order contract for advisory and assistance serv-
7 ices only under this section.

8 (c) CONTRACT PERIOD.—

9 (1) CONTRACT NOT TO EXCEED 5 YEARS.—The period of a task
10 order contract entered into under this section, including all periods of
11 extensions of the contract under options, modifications, or otherwise,
12 may not exceed 5 years unless a longer period is specifically authorized
13 in a law that is applicable to the contract.

14 (2) WAIVER AUTHORITY TO EXTEND CONTRACT.—

15 (A) WHEN WAIVER MAY BE ISSUED.—The head of an executive
16 agency may issue a waiver to extend a task order contract entered
17 into under this section for a period not exceeding 10 years,
18 through 5 one-year options, if the head of the agency determines
19 in writing—

20 (i) that the contract provides engineering or technical serv-
21 ices of such a unique and substantial technical nature that
22 award of a new contract would be harmful to the continuity
23 of the program for which the services are performed;

24 (ii) that award of a new contract would create a large dis-
25 ruption in services provided to the executive agency; and

26 (iii) that the executive agency would, through award of a
27 new contract, endure program risk during critical program
28 stages due to loss of program corporate knowledge of ongoing
29 program activities.

30 (B) DELEGATION.—The authority of the head of an executive
31 agency under subparagraph (A) may be delegated only to the
32 Chief Acquisition Officer of the agency (or the senior procurement
33 executive in the case of an agency for which a Chief Acquisition
34 Officer has not been appointed or designated under section
35 1702(a) of this title).

36 (C) REPORT.—Not later than April 1, 2007, the Administrator
37 shall submit to the Committee on Homeland Security and Govern-
38 mental Affairs of the Senate and the Committee on Oversight and
39 Government Reform of the House of Representatives a report on
40 advisory and assistance services. The report shall include the fol-
41 lowing information:

1 (i) The methods used by executive agencies to identify a
2 contract as an advisory and assistance services contract, as
3 defined in subsection (a).

4 (ii) The number of advisory and assistance services con-
5 tracts awarded by each executive agency during the 5-year
6 period preceding October 17, 2006.

7 (iii) The average annual expenditures by each executive
8 agency for advisory and assistance services contracts.

9 (iv) The average length of advisory and assistance services
10 contracts.

11 (v) The number of advisory and assistance services con-
12 tracts recompleted and awarded to the previous award winner.

13 (D) PROHIBITION ON USE OF AUTHORITY BY EXECUTIVE AGEN-
14 CIES IF REPORT NOT SUBMITTED.—The head of an executive
15 agency may not issue a waiver under subparagraph (A) if the re-
16 port required by subparagraph (C) is not submitted by April 1,
17 2007.

18 (E) TERMINATION OF AUTHORITY.—A waiver may not be issued
19 under this paragraph after December 31, 2011.

20 (d) CONTENT OF NOTICE.—The notice required by section 1708 of this
21 title and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall
22 reasonably and fairly describe the general scope, magnitude, and duration
23 of the proposed task order contract in a manner that would reasonably en-
24 able a potential offeror to decide whether to request the solicitation and con-
25 sider submitting an offer.

26 (e) REQUIRED CONTENT OF SOLICITATION AND CONTRACT.—

27 (1) SOLICITATION.—The solicitation shall include the information
28 (regarding services) described in section 4103(b) of this title.

29 (2) CONTRACT.—A task order contract entered into under this sec-
30 tion shall contain the same information that is required by paragraph
31 (1) to be included in the solicitation of offers for that contract.

32 (f) MULTIPLE AWARDS.—

33 (1) AUTHORITY TO MAKE MULTIPLE AWARDS.—On the basis of one
34 solicitation, the head of an executive agency may award separate task
35 order contracts under this section for the same or similar services to
36 2 or more sources if the solicitation states that the head of the execu-
37 tive agency has the option to do so.

38 (2) CONTENT OF SOLICITATION.—In the case of a task order con-
39 tract for advisory and assistance services to be entered into under this
40 section, if the contract period is to exceed 3 years and the contract

1 amount is estimated to exceed \$10,000,000 (including all options), the
2 solicitation shall—

3 (A) provide for a multiple award authorized under paragraph
4 (1); and

5 (B) include a statement that the head of the executive agency
6 may also elect to award only one task order contract if the head
7 of the executive agency determines in writing that only one of the
8 offerors is capable of providing the services required at the level
9 of quality required.

10 (3) NONAPPLICATION.—Paragraph (2) does not apply in the case of
11 a solicitation for which the head of the executive agency concerned de-
12 termines in writing that, because the services required under the con-
13 tract are unique or highly specialized, it is not practicable to award
14 more than one contract.

15 (g) CONTRACT MODIFICATIONS.—

16 (1) INCREASE IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT
17 ONLY BY MODIFICATION OF CONTRACT.—A task order may not in-
18 crease the scope, period, or maximum value of the task order contract
19 under which the order is issued. The scope, period, or maximum value
20 of the contract may be increased only by modification of the contract.

21 (2) USE OF COMPETITIVE PROCEDURES.—Unless use of procedures
22 other than competitive procedures is authorized by an exception in sec-
23 tion 3304(a) of this title and approved in accordance with section
24 3304(e) of this title, competitive procedures shall be used for making
25 such a modification.

26 (3) NOTICE.—Notice regarding the modification shall be provided in
27 accordance with section 1708 of this title and section 8(e) of the Small
28 Business Act (15 U.S.C. 637(e)).

29 (h) CONTRACT EXTENSIONS.—

30 (1) WHEN CONTRACT MAY BE EXTENDED.—Notwithstanding the
31 limitation on the contract period set forth in subsection (c) or in a so-
32 licitation or contract pursuant to subsection (f), a contract entered into
33 by the head of an executive agency under this section may be extended
34 on a sole-source basis for a period not exceeding 6 months if the head
35 of the executive agency determines that—

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

39 (B) the extension is necessary to ensure continuity of the receipt
40 of services pending the award of, and commencement of perform-
41 ance under, the follow-on contract.

1 (2) LIMIT OF ONE EXTENSION.—A task order contract may be ex-
2 tended under paragraph (1) only once and only in accordance with the
3 limitations and requirements of this subsection.

4 (i) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not
5 apply to a contract for the acquisition of property or services that includes
6 acquisition of advisory and assistance services if the head of the executive
7 agency entering into the contract determines that, under the contract, advi-
8 sory and assistance services are necessarily incident to, and not a significant
9 component of, the contract.

10 **§ 4106. Orders**

11 (a) APPLICATION.—This section applies to task and delivery order con-
12 tracts entered into under sections 4103 and 4105 of this title.

13 (b) ACTIONS NOT REQUIRED FOR ISSUANCE OF ORDERS.—The following
14 actions are not required for issuance of a task or delivery order under a
15 task or delivery order contract:

16 (1) A separate notice for the order under section 1708 of this title
17 or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

18 (2) Except as provided in subsection (c), a competition (or a waiver
19 of competition approved in accordance with section 3304(e) of this
20 title) that is separate from that used for entering into the contract.

21 (c) MULTIPLE AWARD CONTRACTS.—When multiple contracts are award-
22 ed under section 4103(d)(1)(B) or 4105(f) of this title, all contractors
23 awarded the contracts shall be provided a fair opportunity to be considered,
24 pursuant to procedures set forth in the contracts, for each task or delivery
25 order in excess of \$2,500 that is to be issued under any of the contracts,
26 unless—

27 (1) the executive agency’s need for the services or property ordered
28 is of such unusual urgency that providing the opportunity to all of
29 those contractors would result in unacceptable delays in fulfilling that
30 need;

31 (2) only one of those contractors is capable of providing the services
32 or property required at the level of quality required because the services
33 or property ordered are unique or highly specialized;

34 (3) the task or delivery order should be issued on a sole-source basis
35 in the interest of economy and efficiency because it is a logical follow-
36 on to a task or delivery order already issued on a competitive basis;
37 or

38 (4) it is necessary to place the order with a particular contractor to
39 satisfy a minimum guarantee.

40 (d) ENHANCED COMPETITION FOR ORDERS IN EXCESS OF \$5,000,000.—
41 In the case of a task or delivery order in excess of \$5,000,000, the require-

1 ment to provide all contractors a fair opportunity to be considered under
2 subsection (e) is not met unless all such contractors are provided, at a min-
3 imum—

4 (1) a notice of the task or delivery order that includes a clear state-
5 ment of the executive agency's requirements;

6 (2) a reasonable period of time to provide a proposal in response to
7 the notice;

8 (3) disclosure of the significant factors and subfactors, including cost
9 or price, that the executive agency expects to consider in evaluating
10 such proposals, and their relative importance;

11 (4) in the case of an award that is to be made on a best value basis,
12 a written statement documenting—

13 (A) the basis for the award; and

14 (B) the relative importance of quality and price or cost factors;

15 and

16 (5) an opportunity for a post-award debriefing consistent with the
17 requirements of section 3704 of this title.

18 (e) STATEMENT OF WORK.—A task or delivery order shall include a
19 statement of work that clearly specifies all tasks to be performed or prop-
20 erty to be delivered under the order.

21 (f) PROTESTS.—

22 (1) PROTEST NOT AUTHORIZED.—A protest is not authorized in con-
23 nection with the issuance or proposed issuance of a task or delivery
24 order except for—

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

28 (B) a protest of an order valued in excess of \$10,000,000.

29 (2) JURISDICTION OVER PROTESTS.—Notwithstanding section 3556
30 of title 31, the Comptroller General shall have exclusive jurisdiction of
31 a protest authorized under paragraph (1)(B).

32 (3) EFFECTIVE PERIOD.—This subsection shall be in effect for three
33 years, beginning on the date that is 120 days after January 28, 2008.

34 (g) TASK AND DELIVERY ORDER OMBUDSMAN.—

35 (1) APPOINTMENT OR DESIGNATION AND RESPONSIBILITIES.—The
36 head of each executive agency who awards multiple task or delivery
37 order contracts under section 4103(d)(1)(B) or 4105(f) of this title
38 shall appoint or designate a task and delivery order ombudsman who
39 shall be responsible for reviewing complaints from the contractors on
40 those contracts and ensuring that all of the contractors are afforded

1 a fair opportunity to be considered for task or delivery orders when re-
2 quired under subsection (c).

3 (2) WHO IS ELIGIBLE.—The task and delivery order ombudsman
4 shall be a senior agency official who is independent of the contracting
5 officer for the contracts and may be the executive agency’s advocate
6 for competition.

7 **CHAPTER 43—ALLOWABLE COSTS**

Sec.

- 4301. Definitions.
- 4302. Adjustment of threshold amount of covered contract.
- 4303. Effect of submission of unallowable costs.
- 4304. Specific costs not allowable.
- 4305. Required regulations.
- 4306. Applicability of regulations to subcontractors.
- 4307. Contractor certification.
- 4308. Penalties for submission of cost known to be unallowable.
- 4309. Burden of proof on contractor.
- 4310. Proceeding costs not allowable.

8 **§ 4301. Definitions**

9 In this chapter:

10 (1) COMPENSATION.—The term “compensation”, for a fiscal year,
11 means the total amount of wages, salary, bonuses, and deferred com-
12 pensation for the fiscal year, whether paid, earned, or otherwise accru-
13 ing, as recorded in an employer’s cost accounting records for the fiscal
14 year.

15 (2) COVERED CONTRACT.—The term “covered contract” means a
16 contract for an amount in excess of \$500,000 that is entered into by
17 an executive agency, except that the term does not include a fixed-price
18 contract without cost incentives or any firm fixed-price contract for the
19 purchase of commercial items.

20 (3) FISCAL YEAR.—The term “fiscal year” means a fiscal year estab-
21 lished by a contractor for accounting purposes.

22 (4) SENIOR EXECUTIVE.—The term “senior executive”, with respect
23 to a contractor, means the 5 most highly compensated employees in
24 management positions at each home office and each segment of the
25 contractor.

26 **§ 4302. Adjustment of threshold amount of covered contract**

27 Effective on October 1 of each year that is divisible by 5, the amount
28 set forth in section 4301(2) of this title shall be adjusted to the equivalent
29 amount in constant fiscal year 1994 dollars. An adjusted amount that is
30 not evenly divisible by \$50,000 shall be rounded to the nearest multiple of
31 \$50,000. If an amount is evenly divisible by \$25,000 but is not evenly divis-
32 ible by \$50,000, the amount shall be rounded to the next higher multiple
33 of \$50,000.

1 **§ 4303. Effect of submission of unallowable costs**

2 (a) INDIRECT COST THAT VIOLATES FEDERAL ACQUISITION REGULA-
3 TION COST PRINCIPLE.—An executive agency shall require that a covered
4 contract provide that if the contractor submits to the executive agency a
5 proposal for settlement of indirect costs incurred by the contractor for any
6 period after those costs have been accrued and if that proposal includes the
7 submission of a cost that is unallowable because the cost violates a cost
8 principle in the Federal Acquisition Regulation or an executive agency sup-
9 plement to the Federal Acquisition Regulation, the cost shall be disallowed.

10 (b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—

11 (1) UNALLOWABLE COST IN PROPOSAL.—If the executive agency de-
12 termines that a cost submitted by a contractor in its proposal for set-
13 tlement is expressly unallowable under a cost principle referred to in
14 subsection (a) that defines the allowability of specific selected costs, the
15 executive agency shall assess a penalty against the contractor in an
16 amount equal to—

17 (A) the amount of the disallowed cost allocated to covered con-
18 tracts for which a proposal for settlement of indirect costs has
19 been submitted; plus

20 (B) interest (to be computed based on provisions in the Federal
21 Acquisition Regulation) to compensate the Federal Government
22 for the use of the amount which a contractor has been paid in ex-
23 cess of the amount to which the contractor was entitled.

24 (2) COST DETERMINED TO BE UNALLOWABLE BEFORE PROPOSAL
25 SUBMITTED.—If the executive agency determines that a proposal for
26 settlement of indirect costs submitted by a contractor includes a cost
27 determined to be unallowable in the case of that contractor before the
28 submission of that proposal, the executive agency shall assess a penalty
29 against the contractor in an amount equal to 2 times the amount of
30 the disallowed cost allocated to covered contracts for which a proposal
31 for settlement of indirect costs has been submitted.

32 (c) WAIVER OF PENALTY.—The Federal Acquisition Regulation shall pro-
33 vide for a penalty under subsection (b) to be waived in the case of a con-
34 tractor’s proposal for settlement of indirect costs when—

35 (1) the contractor withdraws the proposal before the formal initiation
36 of an audit of the proposal by the Federal Government and resubmits
37 a revised proposal;

38 (2) the amount of unallowable costs subject to the penalty is insig-
39 nificant; or

40 (3) the contractor demonstrates, to the contracting officer’s satisfac-
41 tion, that—

1 (A) it has established appropriate policies and personnel train-
 2 ing and an internal control and review system that provide assur-
 3 ances that unallowable costs subject to penalties are precluded
 4 from being included in the contractor's proposal for settlement of
 5 indirect costs; and

6 (B) the unallowable costs subject to the penalty were inadvert-
 7 ently incorporated into the proposal.

8 (d) APPLICABILITY OF CONTRACT DISPUTES PROCEDURE.—An action of
 9 an executive agency under subsection (a) or (b)—

10 (1) shall be considered a final decision for the purposes of section
 11 7103 of this title; and

12 (2) is appealable in the manner provided in section 7104(a) of this
 13 title.

14 **§ 4304. Specific costs not allowable**

15 (a) SPECIFIC COSTS.—The following costs are not allowable under a cov-
 16 ered contract:

17 (1) Costs of entertainment, including amusement, diversion, and so-
 18 cial activities, and any costs directly associated with those costs (such
 19 as tickets to shows or sports events, meals, lodging, rentals, transpor-
 20 tation, and gratuities).

21 (2) Costs incurred to influence (directly or indirectly) legislative ac-
 22 tion on any matter pending before Congress, a State legislature, or a
 23 legislative body of a political subdivision of a State.

24 (3) Costs incurred in defense of any civil or criminal fraud pro-
 25 ceeding or similar proceeding (including filing of any false certification)
 26 brought by the Federal Government where the contractor is found lia-
 27 ble or had pleaded nolo contendere to a charge of fraud or similar pro-
 28 ceeding (including filing of a false certification).

29 (4) Payments of fines and penalties resulting from violations of, or
 30 failure to comply with, Federal, State, local, or foreign laws and regula-
 31 tions, except when incurred as a result of compliance with specific
 32 terms and conditions of the contract or specific written instructions
 33 from the contracting officer authorizing in advance those payments in
 34 accordance with applicable provisions of the Federal Acquisition Regu-
 35 lation.

36 (5) Costs of membership in any social, dining, or country club or or-
 37 ganization.

38 (6) Costs of alcoholic beverages.

39 (7) Contributions or donations, regardless of the recipient.

40 (8) Costs of advertising designed to promote the contractor or its
 41 products.

1 (9) Costs of promotional items and memorabilia, including models,
2 gifts, and souvenirs.

3 (10) Costs for travel by commercial aircraft that exceed the amount
4 of the standard commercial fare.

5 (11) Costs incurred in making any payment (commonly known as a
6 “golden parachute payment”) that is—

7 (A) in an amount in excess of the normal severance pay paid
8 by the contractor to an employee on termination of employment;
9 and

10 (B) paid to the employee contingent on, and following, a change
11 in management control over, or ownership of, the contractor or a
12 substantial portion of the contractor’s assets.

13 (12) Costs of commercial insurance that protects against the costs
14 of the contractor for correction of the contractor’s own defects in mate-
15 rials or workmanship.

16 (13) Costs of severance pay paid by the contractor to foreign nation-
17 als employed by the contractor under a service contract performed out-
18 side the United States, to the extent that the amount of severance pay
19 paid in any case exceeds the amount paid in the industry involved
20 under the customary or prevailing practice for firms in that industry
21 providing similar services in the United States, as determined under
22 the Federal Acquisition Regulation.

23 (14) Costs of severance pay paid by the contractor to a foreign na-
24 tional employed by the contractor under a service contract performed
25 in a foreign country if the termination of the employment of the foreign
26 national is the result of the closing of, or the curtailment of activities
27 at, a Federal Government facility in that country at the request of the
28 government of that country.

29 (15) Costs incurred by a contractor in connection with any criminal,
30 civil, or administrative proceeding commenced by the Federal Govern-
31 ment or a State, to the extent provided in section 4310 of this title.

32 (16) Costs of compensation of senior executives of contractors for a
33 fiscal year, regardless of the contract funding source, to the extent that
34 the compensation exceeds the benchmark compensation amount deter-
35 mined applicable for the fiscal year by the Administrator under section
36 1127 of this title.

37 (b) WAIVER OF SEVERANCE PAY RESTRICTIONS FOR FOREIGN NATION-
38 ALS.—

39 (1) EXECUTIVE AGENCY DETERMINATION.—Pursuant to the Federal
40 Acquisition Regulation and subject to the availability of appropriations,
41 an executive agency, in awarding a covered contract, may waive the ap-

1 plication of paragraphs (13) and (14) of subsection (a) to that contract
2 if the executive agency determines that—

3 (A) the application of those provisions to that contract would
4 adversely affect the continuation of a program, project, or activity
5 that provides significant support services for employees of the ex-
6 ecutive agency posted outside the United States;

7 (B) the contractor has taken (or has established plans to take)
8 appropriate actions within the contractor's control to minimize the
9 amount and number of incidents of the payment of severance pay
10 by the contractor to employees under the contract who are foreign
11 nationals; and

12 (C) the payment of severance pay is necessary to comply with
13 a law that is generally applicable to a significant number of busi-
14 nesses in the country in which the foreign national receiving the
15 payment performed services under the contract or is necessary to
16 comply with a collective bargaining agreement.

17 (2) SOLICITATION TO INCLUDE STATEMENT ABOUT WAIVER.—An ex-
18 ecutive agency shall include in the solicitation for a covered contract
19 a statement indicating—

20 (A) that a waiver has been granted under paragraph (1) for the
21 contract; or

22 (B) whether the executive agency will consider granting a waiver
23 and, if the executive agency will consider granting a waiver, the
24 criteria to be used in granting the waiver.

25 (3) DETERMINATION TO BE MADE BEFORE CONTRACT AWARDED.—
26 An executive agency shall make the final determination whether to
27 grant a waiver under paragraph (1) with respect to a covered contract
28 before award of the contract.

29 (c) ESTABLISHMENT OF DEFINITIONS, EXCLUSIONS, LIMITATIONS, AND
30 QUALIFICATIONS.—The provisions of the Federal Acquisition Regulation
31 implementing this chapter may establish appropriate definitions, exclusions,
32 limitations, and qualifications. A submission by a contractor of costs that
33 are incurred by the contractor and that are claimed to be allowable under
34 Department of Energy management and operating contracts shall be consid-
35 ered a proposal for settlement of indirect costs incurred by the contractor
36 for any period after those costs have been accrued.

37 **§ 4305. Required regulations**

38 (a) IN GENERAL.—The Federal Acquisition Regulation shall contain pro-
39 visions on the allowability of contractor costs. Those provisions shall define
40 in detail and in specific terms the costs that are unallowable, in whole or
41 in part, under covered contracts.

1 (b) SPECIFIC ITEMS.—The regulations shall, at a minimum, clarify the
2 cost principles applicable to contractor costs of the following:

3 (1) Air shows.

4 (2) Membership in civic, community, and professional organizations.

5 (3) Recruitment.

6 (4) Employee morale and welfare.

7 (5) Actions to influence (directly or indirectly) executive branch ac-
8 tion on regulatory and contract matters (other than costs incurred in
9 regard to contract proposals pursuant to solicited or unsolicited bids).

10 (6) Community relations.

11 (7) Dining facilities.

12 (8) Professional and consulting services, including legal services.

13 (9) Compensation.

14 (10) Selling and marketing.

15 (11) Travel.

16 (12) Public relations.

17 (13) Hotel and meal expenses.

18 (14) Expense of corporate aircraft.

19 (15) Company-furnished automobiles.

20 (16) Advertising.

21 (17) Conventions.

22 (c) ADDITIONAL REQUIREMENTS.—

23 (1) WHEN QUESTIONED COSTS MAY BE RESOLVED.—The Federal
24 Acquisition Regulation shall require that a contracting officer not re-
25 solve any questioned costs until the contracting officer has obtained—

26 (A) adequate documentation of those costs; and

27 (B) the opinion of the contract auditor on the allowability of
28 those costs.

29 (2) PRESENCE OF CONTRACT AUDITOR.—The Federal Acquisition
30 Regulation shall provide that, to the maximum extent practicable, a
31 contract auditor be present at any negotiation or meeting with the con-
32 tractor regarding a determination of the allowability of indirect costs
33 of the contractor.

34 (3) SETTLEMENT TO REFLECT AMOUNT OF INDIVIDUAL QUES-
35 TIONED COSTS.—The Federal Acquisition Regulation shall require that
36 all categories of costs designated in the report of a contract auditor as
37 questioned with respect to a proposal for settlement be resolved in a
38 manner so that the amount of the individual questioned costs that are
39 paid will be reflected in the settlement.

1 **§ 4306. Applicability of regulations to subcontractors**

2 The regulations referred to in sections 4304 and 4305(a) and (b) of this
3 title shall require prime contractors of a covered contract, to the maximum
4 extent practicable, to apply the provisions of those regulations to all sub-
5 contractors of the covered contract.

6 **§ 4307. Contractor certification**

7 (a) CONTENT AND FORM.—A proposal for settlement of indirect costs ap-
8 plicable to a covered contract shall include a certification by an official of
9 the contractor that, to the best of the certifying official’s knowledge and be-
10 lief, all indirect costs included in the proposal are allowable. The certifi-
11 cation shall be in a form prescribed in the Federal Acquisition Regulation.

12 (b) WAIVER.—An executive agency may, in an exceptional case, waive the
13 requirement for certification under subsection (a) in the case of a contract
14 if the agency—

15 (1) determines that it would be in the interest of the Federal Gov-
16 ernment to waive the certification; and

17 (2) states in writing the reasons for the determination and makes
18 the determination available to the public.

19 **§ 4308. Penalties for submission of cost known to be unal-**
20 **lowable**

21 The submission to an executive agency of a proposal for settlement of
22 costs for any period after those costs have been accrued that includes a cost
23 that is expressly specified by statute or regulation as being unallowable,
24 with the knowledge that the cost is unallowable, is subject to section 287
25 of title 18 and section 3729 of title 31.

26 **§ 4309. Burden of proof on contractor**

27 In a proceeding before a board of contract appeals, the United States
28 Court of Federal Claims, or any other Federal court in which the reason-
29 ableness of indirect costs for which a contractor seeks reimbursement from
30 the Federal Government is in issue, the burden of proof is on the contractor
31 to establish that those costs are reasonable.

32 **§ 4310. Proceeding costs not allowable**

33 (a) DEFINITIONS.—In this section:

34 (1) COSTS.—The term “costs”, with respect to a proceeding, means
35 all costs incurred by a contractor, whether before or after the com-
36 mencement of the proceeding, including—

37 (A) administrative and clerical expenses;

38 (B) the cost of legal services, including legal services performed
39 by an employee of the contractor;

40 (C) the cost of the services of accountants and consultants re-
41 tained by the contractor; and

1 (D) the pay of directors, officers, and employees of the con-
2 tractor for time devoted by those directors, officers, and employees
3 to the proceeding.

4 (2) PENALTY.—The term “penalty” does not include restitution, re-
5 imbursement, or compensatory damages.

6 (3) PROCEEDING.—The term “proceeding” includes an investigation.

7 (b) IN GENERAL.—Except as otherwise provided in this section, costs in-
8 curred by a contractor in connection with a criminal, civil, or administrative
9 proceeding commenced by the Federal Government or a State are not allow-
10 able as reimbursable costs under a covered contract if the proceeding—

11 (1) relates to a violation of, or failure to comply with, a Federal or
12 State statute or regulation; and

13 (2) results in a disposition described in subsection (c).

14 (c) COVERED DISPOSITIONS.—A disposition referred to in subsection
15 (b)(2) is any of the following:

16 (1) In a criminal proceeding, a conviction (including a conviction
17 pursuant to a plea of nolo contendere) by reason of the violation or
18 failure referred to in subsection (b).

19 (2) In a civil or administrative proceeding involving an allegation of
20 fraud or similar misconduct, a determination of contractor liability on
21 the basis of the violation or failure referred to in subsection (b).

22 (3) In any civil or administrative proceeding, the imposition of a
23 monetary penalty by reason of the violation or failure referred to in
24 subsection (b).

25 (4) A final decision to do any of the following, by reason of the viola-
26 tion or failure referred to in subsection (b):

27 (A) Debar or suspend the contractor.

28 (B) Rescind or void the contract.

29 (C) Terminate the contract for default.

30 (5) A disposition of the proceeding by consent or compromise if the
31 disposition could have resulted in a disposition described in paragraph
32 (1), (2), (3), or (4).

33 (d) COSTS ALLOWED BY SETTLEMENT AGREEMENT IN PROCEEDING
34 COMMENCED BY FEDERAL GOVERNMENT.—In the case of a proceeding re-
35 ferred to in subsection (b) that is commenced by the Federal Government
36 and is resolved by consent or compromise pursuant to an agreement entered
37 into by a contractor and the Federal Government, the costs incurred by the
38 contractor in connection with the proceeding that are otherwise not allow-
39 able as reimbursable costs under subsection (b) may be allowed to the extent
40 specifically provided in that agreement.

1 (e) COSTS SPECIFICALLY AUTHORIZED BY EXECUTIVE AGENCY IN PRO-
 2 CEEDING COMMENCED BY STATE.—In the case of a proceeding referred to
 3 in subsection (b) that is commenced by a State, the executive agency that
 4 awarded the covered contract involved in the proceeding may allow the costs
 5 incurred by the contractor in connection with the proceeding as reimburs-
 6 able costs if the executive agency determines, in accordance with the Fed-
 7 eral Acquisition Regulation, that the costs were incurred as a result of—

- 8 (1) a specific term or condition of the contract; or
- 9 (2) specific written instructions of the executive agency.

