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ACTIO  
OCA 07-4073

### OFFICE OF CONGRESSIONAL AFFAIRS

#### Routing Slip

	ACTION	INFO
1. D/OCA		X
2. DD/Legislation	XXXX	
3. DD/Senate Affairs		X
4. Ch/Senate Affairs		
5. DD/House Affairs		X
6. Ch/House Affairs		
7. Admin Officer		
8. Executive Officer		
9. FOIA Officer		
10. Constituent Inquiries Officer		
11. <input type="text"/>		X
12.		

SUSPENSE

9 Oct 87

Date

Action Officer:

Remarks:

ATTACHMENT WITH ACTION OFFICER

cmc 25 Sept 87

Name/Date

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**EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503**

**O/CONGRESSIONAL AFFAIRS**  
87-4078

September 22, 1987

LEGISLATIVE REFERRAL MEMORANDUM

**SPECIAL**

**TO:** SEE ATTACHED DISTRIBUTION LIST

**OCA FILE 786**

**SUBJECT:** Office of Management and Budget draft bill -- the  
"Federal Acquisition Act of 1987."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with Circular A-19.

Please provide us with your views no later than October 9, 1987

Direct your questions to Gregory Jones (395-3454), of this office.

*Gregory A. Jones*  
Assistant Director for  
Legislative Reference

**Enclosures**

- |                  |               |
|------------------|---------------|
| cc: Bill Coleman | David Haun    |
| Amy Belasco      | Naomi Sweeney |
| Norine Noonan    | Ed Rea        |
| Frank Reeder     |               |

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<del>Central Intelligence Agency</del>		

### Declaration of Policy

Section 101 It is the policy of the United States to promote economy, efficiency, and effectiveness in the procurement of property and services by the Federal government by --

- (1) simplifying the procurement process;
- (2) promoting competition;
- (3) establishing policies, procedures, and practices that permit the government to acquire property and services of the necessary quality, within the time specified, at the lowest reasonable cost;
- (4) establishing the pre-eminent authority and accountability of the contracting officer by providing clear, unambiguous lines of contracting authority with as few constraints as are necessary;
- (5) providing incentives to encourage agencies and contractors to carry out the purposes and policies of this Act;
- (6) reducing procurement administrative lead times to the minimum number of days consistent with good business practices;
- (7) requiring, to the maximum extent practicable, the use of commercial products to meet the government's needs;
- (8) requiring, whenever feasible, the use of specifications that describe the government's needs in terms of functions to be performed or the performance required;
- (9) supporting the continuing development and maintenance of a procurement career management program to ensure a professional procurement workforce;
- (10) promoting fair dealings and equitable relationships with the private sector;
- (11) ensuring the development of procurement policies that will accommodate emergencies and wartime as well as peacetime requirements;
- (12) promoting the participation of small business concerns; and
- (13) maintaining a strong industrial base.

## DEFINITIONS

Sec. 201. For purposes of this Act the terms ---

(a) "Competitive procedures" are procedures by which an agency enters into a contract following full and open competition. Competitive procedures include ---

(1) the procedures required in Title IX of this Act (40 U.S.C. 541 et seq.) for the procurement of architect and engineering services;

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

(3) the procedures established by the Administrator for General Services for the multiple awards schedule program of the General Services Administration if --

(A) all responsible sources were allowed to participate in the programs; and

(B) orders and contracts under such procedures result in the alternative with the lowest overall cost meet the needs of the Government;

(4) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as responsible business concerns that are entitled to submit offers for such procurements are permitted to compete; and

(5) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review.

(b) "commercial product or commercial-type product" means any part or item of equipment or supply available in the commercial marketplace, including any part or item that requires only minor modification.

(c) "Contracting officer" means the head of an executive agency and such other persons duly authorized by such person to execute contracts on behalf of the United States for the purchase of property and services.

(d) "Cost or Pricing Data" means all information that is verifiable and that, as of the date of agreement on the price of

a contract (or the price of a contract modification), a prudent buyer or seller would reasonably expect to affect price

negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment is derived.

(e) "agency" means each authority of the Government of the United States as defined in title 5, Section 551, of the United States code.

(f) "full and open competition" means that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement;

(g) "property" means personal property. The term excludes real property, such as leaseholds and other interests in real property.

(h) The "single system of Government-wide procurement regulations" means (A) the Federal Acquisition Regulation, a single Government-wide procurement regulation issued and maintained jointly by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration and any regulation issued [by OFPP] pursuant to Section 6 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 405 (b) and (B) agency acquisition regulations implementing and supplementing the Federal Acquisition Regulation essential to implement only agency unique policies and procedures.

(i) "Technical data" means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) concerning supplies procured by an agency. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration.

(j) "Major system" means a combination of elements that will function together to produce the capabilities required to fulfill a mission need, which elements may include hardware, equipment, software or any combination thereof, but excludes construction or other improvements on real property. The minimum dollar threshold that designates a major system shall be established in the regulations required in Section 1300 of this Act.

(k) "Item", or "item of supply", or "supplies" means any individual part, component, subassembly, assembly, or subsystem integral to a major system, and other property which may be replaced during the service life of the system, and includes

spare parts and replenishment spare parts, but does not include packaging or labeling associated with shipment or identification of an "item".

### **Applicability**

Section 202. This Act applies to the acquisition by contract of property and services by any executive agency, whether for the use of the executive agency or otherwise, for which payment is made from appropriated funds.

### **Acquisition Authority and Management**

#### **Section 301 (a) Contracting Authority of an agency**

- (1) Except as otherwise specifically provided in this Act, the authority of an agency to contract for authorized property and services on behalf of the Government is vested in contracting officers.
- (2) Contracting officers are authorized to enter into, administer, and terminate contracts and make related determinations and findings on behalf of the agency. Contracts may be entered into and signed only by contracting officers. Contracting officers will ensure the performance of all necessary actions for effective procurement, ensuring compliance with the terms of the contracts and safeguarding the interests of the United States in its contracts. In order to perform these responsibilities, contracting officers should exercise sound business judgement in the interest of the United States.
- (3) The authority of contracting officers to execute specific contracting functions within an agency shall not relieve the head of the agency of overall responsibility for the administration of such functions.

#### **(b) Management Responsibilities**

To carry out the purposes of this Act and to achieve effective, efficient, and economical procurement, the head of each agency, in accordance with applicable federal laws, the requirements of the single system of government-wide procurement regulations, and good business practices shall --

- (1) Establish short, clear lines of authority, accountability, and responsibility for acquisition decision making within the agency
- (2) Appoint, supervise, reassign and remove contracting officers in accordance with applicable laws.
- (3) Ensure the integration of the procurement activities of the agency with planning and budgeting functions of the agency.
- (4) Ensure that the authority of contracting officer is sufficient to carry out the responsibilities assigned by this Act.
- (5) Establish procedures to ensure the coordination of the contract audit activities of the executive agency to achieve the minimum burden on contractors consistent with prudent business practices.
- (6) Establish program needs and plans for the acquisition of property and services of the agency.
- (7) Ensure that the Senior Acquisition Executive appointed in accordance with subsection (c) has sufficient resources to develop and institute an acquisition personnel training and career development program in the agency to ensure a competent and productive workforce.

**(c) Senior Acquisition Executives**

- (1) The head of an agency shall appoint a Senior Acquisition Executive who shall be responsible for the overall management and direction of the agency's acquisition system, including implementation of acquisition policies, regulations and standards within the agency. The Senior Acquisition Executive shall also ensure the coordination of the contract auditor as part of the contracting team.
- (2) The Senior Acquisition Executive shall designate an Advocate for Competition within the agency who shall--
  - (i) identify and challenge barriers to competition;
  - (ii) promote the use of competitive procedures
- (3) When a department or agency is composed of two or more agencies, the Senior Acquisition Executive may



designate an acquisition executive and an advocate for competition for those agencies.

- (4) The Senior Acquisition Executive shall be responsible for all regulatory and paperwork activities within the agency that pertain to acquisition matters.
- (5) The Senior Acquisition Executive shall consult with the Administrator for Federal Procurement Policy and the Office of Personnel Management to develop education, and training, career development and career management programs for acquisition personnel. Such programs shall be designed to enhance recruitment and retention of highly qualified personnel and shall --

(i) provide for temporary assignment and temporary promotion of highly skilled acquisition personnel to critical assignments such as major systems programs or highly sophisticated acquisitions. The continuation of such temporary assignments and promotions shall be conditioned upon the level of performance demonstrated by the employee

(ii) provide for the establishment of an acquisition core group of specially selected entry level interns who will be placed within each agency. Members of this intern program will be placed in a structured program of training and rotational assignments to ensure their competence to progress to senior level acquisition positions.

#### General Acquisition Requirements

Section 401(a) A contracting officer for an agency, responsible for procuring property and services for the agency, shall --

(1) ensure that the appropriate agency officials have determined that such property or service is needed to carry out an authorized function of the agency;

(2) ensure that adequate funding is available for procuring such property or service; and

(3) exercise good business judgment in carrying out his/her responsibilities.

(b) except as provided in sections 501, 502, and 503, or otherwise provided by law, acquisition of property or services shall be made in accordance with the provisions of this title.

