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IN THE SENATE OF THE UNITED STATES

APRIL 6 (legislative day, FEBRUARY 21), 1977

Mr. CHILES (for himself, Mr. ROTII, Mr. HEINZ, Mr. RIEGLE, and Mr. PACKWOOD) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

OCTOBER , 1977

Reported by Mr. -----, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide policies, methods, and criteria for the acquisition of property and services by executive agencies.

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

3 ~~SHORT TITLE; TABLE OF CONTENTS~~

4 ~~SECTION 1. (a) SHORT TITLE.—This Act may be cited~~
5 ~~as the “Federal Acquisition Act of 1977”.~~

6 ~~(b) TABLE OF CONTENTS.—~~

~~Sec. 1. Short title; table of contents.~~

~~Sec. 2. Declaration of policy.~~

~~Sec. 3. Definitions.~~

~~TITLE I—ACQUISITION METHODS AND REGULATORY GUIDANCE~~

~~Sec. 101. Acquisition methods.~~

~~Sec. 102. Regulatory compliance.~~

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~~TITLE II ACQUISITION BY COMPETITIVE SEALED BIDS~~

- ~~Sec. 201. Criteria for use.~~
- ~~Sec. 202. Invitation for sealed bids.~~
- ~~Sec. 203. Evaluation, award, and notifications.~~

~~TITLE III ACQUISITION BY COMPETITIVE
NEGOTIATION~~

- ~~Sec. 301. Criteria for use.~~
- ~~Sec. 302. Solicitations.~~
- ~~Sec. 303. Evaluation, award, and notifications.~~
- ~~Sec. 304. Single source exceptions.~~
- ~~Sec. 305. Price analysis and cost data.~~
- ~~Sec. 306. Access to records.~~

~~TITLE IV ACQUISITION BY COMPETITIVE SMALL
PURCHASE PROCEDURES~~

- ~~Sec. 401. Criteria for use.~~
- ~~Sec. 402. Solicitations and awards.~~

~~TITLE V GENERAL PROVISIONS~~

- ~~Sec. 501. Contract types.~~
- ~~Sec. 502. Warranty against contingent fees.~~
- ~~Sec. 503. Cancellations and rejections.~~
- ~~Sec. 504. Multiyear contracts.~~
- ~~Sec. 505. Advance, partial, and progress payments.~~
- ~~Sec. 506. Remission of liquidated damages.~~
- ~~Sec. 507. Determinations and findings.~~
- ~~Sec. 508. Competitive bidding information.~~
- ~~Sec. 509. Government surveillance requirements.~~
- ~~Sec. 510. Maintenance of regulations.~~

~~TITLE VI DELEGATION OF AUTHORITY~~

- ~~Sec. 601. Delegation within an executive agency.~~
- ~~Sec. 602. Joint acquisitions.~~

~~TITLE VII PROTESTS~~

- ~~Sec. 701. Purpose.~~
- ~~Sec. 702. Jurisdiction.~~
- ~~Sec. 703. Proceedings.~~
- ~~Sec. 704. General provisions.~~

~~TITLE VIII AMENDMENTS AND REPEALS~~

- ~~Sec. 801. Amendments.~~
- ~~Sec. 802. Repeals.~~

1 ~~DECLARATION OF POLICY~~

2 ~~SEC. 2. (a) FINDINGS. The Congress hereby finds~~

3 ~~that—~~

1 ~~(1) the laws controlling Federal purchasing have~~
2 ~~become outdated, fragmented, and needlessly incon-~~
3 ~~sistent;~~

4 ~~(2) these deficiencies have contributed to signifi-~~
5 ~~cant inefficiency, ineffectiveness, and waste in Federal~~
6 ~~spending;~~

7 ~~(3) the Commission on Government Procurement~~
8 ~~has found and recommended that a new consolidated~~
9 ~~statutory base is needed;~~

10 ~~(4) further, existing statutes need to be modernized~~
11 ~~to focus on effective competition and new technology~~
12 ~~in that—~~

13 ~~(A) national productivity rests on a base of~~
14 ~~competitive industry applying new technology in its~~
15 ~~goods and services; and~~

16 ~~(B) Federal spending practices can encourage~~
17 ~~the Nation's business community by stimulating~~
18 ~~effective competition and the application of new~~
19 ~~technology.~~

20 ~~(b) POLICY.—It is hereby declared to be the policy of~~
21 ~~the United States that the acquisition of property and serv-~~
22 ~~ices by the Federal Government shall be performed so as~~
23 ~~to—~~

24 ~~(1) best meet public needs at the lowest total cost;~~

25 ~~(2) maintain the independent character of private~~

1 ~~enterprise by substituting for regulatory controls the in-~~
2 ~~centives and constraints of effective competition;~~

3 ~~(3) encourage innovation and the application of~~
4 ~~new technology as a first consideration by stating public~~
5 ~~needs so that prospective suppliers will have maximum~~
6 ~~latitude to exercise independent business and technical~~
7 ~~judgments in offering a wide range of competing~~
8 ~~alternatives;~~

9 ~~(4) promote both new and small business by per-~~
10 ~~mitting all qualified and interested sources to compete~~
11 ~~for and grow through Government contracts;~~

12 ~~(5) provide private contractors with the opportu-~~
13 ~~nity to earn a profit on Government contracts commen-~~
14 ~~surate with the contribution made to meeting public~~
15 ~~needs and with comparable profit opportunities available~~
16 ~~in other markets requiring investments, risks, and skills~~
17 ~~similar to the technical and financial risks undertaken;~~

18 ~~(6) safeguard the public interest through individ-~~
19 ~~ual accountability of public officials and maximum use~~
20 ~~of effective competition; and~~

21 ~~(7) further, to achieve these goals, it is the policy~~
22 ~~of the United States to rely on and promote effective~~
23 ~~competition, the efforts of several sellers acting inde-~~
24 ~~pendently of each other, to respond to a public need by~~
25 ~~creating, developing, demonstrating or offering products~~

1 ~~or services which best meet that need, whether that need~~
2 ~~is expressed as an agency mission need, a desired func-~~
3 ~~tion to be performed, performance or physical require-~~
4 ~~ments to be met, or some combination of these. Effective~~
5 ~~competition is present when there is—~~

6 ~~(A) timely availability to prospective sellers~~
7 ~~of information required to respond to the public~~
8 ~~needs;~~

9 ~~(B) independence of action by buyer and~~
10 ~~seller;~~

11 ~~(C) availability to the Government of alterna-~~
12 ~~tive offers that provide a range of concept, design,~~
13 ~~performance, price, lifetime ownership costs, service~~
14 ~~and/or delivery;~~

15 ~~(D) absence of bias or favoritism in the solici-~~
16 ~~tation, evaluation, and award of contracts; and~~

17 ~~(E) ease of competitive entry for new and~~
18 ~~small sellers.~~

19 ~~DEFINITIONS~~

20 ~~SEC. 3. For purposes of this Act—~~

21 ~~(a) The term “acquisition” means any relationship en-~~
22 ~~tered into to obtain property or services for the direct benefit~~
23 ~~or use of an executive agency through purchase, lease, or~~
24 ~~barter to meet a public need, whether the property or services~~
25 ~~are already in existence or must be created, developed,~~

1 ~~demonstrated, and evaluated. Acquisition includes such re-~~
2 ~~lated functions as determination of the particular public need;~~
3 ~~solicitation; selection of sources; award of contracts; contract~~
4 ~~financing and contract performance.~~

5 ~~(b) The term "executive agency" means an executive~~
6 ~~department as defined by section 101 of title 5, United~~
7 ~~States Code; an independent establishment as defined by~~
8 ~~section 104 of title 5, United States Code (except that it~~
9 ~~shall not include the General Accounting Office); a mili-~~
10 ~~tary department as defined by section 102 of title 5, United~~
11 ~~States Code; and the United States Postal Service;~~

12 ~~(c) The term "agency head" means the head of an~~
13 ~~executive agency as defined in subsection (b).~~

14 ~~(d) The term "head of a procuring activity" means~~
15 ~~that official, intermediate between the Agency head and the~~
16 ~~contracting officer, who has the responsibility for super-~~
17 ~~vision and direction of the procuring activity.~~

18 ~~(e) The term "property" includes personal property~~
19 ~~and leaseholds and other interests therein, but excludes real~~
20 ~~property in being and leaseholds and other interests therein.~~

21 ~~(f) The term "services" means all services, including~~
22 ~~administrative, support type, and professional.~~

23 ~~(g) The term "total cost" means all resources con-~~
24 ~~sumed or to be consumed in making an acquisition to~~
25 ~~achieve an end purpose; and may include all direct, in-~~

1 ~~direct, recurring, nonrecurring, and other related costs in-~~
2 ~~curred, or estimated to be incurred in design, development,~~
3 ~~production, operation, maintenance, disposal, training, and~~
4 ~~support of an acquisition over its useful life span, wherever~~
5 ~~each factor is applicable.~~

6 ~~(h) The term "price data" means actual prices pre-~~
7 ~~viously paid, contracted, quoted or proposed and the related~~
8 ~~dates, quantities, and item descriptions existing up to a~~
9 ~~time as close as practicable to any new agreement on price.~~

10 ~~(i) The term "protest" means a challenge to the~~
11 ~~solicitation, proposed award, or award of a contract made~~
12 ~~by an executive agency for the acquisition of property or~~
13 ~~services.~~

14 ~~TITLE I ACQUISITION METHODS AND~~
15 ~~REGULATORY GUIDANCE~~

16 ~~ACQUISITION METHODS~~

17 ~~SEC. 101. (a) An executive agency shall acquire prop-~~
18 ~~erty or services in accordance with the policies specified in~~
19 ~~section 2 of this Act by utilizing—~~

20 ~~(1) the competitive sealed bids method as pro-~~
21 ~~vided in title II of this Act; or~~

22 ~~(2) the competitive negotiation method, as pro-~~
23 ~~vided in title III of this Act; or~~

24 ~~(3) the competitive small purchase method as pro-~~
25 ~~vided in title IV of this Act.~~

1 ~~plementation of and compliance with the requirements of~~
2 ~~this Act; specific reductions in the use of Federal specifica-~~
3 ~~tions pursuant to sections 202 and 302 of this Act; and~~
4 ~~recommendations for revisions in this Act or any other pro-~~
5 ~~vision of law.~~

6 ~~TITLE II—ACQUISITION BY COMPETITIVE~~
7 ~~SEALED BIDS~~
8 ~~CRITERIA FOR USE~~

9 ~~Sec. 201. The competitive sealed bids method should~~
10 ~~be used in the acquisition of property and services when—~~

11 ~~(1) the anticipated total contract price exceeds the~~
12 ~~amount specified in title IV of this Act for use of the~~
13 ~~competitive small purchase procedures method; and~~

14 ~~(2) the public need can be practicably defined in~~
15 ~~terms not restricted by security or proprietary design;~~
16 ~~and~~

17 ~~(3) the private sector industrial base will provide a~~
18 ~~sufficient number of qualified suppliers willing to com-~~
19 ~~pete for and able to perform the contract; and~~

20 ~~(4) suitable products or services have been fully~~
21 ~~developed and previously supplied in comparable forms~~
22 ~~so to warrant the award of a fixed price contract to a~~
23 ~~successful bidder selected primarily on the basis of price;~~
24 ~~and~~

25 ~~(5) the time available for acquisition is sufficient~~

1 ~~to prepare the purchase description and to carry out the~~
2 ~~requisite administrative procedures; and~~

3 ~~(6) the property or service is to be acquired and/~~
4 ~~or used within the limits of the United States and its~~
5 ~~possessions; and~~

6 ~~(7) the price for the property or service has not~~
7 ~~been established by or pursuant to law.~~

8 ~~INVITATION FOR SEALED BIDS~~

9 ~~SEC. 202. (a) The invitation for sealed bids shall be~~
10 ~~formally advertised in such a way that—~~

11 ~~(1) the time prior to opening the bids will be suf-~~
12 ~~ficient to permit effective competition; and~~

13 ~~(2) the purchase description will be accessible to~~
14 ~~all interested potential bidders, except where restricted~~
15 ~~to bidders qualified under a duly authorized set-aside~~
16 ~~program.~~

17 ~~(b) The invitation shall include a description of the~~
18 ~~method to be used in evaluating bids, including factors other~~
19 ~~than price.~~

20 ~~(c) To the extent practicable and consistent with needs~~
21 ~~of the Agency, purchase descriptions shall be stated in func-~~
22 ~~tional terms to permit a variety of distinct products or serv-~~
23 ~~ices to qualify, or, when a particular type of product or serv-~~
24 ~~ice must be designated, in terms of performance specifica-~~

1 ~~tions which stipulate a range of acceptable characteristics or~~
2 ~~minimum standards.~~

3 ~~(d) The preparation and use of definitive product speci-~~
4 ~~fications in a purchase description shall be subject to prior~~
5 ~~approval by the Agency head. Such approval shall include~~
6 ~~written justification, to be placed in and made a part of the~~
7 ~~official contract file, delineating the circumstances which pre-~~
8 ~~clude the use of functional or performance specifications and~~
9 ~~which require the use of detailed product specifications in~~
10 ~~the purchase descriptions.~~

11 ~~(e) Where the use of functional or performance specifi-~~
12 ~~cations make it impracticable to plan for award primarily~~
13 ~~on the basis of price, the contracting officer may request the~~
14 ~~submission of unpriced technical proposals and subsequently~~
15 ~~issue an invitation for sealed bid limited to those offerors~~
16 ~~whose technical proposals meet the standards set forth in~~
17 ~~the purchase description.~~

18 ~~EVALUATION, AWARD, AND NOTIFICATIONS~~

19 ~~SEC. 203. (a) All bids shall be opened publicly at the~~
20 ~~time and place stated in the invitation.~~

21 ~~(b) Award shall be made to the responsible bidder~~
22 ~~whose bid conforms to the invitation and is most advan-~~
23 ~~tageous to the Government, price and other factors~~
24 ~~considered.~~

1 ~~(e) Notice of such award shall be made in writing~~
2 ~~by the contracting officer with reasonable promptness and~~
3 ~~all other bidders shall be appropriately notified.~~

4 ~~TITLE III—ACQUISITION BY COMPETITIVE~~
5 ~~NEGOTIATION~~

6 ~~CRITERIA FOR USE~~

7 ~~Sec. 301. The competitive negotiation method may be~~
8 ~~used in the acquisition of property and services when—~~

9 ~~(1) the anticipated total contract price exceeds~~
10 ~~the amount specified in title IV of this Act for use of~~
11 ~~the competitive small purchase procedures method; and~~

12 ~~(2) the acquisition does not meet the criteria~~
13 ~~established pursuant to section 101 (b) or as set forth~~
14 ~~in section 201 for use of competitive sealed bids.~~

15 ~~SOLICITATIONS~~

16 ~~Sec. 302. (a) Solicitations for offers shall be made~~
17 ~~from a sufficient number of qualified sources so as to obtain~~
18 ~~effective competition and shall be publicized in accordance~~
19 ~~with section 8 (e) of the Small Business Act, with copies~~
20 ~~of the solicitation to be provided to other interested sources~~
21 ~~upon request.~~

22 ~~(b) (1) When price is not expected to be the deciding~~
23 ~~factor in making an award, the solicitation shall include~~
24 ~~both the methodology and the relative importance of all~~
25 ~~significant factors to be used during competitive evaluation~~

1 ~~and for final selection. In any case, if price is included as~~
2 ~~a primary or significant factor, the Government's evaluation~~
3 ~~shall be based to the maximum extent practicable on the~~
4 ~~total cost to meet the Federal need and not on the cost~~
5 ~~of completing any initial or partial segments of activity.~~

6 ~~(2) Any changes in the methodology or evaluation~~
7 ~~factors which may affect the outcome of the competition~~
8 ~~shall be promptly communicated to all competitors.~~

9 ~~(e) To the maximum extent practicable, solicitations~~
10 ~~shall set forth the public need in functional terms so as to~~
11 ~~permit the application of a variety of technological ap-~~
12 ~~proaches and elicit the most promising competing alterna-~~
13 ~~tives. Solicitations shall not prescribe performance character-~~
14 ~~istics based on a single approach. Solicitations shall also not~~
15 ~~prescribe technical characteristics obtained from any poten-~~
16 ~~tial competitor.~~

17 ~~(d) If either the Government or an offeror identifies~~
18 ~~inadequacies in the solicitation which cause misunderstand-~~
19 ~~ings of the public's needs or requirements, clarification of~~
20 ~~intent shall be made to all offerors in a timely fashion and on~~
21 ~~an equal basis.~~

22 ~~EVALUATION, AWARD, AND NOTIFICATIONS~~

23 ~~SEC. 303. (a) Written or oral discussions shall be con-~~
24 ~~ducted with all qualified offerors who remain in a competi-~~
25 ~~tive range solely for the purpose of obtaining any needed~~

1 ~~clarification or extension of offers. An initial offer may be~~
2 ~~accepted without discussion.~~

3 ~~(b) When awards are made for alternative approaches~~
4 ~~selected on the basis of the factors contained in the solicita-~~
5 ~~tion, whether for design, development, demonstration, or~~
6 ~~delivery, to the maximum extent practicable, they shall be~~
7 ~~sustained in competition until sufficient test or evaluation~~
8 ~~information becomes available to narrow the choice to a~~
9 ~~particular product or service.~~

10 ~~(c) Until award is made, information concerning the~~
11 ~~award shall not be disclosed to any person not having direct~~
12 ~~source selection responsibilities.~~

13 ~~(d) Award shall be made to one or more responsible~~
14 ~~offerors whose proposal is most responsive to the factors stip-~~
15 ~~ulated in the solicitation as required by section 302 (b). No-~~
16 ~~tification of award to all unsuccessful offerors shall be made~~
17 ~~with reasonable promptness.~~

18 ~~SINGLE-SOURCE EXCEPTIONS~~

19 ~~SEC. 304. (a) Compliance with the procedures pre-~~
20 ~~scribed in sections 302 and 303 need not be continued if--~~

21 ~~(1) the agency head makes a determination, before~~
22 ~~award, that it is impracticable to proceed with the com-~~
23 ~~petitive negotiation because more than one prospective~~
24 ~~source is not available; a public exigency prevails; or a~~

1 ~~national emergency is declared by the Congress or the~~
2 ~~President;~~

3 ~~(2) such determination, together with the reasons~~
4 ~~therefor, is in writing and conforms with such regula-~~
5 ~~tions as may be prescribed or authorized by the Office of~~
6 ~~Federal Procurement Policy, pursuant to section 102~~
7 ~~(a) (1); and~~

8 ~~(3) notice of intent to award such a contract is~~
9 ~~publicized in advance of the award, pursuant to section~~
10 ~~637 (e) of title 15, United States Code, and includes~~
11 ~~a description of the property or service to be acquired~~
12 ~~and the name of the prospective source.~~

13 ~~In such cases, contracts may be made by negotiation with~~
14 ~~a single offeror selected by the Agency. The submission and~~
15 ~~certification referred to in section 305 (b) and the provisions~~
16 ~~of section 305 (e) shall be required in the case of any single-~~
17 ~~source contract to be awarded pursuant to this section when~~
18 ~~the amount in question is greater than the amount specified~~
19 ~~in section 401.~~

20 ~~(b) Where there is no commercial usage of the product~~
21 ~~or service to be acquired under this section, and the Agency~~
22 ~~head determines that substantial follow-on provision of such~~
23 ~~product or service will be required by the Government, the~~
24 ~~Agency head shall, when he deems appropriate, take action~~

1 through contractual provision, or otherwise, to provide the
2 Government with a capability to establish one or more other
3 competitive sources.

4 ~~PRICE ANALYSIS AND COST DATA~~

5 ~~SEC. 305. (a) Prior to any negotiated award, change,~~
6 ~~or modification of any contract or subcontract, the con-~~
7 ~~tractor and any subcontractor shall be required to submit~~
8 ~~or identify in writing, with his proposal, price data bearing~~
9 ~~on the reasonableness of the offer. Each such contractor~~
10 ~~or subcontractor shall certify that, to the best of this knowl-~~
11 ~~edge and belief, such price data is accurate, complete, and~~
12 ~~current as of the date agreed upon between the parties~~
13 ~~(which date shall be as close as practicable to the date of~~
14 ~~agreement on the negotiated price). The contracting officer~~
15 ~~shall use price analysis techniques to analyze and evaluate~~
16 ~~the reasonableness of offers where —~~

17 ~~(1) the price of the contract, subcontract, change~~
18 ~~or modification is less than \$500,000; (the contracting~~
19 ~~officer may at his discretion, however, request pricing~~
20 ~~data or cost data as provided for in section 305 (b),~~
21 ~~for contracts, subcontracts, changes or modifications,~~
22 ~~where the total amount exceeds the amount specified~~
23 ~~in section 401 of this Act but is less than or equal to~~
24 ~~\$500,000); or~~

25 ~~(2) the price is an established catalog or a market~~

1 ~~price of a commercial item sold in substantial quan-~~
2 ~~ties to the general public; or~~

3 ~~(3) the price is already set by law or regulation;~~

4 ~~or~~

5 ~~(4) negotiation is based on adequate price com-~~
6 ~~petition, wherein price is a primary or significant~~
7 ~~factor; or~~

8 ~~(5) there was recent competitive purchase under~~
9 ~~relatively similar circumstances.~~

10 ~~(b) Where the contract or subcontract is a single-~~
11 ~~source award pursuant to section 304, or for other nego-~~
12 ~~tiated contracts when the contract or subcontract does not~~
13 ~~meet any one of the conditions set forth in section 305 (a)—~~

14 ~~(1) the contractor and any subcontractor shall be~~
15 ~~required to submit or identify in writing, with his pro-~~
16 ~~posal, cost data bearing on the reasonableness of the~~
17 ~~offered price; and~~

18 ~~(2) shall certify that, to the best of his knowledge~~
19 ~~and belief, such cost data is accurate, complete and cur-~~
20 ~~rent as of the date agreed upon between the parties~~
21 ~~(which date shall be as close as practicable to the date~~
22 ~~or agreement on the negotiated price).~~

23 ~~(c) Any prime contract or change or modification~~
24 ~~thereto under which a certification is required under sub-~~
25 ~~section (b) shall contain a provision that the price to the~~

1 ~~Government, including profit or fee, shall be adjusted to~~
2 ~~exclude any significant sums by which it may be determined~~
3 ~~by the Agency head that such price was increased because~~
4 ~~the contractor or any subcontractor required to furnish such~~
5 ~~a certificate, furnished data which was not accurate, com-~~
6 ~~plete or current.~~

7 ~~(d) The Agency head may grant a waiver from the pro-~~
8 ~~visions of sections 305 (a) and (b). Such waiver shall in-~~
9 ~~clude a written justification, to be placed in and made a part~~
10 ~~of the contract file, setting forth the reasons why the provi-~~
11 ~~sions of sections 305 (a) and (b) must be waived.~~

12 ~~(e) At least every three years, beginning with the third~~
13 ~~year after enactment of this Act, the Administrator of the~~
14 ~~Office of Federal Procurement Policy shall review and may~~
15 ~~revise the thresholds cited elsewhere in this section, or any~~
16 ~~prior revision hereto, notwithstanding any other provision~~
17 ~~of law, to reflect an increase or decrease by at least 10 per~~
18 ~~centum in the costs of labor and materials. At least sixty~~
19 ~~days in advance of its effective date, the Administrator shall~~
20 ~~report to Congress any such revision which by itself, or cu-~~
21 ~~mulatively with earlier increases, represents a 50 per centum~~
22 ~~or more increase.~~

23 ~~ACCESS TO RECORDS~~

24 ~~SEC. 306. (a) Until expiration of three years after~~
25 ~~final payment under a contract negotiated or amended under~~

~~1 this title, the Comptroller General of the United States and
2 an executive agency or their authorized representatives are
3 entitled to inspect the plants and examine any books, docu-
4 ments, papers, records or other data of the contractor and
5 his subcontractors that pertain to, and involve transactions
6 relating to the contract or subcontract or to the amendment
7 thereof, including for the purpose of evaluating the accuracy,
8 completeness and currency of data certified under section
9 305, all such books, records and other data relating to the
10 negotiation, pricing, or performance of the contract or sub-
11 contract. This provision may be waived for any contract
12 or subcontract with a foreign contractor or subcontractor,
13 if the Agency head determines, with concurrence of the
14 Comptroller General, that waiver would be in the public
15 interest.~~

~~16 (b) Inspections and examinations by executive agen-
17 cies under subsection (a) shall be conducted only when
18 necessary to insure contract performance. Multiple inspec-
19 tions and examinations of a contractor or subcontractors by
20 more than one executive agency shall be eliminated to the
21 maximum extent practicable by coordinating inspection
22 and examination responsibilities in accordance with regula-
23 tions to be issued or authorized by the Office of Federal
24 Procurement Policy pursuant to section 102(1).~~

1 ~~TITLE IV—ACQUISITION BY COMPETITIVE~~
2 ~~SMALL PURCHASE PROCEDURES METHOD~~
3 ~~CRITERIA FOR USE~~

4 ~~SEC. 401. (a) The competitive small purchase proce-~~
5 ~~dures method may be used in the acquisition of property and~~
6 ~~services under regulations authorized or prescribed by the~~
7 ~~Office of Federal Procurement Policy under section 102 (1)~~
8 ~~when the anticipated total contract price does not exceed~~
9 ~~\$10,000 but, in lieu of this method, the contracting officer~~
10 ~~may use either of the competitive methods prescribed in~~
11 ~~titles II or III of this Act when such use would be more~~
12 ~~advantageous to the Government.~~

13 ~~(b) At least every three years, beginning with the~~
14 ~~third year after enactment of this Act, the Administrator~~
15 ~~of the Office of Federal Procurement Policy shall review~~
16 ~~the prevailing costs of labor and materials and may revise~~
17 ~~the amount stated in section 401 (a) or any prior revision~~
18 ~~thereof, notwithstanding any other provision of law, to~~
19 ~~reflect an increase or decrease by at least 10 per centum~~
20 ~~in the costs of labor and materials. At least sixty days in~~
21 ~~advance of its effective date, the Administrator shall report~~
22 ~~to Congress any such revision which by itself, or cumula-~~
23 ~~tively with earlier increases, represents 50 per centum or~~
24 ~~more increase.~~

1 ~~SOLICITATIONS AND AWARDS~~

2 ~~SEC. 402. The Contracting officer may make an award~~
3 ~~to the contractor whose offer is most advantageous to the~~
4 ~~Government but shall seek to obtain effective competition~~
5 ~~to the maximum extent practicable through informal means.~~

6 ~~TITLE V GENERAL PROVISIONS~~

7 ~~CONTRACT TYPES~~

8 ~~SEC. 501. (a) Contracts may be of any type or combi-~~
9 ~~nation of types, consistent with the degree of technical and~~
10 ~~financial risk to be undertaken by the contractor, which will~~
11 ~~promote the best interests of the Government except that the~~
12 ~~cost plus a percentage of cost system of contracting shall not~~
13 ~~be used under any circumstances.~~

14 ~~(b) The preferred contract form for all contracts shall~~
15 ~~be a fixed price type. Where the technical or financial risks~~
16 ~~of negotiated contracts are substantial, fixed price contracts~~
17 ~~with options for shorter work increments are preferred to~~
18 ~~longer cost type contracts so as to maintain greater control~~
19 ~~over Government obligations.~~

20 ~~WARRANTEE AGAINST CONTINGENT FEES~~

21 ~~SEC. 502. Each contract negotiated under title III of~~
22 ~~this Act or an award to be made as a result of the submission~~
23 ~~of a technical proposal under section 202 (c) of this Act shall~~
24 ~~contain a warrantee by the contractor that no person or sell-~~

1 ~~ing agency has been employed or retained to solicit or secure~~
2 ~~the contract upon an agreement or understanding of a com-~~
3 ~~mission, percentage, brokerage, or contingent fee, excepting~~
4 ~~bona fide employees or bona fide established commercial or~~
5 ~~selling agencies maintained by the contractor for the pur-~~
6 ~~pose of securing business; and that for any breach or viola-~~
7 ~~tion of the warrantee, the Government may annul the con-~~
8 ~~tract without liability or deduct from the contract price or~~
9 ~~consideration the full amount of the commission, percentage,~~
10 ~~brokerage, or contingent fee.~~

11 ~~CANCELLATIONS AND REJECTIONS~~

12 ~~SEC. 503. (a) Where the contracting officer determines~~
13 ~~that it is in the best interest of the Government, the con-~~
14 ~~tracting officer may—~~

15 ~~(1) withdraw a small purchase order prior to the~~
16 ~~consummation of a contract;~~

17 ~~(2) cancel an invitation for sealed bids before bid~~
18 ~~opening or after bid opening but before award; or~~

19 ~~(3) cancel a request for proposal and reject all~~
20 ~~offers.~~

21 ~~(b) When requested, the contracting officer shall fully~~
22 ~~inform any unsuccessful offeror or bidder of the reasons for~~
23 ~~the rejection of his offer or bid.~~

1 ~~appropriated funds originally available for performance of~~
2 ~~the contract, or currently available for procurement of similar~~
3 ~~property or services, and not otherwise obligated, or appro-~~
4 ~~priations made available for such payments.~~

5 ~~ADVANCE, PARTIAL, AND PROGRESS PAYMENTS~~

6 ~~SEC. 505. (a) Any executive agency may—~~

7 ~~(1) make advance, partial, progress, or other pay-~~
8 ~~ments under contracts; and~~

9 ~~(2) insert in solicitations a provision limiting ad-~~
10 ~~vance or progress payments to small business concerns.~~

11 ~~(b) Advance payments under subsection (a) shall not~~
12 ~~be made in excess of the amount required for contract per-~~
13 ~~formance and shall not exceed the unpaid contract price.~~

14 ~~(c) When progress payments are made, the Govern-~~
15 ~~ment shall have title to the progress payment inventory and,~~
16 ~~notwithstanding any other provisions of law, that title may~~
17 ~~not be divested by any action of the contractor, or proceed-~~
18 ~~ing in bankruptcy, or encumbered by any lien or security~~
19 ~~interest.~~

20 ~~(d) Advance payments under subsection (a) may be~~
21 ~~made only upon adequate security and a determination by~~
22 ~~the Agency head that to do so would be in the public inter-~~
23 ~~est. Such security may be in the form of a lien in favor of~~
24 ~~the Government on the property contracted for, on the bal-~~
25 ~~ance in an account in which such payments are deposited,~~

1 ~~or on such property acquired for performance of the contract~~
2 ~~as the parties may agree. This lien shall have priority over~~
3 ~~all other liens.~~

4 ~~REMISSION OF LIQUIDATED DAMAGES~~

5 ~~SEC. 506. Upon the recommendation of the Agency~~
6 ~~head the Comptroller General of the United States may~~
7 ~~remit all or part, as he considers just and equitable, of any~~
8 ~~liquidated damages provided by the contract for delay in~~
9 ~~performing the contract.~~

10 ~~DETERMINATIONS AND FINDINGS~~

11 ~~SEC. 507. (a) Determinations, findings, and decisions~~
12 ~~provided for by this Act may be made with respect to con-~~
13 ~~tracts individually or with respect to classes of contracts.~~

14 ~~(b) Each determination or decision shall be based upon~~
15 ~~written findings of the officer making the determination or~~
16 ~~decision, and shall be retained in the official contract file.~~

17 ~~COMPETITIVE BIDDING INFORMATION~~

18 ~~SEC. 508. (a) If the contracting officer or any other~~
19 ~~agency employee has reason to believe that any bid, pro-~~
20 ~~posal or offer evidences a violation of the antitrust laws or~~
21 ~~provisions of this Act, he shall refer that bid, proposal or~~
22 ~~offer through the appropriate agency official, directly to the~~
23 ~~Attorney General of the United States for appropriate~~
24 ~~action.~~

25 ~~(b) Upon the request of the Attorney General of the~~

1 ~~United States, the Agency head shall make available to the~~
2 ~~Attorney General information which the Attorney General~~
3 ~~considers necessary and relevant to any investigation, prose-~~
4 ~~cution or other action by the United States under the anti-~~
5 ~~trust laws or other statute enforced by the Attorney General.~~

6 ~~(c) The Agency head shall render needed assistance to~~
7 ~~the Attorney General in any investigation and prosecution~~
8 ~~flowing from the information provided in subsection (a)~~
9 ~~or (b) or from other investigation and prosecution in other~~
10 ~~antitrust matters.~~

11 ~~GOVERNMENT SURVEILLANCE REQUIREMENTS~~

12 ~~SEC. 509. (a) Notwithstanding any other provision of~~
13 ~~law, an agency head may grant a waiver from Government~~
14 ~~surveillance requirements for a period not to exceed two~~
15 ~~years to that part of a contractor's operation which is sep-~~
16 ~~arately managed and accounted for if more than 75 per cen-~~
17 ~~tum of the business activity of that part of a contractor's~~
18 ~~operation as measured by total sales volume, is being con-~~
19 ~~ducted under commercial and competitive Government con-~~
20 ~~tracts, where the Government awarded firm fixed-price~~
21 ~~type contracts or where price was the deciding or a signifi-~~
22 ~~cant factor for award.~~

23 ~~(b) Such a waiver shall relieve that contractor profit~~
24 ~~center from Government, but not General Accounting Of-~~
25 ~~fice surveillance requirements including:~~

1 ~~(1) agency management, procurement system and~~
2 ~~property reviews;~~

3 ~~(2) determinations of the reasonableness of indi-~~
4 ~~rect overhead costs;~~

5 ~~(3) provisions of the Cost Accounting Standards~~
6 ~~Act (Public Law 93-379);~~

7 ~~(4) advance agreements for independent research~~
8 ~~and development and bid and proposal activities; and~~

9 ~~(5) provisions of the Renegotiation Act.~~

10 ~~(c) Such a waiver shall not be granted, and may be~~
11 ~~revoked at any time, if the Agency head determines that,~~
12 ~~for other reasons, the combination of commercial and Gov-~~
13 ~~ernment competitive activity is insufficient to insure efficient~~
14 ~~contractor activity under Government contracts.~~