10 (f) OTHER ALLOWABLE COSTS.—

11 (1) IN GENERAL.—Except as provided in paragraph (3), costs in-
 12 curred by a contractor in connection with a criminal, civil, or adminis-
 13 trative proceeding commenced by the Federal Government or a State
 14 in connection with a covered contract may be allowed as reimbursable
 15 costs under the contract if the costs are not disallowable under sub-
 16 section (b), but only to the extent provided in paragraph (2).

17 (2) AMOUNT OF ALLOWABLE COSTS.—

18 (A) MAXIMUM AMOUNT ALLOWED.—The amount of the costs al-
 19 lowable under paragraph (1) in any case may not exceed the
 20 amount equal to 80 percent of the amount of the costs incurred,
 21 to the extent that the costs are determined to be otherwise allow-
 22 able and allocable under the Federal Acquisition Regulation.

23 (B) CONTENT OF REGULATIONS.—Regulations issued for the
 24 purpose of subparagraph (A) shall provide for appropriate consid-
 25 eration of the complexity of procurement litigation, generally ac-
 26 cepted principles governing the award of legal fees in civil actions
 27 involving the Federal Government as a party, and other factors as
 28 may be appropriate.

29 (3) WHEN OTHERWISE ALLOWABLE COSTS ARE NOT ALLOWABLE.—
 30 In the case of a proceeding referred to in paragraph (1), contractor
 31 costs otherwise allowable as reimbursable costs under this subsection
 32 are not allowable if—

33 (A) the proceeding involves the same contractor misconduct al-
 34 leged as the basis of another criminal, civil, or administrative pro-
 35 ceeding; and

36 (B) the costs of the other proceeding are not allowable under
 37 subsection (b).

38 CHAPTER 45—CONTRACT FINANCING

Sec.

4501. Authority of executive agency.

4502. Payment.

4503. Security for advance payments.

4504. Conditions for progress payments.

4505. Payments for commercial items.

4506. Action in case of fraud.

1 **§ 4501. Authority of executive agency**

2 An executive agency may—

3 (1) make advance, partial, progress or other payments under con-
4 tracts for property or services made by the agency; and

5 (2) insert in solicitations for procurement of property or services a
6 provision limiting to small business concerns advance or progress pay-
7 ments.

8 **§ 4502. Payment**

9 (a) BASIS FOR PAYMENT.—When practicable, payments under section
10 4501 of this title shall be made on any of the following bases:

11 (1) Performance measured by objective, quantifiable methods such as
12 delivery of acceptable items, work measurement, or statistical process
13 controls.

14 (2) Accomplishment of events defined in the program management
15 plan.

16 (3) Other quantifiable measures of results.

17 (b) PAYMENT AMOUNT.—Payments made under section 4501 of this title
18 may not exceed the unpaid contract price.

19 **§ 4503. Security for advance payments**

20 Advance payments under section 4501 of this title may be made only on
21 adequate security and a determination by the agency head that to do so
22 would be in the public interest. The security may be in the form of a lien
23 in favor of the Federal Government on the property contracted for, on the
24 balance in an account in which the payments are deposited, and on such
25 of the property acquired for performance of the contract as the parties may
26 agree. This lien shall be paramount to all other liens and is effective imme-
27 diately upon the first advancement of funds without filing, notice, or any
28 other action by the Federal Government.

29 **§ 4504. Conditions for progress payments**

30 (a) PAYMENT COMMENSURATE WITH WORK.—The executive agency shall
31 ensure that a payment for work in progress (including materials, labor, and
32 other items) under a contract of an executive agency that provides for those
33 payments is commensurate with the work accomplished that meets stand-
34 ards established under the contract. The contractor shall provide informa-
35 tion and evidence the executive agency determines is necessary to permit the
36 executive agency to carry out this subsection.

37 (b) LIMITATION.—The executive agency shall ensure that progress pay-
38 ments referred to in subsection (a) are not made for more than 80 percent
39 of the work accomplished under the contract as long as the executive agency
40 has not made the contractual terms, specifications, and price definite.

1 (c) APPLICATION.—This section applies to a contract in an amount great-
2 er than \$25,000.

3 **§ 4505. Payments for commercial items**

4 (a) TERMS AND CONDITIONS FOR PAYMENTS.—Payments under section
5 4501 of this title for commercial items may be made under terms and condi-
6 tions that the head of the executive agency determines are appropriate or
7 customary in the commercial marketplace and are in the best interests of
8 the Federal Government.

9 (b) SECURITY FOR PAYMENTS.—The head of the executive agency shall
10 obtain adequate security for the payments. If the security is in the form
11 of a lien in favor of the Federal Government, the lien is paramount to all
12 other liens and is effective immediately on the first payment, without filing,
13 notice, or other action by the Federal Government.

14 (c) LIMITATION ON ADVANCE PAYMENTS.—Advance payments made
15 under section 4501 of this title for commercial items may include payments,
16 in a total amount not more than 15 percent of the contract price, in ad-
17 vance of any performance of work under the contract.

18 (d) NONAPPLICATION OF CERTAIN CONDITIONS.—The conditions of sec-
19 tions 4503 and 4504 of this title need not be applied if they would be incon-
20 sistent, as determined by the head of the executive agency, with commercial
21 terms and conditions pursuant to this section.

22 **§ 4506. Action in case of fraud**

23 (a) DEFINITION.—In this section, the term “remedy coordination offi-
24 cial”, with respect to an executive agency, means the individual or entity
25 in that executive agency who coordinates within that executive agency the
26 administration of criminal, civil, administrative, and contractual remedies
27 resulting from investigations of fraud or corruption related to procurement
28 activities.

29 (b) RECOMMENDATION TO REDUCE OR SUSPEND PAYMENTS.—In any
30 case in which the remedy coordination official of an executive agency finds
31 that there is substantial evidence that the request of a contractor for ad-
32 vance, partial, or progress payment under a contract awarded by that execu-
33 tive agency is based on fraud, the remedy coordination official shall rec-
34 ommend that the executive agency reduce or suspend further payments to
35 that contractor.

36 (c) REDUCTION OR SUSPENSION OF PAYMENTS.—The head of an execu-
37 tive agency receiving a recommendation under subsection (b) in the case of
38 a contractor’s request for payment under a contract shall determine whether
39 there is substantial evidence that the request is based on fraud. On making
40 an affirmative determination, the head of the executive agency may reduce
41 or suspend further payments to the contractor under the contract.

1 (d) EXTENT OF REDUCTION OR SUSPENSION.—The extent of any reduc-
 2 tion or suspension of payments by an executive agency under subsection (c)
 3 on the basis of fraud shall be reasonably commensurate with the anticipated
 4 loss to the Federal Government resulting from the fraud.

5 (e) WRITTEN JUSTIFICATION.—A written justification for each decision
 6 of the head of an executive agency whether to reduce or suspend payments
 7 under subsection (c), and for each recommendation received by the executive
 8 agency in connection with the decision, shall be prepared and be retained
 9 in the files of the executive agency.

10 (f) NOTICE.—The head of each executive agency shall prescribe proce-
 11 dures to ensure that, before the head of the executive agency decides to re-
 12 duce or suspend payments in the case of a contractor under subsection (c),
 13 the contractor is afforded notice of the proposed reduction or suspension
 14 and an opportunity to submit matters to the executive agency in response
 15 to the proposed reduction or suspension.

16 (g) REVIEW.—Not later than 180 days after the date on which the head
 17 of an executive agency reduces or suspends payments to a contractor under
 18 subsection (c), the remedy coordination official of the executive agency
 19 shall—

20 (1) review the determination of fraud on which the reduction or sus-
 21 pension is based; and

22 (2) transmit a recommendation to the head of the executive agency
 23 whether the suspension or reduction should continue.

24 (h) REPORT.—The head of each executive agency who receives rec-
 25 ommendations made by the remedy coordination official of the executive
 26 agency to reduce or suspend payments under subsection (c) during a fiscal
 27 year shall prepare for that year a report that contains the recommendations,
 28 the actions taken on the recommendations and the reasons for those actions,
 29 and an assessment of the effects of those actions on the Federal Govern-
 30 ment. The report shall be available to any Member of Congress on request.

31 (i) RESTRICTION ON DELEGATION.—The head of an executive agency
 32 may not delegate responsibilities under this section to an individual in a po-
 33 sition below level IV of the Executive Schedule.

34 **CHAPTER 47—MISCELLANEOUS**

Sec.

- 4701. Determinations and decisions.
- 4702. Prohibition on release of contractor proposals.
- 4703. Validation of proprietary data restrictions.
- 4704. Prohibition of contractors limiting subcontractor sales directly to Federal Government.
- 4705. Protection of contractor employees from reprisal for disclosure of certain information.
- 4706. Examination of facilities and records of contractor.
- 4707. Remission of liquidated damages.
- 4708. Payment of reimbursable indirect costs in cost-type research and development contracts with educational institutions.
- 4709. Implementation of electronic commerce capability.

4710. Limitations on tiering of subcontractors.

4711. Linking of award and incentive fees to acquisition outcomes.

1 **§ 4701. Determinations and decisions**

2 (a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHOR-
3 IZED.—

4 (1) IN GENERAL.—Determinations and decisions required to be made
5 under this division by the head of an executive agency or provided in
6 this division or chapters 1 to 11 of title 40 to be made by the Adminis-
7 trator of General Services or other agency head may be made for an
8 individual purchase or contract or, except for determinations or deci-
9 sions made under sections 3105, 3301, 3303 to 3305, 3306(a)–(e), and
10 3308, chapter 37, and section 4702 of this title or to the extent ex-
11 pressly prohibited by another law, for a class of purchases or contracts.

12 (2) DELEGATION.—Except as provided in section 3304(a)(7) of this
13 title, and except as provided in section 121(d)(1) and (2) of title 40
14 with respect to the Administrator of General Services, the agency head,
15 in the discretion and subject to the direction of the agency head, may
16 delegate powers provided by this division or chapters 1 to 11 of title
17 40, including the making of determinations and decisions described in
18 paragraph (1), to other officers or officials of the agency.

19 (3) FINALITY.—The determinations and decisions are final.

20 (b) WRITTEN FINDINGS.—

21 (1) BASIS FOR CERTAIN DETERMINATIONS.—Each determination or
22 decision under section 3901, 3905, 4503, or 4706(d)(2)(B) of this title
23 shall be based on a written finding by the individual making the deter-
24 mination or decision. A finding under section 4503 or 4706(d)(2)(B)
25 shall set out facts and circumstances that support the determination
26 or decision.

27 (2) FINALITY.—Each finding referred to in paragraph (1) is final.

28 (3) MAINTAINING COPIES OF FINDINGS.—The head of an executive
29 agency shall maintain for a period of not less than 6 years a copy of
30 each finding referred to in paragraph (1) that is made by an individual
31 in that executive agency. The period begins on the date of the deter-
32 mination or decision to which the finding relates.

33 **§ 4702. Prohibition on release of contractor proposals**

34 (a) DEFINITION.—In this section, the term “proposal” means a proposal,
35 including a technical, management, or cost proposal, submitted by a con-
36 tractor in response to the requirements of a solicitation for a competitive
37 proposal.

38 (b) PROHIBITION.—A proposal in the possession or control of an execu-
39 tive agency may not be made available to any person under section 552 of
40 title 5.

1 (c) NONAPPLICATION.—Subsection (b) does not apply to a proposal that
2 is set forth or incorporated by reference in a contract entered into between
3 the agency and the contractor that submitted the proposal.

4 **§ 4703. Validation of proprietary data restrictions**

5 (a) CONTRACT THAT PROVIDES FOR DELIVERY OF TECHNICAL DATA.—
6 A contract for property or services entered into by an executive agency that
7 provides for the delivery of technical data shall provide that—

8 (1) a contractor or subcontractor at any tier shall be prepared to
9 furnish to the contracting officer a written justification for any restric-
10 tion the contractor or subcontractor asserts on the right of the Federal
11 Government to use the data; and

12 (2) the contracting officer may review the validity of a restriction the
13 contractor or subcontractor asserts under the contract on the right of
14 the Federal Government to use technical data furnished to the Federal
15 Government under the contract if the contracting officer determines
16 that reasonable grounds exist to question the current validity of the as-
17 serted restriction and that the continued adherence to the asserted re-
18 striction by the Federal Government would make it impracticable to
19 procure the item competitively at a later time.

20 (b) CHALLENGE OF RESTRICTION.—If after a review the contracting offi-
21 cer determines that a challenge to the asserted restriction is warranted, the
22 contracting officer shall provide written notice to the contractor or subcon-
23 tractor asserting the restriction. The notice shall state—

24 (1) the grounds for challenging the asserted restriction; and

25 (2) the requirement for a response within 60 days justifying the cur-
26 rent validity of the asserted restriction.

27 (c) ADDITIONAL TIME FOR RESPONSES.—If a contractor or subcontractor
28 asserting a restriction subject to this section submits to the contracting offi-
29 cer a written request showing the need for additional time to comply with
30 the requirement to justify the current validity of the asserted restriction, the
31 contracting officer shall provide appropriate additional time to adequately
32 permit the justification to be submitted.

33 (d) MULTIPLE CHALLENGES.—If a party asserting a restriction receives
34 notices of challenges to restrictions on technical data from more than one
35 contracting officer, and notifies each contracting officer of the existence of
36 more than one challenge, the contracting officer initiating the earliest chal-
37 lenge, after consultation with the party asserting the restriction and the
38 other contracting officers, shall formulate a schedule of responses to each
39 of the challenges that will afford the party asserting the restriction with an
40 equitable opportunity to respond to each challenge.

41 (e) DECISION ON VALIDITY OF ASSERTED RESTRICTION.—

1 (1) NO RESPONSE SUBMITTED.—The contracting officer shall issue
 2 a decision pertaining to the validity of the asserted restriction if the
 3 contractor or subcontractor does not submit a response under sub-
 4 section (b).

5 (2) RESPONSE SUBMITTED.—Within 60 days of receipt of a justifica-
 6 tion submitted in response to the notice provided pursuant to sub-
 7 section (b), a contracting officer shall issue a decision or notify the
 8 party asserting the restriction of the time within which a decision will
 9 be issued.

10 (f) CLAIM DEEMED CLAIM WITHIN CHAPTER 71.—A claim pertaining to
 11 the validity of the asserted restriction that is submitted in writing to a con-
 12 tracting officer by a contractor or subcontractor at any tier is deemed to
 13 be a claim within the meaning of chapter 71 of this title.

14 (g) FINAL DISPOSITION OF CHALLENGE.—

15 (1) CHALLENGE IS SUSTAINED.—If the contracting officer’s chal-
 16 lenge to the restriction on the right of the Federal Government to use
 17 technical data is sustained on final disposition—

18 (A) the restriction is cancelled; and

19 (B) if the asserted restriction is found not to be substantially
 20 justified, the contractor or subcontractor, as appropriate, is liable
 21 to the Federal Government for payment of the cost to the Federal
 22 Government of reviewing the asserted restriction and the fees and
 23 other expenses (as defined in section 2412(d)(2)(A) of title 28) in-
 24 curred by the Federal Government in challenging the asserted re-
 25 striction, unless special circumstances would make the payment
 26 unjust.

27 (2) CHALLENGE NOT SUSTAINED.—If the contracting officer’s chal-
 28 lenge to the restriction on the right of the Federal Government to use
 29 technical data is not sustained on final disposition, the Federal Govern-
 30 ment—

31 (A) continues to be bound by the restriction; and

32 (B) is liable for payment to the party asserting the restriction
 33 for fees and other expenses (as defined in section 2412(d)(2)(A)
 34 of title 28) incurred by the party asserting the restriction in de-
 35 fending the asserted restriction if the challenge by the Federal
 36 Government is found not to be made in good faith.

37 **§ 4704. Prohibition of contractors limiting subcontractor**
 38 **sales directly to Federal Government**

39 (a) CONTRACT RESTRICTIONS.—Each contract for the purchase of prop-
 40 erty or services made by an executive agency shall provide that the con-
 41 tractor will not—

1 (1) enter into an agreement with a subcontractor under the contract
 2 that has the effect of unreasonably restricting sales by the subcon-
 3 tractor directly to the Federal Government of any item or process (in-
 4 cluding computer software) made or furnished by the subcontractor
 5 under the contract (or any follow-on production contract); or

6 (2) otherwise act to restrict unreasonably the ability of a subcon-
 7 tractor to make sales described in paragraph (1) to the Federal Gov-
 8 ernment.

9 (b) RIGHTS UNDER LAW PRESERVED.—This section does not prohibit a
 10 contractor from asserting rights it otherwise has under law.

11 (c) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not
 12 apply to a contract for an amount that is not greater than the simplified
 13 acquisition threshold.

14 (d) INAPPLICABILITY WHEN GOVERNMENT TREATED SIMILARLY TO
 15 OTHER PURCHASERS.—An agreement between the contractor in a contract
 16 for the acquisition of commercial items and a subcontractor under the con-
 17 tract that restricts sales by the subcontractor directly to persons other than
 18 the contractor may not be considered to unreasonably restrict sales by that
 19 subcontractor to the Federal Government in violation of the provision in-
 20 cluded in the contract pursuant to subsection (a) if the agreement does not
 21 result in the Federal Government being treated differently with regard to
 22 the restriction than any other prospective purchaser of the commercial items
 23 from that subcontractor.

24 **§ 4705. Protection of contractor employees from reprisal for**
 25 **disclosure of certain information**

26 (a) DEFINITIONS.—In this section:

27 (1) CONTRACT.—The term “contract” means a contract awarded by
 28 the head of an executive agency.

29 (2) CONTRACTOR.—The term “contractor” means a person awarded
 30 a contract with an executive agency.

31 (3) INSPECTOR GENERAL.—The term “Inspector General” means an
 32 Inspector General appointed under the Inspector General Act of 1978
 33 (5 U.S.C. App.).

34 (b) PROHIBITION OF REPRISALS.—An employee of a contractor may not
 35 be discharged, demoted, or otherwise discriminated against as a reprisal for
 36 disclosing to a Member of Congress or an authorized official of an executive
 37 agency or the Department of Justice information relating to a substantial
 38 violation of law related to a contract (including the competition for, or nego-
 39 tiation of, a contract).

40 (c) INVESTIGATION OF COMPLAINTS.—An individual who believes that the
 41 individual has been subjected to a reprisal prohibited by subsection (b) may

1 submit a complaint to the Inspector General of the executive agency. Unless
2 the Inspector General determines that the complaint is frivolous, the Inspec-
3 tor General shall investigate the complaint and, on completion of the inves-
4 tigation, submit a report of the findings of the investigation to the indi-
5 vidual, the contractor concerned, and the head of the agency. If the execu-
6 tive agency does not have an Inspector General, the duties of the Inspector
7 General under this section shall be performed by an official designated by
8 the head of the executive agency.

9 (d) REMEDY AND ENFORCEMENT AUTHORITY.—

10 (1) ACTIONS CONTRACTOR MAY BE ORDERED TO TAKE.—If the head
11 of an executive agency determines that a contractor has subjected an
12 individual to a reprisal prohibited by subsection (b), the head of the
13 executive agency may take one or more of the following actions:

14 (A) ABATEMENT.—Order the contractor to take affirmative ac-
15 tion to abate the reprisal.

16 (B) REINSTATEMENT.—Order the contractor to reinstate the in-
17 dividual to the position that the individual held before the reprisal,
18 together with the compensation (including back pay), employment
19 benefits, and other terms and conditions of employment that
20 would apply to the individual in that position if the reprisal had
21 not been taken.

22 (C) PAYMENT.—Order the contractor to pay the complainant an
23 amount equal to the aggregate amount of all costs and expenses
24 (including attorneys' fees and expert witnesses' fees) that the com-
25 plainant reasonably incurred for, or in connection with, bringing
26 the complaint regarding the reprisal, as determined by the head
27 of the executive agency.

28 (2) ENFORCEMENT ORDER.—When a contractor fails to comply with
29 an order issued under paragraph (1), the head of the executive agency
30 shall file an action for enforcement of the order in the United States
31 district court for a district in which the reprisal was found to have oc-
32 curred. In an action brought under this paragraph, the court may
33 grant appropriate relief, including injunctive relief and compensatory
34 and exemplary damages.

35 (3) REVIEW OF ENFORCEMENT ORDER.—A person adversely affected
36 or aggrieved by an order issued under paragraph (1) may obtain review
37 of the order's conformance with this subsection, and regulations issued
38 to carry out this section, in the United States court of appeals for a
39 circuit in which the reprisal is alleged in the order to have occurred.
40 A petition seeking review must be filed no more than 60 days after the

1 head of the agency issues the order. Review shall conform to chapter
2 7 of title 5.

3 (e) SCOPE OF SECTION.—This section does not—

4 (1) authorize the discharge of, demotion of, or discrimination against
5 an employee for a disclosure other than a disclosure protected by sub-
6 section (b); or

7 (2) modify or derogate from a right or remedy otherwise available
8 to the employee.

9 **§ 4706. Examination of facilities and records of contractor**

10 (a) DEFINITION.—In this section, the term “records” includes books, doc-
11 uments, accounting procedures and practices, and other data, regardless of
12 type and regardless of whether the items are in written form, in the form
13 of computer data, or in any other form.

14 (b) AGENCY AUTHORITY.—

15 (1) INSPECTION OF PLANT AND AUDIT OF RECORDS.—The head of
16 an executive agency, acting through an authorized representative, may
17 inspect the plant and audit the records of—

18 (A) a contractor performing a cost-reimbursement, incentive,
19 time-and-materials, labor-hour, or price-redeterminable contract,
20 or any combination of those contracts, the executive agency makes
21 under this division; and

22 (B) a subcontractor performing a cost-reimbursement, incentive,
23 time-and-materials, labor-hour, or price-redeterminable sub-
24 contract, or any combination of those subcontracts, under a con-
25 tract referred to in subparagraph (A).

26 (2) EXAMINATION OF RECORDS.—The head of an executive agency,
27 acting through an authorized representative, may, for the purpose of
28 evaluating the accuracy, completeness, and currency of certified cost or
29 pricing data required to be submitted pursuant to chapter 35 of this
30 title with respect to a contract or subcontract, examine all records of
31 the contractor or subcontractor related to—

32 (A) the proposal for the contract or subcontract;

33 (B) the discussions conducted on the proposal;

34 (C) pricing of the contract or subcontract; or

35 (D) performance of the contract or subcontract.

36 (c) SUBPOENA POWER.—

37 (1) AUTHORITY TO REQUIRE THE PRODUCTION OF RECORDS.—The
38 Inspector General of an executive agency appointed under section 3 or
39 8G of the Inspector General Act of 1978 (5 U.S.C. App.) or, on re-
40 quest of the head of an executive agency, the Director of the Defense
41 Contract Audit Agency (or any successor agency) of the Department

1 of Defense or the Inspector General of the General Services Adminis-
2 tration may require by subpoena the production of records of a con-
3 tractor, access to which is provided for that executive agency by sub-
4 section (b).

5 (2) ENFORCEMENT OF SUBPOENA.—A subpoena under paragraph
6 (1), in the case of contumacy or refusal to obey, is enforceable by order
7 of an appropriate United States district court.

8 (3) AUTHORITY NOT DELEGABLE.—The authority provided by para-
9 graph (1) may not be delegated.

10 (4) REPORT.—In the year following a year in which authority pro-
11 vided in paragraph (1) is exercised for an executive agency, the head
12 of the executive agency shall submit to the Committee on Homeland
13 Security and Governmental Affairs of the Senate and the Committee
14 on Oversight and Government Reform of the House of Representatives
15 a report on the exercise of the authority during the preceding year and
16 the reasons why the authority was exercised in any instance.

17 (d) AUTHORITY OF COMPTROLLER GENERAL.—

18 (1) IN GENERAL.—Except as provided in paragraph (2), each con-
19 tract awarded after using procedures other than sealed bid procedures
20 shall provide that the Comptroller General and representatives of the
21 Comptroller General may examine records of the contractor, or any of
22 its subcontractors, that directly pertain to, and involve transactions re-
23 lating to, the contract or subcontract and to interview any current em-
24 ployee regarding the transactions.

25 (2) EXCEPTION FOR FOREIGN CONTRACTOR OR SUBCONTRACTOR.—
26 Paragraph (1) does not apply to a contract or subcontract with a for-
27 eign contractor or foreign subcontractor if the executive agency con-
28 cerned determines, with the concurrence of the Comptroller General or
29 the designee of the Comptroller General, that applying paragraph (1)
30 to the contract or subcontract would not be in the public interest. The
31 concurrence of the Comptroller General or the designee is not required
32 when—

33 (A) the contractor or subcontractor is—

34 (i) the government of a foreign country or an agency of
35 that government; or

36 (ii) precluded by the laws of the country involved from
37 making its records available for examination; and

38 (B) the executive agency determines, after taking into account
39 the price and availability of the property and services from United
40 States sources, that the public interest would be best served by not
41 applying paragraph (1).

1 (3) ADDITIONAL RECORDS NOT REQUIRED.—Paragraph (1) does not
2 require a contractor or subcontractor to create or maintain a record
3 that the contractor or subcontractor does not maintain in the ordinary
4 course of business or pursuant to another law.

5 (e) LIMITATION ON AUDITS RELATING TO INDIRECT COSTS.—An execu-
6 tive agency may not perform an audit of indirect costs under a contract,
7 subcontract, or modification before or after entering into the contract, sub-
8 contract, or modification when the contracting officer determines that the
9 objectives of the audit can reasonably be met by accepting the results of
10 an audit that was conducted by another department or agency of the Fed-
11 eral Government within one year preceding the date of the contracting offi-
12 cer's determination.

13 (f) EXPIRATION OF AUTHORITY.—The authority of an executive agency
14 under subsection (b) and the authority of the Comptroller General under
15 subsection (d) shall expire 3 years after final payment under the contract
16 or subcontract.

17 (g) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not
18 apply to the following contracts:

19 (1) Contracts for utility services at rates not exceeding those estab-
20 lished to apply uniformly to the public, plus any applicable reasonable
21 connection charge.

22 (2) A contract or subcontract that is not greater than the simplified
23 acquisition threshold.

24 (h) ELECTRONIC FORM ALLOWED.—This section does not preclude a con-
25 tractor from duplicating or storing original records in electronic form.

26 (i) ORIGINAL RECORDS NOT REQUIRED.—An executive agency shall not
27 require a contractor or subcontractor to provide original records in an audit
28 carried out pursuant to this section if the contractor or subcontractor pro-
29 vides photographic or electronic images of the original records and meets
30 the following requirements:

31 (1) PRESERVATION PROCEDURES ESTABLISHED.—The contractor or
32 subcontractor has established procedures to ensure that the imaging
33 process preserves the integrity, reliability, and security of the original
34 records.

35 (2) INDEXING SYSTEM MAINTAINED.—The contractor or subcon-
36 tractor maintains an effective indexing system to permit timely and
37 convenient access to the imaged records.

38 (3) ORIGINAL RECORDS RETAINED.—The contractor or subcon-
39 tractor retains the original records for a minimum of one year after
40 imaging to permit periodic validation of the imaging systems.

1 **§ 4707. Remission of liquidated damages**

2 When a contract made on behalf of the Federal Government by the head
3 of a Federal agency, or by an authorized officer of the agency, includes a
4 provision for liquidated damages for delay, the Secretary of the Treasury
5 on recommendation of the head of the agency may remit any part of the
6 damages as the Secretary of the Treasury believes is just and equitable.

7 **§ 4708. Payment of reimbursable indirect costs in cost-type**
8 **research and development contracts with edu-**
9 **ational institutions**

10 A cost-type research and development contract (including a grant) with
11 a university, college, or other educational institution may provide for pay-
12 ment of reimbursable indirect costs on the basis of predetermined fixed-per-
13 centage rates applied to the total of the reimbursable direct costs incurred
14 or to an element of the total of the reimbursable direct costs incurred.