Full and Open Competition

Section 402(a) [Except as provided in sections 403 and 404,] In procuring property or services, a contracting officer shall --

(1) obtain full and open competition through the use of competitive procedures to obtain sealed bids or proposals; and

(2) use those procedures or combination of procedures that are best suited to the particular procurement.

(b) In determining the competitive procedures appropriate under the circumstance, the contracting officer shall --

(1) solicit sealed bids if --

(A) time permits the solicitation, submission, and evaluation of sealed bids;

(B) the award will be made on the basis of price and other price-related factors;

(C) it is not necessary to conduct discussions with the responding sources about their bids; and

(D) there is a reasonable expectation of receiving more than one sealed bid; or

(2) request competitive proposals if the contracting officer determines that sealed bids are not appropriate.

Limited Competition

Section 403(a)(1) A contracting officer may procure property or services using competitive procedures but may exclude a particular source if the contracting officer determines that it is necessary in order to establish or maintain any alternative source or sources of supply for that property or service.

(2) Such a determination must conclude that it would --

(A) increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of such property or services;

(B) be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization;

(C) be in the interest of national defense in maintaining multiple sources for a critical item of supply; or

(D) be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

(b) In fulfilling the statutory requirements relating to small business concerns and socially and economically disadvantaged small business concerns, an agency shall use competitive procedures but may restrict a solicitation to allow only such business concerns to compete.

#### Procurement Without Competition

Section 404(a) A contracting officer may use procedures other than competitive procedures only when --

(1) the property or services needed by the agency are available from only one responsible source and no other type of property or service will satisfy the needs of the agency;

(2) the agency's need for the property or service is of such unusual and compelling urgency that the government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

(3) it is necessary to award the contract to a particular source or sources in order (A) to maintain a facility, producer, manufacturer, or other supplier so that it will be available for furnishing the property or service in case of a national emergency; (B) to achieve industrial mobilization; or (C) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

(4) the terms of an international agreement or treaty between the United States Government and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures;

(5) a statute expressly authorizes or requires that the procurement be made through another agency or from a specified

source, or the agency's need is for a brand-name commercial item for authorized resale;

(6) the disclosure of the needs of an agency would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

(7) the head of the agency (A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned, and (B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract. The authority of the agency head may not be delegated.

(b)(1) For the purposes of applying subsection (a)(1) of this section --

(A) in the case of a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique and innovative concept, the substance of which is not otherwise available to the United States and does not resemble the substance of a pending competitive procurement; and

(B) in the case of a follow-on contract for the continued development or production of a major system of highly specialized equipment, or the continued provision of highly specialized services, when it is likely that award to a source other than the original source would result in (A) substantial duplication of cost to the government which is not expected to be recovered through competition, or (B) unacceptable delays in fulfilling the executive agency's needs, such property may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures.

(2) For the purposes of applying subsections (a)(2) and (a)(6) of this section, the contracting officer shall request offers from as many potential sources as is practicable under the circumstances.

#### Justification and Approvals

Section 405(a) Except as provided in subsection (c) of this section, a contracting officer may not award a contract using noncompetitive procedures unless --

(1) the contracting officer for the contract justifies the use of such procedures in writing, pursuant to the requirements set

forth in regulation, and certifies the accuracy and completeness of the justification;

(2) the justification is approved--

(A) in the case of a contract in the amount of \$10,000,000 or more by the senior acquisition executive of the without delegation;

(B) in the case of a contract in an amount of less than \$10,000,000 by the procurement official at a level above the contracting officer as determined by the senior acquisition executive of the agency; and

(3) All required notices concerning the contract have been published and all bids or proposals received in response to such notices have been considered by such agency.

(b) The justification required by subsection (a)(1) of this section and any referenced information shall be made available to the public upon request, except for information exempted from release by section 552 of title 5, United States Code.

(c) In the case of a procurement permitted by section 404(a)(2), the justification and approval required by subsection (a) of this section may be made after the contract is awarded. The justification and approval required by subsection (a) of this section is not required in the case of a procurement permitted by section 404(a)(7) or in the case of a procurement conducted under the Wagner-O'Day Act.

(d) In no case may a contracting officer --

(1) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions; or

(2) procure property or services from another agency unless such other agency complies fully with the requirements of this Act in its procurement of such property or services (this restriction is in addition to, and not in lieu of, any other restriction provided by law).]

#### Planning and Solicitation Requirements

Section 406(a)(1) In preparing for the procurement of property or services, an agency shall --

(A) specify its needs and solicit bids or proposals to achieve full and open competition for the property and services;

(B) use advance procurement planning and market research; and

(C) develop specifications in such manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(D) define the agency's requirements for equipment and supplies so that commercial products may be use to fulfill its requirements.

(E) select the contract type most appropriate for the circumstances except that;

(i) a cost-plus-percentage-of-cost type contract may not be used;

(ii) the fee for performing a cost-plus-fixed-fee contract for experimental, developmental, or research work may not be more than 15 percent of the estimated cost of the contract;

(iii) except for (iv) the fee for performing any other cost-plus-fixed-fee contract may not be more than 10 percent of the estimated cost of the contract;

(iv) in no case shall the fee (total Compensation) paid for the production and delivery of designs, plans, drawing, and specifications under any contract for architect-engineer services relating to any public work exceed 6 percent of the estimated cost of construction; and

(v) the determination of the estimated cost of a contract, or the the cost of construction shall be made by the contracting officer at the time the contract is made.

(F) ensure that the contract type selected provides the contractor with incentives commensurate with the contractor's financial investment, and technological, schedule and performance risk. Fixed price contracts are normally not appropriate for research and development phases. For such efforts, a cost-reimbursement contract is preferable because it permits an equitable allocation of program risk between contracting parties.

(2) The contracting officer shall ensure that each solicitation for property and services include specifications that --

(A) permit full and open competition, unless specifically authorized by law;

(B) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency.

(3) Such specifications shall be stated in terms of --

(A) function, so that a variety of products or services may qualify;

(B) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(C) design requirements.

(b) Each solicitation for sealed bids or competitive proposals shall set forth (A) all significant factors that the contracting officer reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price); and (B) the relative importance assigned to each of those factors.

(c) Such solicitation shall also state --

(1)(A) that sealed bids will be evaluated without discussions with the bidders; and

(B) the time and place for the opening of the sealed bids;  
or

(2)(A) that competitive proposals are intended to be evaluated with, and awards made after, discussions with the offerors, but might be evaluated and awarded without discussions with the offerors; and

(B) the time and place for submission of such proposals.

(d) In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the contracting officer clearly establish the relative importance assigned to the quality of the services to be provided (including technical capability, management capability, and prior experience of the offeror.

#### Procurement Notice

Section 407(a) Except as provided in subsection (c) of this section --

(1) Before a contracting officer solicits bids or proposals for a contract for property or services expected to exceed \$25,000, and again at the time of award of such contract (if there are likely to be subcontracts), the contracting officer shall furnish to the Secretary of Commerce a notice described in subsection (b) of this section.

(2) The Secretary of Commerce shall publish promptly in the Commerce Business Daily each such notice.

(3) Whenever a notice of solicitation is required to be provided to the Secretary of Commerce, a contracting officer may not --

(A) issue such solicitation earlier than 15 days after the date on which such notice is published by the Secretary of Commerce; or

(B) establish a deadline for the submission of all bids or proposals in response to such solicitation that is earlier than 30 days after the date on which such solicitation is issued.

(b) Each notice required by subsection (a)(1) of this section shall include such information as specified by regulation issued by the Administrator for Federal Procurement Policy.

(c)(1) Notices (both pre- and post-award) are not required under subsection (a)(1) of this section if --

(A) such notices would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(B) the proposed procurement would result from acceptance of any unsolicited proposal that demonstrates a unique and innovative research concept, and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal;

(C) the procurement is made against an order placed under a requirements contract, or

(D) the procurement is made for perishable subsistence supplies.

(2) The requirements of subsection (a)(1) of this section pertaining only to pre-award notice do not apply to any procurement under conditions described in clause (2), (3), (4), (5), or (7) of section 404(a).



(3) The requirements of subsection (a)(1) of this section pertaining to pre-award notice shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, after consultation with Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

(d) An agency shall make available to any business concern, or the authorized representative of such concern, the complete solicitation package for any on-going procurement announced pursuant this section.

#### Evaluation and Award

Section 408(a) A contracting officer shall evaluate sealed bids and competitive proposals based solely on the factors specified in the solicitation.

(b) All sealed bids or competitive proposals received in response to a solicitation may be rejected if the contracting officer determines that such action is in the public interest.

(c) Sealed bids shall be opened publicly at the time and place stated in the solicitation. The contracting officer shall evaluate the bids without discussions with the bidders and, except as provided in subsection (b) of this section, shall award a contract with reasonable promptness to the responsible source whose bid conforms to the solicitation and is most advantageous to the United States, considering only price and the other price-related factors included in the solicitation. The award of a contract shall be made by transmitting written notice of the award to the successful bidder.

(d)(1) The contracting officer shall evaluate competitive proposals and may award a contract --

(A) after discussions conducted with the offerors at any time after receipt of the proposal and before the award of the contract; or

(B) without discussions with the offerors (other than discussions conducted for the purposes of minor clarification) when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the government.