15 ~~MAINTENANCE OF REGULATIONS~~

16 ~~SEC. 510. (a) Notwithstanding the provisions of title~~
17 ~~VIII of this Act, or any other provisions of law, regulations,~~
18 ~~including amendments thereof approved pursuant to sub-~~
19 ~~section (b), relating to Federal procurement as determined~~
20 ~~by the Administrator of the Office of Federal Procurement~~
21 ~~Policy, promulgated or in effect one hundred and eighty days~~
22 ~~before the date of enactment of this Act shall remain in ef-~~
23 ~~fect until repealed by order of the Administrator of the~~
24 ~~Office of Federal Procurement Policy or until the lapse of~~
25 ~~two years after the date of enactment of this Act, whichever~~

1 ~~is earlier. No regulation preserved by operation of this sec-~~
2 ~~tion may be amended without the prior approval of the Ad-~~
3 ~~ministrator of the Office of Federal Procurement Policy.~~

4 ~~(b) The Administrator of the Office of Federal Pro-~~
5 ~~curement Policy is authorized to approve the amendment of~~
6 ~~regulations preserved under the provisions of subsection (a).~~

7 ~~TITLE VI—DELEGATION OF AUTHORITY~~

8 ~~DELEGATION WITHIN AN EXECUTIVE AGENCY~~

9 ~~SEC. 601. Each agency head may delegate any author-~~
10 ~~ity under this Act except the authority to grant waivers~~
11 ~~under section 509, provided that the authority to make~~
12 ~~determinations under sections 202 and 304 through 306~~
13 ~~shall not be delegated below the level of the head of a~~
14 ~~procuring activity.~~

15 ~~JOINT ACQUISITIONS~~

16 ~~SEC. 602. (a) To facilitate acquisition of property or~~
17 ~~services by one executive agency for another executive~~
18 ~~agency, and to facilitate joint acquisition by those agencies—~~

19 ~~(1) the Agency head may, within his agency,~~
20 ~~delegate functions and assign responsibilities relating~~
21 ~~to the acquisition;~~

22 ~~(2) the heads of two or more executive agencies~~
23 ~~may by agreement delegate acquisition functions and~~
24 ~~assign acquisition responsibilities from one agency to~~

1 ~~another of those agencies or to an officer or civilian~~
2 ~~employee of another of those agencies; and~~

3 ~~(3) the heads of two or more executive agencies~~
4 ~~may create joint or combined offices to exercise acquisi-~~
5 ~~tion functions and responsibilities.~~

6 ~~(b) Subject to the provisions of section 686 of title 31,~~
7 ~~United States Code—~~

8 ~~(1) appropriations available for acquisition of~~
9 ~~property and services by an executive agency may~~
10 ~~be made available for obligation for acquisition of~~
11 ~~property and services by any other agency in amounts~~
12 ~~authorized by the head of the ordering agency and~~
13 ~~without transfer of funds on the books of the Depart-~~
14 ~~ment of the Treasury;~~

15 ~~(2) a disbursing officer of the ordering agency may~~
16 ~~make disbursement for any obligation chargeable under~~
17 ~~subsection (a) of this section, upon a voucher certified~~
18 ~~by an officer or civilian employee of the acquisition~~
19 ~~agency.~~

20 ~~TITLE VII—PROTESTS~~

21 ~~PURPOSE~~

22 ~~SEC. 701. In accordance with the authority of the~~
23 ~~Budget and Accounting Act of 1921 (chapter 18, title III,~~
24 ~~section 304, 42 Stat. 24, 31 U.S.C. 44) and this title,~~

1 ~~protests shall be decided in the General Accounting Office.~~
2 ~~To the fullest extent possible, the Comptroller General shall~~
3 ~~provide for the inexpensive, informal, and expeditious res-~~
4 ~~olution of protests.~~

5 ~~JURISDICTION~~

6 ~~Sec. 702. (a) The Comptroller General shall have~~
7 ~~authority to decide any protest submitted by an interested~~
8 ~~party in accordance with rules and regulations he shall issue~~
9 ~~pursuant to section 704.~~

10 ~~(b) No contract shall be awarded after the contracting~~
11 ~~activity has received notice of a protest to the Comptroller~~
12 ~~General while the matter is pending before him: *Provided,*~~
13 ~~*however,* That the head of an executive agency may author-~~
14 ~~ize the award of a contract notwithstanding such protest,~~
15 ~~upon a written finding that the interest of the United States~~
16 ~~will not permit awaiting the decision of the Comptroller~~
17 ~~General: *And provided further,* That the Comptroller is~~
18 ~~advised prior to the award of such finding.~~

19 ~~(c) With respect to any solicitation, proposed award,~~
20 ~~or award of contract protested to him in accordance with this~~
21 ~~title, the Comptroller General is authorized to declare that~~
22 ~~such solicitation, proposed award, or award does not com-~~
23 ~~port with law or regulation. If award has been made prior~~
24 ~~to such declaration the Comptroller General may further~~

1 ~~declare that the contract shall be terminated for the con-~~
2 ~~venience of the Government.~~

3 ~~PROCEEDINGS~~

4 ~~SEC. 703. (a) Proceedings shall be informal to the~~
5 ~~fullest extent possible.~~

6 ~~(b) Each decision of the Comptroller General shall be~~
7 ~~signed by him or his delegee and shall be binding upon all~~
8 ~~interested parties including the executive agency or agencies~~
9 ~~involved. A copy of the decision shall be furnished to the~~
10 ~~interested parties and the executive agency or agencies~~
11 ~~involved.~~

12 ~~(c) (1) All decisions shall be rendered promptly, con-~~
13 ~~sistent with the need to develop a complete record, in ac-~~
14 ~~cordance with regulations to be issued by the Comptroller~~
15 ~~General pursuant to section 704 of this title.~~

16 ~~(2) There shall be no ex parte proceedings before the~~
17 ~~Comptroller General except that this section shall not be~~
18 ~~deemed to preclude informal contacts with the parties for~~
19 ~~procedural purposes.~~

20 ~~(3) A conference shall be permitted before decision;~~
21 ~~however, no transcripts shall be required. Transcripts may~~
22 ~~be permitted at the Comptroller General's discretion or at~~
23 ~~the request of the interested party, provided the Comptroller~~
24 ~~General and each other interested party shall be furnished~~

1 a copy. Costs of such transcripts and services shall be borne
2 by the requesting party.

3 (4) The Comptroller General shall, for good cause
4 shown, authorize formal discovery proceedings and may
5 sign and issue subpoenas requiring the production of
6 books and records and attendance of witnesses for the
7 taking of evidence. In case of refusal to obey a subpoena
8 by a person who resides, is found, or transacts business
9 within the jurisdiction of a United States district
10 court, the court, upon application of the Comptroller
11 General, shall have jurisdiction to issue the person an
12 order requiring him to appear before the Comptroller
13 General or his designee to produce the books and rec-
14 ords, or to give testimony, or both. Any person who fails
15 to obey the order of the court may be punished by the
16 court as a contempt thereof.

17 (d) The Comptroller General is authorized to dismiss
18 any protest he determines to be frivolous or which, on its
19 face, does not state a valid basis for protest.

20 (e) Where the Comptroller General has declared that
21 solicitation, proposed award, or award of a contract does
22 not comport with law or regulation, he may further declare
23 the entitlement of an appropriate party to bid and proposal
24 preparation costs. In such cases the Comptroller General
25 may remand the matter to the executive agency involved

1 ~~for an initial determination as to the amount of such costs.~~
2 ~~Declarations of entitlement to monetary awards shall be~~
3 ~~paid promptly by the executive agency concerned out of~~
4 ~~funds available for the purpose of the procurement or sale.~~

5 ~~(f) The Comptroller General, where he deems appro-~~
6 ~~priate, shall make recommendations for improving the pro-~~
7 ~~curement process.~~

8 ~~GENERAL PROVISIONS~~

9 ~~SEC. 704. The Comptroller General shall perform such~~
10 ~~acts, make such rules and regulations, and issue such orders,~~
11 ~~not inconsistent with this title, as may be necessary in the~~
12 ~~execution of the protest decision function. He may delegate~~
13 ~~his authority to other officers or employees of the General~~
14 ~~Accounting Office.~~

15 ~~TITLE VIII—AMENDMENTS AND REPEALS~~

16 ~~—AMENDMENTS—~~

17 ~~SEC. 801. (a) The Agriculture Department Appropria-~~
18 ~~tion Act, 1923, is amended by striking out “, after due ad-~~
19 ~~vertisement and on competitive bids,” in the first proviso~~
20 ~~on the page at forty-second Statutes at Large, page 517~~
21 ~~(7 U.S.C. 416).~~

22 ~~(b) Sections 101 (d) and 104 of the Department of~~
23 ~~Agriculture Organic Act of 1944 (58 Stat. 734, 736; 7~~
24 ~~U.S.C. 430, 432) are amended by striking out “in the open~~
25 ~~market”.~~

1 ~~(c) Section 2356(b) of title 10, United States Code,~~
2 ~~is amended by striking out the last sentence.~~

3 ~~(d) Sections 4504 and 9504 of title 10, United States~~
4 ~~Code, are each amended by striking out everything after~~
5 ~~“United States” and inserting in lieu thereof a period.~~

6 ~~(e) Sections 4505 and 9505 of title 10, United States~~
7 ~~Code, are each amended by striking out the second sentence.~~

8 ~~(f) Clause (2) of section 502(e) of the Act of August~~
9 ~~10, 1948 (62 Stat. 1283; 12 U.S.C. 1701e(b)(2)), is~~
10 ~~amended by striking out “, without regard to section 3709~~
11 ~~of the Revised Statutes”.~~

12 ~~(g) Section 502(e) of the Act of December 31, 1970~~
13 ~~(84 Stat. 1784; 12 U.S.C. 1701z-2(e)), is amended by~~
14 ~~striking out “, without regard to section 3709 of the Revised~~
15 ~~Statutes,”.~~

16 ~~(h) Section 708(h) of the Act of June 27, 1934, as~~
17 ~~amended August 10, 1948 (62 Stat. 1279; 12 U.S.C. 1747~~
18 ~~g(h)), is amended by striking out the proviso at the end.~~

19 ~~(i) Section 712 of the Act of June 27, 1934, as~~
20 ~~amended August 10, 1948 (62 Stat. 1281; 12 U.S.C.~~
21 ~~1747k) is amended by striking out “and without regard~~
22 ~~to section 3709 of the Revised Statutes”.~~

23 ~~(j) Section 208(b) of the Act of June 26, 1934, as~~
24 ~~amended October 19, 1970 (84 Stat. 1014; 12 U.S.C.~~
25 ~~1788(b)), is amended by striking out the last sentence.~~

1 ~~(k) Clause (4) of section 2 (b) of the Act of July 18,~~
2 ~~1958 (72 Stat. 386; 15 U.S.C. 634 (b) (4)), is amended~~
3 ~~by striking out: "Section 3709 of the Revised Statutes, as~~
4 ~~amended (41 U.S.C., section 5), shall not be construed~~
5 ~~to apply to any contract of hazard insurance or to any pur-~~
6 ~~chase or contract for services or supplies on account of prop-~~
7 ~~erty obtained by the Administrator or as a result of loans~~
8 ~~made under this Act if the premium therefor or the amount~~
9 ~~thereof does not exceed \$1,000."~~

10 ~~(l) Section 3 of the Act of April 24, 1950 (64 Stat.~~
11 ~~83; 16 U.S.C. 580c), is amended to read as follows:~~

12 ~~"Sec. 3. The Forest Service is authorized to make~~
13 ~~purchases of (1) materials to be tested or upon which~~
14 ~~experiments are to be made or (2) special devices, test~~
15 ~~models, or parts thereof, to be used (a) for experimenta-~~
16 ~~tion to determine their suitability for or adaptability to~~
17 ~~accomplishment of the work for which designed or (b) in~~
18 ~~the designing or developing of new equipment: *Provided,*~~
19 ~~That not to exceed \$50,000 may be expended in any one~~
20 ~~fiscal year pursuant to this authority and not to exceed~~
21 ~~\$10,000 on any one item or purchase."~~

22 ~~(m) Section 2 (b) (1) of the Act entitled "An Act to~~
23 ~~authorize the construction of a National Fisheries Center~~
24 ~~and Aquarium in the District of Columbia and to provide for~~
25 ~~its operation", approved October 9, 1962 (76 Stat. 753;~~

1 ~~16 U.S.C. 1052), is amended by striking out “, without~~
2 ~~regard to the provisions of section 3709 of the Revised~~
3 ~~Statutes of the United States (41 U.S.C. 5),”.~~

4 ~~(n) Subsections 2 (a) (1) and 2 (b) (1) of the Act of~~
5 ~~July 26, 1954 (79 Stat. 44; 20 U.S.C. 331a (a) (1), (b)~~
6 ~~(1), are amended by striking out any references to section~~
7 ~~3709 of the Revised Statutes and to section 5 of title 41,~~
8 ~~United States Code.~~

9 ~~(o) Section 224 (a) of the Act of November 8, 1965~~
10 ~~(79 Stat. 1228; 20 U.S.C. 1034 (a)), is amended by strik-~~
11 ~~ing out “, and, without regard to section 3709 of the Revised~~
12 ~~Statutes (41 U.S.C. 5),”.~~

13 ~~(p) Section 7 of the Act of December 20, 1945, as~~
14 ~~amended October 10, 1949 (59 Stat. 621; 22 U.S.C. 287e),~~
15 ~~is amended by striking out “, all without regard to section~~
16 ~~3709 of the Revised Statutes, as amended (41 U.S.C. 5),”.~~

17 ~~(q) Section 707 of the Act of August 13, 1946 (60~~
18 ~~Stat. 1019; 22 U.S.C. 1047), is amended by striking out~~
19 ~~“, without regard to section 3709 of the Revised Statutes”.~~

20 ~~(r) Section 22 (c) (7) of the Act of December 29,~~
21 ~~1970 (84 Stat. 1613, 29 U.S.C. 671 (c) (7)), is amended~~
22 ~~by striking out “, and without regard to section 3709 of the~~
23 ~~Revised Statutes, as amended (41 U.S.C. 5), or any other~~
24 ~~provision of law relating to competitive bidding.”~~

25 ~~(s) Section 6 (b) of the Act of August 31, 1954 (68~~

1 ~~Stat. 1010; 30 U.S.C. 556 (b)), is amended by striking out~~
2 ~~“and without regard to the provisions of section 3709, Re-~~
3 ~~vised Statutes (41 U.S.C. 5)”.~~

4 ~~(t) Section 1820 (b) of title 38, United States Code,~~
5 ~~is amended by striking out “section 5 of title 41” and in-~~
6 ~~serting in lieu thereof the “Federal Acquisition Act of~~
7 ~~1977” and by deleting “if the amount of such contract~~
8 ~~exceeds \$1,000.”.~~

9 ~~(u) Section 5002 of title 38, United States Code,~~
10 ~~is amended by substituting a period for the comma after~~
11 ~~“work” and striking out the remainder of the section.~~

12 ~~(v) The Act of October 10, 1940, as amended (54~~
13 ~~Stat. 109; 41 U.S.C. 6a, b (a), (c), (d)), is amended~~
14 ~~by striking out section 2 and subsections (c) and (d), and~~
15 ~~by striking out “without regard to the provisions of sec-~~
16 ~~tion 3709 of the Revised Statutes, as amended,” in sub-~~
17 ~~section (a). The Act of July 27, 1965 (79 Stat. 276; 41~~
18 ~~U.S.C. 6a-1) is amended by striking out any and all ref-~~
19 ~~erences to section 3709 of the Revised Statutes in the~~
20 ~~sections relating to Architect of the Capitol.~~

21 ~~(w) Section 11 of the Act of June 30, 1936 (49~~
22 ~~Stat. 2039, renumbered section 12 in 66 Stat. 308; 41~~
23 ~~U.S.C. 45), is amended to read as follows:~~

24 ~~“Sec. 12. The provisions of this Act requiring the~~
25 ~~inclusion of representations with respect to minimum wages~~

1 ~~shall apply only to purchases or contracts relating to such~~
2 ~~industries as have been the subject matter of a determina-~~
3 ~~tion by the Secretary of Labor.”.~~

4 ~~(x) Section 356 (b) of the Act of July 1, 1944, as~~
5 ~~added October 18, 1968 (82 Stat. 1175; 42 U.S.C. 163d~~
6 ~~(b)), is amended by striking out the references to section~~
7 ~~3709 of the Revised Statutes and 41 U.S.C. 5 in clause (3),~~
8 ~~and by striking out the parenthetical phrase “by negotiation~~
9 ~~or otherwise)” in clause (4).~~

10 ~~(y) Section 1 (b) of the Act of October 14, 1940 (54~~
11 ~~Stat. 1126; 42 U.S.C. 1521 (b)), is amended by striking~~
12 ~~out the reference to section 3709 of the Revised Statutes in~~
13 ~~the first parenthetical phrase, and by striking out the first~~
14 ~~proviso.~~

15 ~~(z) Section 202 (b) of the Act of October 14, 1940 (55~~
16 ~~Stat. 362; 42 U.S.C. 1532 (b)), is amended by striking out~~
17 ~~the reference to section 3709 of the Revised Statutes.~~

18 ~~(aa) Section 309 of the Act of September 1, 1951 (65~~
19 ~~Stat. 307; 42 U.S.C. 1592h) is amended by striking out~~
20 ~~clause (a), and amending clause (b) to read as follows:~~

21 ~~“(b) the fixed-fee under a contract on a cost-plus-a-~~
22 ~~fixed-fee basis shall not exceed 6 per centum of the esti-~~
23 ~~mated cost;”.~~

24 ~~(bb) Sections 103 (b) (4) and 104 (a) (2) of the Act~~
25 ~~of July 14, 1955, as amended November 21, 1967 (81~~

1 ~~Stat. 486, 487; 42 U.S.C. 1857b (b) (4), b-1 (a) (2)), is~~
2 ~~amended by striking out the references to section 3709 of~~
3 ~~the Revised Statutes and to section 5 of title 41, United~~
4 ~~States Code.~~

5 ~~(ee) Section 31 (b) of the Atomic Energy Act of 1954~~
6 ~~(68 Stat. 927; 42 U.S.C. 2051c) is amended to read as~~
7 ~~follows:~~

8 ~~“(b) The Commission may make available for use in~~
9 ~~connection with arrangements made under this section such~~
10 ~~of its equipment and facilities as it may deem desirable.”.~~

11 ~~(dd) Section 41 (b) of the Atomic Energy Act of~~
12 ~~1954 (68 Stat. 928; 42 U.S.C. 2061 (b)), is amended~~
13 ~~by striking out the two sentences immediately preceding~~
14 ~~the last sentence in this section.~~

15 ~~(ee) Section 43 of the Atomic Energy Act of 1954~~
16 ~~(68 Stat. 929; 42 U.S.C. 2063), is amended by striking~~
17 ~~out the following: “without regard to the provisions of sec-~~
18 ~~tion 3709 of the Revised Statutes, as amended, upon certifi-~~
19 ~~cation by the Commission that such action is necessary in~~
20 ~~the interest of the common defense and security, or upon a~~
21 ~~showing by the Commission that advertising is not reason-~~
22 ~~ably practicable. Partial and advance payments may be~~
23 ~~made under contracts for such purposes.”.~~

24 ~~(ff) Section 66 of the Atomic Energy Act of 1954 (68~~
25 ~~Stat. 933; 42 U.S.C. 2096), is amended by striking out~~

1 ~~the following: "Any purchase made under this section may~~
2 ~~be made without regard to the provisions of section 3709~~
3 ~~of the Revised Statutes, as amended, upon certification by~~
4 ~~the Commission that such action is necessary in the interest~~
5 ~~of the common defense and security, or upon a showing by~~
6 ~~the Commission that advertising is not reasonably prac-~~
7 ~~ticable. Partial and advance payments may be made under~~
8 ~~contracts for such purposes."~~

9 ~~(gg) Section 203 (e) of the Act of April 3, 1970~~
10 ~~(84 Stat. 115; 42 U.S.C. 4372 (e)), is amended by strik-~~
11 ~~ing out the references to section 3709 of the Revised~~
12 ~~Statutes and to section 5 of title 41, United States Code.~~

13 ~~(hh) Section 703 of the Act of June 29, 1936 (49~~
14 ~~Stat. 2008; 46 U.S.C. 1193), is amended by striking out~~
15 ~~subsection (a), by striking out "For the construction, re-~~
16 ~~construction, or reconditioning of vessels, and" in subsec-~~
17 ~~tion (c), and by renumbering subsections (b) and (c)~~
18 ~~as (a) and (b), respectively.~~

19 ~~(ii) Section 8 (a) of the Act of September 30, 1965~~
20 ~~(79 Stat. 894; 49 U.S.C. 1638 (a)), is amended by~~
21 ~~striking out the references to section 4709 of the Revised~~
22 ~~Statutes and to section 5 of title 41, United States Code,~~
23 ~~in paragraph (1), and by striking out paragraph (3).~~

24 ~~(jj) Section 5012 of title 38, United States Code, is~~

41

1 ~~amended by striking out the second sentence in subsection~~
2 ~~(a) and all of subsection (c).~~

3 ~~REPEALS~~

4 ~~SEC. 802. The following statutes or provisions of~~
5 ~~statutes are repealed.~~

6 ~~Chapters 135 and 137 and sections 2306, 4535, 4540,~~
7 ~~7212, 9535, and 9540 of title 10, United States Code; sec-~~
8 ~~tion 7 of the Act of May 18, 1938 (52 Stat. 406; 16 U.S.C.~~
9 ~~833f); section 7 of the Act of March 3, 1875, as amended~~
10 ~~(18 Stat. 450; 25 U.S.C. 96); section 3 of the Act of~~
11 ~~August 15, 1876 as amended (19 Stat. 199; 25 U.S.C.~~
12 ~~97); sections 602 (d) (3) and 602 (d) (10) of the Fed-~~
13 ~~eral Property and Administrative Services Act as amended~~
14 ~~(40 U.S.C. 474 (3), (10); sections 10 (a) and 10 (b) of~~
15 ~~the Act of September 9, 1959 (73 Stat. 481; 40 U.S.C.~~
16 ~~609 (a), (b)); 41 U.S.C. 5; section 2 of the Act of Octo-~~
17 ~~ber 10, 1940, as amended October 31, 1951 (54 Stat. 1110;~~
18 ~~41 U.S.C. 6a); sections 3710 and 3735 of the Revised~~
19 ~~Statutes (41 U.S.C. 8, 13); section 3653 of the Revised~~
20 ~~Statutes, as amended by the Act of July 7, 1884 (23 Stat.~~
21 ~~204; 41 U.S.C. 24); title III of the Federal Property and~~
22 ~~Administrative Services Act of 1949 as amended; 41 U.S.C.~~
23 ~~254 (b); section 10 (a) of the Act of September 5, 1950~~
24 ~~(64 Stat. 591; 41 U.S.C. 256a); section 510 (a) of the~~

1 ~~Act of July 15, 1949 (63 Stat. 437; 42 U.S.C. 1480 (a));~~
2 ~~section 6 (c) of the EURATOM Cooperation Act of 1958~~
3 ~~(72 Stat. 1085; 42 U.S.C. 2295 (c)); section 1345 (b) of~~
4 ~~the Act of August 1, 1968 (82 Stat. 585; 42 U.S.C. 4081~~
5 ~~(b)); section 404 of the Act entitled "An Act to author-~~
6 ~~ize appropriations during the fiscal year 1969 for procure-~~
7 ~~ment of aircraft, missiles, naval vessels, and tracked combat~~
8 ~~vehicles, research, development, test, and evaluation for the~~
9 ~~Armed Forces, and to prescribe the authorized personnel~~
10 ~~strength of the Selected Reserve of each Reserve component~~
11 ~~of the Armed Forces, and for other purposes, approved,~~
12 ~~September 20, 1969 (82 Stat. 849).~~

13 *SHORT TITLE; TABLE OF CONTENTS*

14 *SECTION 1. (a) SHORT TITLE.—This Act may be cited*
15 *as the "Federal Acquisition Act of 1977".*

16 *(b) TABLE OF CONTENTS.—*

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Definitions.

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GUIDANCE*

Sec. 101. Acquisition methods.

Sec. 102. Regulatory compliance.

*TITLE II—ACQUISITION BY COMPETITIVE SEALED
BIDS*

Sec. 201. Criteria for use.

Sec. 202. Invitation for sealed bids.

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*TITLE III—ACQUISITION BY COMPETITIVE
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- Sec. 301. Criteria for use.*
- Sec. 302. Solicitations.*
- Sec. 303. Evaluation, award, and notifications.*
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*TITLE IV—ACQUISITION BY SIMPLIFIED SMALL
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- Sec. 601. Delegation within an executive agency.*
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- Sec. 701. Purpose.*
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TITLE VIII—APPLICABILITY OF SUBSEQUENT LAWS

- Sec. 801. Applicability of subsequent laws.*

TITLE IX—AMENDMENTS AND REPEALS

- Sec. 901. Amendments.*
- Sec. 902. Repeals.*

1 *SEC. 2. (a) FINDINGS.—The Congress hereby finds*
2 *that—*

3 *(1) the laws controlling Federal purchasing have*
4 *become outdated, fragmented, and needlessly inconsistent;*

5 *(2) these deficiencies have contributed to significant*
6 *inefficiency, ineffectiveness, and waste in Federal*
7 *spending;*

8 *(3) the Commission on Government Procurement*
9 *has found and recommended that a new consolidated*
10 *statutory base is needed;*

11 *(4) further, existing statutes need to be modernized*
12 *to focus on effective competition and new technology in*
13 *that—*

14 *(A) national productivity rests on a base of*
15 *competitive industry applying new technology in its*
16 *goods and services; and*

17 *(B) Federal spending practices can encourage*
18 *the Nation's business community by stimulating*
19 *effective competition and the application of new*
20 *technology.*

21 *(b) POLICY.—It is the policy of the United States that*
22 *when acquiring property and services for the use of the*
23 *Federal Government, the Government shall, whenever practi-*
24 *cable rely on the private sector, and shall act so as to—*

25 *(1) best meet public needs at the lowest total cost;*

1 (2) *maintain the independent character of private*
2 *enterprise by substituting the incentives and constraints*
3 *of effective competition for regulatory controls;*

4 (3) *encourage innovation and the application of new*
5 *technology as a primary consideration by stating public*
6 *needs so that prospective suppliers will have maximum*
7 *latitude to exercise independent business and technical*
8 *judgments in offering a range of competing alternatives;*

9 (4) *maintain and expand the available Federal*
10 *supply base by judicious acquisition practices designed*
11 *to assure Government contracting with new and small*
12 *business concerns to the maximum practicable extent;*

13 (5) *make available for review and examination*
14 *pertinent Federal laws and regulations applicable to the*
15 *award of contracts or which may impact the performance*
16 *of contracts, including, for example, Federal laws and*
17 *agency rules relating to air and water cleanliness re-*
18 *quirements, and occupational safety requirements;*

19 (6) *provide opportunities to minority business firms*
20 *to grow through Government contracts;*

21 (7) *initiate large scale acquisitions only after the*
22 *item or equipment to be acquired has been proven ade-*
23 *quate by operational testing;*

24 (8) *provide contractors with the opportunity to*
25 *earn a profit on Government contracts commensurate*

1 with the contribution made to meeting public needs and
2 comparable to the profit opportunities available in other
3 markets requiring investments, risks, and skills similar
4 to the technical and financial risks undertaken;

5 (9) minimize Government surveillance of contrac-
6 tor operations and contractor performance, and to waive
7 any controls and surveillance not necessary to insure
8 satisfactory performance of contracts;

9 (10) pay contractors promptly any moneys due
10 them under contracts awarded by the United States;

11 (11) further, to achieve these goals, it is the policy
12 of the United States to rely on and promote effective com-
13 petition; to insure the availability to the Government of
14 alternative offers that provide a range of concept, design,
15 performance, price, total cost, service, and delivery; and
16 to facilitate the competitive entry of new and small sellers.

17 Effective competition is general characterized by—

18 (A) timely availability to prospective sellers of
19 information required to respond to public needs;

20 (B) independence of action by buyer and seller;

21 (C) efforts of two or more sellers, acting in-
22 dependently of each other, to respond to a public need
23 by creating, developing, demonstrating, or offering
24 products or services which best meet that need,

1 *tion 846 of title 31, United States Code (but does not include*
2 *the Tennessee Valley Authority or the Bonneville Power*
3 *Administration); and the United States Postal Service.*

4 (c) *The term "agency head" means the head of an*
5 *executive agency as defined in subsection (b).*

6 (d) *The term "head of an acquisition activity" means*
7 *that official, intermediate between the agency head and the*
8 *contracting officer, but not below a major organizational*
9 *level, who has the responsibility for supervision and direction*
10 *of the acquisition activity.*

11 (e) *The term "contracting officer" means any person*
12 *who, either by virtue of his position or by appointment in*
13 *accordance with applicable regulations, has the authority to*
14 *enter into and administer contracts and make determina-*
15 *tions and findings with respect thereto. The term also in-*
16 *cludes the authorized representative of the contracting officer,*
17 *acting within the limits of his authority.*

18 (f) *The term "property" includes personal property*
19 *and leaseholds and other interests therein, but excludes real*
20 *property in being and leaseholds and other interests therein.*

21 (g) *The term "total cost" means all resources con-*
22 *sumed or to be consumed in the acquisition and use of*
23 *property or services. It may include all direct, indirect,*
24 *recurring, nonrecurring, and other related costs incurred,*

1 or estimated to be incurred in design, development, test,
2 evaluation, production, operation, maintenance, disposal,
3 training, and support of an acquisition over its useful life
4 span, wherever each factor is applicable.

5 (h) The term "functional specification" means a de-
6 scription of the intended use of a product required by the
7 Government in such terms that it would not prevent the
8 Government from considering alternative solutions to its
9 needs or act to limit effective competition. A functional speci-
10 fication may include a statement of the qualitative nature of
11 the product required and, when necessary, may set forth
12 those minimum essential characteristics and standards to
13 which such product must conform if it is to satisfy its intended
14 use.

15 (i) The term "protest" means a challenge to the terms
16 of the solicitation, or to the award or proposed award of a
17 contract by an executive agency for the acquisition of
18 property or services.

19 (j) The term "unsolicited proposal" means a written
20 offer to perform a proposed effort, submitted to an agency
21 by an individual or organization solely on its own initiative
22 and not in response to an agency request or communication,
23 with the objective of obtaining a contract.

1 *TITLE I—ACQUISITION METHODS AND*
2 *REGULATORY GUIDANCE*

3 *ACQUISITION METHODS*

4 *SEC. 101. (a) Except as otherwise authorized by law,*
5 *an executive agency shall acquire property or services in*
6 *accordance with this Act by utilizing—*

7 *(1) the competitive sealed bids method as pro-*
8 *vided in title II of this Act; or*

9 *(2) the competitive negotiation method, as pro-*
10 *vided in title III of this Act; or*

11 *(3) the simplified small purchase method as pro-*
12 *vided in title IV of this Act.*

13 *(b) These methods of acquiring property or services*
14 *are equally valid alternatives when selected on the basis*
15 *of the nature of the product or service being acquired, the*
16 *circumstances of the acquisition, and other criteria set forth*
17 *in this Act as implemented by the Administrator for Federal*
18 *Procurement Policy.*

19 *REGULATORY COMPLIANCE*

20 *SEC. 102. (a) The Administrator for Federal Pro-*
21 *curement Policy is authorized and directed, pursuant to the*
22 *authority conferred by Public Law 93-400 and subject*
23 *to the procedures set forth in such public law—*

24 *(1) within two years after the date of enactment*
25 *of this Act, to promulgate a single, simplified, uniform*

1 *Federal regulation implementing this Act and to estab-*
2 *lish procedures for insuring compliance with the Act*
3 *and such regulation by all executive agencies; and*

4 *(2) to review such regulation on a regular basis*
5 *and issue revisions as necessary; and*

6 *(3) to make periodic studies in order to determine*
7 *whether agency compliance with this Act has been effi-*
8 *cient and effective; and*

9 *(4) to establish and oversee a program to reduce*
10 *agency use of detailed product specifications.*

11 *(b) The Administrator for Federal Procurement Policy*
12 *shall include in his annual report required under section 8*
13 *of Public Law 93-400 a report of his activities under this*
14 *section, including his assessment of agency implementation*
15 *of and compliance with the requirements of this Act (in-*
16 *cluding, for example, specific reductions in the use of detailed*
17 *specifications pursuant to this Act), and recommendations*
18 *for revisions in this Act or any other provision of law.*

19 **TITLE II—ACQUISITION BY COMPETITIVE**

20 **SEALED BIDS**

21 **CRITERIA FOR USE**

22 *SEC. 201. The competitive sealed bids method shall*
23 *be used in the acquisition of property and services when all*
24 *of the following conditions are present—*

25 *(1) the anticipated total contract price exceeds the*

1 *amount specified in title IV of this Act for use of the*
2 *simplified small purchase method;*

3 *(2) the public need can be practicably defined in*
4 *terms not restricted by security or proprietary design;*

5 *(3) the private sector will provide a sufficient num-*
6 *ber of qualified suppliers willing to compete for and*
7 *able to perform the contract; and*

8 *(4) suitable products or services capable of meeting*
9 *the public need are available so as to warrant the award*
10 *of a fixed price contract to a successful bidder selected*
11 *primarily on the basis of price;*

12 *(5) the time available for acquisition is sufficient*
13 *to prepare the purchase description and to carry out the*
14 *requisite administrative procedures;*

15 *(6) the property or service is to be acquired within*
16 *the limits of the United States and its possessions;*

17 *(7) the price for the property or service has not*
18 *been established by or pursuant to law or regulation.*

19 **INVITATION FOR SEALED BIDS**

20 *SEC. 202. (a) The invitation for sealed bids shall be*
21 *publicized in accordance with section 512 of this Act and*
22 *shall be issued in such a way that—*

23 *(1) the time prior to opening the bids will be suffi-*
24 *cient to permit effective competition; and*

25 *(2) the invitation will be accessible to all interested*

1 *or potential bidders; however, eligibility to participate in*
2 *the bidding may be restricted to concerns eligible to par-*
3 *ticipate in small business set-asides or other such author-*
4 *ized programs.*

5 *(b) The invitation shall include a description of any*
6 *factors in addition to price that will be considered in evaluat-*
7 *ing bids.*

8 *(c) To the maximum extent practicable and consistent*
9 *with needs of the agency, functional specifications shall be*
10 *used to permit a variety of distinct products or services to*
11 *qualify and to encourage effective competition.*

12 *(d) The preparation and use of detailed product speci-*
13 *fications in a purchase description shall be subject to prior*
14 *approval by the agency head. Such approval shall include*
15 *written justification, to be made a part of the official contract*
16 *file, delineating the circumstances which preclude the use of*
17 *functional specifications and which require the use of detailed*
18 *product specifications in the purchase descriptions.*

19 *(e) Where it is impracticable to plan for award primar-*
20 *ily on the basis of price, the contracting officer may request the*
21 *submission of unpriced technical proposals and subsequently*
22 *issue an invitation for sealed bids limited to those offerors*
23 *whose technical proposals meet the standards set forth in the*
24 *original invitation.*

1 *competition and shall be publicized in accordance with section*
2 *512 of this Act, with copies of the solicitation to be provided*
3 *or made accessible to other interested or potential sources*
4 *upon request; however, eligibility to respond to the solicitation*
5 *may be restricted to concerns eligible to participate in small*
6 *business set-asides or other such authorized programs.*

7 *(b) (1) Each solicitation shall include both the evalua-*
8 *tion methodology and the relative importance of all significant*
9 *factors to be used during competitive evaluation and for final*
10 *selection. In any case, if price is included as a primary or*
11 *significant factor, the Government's evaluation shall be based*
12 *where appropriate on the total cost to meet the public need.*

13 *(2) Any changes in the evaluation factors or their*
14 *relative importance shall be communicated promptly in writ-*
15 *ing to all competitors.*

16 *(c) To the maximum extent practicable and consistent*
17 *with agency needs, solicitations—*

18 *(1) shall set forth the public need in functional*
19 *terms so as to encourage the application of a variety of*
20 *technological approaches and elicit the most promising*
21 *competing alternatives,*

22 *(2) shall not prescribe performance characteristics*
23 *based on a single approach,*

24 *(3) shall not prescribe technical approaches or in-*
25 *novations obtained from any potential competitor.*

1 (d) If either the Government or an offeror identifies
2 inadequacies in the solicitation which cause misunderstand-
3 ings of the public's needs or requirements, clarification of
4 intent shall be made to all offerors in a timely fashion and
5 on an equal basis.