15 **§ 4709. Implementation of electronic commerce capability**

16 (a) **ROLE OF HEAD OF EXECUTIVE AGENCY.**—The head of each execu-
17 tive agency shall implement the electronic commerce capability required by
18 section 2301 of this title. In implementing the capability, the head of an
19 executive agency shall consult with the Administrator.

20 (b) **PROGRAM MANAGER.**—The head of each executive agency shall des-
21 ignate a program manager to implement the electronic commerce capability
22 for the agency. The program manager reports directly to an official at a
23 level not lower than the senior procurement executive designated for the
24 agency under section 1702(c) of this title.

25 **§ 4710. Limitations on tiering of subcontractors**

26 (a) **DEFINITION.**—In this section, the term “executive agency” has the
27 same meaning given in section 133 of this title.

28 (b) **REGULATIONS.**—For executive agencies other than the Department of
29 Defense, the Federal Acquisition Regulation shall—

30 (1) require contractors to minimize the excessive use of subcontractors
31 or of tiers of subcontractors, that add no or negligible value; and

32 (2) ensure that neither a contractor nor a subcontractor receives in-
33 direct costs or profit on work performed by a lower-tier subcontractor
34 to which the higher-tier contractor or subcontractor adds no or neg-
35 ligible value (but not to limit charges for indirect costs and profit based
36 on the direct costs of managing lower-tier subcontracts).

37 (c) **COVERED CONTRACTS.**—This section applies to any cost-reimburse-
38 ment type contract or task or delivery order in an amount greater than the
39 simplified acquisition threshold (as defined by section 134 of this title).

1 (d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed
2 as limiting the ability of the Department of Defense to implement more re-
3 strictive limitations on the tiering of subcontractors.

4 (e) APPLICABILITY.—The Department of Defense shall continue to be
5 subject to guidance on limitations on tiering of subcontractors issued by the
6 Department of Defense pursuant to section 852 of the John Warner Na-
7 tional Defense Authorization Act for Fiscal Year 2007 (Public Law 109-
8 364, 10 U.S.C. 2324 note).

9 **§ 4711. Linking of award and incentive fees to acquisition**
10 **outcomes**

11 (a) DEFINITION.—In this section, the term “executive agency” has the
12 same meaning given in section 133 of this title.

13 (b) GUIDANCE FOR EXECUTIVE AGENCIES ON LINKING OF AWARD AND
14 INCENTIVE FEES TO ACQUISITION OUTCOMES.—The Federal Acquisition
15 Regulation shall provide executive agencies other than the Department of
16 Defense with instructions, including definitions, on the appropriate use of
17 award and incentive fees in Federal acquisition programs.

18 (c) ELEMENTS.—The regulations under subsection (b) shall—

19 (1) ensure that all new contracts using award fees link the fees to
20 acquisition outcomes (which shall be defined in terms of program cost,
21 schedule, and performance);

22 (2) establish standards for identifying the appropriate level of offi-
23 cials authorized to approve the use of award and incentive fees in new
24 contracts;

25 (3) provide guidance on the circumstances in which contractor per-
26 formance may be judged to be “excellent” or “superior” and the per-
27 centage of the available award fee which contractors should be paid for
28 the performance;

29 (4) establish standards for determining the percentage of the avail-
30 able award fee, if any, which contractors should be paid for perform-
31 ance that is judged to be “acceptable”, “average”, “expected”, “good”,
32 or “satisfactory”;

33 (5) ensure that no award fee may be paid for contractor performance
34 that is judged to be below satisfactory performance or performance
35 that does not meet the basic requirements of the contract;

36 (6) provide specific direction on the circumstances, if any, in which
37 it may be appropriate to roll over award fees that are not earned in
38 one award fee period to a subsequent award fee period or periods;

39 (7) ensure consistent use of guidelines and definitions relating to
40 award and incentive fees across the Federal Government;

41 (8) ensure that each executive agency—

1 (A) collects relevant data on award and incentive fees paid to
 2 contractors; and

3 (B) has mechanisms in place to evaluate the data on a regular
 4 basis;

5 (9) include performance measures to evaluate the effectiveness of
 6 award and incentive fees as a tool for improving contractor perform-
 7 ance and achieving desired program outcomes; and

8 (10) provide mechanisms for sharing proven incentive strategies for
 9 the acquisition of different types of products and services among con-
 10 tracting and program management officials.

11 (d) GUIDANCE FOR DEPARTMENT OF DEFENSE.—The Department of
 12 Defense shall continue to be subject to guidance on award and incentive fees
 13 issued by the Secretary of Defense pursuant to section 814 of the John
 14 Warner National Defense Authorization Act for Fiscal Year 2007 (Public
 15 Law 109-364, 10 U.S.C. 2302 note).

16 **Subtitle II—Other Advertising and Contract**
 17 **Provisions**

Chapter	Sec.
61. Advertising	6101
63. General Contract Provisions	6301
65. Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$10,000.	6501
67. Service Contract Labor Standards	6701

18 **CHAPTER 61—ADVERTISING**

Sec.
6101. Advertising requirement for Federal Government purchases and sales.
6102. Exceptions from advertising requirement.
6103. Opening of bids.

19 **§ 6101. Advertising requirement for Federal Government**
 20 **purchases and sales**

21 (a) DEFINITIONS.—In this section—

22 (1) APPROPRIATION.—The term “appropriation” includes amounts
 23 made available by legislation under section 9104 of title 31.

24 (2) FEDERAL GOVERNMENT.—The term “Federal Government” in-
 25 cludes the government of the District of Columbia.

26 (b) PURCHASES.—

27 (1) IN GENERAL.—Unless otherwise provided in the appropriation
 28 concerned or other law, purchases and contracts for supplies or services
 29 for the Federal Government may be made or entered into only after
 30 advertising for proposals for a sufficient time.

31 (2) LIMITATIONS ON APPLICABILITY.—Paragraph (1) does not apply
 32 when—

33 (A) the amount involved in any one case does not exceed
 34 \$25,000;

1 (B) public exigencies require the immediate delivery of articles
2 or performance of services;

3 (C) only one source of supply is available and the Federal Gov-
4 ernment purchasing or contracting officer so certifies; or

5 (D) services are required to be performed by a contractor in
6 person and are—

7 (i) of a technical and professional nature; or

8 (ii) under Federal Government supervision and paid for on
9 a time basis.

10 (e) SALES.—Except when otherwise authorized by law or when the rea-
11 sonable value involved in any one case does not exceed \$500, sales and con-
12 tracts of sale by the Federal Government are governed by the requirements
13 of this section for advertising.

14 (d) APPLICATION TO WHOLLY OWNED GOVERNMENT CORPORATIONS.—
15 For wholly owned Government corporations, this section applies only to ad-
16 ministrative transactions.

17 **§ 6102. Exceptions from advertising requirement**

18 (a) AMERICAN BATTLE MONUMENTS COMMISSION.—Section 6101 of this
19 title does not apply to the American Battle Monuments Commission with
20 respect to leases in foreign countries for office or garage space.

21 (b) BUREAU OF INTERPARLIAMENTARY UNION FOR PROMOTION OF
22 INTERNATIONAL ARBITRATION.—Section 6101 of this title does not apply
23 to the Bureau of Interparliamentary Union for Promotion of International
24 Arbitration with respect to necessary stenographic reporting services by con-
25 tract.

26 (c) DEPARTMENT OF STATE.—Section 6101 of this title does not apply
27 to the Department of State when the purchase or service relates to the
28 packing of personal and household effects of Diplomatic, Consular, and For-
29 eign Service officers and clerks for foreign shipment.

30 (d) INTERNATIONAL COMMITTEE OF AERIAL LEGAL EXPERTS.—Section
31 6101 of this title does not apply to the International Committee of Aerial
32 Legal Experts with respect to necessary stenographic and other services by
33 contract.

34 (e) ARCHITECT OF THE CAPITOL.—The purchase of supplies and equip-
35 ment and the procurement of services for all branches under the Architect
36 of the Capitol may be made in the open market according to common busi-
37 ness practice, without compliance with section 6101 of this title, when the
38 aggregate amount of the purchase or the service does not exceed \$25,000
39 in any instance.

40 (f) FOREST PRODUCTS FROM INDIAN RESERVATIONS.—Lumber and
41 other forest products produced by Indian enterprises from forests on Indian

1 reservations may be sold under regulations the Secretary of the Interior pre-
2 scribes, without compliance with section 6101 of this title.

3 (g) HOUSE OF REPRESENTATIVES.—Section 6101 of this title does not
4 apply to purchases and contracts for supplies or services for any office of
5 the House of Representatives.

6 (h) CONGRESSIONAL BUDGET OFFICE.—The Director of the Congres-
7 sional Budget Office may enter into agreements or contracts without regard
8 to section 6101 of this title.

9 **§ 6103. Opening of bids**

10 Whenever proposals for supplies have been solicited, the parties respond-
11 ing to the solicitation shall be notified of the time and place of the opening
12 of the bids, and be permitted to be present either in person or by attorney.
13 A record of each bid shall be made at the time and place of the opening
14 of the bids.

15 **CHAPTER 63—GENERAL CONTRACT PROVISIONS**

Sec.

6301. Authorization requirement.

6302. Contracts for fuel made by Secretary of the Army.

6303. Certain contracts limited to appropriated amounts.

6304. Certain contracts limited to one-year term.

6305. Prohibition on transfer of contract and certain allowable assignments.

6306. Prohibition on Members of Congress making contracts with Federal Government.

6307. Contracts with Federal Government-owned establishments and availability of appro-
priations.

6308. Contracts for transportation of Federal Government securities.

6309. Honorable discharge certificate in lieu of birth certificate.

16 **§ 6301. Authorization requirement**

17 (a) IN GENERAL.—A contract or purchase on behalf of the Federal Gov-
18 ernment shall not be made unless the contract or purchase is authorized by
19 law or is under an appropriation adequate to its fulfillment.

20 (b) EXCEPTION.—

21 (1) DEFINITION.—In this subsection, the term “defined Secretary”
22 means—

23 (A) the Secretary of Defense; or

24 (B) the Secretary of Homeland Security with respect to the
25 Coast Guard when the Coast Guard is not operating as a service
26 in the Navy.

27 (2) IN GENERAL.—Subsection (a) does not apply to a contract or
28 purchase made by a defined Secretary for clothing, subsistence, forage,
29 fuel, quarters, transportation, or medical and hospital supplies.

30 (3) CURRENT YEAR LIMITATION.—A contract or purchase made by
31 a defined Secretary under this subsection may not exceed the neces-
32 sities of the current year.

33 (4) REPORTS.—The defined Secretary shall immediately advise Con-
34 gress when authority is exercised under this subsection. The defined

1 Secretary shall report quarterly on the estimated obligations incurred
2 pursuant to the authority granted in this subsection.

3 (c) SPECIAL RULE FOR PURCHASE OF LAND.—Land may not be pur-
4 chased by the Federal Government unless the purchase is authorized by law.

5 **§ 6302. Contracts for fuel made by Secretary of the Army**

6 The Secretary of the Army, when the Secretary believes it is in the inter-
7 est of the United States, may enter into contracts and incur obligations for
8 fuel in sufficient quantities to meet the requirements for one year without
9 regard to the current fiscal year. Amounts appropriated for the fiscal year
10 in which the contract is made or amounts appropriated or which may be
11 appropriated for the following fiscal year may be used to pay for supplies
12 delivered under a contract made pursuant to this section.

13 **§ 6303. Certain contracts limited to appropriated amounts**

14 A contract to erect, repair, or furnish a public building, or to make any
15 public improvement, shall not be made on terms requiring the Federal Gov-
16 ernment to pay more than the amount specifically appropriated for the ac-
17 tivity covered by the contract.

18 **§ 6304. Certain contracts limited to one-year term**

19 Except as otherwise provided, an executive department shall not make a
20 contract for stationery or other supplies for a term longer than one year
21 from the time the contract is made.

22 **§ 6305. Prohibition on transfer of contract and certain al-
23 lowable assignments**

24 (a) GENERAL PROHIBITION ON TRANSFER OF CONTRACTS.—The party
25 to whom the Federal Government gives a contract or order may not transfer
26 the contract or order, or any interest in the contract or order, to another
27 party. A purported transfer in violation of this subsection annuls the con-
28 tract or order so far as the Federal Government is concerned, except that
29 all rights of action for breach of contract are reserved to the Federal Gov-
30 ernment.

31 (b) ASSIGNMENT.—

32 (1) IN GENERAL.—Notwithstanding subsection (a) and in accordance
33 with the requirements of this subsection, amounts due from the Fed-
34 eral Government under a contract may be assigned to a bank, trust
35 company, Federal lending agency, or other financing institution.

36 (2) MINIMUM AMOUNT.—This subsection applies only to a contract
37 under which the aggregate amounts due from the Federal Government
38 total at least \$1,000.

39 (3) ACCORD WITH CONTRACT TERMS.—Assignment may not be made
40 under this subsection if the contract forbids the assignment.

1 (4) FULL BALANCE DUE.—Unless otherwise expressly permitted by
2 the contract, an assignment under this subsection must cover the bal-
3 ance of all amounts due from the Federal Government under the con-
4 tract.

5 (5) SINGLE ASSIGNMENT.—Unless otherwise expressly permitted by
6 the contract, an assignment under this subsection may not be made to
7 more than one party or be subject to further assignment, except that
8 assignment may be made to one party as agent or trustee for 2 or
9 more parties participating in the financing.

10 (6) WRITTEN NOTICE.—The assignee of an assignment under this
11 subsection shall file written notice of the assignment and a true copy
12 of the instrument of assignment with—

13 (A) the contracting officer or head of the officer’s department
14 or agency;

15 (B) the surety on any bond connected with the contract; and

16 (C) the disbursing officer, if any, designated in the contract to
17 make payment.

18 (7) VALIDITY.—Notwithstanding any law to the contrary governing
19 the validity of assignments, an assignment under this subsection is a
20 valid assignment for all purposes.

21 (8) NO REFUND TO COVER ASSIGNOR’S LIABILITY.—The assignee of
22 an assignment under this subsection is not liable to make any refund
23 to the Federal Government because of an assignor’s liability to the
24 Federal Government, whether that liability arises from the contract or
25 independently.

26 (9) AVOIDING REDUCTION OR SETOFF WITH CERTAIN CONTRACTS.—

27 (A) CONTRACT PROVISION.—A contract of the Department of
28 Defense, the General Services Administration, the Department of
29 Energy, or another department or agency of the Federal Govern-
30 ment designated by the President may, on a determination of need
31 by the President, provide or be amended without consideration to
32 provide that payments made to an assignee under the contract are
33 not subject to reduction or setoff. Each determination of need by
34 the President under this subparagraph shall be published in the
35 Federal Register.

36 (B) CARRYING OUT CONTRACT PROVISION.—When a “no reduc-
37 tion or setoff” provision as described in subparagraph (A) is in-
38 cluded in a contract, payments to the assignee are not subject to
39 reduction or setoff for an assignor’s liability arising—

40 (i) independently of the contract;

1 (ii) on account of renegotiation under a renegotiation stat-
 2 ute or under a statutory renegotiation article in the contract;
 3 (iii) on account of fines;
 4 (iv) on account of penalties; or
 5 (v) on account of taxes, social security contributions, or the
 6 withholding or non-withholding of taxes or social security con-
 7 tributions, whether arising from or independently of the con-
 8 tract.

9 (C) LIMITATION.—Subparagraph (B)(iv) does not apply to
 10 amounts which may be collected or withheld from the assignor in
 11 accordance with or for failure to comply with the terms of the con-
 12 tract.

13 **§ 6306. Prohibition on Members of Congress making con-**
 14 **tracts with Federal Government**

15 (a) IN GENERAL.—A Member of Congress may not enter into or benefit
 16 from a contract or agreement or any part of a contract or agreement with
 17 the Federal Government.

18 (b) EXEMPTIONS.—

19 (1) IN GENERAL.—Subsection (a) does not apply to contracts that
 20 the Secretary of Agriculture may enter into with farmers.

21 (2) CERTAIN ACTS.—Subsection (a) does not apply to a contract en-
 22 tered into under—

23 (A) the Agricultural Adjustment Act (7 U.S.C. 601 et seq.);

24 (B) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or

25 (C) the Home Owners' Loan Act (12 U.S.C. 1461 et seq.).

26 (3) PUBLIC RECORD.—An exemption under this subsection shall be
 27 made a matter of public record.

28 **§ 6307. Contracts with Federal Government-owned estab-**
 29 **lishments and availability of appropriations**

30 An order or contract placed with a Federal Government-owned establish-
 31 ment for work, material, or the manufacture of material pertaining to an
 32 approved project is deemed to be an obligation in the same manner that
 33 a similar order or contract placed with a commercial manufacturer or pri-
 34 vate contractor is an obligation. Appropriations remain available to pay an
 35 obligation to a Federal Government-owned establishment just as appropria-
 36 tions remain available to pay an obligation to a commercial manufacturer
 37 or private contractor.

1 **§ 6308. Contracts for transportation of Federal Government**
 2 **securities**

3 When practicable, a contract for transporting bullion, cash, or securities
 4 of the Federal Government shall be awarded to the lowest responsible bidder
 5 after notice to all parties with means of transportation.

6 **§ 6309. Honorable discharge certificate in lieu of birth cer-**
 7 **tificate**

8 (a) IN GENERAL.—An employer described in subsection (b) may not deny
 9 employment, on account of failure to produce a birth certificate, to an indi-
 10 vidual who submits, in lieu of the birth certificate, an honorable discharge
 11 certificate (or certificate issued in lieu of an honorable discharge certificate)
 12 from the Army, Air Force, Navy, Marine Corps, or Coast Guard of the
 13 United States, unless the honorable discharge certificate shows on its face
 14 that the individual may have been an alien at the time of its issuance.

15 (b) EMPLOYERS TO WHICH SECTION APPLIES.—An employer referred to
 16 in subsection (a) is an employer—

17 (1) engaged in—

18 (A) the production, maintenance, or storage of arms, armament,
 19 ammunition, implements of war, munitions, machinery, tools,
 20 clothing, food, fuel, or any articles or supplies, or parts or ingredi-
 21 ents of any articles or supplies; or

22 (B) the construction, reconstruction, repair, or installation of a
 23 building, plant, structure, or facility; and

24 (2) engaged in the activity described in paragraph (1) under—

25 (A) a contract with the Federal Government; or

26 (B) any contract that the President, the Secretary of the Army,
 27 the Secretary of the Air Force, the Secretary of the Navy, or the
 28 Secretary of the Department in which the Coast Guard is oper-
 29 ating certifies to the employer to be necessary to the national de-
 30 fense.

31 **CHAPTER 65—CONTRACTS FOR MATERIALS, SUPPLIES,**
 32 **ARTICLES, AND EQUIPMENT EXCEEDING \$10,000**

Sec.

- 6501. Definitions.
- 6502. Required contract terms.
- 6503. Breach or violation of required contract terms.
- 6504. Three-year prohibition on new contracts in case of breach or violation.
- 6505. Exclusions.
- 6506. Administrative provisions.
- 6507. Hearing authority and procedures.
- 6508. Authority to make exceptions.
- 6509. Other procedures.
- 6510. Manufacturers and regular dealers.
- 6511. Effect on other law.

1 **§ 6501. Definitions**

2 In this chapter—

3 (1) AGENCY OF THE UNITED STATES.—The term “agency of the
4 United States” means an executive department, independent establish-
5 ment, or other agency or instrumentality of the United States, the Dis-
6 trict of Columbia, or a corporation in which all stock is beneficially
7 owned by the Federal Government.

8 (2) PERSON.—The term “person” includes one or more individuals,
9 partnerships, associations, corporations, legal representatives, trustees,
10 trustees in cases under title 11, or receivers.

11 (3) SECRETARY.—The term “Secretary” means the Secretary of
12 Labor.

13 **§ 6502. Required contract terms**

14 A contract made by an agency of the United States for the manufacture
15 or furnishing of materials, supplies, articles, or equipment, in an amount
16 exceeding \$10,000, shall include the following representations and stipula-
17 tions:

18 (1) MINIMUM WAGES TO BE PAID.—All individuals employed by the
19 contractor in the manufacture or furnishing of materials, supplies, arti-
20 cles, or equipment under the contract will be paid, without subsequent
21 deduction or rebate on any account, not less than the prevailing min-
22 imum wages, as determined by the Secretary, for individuals employed
23 in similar work or in the particular or similar industries or groups of
24 industries currently operating in the locality in which the materials,
25 supplies, articles, or equipment are to be manufactured or furnished
26 under the contract, except that this paragraph applies only to pur-
27 chases or contracts relating to industries that have been the subject
28 matter of a determination by the Secretary.

29 (2) MAXIMUM NUMBER OF HOURS TO BE WORKED IN A WEEK.—No
30 individual employed by the contractor in the manufacture or furnishing
31 of materials, supplies, articles, or equipment under the contract shall
32 be permitted to work in excess of 40 hours in any one week, except
33 that this paragraph does not apply to an employer who has entered
34 into an agreement with employees pursuant to paragraph (1) or (2) of
35 section 7(b) of the Fair Labor Standards Act of 1938 (29 U.S.C.
36 207(b)(1) or (2)).

37 (3) INELIGIBLE EMPLOYEES.—No individual under 16 years of age
38 and no incarcerated individual will be employed by the contractor in
39 the manufacture or furnishing of materials, supplies, articles, or equip-
40 ment under the contract, except that this section, or other law or exec-
41 utive order containing similar prohibitions against the purchase of

1 goods by the Federal Government, does not apply to convict labor that
2 satisfies the conditions of section 1761(c) of title 18.

3 (4) STANDARDS OF PLACES AND WORKING CONDITIONS WHERE CON-
4 TRACT PERFORMED.—No part of the contract will be performed, and
5 no materials, supplies, articles, or equipment will be manufactured or
6 fabricated under the contract, in plants, factories, buildings, or sur-
7 roundings, or under working conditions, that are unsanitary, haz-
8 ardous, or dangerous to the health and safety of employees engaged in
9 the performance of the contract. Compliance with the safety, sanitary,
10 and factory inspection laws of the State in which the work or part of
11 the work is to be performed is prima facie evidence of compliance with
12 this paragraph.

13 **§ 6503. Breach or violation of required contract terms**

14 (a) APPLICABLE BREACH OR VIOLATION.—This section applies in case of
15 breach or violation of a representation or stipulation included in a contract
16 under section 6502 of this title.

17 (b) LIQUIDATED DAMAGES.—In addition to damages for any other breach
18 of the contract, the party responsible for a breach or violation described in
19 subsection (a) is liable to the Federal Government for the following liq-
20 uidated damages:

21 (1) An amount equal to the sum of \$10 per day for each individual
22 under 16 years of age and each incarcerated individual knowingly em-
23 ployed in the performance of the contract.

24 (2) An amount equal to the sum of each underpayment of wages due
25 an employee engaged in the performance of the contract, including any
26 underpayments arising from deductions, rebates, or refunds.

27 (c) CANCELLATION AND ALTERNATIVE COMPLETION.—In addition to the
28 Federal Government being entitled to damages described in subsection (b),
29 the agency of the United States that made the contract may cancel the con-
30 tract and make open-market purchases or make other contracts for the com-
31 pletion of the original contract, charging any additional cost to the original
32 contractor.

33 (d) RECOVERY OF AMOUNTS DUE.—An amount due the Federal Govern-
34 ment because of a breach or violation described in subsection (a) may be
35 withheld from any amounts owed the contractor under any contract under
36 section 6502 of this title or may be recovered in a suit brought by the At-
37 torney General.

38 (e) EMPLOYEE REIMBURSEMENT FOR UNDERPAYMENT OF WAGES.—An
39 amount withheld or recovered under subsection (d) that is based on an un-
40 derpayment of wages as described in subsection (b)(2) shall be held in a
41 special deposit account. On order of the Secretary, the amount shall be paid

1 directly to the underpaid employee on whose account the amount was with-
 2 held or recovered. However, an employee's claim for payment under this
 3 subsection may be entertained only if made within one year from the date
 4 of actual notice to the contractor of the withholding or recovery.

5 **§ 6504. Three-year prohibition on new contracts in case of**
 6 **breach or violation**

7 (a) DISTRIBUTION OF LIST.—The Comptroller General shall distribute to
 8 each agency of the United States a list containing the names of persons
 9 found by the Secretary to have breached or violated a representation or stip-
 10 ulation included in a contract under section 6502 of this title.

11 (b) THREE-YEAR PROHIBITION.—Unless the Secretary recommends oth-
 12 erwise, a contract described in section 6502 of this title may not be awarded
 13 to a person named on the list under subsection (a), or to a firm, corpora-
 14 tion, partnership, or association in which the person has a controlling inter-
 15 est, until 3 years have elapsed from the date of the determination by the
 16 Secretary that a breach or violation occurred.

17 **§ 6505. Exclusions**

18 (a) ITEMS AVAILABLE IN THE OPEN MARKET.—This chapter does not
 19 apply to the purchase of materials, supplies, articles, or equipment that may
 20 usually be bought in the open market.

21 (b) PERISHABLES AND AGRICULTURAL PRODUCTS.—This chapter does
 22 not apply to any of the following:

23 (1) Perishables, including dairy, livestock and nursery products.

24 (2) Agricultural or farm products processed for first sale by the
 25 original producers.

26 (3) Contracts made by the Secretary of Agriculture for the purchase
 27 of agricultural commodities or products of agricultural commodities.

28 (c) CARRIAGE OF FREIGHT OR PERSONNEL.—This chapter may not be
 29 construed to apply to—

30 (1) the carriage of freight or personnel by vessel, airplane, bus,
 31 truck, express, or railway line where published tariff rates are in effect;

32 or

33 (2) common carriers subject to the Communications Act of 1934 (47
 34 U.S.C. 151 et seq.).

35 **§ 6506. Administrative provisions**

36 (a) IN GENERAL.—The Secretary shall administer this chapter.

37 (b) REGULATIONS.—The Secretary may make, amend, and rescind regu-
 38 lations as necessary to carry out this chapter.

39 (c) USE OF GOVERNMENT OFFICERS AND EMPLOYEES.—The Secretary
 40 shall use Federal officers and employees and, with a State's consent, State

1 and local officers and employees as the Secretary finds necessary to assist
2 in the administration of this chapter.

3 (d) APPOINTMENTS.—The Secretary shall appoint an administrative offi-
4 cer and attorneys, experts, and other employees from time to time as the
5 Secretary finds necessary for the administration of this chapter. The ap-
6 pointments are subject to chapter 51 and subchapter III of chapter 53 of
7 title 5 and other law applicable to the employment and compensation of offi-
8 cers and employees of the Federal Government.

9 (e) INVESTIGATIONS.—The Secretary, or an authorized representative of
10 the Secretary, may make investigations and findings as provided in this
11 chapter and may, in any part of the United States, prosecute an inquiry
12 necessary to carry out this chapter.

13 **§ 6507. Hearing authority and procedures**

14 (a) RECORD AND HEARING REQUIREMENTS FOR WAGE DETERMINA-
15 TIONS.—A wage determination under section 6502(1) of this title shall be
16 made on the record after opportunity for a hearing.

17 (b) AUTHORITY TO HOLD HEARINGS.—The Secretary or an impartial
18 representative designated by the Secretary may hold hearings when there is
19 a complaint of breach or violation of a representation or stipulation included
20 in a contract under section 6502 of this title. The Secretary may initiate
21 hearings on the Secretary's own motion or on the application of a person
22 affected by the ruling of an agency of the United States relating to a pro-
23 posal or contract under this chapter.

24 (c) ORDERS TO COMPEL TESTIMONY.—The Secretary or an impartial
25 representative designated by the Secretary may issue orders requiring wit-
26 nesses to attend hearings held under this section and to produce evidence
27 and testify under oath. Witnesses shall be paid fees and mileage at the same
28 rates as witnesses in courts of the United States.