(2) In the case of award of a contract under paragraph (1)(A), the contracting officer shall conduct, before such award, written or oral discussions with all responsible sources who submit proposals within the competitive range, considering only factors included in the solicitation.

(3) In the case of award of a contract under paragraph (1)(B), the contracting officer shall award the contract based on the proposals as received (and as clarified, if necessary, in discussions conducted for the purpose of minor clarification).

(4) Except as otherwise provided in subsection (b) of this section, the agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the United States, considering only price and the other factors included in the solicitation. The agency shall award the contract by transmitting written notice of the award to such source and shall promptly notify all other offerors of the rejection of their proposals.

(e) If the head of an agency considers that a bid or proposal evidences a violation of the antitrust laws, such agency head shall refer the bid or proposal to the Attorney General for appropriate action.

### Special Acquisition Procedures

#### Section 409 Small Purchases.

- (a) Any procurement of property or services not exceeding \$25,000, or the amount established pursuant to Section 1100, may be made in accordance with simplified small purchase procedures promulgated in the regulations prescribed under Section 1300.
- (b) A procurement requirement shall not be artificially divided so as to constitute a small purchase under this section.

#### Section 410 Multiple Award Schedules

- (a) The Administrator of the General Services Administration may prescribe special competitive acquisition procedures for its multiple award schedule program.
- (b) These procedures must provide an opportunity for all interested parties to submit proposals.
- (c) These procedures require an agency to place an order with the contractor who offers the lowest overall cost alternative which meets its minimum needs.

## Section 411 Basic Research

The regulations issued in accordance with Section 1300 may provide special procedures for the competitive selection of research proposals from a general solicitation and the peer review or scientific review (as appropriate) of those proposals.

\*Section 501

### Architect-Engineer-Services

Section 502 (1) Contracting officers shall award contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required at fair and reasonable prices. In acquiring such services and executive agency shall --

(A) Encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The contracting officer, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency together with those that may be submitted by other firms regarding the proposed project, shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services, and then shall select therefrom in order of preference, based on criteria established and published, no less than three firms considered to be the most highly qualified to provide the services required.

(B) award a contract with to highest qualified firm for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the United States. In making that determination, the agency shall take into account the estimated value, scope, complexity, and professional nature of the service to be rendered.

(2) If the contracting officer cannot negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the contracting officer determines to be fair and reasonable to the United States, the contracting officer shall terminate those negotiations. The contracting officer shall then undertake to conclude a contract with the second most qualified firm. Failing accord with the second most qualified firm, the agency shall terminate negotiations. The agency shall then undertake negotiations with the third most qualified firm.

(3) If the contracting officer cannot negotiate a satisfactory contract with any of the selected firms, it shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

\*Section 501 "Commercial Product Acquisition Procedures" will be distributed separately for clearance.

### Professional Services

Section 503. (a) Optional procedures may be used for Acquisition of highly complex professional services.

(1) For services that can only be broadly defined, require a high degree of innovation, and where the most highly qualified firm is desired, the following process shall be followed:

(A). The contracting officer shall provide for publication of the requirement for the desired service as set forth in Section 405 above and request that all interested firms and persons submit specific professional qualifications and performance data. The qualifications and performance data will be tailored to the requirement of the particular service to be performed. The data will be evaluated against the selection criteria provided in the publication of the requirement.

(B). The contracting officer shall evaluate all statements of qualification and performance data received and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of proposed methods and approaches for furnishing the required services. The contracting officer shall select, in order of preference, based upon the published criteria, no less than three firms deemed most highly qualified to provide the services to be acquired.

(C). The contracting officer shall negotiate a contract with the highest qualified firm for the services required at compensation which the contracting officer determines is fair and reasonable to the Government. In making such determination, the contracting officer shall take into consideration the estimated value of the service to be rendered, the scope, complexity, and professional nature thereof.

(D). Should the contracting officer be unable to negotiate a satisfactory contract with the firm considered to be most highly qualified, at a price the contracting officer determines to be fair and reasonable to the Government, negotiations with

that firm shall be formally terminated. The contracting officer shall then undertake negotiations with the second highest qualified firm. Failing accord with the second most highly qualified firm, the contracting officer shall terminate negotiations. The contracting officer shall then undertake negotiations with the third most qualified firm.

(E). Should the contracting officer be unable to negotiate a satisfactory contract with any of the three selected firms, the contracting officer shall select additional firms in order of their competence and qualification and continue until negotiation until an agreement is reached.

(b) The term "highly complex services" shall be defined in regulation established in accordance with Section 1300 of this Act.

#### Rights in Technical Data

Section 601 (a) The interests of the United States and of a Contractor in technical data shall be defined in regulations issued pursuant to section 1300 of this Act.

(b) Such regulations shall ensure to the maximum extent practicable, that the Government will promote the commercial application of Federally funded research by permitting all contractors regardless of size to retain the rights to technical data developed under a government contract, in exchange for royalty free use of such data by or on behalf of the Government.

(c) Those regulations are not intended to impair any right of the United States or any contractor with respect to patents or copyrights.

#### Validation of Technical Data Restrictions

Section 602 (a) The regulations prescribed in accordance with Section 1300 shall contain procedures for prompt resolution of disputes concerning restrictions asserted by contractors or subcontractors on the right of the United States to use technical data required to be delivered under contracts for property or service.

(b) Those regulations shall provide at a minimum that---

(1) a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification and supporting data for any

restriction asserted by the contractor or subcontractor on the right of the United States to use the technical data; and

(2) the contracting officer shall review the validity of any restriction and render a decision thereon.

(c) A decision by the contracting officer under subsection under (b)(2) may be appealed by the contractor or subcontractor in accordance with the requirements of the Contract Disputes Act of 1978 (41 U.S.C. 601 et. seq.)

### Truth in Negotiations

Section 701. Cost or pricing data.

(a) Required Cost or pricing Data and Certification.

(1) The contracting officer shall require offerors, contractors and subcontractors to make cost or pricing data available as follows:

(A) An offeror for a prime contract to be entered into using procedures other than sealed bid procedures shall be required to submit cost or pricing data before the award of the contract if the price is expected to exceed \$100,000.

(B) The contractor for a contract shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if the price adjustment is expected \$100,000 (or such lesser amount as may be prescribed by the contracting officer).

(C) An offeror for a subcontract (at any tier) under a contract with the United States shall be required to submit cost or pricing data before the award of a subcontract if--

(i) the price of the subcontract is expected to exceed \$100,000; and

(ii) the prime contractor and each higher tier subcontractor have been required to make available cost or pricing data under this section.

(D) The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification of the subcontract if the price adjustment

is expected to exceed \$100,000 (or such lesser amount as may be prescribed by the contracting officer).

(2) A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under paragraph (1) (or required by the head of the agency concerned to submit such data under subsection (c)) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

(3) Cost or pricing data required to be submitted under paragraph (1) (or under subsection (c)), and a certification required to be submitted under paragraph (2), shall be submitted--

(A) in the case of a submission by a prime contractor (or an offeror for a prime contract) to the contracting officer for the contract (or to the designated representative of the contracting officer); or

(B) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

(4) Except as provided under subsection (b), this section applies to contracts entered into by the contracting officer on behalf of a foreign government.

(5) The contracting officer may waive the requirement under this subsection for a contractor, subcontractor, or offeror to submit cost or pricing data. For purposes of paragraph (1)(C)(ii), a contractor or subcontractor granted a waiver shall be considered as having been required to make available cost or pricing data under this section.

(b) Exceptions.-- This section need not apply to a contract or subcontract--

(1) for which the price agreed upon is based on--

(A) adequate price competition;

(B) established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(C) prices set by law or regulation; or

(2) in an exceptional case when the head of the agency determines that the requirements of this section may be waived and states in writing the reasons for such determination.

(c) Authority To Require Cost or Pricing Data.-- When cost or pricing data are not required to be submitted by subsection (a), such data may nevertheless be required to be resubmitted by the contracting officer if the contracting officer determines that such data are necessary for the evaluation of the reasonableness of the price of the contract or subcontract.

(d) Price Reduction for Defective Cost or Pricing Data.--

(1)(A) A prime contract (or change or modification to a prime contract) under which a certificate under subsection (a)(2) is required shall contain a provision that the price of the contract to the United States, including profit or fee, shall be adjusted to exclude any significant amount by which it may be determined by the contracting officer that such price was increased because the contractor (or any subcontractor required to make available such certificate) submitted defective cost or pricing data.

(B) For the purposes of this section, defective cost or pricing data are cost and pricing data which, as of the date of agreement on the price of the contract (or another date agreed upon between the parties) were inaccurate, incomplete, or noncurrent. If for purposes of the preceding sentence the parties agree upon a date other than the date of the agreement on the price of the contract, the date agreed upon shall be as close to the date of agreement on the price of the contract as is practicable.

(2) In determining for purposes of a contract price adjustment under a contract provision required by paragraph (1) whether, and to what extent, a contract price was increased because a contractor (or a subcontractor) submitted defective cost or pricing data, it shall be a defense that the United States did not rely on the defective data submitted by the contractor or subcontractor.