6 (e) The preparation and use of detailed specifications
7 in a solicitation shall be subject to prior approval by the
8 agency head. Such approval shall include written justifica-
9 tion to be made a part of the official contract file, delineating
10 the circumstances which preclude the use of functional speci-
11 fications and which require the use of detailed product
12 specifications.

13 EVALUATION, AWARD, AND NOTIFICATIONS

14 SEC. 303. (a) Written or oral discussions shall be
15 conducted with all responsible offerors in a competitive range
16 for the purpose of obtaining any needed clarification or ex-
17 tension of offers. Discussions shall not disclose the strengths
18 or weaknesses of competing offerors, or disclose any infor-
19 mation from an offeror's proposal which would enable an-
20 other offeror to improve his proposal as a result thereof.
21 Auction techniques are strictly prohibited. Auction tech-
22 niques include, but are not limited to, indicating to an of-
23 feror a price which must be met to obtain further considera-
24 tion, or informing him that his price is not low in relation
25 to another offeror, or making multiple requests for best and

1 *final offers. Detailed negotiations of price and technical fac-*
2 *tors shall be limited to the successful offeror(s). An initial*
3 *offer may be accepted without discussion.*

4 (b) *When awards are made for alternative approaches*
5 *selected on the basis of the factors contained in the sollicita-*
6 *tion, whether for design, development, demonstration, or*
7 *delivery, the contractors shall be sustained in competition, to*
8 *the maximum extent practicable, until sufficient test or evalua-*
9 *tion information becomes available to narrow the choice to a*
10 *particular product or service.*

11 (c) *Until award is made, information concerning the*
12 *award shall not be disclosed to any person not having direct*
13 *source selection responsibilities, except that offerors who are*
14 *eliminated from the competition may be notified prior to*
15 *award: Provided, however, That nothing in this section shall*
16 *limit the responsibility of procuring agencies to furnish in-*
17 *formation to the General Accounting Office pursuant to*
18 *section 54 of title 31, United States Code, or title 7 of this*
19 *Act.*

20 (d) *Award shall be made to one or more responsible*
21 *offerors whose proposal(s), as evaluated in accordance with*
22 *the terms of the solicitation are most advantageous to the*
23 *Government. Notification of award to all unsuccessful offerors*
24 *shall be made with reasonable promptness.*

1 *NONCOMPETITIVE EXCEPTIONS*

2 *SEC. 304. (a) Compliance with the procedures pre-*
3 *scribed in sections 302 and 303 is not required if the con-*
4 *tract to be awarded stems from acceptance of an unsolicited*
5 *proposal, or if the agency head determines that it is in the*
6 *best interest of the Government to enter into a noncompetitive*
7 *contract: Provided,*

8 *(1) That such determination, together with the rea-*
9 *sons therefore, is in writing, and conforms with the*
10 *Office of Federal Procurement Policy regulations, pur-*
11 *suant to section 102(a) (1); and*

12 *(2) (A) for all contracts except those stemming from*
13 *the acceptance of an unsolicited proposal, notice of intent*
14 *to award such a contract shall be publicized pursuant to*
15 *section 512 at least thirty days in advance of solicitation*
16 *of a proposal from the prospective contractor; or, at least*
17 *thirty days in advance of the proposed award date, when*
18 *earlier notice is impracticable. Such notice shall include a*
19 *description of the property or services to be acquired, the*
20 *name of the prospective source, the time for accomplish-*
21 *ment of the work, and the reason for selection of the*
22 *source. If, after such notice, other sources demonstrate an*
23 *ability to meet the requirements for the work to be per-*
24 *formed, a solicitation shall be issued to all such prospec-*
25 *tive offerors;*

1 *(B) in the case of those contracts stemming from the*
2 *acceptance of an unsolicited proposal, notice of intent to*
3 *award such a contract shall be publicized prior to award,*
4 *pursuant to section 512 of this Act. Such notice shall*
5 *include a description of the property or service to be*
6 *acquired, the name of the prospective source, and the*
7 *time for accomplishment of the work.*

8 *(b) Where there is no commercial usage of the product*
9 *or service to be acquired under this section, and the agency*
10 *head determines that substantial follow-on provision of such*
11 *product or service will be required by the Government, the*
12 *agency head shall, when he deems appropriate, take action*
13 *through contractual provision, or otherwise, to provide the*
14 *Government with a capability to establish one or more other*
15 *competitive sources.*

16 **PRICE AND COST DATA AND ANALYSIS**

17 *SEC. 305. (a) (1) The term "price data" means actual*
18 *prices previously paid, contracted, quoted, or proposed, for*
19 *materials or services identical or comparable to those being*
20 *acquired, and the related dates, quantities, and item*
21 *descriptions.*

22 *(2) The term "cost data" means all facts which prudent*
23 *buyers and sellers would reasonably expect to have a signifi-*
24 *cant effect on the negotiation of a contract price or payment*
25 *provisions. Such data are of a type that can be verified as*

1 *being factual, and are to be distinguished from judgmental*
2 *factors.*

3 *(3) The term "price analysis" means the process of*
4 *examining and evaluating a price without evaluation of the*
5 *individual cost and profit elements of the price being*
6 *evaluated.*

7 *(4) The term "cost analysis" means the element-by-*
8 *element examination and evaluation of the estimated or actual*
9 *costs of contract performance, and involves analysis of cost*
10 *data furnished by an offeror or contractor.*

11 *(b) The contracting officer shall obtain price data and*
12 *shall use price analysis techniques to analyze and evaluate*
13 *the reasonableness of a negotiated prime contract price or of*
14 *a price adjustment pursuant to a modification thereto where—*

15 *(1) the price is expected to be less than \$500,000;*

16 *(2) the price is based on an established catalog or*
17 *market price of a commercial item sold in substantial*
18 *quantities to the general public; or*

19 *(3) there has been a recent comparable competitive*
20 *acquisition.*

21 *(c) In the case of subcontracts, when any of the*
22 *conditions in subsection (b) applies, price data shall be*
23 *obtained and price analysis techniques shall be used to analyze*
24 *and evaluate the reasonableness of—*

1 (1) a subcontract price—where evaluation of a
2 subcontract price is necessary to insure the reasonable-
3 ness of the prime contract price, or

4 (2) a subcontract price adjustment pursuant to a
5 prime contract modification.

6 (d) Except as provided in subsection (b) (2) and (3),
7 the contracting officer shall obtain cost data and shall use
8 cost analysis techniques to analyze and evaluate the reason-
9 ableness of prices—

10 (1) whenever the price of a negotiated prime con-
11 tract or a price adjustment pursuant to a contract modi-
12 fication is expected to exceed \$500,000; or

13 (2) for any subcontract price or price adjustment
14 pursuant to a modification thereto in excess of \$500,000
15 which forms part of a negotiated prime contract price
16 or higher tier subcontract price.

17 (e) Notwithstanding subsection (b) hereof, the con-
18 tracting officer may obtain cost data and use cost analysis
19 techniques when authorized under circumstances set forth
20 in regulations issued by the Administrator for Federal
21 Procurement Policy pursuant to section 102(a) of this Act.

22 (f) Contractors and subcontractors shall submit such
23 price data or cost data as are required to be obtained pur-
24 suant to this section. Regulations issued by the Administrator

1 *for Federal Procurement Policy may authorize the identifi-*
2 *cation in writing of price data and cost data, in lieu of*
3 *actual submission, under specified circumstances.*

4 *(g) Any prime contract or modification thereto for which*
5 *price data or cost data are required shall contain a provision*
6 *that the price to the Government, including profit or fee, shall*
7 *be adjusted to exclude any significant sums by which it may*
8 *be determined by the contracting officer that such price was*
9 *increased because of reliance on data which were inaccurate,*
10 *incomplete, or noncurrent as of the date of submission or*
11 *other date agreed upon between the parties (which date shall*
12 *be as close to the date of agreement on the negotiated price*
13 *or payment provisions as is practicable).*

14 *(h) The requirements of this section do not apply to*
15 *contracts or subcontracts where the price negotiated is based*
16 *on adequate price competition, prices set by law or regu-*
17 *lation, or, in exceptional cases, where the head of the agency*
18 *determines that the requirements of this section may be*
19 *waived and states in writing his reasons for such deter-*
20 *mination.*

21 **ACCESS TO RECORDS**

22 *SEC. 306. (a) Until expiration of three years after*
23 *final payment under a contract negotiated or amended under*

1 *this title, an executive agency is entitled to inspect the plants*
2 *and examine any books, documents, papers, records, or other*
3 *data of the contractor and his subcontractors that involve*
4 *transactions relating to the contract or subcontract or to the*
5 *amendment thereof, including all such books, records, and*
6 *other data relating to the negotiation, pricing, or perform-*
7 *ance of the contract or subcontract.*

8 (b) *Until expiration of three years after final payment*
9 *under a contract negotiated or amended under this title, the*
10 *Comptroller General of the United States or his authorized*
11 *representatives is entitled to inspect the plants and examine*
12 *any books, documents, papers, records, or other data of the*
13 *contractor and his subcontractors that directly pertain to,*
14 *and involve transactions relating to the contract or subcon-*
15 *tract or to the amendment thereof, including all such books,*
16 *records, and other data relating to the negotiation, pricing,*
17 *or performance of the contract or subcontract. This provi-*
18 *sion may be waived for any contract or subcontract with a*
19 *foreign contractor or subcontractor, if the Agency head*
20 *determines, with concurrence of the Comptroller General,*
21 *that waiver would be in the public interest. However, the*
22 *concurrence of the Comptroller General or his designee is*
23 *not required—*

1 (1) where the contractor or subcontractor is a for-
2 eign government or agency thereof or is precluded by the
3 laws of the country involved from making its books,
4 documents, papers, or records available for examination;
5 and

6 (2) where the head of the agency determines, after
7 taking into account the price and availability of the prop-
8 erty or services from United States sources, that the
9 public interest would be best served by not applying sub-
10 section (b).

11 If subsection (b) is not applied to a contract or subcontract
12 based on a determination under clause (2), a written report
13 shall be furnished to the Congress.

14 (c) Inspections and examinations by executive agencies
15 under subsection (a) shall be conducted only when necessary
16 to insure contract performance and/or to evaluate the accu-
17 racy, completeness, and currency of data submitted or identi-
18 fied pursuant to section 305. Multiple inspections and exam-
19 inations of a contractor or subcontractors by more than one
20 executive agency shall be eliminated to the maximum extent
21 practicable by coordinating inspection and examination
22 responsibilities in accordance with regulations to be issued or

1 *authorized by the Office of Federal Procurement Policy pur-*
2 *suant to section 102(1).*

3 *TITLE IV—ACQUISITION BY SIMPLIFIED*
4 *SMALL PURCHASE METHOD*

5 *CRITERION FOR USE*

6 *SEC. 401. (a) The simplified small purchase method*
7 *may be used in the acquisition of property and services when*
8 *the anticipated total contract price does not exceed \$10,000.*
9 *In lieu of this method, the contracting officer may use either*
10 *of the competitive methods prescribed in title II or III of*
11 *this Act when such use would be more advantageous to the*
12 *Government.*

13 *SOLICITATIONS AND AWARDS*

14 *SEC. 402. The contracting officer shall use simplified*
15 *small purchase methods to obtain competition to the maxi-*
16 *mum extent practicable in making small purchases and there-*
17 *upon may make award to the contractor whose offer is most*
18 *advantageous to the Government. No provisions of this sec-*
19 *tion are intended to eliminate effective screening of proposed*
20 *acquisitions for appropriate application of small business*
21 *set-aside or other procedures designed to assist small busi-*
22 *nesses. Simplified procedures for small purchases shall be*

1 *issued by the Administrator for Federal Procurement Policy*
2 *pursuant to section 102(a)(1) of this Act.*

3 *TITLE V—GENERAL PROVISIONS*

4 *CONTRACT TYPES*

5 *SEC. 501. (a) Contracts may be of any type or combi-*
6 *nation of types, consistent with the degree of technical and*
7 *financial risk to be undertaken by the contractor, which will*
8 *promote the best interests of the Government except that the*
9 *cost-plus a percentage-of-cost system of contracting shall not*
10 *be used under any circumstances.*

11 *(b) The preferred contract type shall be fixed price con-*
12 *sistent with the nature of the work to be performed and the*
13 *risk to be shared by the Government and the contractor.*

14 *WARRANTY AGAINST CONTINGENT FEES*

15 *SEC. 502. Each contract negotiated under title III of*
16 *this Act or an award to be made as a result of the submission*
17 *of a technical proposal under section 202(e) of this Act shall*
18 *contain a warranty by the contractor that no person or sell-*
19 *ing agency has been employed or retained to solicit or secure*
20 *the contract upon an agreement or understanding of a com-*
21 *mission, percentage, brokerage, or contingent fee, excepting*
22 *bona fide employees or bona fide established commercial or*
23 *selling agencies maintained by the contractor for the pur-*
24 *pose of securing business; and that for any breach or viola-*
25 *tion of the warranty, the Government may annul the con-*

1 *tract without liability or deduct from the contract price or*
2 *consideration the full amount of the commission, percentage,*
3 *brokerage, or contingent fee.*

4 *CANCELLATIONS AND REJECTIONS*

5 *SEC. 503. (a) Where the contracting officer determines*
6 *for cogent and compelling reasons, that it is in the best interest*
7 *of the Government, he may—*

8 *(1) withdraw or cancel a small purchase order which*
9 *has not been accepted in writing by the contractor, prior*
10 *to the contractor's initiation of performance;*

11 *(2) cancel an invitation for sealed bids before bid*
12 *opening or after bid opening but before award; or*

13 *(3) cancel a request for proposal and reject all*
14 *offers.*

15 *(b) When requested, the contracting officer shall fully*
16 *inform any unsuccessful offeror or bidder of the reasons*
17 *for the rejection of his offer or bid.*

18 *MULTIYEAR CONTRACTS*

19 *SEC. 504. (a) Except as otherwise provided by law, an*
20 *agency may make contracts for acquisition of property or*
21 *services for periods not in excess of five years, when—*

22 *(1) appropriations are available and adequate for*
23 *payment for the first fiscal year; and*

24 *(2) the Agency head determines that—*

25 *(A) the Government need for the property or*

1 *services being acquired over the period of the contract*
2 *is reasonably firm and continuing; and*

3 *(B) such a contract will serve the best interests*
4 *of the United States by encouraging effective com-*
5 *petition or promoting economics in performance and*
6 *operation.*

7 *(C) such a method of contracting will not in-*
8 *hibit small business participation.*

9 *(b) The Administrator for Federal Procurement*
10 *Policy may grant exceptions to the five-year limita-*
11 *tion imposed by subsection (a) upon the certification, in*
12 *such form and of such content as the Administrator may*
13 *require, by the Agency head that such exception is in the*
14 *best interests of the Government. A copy of each such*
15 *certification and each exception granted shall be delivered*
16 *to the chairman of the Committee on Government Operations*
17 *and the Committee on Appropriations of the House of Repre-*
18 *sentatives and the Senate, respectively.*

19 *(c) Any cancellation costs incurred must be paid from*
20 *appropriated funds originally available for performance of*
21 *the contract, or currently available for procurement of similar*
22 *property or services, and not otherwise obligated, or appro-*
23 *priations made available for such payments.*

1 *ADVANCE, PARTIAL, AND PROGRESS PAYMENTS*

2 *SEC. 505. (a) Any executive agency may make advance,*
3 *progress, partial, or other payments under contracts.*

4 *(b) Advance and progress payments under contracts*
5 *with small business concerns shall be granted where possible*
6 *and to the extent practicable under the circumstances existing*
7 *for each acquisition; and provisions limiting advance and*
8 *progress payments to small business concerns may be inserted*
9 *into solicitations.*

10 *(c) Payments under subsections (a) and (b) shall not*
11 *exceed the unpaid contract price.*

12 *(d) When progress payments are made, the Government*
13 *shall have title to the property acquired or produced by the*
14 *contractor and allocable or properly chargeable to the con-*
15 *tract. Notwithstanding any other provisions of law, that title*
16 *may not be divested by any action of the contractor, or pro-*
17 *ceeding in bankruptcy, or encumbered by any lien or security*
18 *interest.*

19 *(e) Advance payments under subsection (a) or (b) shall*
20 *not be made in excess of the amount required for contract*
21 *performance, and may be made only upon adequate security*
22 *and a determination by the Agency head that to do so would*
23 *be in the public interest. Such security may be in the form of*

1 *a lien in favor of the Government on the property contracted*
2 *for, on the balance in an account in which such payments*
3 *are deposited, and on such property acquired for perform-*
4 *ance of the contract as the parties may agree. This lien*
5 *is paramount to any other liens.*

6 *REMISSION OF LIQUIDATED DAMAGES*

7 *SEC. 506. Upon the recommendation of the Agency*
8 *head the Comptroller General of the United States may*
9 *remit all or part, as he considers just and equitable, of any*
10 *liquidated damages provided by the contract for delay in*
11 *performing the contract.*

12 *DETERMINATIONS AND FINDINGS*

13 *SEC. 507. (a) Determinations, findings, approvals, and*
14 *decisions provided for by this Act may be made with respect*
15 *to contracts individually or with respect to classes of con-*
16 *tracts and shall be final.*

17 *(b) Each determination, approval, or decision shall be*
18 *based upon written findings of the officer making the deter-*
19 *mination, approval, or decision, and shall be retained in the*
20 *official contract file.*

21 *COLLUSIVE BIDDING INFORMATION*

22 *SEC. 508. (a) If the contracting officer or any other*
23 *agency employee has reason to believe that any bid, pro-*
24 *posal or offer evidences a violation of the antitrust laws or*
25 *provisions of this Act, the matter shall be referred, in ac-*

1 *cordance with agency procedures, to the Attorney General*
2 *of the United States for appropriate action.*

3 *(b) Upon the request of the Attorney General of the*
4 *United States, the Agency head shall make available to the*
5 *Attorney General information which the Attorney General*
6 *considers necessary and relevant to any investigation, prose-*
7 *cution or other action by the United States under the anti-*
8 *trust laws or other statute enforced by the Attorney General.*

9 *(c) The Agency head shall render needed assistance to*
10 *the Attorney General in any investigation and prosecution*
11 *flowing from the information provided in subsection (a)*
12 *or (b) or from other investigation and prosecution in other*
13 *antitrust matters.*

14 **GOVERNMENT SURVEILLANCE REQUIREMENTS**

15 *SEC. 509. (a) Notwithstanding any other provisions*
16 *of law, an agency shall, upon application by a contractor,*
17 *waive the requirements listed in 509(c) below for that part*
18 *of a contractor's operation which is separately managed and*
19 *accounted for if, for the contractor's most recent fiscal year,*
20 *more than 75 per centum of the business of the activity, as*
21 *measured by total revenues is conducted under commercial*
22 *and/or competitive Government contracts. To be competitive*
23 *for purposes of this section, the Government contracts must*
24 *be firm fixed-price or fixed-price with escalation with price*
25 *the deciding factor in the award.*

1 **(b)** *The waiver provided in 509(a) shall not be granted*
2 *if the contractor's activity for the most recent fiscal year, had*
3 *costs incurred of over \$10,000,000, under Government con-*
4 *tracts where the contract prices were based on estimated*
5 *or actual costs. This category would include such contracts*
6 *as cost reimbursement type contracts, firm fixed-price con-*
7 *tracts negotiated without price competition, fixed-price incen-*
8 *tive contracts, and time and material contracts.*

9 **(c)** *The waiver provided for in 509(a) shall apply to*
10 *any or all of the following:*

11 **(1)** *reviews of contractor management and pro-*
12 *curement systems;*

13 **(2)** *determinations of reasonableness of indirect*
14 *overhead costs;*

15 **(3)** *provisions of the Cost Accounting Standards*
16 *Act (Public Law 91-379);*

17 **(4)** *advance agreements for independent research*
18 *and development and bid and proposal activities; and*

19 **(5)** *provisions of the Renegotiation Act.*

20 **(d)** *The waiver period shall not exceed two years with-*
21 *out reconsideration by the Agency. The waiver may be voided*
22 *at any time or may be withheld altogether if the Agency head*
23 *makes a written determination that the waiver should not*
24 *apply.*

1 (e) *The waiver provided for in 509(a) shall not affect*
2 *the General Accounting Office access-to-records authority as*
3 *set forth in section 306 of this Act.*

4 *MAINTENANCE OF REGULATIONS*

5 *SEC. 510. Notwithstanding the provisions of title VIII*
6 *of this Act or any other provisions of law, regulations*
7 *relating to Federal procurement promulgated or in effect*
8 *before the date of enactment of this Act shall remain in ef-*
9 *fect until repealed by order of the Administrator for Fed-*
10 *eral Procurement Policy or until the lapse of two years*
11 *after the date of enactment of this Act, whichever is earlier.*
12 *No regulation preserved by operation of this section may be*
13 *amended without the prior approval of the Administrator*
14 *for Federal Procurement Policy.*

15 *PAYMENTS OF FUNDS DUE*

16 *SEC. 511. A clause shall be included in every contract*
17 *awarded by the United States pursuant to this Act which*
18 *shall provide for interest to be paid by the Federal Govern-*
19 *ment to the contractor on any amount due to the contractor*
20 *for more than thirty days. No amount shall be considered due*
21 *until receipt by the Government of a proper invoice and any*
22 *substantiating documentation required. Interest payable by*
23 *the Government shall be the interest in effect which has been*
24 *established by the Secretary of the Treasury pursuant to*

1 *Public Law 92-41 (85 Stat. 97) for the Renegotiation*
2 *Board, as of a date thirty days after the date the amount*
3 *becomes due.*

4 *PUBLICATION OF INTENT*

5 *SEC. 512. It shall be the duty of the Secretary of*
6 *Commerce, and he is empowered, to obtain notice of all*
7 *proposed acquisitions of \$10,000 and above, from any ex-*
8 *ecutive agency engaged in acquisitions in the United States;*
9 *and to publicize such notices in the daily publication "United*
10 *States Department of Commerce Synopsis of the United*
11 *States Government Proposed Procurement, Sales, and Con-*
12 *tract Awards", immediately after the necessity for the ac-*
13 *quisition is established; except that nothing herein shall*
14 *require publication of such notices with respect to those*
15 *acquisitions—*

16 *(1) which for security reasons are of a classified*
17 *nature; or*

18 *(2) which involve perishable subsistence supplies; or*

19 *(3) which are of such unusual and compelling*
20 *emergency that the Government would be seriously*
21 *injured if notice were required to be publicized thirty*
22 *days in advance of the proposed contract award date.*

23 *In all such cases, notice shall be published at the earliest*
24 *practicable opportunity; or*

1 *MINORITY BUSINESS PARTICIPATION*

2 *SEC. 515. The Administrator for Federal Procurement*
3 *Policy is authorized and directed to initiate, in consultation*
4 *with the Small Business Administration, periodic reviews of*
5 *acquisition programs within the executive branch with the*
6 *objective of making minority business participation in govern-*
7 *ment contracting more effective and assuring that minority*
8 *businesses have full opportunity to compete for Government*
9 *contracts. Targets should be set which reflect the Govern-*
10 *ment's commitment to increasing minority business partici-*
11 *pation in Federal contracting.*

12 *TITLE VI—DELEGATION OF AUTHORITY*

13 *DELEGATION WITHIN AN EXECUTIVE AGENCY*

14 *SEC. 601. Each agency head may designate acquisition*
15 *activities and may delegate any authority under this Act*
16 *except the authority to grant waivers under section 509,*
17 *provided that delegation of the authority to make determina-*
18 *tions under sections 202, 302(e), 304, 305 and 306 shall*
19 *be made with the approval of the Administrator for Federal*
20 *Procurement Policy. Normally such delegations shall not*
21 *be made below the level of the head of the acquisition activity.*

22 *JOINT ACQUISITIONS*

23 *SEC. 602. (a) To facilitate acquisition of property or*
24 *services by one executive agency for another executive agency,*
25 *and to facilitate joint acquisition by those agencies—*

1 (1) *the Agency head may, within his agency, dele-*
2 *gate functions and assign responsibilities relating to the*
3 *acquisition;*

4 (2) *the heads of two or more executive agencies may*
5 *by agreement delegate acquisition functions and assign*
6 *acquisition responsibilities from one agency to another*
7 *of those agencies or to an officer or employee of another*
8 *of those agencies; and*

9 (3) *the heads of two or more executive agencies*
10 *may create joint or combined offices to exercise acquisi-*
11 *tion functions and responsibilities.*

12 (b) *Subject to the provisions of section 686 of title 31,*
13 *United States Code—*

14 (1) *appropriations available for acquisition of*
15 *property and services by an executive agency may be*
16 *made available for obligation for acquisition of property*
17 *and services for its use by any other agency in amounts*
18 *authorized by the head of the ordering agency and with-*
19 *out transfer of funds on the books of the Department of*
20 *the Treasury;*

21 (2) *a disbursing officer of the ordering agency may*
22 *make disbursement for any obligation chargeable under*
23 *subsection (a) of this section, upon a voucher certified*
24 *by an officer or employee of the acquisition agency.*

1 *TITLE VII—PROTESTS*

2 *PURPOSE*

3 *SEC. 701. In accordance with the authority of the*
4 *Budget and Accounting Act of 1921 (chapter 18, title III,*
5 *section 304, 42 Stat. 24; 31 U.S.C. 44) and this title, pro-*
6 *tests shall be decided in the General Accounting Office if*
7 *filed with that office. To the maximum extent practicable, the*
8 *Comptroller General shall provide for the inexpensive, in-*
9 *formal, and expeditious resolution of protests.*

10 *JURISDICTION*

11 *SEC. 702. The Comptroller General shall have authority*
12 *to decide any protest submitted by an interested party in*
13 *accordance with rules and regulations he shall issue pursuant*
14 *to section 703.*

15 *GENERAL PROVISIONS*

16 *SEC. 703. The Comptroller General shall perform such*
17 *acts, make such rules and regulations, and issue such orders,*
18 *not inconsistent with this title, as may be necessary in the*
19 *execution of the protest decision function. He may delegate*
20 *his authority to other officers or employees of the General Ac-*
21 *counting Office.*

22 *TITLE VIII—APPLICABILITY OF*

23 *SUBSEQUENT LAWS*

24 *SEC. 801. No law enacted after the date of enactment*
25 *of this Act, including any limitation in any appropriation*

1 *priation of funds, may be held, considered, or construed as*
 2 *amending any provision of this Act, unless such law does so*
 3 *by specifically and explicitly amending or superseding a*
 4 *specific and separately referenced provision of this Act.*

5 **TITLE IX—AMENDMENTS AND REPEALS**

6 **AMENDMENTS**

7 *SEC. 901. (a) The Agriculture Department Appropria-*
 8 *tion Act, 1923, is amended by striking out “, after due ad-*
 9 *vertisement and on competitive bids,” in the first proviso*
 10 *on the page at forty-second Statutes at Large, page 517*
 11 *(7 U.S.C. 416).*

12 *(b) Section 101(d) and 104 of the Department of*
 13 *Agriculture Organic Act of 1944 (58 Stat. 734, 736; 7*
 14 *U.S.C. 430, 432) are amended by striking out “in the open*
 15 *market”.*

16 *(c) Section 2356(b) of title 10, United States Code,*
 17 *is amended by striking out the last sentence.*

18 *(d) Sections 4504 and 9504 of title 10, United States*
 19 *Code, are each amended by striking out everything after*
 20 *“United States” and inserting in lieu thereof a period.*

21 *(e) Sections 4505 and 9505 of title 10, United States*
 22 *Code, are each amended by striking out the second sentence.*

23 *(f) Clause (2) of section 502(c) of the Act of August*
 24 *10, 1948 (62 Stat. 1283; 12 U.S.C. 1701c(b)(2)), is*
 25 *amended by striking out “, without regard to section 3709*

26 *of the Revised Statutes”*

1 (g) Section 502(e) of the Act of December 31, 1970
2 (84 Stat. 1784; 12 U.S.C. 1701z-2(e)), is amended by
3 striking out “, without regard to section 3709 of the Revised
4 Statutes”.

5 (h) Section 708(h) of the Act of June 27, 1934, as
6 amended August 10, 1948 (62 Stat. 1279; 12 U.S.C. 1747
7 g(h)), is amended by striking out the proviso at the end.

8 (i) Section 712 of the Act of June 27, 1934, as amended
9 August 10, 1948 (62 Stat. 1281; 12 U.S.C. 1747k) is
10 amended by striking out “and without regard to section 3709
11 of the Revised Statutes”.

12 (j) Section 208(b) of the Act of June 26, 1934, as
13 amended October 19, 1970 (84 Stat. 1014; 12 U.S.C.
14 1788(b)), is amended by striking out the last sentence.

15 (k) Clause (4) of section 2(b) of the Act of July 18,
16 1958 (72 Stat. 386; 15 U.S.C. 634(b)(4)), is amended
17 by striking out: “Section 3709 of the Revised Statutes, as
18 amended (41 U.S.C., section 5), shall not be construed
19 to apply to any contract of hazard insurance or to any
20 purchase or contract for services or supplies on account
21 of property obtained by the Administrator or as a result
22 of loans made under this Act if the premium therefor or
23 the amount thereof does not exceed \$1,000.”.

24 (l) Section 3 of the Act of April 24, 1950 (64 Stat.
25 83; 16 U.S.C. 580c, is amended to read as follows:

1 “SEC. 3. *The Forest Service is authorized to make*
2 *purchases of (1) materials to be tested or upon which*
3 *experiments are to be made or (2) special devices, test*
4 *models, or parts thereof, to be used (a) for experimenta-*
5 *tion to determine their suitability for or adaptability to*
6 *accomplishment of the work for which designed or (b) in*
7 *the designing or developing of new equipment: Provided,*
8 *That not to exceed \$50,000 may be expended in any one*
9 *fiscal year pursuant to this authority and not to exceed*
10 *\$10,000 on any one item or purchase.”.*

11 *(m) Section 2(b)(1) of the Act entitled “An Act to*
12 *authorize the construction of a National Fisheries Center*
13 *and Aquarium in the District of Columbia and to provide*
14 *for its operation”, approved October 9, 1962 (76 Stat.*
15 *753; 16 U.S.C. 1052), is amended by striking out “,*
16 *without regard to the provisions of section 3709 of the*
17 *Revised Statutes of the United States (41 U.S.C. 5,”.*

18 *(n) Section 224(a) of the Act of November 8, 1965*
19 *(79 Stat. 1228; 20 U.S.C. 1034(a)), is amended by strik-*
20 *ing out “, and, without regard o section 3709 of the Revised*
21 *Statutes (41 U.S.C. 5),”.*

22 *(o) Section 7 of the Act of December 20, 1945, as*
23 *amended October 10, 1949 (59 Stat. 621; 22 U.S.C. 287e),*
24 *is amended by striking out “, all without regard to section*
25 *3709 of the Revised Statutes, as amended (41 U.S.C. 5)”.*

1 (p) Section 707 of the Act of August 13, 1946 (60
2 Stat. 1019; 22 U.S.C. 1047), is amended by striking out
3 “, without regard to section 3709 of the Revised Statutes”.

4 (q) Section 22(e)(7) of the Act of December 29,
5 1970 (84 Stat. 1613, 29 U.S.C. 671(e)(7)), is amended
6 by striking out “, and without regard to section 3709 of the
7 Revised Statutes, as amended (41 U.S.C. 5), or any other
8 provision of law relating to competitive bidding.”