29 (d) ENFORCEMENT OF ORDERS.—If a person refuses or fails to obey an
30 order issued under subsection (c), the Secretary or an impartial representa-
31 tive designated by the Secretary may bring an action to enforce the order
32 in a district court of the United States or in the district court of a territory
33 or possession of the United States. A court has jurisdiction to enforce the
34 order if the inquiry is being carried out within the court's judicial district
35 or if the person is found or resides or transacts business within the court's
36 judicial district. The court may issue an order requiring the person to obey
37 the order issued under subsection (c), and the court may punish any further
38 refusal or failure as contempt of court.

39 (e) FINDINGS OF FACT.—After notice and a hearing, the Secretary or an
40 impartial representative designated by the Secretary shall make findings of
41 fact. The findings are conclusive for agencies of the United States. If sup-

1 ported by a preponderance of the evidence, the findings are conclusive in
2 any court of the United States.

3 (f) DECISIONS.—The Secretary or an impartial representative designated
4 by the Secretary may make decisions, based on findings of fact, that are
5 considered necessary to enforce this chapter.

6 **§ 6508. Authority to make exceptions**

7 (a) DUTY OF THE SECRETARY TO MAKE EXCEPTIONS.—When the head
8 of an agency of the United States makes a written finding that the inclusion
9 of representations or stipulations under section 6502 of this title in a pro-
10 posal or contract will seriously impair the conduct of Federal Government
11 business, the Secretary shall make exceptions, in specific cases or otherwise,
12 when justice or the public interest will be served.

13 (b) AUTHORITY OF THE SECRETARY TO MODIFY EXISTING CON-
14 TRACTS.—When an agency of the United States and a contractor jointly
15 recommend, the Secretary may modify the terms of an existing contract
16 with respect to minimum wages and maximum hours of labor as the Sec-
17 retary finds necessary and proper in the public interest or to prevent injus-
18 tice and undue hardship.

19 (c) AUTHORITY OF THE SECRETARY TO ALLOW LIMITATIONS, VARI-
20 ATIONS, TOLERANCES, AND EXEMPTIONS.—The Secretary may provide rea-
21 sonable limitations and may prescribe regulations to allow reasonable vari-
22 ations, tolerances, and exemptions in the application of this chapter to con-
23 tractors, including with respect to minimum wages and maximum hours of
24 labor.

25 (d) RATE OF PAY FOR OVERTIME.—When the Secretary permits an in-
26 crease in the maximum hours of labor stipulated in a contract, the Sec-
27 retary shall set a rate of pay for overtime. The overtime rate must be at
28 least one and one-half times the basic hourly rate.

29 (e) AUTHORITY OF THE PRESIDENT TO SUSPEND.—The President may
30 suspend any of the representations and stipulations contained in section
31 6502 of this title whenever, in the President's judgment, suspension is in
32 the public interest.

33 **§ 6509. Other procedures**

34 (a) APPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.—Not-
35 withstanding section 553 of title 5, subchapter II of chapter 5 and chapter
36 7 of title 5 are applicable in the administration of sections 6501 to 6507
37 and 6511 of this title.

38 (b) JUDICIAL REVIEW IN GENERAL.—Notwithstanding the inclusion of
39 representations and stipulations in a contract under section 6502 of this
40 title, an interested person has the right of judicial review of any legal ques-

1 tion which might otherwise be raised, including wage determinations and the
2 interpretation of the terms “locality” and “open market”.

3 (c) JUDICIAL REVIEW OF WAGE DETERMINATIONS.—A person adversely
4 affected or aggrieved by a wage determination under section 6502(1) of this
5 title has the right of judicial review of the determination, or of the applica-
6 bility of the determination, within 90 days after the determination is made,
7 in the manner provided by chapter 7 of title 5. A person adversely affected
8 or aggrieved by a wage determination is deemed to include a person in an
9 industry to which the determination applies that is a supplier of materials,
10 supplies, articles, or equipment that are purchased or intended to be pur-
11 chased by the Federal Government from any source.

12 **§ 6510. Manufacturers and regular dealers**

13 (a) PRESCRIBING STANDARDS.—The Secretary may prescribe, in regula-
14 tions, standards for determining whether a contractor is a manufacturer or
15 regular dealer with respect to materials, supplies, articles, or equipment to
16 be manufactured or furnished under, or used in the performance of, a con-
17 tract entered into by an agency of the United States.

18 (b) JUDICIAL REVIEW.—An interested person has the right of judicial re-
19 view of any legal question relating to interpretation of the terms “regular
20 dealer” and “manufacturer” as defined pursuant to subsection (a).

21 **§ 6511. Effect on other law**

22 This chapter may not be construed to modify or amend the following pro-
23 visions:

- 24 (1) Chapter 83 of this title.
- 25 (2) Sections 3141 to 3144, 3146, and 3147 of title 40.
- 26 (3) Chapter 307 of title 18.

27 **CHAPTER 67—SERVICE CONTRACT LABOR STANDARDS**

Sec.

- 6701. Definitions.
- 6702. Contracts to which this chapter applies.
- 6703. Required contract terms.
- 6704. Limitation on minimum wage.
- 6705. Violations.
- 6706. Three-year prohibition on new contracts in case of violation.
- 6707. Enforcement and administration of chapter.

28 **§ 6701. Definitions**

29 In this chapter:

30 (1) COMPENSATION.—The term “compensation” means any of the
31 payments or fringe benefits described in section 6703 of this title.

32 (2) SECRETARY.—The term “Secretary” means the Secretary of
33 Labor.

34 (3) SERVICE EMPLOYEE.—The term “service employee”—

35 (A) means an individual engaged in the performance of a con-
36 tract made by the Federal Government and not exempted under

1 section 6702(b) of this title, whether negotiated or advertised, the
 2 principal purpose of which is to furnish services in the United
 3 States;

4 (B) includes an individual without regard to any contractual re-
 5 lationship alleged to exist between the individual and a contractor
 6 or subcontractor; but

7 (C) does not include an individual employed in a bona fide exec-
 8 utive, administrative, or professional capacity, as those terms are
 9 defined in part 541 of title 29, Code of Federal Regulations.

10 (4) UNITED STATES.—The term “United States”—

11 (A) includes any State of the United States, the District of Co-
 12 lumbia, Puerto Rico, the Virgin Islands, the outer Continental
 13 Shelf as defined in the Outer Continental Shelf Lands Act (43
 14 U.S.C. § 1331 et seq.), American Samoa, Guam, Wake Island, and
 15 Johnston Island; but

16 (B) does not include any other territory under the jurisdiction
 17 of the United States or any United States base or possession with-
 18 in a foreign country.

19 **§ 6702. Contracts to which this chapter applies**

20 (a) IN GENERAL.—Except as provided in subsection (b), this chapter ap-
 21 plies to any contract or bid specification for a contract, whether negotiated
 22 or advertised, that—

23 (1) is made by the Federal Government or the District of Columbia;

24 (2) involves an amount exceeding \$2,500; and

25 (3) has as its principal purpose the furnishing of services in the
 26 United States through the use of service employees.

27 (b) EXEMPTIONS.—This chapter does not apply to—

28 (1) a contract of the Federal Government or the District of Colum-
 29 bia for the construction, alteration, or repair, including painting and
 30 decorating, of public buildings or public works;

31 (2) any work required to be done in accordance with chapter 65 of
 32 this title;

33 (3) a contract for the carriage of freight or personnel by vessel, air-
 34 plane, bus, truck, express, railway line or oil or gas pipeline where pub-
 35 lished tariff rates are in effect;

36 (4) a contract for the furnishing of services by radio, telephone, tele-
 37 graph, or cable companies, subject to the Communications Act of 1934
 38 (47 U.S.C. 151 et seq.);

39 (5) a contract for public utility services, including electric light and
 40 power, water, steam, and gas;

1 (6) an employment contract providing for direct services to a Federal
2 agency by an individual; and

3 (7) a contract with the United States Postal Service, the principal
4 purpose of which is the operation of postal contract stations.

5 **§ 6703. Required contract terms**

6 A contract, and bid specification for a contract, to which this chapter ap-
7 plies under section 6702 of this title shall contain the following terms:

8 (1) MINIMUM WAGE.—The contract and bid specification shall con-
9 tain a provision specifying the minimum wage to be paid to each class
10 of service employee engaged in the performance of the contract or any
11 subcontract, as determined by the Secretary or the Secretary's author-
12 ized representative, in accordance with prevailing rates in the locality,
13 or, where a collective-bargaining agreement covers the service employ-
14 ees, in accordance with the rates provided for in the agreement, includ-
15 ing prospective wage increases provided for in the agreement as a re-
16 sult of arm's length negotiations. In any case the minimum wage may
17 not be less than the minimum wage specified in section 6704 of this
18 title.

19 (2) FRINGE BENEFITS.—The contract and bid specification shall
20 contain a provision specifying the fringe benefits to be provided to each
21 class of service employee engaged in the performance of the contract
22 or any subcontract, as determined by the Secretary or the Secretary's
23 authorized representative to be prevailing in the locality, or, where a
24 collective-bargaining agreement covers the service employees, to be pro-
25 vided for under the agreement, including prospective fringe benefit in-
26 creases provided for in the agreement as a result of arm's-length nego-
27 tiations. The fringe benefits shall include medical or hospital care, pen-
28 sions on retirement or death, compensation for injuries or illness result-
29 ing from occupational activity, or insurance to provide any of the fore-
30 going, unemployment benefits, life insurance, disability and sickness in-
31 surance, accident insurance, vacation and holiday pay, costs of appren-
32 ticeship or other similar programs and other bona fide fringe benefits
33 not otherwise required by Federal, State, or local law to be provided
34 by the contractor or subcontractor. The obligation under this para-
35 graph may be discharged by furnishing any equivalent combinations of
36 fringe benefits or by making equivalent or differential payments in cash
37 under regulations established by the Secretary.

38 (3) WORKING CONDITIONS.—The contract and bid specification shall
39 contain a provision specifying that no part of the services covered by
40 this chapter may be performed in buildings or surroundings or under
41 working conditions, provided by or under the control or supervision of

1 the contractor or any subcontractor, which are unsanitary or hazardous
 2 or dangerous to the health or safety of service employees engaged to
 3 provide the services.

4 (4) NOTICE.—The contract and bid specification shall contain a pro-
 5 vision specifying that on the date a service employee begins work on
 6 a contract to which this chapter applies, the contractor or subcon-
 7 tractor will deliver to the employee a notice of the compensation re-
 8 quired under paragraphs (1) and (2), on a form prepared by the Fed-
 9 eral agency, or will post a notice of the required compensation in a
 10 prominent place at the worksite.

11 (5) GENERAL SCHEDULE PAY RATES AND PREVAILING RATE SYS-
 12 TEMS.—The contract and bid specification shall contain a statement of
 13 the rates that would be paid by the Federal agency to each class of
 14 service employee if section 5332 or 5341 of title 5 were applicable to
 15 them. The Secretary shall give due consideration to these rates in mak-
 16 ing the wage and fringe benefit determinations specified in this section.

17 **§ 6704. Limitation on minimum wage**

18 (a) IN GENERAL.—A contractor that makes a contract with the Federal
 19 Government, the principal purpose of which is to furnish services through
 20 the use of service employees, and any subcontractor, may not pay less than
 21 the minimum wage specified under section 6(a)(1) of the Fair Labor Stand-
 22 ards Act of 1938 (29 U.S.C. 206(a)(1)) to an employee engaged in per-
 23 forming work on the contract.

24 (b) VIOLATIONS.—Sections 6705 to 6707(d) of this title are applicable to
 25 a violation of this section.

26 **§ 6705. Violations**

27 (a) LIABILITY OF RESPONSIBLE PARTY.—A party responsible for a viola-
 28 tion of a contract provision required under section 6703(1) or (2) of this
 29 title or a violation of section 6704 of this title is liable for an amount equal
 30 to the sum of any deduction, rebate, refund, or underpayment of compensa-
 31 tion due any employee engaged in the performance of the contract.

32 (b) RECOVERY OF AMOUNTS UNDERPAID TO EMPLOYEES.—

33 (1) WITHHOLDING ACCRUED PAYMENTS DUE ON CONTRACTS.—The
 34 total amount determined under subsection (a) to be due any employee
 35 engaged in the performance of a contract may be withheld from ac-
 36 crued payments due on the contract or on any other contract between
 37 the same contractor and the Federal Government. The amount with-
 38 held shall be held in a deposit fund. On order of the Secretary, the
 39 compensation found by the Secretary or the head of a Federal agency
 40 to be due an underpaid employee pursuant to this chapter shall be paid
 41 from the deposit fund directly to the underpaid employee.

1 decisions based on findings of fact, and take other appropriate action under
2 this chapter.

3 (b) LIMITATIONS AND REGULATIONS FOR VARIATIONS, TOLERANCES,
4 AND EXEMPTIONS.—The Secretary may provide reasonable limitations and
5 may prescribe regulations allowing reasonable variation, tolerances, and ex-
6 emptions with respect to this chapter (other than subsection (f)), but only
7 in special circumstances where the Secretary determines that the limitation,
8 variation, tolerance, or exemption is necessary and proper in the public in-
9 terest or to avoid the serious impairment of Federal Government business,
10 and is in accord with the remedial purpose of this chapter to protect pre-
11 vailing labor standards.

12 (c) PRESERVATION OF WAGES AND BENEFITS DUE UNDER PREDE-
13 CESSOR CONTRACTS.—

14 (1) IN GENERAL.—Under a contract which succeeds a contract sub-
15 ject to this chapter, and under which substantially the same services
16 are furnished, a contractor or subcontractor may not pay a service em-
17 ployee less than the wages and fringe benefits the service employee
18 would have received under the predecessor contract, including accrued
19 wages and fringe benefits and any prospective increases in wages and
20 fringe benefits provided for in a collective-bargaining agreement as a
21 result of arm's-length negotiations.

22 (2) EXCEPTION.—This subsection does not apply if the Secretary
23 finds after a hearing in accordance with regulations adopted by the
24 Secretary that wages and fringe benefits under the predecessor con-
25 tract are substantially at variance with wages and fringe benefits pre-
26 vailing in the same locality for services of a similar character.

27 (d) DURATION OF CONTRACTS.—Subject to limitations in annual appro-
28 priation acts but notwithstanding any other law, a contract to which this
29 chapter applies may, if authorized by the Secretary, be for any term of
30 years not exceeding 5, if the contract provides for periodic adjustment of
31 wages and fringe benefits pursuant to future determinations, issued in the
32 manner prescribed in section 6703 of this title at least once every 2 years
33 during the term of the contract, covering each class of service employee.

34 (e) EXCLUSION OF FRINGE BENEFIT PAYMENTS IN DETERMINING OVER-
35 TIME PAY.—In determining any overtime pay to which a service employee
36 is entitled under Federal law, the regular or basic hourly rate of pay of the
37 service employee does not include any fringe benefit payments computed
38 under this chapter which are excluded from the definition of “regular rate”
39 under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C.
40 207(e)).

(f) TIMELINESS OF WAGE AND FRINGE BENEFIT DETERMINATIONS.—It is the intent of Congress that determinations of minimum wages and fringe benefits under section 6703(1) and (2) of this title should be made as soon as administratively feasible for all contracts subject to this chapter. In any event, the Secretary shall at least make the determinations for contracts under which more than 5 service employees are to be employed.

Subtitle III—Contract Disputes

Chapter	Sec.
71. Contract Disputes	7101

CHAPTER 71—CONTRACT DISPUTES

- 7101. Definitions.
- 7102. Applicability of chapter.
- 7103. Decision by contracting officer.
- 7104. Contractor's right of appeal from decision by contracting officer.
- 7105. Agency boards.
- 7106. Agency board procedures for accelerated and small claims.
- 7107. Judicial review of agency board decisions.
- 7108. Payment of claims.
- 7109. Interest.

§ 7101. Definitions

In this chapter:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator for Federal Procurement Policy appointed pursuant to section 1102 of this title.

(2) AGENCY BOARD OR AGENCY BOARD OF CONTRACT APPEALS.—The term “agency board” or “agency board of contract appeals” means—

- (A) the Armed Services Board;
- (B) the Civilian Board;
- (C) the board of contract appeals of the Tennessee Valley Authority; or
- (D) the Postal Service Board established under section 7105(d)(1) of this title.

(3) AGENCY HEAD.—The term “agency head” means the head and any assistant head of an executive agency. The term may include the chief official of a principal division of an executive agency if the head of the executive agency so designates that chief official.

(4) ARMED SERVICES BOARD.—The term “Armed Services Board” means the Armed Services Board of Contract Appeals established under section 7105(a)(1) of this title.

(5) CIVILIAN BOARD.—The term “Civilian Board” means the Civilian Board of Contract Appeals established under section 7105(b)(1) of this title.

(6) CONTRACTING OFFICER.—The term “contracting officer”—

1 (A) means an individual who, by appointment in accordance
 2 with applicable regulations, has the authority to make and admin-
 3 ister contracts and to make determinations and findings with re-
 4 spect to contracts; and

5 (B) includes an authorized representative of the contracting of-
 6 ficer, acting within the limits of the representative's authority.

7 (7) CONTRACTOR.—The term “contractor” means a party to a Fed-
 8 eral Government contract other than the Federal Government.

9 (8) EXECUTIVE AGENCY.—The term “executive agency” means—

10 (A) an executive department as defined in section 101 of title
 11 5;

12 (B) a military department as defined in section 102 of title 5;

13 (C) an independent establishment as defined in section 104 of
 14 title 5, except that the term does not include the Government Ac-
 15 countability Office; and

16 (D) a wholly owned Government corporation as defined in sec-
 17 tion 9101(3) of title 31.

18 (9) MISREPRESENTATION OF FACT.—The term “misrepresentation
 19 of fact” means a false statement of substantive fact, or conduct that
 20 leads to a belief of a substantive fact material to proper understanding
 21 of the matter in hand, made with intent to deceive or mislead.

22 **§ 7102. Applicability of chapter**

23 (a) EXECUTIVE AGENCY CONTRACTS.—Unless otherwise specifically pro-
 24 vided in this chapter, this chapter applies to any express or implied contract
 25 (including those of the nonappropriated fund activities described in sections
 26 1346 and 1491 of title 28) made by an executive agency for—

27 (1) the procurement of property, other than real property in being;

28 (2) the procurement of services;

29 (3) the procurement of construction, alteration, repair, or mainte-
 30 nance of real property; or

31 (4) the disposal of personal property.

32 (b) TENNESSEE VALLEY AUTHORITY CONTRACTS.—

33 (1) IN GENERAL.—With respect to contracts of the Tennessee Valley
 34 Authority, this chapter applies only to contracts containing a clause
 35 that requires contract disputes to be resolved through an agency ad-
 36 ministrative process.

37 (2) EXCLUSION.—Notwithstanding any other provision of this chap-
 38 ter, this chapter does not apply to a contract of the Tennessee Valley
 39 Authority for the sale of fertilizer or electric power or related to the
 40 conduct or operation of the electric power system.

1 (c) FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION CON-
 2 TRACTS.—If an agency head determines that applying this chapter would
 3 not be in the public interest, this chapter does not apply to a contract with
 4 a foreign government, an agency of a foreign government, an international
 5 organization, or a subsidiary body of an international organization.

6 (d) MARITIME CONTRACTS.—Appeals under section 7107(a) of this title
 7 and actions brought under sections 7104(b) and 7107(b) to (f) of this title,
 8 arising out of maritime contracts, are governed by chapter 309 or 311 of
 9 title 46, as applicable, to the extent that those chapters are not inconsistent
 10 with this chapter.

11 **§ 7103. Decision by contracting officer**

12 (a) CLAIMS GENERALLY.—

13 (1) SUBMISSION OF CONTRACTOR'S CLAIMS TO CONTRACTING OFFI-
 14 CER.—Each claim by a contractor against the Federal Government re-
 15 lating to a contract shall be submitted to the contracting officer for a
 16 decision.

17 (2) CONTRACTOR'S CLAIMS IN WRITING.—Each claim by a contractor
 18 against the Federal Government relating to a contract shall be in writ-
 19 ing.

20 (3) CONTRACTING OFFICER TO DECIDE FEDERAL GOVERNMENT'S
 21 CLAIMS.—Each claim by the Federal Government against a contractor
 22 relating to a contract shall be the subject of a written decision by the
 23 contracting officer.

24 (4) TIME FOR SUBMITTING CLAIMS.—

25 (A) IN GENERAL.—Each claim by a contractor against the Fed-
 26 eral Government relating to a contract and each claim by the Fed-
 27 eral Government against a contractor relating to a contract shall
 28 be submitted within 6 years after the accrual of the claim.

29 (B) EXCEPTION.—Subparagraph (A) of this paragraph does not
 30 apply to a claim by the Federal Government against a contractor
 31 that is based on a claim by the contractor involving fraud.

32 (5) APPLICABILITY.—The authority of this subsection and sub-
 33 sections (c)(1), (d), and (e) does not extend to a claim or dispute for
 34 penalties or forfeitures prescribed by statute or regulation that another
 35 Federal agency is specifically authorized to administer, settle, or deter-
 36 mine.

37 (b) CERTIFICATION OF CLAIMS.—

38 (1) REQUIREMENT GENERALLY.—For claims of more than \$100,000
 39 made by a contractor, the contractor shall certify that—

40 (A) the claim is made in good faith;

1 (B) the supporting data are accurate and complete to the best
2 of the contractor's knowledge and belief;

3 (C) the amount requested accurately reflects the contract ad-
4 justment for which the contractor believes the Federal Government
5 is liable; and

6 (D) the certifier is authorized to certify the claim on behalf of
7 the contractor.

8 (2) WHO MAY EXECUTE CERTIFICATION.—The certification required
9 by paragraph (1) may be executed by an individual authorized to bind
10 the contractor with respect to the claim.

11 (3) FAILURE TO CERTIFY OR DEFECTIVE CERTIFICATION.—A con-
12 tracting officer is not obligated to render a final decision on a claim
13 of more than \$100,000 that is not certified in accordance with para-
14 graph (1) if, within 60 days after receipt of the claim, the contracting
15 officer notifies the contractor in writing of the reasons why any at-
16 tempted certification was found to be defective. A defect in the certifi-
17 cation of a claim does not deprive a court or an agency board of juris-
18 diction over the claim. Prior to the entry of a final judgment by a court
19 or a decision by an agency board, the court or agency board shall re-
20 quire a defective certification to be corrected.

21 (c) FRAUDULENT CLAIMS.—

22 (1) NO AUTHORITY TO SETTLE.—This section does not authorize an
23 agency head to settle, compromise, pay, or otherwise adjust any claim
24 involving fraud.

25 (2) LIABILITY OF CONTRACTOR.—If a contractor is unable to sup-
26 port any part of the contractor's claim and it is determined that the
27 inability is attributable to a misrepresentation of fact or fraud by the
28 contractor, then the contractor is liable to the Federal Government for
29 an amount equal to the unsupported part of the claim plus all of the
30 Federal Government's costs attributable to reviewing the unsupported
31 part of the claim. Liability under this paragraph shall be determined
32 within 6 years of the commission of the misrepresentation of fact or
33 fraud.

34 (d) ISSUANCE OF DECISION.—The contracting officer shall issue a deci-
35 sion in writing and shall mail or otherwise furnish a copy of the decision
36 to the contractor.

37 (e) CONTENTS OF DECISION.—The contracting officer's decision shall
38 state the reasons for the decision reached and shall inform the contractor
39 of the contractor's rights as provided in this chapter. Specific findings of
40 fact are not required. If made, specific findings of fact are not binding in
41 any subsequent proceeding.

1 (f) TIME FOR ISSUANCE OF DECISION.—

2 (1) CLAIM OF \$100,000 OR LESS.—A contracting officer shall issue a
3 decision on any submitted claim of \$100,000 or less within 60 days
4 from the contracting officer's receipt of a written request from the con-
5 tractor that a decision be rendered within that period.

6 (2) CLAIM OF MORE THAN \$100,000.—A contracting officer shall,
7 within 60 days of receipt of a submitted certified claim over
8 \$100,000—

9 (A) issue a decision; or

10 (B) notify the contractor of the time within which a decision will
11 be issued.

12 (3) GENERAL REQUIREMENT OF REASONABLENESS.—The decision of
13 a contracting officer on submitted claims shall be issued within a rea-
14 sonable time, in accordance with regulations prescribed by the agency,
15 taking into account such factors as the size and complexity of the claim
16 and the adequacy of information in support of the claim provided by
17 the contractor.

18 (4) REQUESTING TRIBUNAL TO DIRECT ISSUANCE WITHIN SPECIFIED
19 TIME PERIOD.—A contractor may request the tribunal concerned to di-
20 rect a contracting officer to issue a decision in a specified period of
21 time, as determined by the tribunal concerned, in the event of undue
22 delay on the part of the contracting officer.

23 (5) FAILURE TO ISSUE DECISION WITHIN REQUIRED TIME PERIOD.—
24 Failure by a contracting officer to issue a decision on a claim within
25 the required time period is deemed to be a decision by the contracting
26 officer denying the claim and authorizes an appeal or action on the
27 claim as otherwise provided in this chapter. However, the tribunal con-
28 cerned may, at its option, stay the proceedings of the appeal or action
29 to obtain a decision by the contracting officer.

30 (g) FINALITY OF DECISION UNLESS APPEALED.—The contracting offi-
31 cer's decision on a claim is final and conclusive and is not subject to review
32 by any forum, tribunal, or Federal Government agency, unless an appeal or
33 action is timely commenced as authorized by this chapter. This chapter does
34 not prohibit an executive agency from including a clause in a Federal Gov-
35 ernment contract requiring that, pending final decision of an appeal, action,
36 or final settlement, a contractor shall proceed diligently with performance
37 of the contract in accordance with the contracting officer's decision.

38 (h) ALTERNATIVE MEANS OF DISPUTE RESOLUTION.—

39 (1) IN GENERAL.—Notwithstanding any other provision of this chap-
40 ter, a contractor and a contracting officer may use any alternative
41 means of dispute resolution under subchapter IV of chapter 5 of title

1 5, or other mutually agreeable procedures, for resolving claims. All pro-
 2 visions of subchapter IV of chapter 5 of title 5 apply to alternative
 3 means of dispute resolution under this subsection.

4 (2) CERTIFICATION OF CLAIM.—The contractor shall certify the
 5 claim when required to do so under subsection (b)(1) or other law.

6 (3) REJECTING REQUEST FOR ALTERNATIVE DISPUTE RESOLU-
 7 TION.—

8 (A) CONTRACTING OFFICER.—A contracting officer who rejects
 9 a contractor's request for alternative dispute resolution pro-
 10 ceedings shall provide the contractor with a written explanation,
 11 citing one or more of the conditions in section 572(b) of title 5
 12 or other specific reasons that alternative dispute resolution proce-
 13 dures are inappropriate.

14 (B) CONTRACTOR.—A contractor that rejects an agency's re-
 15 quest for alternative dispute resolution proceedings shall inform
 16 the agency in writing of the contractor's specific reasons for re-
 17 jecting the request.

18 **§ 7104. Contractor's right of appeal from decision by con-**
 19 **tracting officer**

20 (a) APPEAL TO AGENCY BOARD.—A contractor, within 90 days from the
 21 date of receipt of a contracting officer's decision under section 7103 of this
 22 title, may appeal the decision to an agency board as provided in section
 23 7105 of this title.

24 (b) BRINGING AN ACTION DE NOVO IN FEDERAL COURT.—

25 (1) IN GENERAL.—Except as provided in paragraph (2), and in lieu
 26 of appealing the decision of a contracting officer under section 7103
 27 of this title to an agency board, a contractor may bring an action di-
 28 rectly on the claim in the United States Court of Federal Claims, not-
 29 withstanding any contract provision, regulation, or rule of law to the
 30 contrary.