(3) It is not a defense to an adjustment of the price of a contract under a contract provision required by paragraph (1) that--

(A) the price if the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcontractor because the contractor or subcontractor--

(i) was the sole source of the property or service procured; or



(ii) otherwise was in a superior bargaining position with respect to the property or service procured;

(B) the contracting officer should have known that the cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(C) the contract was based on an agreement between the contractor and the United States about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or

(D) the prime contractor or subcontractor did not submit a certification of cost or pricing data relating to the contract as required under subsection (a)(2).

(4)(A) A contractor shall be allowed to offset an amount against the amount of a contract price adjustment under a contract provision required by paragraph (1) if--

(i) the contractor certifies to the contracting officer (or to the designated representative of the contracting officer) that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset; and

(ii) the contractor proves that the cost or pricing data were available before the date of the agreement on the price of the contract (or price of the modification) and that the data were not submitted as specified in subsection (a)(3) before such date.

(B) A contractor shall not be allowed to offset an amount otherwise authorized to be offset under subparagraph(A) if-

(i) the certification under subsection (a)(2) with respect to the cost or pricing data involved if it was known to be false when signed; or

(ii) the United States proves that, had the cost or pricing data referred to in subparagraph

(A)(ii) been submitted to the United States before the date of agreement on the price of the contract (or the price of the modification), the submission of such cost or pricing data would not have resulted in an increase in that price in the amount of the offset.

(e) Interest and Penalties for Certain Overpayments--

(1) If the United States makes an over payment to a contractor under a contract subject to this section and the overpayment was due to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the United States--

(A) for interest on the amount of such overpayment, to be computed--

(i) for the period beginning on the date the overpayment was made to the contractor and ending on the date the contractor repays the amount of such overpayment to the United States; and

(ii) at the current rate prescribed by the Secretary of the Treasury under section 6621 of the Internal Revenue Code of 1954; and

(B) if the submission of such defective data was a knowing submission, for an additional amount equal to the overpayment.

(2) Except as provided under subsection (d), the liability of contractor under this subsection shall not be affected by the contractor's refusal to submit certification under subsection (a)(2) with respect to the cost or pricing data involved.

(f) Right of the United States to Examine Contractor Records--

(1) For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section with respect to a contract or subcontract, the head of the agency acting through any authorized representative of the head of the agency who is an employee of the United States or a member of the armed forces, shall have the right to examine all records of the contractor or subcontractor related to--

(A) the proposal for the contract or subcontract;

- (B) the discussions conducted on a proposal;
- (C) pricing of the contract or subcontract; or
- (D) performance of the contract or subcontract.

(2) The right of the head of the agency under paragraph (1) shall expire three years after final payment under the contract or subcontract.

(3) In this subsection, the term "record" ~~includes, documents and other data.~~

#### Commercial Pricing for Spare or Repair Parts

Section 702. (a) LIMITATION ON PRICE OF COMMERCIALY AVAILABLE PARTS.-- Except in the case of an offer submitted with a written statement under subsection (b)(2) and except as provided in subsection (c), if the contracting officer, using procedures other than competitive procedures, enters into a contract with a contractor for the purchase of spare or repair parts which the contractor also offers for sale to the general public, the price charged the United States for such parts under the contract may not exceed the lowest commercial price charged by the contractor in sales of such parts during a period described in subsection (b)(1).

(b) REQUIREMENTS FOR INCLUSION IN OFFER.--The contracting officer, with respect to an offeror who submits an offer to the head of an agency to enter into a contract for the supply of spare or repair parts under a contract awarded using procedures other than competitive procedures, and who also offers such parts for sale to the general public, shall require that the offeror-

- (1) certify in such offer that, to the best of the knowledge and belief of the offeror, the price proposed in the offer does not exceed the lowest commercial price at which such offeror sold such parts during the most recent regular monthly, quarterly, or other period for which sales data are reasonably available; or
- (2) submit with such offer a written statement-

- (A) specifying the amount of the difference between the price proposed in the offer and the lowest commercial price at which such offeror sold such parts during a period described in paragraph (1); and
- (B) providing a justification for that difference.

- (c) EXCEPTION TO LIMITATION.-Subsections (a) and (b) do not apply in the case of a contract with respect to which the contracting officer includes in the file on the contract a written determination by such officer that the use of the lowest commercial price with respect to such contract is not appropriate because of-
- (1) national security considerations; or
  - (2) significant differences between the terms of the commercial sales of the parts to be acquired under such contract and the terms of such contract, including differences in-
    - (A) quantity;
    - (B) quality;
    - (C) delivery requirements; or
    - (D) other terms and conditions.
- (d) AUDITING.-
- (1) In order to verify any certification or statement made under subsection (b) with respect to a contract, the contracting officer who awards such contract (or any representative of the contracting officer who is an employee of the United States or a member of the armed forces), during the time period specified in paragraph (2), may examine and audit all records of sales (including contract terms and conditions) maintained by or for the contractor that are directly pertinent to sales by the contractor of spare or repair parts identical to those covered by the contract during the period covered by such certification or statement.
  - (2) The contracting officer shall require an offeror who submits a certification or written statement under subsection (b) to make available the records, books, data, and documents described in paragraph (1) for examination, audit, or reproduction for the purposes of such paragraph during the three-year period beginning on the date that the offeror submits such certification or statement to such head of an agency.
  - (3) The authority provided by this subsection is in addition to the authority of the head of an agency under section 701 of this Act.
- (e) The regulations issued pursuant to Section 1300 shall prescribe procedures for carrying out this Section.

Such regulations may not require the disclosure or submission of any data related to any element underlying the price of a commercial product not otherwise required by law.

(f) DEFINITIONS.-In this section:

(1) The term "spare or repair part" means any individual piece, part, subassembly, or component which is furnished for the logistic support or repair of an end item and not as an end item itself.

(2) The term "lowest commercial price" means the lowest price at which a sale was made to the general public of a particular part. Such term does not include the price at which a sale was made-

(A) to any agency of the United States;

(B) to any person for resale by such person after such person performs a service or function in connection with such part that increases the cost of the part, unless the agency procuring the part can demonstrate that the agency is procuring the part before such service or function has been performed by any such person;

(C) to a subsidiary, affiliate, or parent business organization of the contractor, or any other branch of the same business entity;

(D) to any person at a price that, for the purpose of making a donation, has been substantially discounted below the fair market value or regular price of such part; or

(E) to a customer located outside the United States.

(g) APPLICABILITY.-This section does not apply to a contract entered into using simplified small purchase procedures established under Section 409 of this Act.

Prohibition of Contractors Limiting Subcontractor Sales  
Directly to the United States

Section 703 (a) Each contract for the purchase of property or services made by an agency subject to this Act shall provide that the contractor shall not --

(1) enter into an agreement with the subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the United States of any item or Process (including computer software) made or furnished under the contract (or any follow-on production contract); or

(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales to the United States described in clause (1).

(b) This section does not prohibit a contractor from asserting rights it otherwise has under law.

Multi-Year Contracting

Section 801. (a) the head of an executive agency may enter into multi-year contracts not to exceed five years of requirements for the purchase of property and five years duration for services whenever such official finds that--

(1). There will be a continuing minimum requirement for the property or services at a relatively constant rate and quantity;

(2). the furnishing of property or services will require a substantial initial investment in plant, equipment, training, or transportation;

(3). the use of multi-year is likely to be more cost effective compared to contracts awarded within the constraints of available appropriations; and

(4). the use of such a contract will encourage full and open competition, including competition among contractors, vendors, and suppliers, and promote economies of operation.

(b). Contracts made under this subsection may be used for the advance acquisition of components, parts, and materials, and contracts may be made under this

subsection for advance acquisition, if feasible and

practical in order to achieve economic-lot purchases and more efficient production rates.

(c). Regulations to implement this section shall be prescribed in accordance with section 1300 of this Act. Such regulations may provide for cancellation provisions in multi-year contracts to the extent that those provisions are necessary and in the best interest of the United States. Cancellation provisions may include consideration of both recurring and nonrecurring costs of the contractor associated with contract performance.

(d). In the event funds are not appropriated or made available for continuation into any year subsequent to contract award, the contract shall be cancelled or terminated, and the costs of cancellation or termination may be paid from--

(i). appropriations originally available for performance of the contract;

(ii). appropriations currently available for acquisition of the type of property or services concerned, and not otherwise obligated; or

(iii). funds appropriated for those payments.

(e). The head of the executive agency concerned shall notify in writing the Committees on Appropriation of the House of Representatives and the Senate and the appropriate oversight committee for that agency 30 days before award of any contract containing a cancellation ceiling in excess of \$100 million.

### Contract Financing

#### Section 901 Advance Payments

(a) The head of an agency may (1) make advance, partial, progress, or other payments for property or services. Those payments may not exceed the unpaid contract price.

(b) Advance payments may be made only if the contractor gives adequate security and after a determination by the head of the agency that to do so would be in the public interest. Such security may be in the form of a lien in favor of the United States on the property contracted for, on the balance in an account in which such payments are deposited, and on

such of the property acquired for performance of the contract as the parties may agree. This lien is paramount to all other liens.



not required-

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

(2) where the head of the agency determines, after taking into account the price and availability of the property or services from United States sources, that the public interest would be best served by not applying subsection (b). If subsection (b) is not applied to a contract or subcontract based on a determination under clause (2), a written report shall be furnished to the Congress.