9 (r) Section 6(b) of the Act of August 31, 1954 (68
10 Stat. 1010; 30 U.S.C. 556(b)), is amended by striking out
11 “and without regard to the provisions of section 3709, Re-
12 vised Statutes (41 U.S.C. 5)”.

13 (s) Section 1820(b) of title 38, United States Code,
14 is amended by striking out “section 5 of title 41” and in-
15 serting in lieu thereof the “Federal Acquisition Act of 1977”
16 and by deleting “if the amount of such contract exceeds
17 \$1,000.”.

18 (t) Section 5002 of title 38, United States Code, is
19 amended by substituting a period for the comma after “work”
20 and striking out the remainder of the section.

21 (u) The Act of October 10, 1940, is amended (54
22 Stat. 109; 41 U.S.C. 6a, b(a), (c)), is amended by
23 striking out section 2 and subsections (c) and (d), and
24 by striking out “without regard to the provisions of sec-
25 tion 3709 of the Revised Statutes, as amended,” in sub-

1 section (a). The Act of July 27, 1965 (79 Stat. 276; 41
2 U.S.C. 6a-1) is amended by striking out any and all ref-
3 erences to section 3709 of the Revised Statutes in the sections
4 relating to Architect of the Capitol.

5 (v) Section 11 of the Act of June 30, 1936 (49
6 Stat. 2039, renumbered section 12 in 66 Stat. 308; 41
7 U.S.C. 45), is amended to read as follows:

8 "SEC. 12. The provisions of this Act requiring the
9 inclusion of representations with respect to minimum wages
10 shall apply only to purchases or contracts relating to such
11 industries as have been the subject matter of a determina-
12 tion by the Secretary of Labor."

13 (w) Section 356(b) of the Act of July 1, 1944, as
14 added October 18, 1968 (82 Stat. 1175; 42 U.S.C. 263d
15 (b)), is amended by striking out the references to section
16 3709 of the Revised Statutes and 41 U.S.C. 5 in clause (3),
17 and by striking out the parenthetical phrase "by negotiation
18 or otherwise)" in clause (4).

19 (x) Section 1(b) of the Act of October 14, 1940 (54
20 Stat. 1126; 42 U.S.C. 1521 (b)), is amended by striking
21 out the reference to section 3709 of the Revised Statutes in
22 the first parenthetical phrase, and by striking out the first
23 proviso and inserting in lieu thereof: "Provided, That the
24 cost plus a percentage of cost system shall not be used."

25 (y) Section 202(b) of the Act of October 14, 1940 (55

1 *Stat. 362; 42 U.S.C. 1532(b)*), is amended by striking out
2 the reference to section 3709 of the Revised Statutes, and by
3 adding the following proviso at the end of paragraph 1532
4 (b): "Provided, That the cost plus a percentage of cost system
5 shall not be used."

6 (z) Section 309 of the Act of September 1, 1951 (65
7 *Stat. 307; 42 U.S.C. 1592h*), is amended by striking out
8 clause (a), and amending clause (b) to read as follows:

9 " (b) the fixed-fee under a contract on a cost-plus-a-
10 fixed-fee basis shall not exceed 6 per centum of the esti-
11 mated cost;".

12 (aa) Section 103(b)(4) and 104(a)(2) of the Act
13 of July 14, 1955, as amended November 21, 1967 (81
14 *Stat. 486, 487; 42 U.S.C. 1857b (b)(4), b-1(a)(2)*), is
15 amended by striking out the references to section 3709 of
16 the Revised Statutes and to section 5 of title 41, United

17 (bb) Section 31(b) of the Atomic Energy Act of 1954
18 (68 *Stat. 927; 42 U.S.C. 2051c*) is amended to read as
19 follows:

20 " (b) The Commission may make available for use in con-
21 nection with arrangements made under this section such of its
22 equipment and facilities as it may deem desirable."

23 (cc) Section 41(b) of the Atomic Energy Act of 1954
24 (68 *Stat. 928; 42 U.S.C. 2061(b)*) is amended by striking
25 out the last three sentences in this section.

1 *(dd) Section 43 of the Atomic Energy Act of 1954*
2 *(68 Stat. 929; 42 U.S.C. 2063) is amended by striking*
3 *out the following: "without regard to the provisions of sec-*
4 *tion 3709 of the Revised Statutes, as amended, upon certifi-*
5 *cation by the Commission that such action is necessary in*
6 *the interest of the common defense and security, or upon a*
7 *showing by the Commission that advertising is not reason-*
8 *ably practicable. Partial and advance payments may be*
9 *made under contracts for such purposes."*

10 *(ee) Section 55 of the Atomic Energy Act of 1954*
11 *(68 Stat. 931; 42 U.S.C. 2075) is amended by inserting*
12 *a period after United States and by striking out the re-*
13 *mainder of the first sentence and the entire second sentence*
14 *in this section.*

15 *(ff) Section 66 of the Atomic Energy Act of 1954 (68*
16 *Stat. 933; 42 U.S.C. 2096) is amended by striking out*
17 *the following: "Any purchase made under this section may*
18 *be made without regard to the provisions of section 3709*
19 *of the Revised Statutes, as amended, upon certification by*
20 *the Commission that such action is necessary in the interest*
21 *of the common defense and security, or upon a showing by*
22 *the Commission that advertising is not reasonably prac-*
23 *ticable. Partial and advance payments may be made under*
24 *contracts for such purposes."*

25 *(gg) Section 203(e) of the Act of April 3, 1970 (84*

1 *Stat. 115; 42 U.S.C. 4372(e)), is amended by strik-*
2 *ing out the references to section 3709 of the Revised*
3 *Statutes and to section 5 of title 41, United States Code.*

4 *(hh) Section 703 of the Act of June 29, 1936 (49*
5 *Stat. 2008; 46 U.S.C. 1193), is amended by striking out*
6 *subsection (a), by striking out "For the construction, re-*
7 *construction, or reconditioning of vessels, and" in subsec-*
8 *tion (c), and by renumbering subsections (b) and (c) as*
9 *(a) and (b), respectively.*

10 *(ii) Section 8(a) of the Act of September 30, 1965*
11 *(79 Stat. 894; 49 U.S.C. 1638(a)), is amended by*
12 *striking out the references to section 3709 of the Revised*
13 *Statutes and to section 5 of title 41, United States Code,*
14 *in paragraph (1), and by striking out paragraphs (3)*
15 *and (4).*

16 *(jj) Section 5012 of title 38, United States Code, is*
17 *amended by striking out the second sentence in subsection*
18 *(a) and all of subsection (c).*

19 *(kk) Section 832(g) of title 16, United States Code,*
20 *is amended by striking out "\$500" and inserting in lieu*
21 *thereof "\$10,000".*

22 **REPEALS**

23 *SEC. 902. The following statutes or provisions of*
24 *statutes are repealed.*

25 *Chapters 135 and 137 and sections 4535, 4540, 7212,*

1 7522, 9535, and 9540 of title 10, United States Code; section
2 637(e) of title 15, United States Code; section 7 of the Act of
3 May 18, 1938 (52 Stat. 406; 16 U.S.C. 833f); section 7 of
4 the Act of March 3, 1875, as amended (18 Stat. 450; 25
5 U.S.C. 96); section 3 of the Act of August 15, 1876, as
6 amended (19 Stat. 199; 25 U.S.C. 97); sections 602(d)(3)
7 and 602(d)(10) of the Federal Property and Administra-
8 tive Services Act as amended (40 U.S.C. 474 (3), (8),
9 (10), and (19)); sections 10(a) and 10(b) of the Act of
10 September 9, 1959 (73 Stat. 481; 40 U.S.C. 609 (a), (b));
11 section 3735 of the Revised Statutes (41 U.S.C. 13); section
12 3653 of the Revised Statutes, as amended by the Act of
13 July 7, 1884 (23 Stat. 204; 41 U.S.C. 24); title III of the
14 Federal Property and Administrative Services Act of 1949
15 as amended; 41 U.S.C. 254(b); section 10(a) of the Act of
16 September 5, 1950 (64 Stat. 591; 41 U.S.C. 256a); section
17 510(a) of the Act of July 15, 1949 (63 Stat. 437; 42
18 U.S.C. 1480(a)); section 6(e) of the EURATOM Cooper-
19 ation Act of 1958 (72 Stat. 1085; 42 U.S.C. 2295(e));
20 section 1345(b) of the Act of August 1, 1968 (82 Stat. 585;
21 42 U.S.C. 4081(b)); section 404 of the Act entitled "An Act
22 to authorize appropriations during the fiscal year 1969 for
23 procurement of aircraft, missiles, naval vessels, and tracked
24 combat vehicles, research, development, test, and evaluation
25 for the Armed Forces, and to prescribe the authorized person-

- 1 *nel strength of the Selected Reserve of each Reserve component*
- 2 *of the Armed Forces, and for other purposes, approved Sep-*
- 3 *tember 20, 1969 (82 Stat. 849); section 403(c) of title 50,*
- 4 *United States Code.*

[COMMITTEE PRINT]

OCTOBER 3, 1977

Calendar No.

95TH CONGRESS
1ST SESSION

S. 1264

[Report No. 95-]

A BILL

To provide policies, methods, and criteria for the acquisition of property and services by executive agencies.

By Mr. CHILES, Mr. ROTH, Mr. HEINZ, Mr. RIEGLE, and Mr. PACKWOOD

APRIL 6 (legislative day, FEBRUARY 21), 1977

Read twice and referred to the Committee on Governmental Affairs

OCTOBER . 1977

Reported with an amendment

LEGISLATIVE SERVICES
FILE COPY

95TH CONGRESS
2D SESSION

S. 1264

[Report No. 95-715]

IN THE SENATE OF THE UNITED STATES

APRIL 6 (legislative day, FEBRUARY 21), 1977

Mr. CHILES (for himself, Mr. ROTH, Mr. HEINZ, Mr. RIEGLE, and Mr. PACKWOOD) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

MARCH 22 (legislative day, FEBRUARY 6), 1978

Reported by Mr. CHILES, with and amendment

JULY 13 (legislative day, MAY 17), 1978

Referred to the Committee on Armed Services, by unanimous consent

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide policies, methods, and criteria for the acquisition of property and services by executive agencies.

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

3 ~~SHORT TITLE; TABLE OF CONTENTS~~

4 ~~SECTION 1. (a) SHORT TITLE.—This Act may be cited~~
5 ~~as the “Federal Acquisition Act of 1977”.~~

6 ~~(b) TABLE OF CONTENTS.—~~

~~Sec. 1. Short title; table of contents.~~

~~Sec. 2. Declaration of policy.~~

~~Sec. 3. Definitions.~~

~~TITLE I ACQUISITION METHODS AND REGULATORY GUIDANCE~~

~~Sec. 101. Acquisition methods.~~

~~Sec. 102. Regulatory compliance.~~

II—O

~~TABLE OF CONTENTS Continued~~

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- ~~Sec. 203. Evaluation, award, and notifications.~~

~~TITLE III ACQUISITION BY COMPETITIVE
NEGOTIATION~~

- ~~Sec. 301. Criteria for use.~~
- ~~Sec. 302. Solicitations.~~
- ~~Sec. 303. Evaluation, award, and notifications.~~
- ~~Sec. 304. Single source exceptions.~~
- ~~Sec. 305. Price analysis and cost data.~~
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~~TITLE IV ACQUISITION BY COMPETITIVE SMALL
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- ~~Sec. 401. Criteria for use.~~
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~~TITLE V GENERAL PROVISIONS~~

- ~~Sec. 501. Contract types.~~
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- ~~Sec. 503. Cancellations and rejections.~~
- ~~Sec. 504. Multiyear contracts.~~
- ~~Sec. 505. Advance, partial, and progress payments.~~
- ~~Sec. 506. Remission of liquidated damages.~~
- ~~Sec. 507. Determinations and findings.~~
- ~~Sec. 508. Competitive bidding information.~~
- ~~Sec. 509. Government surveillance requirements.~~
- ~~Sec. 510. Maintenance of regulations.~~

~~TITLE VI DELEGATION OF AUTHORITY~~

- ~~Sec. 601. Delegation within an executive agency.~~
- ~~Sec. 602. Joint acquisitions.~~

~~TITLE VII PROTESTS~~

- ~~Sec. 701. Purpose.~~
- ~~Sec. 702. Jurisdiction.~~
- ~~Sec. 703. Proceedings.~~
- ~~Sec. 704. General provisions.~~

~~TITLE VIII AMENDMENTS AND REPEALS~~

- ~~Sec. 801. Amendments.~~
- ~~Sec. 802. Repeals.~~

1 ~~DECLARATION OF POLICY~~

2 ~~SEC. 2. (a) FINDINGS.—The Congress hereby finds~~

3 ~~that—~~

1 ~~(1) the laws controlling Federal purchasing have~~
2 ~~become outdated, fragmented, and needlessly incon-~~
3 ~~sistent;~~

4 ~~(2) these deficiencies have contributed to signifi-~~
5 ~~cant inefficiency, ineffectiveness, and waste in Federal~~
6 ~~spending;~~

7 ~~(3) the Commission on Government Procurement~~
8 ~~has found and recommended that a new consolidated~~
9 ~~statutory base is needed;~~

10 ~~(4) further, existing statutes need to be modernized~~
11 ~~to focus on effective competition and new technology~~
12 ~~in that—~~

13 ~~(A) national productivity rests on a base of~~
14 ~~competitive industry applying new technology in its~~
15 ~~goods and services; and~~

16 ~~(B) Federal spending practices can encourage~~
17 ~~the Nation's business community by stimulating~~
18 ~~effective competition and the application of new~~
19 ~~technology.~~

20 ~~(b) POLICY.—It is hereby declared to be the policy of~~
21 ~~the United States that the acquisition of property and serv-~~
22 ~~ices by the Federal Government shall be performed so as~~
23 ~~to—~~

24 ~~(1) best meet public needs at the lowest total cost;~~
25 ~~(2) maintain the independent character of private~~

1 ~~enterprise by substituting for regulatory controls the in-~~
2 ~~centives and constraints of effective competition;~~

3 ~~(3) encourage innovation and the application of~~
4 ~~new technology as a first consideration by stating public~~
5 ~~needs so that prospective suppliers will have maximum~~
6 ~~latitude to exercise independent business and technical~~
7 ~~judgments in offering a wide range of competing~~
8 ~~alternatives;~~

9 ~~(4) promote both new and small business by per-~~
10 ~~mitting all qualified and interested sources to compete~~
11 ~~for and grow through Government contracts;~~

12 ~~(5) provide private contractors with the opportu-~~
13 ~~nity to earn a profit on Government contracts commen-~~
14 ~~surate with the contribution made to meeting public~~
15 ~~needs and with comparable profit opportunities available~~
16 ~~in other markets requiring investments, risks, and skills~~
17 ~~similar to the technical and financial risks undertaken;~~

18 ~~(6) safeguard the public interest through individ-~~
19 ~~ual accountability of public officials and maximum use~~
20 ~~of effective competition; and~~

21 ~~(7) further, to achieve these goals, it is the policy~~
22 ~~of the United States to rely on and promote effective~~
23 ~~competition, the efforts of several sellers acting inde-~~
24 ~~pendently of each other, to respond to a public need by~~
25 ~~creating, developing, demonstrating or offering products~~

1 ~~or services which best meet that need, whether that need~~
2 ~~is expressed as an agency mission need, a desired func-~~
3 ~~tion to be performed, performance or physical require-~~
4 ~~ments to be met, or some combination of these. Effective~~
5 ~~competition is present when there is—~~

6 ~~(A) timely availability to prospective sellers~~
7 ~~of information required to respond to the public~~
8 ~~needs;~~

9 ~~(B) independence of action by buyer and~~
10 ~~seller;~~

11 ~~(C) availability to the Government of alterna-~~
12 ~~tive offers that provide a range of concept, design,~~
13 ~~performance, price, lifetime ownership costs, service~~
14 ~~and/or delivery;~~

15 ~~(D) absence of bias or favoritism in the solici-~~
16 ~~tation, evaluation, and award of contracts; and~~

17 ~~(E) ease of competitive entry for new and~~
18 ~~small sellers.~~

19 **DEFINITIONS**

20 ~~SEC. 3. For purposes of this Act—~~

21 ~~(a) The term “acquisition” means any relationship en-~~
22 ~~tered into to obtain property or services for the direct benefit~~
23 ~~or use of an executive agency through purchase, lease, or~~
24 ~~barter to meet a public need, whether the property or services~~
25 ~~are already in existence or must be created, developed,~~

1 ~~demonstrated, and evaluated. Acquisition includes such re-~~
2 ~~lated functions as determination of the particular public need;~~
3 ~~solicitation; selection of sources; award of contracts; contract~~
4 ~~financing and contract performance.~~

5 ~~(b) The term "executive agency" means an executive~~
6 ~~department as defined by section 101 of title 5, United~~
7 ~~States Code; an independent establishment as defined by~~
8 ~~section 104 of title 5, United States Code (except that it~~
9 ~~shall not include the General Accounting Office); a mili-~~
10 ~~tary department as defined by section 102 of title 5, United~~
11 ~~States Code; and the United States Postal Service;~~

12 ~~(c) The term "agency head" means the head of an~~
13 ~~executive agency as defined in subsection (b).~~

14 ~~(d) The term "head of a procuring activity" means~~
15 ~~that official, intermediate between the Agency head and the~~
16 ~~contracting officer, who has the responsibility for super-~~
17 ~~vision and direction of the procuring activity.~~

18 ~~(e) The term "property" includes personal property~~
19 ~~and leaseholds and other interests therein, but excludes real~~
20 ~~property in being and leaseholds and other interests therein.~~

21 ~~(f) The term "services" means all services, including~~
22 ~~administrative, support type, and professional.~~

23 ~~(g) The term "total cost" means all resources con-~~
24 ~~sumed or to be consumed in making an acquisition to~~
25 ~~achieve an end purpose; and may include all direct, in-~~

1 ~~direct, recurring, nonrecurring, and other related costs in-~~
2 ~~curred, or estimated to be incurred in design, development,~~
3 ~~production, operation, maintenance, disposal, training, and~~
4 ~~support of an acquisition over its useful life span, wherever~~
5 ~~each factor is applicable.~~

6 ~~(h) The term "price data" means actual prices pre-~~
7 ~~viously paid, contracted, quoted or proposed and the related~~
8 ~~dates, quantities, and item descriptions existing up to a~~
9 ~~time as close as practicable to any new agreement on price.~~

10 ~~(i) The term "protest" means a challenge to the~~
11 ~~solicitation, proposed award, or award of a contract made~~
12 ~~by an executive agency for the acquisition of property or~~
13 ~~services.~~

14 ~~TITLE I ACQUISITION METHODS AND~~
15 ~~REGULATORY GUIDANCE~~

16 ~~ACQUISITION METHODS~~

17 ~~SEC. 101. (a) An executive agency shall acquire prop-~~
18 ~~erty or services in accordance with the policies specified in~~
19 ~~section 2 of this Act by utilizing—~~

20 ~~(1) the competitive sealed bids method as pro-~~
21 ~~vided in title II of this Act; or~~

22 ~~(2) the competitive negotiation method, as pro-~~
23 ~~vided in title III of this Act; or~~

24 ~~(3) the competitive small purchase method as pro-~~
25 ~~vided in title IV of this Act.~~

1 ~~plementation of and compliance with the requirements of~~
2 ~~this Act; specific reductions in the use of Federal specifica-~~
3 ~~tions pursuant to sections 202 and 302 of this Act; and~~
4 ~~recommendations for revisions in this Act or any other pro-~~
5 ~~vision of law.~~

6 ~~TITLE II ACQUISITION BY COMPETITIVE~~

7 ~~SEALED BIDS~~

8 ~~CRITERIA FOR USE~~

9 ~~Sec. 201. The competitive sealed bids method should~~
10 ~~be used in the acquisition of property and services when—~~

11 ~~(1) the anticipated total contract price exceeds the~~
12 ~~amount specified in title IV of this Act for use of the~~
13 ~~competitive small purchase procedures method; and~~

14 ~~(2) the public need can be practicably defined in~~
15 ~~terms not restricted by security or proprietary design;~~
16 ~~and~~

17 ~~(3) the private sector industrial base will provide a~~
18 ~~sufficient number of qualified suppliers willing to com-~~
19 ~~pete for and able to perform the contract; and~~

20 ~~(4) suitable products or services have been fully~~
21 ~~developed and previously supplied in comparable forms~~
22 ~~so to warrant the award of a fixed price contract to a~~
23 ~~successful bidder selected primarily on the basis of price;~~
24 ~~and~~

25 ~~(5) the time available for acquisition is sufficient~~

1 ~~to prepare the purchase description and to carry out the~~
2 ~~requisite administrative procedures; and~~

3 ~~(6) the property or service is to be acquired and/~~
4 ~~or used within the limits of the United States and its~~
5 ~~possessions; and~~

6 ~~(7) the price for the property or service has not~~
7 ~~been established by or pursuant to law.~~

8 ~~INVITATION FOR SEALED BIDS~~

9 ~~SEC. 202. (a) The invitation for sealed bids shall be~~
10 ~~formally advertised in such a way that—~~

11 ~~(1) the time prior to opening the bids will be suf-~~
12 ~~ficient to permit effective competition; and~~

13 ~~(2) the purchase description will be accessible to~~
14 ~~all interested potential bidders, except where restricted~~
15 ~~to bidders qualified under a duly authorized set aside~~
16 ~~program.~~

17 ~~(b) The invitation shall include a description of the~~
18 ~~method to be used in evaluating bids, including factors other~~
19 ~~than price.~~

20 ~~(c) To the extent practicable and consistent with needs~~
21 ~~of the Agency, purchase descriptions shall be stated in func-~~
22 ~~tional terms to permit a variety of distinct products or serv-~~
23 ~~ices to qualify, or, when a particular type of product or serv-~~
24 ~~ice must be designated, in terms of performance specifica-~~

1 ~~tions which stipulate a range of acceptable characteristics or~~
2 ~~minimum standards.~~

3 ~~(d) The preparation and use of definitive product speci-~~
4 ~~fications in a purchase description shall be subject to prior~~
5 ~~approval by the Agency head. Such approval shall include~~
6 ~~written justification, to be placed in and made a part of the~~
7 ~~official contract file, delineating the circumstances which pre-~~
8 ~~clude the use of functional or performance specifications and~~
9 ~~which require the use of detailed product specifications in~~
10 ~~the purchase descriptions.~~

11 ~~(e) Where the use of functional or performance speci-~~
12 ~~fications make it impracticable to plan for award primarily~~
13 ~~on the basis of price, the contracting officer may request the~~
14 ~~submission of unpriced technical proposals and subsequently~~
15 ~~issue an invitation for sealed bid limited to those offerors~~
16 ~~whose technical proposals meet the standards set forth in~~
17 ~~the purchase description.~~

18 ~~EVALUATION, AWARD, AND NOTIFICATIONS~~

19 ~~SEC. 203. (a) All bids shall be opened publicly at the~~
20 ~~time and place stated in the invitation.~~

21 ~~(b) Award shall be made to the responsible bidder~~
22 ~~whose bid conforms to the invitation and is most advan-~~
23 ~~tageous to the Government, price and other factors~~
24 ~~considered.~~

1 ~~and for final selection. In any case, if price is included as~~
2 ~~a primary or significant factor, the Government's evaluation~~
3 ~~shall be based to the maximum extent practicable on the~~
4 ~~total cost to meet the Federal need and not on the cost~~
5 ~~of completing any initial or partial segments of activity.~~

6 ~~(2) Any changes in the methodology or evaluation~~
7 ~~factors which may affect the outcome of the competition~~
8 ~~shall be promptly communicated to all competitors.~~

9 ~~(c) To the maximum extent practicable, solicitations~~
10 ~~shall set forth the public need in functional terms so as to~~
11 ~~permit the application of a variety of technological ap-~~
12 ~~proaches and elicit the most promising competing alterna-~~
13 ~~tives. Solicitations shall not prescribe performance character-~~
14 ~~istics based on a single approach. Solicitations shall also not~~
15 ~~prescribe technical characteristics obtained from any poten-~~
16 ~~tial competitor.~~

17 ~~(d) If either the Government or an offeror identifies~~
18 ~~inadequacies in the solicitation which cause misunderstand-~~
19 ~~ings of the public's needs or requirements, clarification of~~
20 ~~intent shall be made to all offerors in a timely fashion and on~~
21 ~~an equal basis.~~

22 ~~EVALUATION, AWARD, AND NOTIFICATIONS~~

23 ~~SEC. 303. (a) Written or oral discussions shall be con-~~
24 ~~ducted with all qualified offerors who remain in a competi-~~
25 ~~tive range solely for the purpose of obtaining any needed~~

1 ~~clarification or extension of offers. An initial offer may be~~
2 ~~accepted without discussion.~~

3 ~~(b) When awards are made for alternative approaches~~
4 ~~selected on the basis of the factors contained in the solicita-~~
5 ~~tion, whether for design, development, demonstration, or~~
6 ~~delivery, to the maximum extent practicable, they shall be~~
7 ~~sustained in competition until sufficient test or evaluation~~
8 ~~information becomes available to narrow the choice to a~~
9 ~~particular product or service.~~

10 ~~(c) Until award is made, information concerning the~~
11 ~~award shall not be disclosed to any person not having direct~~
12 ~~source selection responsibilities.~~

13 ~~(d) Award shall be made to one or more responsible~~
14 ~~offerors whose proposal is most responsive to the factors stip-~~
15 ~~ulated in the solicitation as required by section 302(b). No-~~
16 ~~tification of award to all unsuccessful offerors shall be made~~
17 ~~with reasonable promptness.~~

18 ~~SINGLE SOURCE EXCEPTIONS~~

19 ~~SEC. 304. (a) Compliance with the procedures pre-~~
20 ~~scribed in sections 302 and 303 need not be continued if--~~

21 ~~(1) the agency head makes a determination, before~~
22 ~~award, that it is impracticable to proceed with the com-~~
23 ~~petitive negotiation because more than one prospective~~
24 ~~source is not available; a public exigency prevails; or a~~

1 ~~national emergency is declared by the Congress or the~~
2 ~~President;~~

3 ~~(2) such determination, together with the reasons~~
4 ~~therefor, is in writing and conforms with such regula-~~
5 ~~tions as may be prescribed or authorized by the Office of~~
6 ~~Federal Procurement Policy, pursuant to section 102~~
7 ~~(a) (1); and~~

8 ~~(3) notice of intent to award such a contract is~~
9 ~~publicized in advance of the award, pursuant to section~~
10 ~~637 (c) of title 15, United States Code, and includes~~
11 ~~a description of the property or service to be acquired~~
12 ~~and the name of the prospective source.~~

13 ~~In such cases, contracts may be made by negotiation with~~
14 ~~a single offeror selected by the Agency. The submission and~~
15 ~~certification referred to in section 305 (b) and the provisions~~
16 ~~of section 305 (c) shall be required in the case of any single-~~
17 ~~source contract to be awarded pursuant to this section when~~
18 ~~the amount in question is greater than the amount specified~~
19 ~~in section 401.~~

20 ~~(b) Where there is no commercial usage of the product~~
21 ~~or service to be acquired under this section, and the Agency~~
22 ~~head determines that substantial follow on provision of such~~
23 ~~product or service will be required by the Government, the~~
24 ~~Agency head shall, when he deems appropriate, take action~~

1 ~~through contractual provision, or otherwise, to provide the~~
2 ~~Government with a capability to establish one or more other~~
3 ~~competitive sources.~~

4 ~~PRICE ANALYSIS AND COST DATA~~

5 ~~SEC. 305. (a) Prior to any negotiated award, change,~~
6 ~~or modification of any contract or subcontract, the con-~~
7 ~~tractor and any subcontractor shall be required to submit~~
8 ~~or identify in writing, with his proposal, price data bearing~~
9 ~~on the reasonableness of the offer. Each such contractor~~
10 ~~or subcontractor shall certify that, to the best of this knowl-~~
11 ~~edge and belief, such price data is accurate, complete, and~~
12 ~~current as of the date agreed upon between the parties~~
13 ~~(which date shall be as close as practicable to the date of~~
14 ~~agreement on the negotiated price). The contracting officer~~
15 ~~shall use price analysis techniques to analyze and evaluate~~
16 ~~the reasonableness of offers where—~~

17 ~~(1) the price of the contract, subcontract, change~~
18 ~~or modification is less than \$500,000; (the contracting~~
19 ~~officer may at his discretion, however, request pricing~~
20 ~~data or cost data as provided for in section 305 (b),~~
21 ~~for contracts, subcontracts, changes or modifications,~~
22 ~~where the total amount exceeds the amount specified~~
23 ~~in section 401 of this Act but is less than or equal to~~
24 ~~\$500,000); or~~

25 ~~(2) the price is an established catalog or a market~~

1 ~~price of a commercial item sold in substantial quantities to the general public; or~~
2

3 ~~(3) the price is already set by law or regulation;~~

4 ~~or~~

5 ~~(4) negotiation is based on adequate price competition, wherein price is a primary or significant~~
6 ~~factor; or~~
7

8 ~~(5) there was recent competitive purchase under~~
9 ~~relatively similar circumstances.~~

10 ~~(b) Where the contract or subcontract is a single-~~
11 ~~source award pursuant to section 304, or for other nego-~~
12 ~~tiated contracts when the contract or subcontract does not~~
13 ~~meet any one of the conditions set forth in section 305 (a)—~~

14 ~~(1) the contractor and any subcontractor shall be~~
15 ~~required to submit or identify in writing, with his pro-~~
16 ~~posal, cost data bearing on the reasonableness of the~~
17 ~~offered price; and~~

18 ~~(2) shall certify that, to the best of his knowledge~~
19 ~~and belief, such cost data is accurate, complete and cur-~~
20 ~~rent as of the date agreed upon between the parties~~
21 ~~(which date shall be as close as practicable to the date~~
22 ~~or agreement on the negotiated price).~~

23 ~~(c) Any prime contract or change or modification~~
24 ~~thereto under which a certification is required under sub-~~
25 ~~section (b) shall contain a provision that the price to the~~

1 ~~Government, including profit or fee, shall be adjusted to~~
2 ~~exclude any significant sums by which it may be determined~~
3 ~~by the Agency head that such price was increased because~~
4 ~~the contractor or any subcontractor required to furnish such~~
5 ~~a certificate, furnished data which was not accurate, com-~~
6 ~~plete or current.~~

7 ~~(d) The Agency head may grant a waiver from the pro-~~
8 ~~visions of sections 305 (a) and (b). Such waiver shall in-~~
9 ~~clude a written justification, to be placed in and made a part~~
10 ~~of the contract file, setting forth the reasons why the provi-~~
11 ~~sions of sections 305 (a) and (b) must be waived.~~

12 ~~(e) At least every three years, beginning with the third~~
13 ~~year after enactment of this Act, the Administrator of the~~
14 ~~Office of Federal Procurement Policy shall review and may~~
15 ~~revise the thresholds cited elsewhere in this section, or any~~
16 ~~prior revision hereto, notwithstanding any other provision~~
17 ~~of law, to reflect an increase or decrease by at least 10 per~~
18 ~~centum in the costs of labor and materials. At least sixty~~
19 ~~days in advance of its effective date, the Administrator shall~~
20 ~~report to Congress any such revision which by itself, or cu-~~
21 ~~mulative with earlier increases, represents a 50 per centum~~
22 ~~or more increase.~~

23 ~~ACCESS TO RECORDS~~

24 ~~SEC. 306. (a) Until expiration of three years after~~
25 ~~final payment under a contract negotiated or amended under~~

1 ~~this title, the Comptroller General of the United States and~~
2 ~~an executive agency or their authorized representatives are~~
3 ~~entitled to inspect the plants and examine any books, docu-~~
4 ~~ments, papers, records or other data of the contractor and~~
5 ~~his subcontractors that pertain to, and involve transactions~~
6 ~~relating to the contract or subcontract or to the amendment~~
7 ~~thereof, including for the purpose of evaluating the accuracy,~~
8 ~~completeness and currency of data certified under section~~
9 ~~305, all such books, records and other data relating to the~~
10 ~~negotiation, pricing, or performance of the contract or sub-~~
11 ~~contract. This provision may be waived for any contract~~
12 ~~or subcontract with a foreign contractor or subcontractor,~~
13 ~~if the Agency head determines, with concurrence of the~~
14 ~~Comptroller General, that waiver would be in the public~~
15 ~~interest.~~

16 ~~(b) Inspections and examinations by executive agen-~~
17 ~~cies under subsection (a) shall be conducted only when~~
18 ~~necessary to insure contract performance. Multiple inspec-~~
19 ~~tions and examinations of a contractor or subcontractors by~~
20 ~~more than one executive agency shall be eliminated to the~~
21 ~~maximum extent practicable by coordinating inspection~~
22 ~~and examination responsibilities in accordance with regula-~~
23 ~~tions to be issued or authorized by the Office of Federal~~
24 ~~Procurement Policy pursuant to section 102(1).~~

1 ~~TITLE IV—ACQUISITION BY COMPETITIVE~~
2 ~~SMALL PURCHASE PROCEDURES METHOD~~
3 ~~CRITERIA FOR USE~~

4 ~~SEC. 401. (a) The competitive small purchase proce-~~
5 ~~dures method may be used in the acquisition of property and~~
6 ~~services under regulations authorized or prescribed by the~~
7 ~~Office of Federal Procurement Policy under section 102 (1)~~
8 ~~when the anticipated total contract price does not exceed~~
9 ~~\$10,000 but, in lieu of this method, the contracting officer~~
10 ~~may use either of the competitive methods prescribed in~~
11 ~~titles II or III of this Act when such use would be more~~
12 ~~advantageous to the Government.~~

13 ~~(b) At least every three years, beginning with the~~
14 ~~third year after enactment of this Act, the Administrator~~
15 ~~of the Office of Federal Procurement Policy shall review~~
16 ~~the prevailing costs of labor and materials and may revise~~
17 ~~the amount stated in section 401 (a) or any prior revision~~
18 ~~thereof, notwithstanding any other provision of law, to~~
19 ~~reflect an increase or decrease by at least 10 per centum~~
20 ~~in the costs of labor and materials. At least sixty days in~~
21 ~~advance of its effective date, the Administrator shall report~~
22 ~~to Congress any such revision which by itself, or cumula-~~
23 ~~tively with earlier increases, represents 50 per centum or~~
24 ~~more increase.~~

1 ing agency has been employed or retained to solicit or secure
2 the contract upon an agreement or understanding of a com-
3 mission, percentage, brokerage, or contingent fee, excepting
4 bona fide employees or bona fide established commercial or
5 selling agencies maintained by the contractor for the pur-
6 pose of securing business; and that for any breach or viola-
7 tion of the warrantee, the Government may annul the con-
8 tract without liability or deduct from the contract price or
9 consideration the full amount of the commission, percentage,
10 brokerage, or contingent fee.