31 (2) TENNESSEE VALLEY AUTHORITY.—In the case of an action
 32 against the Tennessee Valley Authority, the contractor may only bring
 33 an action directly on the claim in a district court of the United States
 34 pursuant to section 1337 of title 28, notwithstanding any contract pro-
 35 vision, regulation, or rule of law to the contrary.

36 (3) TIME FOR FILING.—A contractor shall file any action under
 37 paragraph (1) or (2) within 12 months from the date of receipt of a
 38 contracting officer's decision under section 7103 of this title.

39 (4) DE NOVO.—An action under paragraph (1) or (2) shall proceed
 40 de novo in accordance with the rules of the appropriate court.

1 **§ 7105. Agency boards**

2 (a) ARMED SERVICES BOARD.—

3 (1) ESTABLISHMENT.—An Armed Services Board of Contract Ap-
4 peals may be established within the Department of Defense when the
5 Secretary of Defense, after consultation with the Administrator, deter-
6 mines from a workload study that the volume of contract claims justi-
7 fies the establishment of a full-time agency board of at least 3 members
8 who shall have no other inconsistent duties. Workload studies will be
9 updated at least once every 3 years and submitted to the Adminis-
10 trator.

11 (2) APPOINTMENT OF MEMBERS AND COMPENSATION.—Members of
12 the Armed Services Board shall be selected and appointed in the same
13 manner as administrative law judges appointed pursuant to section
14 3105 of title 5, with an additional requirement that members must
15 have had at least 5 years of experience in public contract law. The Sec-
16 retary of Defense shall designate the chairman and vice chairman of
17 the Armed Services Board from among the appointed members. Com-
18 pensation for the chairman, vice chairman, and other members shall be
19 determined under section 5372a of title 5.

20 (b) CIVILIAN BOARD.—

21 (1) ESTABLISHMENT.—There is established in the General Services
22 Administration the Civilian Board of Contract Appeals.

23 (2) MEMBERSHIP.—

24 (A) ELIGIBILITY.—The Civilian Board consists of members ap-
25 pointed by the Administrator of General Services (in consultation
26 with the Administrator for Federal Procurement Policy) from a
27 register of applicants maintained by the Administrator of General
28 Services, in accordance with rules issued by the Administrator of
29 General Services (in consultation with the Administrator for Fed-
30 eral Procurement Policy) for establishing and maintaining a reg-
31 ister of eligible applicants and selecting Civilian Board members.
32 The Administrator of General Services shall appoint a member
33 without regard to political affiliation and solely on the basis of the
34 professional qualifications required to perform the duties and re-
35 sponsibilities of a Civilian Board member.

36 (B) APPOINTMENT OF MEMBERS AND COMPENSATION.—Mem-
37 bers of the Civilian Board shall be selected and appointed to serve
38 in the same manner as administrative law judges appointed pursu-
39 ant to section 3105 of title 5, with an additional requirement that
40 members must have had at least 5 years experience in public con-

1 tract law. Compensation for the members shall be determined
2 under section 5372a of title 5.

3 (3) REMOVAL.—Members of the Civilian Board are subject to re-
4 moval in the same manner as administrative law judges, as provided
5 in section 7521 of title 5.

6 (4) FUNCTIONS.—

7 (A) IN GENERAL.—The Civilian Board has jurisdiction as pro-
8 vided by subsection (e)(1)(B).

9 (B) ADDITIONAL JURISDICTION.—With the concurrence of the
10 Federal agencies affected, the Civilian Board may assume—

11 (i) jurisdiction over any additional category of laws or dis-
12 putes over which an agency board of contract appeals estab-
13 lished pursuant to section 8 of the Contract Disputes Act ex-
14 ercised jurisdiction before January 6, 2007; and

15 (ii) any other function the agency board performed before
16 January 6, 2007, on behalf of those agencies.

17 (e) TENNESSEE VALLEY AUTHORITY BOARD.—

18 (1) ESTABLISHMENT.—The Board of Directors of the Tennessee
19 Valley Authority may establish a board of contract appeals of the Ten-
20 nessee Valley Authority of an indeterminate number of members.

21 (2) APPOINTMENT OF MEMBERS AND COMPENSATION.—The Board
22 of Directors of the Tennessee Valley Authority shall establish criteria
23 for the appointment of members to the agency board established under
24 paragraph (1), and shall designate a chairman of the agency board.
25 The chairman and other members of the agency board shall receive
26 compensation, at the daily equivalent of the rates determined under
27 section 5372a of title 5, for each day they are engaged in the actual
28 performance of their duties as members of the agency board.

29 (d) POSTAL SERVICE BOARD.—

30 (1) ESTABLISHMENT.—There is established an agency board of con-
31 tract appeals known as the Postal Service Board of Contract Appeals.

32 (2) APPOINTMENT AND SERVICE OF MEMBERS.—The Postal Service
33 Board of Contract Appeals consists of judges appointed by the Post-
34 master General. The judges shall meet the qualifications of and serve
35 in the same manner as members of the Civilian Board.

36 (3) APPLICATION.—This chapter applies to contract disputes before
37 the Postal Service Board of Contract Appeals in the same manner as
38 it applies to contract disputes before the Civilian Board.

39 (e) JURISDICTION.—

40 (1) IN GENERAL.—

1 (A) ARMED SERVICES BOARD.—The Armed Services Board has
2 jurisdiction to decide any appeal from a decision of a contracting
3 officer of the Department of Defense, the Department of the
4 Army, the Department of the Navy, the Department of the Air
5 Force, or the National Aeronautics and Space Administration rel-
6 ative to a contract made by that department or agency.

7 (B) CIVILIAN BOARD.—The Civilian Board has jurisdiction to
8 decide any appeal from a decision of a contracting officer of any
9 executive agency (other than the Department of Defense, the De-
10 partment of the Army, the Department of the Navy, the Depart-
11 ment of the Air Force, the National Aeronautics and Space Ad-
12 ministration, the United States Postal Service, the Postal Regu-
13 latory Commission, or the Tennessee Valley Authority) relative to
14 a contract made by that agency.

15 (C) POSTAL SERVICE BOARD.—The Postal Service Board of
16 Contract Appeals has jurisdiction to decide any appeal from a de-
17 cision of a contracting officer of the United States Postal Service
18 or the Postal Regulatory Commission relative to a contract made
19 by either agency.

20 (D) OTHER AGENCY BOARDS.—Each other agency board has ju-
21 risdiction to decide any appeal from a decision of a contracting of-
22 ficer relative to a contract made by its agency.

23 (2) RELIEF.—In exercising this jurisdiction, an agency board may
24 grant any relief that would be available to a litigant asserting a con-
25 tract claim in the United States Court of Federal Claims.

26 (f) SUBPOENA, DISCOVERY, AND DEPOSITION.—A member of an agency
27 board of contract appeals may administer oaths to witnesses, authorize
28 depositions and discovery proceedings, and require by subpoena the attend-
29 ance of witnesses, and production of books and papers, for the taking of
30 testimony or evidence by deposition or in the hearing of an appeal by the
31 agency board. In case of contumacy or refusal to obey a subpoena by a per-
32 son who resides, is found, or transacts business within the jurisdiction of
33 a United States district court, the court, upon application of the agency
34 board through the Attorney General, or upon application by the board of
35 contract appeals of the Tennessee Valley Authority, shall have jurisdiction
36 to issue the person an order requiring the person to appear before the agen-
37 cy board or a member of the agency board, to produce evidence or to give
38 testimony, or both. Any failure of the person to obey the order of the court
39 may be punished by the court as contempt of court.

40 (g) DECISIONS.—An agency board shall—

1 (1) to the fullest extent practicable provide informal, expeditious, and
2 inexpensive resolution of disputes;

3 (2) issue a decision in writing or take other appropriate action on
4 each appeal submitted; and

5 (3) mail or otherwise furnish a copy of the decision to the contractor
6 and the contracting officer.

7 **§ 7106. Agency board procedures for accelerated and small**
8 **claims**

9 (a) ACCELERATED PROCEDURE WHERE \$100,000 OR LESS IN DIS-
10 PUTE.—The rules of each agency board shall include a procedure for the
11 accelerated disposition of any appeal from a decision of a contracting officer
12 where the amount in dispute is \$100,000 or less. The accelerated procedure
13 is applicable at the sole election of the contractor. An appeal under the ac-
14 celerated procedure shall be resolved, whenever possible, within 180 days
15 from the date the contractor elects to use the procedure.

16 (b) SMALL CLAIMS PROCEDURE.—

17 (1) IN GENERAL.—The rules of each agency board shall include a
18 procedure for the expedited disposition of any appeal from a decision
19 of a contracting officer where the amount in dispute is \$50,000 or less,
20 or in the case of a small business concern (as defined in the Small
21 Business Act (15 U.S.C. 631 et seq.) and regulations under that Act),
22 \$150,000 or less. The small claims procedure is applicable at the sole
23 election of the contractor.

24 (2) SIMPLIFIED RULES OF PROCEDURE.—The small claims proce-
25 dure shall provide for simplified rules of procedure to facilitate the de-
26 cision of any appeal. An appeal under the small claims procedure may
27 be decided by a single member of the agency board with such concur-
28 rences as may be provided by rule or regulation.

29 (3) TIME OF DECISION.—An appeal under the small claims proce-
30 dure shall be resolved, whenever possible, within 120 days from the
31 date the contractor elects to use the procedure.

32 (4) FINALITY OF DECISION.—A decision against the Federal Govern-
33 ment or against the contractor reached under the small claims proce-
34 dure is final and conclusive and may not be set aside except in cases
35 of fraud.

36 (5) NO PRECEDENT.—Administrative determinations and final deci-
37 sions under this subsection have no value as precedent for future cases
38 under this chapter.

39 (6) REVIEW OF REQUISITE AMOUNT IN CONTROVERSY.—The Admin-
40 istrator, from time to time, may review the dollar amount specified in

1 paragraph (1) and adjust the amount in accordance with economic in-
 2 dexes selected by the Administrator.

3 **§ 7107. Judicial review of agency board decisions**

4 (a) REVIEW.—

5 (1) IN GENERAL.—The decision of an agency board is final, except
 6 that—

7 (A) a contractor may appeal the decision to the United States
 8 Court of Appeals for the Federal Circuit within 120 days from the
 9 date the contractor receives a copy of the decision; or

10 (B) if an agency head determines that an appeal should be
 11 taken, the agency head, with the prior approval of the Attorney
 12 General, may transmit the decision to the United States Court of
 13 Appeals for the Federal Circuit for judicial review under section
 14 1295 of title 28, within 120 days from the date the agency re-
 15 ceives a copy of the decision.

16 (2) TENNESSEE VALLEY AUTHORITY.—Notwithstanding paragraph
 17 (1), a decision of the board of contract appeals of the Tennessee Valley
 18 Authority is final, except that—

19 (A) a contractor may appeal the decision to a United States dis-
 20 trict court pursuant to section 1337 of title 28, within 120 days
 21 from the date the contractor receives a copy of the decision; or

22 (B) the Tennessee Valley Authority may appeal the decision to
 23 a United States district court pursuant to section 1337 of title 28,
 24 within 120 days from the date of the decision.

25 (3) REVIEW OF ARBITRATION.—An award by an arbitrator under
 26 this chapter shall be reviewed pursuant to sections 9 to 13 of title 9,
 27 except that the court may set aside or limit any award that is found
 28 to violate limitations imposed by Federal statute.

29 (b) FINALITY OF AGENCY BOARD DECISIONS ON QUESTIONS OF LAW
 30 AND FACT.—Notwithstanding any contract provision, regulation, or rule of
 31 law to the contrary, in an appeal by a contractor or the Federal Government
 32 from the decision of an agency board pursuant to subsection (a)—

33 (1) the decision of the agency board on a question of law is not final
 34 or conclusive; but

35 (2) the decision of the agency board on a question of fact is final
 36 and conclusive and may not be set aside unless the decision is—

37 (A) fraudulent, arbitrary, or capricious;

38 (B) so grossly erroneous as to necessarily imply bad faith; or

39 (C) not supported by substantial evidence.

40 (c) REMAND.—In an appeal by a contractor or the Federal Government
 41 from the decision of an agency board pursuant to subsection (a), the court

1 may render an opinion and judgment and remand the case for further ac-
2 tion by the agency board or by the executive agency as appropriate, with
3 direction the court considers just and proper.

4 (d) CONSOLIDATION.—If 2 or more actions arising from one contract are
5 filed in the United States Court of Federal Claims and one or more agency
6 boards, for the convenience of parties or witnesses or in the interest of jus-
7 tice, the United States Court of Federal Claims may order the consolidation
8 of the actions in that court or transfer any actions to or among the agency
9 boards involved.

10 (e) JUDGMENTS AS TO FEWER THAN ALL CLAIMS OR PARTIES.—In an
11 action filed pursuant to this chapter involving 2 or more claims, counter-
12 claims, cross-claims, or third-party claims, and where a portion of one of
13 the claims can be divided for purposes of decision or judgment, and in any
14 action where multiple parties are involved, the court, whenever appropriate,
15 may enter a judgment as to one or more but fewer than all of the claims
16 or portions of claims or parties.

17 (f) ADVISORY OPINIONS.—

18 (1) IN GENERAL.—Whenever an action involving an issue described
19 in paragraph (2) is pending in a district court of the United States,
20 the district court may request an agency board to provide the court
21 with an advisory opinion on the matters of contract interpretation
22 under consideration.

23 (2) APPLICABLE ISSUE.—An issue referred to in paragraph (1) is
24 any issue that could be the proper subject of a final decision of a con-
25 tracting officer appealable under this chapter.

26 (3) REFERRAL TO AGENCY BOARD WITH JURISDICTION.—A district
27 court shall direct a request under paragraph (1) to the agency board
28 having jurisdiction under this chapter to adjudicate appeals of contract
29 claims under the contract being interpreted by the court.

30 (4) TIMELY RESPONSE.—After receiving a request for an advisory
31 opinion under paragraph (1), an agency board shall provide the advi-
32 sory opinion in a timely manner to the district court making the re-
33 quest.

34 **§ 7108. Payment of claims**

35 (a) JUDGMENTS.—Any judgment against the Federal Government on a
36 claim under this chapter shall be paid promptly in accordance with the pro-
37 cedures provided by section 1304 of title 31.

38 (b) MONETARY AWARDS.—Any monetary award to a contractor by an
39 agency board shall be paid promptly in accordance with the procedures con-
40 tained in subsection (a).

1 (c) REIMBURSEMENT.—Payments made pursuant to subsections (a) and
 2 (b) shall be reimbursed to the fund provided by section 1304 of title 31 by
 3 the agency whose appropriations were used for the contract out of available
 4 amounts or by obtaining additional appropriations for purposes of reim-
 5 bursement.

6 (d) TENNESSEE VALLEY AUTHORITY.—

7 (1) JUDGMENTS.—Notwithstanding subsections (a) to (c), any judg-
 8 ment against the Tennessee Valley Authority on a claim under this
 9 chapter shall be paid promptly in accordance with section 9(b) of the
 10 Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)).

11 (2) MONETARY AWARDS.—Notwithstanding subsections (a) to (c),
 12 any monetary award to a contractor by the board of contract appeals
 13 of the Tennessee Valley Authority shall be paid in accordance with sec-
 14 tion 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C.
 15 831h(b)).

16 **§ 7109. Interest**

17 (a) PERIOD.—

18 (1) IN GENERAL.—Interest on an amount found due a contractor on
 19 a claim shall be paid to the contractor for the period beginning with
 20 the date the contracting officer receives the contractor’s claim, pursu-
 21 ant to section 7103(a) of this title, until the date of payment of the
 22 claim.

23 (2) DEFECTIVE CERTIFICATION.—On a claim for which the certifi-
 24 cation under section 7103(b)(1) of this title is found to be defective,
 25 any interest due under this section shall be paid for the period begin-
 26 ning with the date the contracting officer initially receives the contrac-
 27 tor’s claim until the date of payment of the claim.

28 (b) RATE.—Interest shall acerue and be paid at a rate which the Sec-
 29 retary of the Treasury shall specify as applicable for each successive 6-
 30 month period. The rate shall be determined by the Secretary of the Treas-
 31 ury taking into consideration current private commercial rates of interest
 32 for new loans maturing in approximately 5 years.

33 **Subtitle IV—Miscellaneous**

Chapter	Sec.
81. Drug-Free Workplace	8101
83. Buy American	8301
85. Committee for Purchase From People Who Are Blind or Se- verely Disabled.	8501
87. Kickbacks	8701

34 **CHAPTER 81—DRUG-FREE WORKPLACE**

- Sec.
- 8101. Definitions and construction.
 - 8102. Drug-free workplace requirements for Federal contractors.
 - 8103. Drug-free workplace requirements for Federal grant recipients.
 - 8104. Employee sanctions and remedies.

8105. Waiver.
8106. Regulations.

1 **§ 8101. Definitions and construction**

2 (a) DEFINITIONS.—In this chapter:

3 (1) CONTRACTOR.—The term “contractor” means the department,
4 division, or other unit of a person responsible for the performance
5 under the contract.

6 (2) CONTROLLED SUBSTANCE.—The term “controlled substance”
7 means a controlled substance in schedules I through V of section 202
8 of the Comprehensive Drug Abuse Prevention and Control Act of 1970
9 (21 U.S.C. 812).

10 (3) CONVICTION.—The term “conviction” means a finding of guilt
11 (including a plea of nolo contendere), an imposition of sentence, or
12 both, by a judicial body charged with the responsibility to determine
13 violations of Federal or State criminal drug statutes.

14 (4) CRIMINAL DRUG STATUTE.—The term “criminal drug statute”
15 means a criminal statute involving manufacture, distribution, dispensa-
16 tion, use, or possession of a controlled substance.

17 (5) DRUG-FREE WORKPLACE.—The term “drug-free workplace”
18 means a site of an entity—

19 (A) for the performance of work done in connection with a spe-
20 cific contract or grant described in section 8102 or 8103 of this
21 title; and

22 (B) at which employees of the entity are prohibited from engag-
23 ing in the unlawful manufacture, distribution, dispensation, pos-
24 session, or use of a controlled substance in accordance with the
25 requirements of the Anti-Drug Abuse Act of 1988 (Public Law
26 100–690, 102 Stat. 4181).

27 (6) EMPLOYEE.—The term “employee” means the employee of a
28 contractor or grantee directly engaged in the performance of work pur-
29 suant to the contract or grant described in section 8102 or 8103 of
30 this title.

31 (7) FEDERAL AGENCY.—The term “Federal agency” means an agen-
32 cy as defined in section 552(f) of title 5.

33 (8) GRANTEE.—The term “grantee” means the department, division,
34 or other unit of a person responsible for the performance under the
35 grant.

36 (b) CONSTRUCTION.—This chapter does not require law enforcement
37 agencies to comply with this chapter if the head of the agency determines
38 it would be inappropriate in connection with the agency’s undercover oper-
39 ations.

1 **§ 8102. Drug-free workplace requirements for Federal con-**
2 **tractors**

3 (a) IN GENERAL.—

4 (1) PERSONS OTHER THAN INDIVIDUALS.—A person other than an
5 individual shall not be considered a responsible source (as defined in
6 section 113 of this title) for the purposes of being awarded a contract
7 for the procurement of any property or services of a value greater than
8 the simplified acquisition threshold (as defined in section 134 of this
9 title) by a Federal agency, other than a contract for the procurement
10 of commercial items (as defined in section 103 of this title), unless the
11 person agrees to provide a drug-free workplace by—

12 (A) publishing a statement notifying employees that the unlaw-
13 ful manufacture, distribution, dispensation, possession, or use of
14 a controlled substance is prohibited in the person's workplace and
15 specifying the actions that will be taken against employees for vio-
16 lations of the prohibition;

17 (B) establishing a drug-free awareness program to inform em-
18 ployees about—

19 (i) the dangers of drug abuse in the workplace;

20 (ii) the person's policy of maintaining a drug-free work-
21 place;

22 (iii) available drug counseling, rehabilitation, and employee
23 assistance programs; and

24 (iv) the penalties that may be imposed on employees for
25 drug abuse violations;

26 (C) making it a requirement that each employee to be engaged
27 in the performance of the contract be given a copy of the state-
28 ment required by subparagraph (A);

29 (D) notifying the employee in the statement required by sub-
30 paragraph (A) that as a condition of employment on the contract
31 the employee will—

32 (i) abide by the terms of the statement; and

33 (ii) notify the employer of any criminal drug statute convic-
34 tion for a violation occurring in the workplace no later than
35 5 days after the conviction;

36 (E) notifying the contracting agency within 10 days after receiv-
37 ing notice under subparagraph (D)(ii) from an employee or other-
38 wise receiving actual notice of a conviction;

39 (F) imposing a sanction on, or requiring the satisfactory partici-
40 pation in a drug abuse assistance or rehabilitation program by,

1 any employee who is convicted, as required by section 8104 of this
2 title; and

3 (G) making a good faith effort to continue to maintain a drug-
4 free workplace through implementation of subparagraphs (A) to
5 (F).

6 (2) INDIVIDUALS.—A Federal agency shall not make a contract with
7 an individual unless the individual agrees not to engage in the unlawful
8 manufacture, distribution, dispensation, possession, or use of a con-
9 trolled substance in the performance of the contract.

10 (b) SUSPENSION, TERMINATION, OR DEBARMENT OF CONTRACTOR.—

11 (1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—
12 Payment under a contract awarded by a Federal agency may be sus-
13 pended and the contract may be terminated, and the contractor or indi-
14 vidual who made the contract with the agency may be suspended or
15 debarred in accordance with the requirements of this section, if the
16 head of the agency determines that—

17 (A) the contractor is violating, or has violated, the requirements
18 of subparagraph (A), (B), (C), (D), (E), or (F) of subsection
19 (a)(1); or

20 (B) the number of employees of the contractor who have been
21 convicted of violations of criminal drug statutes for violations oc-
22 curring in the workplace indicates that the contractor has failed
23 to make a good faith effort to provide a drug-free workplace as
24 required by subsection (a).

25 (2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT
26 PROCEEDINGS.—A contracting officer who determines in writing that
27 cause for suspension of payments, termination, or suspension or debar-
28 ment exists shall initiate an appropriate action, to be conducted by the
29 agency concerned in accordance with the Federal Acquisition Regula-
30 tion and applicable agency procedures. The Federal Acquisition Regula-
31 tion shall be revised to include rules for conducting suspension and de-
32 barment proceedings under this subsection, including rules providing
33 notice, opportunity to respond in writing or in person, and other proce-
34 dures as may be necessary to provide a full and fair proceeding to a
35 contractor or individual.

36 (3) EFFECT OF DEBARMENT.—A contractor or individual debarred
37 by a final decision under this subsection is ineligible for award of a
38 contract by a Federal agency, and for participation in a future procure-
39 ment by a Federal agency, for a period specified in the decision, not
40 to exceed 5 years.

1 **§ 8103. Drug-free workplace requirements for Federal grant**
2 **recipients**

3 (a) IN GENERAL.—

4 (1) PERSONS OTHER THAN INDIVIDUALS.—A person other than an
5 individual shall not receive a grant from a Federal agency unless the
6 person agrees to provide a drug-free workplace by—

7 (A) publishing a statement notifying employees that the unlaw-
8 ful manufacture, distribution, dispensation, possession, or use of
9 a controlled substance is prohibited in the grantee's workplace and
10 specifying the actions that will be taken against employees for vio-
11 lations of the prohibition;

12 (B) establishing a drug-free awareness program to inform em-
13 ployees about—

14 (i) the dangers of drug abuse in the workplace;

15 (ii) the grantee's policy of maintaining a drug-free work-
16 place;

17 (iii) available drug counseling, rehabilitation, and employee
18 assistance programs; and

19 (iv) the penalties that may be imposed on employees for
20 drug abuse violations;

21 (C) making it a requirement that each employee to be engaged
22 in the performance of the grant be given a copy of the statement
23 required by subparagraph (A);

24 (D) notifying the employee in the statement required by sub-
25 paragraph (A) that as a condition of employment in the grant the
26 employee will—

27 (i) abide by the terms of the statement; and

28 (ii) notify the employer of any criminal drug statute convic-
29 tion for a violation occurring in the workplace no later than
30 5 days after the conviction;

31 (E) notifying the granting agency within 10 days after receiving
32 notice under subparagraph (D)(ii) from an employee or otherwise
33 receiving actual notice of a conviction;

34 (F) imposing a sanction on, or requiring the satisfactory partici-
35 pation in a drug abuse assistance or rehabilitation program by,
36 any employee who is convicted, as required by section 8104 of this
37 title; and

38 (G) making a good faith effort to continue to maintain a drug-
39 free workplace through implementation of subparagraphs (A) to
40 (F).

1 (2) INDIVIDUALS.—A Federal agency shall not make a grant to an
 2 individual unless the individual agrees not to engage in the unlawful
 3 manufacture, distribution, dispensation, possession, or use of a con-
 4 trolled substance in conducting an activity with the grant.

5 (b) SUSPENSION, TERMINATION, OR DEBARMENT OF GRANTEE.—

6 (1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—

7 Payment under a grant awarded by a Federal agency may be sus-
 8 pended and the grant may be terminated, and the grantee may be sus-
 9 pended or debarred, in accordance with the requirements of this sec-
 10 tion, if the head of the agency or the official designee of the head of
 11 the agency determines in writing that—

12 (A) the grantee is violating, or has violated, the requirements
 13 of subparagraph (A), (B), (C), (D), (E), (F), or (G) of subsection
 14 (a)(1); or

15 (B) the number of employees of the grantee who have been con-
 16 victed of violations of criminal drug statutes for violations occur-
 17 ring in the workplace indicates that the grantee has failed to make
 18 a good faith effort to provide a drug-free workplace as required
 19 by subsection (a)(1).

20 (2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT
 21 PROCEEDINGS.—A suspension of payments, termination, or suspension
 22 or debarment proceeding subject to this subsection shall be conducted
 23 in accordance with applicable law, including Executive Order 12549 or
 24 any superseding executive order and any regulations prescribed to im-
 25 plement the law or executive order.

26 (3) EFFECT OF DEBARMENT.—A grantee debarred by a final deci-
 27 sion under this subsection is ineligible for award of a grant by a Fed-
 28 eral agency, and for participation in a future grant by a Federal agen-
 29 cy, for a period specified in the decision, not to exceed 5 years.

30 **§ 8104. Employee sanctions and remedies**

31 Within 30 days after receiving notice from an employee of a conviction
 32 pursuant to section 8102(a)(1)(D)(ii) or 8103(a)(1)(D)(ii) of this title, a
 33 contractor or grantee shall—

34 (1) take appropriate personnel action against the employee, up to
 35 and including termination; or

36 (2) require the employee to satisfactorily participate in a drug abuse
 37 assistance or rehabilitation program approved for those purposes by a
 38 Federal, State, or local health, law enforcement, or other appropriate
 39 agency.

§ 8105. Waiver

(a) IN GENERAL.—The head of an agency may waive a suspension of payments, termination of the contract or grant, or suspension or debarment of a contractor or grantee under this chapter with respect to a particular contract or grant if—

(1) in the case of a contract, the head of the agency determines under section 8102(b)(1) of this title, after a final determination is issued under section 8102(b)(1), that suspension of payments, termination of the contract, suspension or debarment of the contractor, or refusal to permit a person to be treated as a responsible source for a contract would severely disrupt the operation of the agency to the detriment of the Federal Government or the general public; or

(2) in the case of a grant, the head of the agency determines that suspension of payments, termination of the grant, or suspension or debarment of the grantee would not be in the public interest.

(b) WAIVER AUTHORITY MAY NOT BE DELEGATED.—The authority of the head of an agency under this section to waive a suspension, termination, or debarment shall not be delegated.

§ 8106. Regulations

Government-wide regulations governing actions under this chapter shall be issued pursuant to division B of subtitle I of this title.

CHAPTER 83—BUY AMERICAN

Sec.