(d) (1) The Director of the Defense Contract Audit Agency (or any successor agency) may require by subpoena the production of books, documents, papers, or records of a contractor, access to which is provided to the \*\* Secretary of Defense by subsection (a) or by section 2306a\*\* of this title.

(2) Any such subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate United States district court.

(3) The authority provided by paragraph (1) may not be redelegated.

(4) The Director (or any successor official) shall submit an annual report to the Secretary of Defense on the exercise of such authority during the preceding year and the reasons why such authority was exercised in any instance. The Secretary shall forward a copy of each such report to the Committees on Armed Services of the Senate and House of Representatives.

#### Encouraging New Competitors

Section 905 (a) In this section, "qualification requirement means the United States requirement for testing or other quality assurance demonstration that must be

completed before contract award. Except as provided by section 501 --

(b) Prior to establishing a qualification requirement, the contracting officer shall---

(1) specify in writing and make available to a

### Delegation

Section 902 Except as provided in section 404 of this Act, the head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under this chapter.

### Remission of liquidated damages

Section 903 Upon the recommendation of the head of an agency, the Comptroller General may remit all or part, as he considers just and equitable, of any liquidated damages assessed for delay in performing a contract, made by that agency, that provides for such damages.

### Examination of books and records of contractor

Section 904 (a) An agency as defined in section 301 of this Act is entitled, through an authorized representative, to inspect the plant and audit the books and records of-

(1) a contractor performing a cost or cost-plus-a-fixed-fee contract made by that agency under this chapter; and

(2) a subcontractor performing any subcontract under a cost or cost-plus-a-fixed-fee contract made by that agency under this chapter.

(b) Except as provided in subsection (c), each contract awarded after using procedures other than sealed-bid procedures shall provide that the Comptroller General and his representatives are entitled, until the expiration of three years after final payment, to examine any books, documents, papers, or records of the contractor, or any of his subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract.

(c) Subsection (b) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the head of the agency determines, with the concurrence of the Comptroller General or his designee, that the application of that subsection to the contract or subcontract would not be in the public interest. However, the concurrence of the Comptroller General or his designee is

potential offeror upon request all requirements that a prospective offeror, or its product of service, must satisfy in order to become qualified; and

(2) specify an estimate of the costs of testing and evaluation likely to be incurred by a potential offeror in order to become qualified;

(c) the contracting officer shall--

(1) ensure that a potential offeror is provided, upon request and at its expense, a prompt opportunity to demonstrate its ability to meet the standards specified in the qualification; and

(2) ensure that qualification requirements of subsection (b)(1) are kept current.

(d) If the number of qualified sources or qualified products available to compete actively for anticipated future requirements is fewer than two actual manufacturers, respectively, the contracting officer concerned, at his sole discretion, may bear the cost of conducting the specified testing and evaluation for small business concerns (excluding costs associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated). The cost may be borne only if the contracting officer determines that the concerns attempting to qualify are likely to succeed and the additional qualified sources or products are likely to result on cost savings from increased competition for future requirements sufficient to amortize the costs incurred by the agency within a reasonable period of time considering the duration and dollar value of anticipated future requirements.

(e) A proposed acquisition need not be delayed to comply with this section.

#### Assignment and Delegation of Acquisition Functions and Responsibilities

Section 906 To facilitate the acquisition of property and services covered by this Act by any agency for any other agency, and to facilitate joint acquisition by any agencies--

(a) the heads of two or more agencies may by agreement delegate acquisition functions and assign acquisition responsibilities from one executive agency to another of those agencies or to an officer or a civilian employee of another of those executive agencies; and

(b) the heads of two or more agencies may create joint or combined offices to exercise acquisition functions and responsibilities.

#### Allocation of Appropriations

Section 907 (a) Appropriations available for acquisition by an agency may, through administrative allotment, be made available for obligation for acquisition by any other agency in amounts authorized by the head of the allotting agency and without transfer of funds on the books of the Department of the Treasury.

(b) A disbursing official of the allotting agency may make any disbursement chargeable to an allotment under subsection (a) upon voucher certified by an officer or employee of the acquiring agency.

#### Socioeconomic Provisions

Section 1000 (a) In order to promote economy and efficiency in contracting the following statutory provisions shall apply only to acquisitions which exceed \$25,000 or the amount established pursuant to section 1100 for simplified small purchases.

- (1) The Walsh-Healey Public Contracts Act (41 U.S.C. 35)
- (2) Section 2010 of title 38, United States Code (the Vietnam Era Veterans Readjustment Act)
- (3) The Rehabilitation Act of 1973 (29 U.S.C. 793)
- (4) The Solid Waste Control Act (42 U.S.C. 6962)

(b) To Promote economy and efficiency in the acquisition of services or construction, repair and maintenance of facilities, the following thresholds apply:

- (1) For the Department of Defense and National Aeronautics and Space Administration, the provisions of the Davis-Bacon Act, (40 U.S.C. 276a to 276a-5) and the provisions of the Service Contract Act, (41 U.S.C. 351 to 358) apply to procurement of \$1 million and above or the amount established pursuant to section 1100 of this Act.
- (2) For executive agencies other than the Department of Defense and National Aeronautics and Space Administration, the provisions of the Davis-Bacon Act

(40 U.S.C. 276a to 276a-5) and the provisions of the Service Contract Act (41 U.S.C. 351 to 358) shall apply to procurement of \$100,000 and above or the amount established pursuant to section 1100 of this Act.

### Small Business

Section 1001. (a). Policy. It is the policy of the United States that small and small disadvantaged business shall have the maximum practicable opportunity to participate in the performance of federal contracts and subcontracts.

(b)(1) Awards to small business. Small business concerns, as defined by the Administrator of the Small Business Administration, shall receive any contract as to which it is determined by the Small Business Administration and the contracting officer to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the government are placed with small business concerns that can provide the property or service. These determinations to set-aside an acquisition may be made for individual contracts or for classes of contracts. Whenever the Small Business Administration and contracting officer fail to agree, the matter shall be submitted to the head of the executive agency by the Administrator of the Small Business Administration.

(2) When making contract awards under small business set-asides, contracting officers shall;

(A) ensure that the award of a contract would not result in a cost to the Government which exceeds a fair market price; and,

(B) ensure that the small business concern awarded a contract as result of a set-aside will;

(i) in the case of a contract for services (except construction), perform at least 50% of the cost of the contract with its own employees; and

(ii) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies who shall be required to offer the product of a small business), perform

work for at least 50% of the cost of manufacturing the supplies (not including the cost of material).

(C) The contracting officer, after consultation with the Small Business Administration, may change the percentage under subparagraph (i) or (ii) above with respect to a solicitation to reflect conventional industry practice.

(c) Small purchase procedures. Each contract for the acquisition of property or services which is subject to small purchase procedures established pursuant to section 408 of this Act, shall be set-aside exclusively for small business concerns. The set-aside shall be dissolved if the contracting officer does not receive offers from two or more small business concerns which offer competitive prices and meet required terms of quality and delivery.

(d) Subcontracting plans. Before the award of any contract or contract modification in excess of \$1 million, the contracting officer shall;

(1) determine that the offerer has established for its entire organization, or for the suitable subdivision thereof or for the specific contract, a small and small disadvantaged business subcontracting plan which is applicable to the contract; and

(2) approve the plan, or determine that the plan has been approved by a contracting officer within the previous twelve months as offering the maximum practical opportunity for small business and small disadvantaged business subcontracting or reject the plan as insufficient under the instant contract; and

(3) incorporate such plan into the contract. The plan may be incorporated by reference.

(e) Subsection (d) does not apply--

(1) to offerors who are small businesses; or

(2) to any contract which, including all subcontracts, will be performed outside the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

- (f) Regulations to implement this Section shall be in accordance with Section 1300 of this Act. Such regulations shall specify the matters to be addressed by small and small disadvantaged business subcontracting plans, and the manner in which the determinations required by subsection (d) shall be made.
- (g) The contracting officer shall consider the failure of a contractor to comply with an annual subcontracting plan or the plan for a prior contract in the determination of contractor responsibility and in the negotiation of profit and fees.
- (h) A contracting officer shall not be required to refer determinations of nonresponsibility to the Small Business Administration as required by Section 8 of the Small Business Act [15 U.S.C. 637(b)] when the next low responsive, responsible offeror is a small business concern or when the proposed contract is a small purchase as defined in Section 409 of this Act.

#### Adjustment of Dollar Thresholds

Section 1100 (a) The Administrator for Federal Procurement Policy, after consultation with the Secretary of Defense, The Administrator of General services, and the Administrator of the National Aeronautics and Space Administration shall, at least every three years after enactment of this Act, review the dollar thresholds established by this Act.

(b) In such review the Administrator for Federal Procurement Policy shall consider prevailing cost as reflected in selected economic indices, the nature of the products and services to be procured, as well as other relevant factors.