11 ~~CANCELLATIONS AND REJECTIONS~~

12 ~~SEC. 503. (a) Where the contracting officer determines~~
13 ~~that it is in the best interest of the Government, the con-~~
14 ~~tracting officer may—~~

15 ~~(1) withdraw a small purchase order prior to the~~
16 ~~consummation of a contract;~~

17 ~~(2) cancel an invitation for sealed bids before bid~~
18 ~~opening or after bid opening but before award; or~~

19 ~~(3) cancel a request for proposal and reject all~~
20 ~~offers.~~

21 ~~(b) When requested, the contracting officer shall fully~~
22 ~~inform any unsuccessful offeror or bidder of the reasons for~~
23 ~~the rejection of his offer or bid.~~

1 ~~appropriated funds originally available for performance of~~
2 ~~the contract, or currently available for procurement of similar~~
3 ~~property or services, and not otherwise obligated, or appro-~~
4 ~~priations made available for such payments.~~

5 ~~ADVANCE, PARTIAL, AND PROGRESS PAYMENTS~~

6 ~~SEC. 505. (a) Any executive agency may—~~

7 ~~(1) make advance, partial, progress, or other pay-~~
8 ~~ments under contracts; and~~

9 ~~(2) insert in solicitations a provision limiting ad-~~
10 ~~vance or progress payments to small business concerns.~~

11 ~~(b) Advance payments under subsection (a) shall not~~
12 ~~be made in excess of the amount required for contract per-~~
13 ~~formance and shall not exceed the unpaid contract price.~~

14 ~~(c) When progress payments are made, the Govern-~~
15 ~~ment shall have title to the progress payment inventory and,~~
16 ~~notwithstanding any other provisions of law, that title may~~
17 ~~not be divested by any action of the contractor, or proceed-~~
18 ~~ing in bankruptcy, or encumbered by any lien or security~~
19 ~~interest.~~

20 ~~(d) Advance payments under subsection (a) may be~~
21 ~~made only upon adequate security and a determination by~~
22 ~~the Agency head that to do so would be in the public inter-~~
23 ~~est. Such security may be in the form of a lien in favor of~~
24 ~~the Government on the property contracted for, on the bal-~~
25 ~~ance in an account in which such payments are deposited,~~

1 ~~or on such property acquired for performance of the contract~~
2 ~~as the parties may agree. This lien shall have priority over~~
3 ~~all other liens.~~

4 ~~REMISSION OF LIQUIDATED DAMAGES~~

5 ~~SEC. 506. Upon the recommendation of the Agency~~
6 ~~head the Comptroller General of the United States may~~
7 ~~remit all or part, as he considers just and equitable, of any~~
8 ~~liquidated damages provided by the contract for delay in~~
9 ~~performing the contract.~~

10 ~~DETERMINATIONS AND FINDINGS~~

11 ~~SEC. 507. (a) Determinations, findings, and decisions~~
12 ~~provided for by this Act may be made with respect to con-~~
13 ~~tracts individually or with respect to classes of contracts.~~

14 ~~(b) Each determination or decision shall be based upon~~
15 ~~written findings of the officer making the determination or~~
16 ~~decision, and shall be retained in the official contract file.~~

17 ~~COMPETITIVE BIDDING INFORMATION~~

18 ~~SEC. 508. (a) If the contracting officer or any other~~
19 ~~agency employee has reason to believe that any bid, pro-~~
20 ~~posal or offer evidences a violation of the antitrust laws or~~
21 ~~provisions of this Act, he shall refer that bid, proposal or~~
22 ~~offer through the appropriate agency official, directly to the~~
23 ~~Attorney General of the United States for appropriate~~
24 ~~action.~~

25 ~~(b) Upon the request of the Attorney General of the~~

1 ~~United States, the Agency head shall make available to the~~
2 ~~Attorney General information which the Attorney General~~
3 ~~considers necessary and relevant to any investigation, prose-~~
4 ~~cution or other action by the United States under the anti-~~
5 ~~trust laws or other statute enforced by the Attorney General.~~

6 ~~(c) The Agency head shall render needed assistance to~~
7 ~~the Attorney General in any investigation and prosecution~~
8 ~~flowing from the information provided in subsection (a)~~
9 ~~or (b) or from other investigation and prosecution in other~~
10 ~~antitrust matters.~~

11 ~~GOVERNMENT SURVEILLANCE REQUIREMENTS~~

12 ~~SEC. 509. (a) Notwithstanding any other provision of~~
13 ~~law, an agency head may grant a waiver from Government~~
14 ~~surveillance requirements for a period not to exceed two~~
15 ~~years to that part of a contractor's operation which is sep-~~
16 ~~arately managed and accounted for if more than 75 per cen-~~
17 ~~tum of the business activity of that part of a contractor's~~
18 ~~operation as measured by total sales volume, is being con-~~
19 ~~ducted under commercial and competitive Government con-~~
20 ~~tracts, where the Government awarded firm fixed-price~~
21 ~~type contracts or where price was the deciding or a signifi-~~
22 ~~cant factor for award.~~

23 ~~(b) Such a waiver shall relieve that contractor profit~~
24 ~~center from Government, but not General Accounting Of-~~
25 ~~fice surveillance requirements including:~~

1 ~~(1) agency management, procurement system and~~
2 ~~property reviews;~~

3 ~~(2) determinations of the reasonableness of indi-~~
4 ~~rect overhead costs;~~

5 ~~(3) provisions of the Cost Accounting Standards~~
6 ~~Act (Public Law 93-379);~~

7 ~~(4) advance agreements for independent research~~
8 ~~and development and bid and proposal activities; and~~

9 ~~(5) provisions of the Renegotiation Act.~~

10 ~~(e) Such a waiver shall not be granted, and may be~~
11 ~~revoked at any time, if the Agency head determines that,~~
12 ~~for other reasons, the combination of commercial and Gov-~~
13 ~~ernment competitive activity is insufficient to insure efficient~~
14 ~~contractor activity under Government contracts.~~

15 ~~MAINTENANCE OF REGULATIONS~~

16 ~~SEC. 510. (a) Notwithstanding the provisions of title~~
17 ~~VIII of this Act, or any other provisions of law, regulations,~~
18 ~~including amendments thereof approved pursuant to sub-~~
19 ~~section (b), relating to Federal procurement as determined~~
20 ~~by the Administrator of the Office of Federal Procurement~~
21 ~~Policy, promulgated or in effect one hundred and eighty days~~
22 ~~before the date of enactment of this Act shall remain in ef-~~
23 ~~fect until repealed by order of the Administrator of the~~
24 ~~Office of Federal Procurement Policy or until the lapse of~~
25 ~~two years after the date of enactment of this Act, whichever~~

1 ~~is earlier. No regulation preserved by operation of this sec-~~
2 ~~tion may be amended without the prior approval of the Ad-~~
3 ~~ministrator of the Office of Federal Procurement Policy.~~

4 ~~(b) The Administrator of the Office of Federal Pro-~~
5 ~~curement Policy is authorized to approve the amendment of~~
6 ~~regulations preserved under the provisions of subsection (a).~~

7 ~~TITLE VI—DELEGATION OF AUTHORITY~~

8 ~~DELEGATION WITHIN AN EXECUTIVE AGENCY~~

9 ~~SEC. 601. Each agency head may delegate any author-~~
10 ~~ity under this Act except the authority to grant waivers~~
11 ~~under section 509, provided that the authority to make~~
12 ~~determinations under sections 202 and 304 through 306~~
13 ~~shall not be delegated below the level of the head of a~~
14 ~~procuring activity.~~

15 ~~JOINT ACQUISITIONS~~

16 ~~SEC. 602. (a) To facilitate acquisition of property or~~
17 ~~services by one executive agency for another executive~~
18 ~~agency, and to facilitate joint acquisition by those agencies—~~

19 ~~(1) the Agency head may, within his agency,~~
20 ~~delegate functions and assign responsibilities relating~~
21 ~~to the acquisition;~~

22 ~~(2) the heads of two or more executive agencies~~
23 ~~may by agreement delegate acquisition functions and~~
24 ~~assign acquisition responsibilities from one agency to~~

1 ~~another of those agencies or to an officer or civilian~~
2 ~~employee of another of those agencies; and~~

3 ~~(3) the heads of two or more executive agencies~~
4 ~~may create joint or combined offices to exercise acqui-~~
5 ~~sition functions and responsibilities.~~

6 ~~(b) Subject to the provisions of section 686 of title 31,~~
7 ~~United States Code—~~

8 ~~(1) appropriations available for acquisition of~~
9 ~~property and services by an executive agency may~~
10 ~~be made available for obligation for acquisition of~~
11 ~~property and services by any other agency in amounts~~
12 ~~authorized by the head of the ordering agency and~~
13 ~~without transfer of funds on the books of the Depart-~~
14 ~~ment of the Treasury;~~

15 ~~(2) a disbursing officer of the ordering agency may~~
16 ~~make disbursement for any obligation chargeable under~~
17 ~~subsection (a) of this section, upon a voucher certified~~
18 ~~by an officer or civilian employee of the acquisition~~
19 ~~agency.~~

20 ~~TITLE VII—PROTESTS~~

21 ~~PURPOSE~~

22 ~~SEC. 701. In accordance with the authority of the~~
23 ~~Budget and Accounting Act of 1921 (chapter 18, title III,~~
24 ~~section 304, 42 Stat. 24, 31 U.S.C. 44) and this title,~~

1 ~~protests shall be decided in the General Accounting Office.~~
2 ~~To the fullest extent possible, the Comptroller General shall~~
3 ~~provide for the inexpensive, informal, and expeditious res-~~
4 ~~olution of protests.~~

5 ~~JURISDICTION~~

6 ~~SEC. 702. (a) The Comptroller General shall have~~
7 ~~authority to decide any protest submitted by an interested~~
8 ~~party in accordance with rules and regulations he shall issue~~
9 ~~pursuant to section 704.~~

10 ~~(b) No contract shall be awarded after the contracting~~
11 ~~activity has received notice of a protest to the Comptroller~~
12 ~~General while the matter is pending before him: *Provided,*~~
13 ~~*however,* That the head of an executive agency may author-~~
14 ~~ize the award of a contract notwithstanding such protest,~~
15 ~~upon a written finding that the interest of the United States~~
16 ~~will not permit awaiting the decision of the Comptroller~~
17 ~~General: *And provided further,* That the Comptroller is~~
18 ~~advised prior to the award of such finding.~~

19 ~~(c) With respect to any solicitation, proposed award,~~
20 ~~or award of contract protested to him in accordance with this~~
21 ~~title, the Comptroller General is authorized to declare that~~
22 ~~such solicitation, proposed award, or award does not com-~~
23 ~~port with law or regulation. If award has been made prior~~
24 ~~to such declaration the Comptroller General may further~~

1 ~~declare that the contract shall be terminated for the con-~~
2 ~~venience of the Government.~~

3 ~~PROCEEDINGS~~

4 ~~SEC. 703. (a) Proceedings shall be informal to the~~
5 ~~fullest extent possible.~~

6 ~~(b) Each decision of the Comptroller General shall be~~
7 ~~signed by him or his delegee and shall be binding upon all~~
8 ~~interested parties including the executive agency or agencies~~
9 ~~involved. A copy of the decision shall be furnished to the~~
10 ~~interested parties and the executive agency or agencies~~
11 ~~involved.~~

12 ~~(c) (1) All decisions shall be rendered promptly, con-~~
13 ~~sistent with the need to develop a complete record, in ac-~~
14 ~~cordance with regulations to be issued by the Comptroller~~
15 ~~General pursuant to section 704 of this title.~~

16 ~~(2) There shall be no ex parte proceedings before the~~
17 ~~Comptroller General except that this section shall not be~~
18 ~~deemed to preclude informal contacts with the parties for~~
19 ~~procedural purposes.~~

20 ~~(3) A conference shall be permitted before decision;~~
21 ~~however, no transcripts shall be required. Transcripts may~~
22 ~~be permitted at the Comptroller General's discretion or at~~
23 ~~the request of the interested party, provided the Comptroller~~
24 ~~General and each other interested party shall be furnished~~

1 ~~a copy. Costs of such transcripts and services shall be borne~~
2 ~~by the requesting party.~~

3 ~~(4) The Comptroller General shall, for good cause~~
4 ~~shown, authorize formal discovery proceedings and may~~
5 ~~sign and issue subpoenas requiring the production of~~
6 ~~books and records and attendance of witnesses for the~~
7 ~~taking of evidence. In case of refusal to obey a subpoena~~
8 ~~by a person who resides, is found, or transacts business~~
9 ~~within the jurisdiction of a United States district~~
10 ~~court, the court, upon application of the Comptroller~~
11 ~~General, shall have jurisdiction to issue the person an~~
12 ~~order requiring him to appear before the Comptroller~~
13 ~~General or his designee to produce the books and rec-~~
14 ~~ords, or to give testimony, or both. Any person who fails~~
15 ~~to obey the order of the court may be punished by the~~
16 ~~court as a contempt thereof.~~

17 ~~(d) The Comptroller General is authorized to dismiss~~
18 ~~any protest he determines to be frivolous or which, on its~~
19 ~~face, does not state a valid basis for protest.~~

20 ~~(e) Where the Comptroller General has declared that~~
21 ~~solicitation, proposed award, or award of a contract does~~
22 ~~not comport with law or regulation, he may further declare~~
23 ~~the entitlement of an appropriate party to bid and proposal~~
24 ~~preparation costs. In such cases the Comptroller General~~
25 ~~may remand the matter to the executive agency involved~~

1 ~~for an initial determination as to the amount of such costs.~~
2 ~~Declarations of entitlement to monetary awards shall be~~
3 ~~paid promptly by the executive agency concerned out of~~
4 ~~funds available for the purpose of the procurement or sale.~~

5 ~~(f) The Comptroller General, where he deems appro-~~
6 ~~priate, shall make recommendations for improving the pro-~~
7 ~~curement process.~~

8 ~~GENERAL PROVISIONS~~

9 ~~SEC. 701. The Comptroller General shall perform such~~
10 ~~acts, make such rules and regulations, and issue such orders,~~
11 ~~not inconsistent with this title, as may be necessary in the~~
12 ~~execution of the protest decision function. He may delegate~~
13 ~~his authority to other officers or employees of the General~~
14 ~~Accounting Office.~~

15 ~~TITLE VIII AMENDMENTS AND REPEALS~~

16 ~~AMENDMENTS~~

17 ~~SEC. 801. (a) The Agriculture Department Appropria-~~
18 ~~tion Act, 1923, is amended by striking out “, after due ad-~~
19 ~~vertisement and on competitive bids,” in the first proviso~~
20 ~~on the page at forty-second Statutes at Large, page 517~~
21 ~~(7 U.S.C. 416).~~

22 ~~(b) Sections 101 (d) and 104 of the Department of~~
23 ~~Agriculture Organic Act of 1944 (58 Stat. 734, 736; 7~~
24 ~~U.S.C. 430, 432) are amended by striking out “in the open~~
25 ~~market”.~~

1 ~~(c) Section 2356 (b) of title 10, United States Code,~~
2 ~~is amended by striking out the last sentence.~~

3 ~~(d) Sections 4504 and 9504 of title 10, United States~~
4 ~~Code, are each amended by striking out everything after~~
5 ~~“United States” and inserting in lieu thereof a period.~~

6 ~~(e) Sections 4505 and 9505 of title 10, United States~~
7 ~~Code, are each amended by striking out the second sentence.~~

8 ~~(f) Clause (2) of section 502 (e) of the Act of August~~
9 ~~10, 1948 (62 Stat. 1283; 12 U.S.C. 1701c (b) (2)), is~~
10 ~~amended by striking out “, without regard to section 3709~~
11 ~~of the Revised Statutes”.~~

12 ~~(g) Section 502 (e) of the Act of December 31, 1970~~
13 ~~(84 Stat. 1784; 12 U.S.C. 1701z 2 (e)), is amended by~~
14 ~~striking out “, without regard to section 3709 of the Revised~~
15 ~~Statutes,”.~~

16 ~~(h) Section 708 (h) of the Act of June 27, 1934, as~~
17 ~~amended August 10, 1948 (62 Stat. 1279; 12 U.S.C. 1747~~
18 ~~g (h)), is amended by striking out the proviso at the end.~~

19 ~~(i) Section 712 of the Act of June 27, 1934, as~~
20 ~~amended August 10, 1948 (62 Stat. 1281; 12 U.S.C.~~
21 ~~1747k) is amended by striking out “and without regard~~
22 ~~to section 3709 of the Revised Statutes”.~~

23 ~~(j) Section 208 (b) of the Act of June 26, 1934, as~~
24 ~~amended October 19, 1970 (84 Stat. 1014; 12 U.S.C.~~
25 ~~1788 (b)), is amended by striking out the last sentence.~~

1 ~~(k) Clause (4) of section 2 (b) of the Act of July 18,~~
2 ~~1958 (72 Stat. 386; 15 U.S.C. 634 (b) (4)), is amended~~
3 ~~by striking out: "Section 3709 of the Revised Statutes, as~~
4 ~~amended (41 U.S.C., section 5), shall not be construed~~
5 ~~to apply to any contract of hazard insurance or to any pur-~~
6 ~~chase or contract for services or supplies on account of prop-~~
7 ~~erty obtained by the Administrator or as a result of loans~~
8 ~~made under this Act if the premium therefor or the amount~~
9 ~~thereof does not exceed \$1,000."~~

10 ~~(l) Section 3 of the Act of April 24, 1950 (64 Stat.~~
11 ~~83; 16 U.S.C. 580c), is amended to read as follows:~~

12 ~~"Sec. 3. The Forest Service is authorized to make~~
13 ~~purchases of (1) materials to be tested or upon which~~
14 ~~experiments are to be made or (2) special devices, test~~
15 ~~models, or parts thereof, to be used (a) for experimenta-~~
16 ~~tion to determine their suitability for or adaptability to~~
17 ~~accomplishment of the work for which designed or (b) in~~
18 ~~the designing or developing of new equipment: *Provided,*~~
19 ~~That not to exceed \$50,000 may be expended in any one~~
20 ~~fiscal year pursuant to this authority and not to exceed~~
21 ~~\$10,000 on any one item or purchase."~~

22 ~~(m) Section 2 (b) (1) of the Act entitled "An Act to~~
23 ~~authorize the construction of a National Fisheries Center~~
24 ~~and Aquarium in the District of Columbia and to provide for~~
25 ~~its operation", approved October 9, 1962 (76 Stat. 753;~~

1 ~~16 U.S.C. 1052), is amended by striking out “, without~~
2 ~~regard to the provisions of section 3709 of the Revised~~
3 ~~Statutes of the United States (41 U.S.C. 5),”.~~

4 ~~(n) Subsections 2 (a) (1) and 2 (b) (1) of the Act of~~
5 ~~July 26, 1954 (79 Stat. 44; 20 U.S.C. 331a (a) (1), (b)~~
6 ~~(1), are amended by striking out any references to section~~
7 ~~3709 of the Revised Statutes and to section 5 of title 41,~~
8 ~~United States Code.~~

9 ~~(o) Section 224 (a) of the Act of November 8, 1965~~
10 ~~(79 Stat. 1228; 20 U.S.C. 1034 (a)), is amended by strik-~~
11 ~~ing out “, and, without regard to section 3709 of the Revised~~
12 ~~Statutes (41 U.S.C. 5),”.~~

13 ~~(p) Section 7 of the Act of December 20, 1945, as~~
14 ~~amended October 10, 1949 (59 Stat. 621; 22 U.S.C. 287e),~~
15 ~~is amended by striking out “, all without regard to section~~
16 ~~3709 of the Revised Statutes, as amended (41 U.S.C. 5).”.~~

17 ~~(q) Section 707 of the Act of August 13, 1946 (60~~
18 ~~Stat. 1019; 22 U.S.C. 1047), is amended by striking out~~
19 ~~“, without regard to section 3709 of the Revised Statutes”.~~

20 ~~(r) Section 22 (e) (7) of the Act of December 29,~~
21 ~~1970 (84 Stat. 1613, 29 U.S.C. 671 (e) (7)), is amended~~
22 ~~by striking out “, and without regard to section 3709 of the~~
23 ~~Revised Statutes, as amended (41 U.S.C. 5), or any other~~
24 ~~provision of law relating to competitive bidding.”~~

25 ~~(s) Section 6 (b) of the Act of August 31, 1954 (68~~

1 ~~Stat. 1010; 30 U.S.C. 556 (b))~~, is amended by striking out
2 ~~“and without regard to the provisions of section 3709, Re-~~
3 ~~vised Statutes (41 U.S.C. 5)”~~.

4 ~~(t) Section 1820 (b) of title 38, United States Code,~~
5 ~~is amended by striking out “section 5 of title 41” and in-~~
6 ~~serting in lieu thereof the “Federal Acquisition Act of~~
7 ~~1977” and by deleting “if the amount of such contract~~
8 ~~exceeds \$1,000.”~~.

9 ~~(u) Section 5002 of title 38, United States Code,~~
10 ~~is amended by substituting a period for the comma after~~
11 ~~“work” and striking out the remainder of the section.~~

12 ~~(v) The Act of October 10, 1940, as amended (54~~
13 ~~Stat. 109; 41 U.S.C. 6a, b (a), (c), (d))~~, is amended
14 ~~by striking out section 2 and subsections (c) and (d), and~~
15 ~~by striking out “without regard to the provisions of sec-~~
16 ~~tion 3709 of the Revised Statutes, as amended,” in sub-~~
17 ~~section (a). The Act of July 27, 1965 (79 Stat. 276; 41~~
18 ~~U.S.C. 6a-1) is amended by striking out any and all ref-~~
19 ~~erences to section 3709 of the Revised Statutes in the~~
20 ~~sections relating to Architect of the Capitol.~~

21 ~~(w) Section 11 of the Act of June 30, 1936 (49~~
22 ~~Stat. 2039, renumbered section 12 in 66 Stat. 308; 41~~
23 ~~U.S.C. 45), is amended to read as follows:~~

24 ~~“SEC. 12. The provisions of this Act requiring the~~
25 ~~inclusion of representations with respect to minimum wages~~

1 ~~shall apply only to purchases or contracts relating to such~~
2 ~~industries as have been the subject matter of a determina-~~
3 ~~tion by the Secretary of Labor.”.~~

4 ~~(x) Section 356 (b) of the Act of July 1, 1944, as~~
5 ~~added October 18, 1968 (82 Stat. 1175; 42 U.S.C. 163d~~
6 ~~(b)), is amended by striking out the references to section~~
7 ~~3709 of the Revised Statutes and 41 U.S.C. 5 in clause (3),~~
8 ~~and by striking out the parenthetical phrase “by negotiation~~
9 ~~or otherwise)” in clause (4).~~

10 ~~(y) Section 1 (b) of the Act of October 14, 1940 (54~~
11 ~~Stat. 1126; 42 U.S.C. 1521 (b)), is amended by striking~~
12 ~~out the reference to section 3709 of the Revised Statutes in~~
13 ~~the first parenthetical phrase, and by striking out the first~~
14 ~~proviso.~~

15 ~~(z) Section 202 (b) of the Act of October 14, 1940 (55~~
16 ~~Stat. 362; 42 U.S.C. 1532 (b)), is amended by striking out~~
17 ~~the reference to section 3709 of the Revised Statutes.~~

18 ~~(aa) Section 309 of the Act of September 1, 1951 (65~~
19 ~~Stat. 307; 42 U.S.C. 1592h) is amended by striking out~~
20 ~~clause (a), and amending clause (b) to read as follows:~~

21 ~~“(b) the fixed fee under a contract on a cost-plus-a-~~
22 ~~fixed-fee basis shall not exceed 6 per centum of the esti-~~
23 ~~mated cost;”.~~

24 ~~(bb) Sections 103 (b) (4) and 104 (a) (2) of the Act~~
25 ~~of July 14, 1955, as amended November 21, 1967 (81~~

1 ~~Stat. 486, 487; 42 U.S.C. 1857b (b) (4), b-1(a) (2))~~, is
2 ~~amended by striking out the references to section 3709 of~~
3 ~~the Revised Statutes and to section 5 of title 41, United~~
4 ~~States Code.~~

5 ~~(cc) Section 31 (b) of the Atomic Energy Act of 1954~~
6 ~~(68 Stat. 927; 42 U.S.C. 2051c) is amended to read as~~
7 ~~follows:~~

8 ~~“(b) The Commission may make available for use in~~
9 ~~connection with arrangements made under this section such~~
10 ~~of its equipment and facilities as it may deem desirable.”.~~

11 ~~(dd) Section 41 (b) of the Atomic Energy Act of~~
12 ~~1954 (68 Stat. 928; 42 U.S.C. 2061 (b))~~, is amended
13 ~~by striking out the two sentences immediately preceding~~
14 ~~the last sentence in this section.~~

15 ~~(ee) Section 43 of the Atomic Energy Act of 1954~~
16 ~~(68 Stat. 929; 42 U.S.C. 2063)~~, is amended by striking
17 ~~out the following: “without regard to the provisions of sec-~~
18 ~~tion 3709 of the Revised Statutes, as amended, upon certifi-~~
19 ~~cation by the Commission that such action is necessary in~~
20 ~~the interest of the common defense and security, or upon a~~
21 ~~showing by the Commission that advertising is not reason-~~
22 ~~ably practicable. Partial and advance payments may be~~
23 ~~made under contracts for such purposes.”.~~

24 ~~(ff) Section 66 of the Atomic Energy Act of 1954 (68~~
25 ~~Stat. 933; 42 U.S.C. 2096)~~, is amended by striking out

1 ~~the following: "Any purchase made under this section may~~
2 ~~be made without regard to the provisions of section 3709~~
3 ~~of the Revised Statutes, as amended, upon certification by~~
4 ~~the Commission that such action is necessary in the interest~~
5 ~~of the common defense and security, or upon a showing by~~
6 ~~the Commission that advertising is not reasonably prac-~~
7 ~~ticable. Partial and advance payments may be made under~~
8 ~~contracts for such purposes."~~

9 ~~(gg) Section 203 (e) of the Act of April 3, 1970~~
10 ~~(81 Stat. 115; 42 U.S.C. 4372 (e)), is amended by strik-~~
11 ~~ing out the references to section 3709 of the Revised~~
12 ~~Statutes and to section 5 of title 41, United States Code.~~

13 ~~(hh) Section 703 of the Act of June 29, 1936 (49~~
14 ~~Stat. 2008; 46 U.S.C. 1193), is amended by striking out~~
15 ~~subsection (a), by striking out "For the construction, re-~~
16 ~~construction, or reconditioning of vessels, and" in subsec-~~
17 ~~tion (c), and by renumbering subsections (b) and (c)~~
18 ~~as (a) and (b), respectively.~~

19 ~~(ii) Section 8 (a) of the Act of September 30, 1965~~
20 ~~(79 Stat. 894; 49 U.S.C. 1638 (a)), is amended by~~
21 ~~striking out the references to section 4709 of the Revised~~
22 ~~Statutes and to section 5 of title 41, United States Code,~~
23 ~~in paragraph (1), and by striking out paragraph (3).~~

24 ~~(jj) Section 5012 of title 38, United States Code, is~~

1 ~~amended by striking out the second sentence in subsection~~
2 ~~(a) and all of subsection (c).~~

3

~~REPEALS~~

4 ~~SEC. 802. The following statutes or provisions of~~
5 ~~statutes are repealed.~~

6 ~~Chapters 135 and 137 and sections 2306, 4535, 4540,~~
7 ~~7212, 9535, and 9540 of title 10, United States Code; sec-~~
8 ~~tion 7 of the Act of May 18, 1938 (52 Stat. 406; 16 U.S.C.~~
9 ~~833f); section 7 of the Act of March 3, 1875, as amended~~
10 ~~(18 Stat. 450; 25 U.S.C. 96); section 3 of the Act of~~
11 ~~August 15, 1876 as amended (19 Stat. 199; 25 U.S.C.~~
12 ~~97); sections 602 (d) (3) and 602 (d) (10) of the Fed-~~
13 ~~eral Property and Administrative Services Act as amended~~
14 ~~(40 U.S.C. 474 (3), (10); sections 10 (a) and 10 (b) of~~
15 ~~the Act of September 9, 1959 (73 Stat. 481; 40 U.S.C.~~
16 ~~609 (a), (b)); 41 U.S.C. 5; section 2 of the Act of Octo-~~
17 ~~ber 10, 1940, as amended October 31, 1951 (54 Stat. 1110;~~
18 ~~41 U.S.C. 6a); sections 3710 and 3735 of the Revised~~
19 ~~Statutes (41 U.S.C. 8, 13); section 3653 of the Revised~~
20 ~~Statutes, as amended by the Act of July 7, 1884 (23 Stat.~~
21 ~~204; 41 U.S.C. 24); title III of the Federal Property and~~
22 ~~Administrative Services Act of 1949 as amended; 41 U.S.C.~~
23 ~~254 (b); section 10 (a) of the Act of September 5, 1950~~
24 ~~(64 Stat. 591; 41 U.S.C. 256a); section 510 (a) of the~~

1 ~~Act of July 15, 1949 (63 Stat. 437; 42 U.S.C. 1480 (a));~~
2 ~~section 6 (c) of the EURATOM Cooperation Act of 1958~~
3 ~~(72 Stat. 1085; 42 U.S.C. 2295 (c)); section 1345 (b) of~~
4 ~~the Act of August 1, 1968 (82 Stat. 585; 42 U.S.C. 4081~~
5 ~~(b)); section 404 of the Act entitled "An Act to author-~~
6 ~~ize appropriations during the fiscal year 1969 for procure-~~
7 ~~ment of aircraft, missiles, naval vessels, and tracked combat~~
8 ~~vehicles, research, development, test, and evaluation for the~~
9 ~~Armed Forces, and to prescribe the authorized personnel~~
10 ~~strength of the Selected Reserve of each Reserve component~~
11 ~~of the Armed Forces, and for other purposes, approved,~~
12 ~~September 20, 1969 (82 Stat. 849).~~

13 **SHORT TITLE; TABLE OF CONTENTS**

14 **SECTION 1. (a) SHORT TITLE.—***This Act may be cited*
15 *as the "Federal Acquisition Act of 1977".*

16 **(b) TABLE OF CONTENTS.—**

Sec. 1. Short title; table of contents.

Sec. 2. Declaration of policy.

Sec. 3. Definitions.

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Sec. 102. Regulatory compliance.

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- Sec. 301. Criteria for use.*
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- Sec. 303. Evaluation, award, and notifications.*
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- Sec. 601. Delegation within an executive agency.*
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- Sec. 701. Purpose.*
- Sec. 702. Jurisdiction.*
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- Sec. 704. General provisions.*
- Sec. 705. Judicial review.*

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- Sec. 801. Applicability of subsequent laws.*
- Sec. 802. Separability.*

TITLE IX—AMENDMENTS AND REPEALS

- Sec. 901. Amendments.*
- Sec. 902. Repeals.*

1

DECLARATION OF POLICY

2

Findings

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SEC. 2. (a) The Congress hereby finds that—

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(1) the laws controlling Federal purchasing have become outdated, fragmented, and needlessly inconsistent;

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(2) these deficiencies have contributed to significant inefficiency, ineffectiveness, and waste in Federal spending;

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(3) a new consolidated statutory base is needed, as recommended by the Commission on Government Procurement;

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(4) further, existing statutes need to be modernized to focus on effective competition and new technology in that—

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(A) national productivity rests on a base of competitive industry applying new technology in its goods and services; and

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(B) Federal spending practices can encourage the Nation's business community by stimulating effective competition and the application of new technology.