- 8301. Definitions.
- 8302. American materials required for public use.
- 8303. Contracts for public works.
- 8304. Waiver rescission.
- 8305. Annual report.

§ 8301. Definitions

In this chapter:

(1) PUBLIC BUILDING, PUBLIC USE, AND PUBLIC WORK.—The terms “public building”, “public use”, and “public work” mean a public building of, use by, and a public work of, the Federal Government, the District of Columbia, Puerto Rico, American Samoa, and the Virgin Islands.

(2) UNITED STATES.—The term “United States” includes any place subject to the jurisdiction of the United States.

§ 8302. American materials required for public use

(a) IN GENERAL.—

(1) ALLOWABLE MATERIALS.—Only unmanufactured articles, materials, and supplies that have been mined or produced in the United States, and only manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from ar-

1 articles, materials, or supplies mined, produced, or manufactured in the
2 United States, shall be acquired for public use unless the head of the
3 department or independent establishment concerned determines their
4 acquisition to be inconsistent with the public interest or their cost to
5 be unreasonable.

6 (2) EXCEPTIONS.—This section does not apply—

7 (A) to articles, materials, or supplies for use outside the United
8 States;

9 (B) if articles, materials, or supplies of the class or kind to be
10 used, or the articles, materials, or supplies from which they are
11 manufactured, are not mined, produced, or manufactured in the
12 United States in sufficient and reasonably available commercial
13 quantities and are not of a satisfactory quality; and

14 (C) to manufactured articles, materials, or supplies procured
15 under any contract with an award value that is not more than the
16 micro-purchase threshold under section 1902 of this title.

17 (b) REPORTS.—

18 (1) IN GENERAL.—Not later than 180 days after the end of each of
19 fiscal years 2009 through 2011, the head of each Federal agency shall
20 submit to the Committee on Homeland Security and Governmental Af-
21 fairs of the Senate and the Committee on Oversight and Government
22 Reform of the House of Representatives a report on the amount of the
23 acquisitions made by the agency in that fiscal year of articles, mate-
24 rials, or supplies purchased from entities that manufacture the articles,
25 materials, or supplies outside of the United States.

26 (2) CONTENTS OF REPORT.—The report required by paragraph (1)
27 shall separately include, for the fiscal year covered by the report—

28 (A) the dollar value of any articles, materials, or supplies that
29 were manufactured outside the United States;

30 (B) an itemized list of all waivers granted with respect to the
31 articles, materials, or supplies under this chapter, and a citation
32 to the treaty, international agreement, or other law under which
33 each waiver was granted;

34 (C) if any articles, materials, or supplies were acquired from en-
35 tities that manufacture articles, materials, or supplies outside the
36 United States, the specific exception under this section that was
37 used to purchase the articles, materials, or supplies; and

38 (D) a summary of—

39 (i) the total procurement funds expended on articles, mate-
40 rials, and supplies manufactured inside the United States;
41 and

1 (ii) the total procurement funds expended on articles, mate-
2 rials, and supplies manufactured outside the United States.

3 (3) PUBLIC AVAILABILITY.—The head of each Federal agency sub-
4 mitting a report under paragraph (1) shall make the report publicly
5 available to the maximum extent practicable.

6 (4) EXCEPTION FOR INTELLIGENCE COMMUNITY.—This subsection
7 shall not apply to acquisitions made by an agency, or component of an
8 agency, that is an element of the intelligence community as specified
9 in, or designated under, section 3 of the National Security Act of 1947
10 (50 U.S.C. 401a).

11 **§ 8303. Contracts for public works**

12 (a) IN GENERAL.—Every contract for the construction, alteration, or re-
13 pair of any public building or public work in the United States shall contain
14 a provision that in the performance of the work the contractor, subcontractors,
15 material men, or suppliers shall use only—

16 (1) unmanufactured articles, materials, and supplies that have been
17 mined or produced in the United States; and

18 (2) manufactured articles, materials, and supplies that have been
19 manufactured in the United States substantially all from articles, mate-
20 rials, or supplies mined, produced, or manufactured in the United
21 States.

22 (b) EXCEPTIONS.—

23 (1) IN GENERAL.—This section does not apply—

24 (A) to articles, materials, or supplies for use outside the United
25 States;

26 (B) if articles, materials, or supplies of the class or kind to be
27 used, or the articles, materials, or supplies from which they are
28 manufactured, are not mined, produced, or manufactured in the
29 United States in sufficient and reasonably available commercial
30 quantities and are not of a satisfactory quality; and

31 (C) to manufactured articles, materials, or supplies procured
32 under any contract with an award value that is not more than the
33 micro-purchase threshold under section 1902 of this title.

34 (2) PARTICULAR ARTICLE, MATERIAL, OR SUPPLY.—If the head of
35 the department or independent establishment making the contract finds
36 that it is impracticable to comply with subsection (a) for a particular
37 article, material, or supply or that it would unreasonably increase the
38 cost, an exception shall be noted in the specifications for that article,
39 material, or supply and a public record of the findings that justified
40 the exception shall be made.

1 (3) INCONSISTENT WITH PUBLIC INTEREST.—Subsection (a) shall be
2 regarded as requiring the purchase, for public use within the United
3 States, of articles, materials, or supplies manufactured in the United
4 States in sufficient and reasonably available commercial quantities and
5 of a satisfactory quality, unless the head of the department or inde-
6 pendent establishment concerned determines their purchase to be in-
7 consistent with the public interest or their cost to be unreasonable.

8 (e) RESULTS OF FAILURE TO COMPLY.—If the head of a department, bu-
9 reau, agency, or independent establishment that has made a contract con-
10 taining the provision required by subsection (a) finds that there has been
11 a failure to comply with the provision in the performance of the contract,
12 the head of the department, bureau, agency, or independent establishment
13 shall make the findings public. The findings shall include the name of the
14 contractor obligated under the contract. The contractor, and any subcon-
15 tractor, material man, or supplier associated or affiliated with the con-
16 tractor, shall not be awarded another contract for the construction, alter-
17 ation, or repair of any public building or public work for 3 years after the
18 findings are made public.

19 **§ 8304. Waiver rescission**

20 (a) TYPE OF AGREEMENT.—An agreement referred to in subsection (b)
21 is a reciprocal defense procurement memorandum of understanding between
22 the United States and a foreign country pursuant to which the Secretary
23 of Defense has prospectively waived this chapter for certain products in that
24 country.

25 (b) DETERMINATION BY SECRETARY OF DEFENSE.—If the Secretary of
26 Defense, after consultation with the United States Trade Representative,
27 determines that a foreign country that is party to an agreement described
28 in subsection (a) has violated the agreement by discriminating against cer-
29 tain types of products produced in the United States that are covered by
30 the agreement, the Secretary of Defense shall rescind the Secretary's blan-
31 ket waiver of this chapter with respect to those types of products produced
32 in that country.

33 **§ 8305. Annual report**

34 Not later than 60 days after the end of each fiscal year, the Secretary
35 of Defense shall submit to Congress a report on the amount of purchases
36 by the Department of Defense from foreign entities in that fiscal year. The
37 report shall separately indicate the dollar value of items for which this chap-
38 ter was waived pursuant to—

39 (1) a reciprocal defense procurement memorandum of understanding
40 described in section 8304(a) of this title;

41 (2) the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.); or

(3) an international agreement to which the United States is a party.

**CHAPTER 85—COMMITTEE FOR PURCHASE FROM
PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

Sec.

8501. Definitions.

8502. Committee for Purchase From People Who Are Blind or Severely Disabled.

8503. Duties and powers of the Committee.

8504. Procurement requirements for the Federal Government.

8505. Audit.

8506. Authorization of appropriations.

§ 8501. Definitions

In this chapter:

(1) **BLIND.**—The term “blind” refers to an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

(2) **COMMITTEE.**—The term “Committee” means the Committee for Purchase From People Who Are Blind or Severely Disabled established under section 8502 of this title.

(3) **DIRECT LABOR.**—The term “direct labor”—

(A) includes all work required for preparation, processing, and packing of a product, or work directly relating to the performance of a service; but

(B) does not include supervision, administration, inspection, or shipping.

(4) **ENTITY OF THE FEDERAL GOVERNMENT AND FEDERAL GOVERNMENT.**—The terms “entity of the Federal Government” and “Federal Government” include an entity of the legislative or judicial branch, a military department or executive agency (as defined in sections 102 and 105 of title 5, respectively), the United States Postal Service, and a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces.

(5) **OTHER SEVERELY DISABLED.**—The term “other severely disabled” means an individual or class of individuals under a physical or mental disability, other than blindness, which (according to criteria established by the Committee after consultation with appropriate entities of the Federal Government and taking into account the views of non-Federal Government entities representing the disabled) constitutes a substantial handicap to employment and is of a nature that prevents the individual from currently engaging in normal competitive employment.

1 (6) QUALIFIED NONPROFIT AGENCY FOR OTHER SEVERELY DIS-
2 ABLED.—The term “qualified nonprofit agency for other severely dis-
3 abled” means an agency—

4 (A)(i) organized under the laws of the United States or a State;
5 (ii) operated in the interest of severely disabled individuals who
6 are not blind; and

7 (iii) of which no part of the net income of the agency inures
8 to the benefit of a shareholder or other individual;

9 (B) that complies with any applicable occupational health and
10 safety standard prescribed by the Secretary of Labor; and

11 (C) that in the production of products and in the provision of
12 services (whether or not the products or services are procured
13 under this chapter) during the fiscal year employs blind or other
14 severely disabled individuals for at least 75 percent of the hours
15 of direct labor required for the production or provision of the
16 products or services.

17 (7) QUALIFIED NONPROFIT AGENCY FOR THE BLIND.—The term
18 “qualified nonprofit agency for the blind” means an agency—

19 (A)(i) organized under the laws of the United States or a State;

20 (ii) operated in the interest of blind individuals; and

21 (iii) of which no part of the net income of the agency inures
22 to the benefit of a shareholder or other individual;

23 (B) that complies with any applicable occupational health and
24 safety standard prescribed by the Secretary of Labor; and

25 (C) that in the production of products and in the provision of
26 services (whether or not the products or services are procured
27 under this chapter) during the fiscal year employs blind individ-
28 uals for at least 75 percent of the hours of direct labor required
29 for the production or provision of the products or services.

30 (8) SEVERELY DISABLED INDIVIDUAL.—The term “severely disabled
31 individual” means an individual or class of individuals under a physical
32 or mental disability, other than blindness, which (according to criteria
33 established by the Committee after consultation with appropriate enti-
34 ties of the Federal Government and taking into account the views of
35 non-Federal Government entities representing the disabled) constitutes
36 a substantial handicap to employment and is of a nature that prevents
37 the individual from currently engaging in normal competitive employ-
38 ment.

39 (9) STATE.—The term “State” includes the District of Columbia,
40 Puerto Rico, the Virgin Islands, Guam, American Samoa, and the
41 Northern Mariana Islands.

1 **§ 8502. Committee for Purchase From People Who Are Blind**
2 **or Severely Disabled**

3 (a) ESTABLISHMENT.—There is a Committee for Purchase From People
4 Who Are Blind or Severely Disabled.

5 (b) COMPOSITION.—The Committee consists of 15 members appointed by
6 the President as follows:

7 (1) One officer or employee from each of the following, nominated
8 by the head of the department or agency:

9 (A) The Department of Agriculture.

10 (B) The Department of Defense.

11 (C) The Department of the Army.

12 (D) The Department of the Navy.

13 (E) The Department of the Air Force.

14 (F) The Department of Education.

15 (G) The Department of Commerce.

16 (H) The Department of Veterans Affairs.

17 (I) The Department of Justice.

18 (J) The Department of Labor.

19 (K) The General Services Administration.

20 (2) One member from individuals who are not officers or employees
21 of the Federal Government and who are conversant with the problems
22 incident to the employment of the blind.

23 (3) One member from individuals who are not officers or employees
24 of the Federal Government and who are conversant with the problems
25 incident to the employment of other severely disabled individuals.

26 (4) One member from individuals who are not officers or employees
27 of the Federal Government and who represent blind individuals em-
28 ployed in qualified nonprofit agencies for the blind.

29 (5) One member from individuals who are not officers or employees
30 of the Federal Government and who represent severely disabled individ-
31 uals (other than blind individuals) employed in qualified nonprofit
32 agencies for other severely disabled individuals.

33 (c) TERMS OF OFFICE.—Members appointed under paragraph (2), (3),
34 (4), or (5) of subsection (b) shall be appointed for terms of 5 years and
35 may be reappointed if the member meets the qualifications prescribed by
36 those paragraphs.

37 (d) CHAIRMAN.—The members of the Committee shall elect one of the
38 members to be Chairman.

39 (e) VACANCY.—

1 (1) MANNER IN WHICH FILLED.—A vacancy in the membership of
2 the Committee shall be filled in the manner in which the original ap-
3 pointment was made.

4 (2) UNFULFILLED TERM.—A member appointed under paragraph
5 (2), (3), (4), or (5) of subsection (b) to fill a vacancy occurring prior
6 to the expiration of the term for which the predecessor was appointed
7 shall be appointed only for the remainder of the term. The member
8 may serve after the expiration of a term until a successor takes office.

9 (f) PAY AND TRAVEL EXPENSES.—

10 (1) AMOUNT TO WHICH MEMBERS ARE ENTITLED.—Except as pro-
11 vided in paragraph (2), members of the Committee are entitled to re-
12 ceive the daily equivalent of the maximum annual rate of basic pay
13 payable under section 5376 of title 5 for each day (including travel-
14 time) during which they perform services for the Committee. A member
15 is entitled to travel expenses, including a per diem allowance instead
16 of subsistence, as provided under section 5703 of title 5.

17 (2) OFFICERS OR EMPLOYEES OF THE FEDERAL GOVERNMENT.—
18 Members who are officers or employees of the Federal Government may
19 not receive additional pay because of their service on the Committee.

20 (g) STAFF.—

21 (1) APPOINTMENT AND COMPENSATION.—Subject to rules the Com-
22 mittee may adopt and to chapters 33 and 51 and subchapter III of
23 chapter 53 of title 5, the Chairman may appoint and fix the pay of
24 personnel the Committee determines are necessary to assist it in car-
25 rying out this chapter.

26 (2) PERSONNEL FROM OTHER ENTITIES.—On request of the Com-
27 mittee, the head of an entity of the Federal Government may detail,
28 on a reimbursable basis, any personnel of the entity to the Committee
29 to assist it in carrying out this chapter.

30 (h) OBTAINING OFFICIAL INFORMATION.—The Committee may secure di-
31 rectly from an entity of the Federal Government information necessary to
32 enable it to carry out this chapter. On request of the Chairman, the head
33 of the entity shall furnish the information to the Committee.

34 (i) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General
35 Services shall provide to the Committee, on a reimbursable basis, adminis-
36 trative support services the Committee requests.

37 (j) ANNUAL REPORT.—Not later than December 31 of each year, the
38 Committee shall transmit to the President a report that includes the names
39 of the Committee members serving in the prior fiscal year, the dates of
40 Committee meetings in that year, a description of the activities of the Com-

1 mittee under this chapter in that year, and any recommendations for
2 changes in this chapter which the Committee determines are necessary.

3 **§ 8503. Duties and powers of the Committee**

4 (a) PROCUREMENT LIST.—

5 (1) MAINTENANCE OF LIST.—The Committee shall maintain and
6 publish in the Federal Register a procurement list. The list shall in-
7 clude the following products and services determined by the Committee
8 to be suitable for the Federal Government to procure pursuant to this
9 chapter:

10 (A) Products produced by a qualified nonprofit agency for the
11 blind or by a qualified nonprofit agency for other severely disabled.

12 (B) The services those agencies provide.

13 (2) CHANGES TO LIST.—The Committee may, by rule made in ac-
14 cordance with the requirements of section 553(b) to (e) of title 5, add
15 to and remove from the procurement list products so produced and
16 services so provided.

17 (b) FAIR MARKET PRICE.—The Committee shall determine the fair mar-
18 ket price of products and services contained on the procurement list that
19 are offered for sale to the Federal Government by a qualified nonprofit
20 agency for the blind or a qualified nonprofit agency for other severely dis-
21 abled. The Committee from time to time shall revise its price determinations
22 with respect to those products and services in accordance with changing
23 market conditions.

24 (c) CENTRAL NONPROFIT AGENCY OR AGENCIES.—The Committee shall
25 designate a central nonprofit agency or agencies to facilitate the distribu-
26 tion, by direct allocation, subcontract, or any other means, of orders of the
27 Federal Government for products and services on the procurement list
28 among qualified nonprofit agencies for the blind or qualified nonprofit agen-
29 cies for other severely disabled.

30 (d) REGULATIONS.—The Committee—

31 (1) may prescribe regulations regarding specifications for products
32 and services on the procurement list, the time of their delivery, and
33 other matters as necessary to carry out this chapter; and

34 (2) shall prescribe regulations providing that when the Federal Gov-
35 ernment purchases products produced and offered for sale by qualified
36 nonprofit agencies for the blind or qualified nonprofit agencies for
37 other severely disabled, priority shall be given to products produced and
38 offered for sale by qualified nonprofit agencies for the blind.

39 (e) STUDY AND EVALUATION OF ACTIVITIES.—The Committee shall
40 make a continuing study and evaluation of its activities under this chapter
41 to ensure effective and efficient administration of this chapter. The Com-

1 mittee on its own or in cooperation with other public or nonprofit private
2 agencies may study—

3 (1) problems related to the employment of the blind and other se-
4 verely disabled individuals; and

5 (2) the development and adaptation of production methods that
6 would enable a greater utilization of the blind and other severely dis-
7 abled individuals.

8 **§ 8504. Procurement requirements for the Federal Govern-**
9 **ment**

10 (a) IN GENERAL.—An entity of the Federal Government intending to pro-
11 cure a product or service on the procurement list referred to in section 8503
12 of this title shall procure the product or service from a qualified nonprofit
13 agency for the blind or a qualified nonprofit agency for other severely dis-
14 abled in accordance with regulations of the Committee and at the price the
15 Committee establishes if the product or service is available within the period
16 required by the entity.

17 (b) EXCEPTION.—This section does not apply to the procurement of a
18 product that is available from an industry established under chapter 307
19 of title 18 and that is required under section 4124 of title 18 to be procured
20 from that industry.

21 **§ 8505. Audit**

22 For the purpose of audit and examination, the Comptroller General shall
23 have access to the books, documents, papers, and other records of—

24 (1) the Committee and of each central nonprofit agency the Com-
25 mittee designates under section 8503(c) of this title; and

26 (2) qualified nonprofit agencies for the blind and qualified nonprofit
27 agencies for other severely disabled that have sold products or services
28 under this chapter to the extent those books, documents, papers, and
29 other records relate to the activities of the agency in a fiscal year in
30 which a sale was made under this chapter.

31 **§ 8506. Authorization of appropriations**

32 Necessary amounts may be appropriated to the Committee to carry out
33 this chapter.

34 **CHAPTER 87—KICKBACKS**

Sec.

- 8701. Definitions.
- 8702. Prohibited conduct.
- 8703. Contractor responsibilities.
- 8704. Inspection authority.
- 8705. Administrative offsets.
- 8706. Civil actions.
- 8707. Criminal penalties.

35 **§ 8701. Definitions**

36 In this chapter:

1 (1) CONTRACTING AGENCY.—The term “contracting agency”, when
 2 used with respect to a prime contractor, means a department, agency,
 3 or establishment of the Federal Government that enters into a prime
 4 contract with a prime contractor.

5 (2) KICKBACK.—The term “kickback” means any money, fee, com-
 6 mission, credit, gift, gratuity, thing of value, or compensation of any
 7 kind that is provided to a prime contractor, prime contractor employee,
 8 subcontractor, or subcontractor employee to improperly obtain or re-
 9 ward favorable treatment in connection with a prime contract or a sub-
 10 contract relating to a prime contract.

11 (3) PRIME CONTRACT.—The term “prime contract” means a con-
 12 tract or contractual action entered into by the Federal Government to
 13 obtain supplies, materials, equipment, or services of any kind.

14 (4) PRIME CONTRACTOR.—The term “prime contractor” means a
 15 person that has entered into a prime contract with the Federal Govern-
 16 ment.

17 (5) PRIME CONTRACTOR EMPLOYEE.—The term “prime contractor
 18 employee” means an officer, partner, employee, or agent of a prime
 19 contractor.

20 (6) SUBCONTRACT.—The term “subcontract” means a contract or
 21 contractual action entered into by a prime contractor or subcontractor
 22 to obtain supplies, materials, equipment, or services of any kind under
 23 a prime contract.

24 (7) SUBCONTRACTOR.—The term “subcontractor”—

25 (A) means a person, other than the prime contractor, that offers
 26 to furnish or furnishes supplies, materials, equipment, or services
 27 of any kind under a prime contract or a subcontract entered into
 28 in connection with the prime contract; and

29 (B) includes a person that offers to furnish or furnishes general
 30 supplies to the prime contractor or a higher tier subcontractor.

31 (8) SUBCONTRACTOR EMPLOYEE.—The term “subcontractor em-
 32 ployee” means an officer, partner, employee, or agent of a subcon-
 33 tractor.

34 § 8702. Prohibited conduct

35 A person may not—

36 (1) provide, attempt to provide, or offer to provide a kickback;

37 (2) solicit, accept, or attempt to accept a kickback; or

38 (3) include the amount of a kickback prohibited by paragraph (1)
 39 or (2) in the contract price—

40 (A) a subcontractor charges a prime contractor or a higher tier
 41 subcontractor; or

(B) a prime contractor charges the Federal Government.

§ 8703. Contractor responsibilities

(a) REQUIREMENTS INCLUDED IN CONTRACTS.—Each contracting agency shall include in each prime contract awarded by the agency a requirement that the prime contractor shall—

(1) have in place and follow reasonable procedures designed to prevent and detect violations of section 8702 of this title in its own operations and direct business relationships; and

(2) cooperate fully with a Federal Government agency investigating a violation of section 8702 of this title.

(b) FULL COOPERATION REQUIRED.—Notwithstanding subsection (d), a prime contractor shall cooperate fully with a Federal Government agency investigating a violation of section 8702 of this title.

(c) REPORTING REQUIREMENT.—

(1) IN GENERAL.—A prime contractor or subcontractor that has reasonable grounds to believe that a violation of section 8702 of this title may have occurred shall promptly report the possible violation in writing to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(2) SUPPLYING INFORMATION AS FAVORABLE EVIDENCE.—In an administrative or contractual action to suspend or debar a person who is eligible to enter into contracts with the Federal Government, evidence that the person has supplied information to the Federal Government pursuant to paragraph (1) is favorable evidence of the person's responsibility for the purposes of Federal procurement laws and regulations.

(d) INAPPLICABILITY TO CERTAIN PRIME CONTRACTS.—Subsection (a) does not apply to a prime contract—

(1) that is not greater than \$100,000; or

(2) for the acquisition of commercial items (as defined in section 103 of this title).

§ 8704. Inspection authority

(a) IN GENERAL.—To ascertain whether there has been a violation of section 8702 of this title with respect to a prime contract, the Comptroller General and the inspector general of the contracting agency, or a representative of the contracting agency designated by the head of the agency if the agency does not have an inspector general, shall have access to and may inspect the facilities and audit the books and records, including electronic data or records, of a prime contractor or subcontractor under a prime contract awarded by the agency.

1 (b) EXCEPTION.—This section does not apply to a prime contract for the
2 acquisition of commercial items (as defined in section 103 of this title).

3 **§ 8705. Administrative offsets**

4 (a) DEFINITION.—In this section, the term “contracting officer” has the
5 meaning given that term in chapter 71 of this title.

6 (b) OFFSET AUTHORITY.—A contracting officer of a contracting agency
7 may offset the amount of a kickback provided, accepted, or charged in viola-
8 tion of section 8702 of this title against amounts the Federal Government
9 owes the prime contractor under the prime contract to which the kickback
10 relates.

11 (c) DUTIES OF PRIME CONTRACTOR.—

12 (1) WITHHOLDING AND PAYING OVER OR RETAINING AMOUNTS.—On
13 direction of a contracting officer of a contracting agency with respect
14 to a prime contract, the prime contractor shall withhold from amounts
15 owed to a subcontractor under a subcontract of the prime contract the
16 amount of a kickback which was or may be offset against the prime
17 contractor under subsection (b). The contracting officer may order that
18 amounts withheld—

19 (A) be paid over to the contracting agency; or

20 (B) be retained by the prime contractor if the Federal Govern-
21 ment has already offset the amount against the prime contractor.

22 (2) NOTICE.—The prime contractor shall notify the contracting offi-
23 cer when an amount is withheld and retained under paragraph (1)(B).

24 (d) OFFSET, DIRECTION, OR ORDER IS CLAIM OF FEDERAL GOVERN-
25 MENT.—An offset under subsection (b) or a direction or order of a con-
26 tracting officer under subsection (c) is a claim by the Federal Government
27 for the purposes of chapter 71 of this title.

28 **§ 8706. Civil actions**

29 (a) AMOUNT.—The Federal Government in a civil action may recover
30 from a person—

31 (1) that knowingly engages in conduct prohibited by section 8702 of
32 this title a civil penalty equal to—

33 (A) twice the amount of each kickback involved in the violation;

34 and

35 (B) not more than \$10,000 for each occurrence of prohibited
36 conduct; and

37 (2) whose employee, subcontractor, or subcontractor employee vio-
38 lates section 8702 of this title by providing, accepting, or charging a
39 kickback a civil penalty equal to the amount of that kickback.

40 (b) STATUTE OF LIMITATIONS.—A civil action under this section must be
41 brought within 6 years after the later of the date on which—

- 1 (1) the prohibited conduct establishing the cause of action occurred;
2 or
3 (2) the Federal Government first knew or should reasonably have
4 known that the prohibited conduct had occurred.

5 **§ 8707. Criminal penalties**

6 A person that knowingly and willfully engages in conduct prohibited by
7 section 8702 of this title shall be fined under title 18, imprisoned for not
8 more than 10 years, or both.

9 **SEC. 4. CONFORMING AMENDMENT.**

10 Section 2410i(b)(1) of title 10, United States Code, is amended by strik-
11 ing “small purchase threshold” and substituting “simplified acquisition
12 threshold”.

13 **SEC. 5. CONFORMING CROSS-REFERENCES.**

14 (a) TITLE 5.—Title 5, United States Code, is amended as follows:

15 (1) In section 504(b)(1)(C)(ii)—

16 (A) strike “section 6 of the Contract Disputes Act of 1978 (41
17 U.S.C. 605)” and substitute “section 7103 of title 41”; and

18 (B) strike “section 8 of that Act (41 U.S.C. 607)” and sub-
19 stitute “section 7105 of title 41”.

20 (2) In section 551(1)(H), strike “chapter 2 of title 41;”.

21 (3) In section 701(b)(1)(H), strike “chapter 2 of title 41;”.

22 (4) In section 3109(b)(3), strike “section 5” and substitute “section
23 6101(b) to (d)”.

24 (5) In section 3374(c)(2), strike “section 27 of the Office of Federal
25 Procurement Policy Act” and substitute “chapter 21 of title 41”.

26 (6) In section 3704(b)(2)(G), strike “section 27 of the Office of Fed-
27 eral Procurement Policy Act” and substitute “chapter 21 of title 41”.

28 (7) In section 4105, strike “section 5” and substitute “section
29 6101(b) to (d)”.

30 (8) In section 5102(e)(30), strike “section 8 of the Contract Dis-
31 putes Act of 1978” and substitute “section 7105(a)(2), (c)(2), or
32 (d)(2) of title 41”.

33 (9) In section 5372a—

34 (A) in subsection (a)(1)—

35 (i) strike “section 8 of the Contract Disputes Act of 1978”
36 and substitute “section 7105(a)(2), (c)(2), or (d)(2) of title
37 41”; and

38 (ii) strike “section 42 of the Office of Federal Procurement
39 Policy Act” and substitute “section 7105(b)(2) of title 41”;
40 and

1 (B) in subsection (a)(2), strike “section 8 of the Contract Dis-
2 puts Act of 1978” and substitute “section 7105(a)(1), (c)(1), or
3 (d)(1) of title 41”.