(c) After such review the Administrator may, no more frequently than annually, make adjustments in thresholds as are determined to be appropriate. If such an adjustment exceeds 25% of the existing threshold the Administrator shall notify the Congress at least 60 days prior to the effective date of the adjustment. The notice to the Congress shall include a report detailing the basis for the adjustment and an explanation as to the manner in which the adjustment will promote the economy and efficiency of federal acquisitions.

Safeguard of Acquisition Information

Section 1200. (a) Contractor information, including commercial or financial information--

- (1) pertaining to a company or individual,
- (2) submitted by such company or individual to an agency as part of the procurement process conducted by the agency, and
- (3) designated as confidential by the company or individual at the time of submission; or
- (4) technical data for which the Government has obtained royalty free use for Governmental purposes but for which the exclusive commercial rights have been awarded to a contractor.

shall be exempt from the provisions of The Freedom of Information Act ( 5 USC 552 ) and shall be kept in confidence by the agency. No such information shall be disclosed by the agency without the authority of the submitting company or individual.

(b) Unless a protest has been lodged regarding a solicitation or the award of a contract, upon the request of an offeror, not awarded a contract, information which the offeror provided to an agency in response to a solicitation shall be returned within 120

days after the award of a contract resulting from that solicitation. The offeror shall bear the cost of returning such information.

Regulations

Section 1300 (a) Subject to the overall policy direction of the Administrator for Federal Procurement Policy and the authority of the Administrator pursuant Section 6 of the Office of Federal Procurement Policy Act, ( 41 USC 405), and with due regard to the program activities of the executive agencies, the Administrator of General Services, the Secretary of Defense, and the Administrator of National Aeronautics and Space Administration jointly shall --

(1) prescribe the Federal Acquisition Regulation which shall be consistent with the policies and procedures

set forth in this Act and which shall be followed by the executive agencies in the acquisition of property and



services;

(2) in consultation with the Administrator for Federal Procurement Policy, establish a management system for the maintenance of the regulations.

(b) Each executive agency may after prescribe regulations which implement and supplement the government wide regulation.

### Publication of Proposed Regulations

Section 1400 Except as provided in subsection (d), no acquisition policy, regulation, procedure, or form (including amendments or modifications thereto) relating to the expenditure of appropriated funds that has (1) a significant effect beyond the internal operating procedures of the agency issuing the acquisition policy, regulation, procedure of form, or (2) a significant cost or administrative impact on contractors or offerors, may not take effect until 30 days after the acquisition policy, regulation procedure, or form is published for public comment in the Federal Register pursuant to subsection (b).

(a) Subject to subsection (c), the head of the agency shall cause to be published in the Federal Register a notice of the proposed acquisition policy, regulation, procedure, or form and provide for a public comment period for receiving

and considering the views of all interested parties on such proposal. The length of such comment period may not be less than 30 days.

(b) Any notice of a proposed acquisition policy, regulation, procedure, or form prepared for publication in the Federal Register shall include--

(1) the text of the proposal or if it is impracticable to publish the full text of the proposal, a summary of the proposal and a statement specifying the name, address, and telephone number of the officer or employee of the executive agency from whom the full text may be obtained; and

(2) a request for interested parties to submit comments on the proposal and shall include the name and address of the officer or employee of the Government designated to receive such comments.

(c) (1) The requirements of subsections (a) and (b)

may be waived by the officer authorized to issue an acquisition policy, regulation, procedure, or form if urgent and compelling circumstances make compliance with such requirements impracticable.

(2) An acquisition policy, regulation, procedure, or form with respect to which the requirements of subsections (a) and (b) are waived under paragraph (1) shall be effective on a temporary basis if-

(A) a notice of such acquisition policy, regulation, procedure, or form is published in the Federal Register and includes a statement that the acquisition policy, regulation, procedure, or form is temporary; and

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

After considering the comments received, the head of the agency waiving the requirements of subsections (a) and (b) under paragraph (1) may issue the final acquisition policy, regulation, procedure of form."

(d) The procedures required subsection (a) shall apply with respect to acquisition policies, regulations, procedures, or forms that an agency issues in final form on or after the date which is 30 days after the date of enactment of this Act.

#### Applicability of Existing Acquisition Authority

Section 1500 (a) Section 3709, 3710, and 3735 of the Revised Statutes, shall not apply to the acquisition of property or services made by an executive agency pursuant to this Act. Any law which authorizes an executive agency to acquire property or services without advertising or without regard to those section shall be construed to authorize the acquisition of the property of services pursuant to the provisions of this title relating to procedures other than sealed-bid procedures.

(b) Nothing in this Act shall impair or affect any authority of--

(1) the President under the Philippine Property Act of 1946 (60 Stat. 418; 22 U.S.C. 1381);

(2) any executive agency with respect to any, phase (including, but not limited to, acquisition storage,

transportation, processing and disposal) of any program conducted for purposes of resale, price support, grants to farmers, stabilization, transfer to foreign governments, or foreign aid, relief, or rehabilitation: Provided, that the agency carrying out such program shall, to the maximum extent practicable, consistent with the fulfillment of the purposes of the program and the effective and efficient conduct of its business, coordinate its operations with the requirements of this Act and the policies and regulations prescribed pursuant thereto;

(3) the Department of Defense with respect to property required for or located in occupied territories;

(4) the Secretary of Defense with respect to the Administration of the National Industrial Reserve Act of 1948;

(5) the President with respect to the Administration of the Strategic and Critical Materials Stock Piling Act (60 Stat. 596);

(6) the Secretary of State under the Foreign Service Buildings Act of May 7, 1926; as amended;

(7) the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force with respect to the administration of section 1(b) of the Act entitled "An Act to expedite the strengthening of the national defense", approved July 2, 1940 (54 Stat. 712);

(8) the Secretary of Agriculture or the Department of Agriculture under (A) the National School Lunch Act (60 Stat. 230); (B) the Farmers Home Administration Act of 1946 (60 Stat. 1062); (C) the Act of August 31, 1947, Public Law 298, Eightieth Congress, with respect to the disposal of labor supply centers, and labor homes, labor camps, or facilities; (D) section 32 of the Act of August 24, 1935 (49 Stat. 774), as amended, with respect to the exportation and domestic consumption of agricultural products; or (E) section 201 of the Agricultural Adjustment Act of 1938 (52 Stat. 36) or section 203(j) of the Agricultural Marketing Act of 1946 (60 Stat. 1082);

(9) the Secretary of Agriculture, Farm Credit Administration, or any farm credit board under section 6(b) of the Farm Credit Act of 1937 (50 Stat. 706), with respect to the acquisition or disposal of property;

(10) the Department of Housing and Urban Development or any officer thereof with respect to the

disposal of residential property, or of other property (real or personal) held as part of or acquired for or in connection with residential property, or in connection with the insurance or mortgages, loans, or savings and loan accounts under the National Housing Act;

(11) the Tennessee Valley Authority with respect to nonpersonal services, with respect to the matters referred to in section 201(a) (4), and with respect to any property acquired or to be acquired for in connection with any program of processing, manufacture, production, or force account construction: Provided, that the Tennessee Valley Authority shall be to the maximum extent that it may deem practicable, consistent with the fulfillment of the purpose of its program and the effective and efficient conduct of its business, coordinate its operations with the requirements of this Act and the policies and regulations prescribed pursuant thereto:

(12) the Department of Energy with respect to the functions transferred from the Atomic Energy Commission.

(13) the Administrator of the Federal Aviation Agency or the Chief of the Weather Bureau with respect to the disposal of airport property and airway property for use as such property. For the purpose of this paragraph the terms "airport property" and "airway" shall have the respective meanings ascribed to them in the International Aviation Facilities Act (62 Stat. 450);

(14) The United States Postal Service;

(15) the Secretary of Commerce with respect to the construction, reconstruction, and reconditioning (including outfitting and equipping incident to the foregoing), the acquisition, operation, maintenance, preservation, sale, lease, or charter of any merchant vessel or of any shipyard, ship site, terminal, pier, dock, warehouse, or other installation necessary or appropriate for the carrying out of any program of such Commission authorized by law, or nonadministrative activities incidental thereto: Provided, that the Secretary of Commerce shall to the maximum extent that it may deem practicable, consistent with the fulfillment of the purposes of such programs and the effective and efficient conduct of such activities, coordinate its operations with the requirements of this Act, and the policies and regulations prescribed pursuant thereto;

(16) the Central Intelligence Agency;

(17) the joint Committee on Printing, under the Act entitled "An Act providing for the public printing and

binding and the distribution of public documents" approved January 12, 1895 (28 Stat. 601), as amended or any other Act;

(18) for such period of time as the President may specify, any other authority of any executive agency which the President determines within one year after the effective date of this Act should, in the public interest, stand unimpaired by this Act; or

(19) the Secretary of Energy with respect to procurement for program operations under the Bonneville Project Act of 1937 (50 Stat. 731), as amended.