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Policy

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24

(b) It is the policy of the United States that when acquiring property and services for the use of the Federal

1 *Government, the Government shall, whenever practicable*
2 *rely on the private sector, and shall act so as to—*

3 *.(1) best meet public needs at the lowest total cost;*

4 *(2) maintain the independent character of private*
5 *enterprise by substituting the incentives and constraints*
6 *of effective competition for regulatory controls;*

7 *(3) encourage innovation and the application of new*
8 *technology as a primary consideration by stating agency*
9 *needs so that prospective suppliers will have maximum*
10 *latitude to exercise independent business and technical*
11 *judgments in offering a range of competing alternatives;*

12 *(4) maintain and expand the available Federal*
13 *supply base by judicious acquisition practices designed*
14 *to assure Government contracting with new and small*
15 *business concerns to the maximum practicable extent;*

16 *(5) make available for review and examination those*
17 *pertinent Federal laws and regulations applicable to the*
18 *awards of contracts and those which may impact the per-*
19 *formance of contracts, including, for example, Federal*
20 *laws and agency rules relating to air and water clean-*
21 *liness requirements, and to occupational safety require-*
22 *ments;*

23 *(6) provide opportunities to minority business firms*
24 *to grow through Government contracts;*

1 (7) *initiate large scale productions only after the*
2 *item or equipment to be acquired has been proven ade-*
3 *quate by operational testing;*

4 (8) *provide contractors with the opportunity to*
5 *earn a profit on Government contracts commensurate*
6 *with the contribution made to meeting public needs and*
7 *comparable to the profit opportunities available in other*
8 *markets requiring similar investments, technical and fi-*
9 *nancial risks and skills;*

10 (9) *minimize Government surveillance of contrac-*
11 *tor operations and contractor performance, and to waive*
12 *any controls and surveillance not necessary to insure*
13 *satisfactory performance of contracts;*

14 (10) *pay contractors promptly any moneys due*
15 *them under contracts awarded by the United States;*

16 (11) *rely on and promote effective competition; to in-*
17 *sure the availability to the Government of alternative*
18 *offers that provide a range of concept, design, perform-*
19 *ance, price, total cost, service, and delivery; and to*
20 *facilitate the competitive entry of new and small sellers.*

21 *Effective competition is generally characterized by—*

22 (A) *timely availability to prospective sellers of*
23 *information required to respond to agency needs;*

24 (B) *independence of action by buyer and seller;*

25 (C) *efforts of two or more sellers, acting in-*

1 *ment as defined by section 102 of title 5 United States Code;*
2 *the United States Postal Service; and a wholly owned Gov-*
3 *ernment Corporation as defined by section 846 of title 31,*
4 *United States Code (but does not include the Tennessee*
5 *Valley Authority or the Bonneville Power Administration).*

6 (c) *The term "agency head" means the head of an*
7 *executive agency as defined in subsection (b).*

8 (d) *The term "contracting officer" means any person*
9 *who, either by virtue of his position or by appointment in*
10 *accordance with applicable regulations, has the authority to*
11 *enter into and administer contracts and make determina-*
12 *tions and findings with respect thereto. The term also in-*
13 *cludes the authorized representative of the contracting officer,*
14 *acting within the limits of his authority.*

15 (e) *The term "property" includes personal property*
16 *and leaseholds and other interests therein, but excludes real*
17 *property in being and leaseholds and other interests therein.*

18 (f) *The term "total cost" means all resources con-*
19 *sumed or to be consumed in the acquisition and use of*
20 *property or services. It may include all direct, indirect,*
21 *recurring, nonrecurring, and other related costs incurred,*
22 *or estimated to be incurred in design, development, test,*
23 *evaluation, production, operation, maintenance, disposal,*
24 *training, and support of an acquisition over its useful life*
25 *span, wherever each factor is applicable.*

1 (g) *The term "functional specification" means a de-*
2 *scription of the intended use of a product required by the*
3 *Government. A functional specification may include a state-*
4 *ment of the qualitative nature of the product required and,*
5 *when necessary, may set forth those minimum essential*
6 *characteristics and standards to which such product must*
7 *conform if it is to satisfy its intended use.*

8 (h) *The term "unsolicited proposal" means a written*
9 *offer to perform a proposed effort, submitted to an agency*
10 *by an individual or organization solely on its own initiative*
11 *with the objective of obtaining a contract, and not in response*
12 *to an agency request or communication.*

13 *TITLE I—ACQUISITION METHODS AND*
14 *REGULATORY COMPLIANCE*

15 *ACQUISITION METHODS*

16 *SEC. 101. (a) Except as otherwise authorized by law,*
17 *an executive agency shall acquire property or services in*
18 *accordance with this Act by utilizing—*

19 (1) *the competitive sealed bids method as pro-*
20 *vided in title II of this Act; or*

21 (2) *the competitive negotiation method, as pro-*
22 *vided in title III of this Act; or*

23 (3) *the simplified small purchase method as pro-*
24 *vided in title IV of this Act.*

25 (b) *These methods of acquiring property or services*

1 *are equally valid alternatives when selected on the basis*
2 *of the nature of the product or service being acquired, the*
3 *circumstances of the acquisition, and other criteria set forth*
4 *in this Act as implemented by the Administrator for Federal*
5 *Procurement Policy.*

6 **REGULATORY COMPLIANCE**

7 **SEC. 102. (a)** *The Administrator for Federal Pro-*
8 *curement Policy is authorized and directed, pursuant to the*
9 *authority conferred by Public Law 93-400 and subject*
10 *to the procedures set forth in such public law—*

11 *(1) to promulgate a single, simplified, uniform*
12 *Federal regulation implementing this Act and to estab-*
13 *lish procedures for insuring compliance with the Act*
14 *and such regulation by all executive agencies within two*
15 *years after the date of enactment of this Act;*

16 *(2) to review such regulation on a regular basis*
17 *and issue revisions as necessary;*

18 *(3) to make periodic studies in order to determine*
19 *whether agency compliance with this Act has been effi-*
20 *cient and effective; and*

21 *(4) to establish and oversee a program to reduce*
22 *agency use of detailed product specifications.*

23 **(b)** *The Administrator for Federal Procurement Policy*
24 *shall include in his annual report required under section 8*

1 of Public Law 93-400 a report of his activities under this
2 section, including his assessment of agency implementation
3 of and compliance with the requirements of this Act (in-
4 cluding, for example, specific reductions in the use of detailed
5 specifications pursuant to this Act), and recommendations
6 for revisions in this Act or any other provision of law.

7 **TITLE II—ACQUISITION BY COMPETITIVE**

8 **SEALED BIDS**

9 **CRITERIA FOR USE**

10 *SEC. 201. The competitive sealed bids method shall*
11 *be used in the acquisition of property and services when all*
12 *of the following conditions are present—*

13 *(1) the anticipated total contract price exceeds the*
14 *amount specified in title IV of this Act for use of the*
15 *simplified small purchase method;*

16 *(2) the agency need can be practicably defined in*
17 *terms not restricted by security or proprietary design;*

18 *(3) the private sector will provide a sufficient num-*
19 *ber of qualified suppliers willing to compete for and*
20 *able to perform the contract;*

21 *(4) suitable products or services capable of meeting*
22 *the agency need are available so as to warrant the award*
23 *of a fixed price contract to a successful bidder selected*
24 *primarily on the basis of price;*

1 (d) *The preparation and use of detailed product speci-*
2 *fications in a purchase description shall be subject to prior*
3 *approval by the agency head. Such approval shall include*
4 *written justification, to be made a part of the official contract*
5 *file, delineating the circumstances which preclude the use of*
6 *functional specifications and which require the use of detailed*
7 *product specifications in the purchase descriptions.*

8 (e) *Where it is impracticable to plan for award primar-*
9 *ily on the basis of price, the contracting officer may request the*
10 *submission of unpriced technical proposals and subsequently*
11 *issue an invitation for sealed bids limited to those offerors*
12 *whose technical proposals meet the standards set forth in the*
13 *original invitation.*

14 **EVALUATION, AWARD, AND NOTIFICATIONS**

15 **SEC. 203. (a)** *All bids shall be opened publicly at the*
16 *time and place stated in the invitation.*

17 (b) *Award shall be made to the responsible bidder whose*
18 *bid conforms to the invitation and is most advantageous to the*
19 *Government, price and other factors considered: Provided,*
20 *That all bids may be rejected when the agency head deter-*
21 *mines that, for cogent and compelling reasons, it is in the*
22 *Government's interest to do so.*

23 (c) *Notice of award shall be made in writing by the*
24 *contracting officer with reasonable promptness and all other*
25 *bidders shall be appropriately notified.*

1 *TITLE III—ACQUISITION BY COMPETITIVE*
2 *NEGOTIATION*
3 *CRITERIA FOR USE*

4 *SEC. 301. The competitive negotiation method shall be*
5 *used in the acquisition of property and services when—*

6 *(1) the anticipated total contract price exceeds the*
7 *amount specified in title IV of this Act for use of the*
8 *simplified small purchase method; and*

9 *(2) the acquisition does not meet the criteria estab-*
10 *lished pursuant to section 101(b) or as set forth in sec-*
11 *tion 201 of this Act for use of competitive sealed bids.*

12 *SOLICITATIONS*

13 *SEC. 302. (a) Solicitations for offers shall be issued to a*
14 *sufficient number of qualified sources so as to obtain effective*
15 *competition and shall be publicized in accordance with section*
16 *512 of this Act, with copies of the solicitation to be provided*
17 *or made accessible to other interested or potential sources*
18 *upon request; however, eligibility to respond to the solicitation*
19 *may be restricted to concerns eligible to participate in small*
20 *business set-asides or other such authorized programs.*

21 *(b)(1) Each solicitation shall include both the evalua-*
22 *tion methodology and the relative importance of all significant*
23 *factors to be used during competitive evaluation and for final*
24 *selection. In any case, if price is included as a primary or*
25 *significant factor, the Government's evaluation shall be based*
26 *where appropriate on the total cost to meet the agency need.*

1 (2) *Any changes in the evaluation factors or their*
2 *relative importance shall be communicated promptly in writ-*
3 *ing to all competitors.*

4 (c) *To the maximum extent practicable and consistent*
5 *with agency needs, solicitations shall encourage effective com-*
6 *petition by—*

7 (1) *setting forth the agency need in functional*
8 *terms so as to encourage the application of a variety of*
9 *technological approaches and elicit the most promising*
10 *competing alternatives,*

11 (2) *not prescribing performance characteristics*
12 *based on a single approach, and*

13 (3) *not prescribing technical approaches or in-*
14 *novations obtained from any potential competitor.*

15 (d) *If either the Government or an offeror identifies*
16 *inadequacies in the solicitation which cause misunderstand-*
17 *ings of the agency's needs or requirements, clarification of*
18 *intent shall be made to all offerors in a timely fashion and*
19 *on an equal basis.*

20 (e) *The preparation and use of detailed specifications*
21 *in a solicitation shall be subject to prior approval by the*
22 *agency head. Such approval shall include written justifica-*
23 *tion to be made a part of the official contract file, delineating*
24 *the circumstances which preclude the use of functional speci-*
25 *fications and which require the use of detailed product*

1 *EVALUATIONS, AWARD, AND NOTIFICATIONS*

2 *SEC. 303. (a) Written or oral discussions shall be con-*
3 *ducted with all responsible offerors in a competitive range.*
4 *Such discussions shall generally be limited to obtaining any*
5 *needed clarification, substantiation, or extension of offers. An*
6 *initial offer may be accepted without discussion when it is*
7 *clear that the agency need would be satisfied on fair and*
8 *reasonable terms without such discussions, and the solicitation*
9 *has advised all offerors that award may be made without*
10 *discussions. If discussions are conducted with any offeror,*
11 *discussions shall be conducted with all offerors in a com-*
12 *petitive range. Discussions shall not disclose the strengths*
13 *or weaknesses of competing offerors, or disclose any informa-*
14 *tion from an offeror's proposal which would enable another*
15 *offeror to improve his proposal as a result thereof. Auction*
16 *techniques are strictly prohibited. Auction techniques include,*
17 *but are not limited to, indicating to an offeror a price which*
18 *must be met to obtain further consideration, or informing him*
19 *that his price is not low in relation to another offeror, or*
20 *making multiple requests for best and final offers. Detailed*
21 *negotiations of price and technical factors shall generally be*
22 *limited to the successful offeror(s).*

23 *(b) When awards are made for alternative approaches*
24 *selected on the basis of the factors contained in the sollicita-*
25 *tion, whether for design, development, demonstration, or*

1 *delivery, the contractors shall be sustained in competition to*
2 *the maximum extent practicable until sufficient test or evalua-*
3 *tion information becomes available to narrow the choice to a*
4 *particular product or service.*

5 *(c) Until selection is made, information concerning the*
6 *award shall not be disclosed to any person not having*
7 *source selection responsibilities, except that offerors who are*
8 *eliminated from the competition may be informed prior to*
9 *awards.*

10 *(d) Award shall be made to one or more responsible*
11 *offerors whose proposal(s), as evaluated in accordance with*
12 *the terms of the solicitation are most advantageous to the*
13 *Government. Notification of award to all unsuccessful*
14 *offerors shall be made with reasonable promptness.*

15 *(e) Notwithstanding any other provision of this Act, the*
16 *continued use of multiple award schedules is authorized.*

17 **NONCOMPETITIVE EXCEPTIONS**

18 *SEC. 304. (a) Compliance with the procedures pre-*
19 *scribed in sections 302 and 303 is not required if the con-*
20 *tract to be awarded stems from acceptance of an unsolicited*
21 *proposal, or if the agency head determines that it is in the*
22 *best interest of the Government to enter into a noncompetitive*
23 *contract: Provided,*

24 *(1) That such determination, together with the rea-*
25 *sons therefor, is in writing, and conforms with regula-*

1 *tions issued by the Administrator for Federal Procure-*
2 *ment Policy, pursuant to section 102(a) (1); and*

3 *(2) (A) for all contracts except those stemming from*
4 *the acceptance of an unsolicited proposal, notice of intent*
5 *to award such a contract shall be publicized pursuant to*
6 *section 512 at least thirty days in advance of solicitation*
7 *of a proposal from the prospective contractor; or, at least*
8 *thirty days in advance of the proposed award date, when*
9 *earlier notice is impracticable. Such notice shall include a*
10 *description of the property or services to be acquired, the*
11 *name of the prospective source, the time for accomplish-*
12 *ment of the work, and the reason for selection of the*
13 *source. If, after such notice, other sources demonstrate an*
14 *ability to meet the requirements for the work to be per-*
15 *formed, a solicitation shall be issued to all such prospec-*
16 *tive offerors;*

17 *(B) in the case of those contracts stemming from the*
18 *acceptance of an unsolicited proposal, notice of intent to*
19 *award such a contract shall be publicized prior to award,*
20 *pursuant to section 512 of this Act. Such notice shall*
21 *include a description of the property or service to be*
22 *acquired, the name of the prospective source, and the*
23 *time for accomplishment of the work.*

24 *(b) Where there is no commercial usage of the product*
25 *or service to be acquired under this section, and the agency*

1 *head determines that substantial follow-on provision of such*
2 *product or service will be required by the Government, the*
3 *agency head shall, when he deems appropriate, take action*
4 *through contractual provision, or otherwise, to provide the*
5 *Government with a capability to establish one or more other*
6 *competitive sources.*

7 **PRICE AND COST DATA AND ANALYSIS**

8 *SEC. 305. (a) (1) The term "price data" means actual*
9 *prices previously paid, contracted, quoted, or proposed, for*
10 *materials or services identical or comparable to those being*
11 *acquired, and the related dates, quantities, and item*
12 *descriptions which prudent buyers and sellers would reason-*
13 *ably expect to have a significant effect on the negotiation of a*
14 *contract price or payment provisions.*

15 *(2) The term "cost data" means all facts which prudent*
16 *buyers and sellers would reasonably expect to have a signifi-*
17 *cant effect on the negotiation of a contract price or payment*
18 *provisions. Such data are of a type that can be verified as*
19 *being factual, and are to be distinguished from judgmental*
20 *factors. The term does, however, include the facts upon*
21 *which a contractor's judgment is based.*

22 *(3) The term "price analysis" means the process of*
23 *examining and evaluating a price without evaluation of the*
24 *individual cost and profit elements of the price being*
25 *evaluated.*

1 (4) *The term "cost analysis" means the element-by-*
2 *element examination and evaluation of the estimated or actual*
3 *costs of contract performance, and involves analysis of cost*
4 *data furnished by an offeror or contractor and the judg-*
5 *mental factors applied in projecting from such data to the*
6 *offered price.*

7 (b) *The contracting officer shall obtain price data and*
8 *shall use price analysis techniques to analyze and evaluate*
9 *the reasonableness of a negotiated prime contract price or of*
10 *a price adjustment pursuant to a modification thereto where—*

11 (1) *the price is expected to be \$500,000 or less;*

12 (2) *the price is based on an established catalog or*
13 *market price of a commercial item sold in substantial*
14 *quantities to the general public; or*

15 (3) *there has been a recent comparable competitive*
16 *acquisition.*

17 (c) *In the case of subcontracts, when any of the*
18 *conditions in subsection (b) applies, price data shall be*
19 *obtained and price analysis techniques shall be used to analyze*
20 *and evaluate the reasonableness of—*

21 (1) *a subcontract price—where evaluation of a*
22 *subcontract price is necessary to insure the reasonable-*
23 *ness of the prime contract price, or*

24 (2) *a subcontract price adjustment pursuant to a*
25 *prime contract modification.*

1 *(d) Except as provided in subsection (b) (2) and (3),*
2 *cost data shall be obtained and cost analysis techniques shall*
3 *be used to analyze and evaluate the reasonableness of prices—*

4 *(1) whenever the price of a negotiated prime con-*
5 *tract or a price adjustment pursuant to a contract modi-*
6 *fication is expected to exceed \$500,000; or*

7 *(2) for any subcontract price or price adjustment*
8 *pursuant to a modification thereto in excess of \$500,000*
9 *which forms part of a negotiated prime contract price*
10 *or higher tier subcontract price.*

11 *(e) Notwithstanding subsection (b) hereof, the con-*
12 *tracting officer may obtain cost data and use cost analysis*
13 *techniques when authorized under circumstances set forth*
14 *in regulations issued by the Administrator for Federal*
15 *Procurement Policy pursuant to this Act.*

16 *(f) Contractors and subcontractors shall submit in*
17 *writing such price data or cost data as are required to be*
18 *obtained pursuant to this section. Regulations issued by the*
19 *Administrator for Federal Procurement Policy may author-*
20 *ize identification in writing of price data and cost data, in*
21 *lieu of actual submission, under specified circumstances.*

22 *(g) Any prime contract or subcontract or modification*
23 *thereto for which price data or cost data are required shall*
24 *contain a provision that the price to the Government, in-*
25 *cluding profit or fee, shall be adjusted to exclude any sig-*

1 *nificant sums by which it may be determined by the contract-*
2 *ing officer that such price was increased because of reliance on*
3 *data which were inaccurate, incomplete, or noncurrent as*
4 *of the date of submission or other date agreed upon between*
5 *the parties (which date shall be as close to the date of agree-*
6 *ment on the negotiated price or payment provisions as is*
7 *practicable).*

8 *(h) The requirements of this section do not apply to*
9 *contracts or subcontracts where the price negotiated is based*
10 *on adequate price competition, prices set by law or regu-*
11 *lation, or, in exceptional cases, where the head of the agency*
12 *determines that the requirements of this section may be*
13 *waived and states in writing his reasons for such deter-*
14 *mination.*

15 **ACCESS TO RECORDS**

16 **SEC. 306. (a) Until expiration of three years after**
17 **final payment under a contract or a subcontract negotiated**
18 **or amended under this title, an executive agency is entitled to**
19 **inspect the plants and examine any books, documents, papers,**
20 **records, or other data of the contractor and his subcontractors**
21 **that involve transactions relating to the contract or subcontract**
22 **or to the amendment thereof, including all such books, records,**
23 **and other data relating to the negotiation, pricing, or perform-**
24 **ance, of the contract or subcontract.**

25 **(b) Until expiration of three years after final payment**

1 *under a contract or a subcontract negotiated or amended un-*
2 *der this title, the Comptroller General of the United States or*
3 *his authorized representatives is entitled to inspect the plants*
4 *and examine any books, documents, papers, records, or other*
5 *data of the contractor and his subcontractors that directly per-*
6 *tain to, and involve transactions relating to the contract or sub-*
7 *contract or to the amendment thereof, including all such books,*
8 *records, and other data relating to the negotiation, pricing,*
9 *or performance of the contract or subcontract. This provi-*
10 *sion may be waived for any contract or subcontract with a*
11 *foreign contractor or subcontractor, if the Agency head*
12 *determines, with concurrence of the Comptroller General,*
13 *that waiver would be in the public interest. However, the*
14 *concurrence of the Comptroller General or his designee is*
15 *not required—*

16 (1) *where the contractor or subcontractor is a for-*
17 *ign government or agency thereof or is precluded by the*
18 *laws of the country involved from making its books,*
19 *documents, papers, or records available for examination;*
20 *and*

21 (2) *where the head of the agency determines, after*
22 *taking into account the price and availability of the prop-*
23 *erty or services from United States sources, that the*
24 *public interest would be best served by not applying sub-*
25 *section (b).*

1 *If subsection (b) is not applied to a contract or subcontract*
2 *based on a determination under clause (2), a written report*
3 *shall be furnished to the Congress.*

4 *(c) Inspections and examinations by executive agencies*
5 *under subsection (a) shall be conducted only when necessary*
6 *to insure efficient and economical contract performance*
7 *and/or to evaluate the accuracy, completeness, and currency*
8 *of data submitted or identified pursuant to section 305. Mul-*
9 *iple inspections and examinations of a contractor or sub-*
10 *contractors by more than one executive agency shall be*
11 *eliminated to the maximum extent practicable by coordinating*
12 *inspection and examination responsibilities in accordance with*
13 *regulations to be issued or authorized by the Administrator for*
14 *Federal Procurement Policy pursuant to this Act.*

15 *TITLE IV—ACQUISITION BY SIMPLIFIED*
16 *SMALL PURCHASE METHOD*

17 *CRITERION FOR USE*

18 *SEC. 401. The simplified small purchase method may*
19 *be used in the acquisition of property and services when*
20 *the anticipated total contract price does not exceed \$10,000.*
21 *In lieu of this method, the contracting officer may use either*
22 *of the competitive methods prescribed in title II or III of*
23 *this Act when such use would be more advantageous to the*
24 *Government.*

1 *WARRANTY AGAINST CONTINGENT FEES*

2 *SEC. 502. Each contract negotiated under title III of*
3 *this Act or an award to be made as a result of the submission*
4 *of a technical proposal under section 202(e) of this Act shall*
5 *contain a warranty by the contractor that no person or sell-*
6 *ing agency has been employed or retained to solicit or secure*
7 *the contract upon an agreement or understanding of a com-*
8 *mission, percentage, brokerage, or contingent fee, excepting*
9 *bona fide employees or bona fide established commercial or*
10 *selling agencies maintained by the contractor for the pur-*
11 *pose of securing business; and that for any breach or viola-*
12 *tion of the warranty, the Government may annul the con-*
13 *tract without liability or deduct from the contract price or*
14 *consideration the full amount of the commission, percentage,*
15 *brokerage, or contingent fee.*

16 *CANCELLATIONS AND REJECTIONS*

17 *SEC. 503. (a) Where the contracting officer determines*
18 *for cogent and compelling reasons, that it is in the best interest*
19 *of the Government, he may—*

20 *(1) withdraw or cancel a small purchase order which*
21 *has not been accepted in writing by the contractor, prior*
22 *to the contractor's initiation of performance;*

23 *(2) cancel an invitation for sealed bids before bid*
24 *opening or after bid opening but before award; or*

1 (3) cancel a request for proposal and reject all
2 offers.

3 (b) When requested, the contracting officer shall fully
4 inform any unsuccessful offeror or bidder of the reasons
5 for the rejection of his offer or bid.

6 MULTIYEAR CONTRACTS

7 SEC. 504. (a) Except as otherwise provided by law, an
8 agency may make contracts for acquisition of property or
9 services for periods not in excess of five years, when—

10 (1) appropriations are available and adequate for
11 payment for the first fiscal year; and

12 (2) the Agency head determines that—

13 (A) the Government need for the property or
14 services being acquired over the period of the contract
15 is reasonably firm and continuing; and

16 (B) such a contract will serve the best interests
17 of the United States by encouraging effective com-
18 petition or promoting economics in performance and
19 operation; and

20 (C) such a method of contracting will not in-
21 hibit small business participation.

22 (b) The Administrator for Federal Procurement
23 Policy may grant exceptions to the five-year limita-
24 tion imposed by subsection (a) upon the certification, in

1 *such form and of such content as the Administrator may*
2 *require, by the Agency head that such exception is in the*
3 *best interests of the Government. A copy of each such*
4 *certification and each exception granted shall be delivered*
5 *to the chairman of the House Committee on Government*
6 *Operations, the Senate Committee on Governmental Affairs,*
7 *and the Committees on Appropriations of the House of Repre-*
8 *sentatives and the Senate, respectively.*

9 *(c) Any cancellation costs incurred must be paid from*
10 *appropriated funds originally available for performance of*
11 *the contract, or currently available for acquisition of similar*
12 *property or services, and not otherwise obligated, or appro-*
13 *priations made available for such payments.*

14 *ADVANCE, PARTIAL, AND PROGRESS PAYMENTS*

15 *SEC. 505. (a) Any executive agency may make advance,*
16 *progress, partial, or other payments under contracts.*

17 *(b) Advance and progress payments under contracts*
18 *with small business concerns shall be granted where possible*
19 *and to the extent practicable under the circumstances existing*
20 *for each acquisition; and provisions limiting advance and*
21 *progress payments to small business concerns may be inserted*
22 *into solicitations.*

23 *(c) Payments under subsections (a) and (b) shall not*
24 *exceed the unpaid contract price.*

25 *(d) When progress payments are made, the Government*

1 *shall have title to the property acquired or produced by the*
2 *contractor and allocable or properly chargeable to the con-*
3 *tract. Notwithstanding any other provisions of law, that title*
4 *may not be divested by any action of the contractor, or pro-*
5 *ceeding in bankruptcy, or encumbered by any lien or security*
6 *interest.*

7 *(e) Advance payments under subsection (a) or (b) shall*
8 *not be made in excess of the amount required for contract*
9 *performance, and may be made only upon adequate security*
10 *and a determination by the Agency head that to do so would*
11 *be in the public interest. Such security may be in the form of*
12 *a lien in favor of the Government on the property contracted*
13 *for, on the balance in an account in which such payments*
14 *are deposited, and on such property acquired for perform-*
15 *ance of the contract as the parties may agree. This lien*
16 *is paramount to any other liens.*

17 **REMISSION OF LIQUIDATED DAMAGES**

18 *SEC. 506. Upon the recommendation of the Agency*
19 *head the Comptroller General of the United States may*
20 *remit all or part, as he considers just and equitable, of any*
21 *liquidated damages provided by the contract for delay in*
22 *performing the contract.*

23 **DETERMINATIONS AND FINDINGS**

24 *SEC. 507. (a) Determinations, findings, approvals, and*
25 *decisions provided for by this Act may be made with respect*

1 *to contracts individually or with respect to classes of con-*
2 *tracts and shall be final.*

3 *(b) Each determination, approval, or decision shall be*
4 *based upon written findings of the officer making the deter-*
5 *mination, approval, or decision, and shall be retained in the*
6 *official contract file.*

7 *COLLUSIVE BIDDING INFORMATION*

8 *SEC. 508. (a) If the contracting officer or any other*
9 *agency employee has reason to believe that any bid, pro-*
10 *posal or offer evidences a violation of the antitrust laws or*
11 *provisions of this Act, the matter shall be referred, in ac-*
12 *cordance with agency procedures, to the Attorney General*
13 *of the United States for appropriate action.*

14 *(b) Upon the request of the Attorney General of the*
15 *United States, the Agency head shall make available to the*
16 *Attorney General information which the Attorney General*
17 *considers necessary and relevant to any investigation, prose-*
18 *cution or other action by the United States under the anti-*
19 *trust laws or other statute enforced by the Attorney General.*

20 *(c) The Agency head shall render needed assistance to*
21 *the Attorney General in any investigation and prosecution*
22 *flowing from the information provided in subsection (a)*
23 *or (b) or from other investigation and prosecution in other*
24 *antitrust matters.*

1 **GOVERNMENT SURVEILLANCE REQUIREMENTS**

2 *SEC. 509. (a) Notwithstanding any other provisions*
3 *of law, an agency shall, upon application by a contractor,*
4 *waive the requirements listed in 509(c) for that part*
5 *of a contractor's operation which is separately managed and*
6 *accounted for if, for the contractor's most recent fiscal year,*
7 *more than 75 per centum of the business of the activity, as* ^{*test*}
8 *measured by total revenues is conducted under commercial*
9 *and/or competitive Government contracts. To be competitive*
10 *for purposes of this section, the Government contracts must*
11 *be firm fixed-price or fixed-price with escalation with price*
12 *the deciding factor in the award.*

13 *(b) The waiver provided in 509(a) shall not be granted*
14 *if the contractor's activity for the most recent fiscal year, had*
15 *costs incurred of over \$10,000,000, under Government con-*
16 *tracts where the contract prices were based on estimated*
17 *or actual costs. This category would include such contracts*
18 *as cost reimbursement type contracts, firm fixed-price con-*
19 *tracts negotiated without price competition, fixed-price incen-*
20 *tive contracts, and time and material contracts.*

21 *(c) The waiver provided for in 509(a) shall apply to*
22 *any or all of the following:*

23 *(1) reviews of contractor management and pro-*
24 *curement systems;*

1 *amended without the prior approval of the Administrator*
2 *for Federal Procurement Policy.*

3 *PAYMENTS OF FUNDS DUE*

4 *SEC. 511. A clause shall be included in every contract*
5 *awarded by the United States pursuant to this Act which*
6 *shall provide for interest to be paid by the Federal Govern-*
7 *ment to the contractor on any amount due to the contractor*
8 *for more than thirty days. No amount shall be considered due*
9 *until receipt by the Government of a proper invoice and any*
10 *substantiating documentation required. Interest payable by*
11 *the Government shall be the interest in effect which has been*
12 *established by the Secretary of the Treasury pursuant to*
13 *Public Law 92-41 (85 Stat. 97) for the Renegotiation*
14 *Board, as of a date thirty days after the date the amount*
15 *becomes due.*

16 *PUBLICATION OF INTENT*

17 *SEC. 512. It shall be the duty of the Secretary of*
18 *Commerce, and he is empowered, to obtain notice of all*
19 *proposed acquisitions of above \$10,000, from any execu-*
20 *tive agency engaged in acquisitions in the United States;*
21 *and to publicize such notices in the daily publication "United*
22 *States Department of Commerce Synopsis of the United*
23 *States Government Proposed Procurement, Sales, and Con-*
24 *tract Awards", immediately after the necessity for the ac-*

1 *quisition is established; except that nothing herein shall*
2 *require publication of such notices with respect to those*
3 *acquisitions—*

4 *(1) which for security reasons are of a classified*
5 *nature; or*

6 *(2) which involve perishable subsistence supplies; or*

7 *(3) which are of such unusual and compelling*
8 *emergency that the Government would be seriously*
9 *injured if notice were required to be publicized thirty*
10 *days in advance of the proposed contract award date.*

11 *In all such cases, notice shall be published at the earliest*
12 *practicable opportunity; or*

13 *(4) which are made by an order placed under an*
14 *existing contract; or*

15 *(5) which are made from another Government*
16 *department or agency, or a mandatory source of supply;*
17 *or*

18 *(6) for which it is determined in writing by the*
19 *procuring agency, with the concurrence of the Adminis-*
20 *trator, Small Business Administration, that advance*
21 *publicity is not appropriate or reasonable.*

22 *REVISIONS OF THRESHOLDS*

23 *SEC. 513. At least every three years, beginning with the*
24 *third year after enactment of this Act, the Administrator for*

1 *Federal Procurement Policy shall review the prevailing costs*
2 *of labor and materials and may revise the amounts stated*
3 *in sections 305, 401, 509, and 512 or any prior revisions*
4 *thereof, notwithstanding any other provision of law, to reflect*
5 *an increase or decrease by at least 10 per centum in the costs*
6 *of labor and materials. At least sixty days in advance of its*
7 *effective date, the Administrator shall report to Congress*
8 *any such revision which by itself, or cumulatively with earlier*
9 *increases, represents 50 per centum or more increase.*

10 *SUNSET FOR SPECIFICATIONS*

11 *SEC. 514. All specifications shall be reviewed at least*
12 *every five years, and shall be canceled, modified, revised, or*
13 *reissued as determined by such review.*

14 *MINORITY BUSINESS PARTICIPATION*

15 *SEC. 515. The Administrator for Federal Procurement*
16 *Policy is authorized and directed to initiate, in consultation*
17 *with the Small Business Administration, periodic reviews of*
18 *acquisition programs within the executive branch with the*
19 *objective of making minority business participation in govern-*
20 *ment contracting more effective and assuring that minority*
21 *businesses have full opportunity to compete for Government*
22 *contracts. Targets should be set which reflect the Govern-*
23 *ment's commitment to increasing minority business partici-*
24 *pation in Federal contracting.*

1 *LIMITATION ON CONTRACT CLAIMS*

2 *SEC. 516. Any claim by an executive agency against a*
3 *contractor under a provision of a contract awarded by the*
4 *agency pursuant to this Act shall be made within six years*
5 *from the date of final payment under the contract.*

6 *TITLE VI—DELEGATION OF AUTHORITY*

7 *DELEGATION WITHIN AN EXECUTIVE AGENCY*

8 *SEC. 601. Each agency head may delegate any authority*
9 *under this Act, provided that such delegation is made in*
10 *accordance with regulations established by the Administra-*
11 *tor for Federal Procurement Policy. Delegation of authority*
12 *to make determinations under sections 202, 302(e), 304,*
13 *305, 306, and 509 shall be maintained at the highest organi-*
14 *zational level practicable in order to protect the integrity*
15 *of the acquisition process consistent with the nature and the*
16 *size of the acquisition decision. The authority in section*
17 *702(b) to authorize the award of a contract notwithstanding*
18 *a protest pending before the Comptroller General may not*
19 *be delegated below the level of Assistant Secretary or com-*
20 *parable level.*

21 *JOINT ACQUISITIONS*

22 *SEC. 602. (a) To facilitate acquisition of property or*
23 *services by one executive agency for another executive agency,*
24 *and to facilitate joint acquisition by those agencies—*

1 (1) *the Agency head may, within his agency, dele-*
2 *gate functions and assign responsibilities relating to the*
3 *acquisition;*

4 (2) *the heads of two or more executive agencies may*
5 *by agreement delegate acquisition functions and assign*
6 *acquisition responsibilities from one agency to another*
7 *of those agencies or to an officer or employee of another*
8 *of those agencies; and*

9 (3) *the heads of two or more executive agencies*
10 *may create joint or combined offices to exercise acquisi-*
11 *tion functions and responsibilities.*

12 (b) *Subject to the provisions of section 686 of title 31,*
13 *United States Code—*

14 (1) *appropriations available for acquisition of*
15 *property and services by an executive agency may be*
16 *made available for obligation for acquisition of property*
17 *and services for its use by any other agency in amounts*
18 *authorized by the head of the ordering agency and with-*
19 *out transfer of funds on the books of the Department of*
20 *the Treasury;*

21 (2) *a disbursing officer of the ordering agency may*
22 *make disbursement for any obligation chargeable under*
23 *subsection (a) of this section, upon a voucher certified*
24 *by an officer or employee of the acquisition agency.*