4 (10) In section 7342(e)(1), strike “title III of the Federal Property
5 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and
6 substitute “division C of subtitle I of title 41”.

7 (11) In section 8709(a), strike “section 5” and substitute “section
8 6101(b) to (d)”.

9 (12) In section 8714a(a), strike “section 5” and substitute “section
10 6101(b) to (d)”.

11 (13) In section 8714b(a), strike “section 5” and substitute “section
12 6101(b) to (d)”.

13 (14) In section 8714c(a), strike “section 5” and substitute “section
14 6101(b) to (d)”.

15 (15) In section 8902(a), strike “section 5” and substitute “section
16 6101(b) to (d)”.

17 (16) In section 8953(a)(1), strike “section 5” and substitute “sec-
18 tion 6101(b) to (d)”.

19 (17) In section 8983(a)(1), strike “section 5” and substitute “sec-
20 tion 6101(b) to (d)”.

21 (18) In section 9003—

22 (A) in subsection (a), strike “section 5” and substitute “section
23 6101(b) to (d)”;

24 (B) in subsection (c)(3), before subparagraph (A), strike “the
25 Contract Disputes Act of 1978” and substitute “chapter 71 of
26 title 41”;

27 (C) in subsection (c)(3)(A), strike “(after appropriate arrange-
28 ments, as described in section 8(e) of such Act)”;

29 (D) in subsection (c)(3)(B), strike “section 10(a)(1) of such
30 Act” and substitute “section 7104(b)(1) of title 41”.

31 (19) In section 9009, strike “section 26(f) of the Office of Federal
32 Procurement Policy Act (41 U.S.C. 422(f))” and substitute “section
33 1502(a) and (b) of title 41”.

34 (b) TITLE 10.—Title 10, United States Code, is amended as follows:

35 (1) In section 133(c)(1), strike “section 16(e) of the Office of Fed-
36 eral Procurement Policy Act (41 U.S.C. 414(c))” and substitute “sec-
37 tion 1702(e) of title 41”.

38 (2) In section 2013(a), strike “section 3709 of the Revised Statutes
39 (41 U.S.C. 5)” and substitute “section 6101(b)–(d) of title 41”.

1 (3) In section 2194(b)(2), strike “title III of the Federal Property
2 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and
3 substitute “division C of subtitle I of title 41”.

4 (4) In section 2201—

5 (A) in subsection (b), strike “section 3732(a) of the Revised
6 Statutes (41 U.S.C. 11(a))” and substitute “section 6301(a) and
7 (b)(1)–(3) of title 41”; and

8 (B) in subsection (c), strike “section 3732(a) of the Revised
9 Statutes (41 U.S.C. 11(a))” and substitute “section 6301(a) and
10 (b)(1)–(3) of title 41”.

11 (5) In section 2207(b), strike “section 4(11) of the Office of Federal
12 Procurement Policy Act (41 U.S.C. 403(11))” and substitute “section
13 134 of title 41”.

14 (6) In section 2225(f)—

15 (A) in paragraph (1), strike “section 16(c) of the Office of Fed-
16 eral Procurement Policy Act (41 U.S.C. 414(c))” and substitute
17 “section 1702(c) of title 41”; and

18 (B) in paragraph (2), strike “section 4(11) of the Office of Fed-
19 eral Procurement Policy Act (41 U.S.C. 403(11))” and substitute
20 “section 134 of title 41”.

21 (7) In section 2226(b), strike “section 4(12) of the Office of Federal
22 Procurement Policy Act (41 U.S.C. 403(12))” and substitute “section
23 103 of title 41”.

24 (8) In section 2302—

25 (A) in paragraph (3), strike “section 4 of the Office of Federal
26 Procurement Policy Act (41 U.S.C. 403)” and substitute “chapter
27 1 of title 41”;

28 (B) in paragraph (6), strike “section 25(e)(1) of the Office of
29 Federal Procurement Policy Act (41 U.S.C. 421(c)(1))” and sub-
30 stitute “section 1303(a)(1) of title 41”; and

31 (C) in paragraph (7), strike “section 4 of the Office of Federal
32 Procurement Policy Act (41 U.S.C. 403)” and substitute “section
33 134 of title 41”.

34 (9) In section 2302a—

35 (A) in subsection (a), strike “section 4(11) of the Office of Fed-
36 eral Procurement Policy Act” and substitute “section 134 of title
37 41”; and

38 (B) in subsection (b), strike “section 33 of the Office of Federal
39 Procurement Policy Act” and substitute “section 1905 of title
40 41”.

1 (10) In section 2302b, strike “section 31 of the Office of Federal
2 Procurement Policy Act” and substitute “section 1901 of title 41”.

3 (11) In section 2302c—

4 (A) in subsection (a)(1), strike “section 30 of the Office of Fed-
5 eral Procurement Policy Act (41 U.S.C. 426)” and substitute
6 “section 2301 of title 41”; and

7 (B) in subsection (b), strike “section 16(e) of the Office of Fed-
8 eral Procurement Policy Act (41 U.S.C. 414(c))” and substitute
9 “section 1702(e) of title 41”.

10 (12) In section 2304—

11 (A) in subsection (f)(1)(B)(iii), strike “section 16(e) of the Of-
12 fice of Federal Procurement Policy Act (41 U.S.C. 414(e))” and
13 substitute “section 1702(e) of title 41”;

14 (B) in subsection (f)(1)(C), strike “section 18 of the Office of
15 Federal Procurement Policy Act (41 U.S.C. 416)” and substitute
16 “section 1708 of title 41”;

17 (C) in subsection (f)(2)(D), strike “the Javits-Wagner-O’Day
18 Act (41 U.S.C. 46 et seq.)” and substitute “chapter 85 of title
19 41”;

20 (D) in subsection (g)(4), strike “section 31(f) of the Office of
21 Federal Procurement Policy Act (41 U.S.C. 427)” and substitute
22 “section 1901(e) of title 41”; and

23 (E) in subsection (h)(1), strike “The Walsh-Healey Act (41
24 U.S.C. 35 et seq.)” and substitute “Chapter 65 of title 41”.

25 (13) In section 2304b—

26 (A) in subsection (c), strike “section 18 of the Office of Federal
27 Procurement Policy Act (41 U.S.C. 416)” and substitute “section
28 1708 of title 41”; and

29 (B) in subsection (f)(3), strike “section 18 of the Office of Fed-
30 eral Procurement Policy Act (41 U.S.C. 416)” and substitute
31 “section 1708 of title 41”.

32 (14) In section 2304c(a)(1), strike “section 18 of the Office of Fed-
33 eral Procurement Policy Act (41 U.S.C. 416)” and substitute “section
34 1708 of title 41”.

35 (15) In section 2306a(h)(3), strike “section 4(12) of the Office of
36 Federal Procurement Policy Act (41 U.S.C. 403(12))” and substitute
37 “section 103 of title 41”.

38 (16) In section 2314, strike “Sections 3709 and 3735 of the Revised
39 Statutes (41 U.S.C. 5 and 13)” and substitute “Sections 6101(b)–(d)
40 and 6304 of title 41”.

41 (17) In section 2318—

1 (A) in subsection (a)(1), strike “section 20(a) of the Office of
2 Federal Procurement Policy Act (41 U.S.C. 418(a))” and sub-
3 stitute “section 1705(a) of title 41”; and

4 (B) in subsection (a)(2), strike “sections 20(b) and 20(e) of the
5 Office of Federal Procurement Policy Act (41 U.S.C. 418(b), (e))”
6 and substitute “section 1705(b) and (e) of title 41”.

7 (18) In section 2321(h), strike “the Contract Disputes Act of 1978
8 (41 U.S.C. 601 et seq.)” and substitute “chapter 71 of title 41”.

9 (19) In section 2324—

10 (A) in subsection (d)(1), strike “section 6 of the Contract Dis-
11 putes Act of 1978 (41 U.S.C. 605)” and substitute “section 7103
12 of title 41”;

13 (B) in subsection (d)(2), strike “section 7 of such Act (41
14 U.S.C. 606)” and substitute “section 7104(a) of title 41”;

15 (C) in subsection (e)(1)(P), strike “section 39 of the Office of
16 Federal Procurement Policy Act (41 U.S.C. 435)” and substitute
17 “section 1127 of title 41”; and

18 (D) in subsection (e)(2)(C), strike “(41 U.S.C. 10b–1)” and
19 substitute “(as added by section 7002(2) of the Omnibus Trade
20 and Competitiveness Act of 1988)”.

21 (20) In section 2343, strike “section 3741 of the Revised Statutes
22 (41 U.S.C. 22)” and substitute “section 6306 of title 41”.

23 (21) In section 2375(b), strike “section 34 of the Office of Federal
24 Procurement Policy Act (41 U.S.C. 430)” and substitute “section 1906
25 of title 41”.

26 (22) In section 2376(1), strike “section 4 of the Office of Federal
27 Procurement Policy Act (41 U.S.C. 403)” and substitute “chapter 1
28 of title 41”.

29 (23) In section 2384—

30 (A) in subsection (b)(2), strike “section 4(12) of the Office of
31 Federal Procurement Policy Act (41 U.S.C. 403(12))” and sub-
32 stitute “section 103 of title 41”; and

33 (B) in subsection (b)(3), strike “section 4(11) of the Office of
34 Federal Procurement Policy Act (41 U.S.C. 403(11))” and sub-
35 stitute “section 134 of title 41”.

36 (24) In section 2393(d)—

37 (A) strike “section 4(11) of the Office of Federal Procurement
38 Policy Act (41 U.S.C. 403(11))” and substitute “section 134 of
39 title 41”; and

1 (B) strike “section 4(12) of the Office of Federal Procurement
2 Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of
3 title 41”.

4 (25) In section 2402—

5 (A) in subsection (c), strike “section 4(11) of the Office of Fed-
6 eral Procurement Policy Act (41 U.S.C. 403(11))” and substitute
7 “section 134 of title 41”; and

8 (B) in subsection (d)(2), strike “section 4(12) of the Office of
9 Federal Procurement Policy Act (41 U.S.C. 403(12))” and sub-
10 stitute “section 103 of title 41”.

11 (26) In section 2408—

12 (A) in subsection (a)(4)(A), strike “section 4(11) of the Office
13 of Federal Procurement Policy Act (41 U.S.C. 403(11))” and
14 substitute “section 134 of title 41”; and

15 (B) in subsection (a)(4)(B), strike “section 4(12) of the Office
16 of Federal Procurement Policy Act (41 U.S.C. 403(12))” and
17 substitute “section 103 of title 41”.

18 (27) In section 2410(c), strike “section 4(11) of the Office of Fed-
19 eral Procurement Policy Act” and substitute “section 134 of title 41”.

20 (28) In section 2410b(e), strike “section 4(12) of the Office of Fed-
21 eral Procurement Policy Act (41 U.S.C. 403(12))” and substitute
22 “section 103 of title 41”.

23 (29) In section 2410d—

24 (A) in subsection (b)(2)(A), strike “section 5(3) of the Javits-
25 Wagner-O’Day Act (41 U.S.C. 48b(3))” and substitute “section
26 8501(7) of title 41”;

27 (B) in subsection (b)(2)(B), strike “handicapped, as defined in
28 section 5(4) of such Act (41 U.S.C. 48b(4))” and substitute “dis-
29 abled, as defined in section 8501(6) of title 41”; and

30 (C) in subsection (b)(2)(C), strike “section 2(c) of such Act (41
31 U.S.C. 47(e))” and substitute “section 8503(e) of title 41”.

32 (30) In section 2410g(d)(1), strike “section 4(12) of the Office of
33 Federal Procurement Policy Act (41 U.S.C. 403(12))” and substitute
34 “section 103 of title 41”.

35 (31) In section 2410i(b)(1), strike “section 4(11) of the Office of
36 Federal Procurement Policy Act (41 U.S.C. 403(11))” and substitute
37 “section 134 of title 41”.

38 (32) In section 2410m—

39 (A) in subsection (a), before paragraph (1), strike “the Contract
40 Disputes Act of 1978 (41 U.S.C. 601 et seq.)” and substitute
41 “chapter 71 of title 41”;

1 (B) in subsection (a)(2), strike “section 7 of such Act (41
2 U.S.C. 606)” and substitute “section 7104(a) of title 41”; and

3 (C) in subsection (b)(1)(A), strike “section 10(a) of the Con-
4 tract Disputes Act of 1978 (41 U.S.C. 609(a))” and substitute
5 “section 7104(b) of title 41”.

6 (33) In section 2457(e), strike “section 2 of the Buy American Act
7 (41 U.S.C. 10a)” and substitute “section 8302 of title 41”.

8 (34) In section 2461(c)(1), strike “section 2 of the Javits-Wagner-
9 O’Day Act (41 U.S.C. 47)” and substitute “section 8503 of title 41”.

10 (35) In section 2485(b)(1), strike “section 4(6) of the Office of Fed-
11 eral Procurement Policy Act (41 U.S.C. 403(6))” and substitute “sec-
12 tion 107 of title 41”.

13 (36) In the chapter analysis for subchapter V of chapter 148, in the
14 item for section 2533, strike “the Buy American Act” and substitute
15 “chapter 83 of title 41”.

16 (37) In section 2533—

17 (A) in the section catchline, strike “**the Buy American**
18 **Act**” and substitute “**chapter 83 of title 41**”; and

19 (B) in subsection (a), strike “section 2 of the Buy American Act
20 (41 U.S.C. 10a)” and substitute “section 8302 of title 41”.

21 (38) In section 2533a(i), strike “section 34 of the Office of Federal
22 Procurement Policy Act (41 U.S.C. 430)” and substitute “section 1906
23 of title 41”.

24 (39) In section 2533b—

25 (A) in subsection (h), strike “section 34 of the Office of Federal
26 Procurement Policy Act (41 U.S.C. 430)” and substitute “section
27 1906 of title 41”; and

28 (B) in subsection (j), strike “section 4 of the Office of Federal
29 Procurement Policy Act (41 U.S.C. 403)” and substitute “section
30 105 of title 41”.

31 (40) In section 2534(g)(2), strike “section 33 of the Office of Fed-
32 eral Procurement Policy Act (41 U.S.C. 429)” and substitute “section
33 1905 of title 41”.

34 (41) In section 2562(a)(1), strike “title III of the Federal Property
35 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and
36 substitute “division C of subtitle I of title 41”.

37 (42) In section 2576(a), strike “title III of the Federal Property and
38 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-
39 stitute “division C of subtitle I of title 41”.

1 (43) In section 2636(b)(3), strike “section 4(11) of the Office of
2 Federal Procurement Policy Act (41 U.S.C. 403(11))” and substitute
3 “section 134 of title 41”.

4 (44) In section 2667(f)(1), strike “Notwithstanding subsection (a)(3)
5 or subtitle I of title 40 and title III of the Federal Property and Ad-
6 ministrative Services Act of 1949 (to the extent subtitle I and title III
7 are inconsistent with this subsection)” and substitute “Notwithstanding
8 subtitle I of title 40 and division C of subtitle I of title 41 (to the ex-
9 tent those provisions are inconsistent with this subsection) or sub-
10 section (a)(2) of this section”.

11 (45) In section 2664(a), strike “title III of the Federal Property and
12 Administrative Services Act of 1949, as amended (41 U.S.C. 251 et
13 seq.)” and substitute “division C of subtitle I of title 41”.

14 (46) In section 2691(b), strike “title III of the Federal Property and
15 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-
16 stitute “division C of subtitle I of title 41”.

17 (47) In section 2696(a), strike “title III of the Federal Property and
18 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-
19 stitute “division C of subtitle I of title 41”.

20 (48) In section 2836(g), strike “the Contract Disputes Act of 1978
21 (41 U.S.C. 601 et seq.)” and substitute “chapter 71 of title 41”.

22 (49) In section 2854a(d)(1), strike “title III of the Federal Property
23 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and
24 substitute “division C of subtitle I of title 41”.

25 (50) In section 2878(d)(2), strike “title III of the Federal Property
26 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and
27 substitute “division C of subtitle I of title 41”.

28 (51) In the chapter analysis for chapter 633, in the item for section
29 7299, strike “Walsh-Healey Act” and substitute “chapter 65 of title
30 41”.

31 (52) In section 7299—

32 (A) in the heading, strike “Walsh-Healey Act” and substitute
33 “chapter 65 of title 41”; and

34 (B) strike “the Walsh-Healey Act (41 U.S.C. 35 et seq.)” and
35 substitute “chapter 65 of title 41”.

36 (53) In section 7305(d)—

37 (A) strike “title III of the Federal Property and Administrative
38 Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “di-
39 vision C of subtitle I of title 41”; and

40 (B) strike “under subtitle I of title 40 and such title III” and
41 substitute “under those provisions”.

1 (54) In section 9444(b)(1), strike “title III of the Federal Property
2 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and
3 substitute “division C of subtitle I of title 41”.

4 (55) In section 9781(g), strike “title III of the Federal Property and
5 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-
6 stitute “division C of subtitle I of title 41”.

7 (e) TITLE 14.—Title 14, United States Code, is amended as follows:

8 (1) In section 92(d), strike “title III of the Federal Property and
9 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-
10 stitute “division C of subtitle I of title 41”.

11 (2) In section 93(h), strike “title III of the Federal Property and
12 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-
13 stitute “division C of subtitle I of title 41”.

14 (3) In section 641(a), strike “title III of the Federal Property and
15 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-
16 stitute “division C of subtitle I of title 41”.

17 (4) In section 685(c)(1), strike “title III of the Federal Property and
18 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-
19 stitute “division C of subtitle I of title 41”.

20 (d) TITLE 18.—Title 18, United States Code, is amended as follows:

21 (1) In section 3672, strike “section 3709 of the Revised Statutes of
22 the United States” and substitute “section 6101(b) to (d) of title 41”.

23 (2) In section 4124(c), strike “section 6(d)(4) of the Office of Fed-
24 eral Procurement Policy Act” and substitute “section 1122(a)(4) of
25 title 41”.

26 (e) TITLE 23.—Title 23, United States Code, is amended as follows:

27 (1) In section 140—

28 (A) in subsection (b), strike “section 3709 of the Revised Stat-
29 utes, as amended (41 U.S.C. 5),” and substitute “section 6101(b)
30 to (d) of title 41”; and

31 (B) in subsection (c)—

32 (i) strike “section 3709 of the Revised Statutes, as amend-
33 ed (41 U.S.C. 5),” and substitute “section 6101(b) to (d) of
34 title 41”; and

35 (ii) strike “section 302(e) of the Federal Property and Ad-
36 ministrative Services Act of 1949 (41 U.S.C. 252(e))” and
37 substitute “section 3106 of title 41”.

38 (2) In section 502(c)(5), strike “Section 3709 of the Revised Stat-
39 utes (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

40 (f) THE INTERNAL REVENUE CODE OF 1986.—Section 7608(e)(1) of the
41 Internal Revenue Code of 1986 (26 U.S.C. 7608(e)(1)) is amended—

1 (1) in subparagraph (A)(i)(II), by striking “sections 11(a) and 22”
2 and substituting “sections 6301(a) and (b)(1)–(3) and 6306”;

3 (2) in subparagraph (A)(i)(III), by striking “section 255” and sub-
4 stituting “chapter 45”; and

5 (3) in subparagraph (A)(i)(V), by striking “section 254(a) and (c)”
6 and substituting “section 3901”.

7 (g) TITLE 28.—Title 28, United States Code, is amended as follows:

8 (1) In the last sentence of section 524(e)(1), strike “section 3709
9 of the Revised Statutes of the United States (41 U.S.C. 5), title III
10 of the Federal Property and Administrative Services Act of 1949 (41
11 U.S.C. 251 and following)” and substitute “division C (except sections
12 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41,
13 section 6101(b) to (d) of title 41”.

14 (2) In section 604(a)(10)(C), strike “section 3709 of the Revised
15 Statutes of the United States (41 U.S.C. 5)” and substitute “section
16 6101(b) to (d) of title 41”.

17 (3) In section 624(3), strike “section 3709 of the Revised Statutes,
18 as amended (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of
19 title 41”.

20 (4) In section 753(g), strike “section 3709 of the Revised Statutes
21 of the United States, as amended (41 U.S.C. 5)” and substitute “sec-
22 tion 6101(b) to (d) of title 41”.

23 (5) In section 1295—

24 (A) in subsection (a)(10), strike “section 8(g)(1) of the Con-
25 tract Disputes Act of 1978 (41 U.S.C. 607(g)(1))” and substitute
26 “section 7107(a)(1) of title 41”;

27 (B) in subsection (b), strike “section 10(b) of the Contract Dis-
28 putes Act of 1978 (41 U.S.C. 609(b))” and substitute “section
29 7107(b) of title 41”; and

30 (C) in subsection (c), strike “section 10(b) of the Contract Dis-
31 putes Act of 1978” and substitute “section 7107(b) of title 41”.

32 (6) In section 1346(a)(2), strike “sections 8(g)(1) and 10(a)(1) of
33 the Contract Disputes Act of 1978” and substitute “sections
34 7104(b)(1) and 7107(a)(1) of title 41”.

35 (7) In section 1491(a)(2), strike “section 10(a)(1) of the Contract
36 Disputes Act of 1978” and substitute “section 7104(b)(1) of title 41”.

37 (8) In section 2401(a), strike “the Contract Disputes Act of 1978”
38 and substitute “chapter 71 of title 41”.

39 (9) In section 2412—

40 (A) in subsection (d)(2)(E), strike “the Contract Disputes Act
41 of 1978” and substitute “chapter 71 of title 41”; and

1 (B) in subsection (d)(3), strike “the Contract Disputes Act of
2 1978” and substitute “chapter 71 of title 41”.

3 (10) In section 2414, strike “the Contract Disputes Act of 1978”
4 and substitute “chapter 71 of title 41”.

5 (11) In section 2517(a), strike “the Contract Disputes Act of 1978”
6 and substitute “chapter 71 of title 41”.

7 (h) TITLE 31.—Title 31, United States Code, is amended as follows:

8 (1) In section 506, strike “section 5(a) of the Office of Federal Pro-
9 curement Policy Act (41 U.S.C. 404(a))” and substitute “section
10 1101(a) of title 41”.

11 (2) In section 731(i)(7), strike “section 27 of the Office of Federal
12 Procurement Policy Act (41 U.S.C. 423)” and substitute “chapter 21
13 of title 41”.

14 (3) In section 781(e)(1), strike “section 3709 of the Revised Stat-
15 utes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

16 (4) Section 1344(h)(2)(A) is amended to read as follows:

17 “(A) a department—

18 “(i) including independent establishments, other agencies,
19 and wholly owned Government corporations; but

20 “(ii) not including the Senate, House of Representatives, or
21 Architect of the Capitol, or the officers or employees there-
22 of;”.

23 (5) In section 3567, strike “section 4(1) of the Office of Federal
24 Procurement Policy Act (41 U.S.C. 403(1))” and substitute “section
25 133 of title 41”.

26 (6) In section 3718(b)(1)(A), strike “title III of the Federal Prop-
27 erty and Administrative Services Act of 1949 (41 U.S.C. 251 and fol-
28 lowing)” and substitute “division C of subtitle I of title 41”.

29 (7) In section 3902(a), strike “section 12 of the Contract Disputes
30 Act of 1978 (41 U.S.C. 611)” and substitute “section 7109(a)(1) and
31 (b) of title 41”.

32 (8) In section 3907—

33 (A) in subsection (a), strike “section 6 of the Contract Disputes
34 Act of 1978 (41 U.S.C. 605)” and substitute “section 7103 of
35 title 41”;

36 (B) in subsection (b)(1)(A), strike “the Contract Disputes Act
37 of 1978 (41 U.S.C. 601 et seq.)” and substitute “chapter 71 of
38 title 41”;

39 (C) in subsection (b)(2)—

1 (i) strike “section 12 of the Contract Disputes Act of 1978
2 (41 U.S.C. 611)” and substitute “section 7109(a)(1) and (b)
3 of title 41”; and

4 (ii) in the second sentence, strike “section 12” and sub-
5 stitute “section 7109(a)(1) and (b)”; and

6 (D) in subsection (c), strike “the Contract Disputes Act of 1978
7 (41 U.S.C. 601 et seq.)” and substitute “chapter 71 of title 41”.

8 (9) In section 6202(e)(2), strike “section 6(d)(5) of the Office of
9 Federal Procurement Policy Act (41 U.S.C. 405(d)(5))” and substitute
10 “section 1122(a)(4) of title 41”.

11 (10) In section 9703(b)(3), as added by section 638(b)(1) of the Act
12 of October 6, 1992 (Public Law 102–393, 106 Stat. 1779), strike “sec-
13 tion 3709 of the Revised Statutes of the United States (41 U.S.C. 5),
14 title III of the Federal Property and Administrative Services Act of
15 1949 (41 U.S.C. 251 et seq.)” and substitute “division C (except sec-
16 tions 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title
17 41, section 6101(b) to (d) of title 41”.

18 (i) TITLE 35.—Title 35, United States Code, is amended as follows:

19 (1) In section 2(b)(4)(A), strike “title III of the Federal Property
20 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and
21 substitute “division C (except sections 3302, 3501(b), 3509, 3906,
22 4710, and 4711) of subtitle I of title 41”.

23 (2) In section 203(b), strike “the Contract Disputes Act (41 U.S.C.
24 § 601 et seq.)” and substitute “chapter 71 of title 41”.

25 (j) TITLE 38.—Title 38, United States Code, is amended as follows:

26 (1) In section 1720(c)(2), strike “section 2(b)(1) of the Service Con-
27 tract Act of 1965 (41 U.S.C. 351(b)(1))” and substitute “section
28 6704(a) of title 41”.

29 (2) In section 1966(a), strike “section 3709 of the Revised Statutes,
30 as amended (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of
31 title 41”.

32 (3) In section 3720(b), strike “title III of the Federal Property and
33 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-
34 stitute “division C (except sections 3302, 3501(b), 3509, 3906, 4710,
35 and 4711) of subtitle I of title 41”.

36 (4) In section 7317(f), strike “section 3709 of the Revised Statutes
37 (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

38 (5) In section 7802(f), strike “section 3709 of the Revised Statutes
39 (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

40 (6) In section 8122—

1 (A) in subsection (a)(1), strike “section 3709 of the Revised
2 Statutes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of
3 title 41”; and

4 (B) in subsection (c)—

5 (i) strike “(41 U.S.C. 252(c))”; and

6 (ii) strike “section 304 of that Act (41 U.S.C. 254)” and
7 substitute “sections 3901 and 3905 of title 41”.

8 (7) In section 8127—

9 (A) in subsection (b), strike “section 4 of the Office of Federal
10 Procurement Policy Act (41 U.S.C. 403)” and substitute “section
11 134 of title 41”; and

12 (B) in subsection (c)(2), strike “section 4 of the Office of Fed-
13 eral Procurement Policy Act (41 U.S.C. 403)” and substitute
14 “section 134 of title 41”.

15 (8) In section 8153(a)—

16 (A) in paragraph (3)(B)(ii), strike “section 22 of the Office of
17 Federal Procurement Policy Act (41 U.S.C. 418b)” and substitute
18 “section 1707 of title 41”; and

19 (B) in paragraph (3)(D), strike “section 303(f) of the Federal
20 Property and Administrative Services Act of 1949 (41 U.S.C.
21 253(f))” and substitute “section 3304(e) of title 41”.

22 (9) In section 8201(e), strike “section 3709 of the Revised Statutes
23 (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

24 (k) TITLE 39.—Section 410(b) of title 39, United States Code, is amend-
25 ed by striking paragraph (5) and substituting—

26 “(5) chapters 65 and 67 of title 41;”.

27 (l) TITLE 40.—Title 40, United States Code, is amended as follows:

28 (1) In the chapter analysis for chapter 1, in item 111, strike “Fed-
29 eral Property and Administrative Services Act of 1949” and substitute
30 “division C of subtitle I of title 41”.