(c) No provision of this Act, as amended, shall apply to the Senate or the House of Representatives (including the Architect of the Capitol and any building, activity, or function under his direction), but any of the services and facilities authorized by this Act to be rendered or furnished shall, as far as practicable, be made available to the Senate, the House of Representatives, or the Architect of the Capitol upon their request, and, if payment would be required for the rendition or furnishing or a similar service or facility to an executive agency, payment therefor shall be made by the recipient thereof, upon presentation of proper vouchers, in advance or by reimbursement (as may be agreed upon by the Administrator and the officer or body making such request). Such payment may be credited to the applicable appropriation of the executive agency receiving such payment.

#### TRANSITIONAL PROVISIONS

Section 1600(a) The provisions of this Act shall be effective 365 days after its enactment.

(b) All orders, determinations, rules, regulations, permits, contracts, licenses, and privileges which are in effect at the time this Act takes effect shall continue in effect according to their terms until modified, terminated, superseded, set-aside, or revoked by authorized officials, a court of competent jurisdiction, or by operation of law.

#### APPLICABILITY OF SUBSEQUENT LAWS

Section 1700 A law enacted after the date of enactment of this Act, including any limitations in any appropriation bill or any limitation of any provision authorizing the appropriation of funds, may not be held, considered, or construed as amending any provision of this Act, unless that law does so by specifically and explicitly amending or superseding a specific and separately referenced provision of

this Act.

### SEPARABILITY

Section 1800 If any provision of this Act or its application to any person or circumstances is held invalid, neither the remainder of this Act nor the application of that provision to other persons or circumstances shall be affected thereby.

### RULE REGARDING ACQUISITION LEGISLATION

Section 1900 (a) No bill or resolution, and no amendment to any bill or resolution, which could amend the provisions of this Act shall be considered in the House of Representatives or the Senate unless it is a bill or resolution which has been reported by a legislative committee of the House of Representatives or the Senate (or from the consideration of which such committee has been discharged) which has jurisdiction over the bill or resolution.

(b) The provisions of this section are enacted by the Congress--

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either house to change such rules (so far as relating to such House) at any time. in the same manner, and to the same extent as in the case of any rule or such House.

### Amendments

Section 2000 To effect the provisions of this Act the following statutes are hereby amended:

(a) Section 8 of the Small Business Act [15 U.S.C. 637(b)] is amended by striking the last sentence of subparagraph (b)(7)(C) and inserting in lieu thereof the following:

"A contracting officer shall not be required to refer determinations of nonresponsibility to the

Administration when the next low responsive, responsible bidder is a small business concern or when the proposed contract is a small purchase authorized under Section 409 of the Federal Acquisition Act of 1987"

(b) Section 8 of the Small Business Act [15 U.S.C. 637(d)] is amended by striking subsections (d)(1) through (d)(9) and inserting in lieu thereof:

"8(d)(1) Subcontracting Plans. Before the award of any contract in excess of \$1,000,000, the contracting officer shall:

"(A) determine that the offeror has established for its entire organization, or a suitable subdivision thereof, or for the specific contract, a small and small disadvantaged business contracting plan which is applicable to the contract; and

"(B) approve the plan, or determine that the plan has been approved by a contracting officer within the previous twelve months as offering the maximum practical opportunity for small and small disadvantaged business subcontracting or reject the plan as insufficient under the instant contract; and

"(C) incorporate such plan into the contract. The plan may be incorporated by reference.

"(2) Subparagraph (1) does not apply--

"(A) to offerors who are small businesses; or

"(B) to any contract which, including all subcontracts, will be performed outside the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"(3) Regulations to implement this section shall be in accordance with Section 1300 of the Federal acquisition Act of 1987. Such regulations shall specify the matters to be addressed in the small and small disadvantaged business subcontracting plans, and the manner in which the determinations required by subparagraph (1) shall be made.

"(4) The Contracting officer shall consider the failure of a contractor to comply with an annual subcontracting plan or the plan for a prior contract in the determination of contractor responsibility and in the negotiation of profit

and fees.

(c) Amend subsection 8(d)(10) of the Small Business Act, [15 U.S.C. 637(d)(10)] by renumbering it 8(d)(5) and inserting in lieu thereof:

"8(d)(5) In the case of contracts containing subcontracting plans for small and small disadvantaged business, the Administration is authorized to --

"(A) assist Federal agencies and businesses in complying with their responsibilities for the formulation of such plans and for performance under the provisions of the plans;

"(B) review any solicitation for any contract to be let, which will require such a subcontracting plan, to determine the maximum practicable opportunity for small and small disadvantaged business to participate as subcontractors in the performance of any contract resulting from any solicitation, and to submit its finding, which shall be advisory in nature, to the appropriate Federal agency; and

"(C) evaluate compliance with subcontracting plans."

(d) Amend subsection 8(d)(11) of the Small Business Act, [15 U.S.C.(d)(1)] by renumbering it "(6)".

(e) In the first clause of the Walsh-Healey Public Contracts Act (41 U.S.C 35) strike "\$10,000" and insert "\$25000 or the amount established pursuant to Section 1100 of Federal Acquisition Act of 1987".

(f) Section 2010 of title 38, United States Code [Section 503(a) of The Vietnam Era Veterans Readjustment Act of 1972] is amended by striking " the amount of \$10,000 or more" and inserting in lieu thereof "\$25000 or the amount established pursuant to section 1100 of the Federal Acquisition Act of 1987".

(e) Section 503(a) of the Rehabilitation Act of 1973 [29 U.S.C.793(a)] is amended by striking "\$2500" and inserting in lieu thereof "\$25000 or the amount established pursuant to Section 1100 of the Federal Acquisition Act of 1987"

(f) Section 6002(a) of the Solid Waste Control Act [42 U.S.C. 6962(a)] is amended by striking "\$10,000" and inserting in lieu thereof "\$25000 or the amount established pursuant to Section 1100 of the Federal Acquisition Act of 1987".



(g) Section 1(a) of the Davis-Bacon Act [40 U.S.C. 276(a)] is amended by striking "\$2,000" and inserting in lieu thereof "contracts exceeding one million dollars by the Department of Defense and the National Aeronautics and Space Administration, contracts exceeding one hundred thousand dollars by any other agency subject to this Act, or the amount established pursuant to Section 1100 the Federal Acquisition Act of 1987".

(h) Section 2 of the Service Contract Act [41 U.S.C. 351(a)] is amended by striking "\$2,500" and inserting in lieu thereof "Contracts exceeding one million dollars by the Department of Defense and the National Aeronautics and Space Administration, Contracts exceeding one hundred thousand dollars by any other agency subject to this Act, or the amount established pursuant to the Federal Acquisition Act of 1987".

(j) Section 4 of the Office of Federal Procurement Policy Act [41 U.S.C. 402] is amended by deleting subsections (4), (9), (10), and (11).

#### Section 2100 Repeals

(a) Chapter 135 and Sections 2301 through 2314, 2317 through 2321 and 2323 of Chapter 137 United States Code;

(b) Subsections 8(e) through (h) and 15(j) of the small business act, as amended [15 U.S.C. 637(e) through (h), and 644(j)];

(c) Sections 502(d)(8), (10) and (19) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 474(8), (10), and (19));

(d) Title III of the Federal Property and Administrative Services Act, as amended (41 U.S.C. 251 through 260); and

(e) Sections 16, 17, 18, 20, 21, and 22, of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 414, 415, 416, 418, 418a, and 418b).

## Section-By-Section Analysis

Section 101. Declaration of Policy. This section of the proposal contains the congressional policy of simplifying the Federal procurement process, encouraging increased competition, reestablishing the authority and accountability of contracting officers, and restates the policies of the principal procurement statutes for the purposes of a single statute governing all Federal Procurement

Section 201. Definitions. In addition to terms which are currently defined in the principal statutes, a number of new or redefined terms are added.

The term "competitive procedures reflects the definition which derived from the Competition in Contracting Act of 1984 (CICA) and continues to recognize the special procedures use in acquiring A&E services, basic research, multiple award schedules, and small business set asides as competitive procedures.

The new definition of "contracting officer" includes the head of an executive agency and such other persons designated by the head of the agency. "commercial Product and " commercial-type products are defined for the purposed of establishing special commercial acquisition procedures. The term "Agency" is redefined to the parameters of 5 U.S.C. 551 which definition includes all executive branch agencies and establishments. The only organizations exempted are those specifically excluded by that section.

Section 301. Acquisition Authority and Management. The authorities and responsibilities of agency acquisition officials are set forth in a consolidation of similar provisions contained in the Office of Federal Procurement Policy Act and CICA. The responsibilities of contracting officials including the head of an agency, contracting officers, senior acquisition executives, and competition advocates are spelled out in this section. The head of the agency's responsibilities include management of the overall programs and acquisitions, appointment of contracting officers, and procedures for coordination of the agency's contract audit function. Acquisition Executives are required ensure that the contract auditor is integrated into the contracting team and develop specific programs for the improvement of the quality of the acquisition workforce. The functions of the Competition Advocate are simplified however their function is expected to remain unchanged from their current

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statutory authority.

**Section 401. General Acquisition Requirements.** Contracting officers are to ensure compliance including proper determination of agency requirements, adequate funding, and exercise of good business judgement are set forth in this section. This also limits acquisition techniques to those set forth in the proposed statute unless otherwise provided by law. This section closely parallels current law.