1 *TITLE VII—PROTESTS*

2 *PURPOSE*

3 *SEC. 701. Under the authority contained in the Budget*
4 *and Accounting Act, 1921, as amended, protests shall be*
5 *decided in the General Accounting Office if filed with that*
6 *Office in accordance with this title. For purposes of this title,*
7 *the term "protest" means a challenge to a solicitation, or to*
8 *the award or proposed award of any contract to be financed*
9 *by appropriated funds for the acquisition of property or*
10 *services or for any sale or lease by the Government and the*
11 *term "agency" means an executive department as defined by*
12 *section 101 of title 5, United States Code; an independent*
13 *establishment as defined by section 104 of title 5, United*
14 *States Code (except that it shall not include the General*
15 *Accounting Office); a military department as defined by*
16 *section 102 of title 5, United States Code; the United States*
17 *Postal Service; a wholly owned Government corporation as*
18 *defined by section 846 of title 31, United States Code (but*
19 *does not include the Tennessee Valley Authority or the*
20 *Bonneville Power Administration); and any department or*
21 *agency or other activity of the Federal Government whose*
22 *accounts are subject to settlement by the Comptroller Gen-*

1 *eral of the United States pursuant to the Budget and Ac-*
2 *counting Act, 1921, as amended.*

3 *JURISDICTION*

4 *SEC. 702. (a) In accordance with the procedures issued*
5 *pursuant to section 704, the Comptroller General shall have*
6 *authority to decide any protest submitted by an interested*
7 *party or referred by any agency or Federal instrumentality.*
8 *An interested party is a firm or an individual whose direct*
9 *economic interest would be affected as contractor or subcon-*
10 *tractor by the award or nonaward of the contract.*

11 *(b) No contract shall be awarded after the contracting*
12 *activity has received notice of a protest to the Comptroller*
13 *General while the matter is pending before him: Provided,*
14 *however, That the head of an executive agency may authorize*
15 *the award of a contract notwithstanding such protest, upon a*
16 *written finding that the interest of the United States will not*
17 *permit awaiting the decision of the Comptroller General:*
18 *And provided further, That the Comptroller is advised of*
19 *such finding prior to the award of the contract.*

20 *(c) With respect to any solicitation, proposed award,*
21 *or award of contract protested to him in accordance with*
22 *this title, the Comptroller General is authorized to declare*

1 *whether such solicitation, proposed award, or award com-*
2 *ports with law and regulation.*

3 *PROCEEDINGS*

4 *SEC. 703. (a) To the maximum extent practicable, the*
5 *Comptroller General shall provide for the inexpensive, in-*
6 *formal, and expeditious resolution of protests.*

7 *(b) Each decision of the Comptroller General shall be*
8 *signed by him or his delegee and shall be issued under the*
9 *authority of the Comptroller General to settle the accounts of*
10 *the Government under the Budget and Accounting Act,*
11 *1921, as amended. A copy of the decision shall be furnished*
12 *to the interested parties and the executive agency or agencies*
13 *involved.*

14 *(c) There shall be no ex parte proceeding in protests*
15 *before the Comptroller General or his representative, except*
16 *that this subsection shall not be deemed to preclude informal*
17 *contacts with the parties for procedural purposes.*

18 *(d) The Comptroller General is authorized to dismiss*
19 *any protest he determines to be frivolous or which, on its*
20 *face, does not state a valid basis for protest.*

21 *(e) Where the Comptroller General has declared that*
22 *a solicitation, proposed award, or award of a contract does*
23 *not comport with law or regulation, he may further declare*
24 *the entitlement of an appropriate party to bid and proposal*
25 *preparation costs. In such cases the Comptroller General*
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1 *may remand the matter to the executive agency involved for*
2 *an initial determination as to the amount of such costs. Dec-*
3 *larations of entitlement to monetary awards shall be paid*
4 *promptly by the executive agency concerned out of funds*
5 *available for the purpose.*

6 *GENERAL PROVISIONS*

7 *SEC. 704. The Comptroller General shall issue such pro-*
8 *cedures, not inconsistent with this title, as may be necessary*
9 *in the execution of the protest decision function. He may*
10 *delegate his authority to other officers or employees of the*
11 *General Accounting Office.*

12 *JUDICIAL REVIEW*

13 *SEC. 705. Any person adversely affected or aggrieved*
14 *by the action, or the failure to act, of an executive agency,*
15 *or of the Comptroller General, in respect of a solicitation or*
16 *award hereunder may obtain judicial review thereof to the*
17 *extent provided by sections 702 through 706 of title 5, United*
18 *States Code, including determinations necessary to resolve*
19 *disputed material facts or when otherwise appropriate.*

20 *TITLE VIII—APPLICABILITY OF*

21 *SUBSEQUENT LAWS*

22 *SEC. 801. No law enacted after the date of enactment*
23 *of this Act, including any limitation in any appropriation*
24 *bill or any limitation of any provision authorizing the appro-*
25 *priation of funds, may be held, considered, or construed as*

1 *amending any provision of this Act, unless such law does so*
2 *by specifically and explicitly amending or superseding a*
3 *specific and separately referenced provision of this Act.*

4 *SEPARABILITY*

5 *SEC. 802. If any provision of this Act or the application*
6 *thereof to any person or circumstance is held invalid, neither*
7 *the remainder of this Act nor the application of such provision*
8 *to other persons or circumstances shall be affected thereby.*

9 *TITLE IX—AMENDMENTS AND REPEALS*

10 *AMENDMENTS*

11 *SEC. 901. (a) The Agriculture Department Appropria-*
12 *tion Act, 1923, is amended by striking out “, after due ad-*
13 *vertisement and on competitive bids,” in the first proviso*
14 *on the page at forty-second Statutes at Large, page 517*
15 *(7 U.S.C. 416).*

16 *(b) Section 101(d) and 104 of the Department of*
17 *Agriculture Organic Act of 1944 (58 Stat. 734, 736; 7*
18 *U.S.C. 430, 432) are amended by striking out “in the open*
19 *market”.*

20 *(c) Section 2356(b) of title 10, United States Code,*
21 *is amended by striking out the last sentence.*

22 *(d) Sections 4504 and 9504 of title 10, United States*
23 *Code, are each amended by striking out everything after*
24 *“United States” and inserting in lieu thereof a period.*

1 (e) Sections 4505 and 9505 of title 10, United States
2 Code, are each amended by striking out the second sentence.

3 (f) Clause (2) of section 502(c) of the Act of August
4 10, 1948 (62 Stat. 1283; 12 U.S.C. 1701c(b)(2)), is
5 amended by striking out “, without regard to section 3709
6 of the Revised Statutes”.

7 (g) Section 502(e) of the Act of December 31, 1970
8 (84 Stat. 1784; 12 U.S.C. 1701z-2(e)), is amended by
9 striking out “, without regard to section 3709 of the Revised
10 Statutes,”.

11 (h) Section 708(h) of the Act of June 27, 1934, as
12 amended August 10, 1948 (62 Stat. 1279; 12 U.S.C. 1747
13 g(h)), is amended by striking out the proviso at the end.

14 (i) Section 712 of the Act of June 27, 1934, as amended
15 August 10, 1948 (62 Stat. 1281; 12 U.S.C. 1747k) is
16 amended by striking out “and without regard to section 3709
17 of the Revised Statutes”.

18 (j) Section 208(b) of the Act of June 26, 1934, as
19 amended October 19, 1970 (84 Stat. 1014; 12 U.S.C.
20 1788(b)), is amended by striking out the last sentence.

21 (k) Clause (4) of section 2(b) of the Act of July 18,
22 1958 (72 Stat. 386; 15 U.S.C. 634(b)(4)), is amended
23 by striking out: “Section 3709 of the Revised Statutes, as
24 amended (41 U.S.C., section 5), shall not be construed

1 to apply to any contract of hazard insurance or to any
2 purchase or contract for services or supplies on account
3 of property obtained by the Administrator or as a result
4 of loans made under this Act if the premium therefor or
5 the amount thereof does not exceed \$1,000.”.

6 (l) Section 3 of the Act of April 24, 1950 (64 Stat.
7 83; 16 U.S.C. 580c, is amended to read as follows:

8 “SEC. 3. The Forest Service is authorized to make
9 purchases of (1) materials to be tested or upon which
10 experiments are to be made or (2) special devices, test
11 models, or parts thereof, to be used (a) for experimenta-
12 tion to determine their suitability for or adaptability to
13 accomplishment of the work for which designed or (b) in
14 the designing or developing of new equipment: Provided,
15 That not to exceed \$50,000 may be expended in any one
16 fiscal year pursuant to this authority and not to exceed
17 \$10,000 on any one item or purchase.”.

18 (m) Section 2(b)(1) of the Act entitled “An Act to
19 authorize the construction of a National Fisheries Center
20 and Aquarium in the District of Columbia and to provide
21 for its operation”, approved October 9, 1962 (76 Stat.
22 753; 16 U.S.C. 1052), is amended by striking out “,
23 without regard to the provisions of section 3709 of the
24 Revised Statutes of the United States (41 U.S.C. 5,”.

25 (n) Section 224(a) of the Act of November 8, 1965

1 *(79 Stat. 1228; 20 U.S.C. 1034(a)), is amended by strik-*
2 *ing out “, and, without regard o section 3709 of the Revised*
3 *Statutes (41 U.S.C. 5),”.*

4 *(o) Section 7 of the Act of December 20, 1945, as*
5 *amended October 10, 1949 (59 Stat. 621; 22 U.S.C. 287e),*
6 *is amended by striking out “, all without regard to section*
7 *3709 of the Revised Statutes, as amended (41 U.S.C. 5)”.*

8 *(p) Section 707 of the Act of August 13, 1946 (60*
9 *Stat. 1019; 22 U.S.C. 1047), is amended by striking out*
10 *“, without regard to section 3709 of the Revised Statutes”.*

11 *(q) Section 22(e)(7) of the Act of December 29,*
12 *1970 (84 Stat. 1613, 29 U.S.C. 671(e)(7)), is amended*
13 *by striking out “, and without regard to section 3709 of the*
14 *Revised Statutes, as amended (41 U.S.C. 5), or any other*
15 *provision of law relating to competitive bidding.”*

16 *(r) Section 6(b) of the Act of August 31, 1954 (68*
17 *Stat. 1010; 30 U.S.C. 556(b)), is amended by striking out*
18 *“and without regard to the provisions of section 3709, Re-*
19 *vised Statutes (41 U.S.C. 5)”.*

20 *(s) Section 1820(b) of title 38, United States Code,*
21 *is amended by striking out “section 5 of title 41” and in-*
22 *serting in lieu thereof the “Federal Acquisition Act of 1977”*
23 *and by deleting “if the amount of such contract exceeds*
24 *\$1,000.”.*

25 *(t) Section 5002 of title 38, United States Code, is*

1 *amended by substituting a period for the comma after "work"*
2 *and striking out the remainder of the section.*

3 *(u) The Act of October 10, 1940, as amended (54*
4 *Stat. 1109; 41 U.S.C. 6a, b(a), is amended by striking*
5 *out section 2, and by striking out "without regard to the*
6 *provisions of section 3709 of the Revised Statutes, as*
7 *amended," in subsection (a). The Act of July 27, 1965*
8 *(79 Stat. 276; 41 U.S.C. 6a-1) is amended by striking*
9 *out any and all references to section 3709 of the Revised*
10 *Statutes in the sections relating to Architect of the Capitol.*

11 *(v) Section 11 of the Act of June 30, 1936 (49*
12 *Stat. 2039, renumbered section 12 in 66 Stat. 308; 41*
13 *U.S.C. 45), is amended to read as follows:*

14 *"SEC. 12. The provisions of this Act requiring the*
15 *inclusion of representations with respect to minimum wages*
16 *shall apply only to purchases or contracts relating to such*
17 *industries as have been the subject matter of a determina-*
18 *tion by the Secretary of Labor."*

19 *(w) Section 356(b) of the Act of July 1, 1944, as*
20 *added October 18, 1968 (82 Stat. 1175; 42 U.S.C. 263d*
21 *(b)), is amended by striking out the references to section*
22 *3709 of the Revised Statutes and 41 U.S.C. 5 in clause (3),*
23 *and by striking out the parenthetical phrase "(by negotiation*
24 *or otherwise)" in clause (4).*

1 (x) Section 1(b) of the Act of October 14, 1940 (54
2 Stat. 1126; 42 U.S.C. 1521 (b)), is amended by striking
3 out the reference to section 3709 of the Revised Statutes in
4 the first parenthetical phrase, and by striking out the first
5 proviso and inserting in lieu thereof: "Provided, That the
6 cost plus a percentage of cost system shall not be used."

7 (y) Section 202(b) of the Act of October 14, 1940 (55
8 Stat. 362; 42 U.S.C. 1532(b)), is amended by striking out
9 the reference to section 3709 of the Revised Statutes, and by
10 adding the following proviso at the end of paragraph 1532
11 (b): "Provided, That the cost plus a percentage of cost system
12 shall not be used."

13 (z) Section 309 of the Act of September 1, 1951 (65
14 Stat. 307; 42 U.S.C. 1592h), is amended by striking out
15 clause (a), and amending clause (b) to read as follows:
16 "(b) the fixed-fee under a contract on a cost-plus-a-
17 fixed-fee basis shall not exceed 6 per centum of the esti-
18 mated cost;"

19 (aa) Section 103(b)(4) and 104(a)(2) of the Act
20 of July 14, 1955, as amended November 21, 1967 (81
21 Stat. 486, 487; 42 U.S.C. 1857b (b)(4), b-1(a)(2)), is
22 amended by striking out the references to section 3709 of
23 the Revised Statutes and to section 5 of title 41, United
24 States Code.

1 *(bb) Section 31(b) of the Atomic Energy Act of 1954*
2 *(68 Stat. 927; 42 U.S.C. 2051(c) is amended to read as*
3 *follows:*

4 *“(c) The Commission may make available for use in con-*
5 *nection with arrangements made under this section such of its*
6 *equipment and facilities as it may deem desirable.”.*

7 *(cc) Section 41(b) of the Atomic Energy Act of 1954*
8 *(68 Stat. 928; 42 U.S.C. 2061(b)) is amended by striking*
9 *out the last three sentences in this section.*

10 *(dd) Section 43 of the Atomic Energy Act of 1954*
11 *(68 Stat. 929; 42 U.S.C. 2063) is amended by striking*
12 *out the following: “without regard to the provisions of sec-*
13 *tion 3709 of the Revised Statutes, as amended, upon certifi-*
14 *cation by the Commission that such action is necessary in*
15 *the interest of the common defense and security, or upon a*
16 *showing by the Commission that advertising is not reason-*
17 *ably practicable. Partial and advance payments may be*
18 *made under contracts for such purposes.”.*

19 *(ee) Section 55 of the Atomic Energy Act of 1954*
20 *(68 Stat. 931; 42 U.S.C. 2075) is amended by striking*
21 *out the second and third sentences in this section.*

22 *(ff) Section 66 of the Atomic Energy Act of 1954 (68*
23 *Stat. 933; 42 U.S.C. 2096) is amended by striking out*
24 *the following: “Any purchase made under this section may*
25 *be made without regard to the provisions of section 3709*

1 of the Revised Statutes, as amended, upon certification by
2 the Commission that such action is necessary in the interest
3 of the common defense and security, or upon a showing by
4 the Commission that advertising is not reasonably prac-
5 ticable. Partial and advance payments may be made under
6 contracts for such purposes.”.

7 (gg) Section 203(e) of the Act of April 3, 1970 (84
8 Stat. 115; 42 U.S.C. 4372(e)), is amended by strik-
9 ing out the references to section 3709 of the Revised
10 Statutes and to section 5 of title 41, United States Code.

11 (hh) Section 703 of the Act of June 29, 1936 (49
12 Stat. 2008; 46 U.S.C. 1193), is amended by striking out
13 subsection (a), by striking out “For the construction, re-
14 construction, or reconditioning of vessels, and” in subsec-
15 tion (c), and by renumbering subsections (b) and (c) as
16 (a) and (b), respectively.

17 (ii) Section 8(a) of the Act of September 30, 1965
18 (79 Stat. 894; 49 U.S.C. 1638(a)), is amended by
19 striking out the references to section 3709 of the Revised
20 Statutes and to section 5 of title 41, United States Code,
21 in paragraph (1), and by striking out paragraphs (3)
22 and (4).

23 (jj) Section 5012 of title 38, United States Code, is
24 amended by striking out the second sentence in subsection
25 (a) and all of subsection (c).

1 *tive Services Act as amended (40 U.S.C. 474 (3), (8),*
2 *(10), and (19); sections 10(a) and 10(b) of the Act of*
3 *September 9, 1959 (73 Stat. 481; 40 U.S.C. 609 (a), (b));*
4 *section 3735 of the Revised Statutes (41 U.S.C. 13); section*
5 *3653 of the Revised Statutes, as amended by the Act of*
6 *July 7, 1884 (23 Stat. 204; 41 U.S.C. 24); title III of the*
7 *Federal Property and Administrative Services Act of 1949*
8 *as amended (41 U.S.C. 251 et seq.); 41 U.S.C. 254(b);*
9 *section 10(a) of the Act of September 5, 1950 (64 Stat.*
10 *591; 41 U.S.C. 256a); section 242m(f) of title 42, United*
11 *States Code; section 292f of title 42, United States Code;*
12 *section 300c-11(b)(4) of title 42, United States Code;*
13 *section 300c-22(d) of title 42, United States Code; section*
14 *300d-5(d) of title 42, United States Code; section 300e-*
15 *2(g) of title 42, United States Code; section 300e-3(h)*
16 *of title 42, United States Code; section 510(a) of the*
17 *Act of July 15, 1949 (63 Stat. 437; 42 U.S.C. 1480*
18 *(a)); section 6(e) of the EURATOM Cooperation Act*
19 *of 1958 (72 Stat. 1005; 42 U.S.C. 2295(e)); section*
20 *1345(b) of the Act of August 1, 1968 (82 Stat. 585;*
21 *42 U.S.C. 4081(b)); section 404 of the Act entitled "An Act*
22 *to authorize appropriations during the fiscal year 1969 for*
23 *procurement of aircraft, missiles, naval vessels, and tracked*
24 *combat vehicles, research, development, test, and evaluation*
25 *for the Armed Forces, and to prescribe the authorized person-*

1 *nel strength of the Selected Reserve of each Reserve component*
2 *of the Armed Forces, and for other purposes, approved Sep-*
3 *tember 20, 1968 (82 Stat. 849); section 403c of title 50,*
4 *United States Code.*

95TH CONGRESS
2d SESSION

S. 1264

[Report No. 95-715]

A BILL

To provide policies, methods, and criteria for the acquisition of property and services by executive agencies.

By Mr. CHILES, Mr. ROTH, Mr. HEINZ, Mr. RIEGLE, and Mr. PACKWOOD

APRIL 6 (legislative day, FEBRUARY 21), 1977
Read twice and referred to the Committee on
Governmental Affairs

MARCH 22 (legislative day, FEBRUARY 6), 1978
Reported with an amendment

JULY 13 (legislative day, MAY 17), 1978
Referred to the Committee on Armed Services, by
unanimous consent

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95TH CONGRESS
1ST SESSION

S. 1264

IN THE SENATE OF THE UNITED STATES

APRIL 6 (legislative day, FEBRUARY 21), 1977

Mr. CHILLES (for himself and Mr. ROTII) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To provide policies, methods, and criteria for the acquisition of property and services by executive agencies.

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

3 SHORT TITLE; TABLE OF CONTENTS

4 SECTION 1. (a) SHORT TITLE.—This Act may be cited
5 as the “Federal Acquisition Act of 1977”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Declaration of policy.
Sec. 3. Definitions.

TITLE I—ACQUISITION METHODS AND REGULATORY GUIDANCE

Sec. 101. Acquisition methods.
Sec. 102. Regulatory compliance.

II

1 (1) the laws controlling Federal purchasing have
2 become outdated, fragmented, and needlessly incon-
3 sistent;

4 (2) these deficiencies have contributed to signifi-
5 cant inefficiency, ineffectiveness, and waste in Federal
6 spending;

7 (3) the Commission on Government Procurement
8 has found and recommended that a new consolidated
9 statutory base is needed;

10 (4) further, existing statutes need to be modernized
11 to focus on effective competition and new technology
12 in that—

13 (A) national productivity rests on a base of
14 competitive industry applying new technology in its
15 goods and services; and

16 (B) Federal spending practices can encourage
17 the Nation's business community by stimulating
18 effective competition and the application of new
19 technology.

20 (b) POLICY.—It is hereby declared to be the policy of
21 the United States that the acquisition of property and serv-
22 ices by the Federal Government shall be performed so as
23 to—

24 (1) best meet public needs at the lowest total cost;

25 (2) maintain the independent character of private

1 enterprise by substituting for regulatory controls the in-
2 centives and constraints of effective competition;

3 (3) encourage innovation and the application of
4 new technology as a first consideration by stating public
5 needs so that prospective suppliers will have maximum
6 latitude to exercise independent business and technical
7 judgments in offering a wide range of competing
8 alternatives;

9 (4) promote both new and small business by per-
10 mitting all qualified and interested sources to compete
11 for and grow through Government contracts;

12 (5) provide private contractors with the opportu-
13 nity to earn a profit on Government contracts commen-
14 surate with the contribution made to meeting public
15 needs and with comparable profit opportunities available
16 in other markets requiring investments, risks, and skills
17 similar to the technical and financial risks undertaken;

18 (6) safeguard the public interest through individ-
19 ual accountability of public officials and maximum use
20 of effective competition; and

21 (7) further, to achieve these goals, it is the policy
22 of the United States to rely on and promote effective
23 competition, the efforts of several sellers acting inde-
24 pendently of each other, to respond to a public need by
25 creating, developing, demonstrating or offering products

1 or services which best meet that need, whether that need
2 is expressed as an agency mission need, a desired func-
3 tion to be performed, performance or physical require-
4 ments to be met, or some combination of these. Effective
5 competition is present when there is—

6 (A) timely availability to prospective sellers
7 of information required to respond to the public
8 needs;

9 (B) independence of action by buyer and
10 seller;

11 (C) availability to the Government of alterna-
12 tive offers that provide a range of concept, design,
13 performance, price, lifetime ownership costs, service
14 and/or delivery ;

15 (D) absence of bias or favoritism in the solici-
16 tation, evaluation, and award of contracts; and

17 (E) ease of competitive entry for new and
18 small sellers.

19 DEFINITIONS

20 SEC. 3. For purposes of this Act—

21 (a) The term “acquisition” means any relationship en-
22 tered into to obtain property or services for the direct benefit
23 or use of an executive agency through purchase, lease, or
24 barter to meet a public need, whether the property or services
25 are already in existence or must be created, developed,

1 demonstrated, and evaluated. Acquisition includes such re-
2 lated functions as determination of the particular public need;
3 solicitation; selection of sources; award of contracts; contract
4 financing and contract performance.

5 (b) The term "executive agency" means an executive
6 department as defined by section 101 of title 5, United
7 States Code; an independent establishment as defined by
8 section 104 of title 5, United States Code (except that it
9 shall not include the General Accounting Office); a mili-
10 tary department as defined by section 102 of title 5, United
11 States Code; and the United States Postal Service;

12 (c) The term "agency head" means the head of an
13 executive agency as defined in subsection (b).

14 (d) The term "head of a procuring activity" means
15 that official, intermediate between the Agency head and the
16 contracting officer, who has the responsibility for super-
17 vision and direction of the procuring activity.

18 (e) The term "property" includes personal property
19 and leaseholds and other interests therein, but excludes real
20 property in being and leaseholds and other interests therein.

21 (f) The term "services" means all services, including
22 administrative, support-type, and professional.

23 (g) The term "total cost" means all resources con-
24 sumed or to be consumed in making an acquisition to
25 achieve an end purpose; and may include all direct, in-

1 direct, recurring, nonrecurring, and other related costs in-
2 curred, or estimated to be incurred in design, development,
3 production, operation, maintenance, disposal, training, and
4 support of an acquisition over its useful life span, wherever
5 each factor is applicable.

6 (h) The term "price data" means actual prices pre-
7 viously paid, contracted, quoted or proposed and the related
8 dates, quantities, and item descriptions existing up to a
9 time as close as practicable to any new agreement on price.

10 (i) The term "protest" means a challenge to the
11 solicitation, proposed award, or award of a contract made
12 by an executive agency for the acquisition of property or
13 services.

14 TITLE I—ACQUISITION METHODS AND 15 REGULATORY GUIDANCE

16 ACQUISITION METHODS

17 SEC. 101. (a) An executive agency shall acquire prop-
18 erty or services in accordance with the policies specified in
19 section 2 of this Act by utilizing—

20 (1) the competitive sealed bids method as pro-
21 vided in title II of this Act; or

22 (2) the competitive negotiation method, as pro-
23 vided in title III of this Act; or

24 (3) the competitive small purchase method as pro-
25 vided in title IV of this Act.

1 (b) These methods of acquiring property or services
2 are equally valid alternatives and shall be selected on the
3 basis of the nature of the product or service being acquired,
4 the circumstances of the acquisition, and other criteria as set
5 forth in this Act or as may be established by the Adminis-
6 trator of the Office of Federal Procurement Policy.

7 REGULATORY COMPLIANCE

8 SEC. 102. (a) The Administrator of the Office of Fed-
9 eral Procurement Policy is authorized and directed, pursuant
10 to the authority conferred by Public Law 93-400 and sub-
11 ject to the procedures set forth in such public law—

12 (1) within two years after the date of enactment
13 of this Act, to promulgate a single, simplified, uniform
14 Federal regulation implementing the policies and proce-
15 dures prescribed in this Act and to establish procedures
16 for insuring compliance with such provisions by all
17 executive agencies; and

18 (2) to make periodic studies of the use of the
19 acquisition methods prescribed by this Act in order to
20 determine whether agency compliance with this Act has
21 been efficient and effective.

22 (b) The Administrator of the Office of Federal Procure-
23 ment Policy shall include in his annual report required under
24 section 8 of Public Law 93-400 a report of his activities
25 under this section, including his assessment of agency im-

1 plementation of and compliance with the requirements of
2 this Act; specific reductions in the use of Federal specifica-
3 tions pursuant to sections 202 and 302 of this Act; and
4 recommendations for revisions in this Act or any other pro-
5 vision of law.

6 TITLE II—ACQUISITION BY COMPETITIVE

7 SEALED BIDS

8 CRITERIA FOR USE

9 SEC. 201. The competitive sealed bids method should
10 be used in the acquisition of property and services when—

11 (1) the anticipated total contract price exceeds the
12 amount specified in title IV of this Act for use of the
13 competitive small purchase procedures method; and

14 (2) the public need can be practicably defined in
15 terms not restricted by security or proprietary design;
16 and

17 (3) the private sector industrial base will provide a
18 sufficient number of qualified suppliers willing to com-
19 pete for and able to perform the contract; and

20 (4) suitable products or services have been fully
21 developed and previously supplied in comparable forms
22 so to warrant the award of a fixed price contract to a
23 successful bidder selected primarily on the basis of price;
24 and

25 (5) the time available for acquisition is sufficient

1 to prepare the purchase description and to carry out the
2 requisite administrative procedures; and

3 (6) the property or service is to be acquired and/
4 or used within the limits of the United States and its
5 possessions; and

6 (7) the price for the property or service has not
7 been established by or pursuant to law.

8 INVITATION FOR SEALED BIDS

9 SEC. 202. (a) The invitation for sealed bids shall be
10 formally advertised in such a way that—

11 (1) the time prior to opening the bids will be suf-
12 ficient to permit effective competition; and

13 (2) the purchase description will be accessible to
14 all interested potential bidders, except where restricted
15 to bidders qualified under a duly authorized set-aside
16 program.

17 (b) The invitation shall include a description of the
18 method to be used in evaluating bids, including factors other
19 than price.

20 (c) To the extent practicable and consistent with needs
21 of the Agency, purchase descriptions shall be stated in func-
22 tional terms to permit a variety of distinct products or serv-
23 ices to qualify, or, when a particular type of product or serv-
24 ice must be designated, in terms of performance specifica-

1 tions which stipulate a range of acceptable characteristics or
2 minimum standards.

3 (d) The preparation and use of definitive product speci-
4 fications in a purchase description shall be subject to prior
5 approval by the Agency head. Such approval shall include
6 written justification, to be placed in and made a part of the
7 official contract file, delineating the circumstances which pre-
8 clude the use of functional or performance specifications and
9 which require the use of detailed product specifications in
10 the purchase descriptions.

11 (e) Where the use of functional or performance specifi-
12 cations make it impracticable to plan for award primarily
13 on the basis of price, the contracting officer may request the
14 submission of unpriced technical proposals and subsequently
15 issue an invitation for sealed bid limited to those offerors
16 whose technical proposals meet the standards set forth in
17 the purchase description.

18 EVALUATION, AWARD, AND NOTIFICATIONS

19 SEC. 203. (a) All bids shall be opened publicly at the
20 time and place stated in the invitation.

21 (b) Award shall be made to the responsible bidder
22 whose bid conforms to the invitation and is most advan-
23 tageous to the Government, price and other factors
24 considered.

1 (c) Notice of such award shall be made in writing
2 by the contracting officer with reasonable promptness and
3 all other bidders shall be appropriately notified.

4 TITLE III—ACQUISITION BY COMPETITIVE
5 NEGOTIATION

6 CRITERIA FOR USE

7 SEC. 301. The competitive negotiation method may be
8 used in the acquisition of property and services when—

9 (1) the anticipated total contract price exceeds
10 the amount specified in title IV of this Act for use of
11 the competitive small purchase procedures method; and

12 (2) the acquisition does not meet the criteria
13 established pursuant to section 101 (b) or as set forth
14 in section 201 for use of competitive sealed bids.

15 SOLICITATIONS

16 SEC. 302. (a) Solicitations for offers shall be made
17 from a sufficient number of qualified sources so as to obtain
18 effective competition and shall be publicized in accordance
19 with section 8 (e) of the Small Business Act, with copies
20 of the solicitation to be provided to other interested sources
21 upon request.

22 (b) (1) When price is not expected to be the deciding
23 factor in making an award, the solicitation shall include
24 both the methodology and the relative importance of all
25 significant factors to be used during competitive evaluation

1 and for final selection. In any case, if price is included as
2 a primary or significant factor, the Government's evaluation
3 shall be based to the maximum extent practicable on the
4 total cost to meet the Federal need and not on the cost
5 of completing any initial or partial segments of activity.

6 (2) Any changes in the methodology or evaluation
7 factors which may affect the outcome of the competition
8 shall be promptly communicated to all competitors.

9 (c) To the maximum extent practicable, solicitations
10 shall set forth the public need in functional terms so as to
11 permit the application of a variety of technological ap-
12 proaches and elicit the most promising competing alterna-
13 tives. Solicitations shall not prescribe performance character-
14 istics based on a single approach. Solicitations shall also not
15 prescribe technical characteristics obtained from any poten-
16 tial competitor.

17 (d) If either the Government or an offeror identifies
18 inadequacies in the solicitation which cause misunderstand-
19 ings of the public's needs or requirements, clarification of
20 intent shall be made to all offerors in a timely fashion and on
21 an equal basis.

22 EVALUATION, AWARD, AND NOTIFICATIONS

23 SEC. 303. (a) Written or oral discussions shall be con-
24 ducted with all qualified offerors who remain in a competi-
25 tive range solely for the purpose of obtaining any needed

1 clarification or extension of offers. An initial offer may be
2 accepted without discussion.

3 (b) When awards are made for alternative approaches
4 selected on the basis of the factors contained in the solicita-
5 tion, whether for design, development, demonstration, or
6 delivery, to the maximum extent practicable, they shall be
7 sustained in competition until sufficient test or evaluation
8 information becomes available to narrow the choice to a
9 particular product or service.

10 (c) Until award is made, information concerning the
11 award shall not be disclosed to any person not having direct
12 source selection responsibilities.

13 (d) Award shall be made to one or more responsible
14 offerors whose proposal is most responsive to the factors stip-
15 ulated in the solicitation as required by section 302 (b). No-
16 tification of award to all unsuccessful offerors shall be made
17 with reasonable promptness.

18 SINGLE-SOURCE EXCEPTIONS

19 SEC. 304. (a) Compliance with the procedures pre-
20 scribed in sections 302 and 303 need not be continued if---

21 (1) the agency head makes a determination, before
22 award, that it is impracticable to proceed with the com-
23 petitive negotiation because more than one prospective
24 source is not available; a public exigency prevails; or a

1 national emergency is declared by the Congress or the
2 President;

3 (2) such determination, together with the reasons
4 therefor, is in writing and conforms with such regula-
5 tions as may be prescribed or authorized by the Office of
6 Federal Procurement Policy, pursuant to section 102

7 (a) (1) ; and

8 (3) notice of intent to award such a contract is
9 publicized in advance of the award, pursuant to section
10 637 (e) of title 15, United States Code, and includes
11 a description of the property or service to be acquired
12 and the name of the prospective source.

13 In such cases, contracts may be made by negotiation with
14 a single offeror selected by the Agency. The submission and
15 certification referred to in section 305 (b) and the provisions
16 of section 305 (c) shall be required in the case of any single-
17 source contract to be awarded pursuant to this section when
18 the amount in question is greater than the amount specified
19 in section 401.

20 (b) Where there is no commercial usage of the product
21 or service to be acquired under this section, and the Agency
22 head determines that substantial follow-on provision of such
23 product or service will be required by the Government, the
24 Agency head shall, when he deems appropriate, take action

1 through contractual provision, or otherwise, to provide the
2 Government with a capability to establish one or more other
3 competitive sources.