31 (2) In section 102, before paragraph (1), strike “title III of the Fed-
32 eral Property and Administrative Services Act of 1949 (41 U.S.C. 251
33 et seq.)” and substitute “division C (except section 3302) of subtitle
34 I of title 41”.

35 (3) In section 111—

36 (A) in the section catchline, strike “**Federal Property and**
37 **Administrative Services Act of 1949**” and substitute “**di-**
38 **vision C of subtitle I of title 41**”; and

39 (B) before paragraph (1), strike “title III of the Federal Prop-
40 erty and Administrative Services Act of 1949 (41 U.S.C. 251 et

1 seq.)” and substitute “division C (except sections 3302, 3501(b),
2 3509, 3906, 4710, and 4711) of subtitle I of title 41”.

3 (4) In section 113(b)—

4 (A) in the heading, strike “THE OFFICE OF FEDERAL PRO-
5 CUREMENT POLICY ACT” and substitute “DIVISION B OF SUB-
6 TITLE I OF TITLE 41”; and

7 (B) strike “the Office of Federal Procurement Policy Act (41
8 U.S.C. 401 et seq.)” and substitute “division B of subtitle I of
9 title 41”.

10 (5) In section 311—

11 (A) in subsection (a), strike “title III of the Federal Property
12 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”
13 and substitute “division C of subtitle I of title 41”; and

14 (B) in subsection (b), strike “title III of the Federal Property
15 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”
16 and substitute “division C of subtitle I of title 41”.

17 (6) In section 501(b)(2)(B), strike “the Office of Federal Procure-
18 ment Policy Act (41 U.S.C. 401 et seq.)” and substitute “division B
19 of subtitle I of title 41”.

20 (7) In section 502—

21 (A) in subsection (b)(1)(A)(i), strike “section 5(3) of the Javits-
22 Wagner-O’Day Act (41 U.S.C. 48b(3))” and substitute “section
23 8501(7) of title 41”;

24 (B) in subsection (b)(1)(A)(ii), strike “handicapped (as defined
25 in section 5(4) of the Javits-Wagner-O’Day Act (41 U.S.C.
26 48b(4)))” and substitute “disabled (as defined in section 8501(6)
27 of title 41)”;

28 (C) in subsection (b)(1)(B), strike “the Javits-Wagner-O’Day
29 Act (41 U.S.C. 46 et seq.)” and substitute “chapter 85 of title
30 41”; and

31 (D) in subsection (b)(2), strike “section 2 of the Javits-Wagner-
32 O’Day Act (41 U.S.C. 47)” and substitute “section 8503 of title
33 41”.

34 (8) In section 503(b)—

35 (A) in paragraph (1), strike “the Office of Federal Procurement
36 Policy Act (41 U.S.C. 401 et seq.)” and substitute “division B of
37 subtitle I of title 41”; and

38 (B) in paragraph (3)—

39 (i) in the heading, strike “SECTION 3709 OF REVISED STAT-
40 UTES” and substitute “SECTION 6101(b) TO (d) OF TITLE 41”;
41 and

1 (ii) strike “Section 3709 of the Revised Statutes (41
2 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title
3 41”.

4 (9) In section 506(a)(1)(D), strike “the Office of Federal Procure-
5 ment Policy Act (41 U.S.C. 401 et seq.)” and substitute “division B
6 of subtitle I of title 41”.

7 (10) In section 545(f), strike “Section 3709 of the Revised Statutes
8 (41 U.S.C. 5)” and substitute “Section 6101(b)–(d) of title 41”.

9 (11) In section 593(a)(2), strike “the Javits-Wagner-O’Day Act (41
10 U.S.C. 46 et seq.)” and substitute “chapter 85 of title 41”.

11 (12) In section 1305, strike “title III of the Federal Property and
12 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-
13 stitute “division C of subtitle I of title 41”.

14 (13) In section 1308, strike “title III of the Federal Property and
15 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-
16 stitute “division C of subtitle I of title 41”.

17 (14) In section 3148, strike “section 3709 of the Revised Statutes
18 (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

19 (15) In section 3304(d)(2), strike “title III of the Federal Property
20 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and
21 substitute “division C (except sections 3302, 3501(b), 3509, 3906,
22 4710, and 4711) of subtitle I of title 41”.

23 (16) In section 3305(a)—

24 (A) in paragraph (1), strike “title III of the Federal Property
25 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”
26 and substitute “division C of subtitle I of title 41”; and

27 (B) in paragraph (2), strike “title III of the Federal Property
28 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”
29 and substitute “division C of subtitle I of title 41”.

30 (17) In section 3308(a), strike “section 3709 of the Revised Statutes
31 (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

32 (18) In section 3310(2), strike “section 303 of the Federal Property
33 and Administrative Services Act of 1949 (41 U.S.C. 253)” and sub-
34 stitute “sections 3105, 3301, and 3303 to 3305 of title 41”.

35 (19) In section 3701(b)(3)(A)(ii), strike “the Walsh-Healey Act (41
36 U.S.C. 35 et seq.)” and substitute “chapter 65 of title 41”.

37 (20) In section 3704(b)(1), strike “sections 4 and 5 of the Walsh-
38 Healey Act (41 U.S.C. 38, 39)” and substitute “sections 6506 and
39 6507 of title 41”.

1 (21) In section 3707, strike “section 4 of the Office of Federal Pro-
2 curement Policy Act (41 U.S.C. 403)” and substitute “section 103 of
3 title 41”.

4 (22) In section 6111(b)(2)(D), strike “section 3709 of the Revised
5 Statutes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title
6 41”.

7 (23) In section 8711(d), strike “section 3709 of the Revised Statutes
8 (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

9 (24) In section 11101—

10 (A) in paragraph (1), strike “section 4 of the Office of Federal
11 Procurement Policy Act (41 U.S.C. 403)” and substitute “section
12 103 of title 41”; and

13 (B) in paragraph (2), strike “section 4 of the Act (41 U.S.C.
14 403)” and substitute “section 133 of title 41”.

15 (m) TITLE 44.—Title 44, United States Code, is amended as follows:

16 (1) In the chapter analysis for chapter 3, in the item for section 311,
17 strike “the Federal Property and Administrative Services Act” and
18 substitute “subtitle I of title 40 and division C of subtitle I of title 41”.

19 (2) In section 311—

20 (A) in the section catchline, strike “**the Federal Property**
21 **and Administrative Services Act**” and substitute “**sub-**
22 **title I of title 40 and division C of subtitle I of title**
23 **41**”;

24 (B) in subsection (a), strike “title III of the Federal Property
25 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”
26 and substitute “division C (except sections 3302, 3501(b), 3509,
27 3906, 4710, and 4711) of subtitle I of title 41”; and

28 (C) in subsection (c), strike “section 3709 of the Revised Stat-
29 utes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title
30 41”.

31 (n) TITLE 46.—Section 51703(b)(2) of title 46, United States Code, is
32 amended by striking “section 3709 of the Revised Statutes (41 U.S.C. 5)”
33 and substituting “section 6101(b) to (d) of title 41”.

34 (o) TITLE 49.—Title 49, United States Code, is amended as follows:

35 (1) In section 103(e), strike “title III of the Federal Property and
36 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-
37 stitute “division C of subtitle I of title 41”.

38 (2) In section 1113(b)(1)(B) strike “section 3709 of the Revised
39 Statutes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title
40 41”.

1 (3) In section 5334(j)(2), strike “Section 3709 of the Revised Stat-
2 utes (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

3 (4) In section 10721, strike “Section 3709 of the Revised Statutes
4 (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

5 (5) In section 13712, strike “Section 3709 of the Revised Statutes
6 (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

7 (6) In section 15504, strike “Section 3709 of the Revised Statutes
8 (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

9 (7) In section 40110—

10 (A) in subsection (d)(2)(A), strike “Title III of the Federal
11 Property and Administrative Services Act of 1949 (41 U.S.C.
12 252–266)” and substitute “Division C (except sections 3302,
13 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41”;

14 (B) in subsection (d)(2)(B), strike “The Office of Federal Pro-
15 curement Policy Act (41 U.S.C. 401 et seq.)” and substitute “Di-
16 vision B (except sections 1704 and 2303) of subtitle I of title 41”;

17 (C) in subsection (d)(2)(C), strike “, except for section 315 (41
18 U.S.C. 265). For the purpose of applying section 315 of that Act
19 to the system,” and substitute “. However, section 4705 of title
20 41 shall apply to the new acquisition management system devel-
21 oped and implemented pursuant to paragraph (1). For the purpose
22 of applying section 4705 of title 41 to the system,”; and

23 (D) in subsection (d)(3)—

24 (i) in the heading, strike “THE OFFICE OF FEDERAL PRO-
25 CUREMENT POLICY ACT” and substitute “DIVISION B OF SUB-
26 TITLE I OF TITLE 41”;

27 (ii) before subparagraph (A), strike “section 27 of the Of-
28 fice of Federal Procurement Policy Act (41 U.S.C. 423)” and
29 substitute “chapter 21 of title 41”; and

30 (iii) in subparagraph (A), strike “Subsections (f) and (g)”
31 and substitute “Sections 2101 and 2106 of title 41”.

32 (8) In section 40118(f)(2), strike “section 4(12) of the Office of
33 Federal Procurement Policy Act (41 U.S.C. 403(12))” and substitute
34 “section 103 of title 41”.

35 (9) In section 47305(d), strike “Section 3709 of the Revised Stat-
36 utes (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

37 **SEC. 6. TRANSITIONAL AND SAVINGS PROVISIONS.**

38 (a) CUTOFF DATE.—This Act replaces certain provisions of law enacted
39 on or before December 31, 2008. If a law enacted after that date amends
40 or repeals a provision replaced by this Act, that law is deemed to amend
41 or repeal, as the case may be, the corresponding provision enacted by this

1 Act. If a law enacted after that date is otherwise inconsistent with this Act,
2 it supersedes this Act to the extent of the inconsistency.

3 (b) ORIGINAL DATE OF ENACTMENT UNCHANGED.—For purposes of de-
4 termining whether one provision of law supersedes another based on enact-
5 ment later in time, the date of enactment of a provision enacted by this Act
6 is deemed to be the date of enactment of the provision it replaced.

7 (c) REFERENCES TO PROVISIONS REPLACED.—A reference to a provision
8 of law replaced by this Act, including a reference in a regulation, order, or
9 other law, is deemed to refer to the corresponding provision enacted by this
10 Act.

11 (d) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A
12 regulation, order, or other administrative action in effect under a provision
13 of law replaced by this Act continues in effect under the corresponding pro-
14 vision enacted by this Act.

15 (e) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or
16 an offense committed under a provision of law replaced by this Act is
17 deemed to have been taken or committed under the corresponding provision
18 enacted by this Act.

19 (f) EFFECTIVE DATES FOR CERTAIN ACTIONS.—

20 (1) ISSUE POLICY.—The requirement in section 2303(b)(1) of title
21 41, United States Code, to issue a policy shall be done not later than
22 270 days after October 14, 2008.

23 (2) REVISIONS IN FEDERAL PROCUREMENT DATA SYSTEM OR SUC-
24 CESSOR SYSTEM.—The requirement in section 2311 of title 41, United
25 States Code, to direct appropriate revisions in the Federal Procurement
26 Data System or any successor system shall be done not later than one
27 year after October 14, 2008.

28 (3) ESTABLISH DATABASE.—The requirement in section 2313(a) of
29 title 41, United States Code, to establish a database shall be done not
30 later than one year after October 14, 2008.

31 (4) AMEND FEDERAL ACQUISITION REGULATION WITHIN ONE YEAR
32 AFTER OCTOBER 14, 2008.—The Federal Acquisition Regulation shall be
33 amended to meet the requirements of sections 2313(f), 3302(b) and
34 (d), 4710(b), and 4711(b) of title 41, United States Code, not later
35 than one year after October 14, 2008.

36 (5) AMEND FEDERAL ACQUISITION REGULATION WITHIN 270 DAYS
37 AFTER OCTOBER 14, 2008.—The Federal Acquisition Regulation shall be
38 amended to meet the requirements of section 3906(b) of title 41,
39 United States Code, not later than 270 days after October 14, 2008.

1 **SEC. 7. REPEALS.**

2 (a) INFERENCE OF REPEAL.—The repeal of a law by this Act may not
3 be construed as a legislative inference that the provision was or was not in
4 effect before its repeal.

5 (b) REPEALER SCHEDULE.—The laws specified in the following schedule
6 are repealed, except for rights and duties that matured, penalties that were
7 incurred, and proceedings that were begun before the date of enactment of
8 this Act.

Schedule of Laws Repealed
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code (title 41 unless otherwise specified)	
			Volume	Page	Existing	Proposed
1875 Mar. 3	133	2	18	455	10	
1884 July 7	332	(words after "fifty five thousand dollars" in 3d par. under heading "Miscellaneous Objects Under the Treasury Department").	23	204	24	6308
1920 June 5	240	(last par. under heading "Purchase of Articles Manufactured at Government Arsenals").	41	975	23	6307
1921 June 30	33	1 (last proviso on p. 78)	42	78	11a	6302
1922 July 1	259	(1st proviso on p. 812)	42	812	23	6307
1926 May 13	294	(4th complete par. (related to R.S. § 3741) on p. 547)	44	547	16c	
1927 Jan. 12	27	(2d complete par. (related to R.S. § 3741) on p. 936)	44	936	16a	
1933 Mar. 3	212	title III, § 1	47	1520	10c	8301
		title III, § 2	47	1520	10a	8302
		title III, § 3	47	1520	10b	8303
		title III, § 4			10b-1	
June 16	101	5	48	305	24a	
1934 Jan. 25	5	(related to R.S. § 3741)	48	337	22	6306
June 16	553	1-6	48	974	28-33	

1935	815	.....	49	990	.....	34	.....
Aug. 29	.....	.....	.....	.....	.....	.....	.....
1936	881	.....	49	2036	.....	35	6502
June 30	.....	1 (matter before subsec. (a) less words related to definition of "agency of the United States") ..	49	2036	.....	35	6501
.....	.....	1 (matter before subsec. (a) related to definition of "agency of the United States") ..	49	2036	.....	35	6502
.....	.....	1(a)-(d)	49	2037	.....	36	6503
.....	.....	2	49	2037	.....	37	6504
.....	.....	3	49	2038	.....	38	6506
.....	.....	4	49	2038	.....	39	6507
.....	.....	5	49	2038	.....	40	6508
.....	.....	6	49	2039	.....	41	6501
.....	.....	7	49	2039	.....	42	6511
.....	.....	8	49	2039	.....	43	6505
.....	.....	9	49	2039	.....	43	6509
.....	.....	10(a) .....	.....	.....	.....	43a	6507
.....	.....	10(b) (1st sentence) .....	.....	.....	.....	43a	6509
.....	.....	10(b) (last sentence), (c) .....	.....	.....	.....	43a	6510
.....	.....	11	49	2039	.....	44	.....
.....	.....	12	49	2039	.....	44	.....
.....	.....	13	49	2039	.....	45	6502
.....
1938	697	.....	52	1196	.....	46	8502
June 25	.....	1	52	1196	.....	47	8503
.....	.....	2	52	1196	.....	48	8504
.....	.....	3	52	1196	.....	48a	8505
.....	.....	4	52	1196	.....	48b	8501
.....	.....	5	52	1196	.....	48c	8506
.....	.....	6	52	1196	.....	46 note	.....
.....	.....	7 .....	.....	.....	.....	.....	.....
.....
1939	418	.....	53	1197	.....	16d	.....
Aug. 4	.....	13 (related to R.S. § 3744) .....	.....	.....	.....	.....	.....
.....
1940	396	.....	54	474	.....	6kk	.....
June 18	.....	(last par. (related to R.S. § 3709) under heading "Botanic Garden")	54	474	.....	16b	.....
June 24	412	.....	54	504	.....	6b	6102
Oct. 10	851	(last par. (related to R.S. § 3744) under heading "Botanic Garden")	54	504	.....	6a	6102
.....	.....	.....	54	1110	.....	6a	6102
.....	.....	2(a)	54	1110	.....	6a	6102
.....	.....	2(f)	54	1110	.....	6a	6102
.....	.....	2(h)	54	1110	.....	6a	6102
.....	.....	2(j)	54	1110	.....	6a	6102
.....	.....	3(a)	54	1111	.....	6b	.....
.....	.....	3(b)	54	1111	.....	6b	.....

Schedule of Laws Repealed—Continued
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code (title 41, unless otherwise specified)		
			Volume	Page	Existing	Proposed	
1942 June 22	432	1	56	375	49	6309	
	472	2	56	376	50	6309	
	(1st complete par. on p. 493)		56	493	6	.....
1944 July 1	358	1, 2(a)	58	649	101, 102	.....
	.....	3	58	650	103	.....
	.....	4(b)—13(c)	58	651	104—113	.....
	.....	13(d)	58	662	113	.....
	.....	13(e)—15	58	662	113—115	.....
	.....	17, 18(a)	58	665	117, 118	.....
	.....	18(c)—(e)	58	666	118	.....
	.....	19(c)	58	667	119	.....
	.....	20—25	58	668	120—125	.....
	.....	26	58	671	101 note	.....
	.....	27	58	671	101 note	.....
	1946 Mar. 8	80	1	60	37	51
		2	60	37	52	8701
.....		3	60	37	53	8702	
.....		4	60	37	54	8707	
.....		5	60	37	55	8706	
.....		6	60	37	56	8705	
.....		7	60	37	57	8703	
.....		8	60	37	58	8704	
.....		9(c)	60	809	5	6101	
.....		18	60	811	5a	6101	
1949 June 30		288	301	63	393	251
		302(a)	63	393	252	3101
		302(b)	63	393	252	3104

302(c)(1)	63	393	252	3106
302(c)(2)			252	3301
302A, 302B			252a, 252b	3101
302C			252c	4709
303(a)	63	395	253	3301
303(b)	63	395	253	3303
303(c)-(f)	63	395	253	3304
303(g)	63	395	253	3305
303(h)			253	3301
303(i)			253	3105
303(j)			253	3105
303(k)			253	3304
303A			253a	3306
303B(a), (b)			253b	3701
303B(c)			253b	3702
303B(d)			253b	3703
303B(e)			253b	3704
303B(f)			253b	3705
303B(g)			253b	3705
303B(h)			253b	3706
303B(i)			253b	3707
303B(j)			253b	3308
303B(k), (l)			253b	3708
303B(m)			253b	4702
303C			253c	3311
303D			253d	4703
303E			253e	3310
303F			253f	4704
303G			253g	4103
303H			253h	4103
303I			253i	4105
303J			253j	4106
303K			253k	4101
303L			253l	3902
303M			253m	3309
304(a)	63	395	254	3901
304(b)	63	395	254	3905
304A(a)			254b	3502
304A(b)			254b	3503
304A(c)			254b	3504
304A(d)			254b	3505
304A(e)			254b	3506
304A(f)			254b	3507
304A(g)			254b	3508
304A(h)			254b	3501
304B			254c	3903
304C			254d	4706
305(a)	63	396	255	4501

Schedule of Laws Repealed—Continued
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code (title 41 unless otherwise specified)	
			Volume	Page	Existing	Proposed
		305(b)	63	396	255	4502
		305(c)	63	396	255	4502
		305(d)	63	396	255	4503
		305(e)			255	4504
		305(f)			255	4505
		305(g)			255	4506
		305(a)-(d)			256	4303
		306(a)			256	4304
		306(c)			256	4305
		306(f)			256	4306
		306(g)			256	4307
		306(h)			256	4308
		306(i)			256	4309
		306(j)			256	4310
		306(k)			256	4301
		306(l)(1)			257	4701
		306(l)(2)			257	151
		306(m)			259	152
		307	63	396	259	111
		309(a)	63	397	259	112
		309(b)			259	114
		309(c)(1)			259	107
		309(c)(2)			259	114
		309(c)(3)			259	107
		309(c)(4)			259	113
		309(c)(5)			259	116
		309(c)(6)			259	109
		309(c)(7)			259	108
		309(c)(8), (9)			259	115
		309(c)(10)			259	103
		309(c)(11)			259	110
		309(c)(12)			259	102
		309(c)(13)			259	105
		309(c)(14)			259	153
		309(d)			259	106
		309(e)			259	106

Oct. 29	310	63	397	260	3101
	311			261	3102
	312			262	4701
	313			263	3103
	314			264	3307
	314A ("commercial item")			264a ("commercial item")	103
	314A ("nondevelopmental item")			264a ("nondevelopmental item")	110
	314A ("component")			264a ("component")	105
	314A ("commercial component")			264a ("commercial component")	102
	314B			264b	3307
	315			265	4705
	316			266	3105
Oct. 29	633	63	1024	10d	8303
Sept. 5	10(a)	64	591	256a	4707
July 14		66	627	113, 113 note	
May 11	1	68	81	321	
	2	68	81	322	
July 1	(last par. on p. 251)	71	251	6a	
Aug. 3	301	75	279	6b	
Sept. 5		76	487	254a	4708
July 27	(2d par. on p. 276)	79	276	6a-1	6102
Oct. 22	1	79	1034	351 note	6702
	2(a) (words before par. (1) related to applicability)	79	1034	351	6703
	2(a) (words before par. (1) related to required contract terms), (1)-(5)	79	1034	351	6704
	2(b)	79	1034	351	6705
	3	79	1035	352	6707
	4	79	1035	353	6707
	5(a)	79	1035	354	6706

Schedule of Laws Repealed—Continued
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code (title 41 unless otherwise specified)	
			Volume	Page	Existing	Proposed
		5(b)	79	1035	354	6705
		6	79	1035	355	6707
		7	79	1035	356	6702
		8	79	1036	357	6701
		9	79	1036	351 note	.....
		10 .....	.....	.....	358	6707
1974	93-400	4(1)	88	797	403	133
Aug. 30		4(2)	88	797	403	111
		4(3)	88	797	403	112
		4(4)	88	797	403	114
		4(5) .....	.....	.....	403	132
		4(6) .....	.....	.....	403	107
		4(7) .....	.....	.....	403	113
		4(8) .....	.....	.....	403	116
		4(9) .....	.....	.....	403	109
		4(10) ("item", "item of supply") .....	.....	.....	403	108
		4(10) ("supplies") .....	.....	.....	403	115
		4(11) .....	.....	.....	403	134
		4(12) .....	.....	.....	403	103
		4(13) .....	.....	.....	403	110
		4(14) .....	.....	.....	403	105
		4(15) .....	.....	.....	403	102
		4(16) .....	.....	.....	403	131
		4(17) .....	.....	.....	403	1301
		5(a)	88	797	404	1101
		5(b)	88	797	404	1102
		6(a)-(c)	88	797	405	1121
		6(d), (e)	88	797	405	1122
		6(f)	88	797	405	1121
		6(g)	88	797	405	1122
		6(h)(1)	88	797	405	1130
		6(h)(2)	88	797	405	2305
		6(i)	88	797	405	1125

Schedule of Laws Repealed—Continued
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code (title 41, unless otherwise specified)	
			Volume	Page	Existing	Proposed
		38	92	1771	434	2308
		39	92	1771	435	1127
		40	92	2383	436	2309
		41	92	2383	437	2310
		42	92	2383	438	7105
		43	92	2384	439	1710
		44	92	2384	440	2312
1978	95-507	222 (1st sentence)	92	1771	405a	1121
Oct. 24		222 (last sentence)	92	1771	405a	1123
	95-563	1	92	2383	601 note	7101
Nov. 1		2	92	2383	602	7102
		3	92	2383	603	7102
		4	92	2384	604	7103
		5	92	2384	605	7103
		6(a) (1st, 2d sentences)	92	2384	605	7103
		6(a) (3d, 4th sentences)	92	2384	605	7103
		6(a) (5th-last sentences), (b), (c)(1)-(5)	92	2384	605	7103
		6(c)(6), (7), (d), (e)	92	2385	606	7104
		7	92	2385	607	7105
		8(a)-(e)	92	2385	607	7105
		8(f)	92	2386	607	7106
		8(g)	92	2387	607	7107
		9	92	2387	608	7106
		10(a)	92	2388	609	7104
		10(b)-(c)	92	2388	609	7107
		10(f)	92	2388	609	7107
		11	92	2388	610	7105
		12	92	2389	611	7109
		13	92	2389	612	7109
		15	92	2391	613	7108
		16	92	2391	601 note	7108

1984	98-577	502	98	3085	414a	1706
Oct. 30						
1988	100-463	8141	102	2270-47	405b	2304
Oct. 1						
Oct. 25	100-533	502	102	2697	417a	1713
Nov. 18	100-690	5151	102	4304	701 note	
		5152	102	4304	701	8102
		5153	102	4306	702	8103
		5154	102	4307	703	8104
		5155	102	4307	704	8105
		5156	102	4308	705	8106
		5157, 5158	102	4308	706, 707	8101
		5160	102	4308	701 note	
1992	102-572	907(a)(3)	106	4518	611 note	7109
Oct. 29						
1993	103-160	849(c), (d)	107	1725	100-2	8304
Nov. 30						
1994	103-355	1054(b)	108	3265	253h note	4102
Oct. 13		8002	108	3386	264 note	3307
1996	104-201	827	110	2611	100-3	8305
Sept. 23						
1997	105-18	7004	111	192	253f-1	3904
June 12						
1999	106-57	207	113	423	253f-2	3904
Sept. 29						
Oct. 5	106-65	804	113	704	253h note	4104
2000	106-554	1(a)(2) [title I, § 101]	114	2763A-100	253f-3	3904
Dec. 21		1(a)(2) [title I, § 110]	114	2763A-108	253f-4	3904
2003	108-7	div. II, title I, § 5	117	350	253f-5	3904
Feb. 20		div. II, title I, § 104	117	354	6a-3	6102
		div. II, title I, § 1002	117	357	253f-6	3904
		div. II, title I, § 1102	117	370	6a-4	6102
		div. II, title I, § 1202	117	373	253f-7	3904
		4	117	889	253f-8	3904
Aug. 15	108-72					

Schedule of Laws Repealed—Continued
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code (title 41, unless otherwise specified)		
			Volume	Page	Existing	Proposed	
Nov. 24	108-136	1412(a)	117	1664		433 note	1703
		1413	117	1665		433 note	1703
		1414	117	1666		433 note	1128
		1428	117	1670		253a note	3306
		1431(b)	117	1671		405 note	1129
2004	108-375	1441	117	1673		428a note	1904
		807(c)	118	2011		431a note	1908
2006	109-364		120	2333		253i note	4105
		834(b), (c) (related to (b))					
2008	110-181	855	122	251		433a	1704
		6102, 6103	122	2386, 2387		251 note	3509
		[div. A], title VIII, 841(a)	122	4537		405e(a)	2303
		[div. A], title VIII, 841(c)	122	4539		405e(c)	2303
		[div. A], title VIII, 863(a)-(c)	122	4547		253h note	3302
		[div. A], title VIII, 864(a), (b), (d), (e), (f)(2), (g)	122	4549		254 note	3906
		[div. A], title VIII, 866	122	4551		254b note	4710
		[div. A], title VIII, 867	122	4551		251 note	4711
		[div. A], title VIII, 868	122	4552		254b note	3501
		[div. A], title VIII, 869	122	4553		433a note	1704
		[div. A], title VIII, 872	122	4555		417b	2313
		[div. A], title VIII, 874(a)	122	4558		405 note	2311

Revised Statutes

Revised Statutes Section	United States Code (title 41)	
	Existing	Proposed
3709	5	6101
3710	8	6103
3732	11	6301
3733	12	6303
3735	13	6304
3736	14	6301
3737	15	6305
3741	22	6306

Passed the House of Representatives May 6, 2009.

Attest:

Clerk.

111TH CONGRESS
1ST SESSION

H. R. 1107

AN ACT

To enact certain laws relating to public contracts as
title 41, United States Code, "Public Contracts".