4 PRICE ANALYSIS AND COST DATA

5 SEC. 305. (a) Prior to any negotiated award, change,
6 or modification of any contract or subcontract, the con-
7 tractor and any subcontractor shall be required to submit
8 or identify in writing, with his proposal, price data bearing
9 on the reasonableness of the offer. Each such contractor
10 or subcontractor shall certify that, to the best of this knowl-
11 edge and belief, such price data is accurate, complete, and
12 current as of the date agreed upon between the parties
13 (which date shall be as close as practicable to the date of
14 agreement on the negotiated price). The contracting officer
15 shall use price analysis techniques to analyze and evaluate
16 the reasonableness of offers where—

17 (1) the price of the contract, subcontract, change
18 or modification is less than \$500,000; (the contracting
19 officer may at his discretion, however, request pricing
20 data or cost data as provided for in section 305 (b),
21 for contracts, subcontracts, changes or modifications,
22 where the total amount exceeds the amount specified
23 in section 401 of this Act but is less than or equal to
24 \$500,000) ; or

25 (2) the price is an established catalog or a market

1 price of a commercial item sold in substantial quan-
2 tities to the general public; or

3 (3) the price is already set by law or regulation;

4 or

5 (4) negotiation is based on adequate price com-
6 petition, wherein price is a primary or significant
7 factor; or

8 (5) there was recent competitive purchase under
9 relatively similar circumstances.

10 (b) Where the contract or subcontract is a single-
11 source award pursuant to section 304, or for other nego-
12 tiated contracts when the contract or subcontract does not
13 meet any one of the conditions set forth in section 305 (a)—

14 (1) the contractor and any subcontractor shall be
15 required to submit or identify in writing, with his pro-
16 posal, cost data bearing on the reasonableness of the
17 offered price; and

18 (2) shall certify that, to the best of his knowledge
19 and belief, such cost data is accurate, complete and cur-
20 rent as of the date agreed upon between the parties
21 (which date shall be as close as practicable to the date
22 or agreement on the negotiated price).

23 (c) Any prime contract or change or modification
24 thereto under which a certification is required under sub-
25 section (b) shall contain a provision that the price to the

1 Government, including profit or fee, shall be adjusted to
2 exclude any significant sums by which it may be determined
3 by the Agency head that such price was increased because
4 the contractor or any subcontractor required to furnish such
5 a certificate, furnished data which was not accurate, com-
6 plete or current.

7 (d) The Agency head may grant a waiver from the pro-
8 visions of sections 305 (a) and (b). Such waiver shall in-
9 clude a written justification, to be placed in and made a part
10 of the contract file, setting forth the reasons why the provi-
11 sions of sections 305 (a) and (b) must be waived.

12 (e) At least every three years, beginning with the third
13 year after enactment of this Act, the Administrator of the
14 Office of Federal Procurement Policy shall review and may
15 revise the thresholds cited elsewhere in this section, or any
16 prior revision hereto, notwithstanding any other provision
17 of law, to reflect an increase or decrease by at least 10 per
18 centum in the costs of labor and materials. At least sixty
19 days in advance of its effective date, the Administrator shall
20 report to Congress any such revision which by itself, or cu-
21 mulatively with earlier increases, represents a 50 per centum
22 or more increase.

23 ACCESS TO RECORDS

24 SEC. 306. (a) Until expiration of three years after
25 final payment under a contract negotiated or amended under

1 this title, the Comptroller General of the United States and
2 an executive agency or their authorized representatives are
3 entitled to inspect the plants and examine any books, docu-
4 ments, papers, records or other data of the contractor and
5 his subcontractors that pertain to, and involve transactions
6 relating to the contract or subcontract or to the amendment
7 thereof, including for the purpose of evaluating the accuracy,
8 completeness and currency of data certified under section
9 305, all such books, records and other data relating to the
10 negotiation, pricing, or performance of the contract or sub-
11 contract. This provision may be waived for any contract
12 or subcontract with a foreign contractor or subcontractor,
13 if the Agency head determines, with concurrence of the
14 Comptroller General, that waiver would be in the public
15 interest.

16 (b) Inspections and examinations by executive agen-
17 cies under subsection (a) shall be conducted only when
18 necessary to insure contract performance. Multiple inspec-
19 tions and examinations of a contractor or subcontractors by
20 more than one executive agency shall be eliminated to the
21 maximum extent practicable by coordinating inspection
22 and examination responsibilities in accordance with regula-
23 tions to be issued or authorized by the Office of Federal
24 Procurement Policy pursuant to section 102(1).

1 TITLE IV—ACQUISITION BY COMPETITIVE
2 SMALL PURCHASE PROCEDURES METHOD
3 CRITERIA FOR USE

4 SEC. 401. (a) The competitive small purchase proce-
5 dures method may be used in the acquisition of property and
6 services under regulations authorized or prescribed by the
7 Office of Federal Procurement Policy under section 102.(1)
8 when the anticipated total contract price does not exceed
9 \$10,000 but, in lieu of this method, the contracting officer
10 may use either of the competitive methods prescribed in
11 titles II or III of this Act when such use would be more
12 advantageous to the Government.

13 (b) At least every three years, beginning with the
14 third year after enactment of this Act, the Administrator
15 of the Office of Federal Procurement Policy shall review
16 the prevailing costs of labor and materials and may revise
17 the amount stated in section 401 (a) or any prior revision
18 thereof, notwithstanding any other provision of law, to
19 reflect an increase or decrease by at least 10 per centum
20 in the costs of labor and materials. At least sixty days in
21 advance of its effective date, the Administrator shall report
22 to Congress any such revision which by itself, or cumula-
23 tively with earlier increases, represents 50 per centum or
24 more increase.

1 SOLICITATIONS AND AWARDS

2 SEC. 402. The Contracting officer may make an award
3 to the contractor whose offer is most advantageous to the
4 Government but shall seek to obtain effective competition
5 to the maximum extent practicable through informal means.

6 TITLE V—GENERAL PROVISIONS

7 CONTRACT TYPES

8 SEC. 501. (a) Contracts may be of any type or combi-
9 nation of types, consistent with the degree of technical and
10 financial risk to be undertaken by the contractor, which will
11 promote the best interests of the Government except that the
12 cost-plus a percentage-of-cost system of contracting shall not
13 be used under any circumstances.

14 (b) The preferred contract form for all contracts shall
15 be a fixed-price type. Where the technical or financial risks
16 of negotiated contracts are substantial, fixed-price contracts
17 with options for shorter work increments are preferred to
18 longer cost-type contracts so as to maintain greater control
19 over Government obligations.

20 WARRANTEE AGAINST CONTINGENT FEES

21 SEC. 502. Each contract negotiated under title III of
22 this Act or an award to be made as a result of the submission
23 of a technical proposal under section 202 (c) of this Act shall
24 contain a warrantee by the contractor that no person or sell-

1 ing agency has been employed or retained to solicit or secure
2 the contract upon an agreement or understanding of a com-
3 mission, percentage, brokerage, or contingent fee, excepting
4 bona fide employees or bona fide established commercial or
5 selling agencies maintained by the contractor for the pur-
6 pose of securing business; and that for any breach or viola-
7 tion of the warrantee, the Government may annul the con-
8 tract without liability or deduct from the contract price or
9 consideration the full amount of the commission, percentage,
10 brokerage, or contingent fee.

11 CANCELLATIONS AND REJECTIONS

12 SEC. 503. (a) Where the contracting officer determines
13 that it is in the best interest of the Government, the con-
14 tracting officer may—

15 (1) withdraw a small purchase order prior to the
16 consummation of a contract;

17 (2) cancel an invitation for sealed bids before bid
18 opening or after bid opening but before award; or

19 (3) cancel a request for proposal and reject all
20 offers.

21 (b) When requested, the contracting officer shall fully
22 inform any unsuccessful offeror or bidder of the reasons for
23 the rejection of his offer or bid.

MULTIYEAR CONTRACTS

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SEC. 504. (a) Except as otherwise provided by law, an agency may make contracts for acquisition of property or services for periods not in excess of five years, when appropriations are available and adequate for payment for the first fiscal year and the Agency head determines that—

(1) the Government need for the property or services being acquired over the period of the contract is reasonably firm and continuing; and

(2) such a contract will serve the best interests of the United States by encouraging effective competition or promoting economies in performance and operation.

(b) The Administrator of the Office of Federal Procurement Policy may grant exceptions to the five year limitation imposed by subsection (a) upon the certification, in such form and of such content as the Administrator may require, by the Agency head that such exception is in the best interests of the Government. A copy of each such certification and each exception granted shall be delivered to the chairman of the Committee on Government Operations and the Committee on Appropriations of the House of Representatives and the Senate, respectively.

(c) Any cancellation costs incurred must be paid from

1 appropriated funds originally available for performance of
2 the contract, or currently available for procurement of similar
3 property or services, and not otherwise obligated, or appro-
4 priations made available for such payments.

5 ADVANCE, PARTIAL, AND PROGRESS PAYMENTS

6 SEC. 505. (a) Any executive agency may—

7 (1) make advance, partial, progress, or other pay-
8 ments under contracts; and

9 (2) insert in solicitations a provision limiting ad-
10 vance or progress payments to small business concerns.

11 (b) Advance payments under subsection (a) shall not
12 be made in excess of the amount required for contract per-
13 formance and shall not exceed the unpaid contract price.

14 (c) When progress payments are made, the Govern-
15 ment shall have title to the progress payment inventory and,
16 notwithstanding any other provisions of law, that title may
17 not be divested by any action of the contractor, or proceed-
18 ing in bankruptcy, or encumbered by any lien or security
19 interest.

20 (d) Advance payments under subsection (a) may be
21 made only upon adequate security and a determination by
22 the Agency head that to do so would be in the public inter-
23 est. Such security may be in the form of a lien in favor of
24 the Government on the property contracted for, on the bal-
25 ance in an account in which such payments are deposited,

1 or on such property acquired for performance of the contract
2 as the parties may agree. This lien shall have priority over
3 all other liens.

4 REMISSION OF LIQUIDATED DAMAGES

5 SEC. 506. Upon the recommendation of the Agency
6 head the Comptroller General of the United States may
7 remit all or part, as he considers just and equitable, of any
8 liquidated damages provided by the contract for delay in
9 performing the contract.

10 DETERMINATIONS AND FINDINGS

11 SEC. 507. (a) Determinations, findings, and decisions
12 provided for by this Act may be made with respect to con-
13 tracts individually or with respect to classes of contracts.

14 (b) Each determination or decision shall be based upon
15 written findings of the officer making the determination or
16 decision, and shall be retained in the official contract file.

17 COMPETITIVE BIDDING INFORMATION

18 SEC. 508. (a) If the contracting officer or any other
19 agency employee has reason to believe that any bid, pro-
20 posal or offer evidences a violation of the antitrust laws or
21 provisions of this Act, he shall refer that bid, proposal or
22 offer through the appropriate agency official, directly to the
23 Attorney General of the United States for appropriate
24 action.

25 (b) Upon the request of the Attorney General of the

1 United States, the Agency head shall make available to the
2 Attorney General information which the Attorney General
3 considers necessary and relevant to any investigation, prose-
4 cution or other action by the United States under the anti-
5 trust laws or other statute enforced by the Attorney General.

6 (c) The Agency head shall render needed assistance to
7 the Attorney General in any investigation and prosecution
8 flowing from the information provided in subsection (a)
9 or (b) or from other investigation and prosecution in other
10 antitrust matters.

11 GOVERNMENT SURVEILLANCE REQUIREMENTS

12 SEC. 509. (a) Notwithstanding any other provision of
13 law, an agency head may grant a waiver from Government
14 surveillance requirements for a period not to exceed two
15 years to that part of a contractor's operation which is sep-
16 arately managed and accounted for if more than 75 per cen-
17 tum of the business activity of that part of a contractor's
18 operation as measured by total sales volume, is being con-
19 ducted under commercial and competitive Government con-
20 tracts, where the Government awarded firm fixed-price
21 type contracts or where price was the deciding or a signifi-
22 cant factor for award.

23 (b) Such a waiver shall relieve that contractor profit
24 center from Government, but not General Accounting Of-
25 fice surveillance requirements including:

1 (1) agency management, procurement system and
2 property reviews;

3 (2) determinations of the reasonableness of indi-
4 rect overhead costs;

5 (3) provisions of the Cost Accounting Standards
6 Act (Public Law 93-379);

7 (4) advance agreements for independent research
8 and development and bid and proposal activities; and

9 (5) provisions of the Renegotiation Act.

10 (c) Such a waiver shall not be granted, and may be
11 revoked at any time, if the Agency head determines that,
12 for other reasons, the combination of commercial and Gov-
13 ernment competitive activity is insufficient to insure efficient
14 contractor activity under Government contracts.

15 MAINTENANCE OF REGULATIONS

16 SEC. 510. (a) Notwithstanding the provisions of title
17 VIII of this Act, or any other provisions of law, regulations,
18 including amendments thereof approved pursuant to sub-
19 section (b), relating to Federal procurement as determined
20 by the Administrator of the Office of Federal Procurement
21 Policy, promulgated or in effect one hundred and eighty days
22 before the date of enactment of this Act shall remain in ef-
23 fect until repealed by order of the Administrator of the
24 Office of Federal Procurement Policy or until the lapse of
25 two years after the date of enactment of this Act, whichever

1 is earlier. No regulation preserved by operation of this sec-
2 tion may be amended without the prior approval of the Ad-
3 ministrator of the Office of Federal Procurement Policy.

4 (b) The Administrator of the Office of Federal Pro-
5 curement Policy is authorized to approve the amendment of
6 regulations preserved under the provisions of subsection (a).

7 TITLE VI—DELEGATION OF AUTHORITY

8 DELEGATION WITHIN AN EXECUTIVE AGENCY

9 SEC. 601. Each agency head may delegate any author-
10 ity under this Act except the authority to grant waivers
11 under section 509, provided that the authority to make
12 determinations under sections 202 and 304 through 306
13 shall not be delegated below the level of the head of a
14 procuring activity.

15 JOINT ACQUISITIONS

16 SEC. 602. (a) To facilitate acquisition of property or
17 services by one executive agency for another executive
18 agency, and to facilitate joint acquisition by those agencies—

19 (1) the Agency head may, within his agency,
20 delegate functions and assign responsibilities relating
21 to the acquisition;

22 (2) the heads of two or more executive agencies
23 may by agreement delegate acquisition functions and
24 assign acquisition responsibilities from one agency to

1 another of those agencies or to an officer or civilian
2 employee of another of those agencies; and

3 (3) the heads of two or more executive agencies
4 may create joint or combined offices to exercise acquisi-
5 tion functions and responsibilities.

6 (b) Subject to the provisions of section 686 of title 31,
7 United States Code—

8 (1) appropriations available for acquisition of
9 property and services by an executive agency may
10 be made available for obligation for acquisition of
11 property and services by any other agency in amounts
12 authorized by the head of the ordering agency and
13 without transfer of funds on the books of the Depart-
14 ment of the Treasury;

15 (2) a disbursing officer of the ordering agency may
16 make disbursement for any obligation chargeable under
17 subsection (a) of this section, upon a voucher certified
18 by an officer or civilian employee of the acquisition
19 agency.

20 TITLE VII—PROTESTS

21 PURPOSE

22 SEC. 701. In accordance with the authority of the
23 Budget and Accounting Act of 1921 (chapter 18, title III,
24 section 304, 42 Stat. 24, 31 U.S.C. 44) and this title,

1 protests shall be decided in the General Accounting Office.
2 To the fullest extent possible, the Comptroller General shall
3 provide for the inexpensive, informal, and expeditious res-
4 olution of protests.

5 JURISDICTION

6 SEC. 702. (a) The Comptroller General shall have
7 authority to decide any protest submitted by an interested
8 party in accordance with rules and regulations he shall issue
9 pursuant to section 704.

10 (b) No contract shall be awarded after the contracting
11 activity has received notice of a protest to the Comptroller
12 General while the matter is pending before him: *Provided,*
13 *however,* That the head of an executive agency may author-
14 ize the award of a contract notwithstanding such protest,
15 upon a written finding that the interest of the United States
16 will not permit awaiting the decision of the Comptroller
17 General: *And provided further,* That the Comptroller is
18 advised prior to the award of such finding.

19 (c) With respect to any solicitation, proposed award,
20 or award of contract protested to him in accordance with this
21 title, the Comptroller General is authorized to declare that
22 such solicitation, proposed award, or award does not com-
23 port with law or regulation. If award has been made prior
24 to such declaration the Comptroller General may further

1 declare that the contract shall be terminated for the con-
2 venience of the Government.

3 PROCEEDINGS

4 SEC. 703. (a) Proceedings shall be informal to the
5 fullest extent possible.

6 (b) Each decision of the Comptroller General shall be
7 signed by him or his delegee and shall be binding upon all
8 interested parties including the executive agency or agencies
9 involved. A copy of the decision shall be furnished to the
10 interested parties and the executive agency or agencies
11 involved.

12 (c) (1) All decisions shall be rendered promptly, con-
13 sistent with the need to develop a complete record, in ac-
14 cordance with regulations to be issued by the Comptroller
15 General pursuant to section 704 of this title.

16 (2) There shall be no *ex parte* proceedings before the
17 Comptroller General except that this section shall not be
18 deemed to preclude informal contacts with the parties for
19 procedural purposes.

20 (3) A conference shall be permitted before decision;
21 however, no transcripts shall be required. Transcripts may
22 be permitted at the Comptroller General's discretion or at
23 the request of the interested party, provided the Comptroller
24 General and each other interested party shall be furnished

1 a copy. Costs of such transcripts and services shall be borne
2 by the requesting party.

3 (4) The Comptroller General shall, for good cause
4 shown, authorize formal discovery proceedings and may
5 sign and issue subpoenas requiring the production of
6 books and records and attendance of witnesses for the
7 taking of evidence. In case of refusal to obey a subpoena
8 by a person who resides, is found, or transacts business
9 within the jurisdiction of a United States district
10 court, the court, upon application of the Comptroller
11 General, shall have jurisdiction to issue the person an
12 order requiring him to appear before the Comptroller
13 General or his designee to produce the books and rec-
14 ords, or to give testimony, or both. Any person who fails
15 to obey the order of the court may be punished by the
16 court as a contempt thereof.

17 (d) The Comptroller General is authorized to dismiss
18 any protest he determines to be frivolous or which, on its
19 face, does not state a valid basis for protest.

20 (e) Where the Comptroller General has declared that
21 solicitation, proposed award, or award of a contract does
22 not comport with law or regulation, he may further declare
23 the entitlement of an appropriate party to bid and proposal
24 preparation costs. In such cases the Comptroller General
25 may remand the matter to the executive agency involved

1 for an initial determination as to the amount of such costs.
2 Declarations of entitlement to monetary awards shall be
3 paid promptly by the executive agency concerned out of
4 funds available for the purpose of the procurement or sale.

5 (f) The Comptroller General, where he deems appro-
6 priate, shall make recommendations for improving the pro-
7 curement process.

8 GENERAL PROVISIONS

9 SEC. 704. The Comptroller General shall perform such
10 acts, make such rules and regulations, and issue such orders,
11 not inconsistent with this title, as may be necessary in the
12 execution of the protest decision function. He may delegate
13 his authority to other officers or employees of the General
14 Accounting Office.

15 TITLE VIII—AMENDMENTS AND REPEALS

16 AMENDMENTS

17 SEC. 801. (a) The Agriculture Department Appropria-
18 tion Act, 1923, is amended by striking out “, after due ad-
19 vertisement and on competitive bids,” in the first proviso
20 on the page at forty-second Statutes at Large, page 517
21 (7 U.S.C. 416).

22 (b) Sections 101 (d) and 104 of the Department of
23 Agriculture Organic Act of 1944 (58 Stat. 734, 736; 7
24 U.S.C. 430, 432) are amended by striking out “in the open
25 market”.

1 (c) Section 2356(b) of title 10, United States Code,
2 is amended by striking out the last sentence.

3 (d) Sections 4504 and 9504 of title 10, United States
4 Code, are each amended by striking out everything after
5 "United States" and inserting in lieu thereof a period.

6 (e) Sections 4505 and 9505 of title 10, United States
7 Code, are each amended by striking out the second sentence.

8 (f) Clause (2) of section 502(e) of the Act of August
9 10, 1948 (62 Stat. 1283; 12 U.S.C. 1701c(b)(2)), is
10 amended by striking out ", without regard to section 3709
11 of the Revised Statutes".

12 (g) Section 502(e) of the Act of December 31, 1970
13 (84 Stat. 1784; 12 U.S.C. 1701z-2(c)), is amended by
14 striking out ", without regard to section 3709 of the Revised
15 Statutes,".

16 (h) Section 708(h) of the Act of June 27, 1934, as
17 amended August 10, 1948 (62 Stat. 1279; 12 U.S.C. 1747
18 g(h)), is amended by striking out the proviso at the end.

19 (i) Section 712 of the Act of June 27, 1934, as
20 amended August 10, 1948 (62 Stat. 1281; 12 U.S.C.
21 1747k) is amended by striking out "and without regard
22 to section 3709 of the Revised Statutes".

23 (j) Section 208(b) of the Act of June 26, 1934, as
24 amended October 19, 1970 (84 Stat. 1014; 12 U.S.C.
25 1788(b)), is amended by striking out the last sentence.

1 (k) Clause (4) of section 2 (b) of the Act of July 18,
2 1958 (72 Stat. 386; 15 U.S.C. 634 (b) (4)), is amended
3 by striking out: "Section 3709 of the Revised Statutes, as
4 amended (41 U.S.C., section 5), shall not be construed
5 to apply to any contract of hazard insurance or to any pur-
6 chase or contract for services or supplies on account of prop-
7 erty obtained by the Administrator or as a result of loans
8 made under this Act if the premium therefor or the amount
9 thereof does not exceed \$1,000."

10 (l) Section 3 of the Act of April 24, 1950 (64 Stat.
11 83; 16 U.S.C. 580c), is amended to read as follows:

12 "SEC. 3. The Forest Service is authorized to make
13 purchases of (1) materials to be tested or upon which
14 experiments are to be made or (2) special devices, test
15 models, or parts thereof, to be used (a) for experimenta-
16 tion to determine their suitability for or adaptability to
17 accomplishment of the work for which designed or (b) in
18 the designing or developing of new equipment: *Provided,*
19 That not to exceed \$50,000 may be expended in any one
20 fiscal year pursuant to this authority and not to exceed
21 \$10,000 on any one item or purchase."

22 (m) Section 2 (b) (1) of the Act entitled "An Act to
23 authorize the construction of a National Fisheries Center
24 and Aquarium in the District of Columbia and to provide for
25 its operation", approved October 9, 1962 (76 Stat. 753;

1 16 U.S.C. 1052), is amended by striking out “, without
2 regard to the provisions of section 3709 of the Revised
3 Statutes of the United States (41 U.S.C. 5),”.

4 (n) Subsections 2 (a) (1) and 2 (b) (1) of the Act of
5 July 26, 1954 (79 Stat. 44; 20 U.S.C. 331a (a) (1), (b)
6 (1), are amended by striking out any references to section
7 3709 of the Revised Statutes and to section 5 of title 41,
8 United States Code.

9 (o) Section 224 (a) of the Act of November 8, 1965
10 (79 Stat. 1228; 20 U.S.C. 1034 (a)), is amended by strik-
11 ing out “, and, without regard to section 3709 of the Revised
12 Statutes (41 U.S.C. 5),”.

13 (p) Section 7 of the Act of December 20, 1945, as
14 amended October 10, 1949 (59 Stat. 621; 22 U.S.C. 287e),
15 is amended by striking out “, all without regard to section
16 3709 of the Revised Statutes, as amended (41 U.S.C. 5)”.

17 (q) Section 707 of the Act of August 13, 1946 (60
18 Stat. 1019; 22 U.S.C. 1047), is amended by striking out
19 “, without regard to section 3709 of the Revised Statutes”.

20 (r) Section 22 (e) (7) of the Act of December 29,
21 1970 (84 Stat. 1613, 29 U.S.C. 671 (e) (7)), is amended
22 by striking out “, and without regard to section 3709 of the
23 Revised Statutes, as amended (41 U.S.C. 5), or any other
24 provision of law relating to competitive bidding.”

25 (s) Section 6 (b) of the Act of August 31, 1954 (68

1 Stat. 1010; 30 U.S.C. 556 (b)), is amended by striking out
2 “and without regard to the provisions of section 3709, Re-
3 vised Statutes (41 U.S.C. 5)”.

4 (t) Section 1820 (b) of title 38, United States Code,
5 is amended by striking out “section 5 of title 41” and in-
6 serting in lieu thereof the “Federal Acquisition Act of
7 1977” and by deleting “if the amount of such contract
8 exceeds \$1,000.”.

9 (u) Section 5002 of title 38, United States Code,
10 is amended by substituting a period for the comma after
11 “work” and striking out the remainder of the section.

12 (v) The Act of October 10, 1940, as amended (54
13 Stat. 109; 41 U.S.C. 6a, b (a), (c), (d)), is amended
14 by striking out section 2 and subsections (c) and (d), and
15 by striking out “without regard to the provisions of sec-
16 tion 3709 of the Revised Statutes, as amended,” in sub-
17 section (a). The Act of July 27, 1965 (79 Stat. 276; 41
18 U.S.C. 6a-1) is amended by striking out any and all ref-
19 erences to section 3709 of the Revised Statutes in the
20 sections relating to Architect of the Capitol.

21 (w) Section 11 of the Act of June 30, 1936 (49
22 Stat. 2039, renumbered section 12 in 66 Stat. 308; 41
23 U.S.C. 45), is amended to read as follows:

24 “SEC. 12. The provisions of this Act requiring the
25 inclusion of representations with respect to minimum wages

1 shall apply only to purchases or contracts relating to such
2 industries as have been the subject matter of a determina-
3 tion by the Secretary of Labor.”.

4 (x) Section 356 (b) of the Act of July 1, 1944, as
5 added October 18, 1968 (82 Stat. 1175; 42 U.S.C. 163d
6 (b)), is amended by striking out the references to section
7 3709 of the Revised Statutes and 41 U.S.C. 5 in clause (3),
8 and by striking out the parenthetical phrase “by negotiation
9 or otherwise)” in clause (4).

10 (y) Section 1 (b) of the Act of October 14, 1940 (54
11 Stat. 1126; 42 U.S.C. 1521 (b)), is amended by striking
12 out the reference to section 3709 of the Revised Statutes in
13 the first parenthetical phrase, and by striking out the first
14 proviso.

15 (z) Section 202 (b) of the Act of October 14, 1940 (55
16 Stat. 362; 42 U.S.C. 1532 (b)), is amended by striking out
17 the reference to section 3709 of the Revised Statutes.

18 (aa) Section 309 of the Act of September 1, 1951 (65
19 Stat. 307; 42 U.S.C. 1592h) is amended by striking out
20 clause (a), and amending clause (b) to read as follows:

21 “(b) the fixed-fee under a contract on a cost-plus-a-
22 fixed-fee basis shall not exceed 6 per centum of the esti-
23 mated cost;”.

24 (bb) Sections 103 (b) (4) and 104 (a) (2) of the Act
25 of July 14, 1955, as amended November 21, 1967 (81

1 Stat. 486, 487; 42 U.S.C. 1857b (b) (4), b-1 (a) (2)), is
2 amended by striking out the references to section 3709 of
3 the Revised Statutes and to section 5 of title 41, United
4 States Code.

5 (cc) Section 31 (b) of the Atomic Energy Act of 1954
6 (68 Stat. 927; 42 U.S.C. 2051c) is amended to read as
7 follows:

8 “(b) The Commission may make available for use in
9 connection with arrangements made under this section such
10 of its equipment and facilities as it may deem desirable.”.

11 (dd) Section 41 (b) of the Atomic Energy Act of
12 1954 (68 Stat. 928; 42 U.S.C. 2061 (b)), is amended
13 by striking out the two sentences immediately preceding
14 the last sentence in this section.

15 (ee) Section 43 of the Atomic Energy Act of 1954
16 (68 Stat. 929; 42 U.S.C. 2063), is amended by striking
17 out the following: “without regard to the provisions of sec-
18 tion 3709 of the Revised Statutes, as amended, upon certifi-
19 cation by the Commission that such action is necessary in
20 the interest of the common defense and security, or upon a
21 showing by the Commission that advertising is not reason-
22 ably practicable. Partial and advance payments may be
23 made under contracts for such purposes.”.

24 (ff) Section 66 of the Atomic Energy Act of 1954 (68
25 Stat. 933; 42 U.S.C. 2096), is amended by striking out

1 the following: "Any purchase made under this section may
2 be made without regard to the provisions of section 3709
3 of the Revised Statutes, as amended, upon certification by
4 the Commission that such action is necessary in the interest
5 of the common defense and security, or upon a showing by
6 the Commission that advertising is not reasonably prac-
7 ticable. Partial and advance payments may be made under
8 contracts for such purposes."

9 (gg) Section 203(e) of the Act of April 3, 1970
10 (84 Stat. 115; 42 U.S.C. 4372(e)), is amended by strik-
11 ing out the references to section 3709 of the Revised
12 Statutes and to section 5 of title 41, United States Code.

13 (hh) Section 703 of the Act of June 29, 1936 (49
14 Stat. 2008; 46 U.S.C. 1193), is amended by striking out
15 subsection (a), by striking out "For the construction, re-
16 construction, or reconditioning of vessels, and" in subsec-
17 tion (c), and by renumbering subsections (b) and (c)
18 as (a) and (b), respectively.

19 (ii) Section 8(a) of the Act of September 30, 1965
20 (79 Stat. 894; 49 U.S.C. 1638(a)), is amended by
21 striking out the references to section 4709 of the Revised
22 Statutes and to section 5 of title 41, United States Code,
23 in paragraph (1), and by striking out paragraph (3).

24 (jj) Section 5012 of title 38, United States Code, is

1 amended by striking out the second sentence in subsection
2 (a) and all of subsection (c).

3 REPEALS

4 SEC. 802. The following statutes or provisions of
5 statutes are repealed.

6 Chapters 135 and 137 and sections 2306, 4535, 4540,
7 7212, 9535, and 9540 of title 10, United States Code; sec-
8 tion 7 of the Act of May 18, 1938 (52 Stat. 406; 16 U.S.C.
9 833f) ; section 7 of the Act of March 3, 1875, as amended
10 (18 Stat. 450; 25 U.S.C. 96) ; section 3 of the Act of
11 August 15, 1876 as amended (19 Stat. 199; 25 U.S.C.
12 97) ; sections 602 (d) (3) and 602 (d) (10) of the Fed-
13 eral Property and Administrative Services Act as amended
14 (40 U.S.C. 474 (3), (10) ; sections 10 (a) and 10 (b) of
15 the Act of September 9, 1959 (73 Stat. 481; 40 U.S.C.
16 609 (a), (b)) ; 41 U.S.C. 5; section 2 of the Act of Octo-
17 ber 10, 1940, as amended October 31, 1951 (54 Stat. 1110;
18 41 U.S.C. 6a) ; sections 3710 and 3735 of the Revised
19 Statutes (41 U.S.C. 8, 13) ; section 3653 of the Revised
20 Statutes, as amended by the Act of July 7, 1884 (23 Stat.
21 204; 41 U.S.C. 24) ; title III of the Federal Property and
22 Administrative Services Act of 1949 as amended; 41 U.S.C.
23 254 (b) ; section 10 (a) of the Act of September 5, 1950
24 (64 Stat. 591; 41 U.S.C. 256a) ; section 510 (a) of the

1 Act of July 15, 1949 (63 Stat. 437; 42 U.S.C. 1480 (a)) ;
2 section 6 (e) of the EURATOM Cooperation Act of 1958
3 (72 Stat. 1085; 42 U.S.C. 2295 (e)) ; section 1345 (b) of
4 the Act of August 1, 1968 (82 Stat. 585; 42 U.S.C. 4081
5 (b)) ; section 404 of the Act entitled "An Act to author-
6 ize appropriations during the fiscal year 1969 for procure-
7 ment of aircraft, missiles, naval vessels, and tracked combat
8 vehicles, research, development, test, and evaluation for the
9 Armed Forces, and to prescribe the authorized personnel
10 strength of the Selected Reserve of each Reserve component
11 of the Armed Forces, and for other purposes, approved,
12 September 20, 1969 (82 Stat. 849).

95TH CONGRESS
1ST SESSION

S. 1264

A BILL

To provide policies, methods, and criteria for the acquisition of property and services by executive agencies.

By Mr. CHILES and Mr. ROTH

APRIL 6 (legislative day, FEBRUARY 21), 1977
Read twice and referred to the Committee on
Governmental Affairs

Purpose:

Amdt. No. 3435

To permit firms other than architectural and engineering firms to compete for certain jobs through the negotiated bidding procedure.

LEGISLATIVE COUNCIL
FILE COPY

95TH CONGRESS
2D SESSION

S. 1264

IN THE SENATE OF THE UNITED STATES

AUGUST 7 (legislative day, MAY 17), 1978
Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. CHURCH to S. 1264, a bill to provide policies, methods, and criteria for the acquisition of property and services by executive agencies, viz:

1 On page 92, immediately after line 4, insert the follow-
2 ing new title:

3 “TITLE X—SELECTION OF FIRMS TO PERFORM
4 INCIDENTAL SERVICES AMENDMENTS TO
5 THE FEDERAL PROPERTY AND ADMINIS-
6 TRATIVE SERVICES ACT OF 1949

7 “SEC. 1001. (a) Section 901 (1) of the Federal Prop-
8 erty and Administrative Services Act of 1949 is amended by

1 inserting immediately before the period a comma and the
2 following: 'except in the case of incidental services as
3 described in paragraph (3), the term "firm" includes any
4 individual, firm, partnership, corporation, association, or
5 other legal entity permitted by law or otherwise profes-
6 sionally qualified to perform such incidental services'.

7 " (b) Section 901 (3) of such Act is amended by strik-
8 ing out 'that members of these professions and those in
9 their employ may logically or justifiably perform' and in-
10 sserting 'to professional architectural and engineering
11 services' ".

12 On page 43, in the table of contents, immediately after
13 item "Sec. 902." insert the following:

"TITLE X—SELECTION OF FIRMS TO PERFORM
INCIDENTAL SERVICES

"Sec. 1001. Amendments to the Federal Property and Administrative
Services Act of 1949."

Amdt. No. 3435

**95TH CONGRESS
2D SESSION**

S. 1264

AMENDMENTS

Intended to be proposed by Mr. CHURCH to
S. 1264, a bill to provide policies, methods,
and criteria for the acquisition of property
and services by executive agencies.

AUGUST 7 (legislative day, MAY 17), 1978

Ordered to lie on the table and to be printed