**Section 402. Full and Open Competition.** The section requires the use of full and open competition by obtaining sealed bids or competitive proposals and is essentially a restatement of the requirements of CICA except that responsibilities are placed on the contracting officer rather than executive agencies as stated in CICA.

**Section 403. Limited Competition.** Authorization is in the same manner as provided in CICA with the addition of competitive procurements among participants in the 8a program.

**Section 404. Procurement Without Competition.** Authorization is based with the same limitations established by CICA and includes the amendments incorporated by P.L.99-591. All responsibilities placed in the contracting officer.

**Section 405.** The requirement for justifications and approvals to engage in noncompetitive acquisitions is retained. The proposed section differs from current provisions by establishing a threshold of \$10 mil. at which the senior acquisition executive of the agency must grant approval without redelegation. The authorization levels of justifications and approvals for lesser amounts, unlike the rigid schedule stipulated by CICA, are to be determined by the senior acquisition executive of the agency.

**Section 406. Planning and Solicitation Requirements** The proposal requires contracting officers to use advance procurement planning, specify needs in a manner that will promote full and open competition, encourages the use of functional specifications over design specifications and emphasizes the importance of defining needs so that commercial products may be used to fulfill the agency's requirements. This section provides the requirements for selection of contract types and limitation of fees under cost type contracts. These requirements are unchanged from the present statutory requirements. An additional responsibility of the contracting officer is to ensure that the contract type selected reflects a balance among factors such as incentives commensurate with contractor risk.

**Section 407. Procurement Notice.** The procurement notice

provisions of this proposal follow closely the current provisions of the OFPP Act and The Small Business Act except that the publication threshold of \$25,000 applies to all acquisitions nor excepted under the section. The current statutory provisions require publication of sole source procurements at \$10,000 and up. The dual provisions currently contained in the Small Business Act and the OFPP Act are eliminated.

**Section 408. Evaluation and Award.** These requirements are not changed from present law. Bids and proposals are required to be evaluated on the basis of the evaluation factors stated in the solicitation. Awards are to be made promptly. Awards of negotiated procurements may be made with or without discussions so long as the solicitation notifies the offerors that such an option is available to the Government. This section also reflects the importance of the determination by the contracting officer of the relative importance of factors such as technical capability, management capability and experience

**Section 409. Small Purchases.** Simplified small purchases are authorized for procurements of \$25,000 or less. Procedures are to be set forth in the FAR. The ceiling may be adjusted in accordance with section 1100.

**Section 410. Multiple Award Schedules.** Authority for competitive multiple award schedule acquisitions is provided in the manner authorized by CICA.

**Section 411. Basic Research.** Special procedures for competitive selection of basic research proposals are authorized.

**Section 501. Commercial Style Competition for Commercial Products.** This section will be distributed separately for clearance.

**Section 502. Architect-Engineer-Services.** The provisions for acquiring the services of architect and engineer services while incorporated into this proposal is unchanged for the current requirements of the Brooks Act.

**Section 503. Professional Services.** A new approach to the acquisition of professional services is established under the proposal. Highly complex services which require unique qualifications may be acquired using an optional selection procedure which announces requirements and selects qualified sources with whom the agency will conduct negotiations starting with the highest qualified firm. This procedure will be similar to that use in acquiring architect and engineer services in that if the agency is able to successfully negotiate a contract with the highest qualified firm that has submitted the best proposal, the procurement will be concluded. The term highly complex services will be defined in the FAR.

**Section 601. Rights in Technical Data.** The prescriptive requirements of the current statutory provisions is reduced to a statement of the requirement that the interests of the contractor and the Government be defined in regulation with assurance that the policy of commercialization of federally funded research be carried out in the FAR.

**Section 602. Validation of Technical Data Rights.** The current statutory provisions requiring prompt resolution of disputes concerning restrictions on the right of the Government to use technical data are simplified. Where current law sets forth detailed procedures, the proposal would require development of procedures in the FAR to assure contractor or subcontractor justification of restrictions asserted and a decision by the contracting officer regarding those restrictions. Adverse decisions by the contracting officer may be appealed by the contractor under the disputes clause.

**Section 701. Truth in Negotiations.** This section adopts the current provisions of the Armed Services Procurement Act for all agencies establishing uniform requirements for the submission of certified cost or pricing data by contractors. Unlike the current statutory provisions the authority of this section to be exercised on behalf of the Government is vested in the Contracting officer. The provisions for price reduction for defective cost or pricing data and audit of contractor records are unchanged.

**Section 702. Commercial Pricing of Spare or Repair Parts.** This section adopts the current provisions of the Armed Services Act for application by all agencies. Contractors offering to supply spare or repair parts under non competitive procedures who sell those same items to the public, are required to certify that the price to the Government does not exceed the lowest commercial price charged by the contractor during an appropriate sales period.

**Section 703. Prohibition of Contractors Limiting Subcontractor Sales Directly to the United States.** This section continues existing statutory provisions designed to prevent prime contractors from using provisions in their subcontracts or other techniques which would prohibit or discourage sales of parts, components or subsystems directly to the Government.

**Section 801. Multi-Year Contracting.** The proposal retains the procedures of the Armed Services Procurement Act for all agencies in simplified language setting forth conditions for its use as set forth in that Act.

Section 901. Advance Payments. Existing Statutory provisions are consolidated in simpler language. The basic authority for advance, partial, or progress payments remains unchanged.

Section 902. Delegation. Agency heads are may delegate any authority under this Act unless denied by specific requirements of a section of the proposed act.

Section 903. Remission of Liquidated Damages. This section consolidated the existing statutory provisions.

Section 904. Examination of Books and Records of Contractor. This section consolidates existing law.

Section 905. Encouraging New Competitors. This section simplifies and consolidates the existing coverage of the Armed Services Act and the Federal Property Act by requiring that agencies, (1) justify the use of perqualification procedures, and (2) take action to qualify additional competitors.

Section 906. Assignment and Delegation of Acquisition Functions and Responsibilities. This section consolidates existing authority under the Armed Services Act.

Section 907. Allocation of Appropriations. This section expands to all agencies the authority currently contained in the armed Services Act which permit agency heads to allocate appropriations for programs to other agencies permitting combined agency resources for joint projects.

Section 1000. Socioeconomic Provisions. To provide for consistency and economy the threshold application of the socioeconomic statutes which are implemented through the acquisition process is established at \$25,000 or the adjusted amount established under section 1100. The statutes affected are; The Walsh-Healey Public Contracts Act, The Vietnam Era Veterans Act, The Rehabilitation Act of 1973, and The Solid Waste Control Act. The thresholds for the Davis-Bacon and Service Contract Acts are revised to \$1 mil. for DOD and NASA and \$100K for all other agencies.

Section 1001. Small Business. The preference for award to small businesses through small business set asides is retained in a simplified version and made a section of the proposed act. This section also preserves the small business small purchase reservation and revises existing law to provide regarding subcontracting plans for utilization of small and small disadvantaged business. Under the proposed provisions, company wide annual plans may be adopted for use in contracts which are above the revised threshold requirements of \$1 mil. Contractors would be required to update

plans to reflect any significant change in their business base. Finally the requirement for invoking the certificate of competency procedures is revised to eliminate its applicability for purchases under the small purchase ceiling and on other acquisitions where the next low responsive responsible offeror is a small business.

**Section 1100. Adjustment of Dollar Thresholds.** This new authority would permit the Administrator for Federal Procurement Policy after consultation with appropriate agency heads to review adjust the dollar thresholds that affect federal acquisitions. A review would be required every three years. If the adjustment exceeds 25% of the existing threshold the Administrator would be required to provide a report to the appropriate committees of the Congress at least 60 days before the effective date of the change. The report will describe the improvement in economy and efficiency resulting from the revised threshold.

**Section 1200. Safeguard of Acquisition Information.** To provide further protection for information submitted by contractors in the acquisition process, all information submitted in support of a proposal will be exempt from release under the freedom of information Act unless it discoverable in litigation of a protest.

**Section 1300. Regulations.** This section provides for the promulgation of the Federal Acquisition Regulation by the Secretary of Defense, The Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration. Agencies are permitted to prescribe regulations which implement and supplement the government wide regulation. This section follows current law and adds recognition of the oversight responsibility of the Administrator for Federal Procurement Policy.

**Section 1400. Publication of Proposed Regulations.** The current statutory requirement for publication of proposed regulations required by Section 18 of the OFPP Act is retained. Proposed regulations that have a significant effect beyond the internal operating procedures of an agency or which has a significant cost or administrative impact is required to be published in then Federal Register for public comment for a period of 30 days. Regulations may be issued on a temporary basis if compelling and urgent circumstances exist. However, the regulation may not become permanent until published for 30 days public notice.

**Section 1500. Applicability of Existing Statutory Authority.** This section ensures that the numerous grants of authority throughout the United States Code which provide for procurement without regard to "formal advertising" will be covered by the authorities of this act for other than sealed bid procedures. also, the special authorities of the "non-interference" provisions of the



Federal Property and Administrative Services Act are incorporated in this proposal.

Section 1600. Transitional Provisions. To provide for a smooth and orderly transition from multiple statutory authority to the single statute, the effective date of the provisions of the proposed act is made 365 days after enactment. This section also provides that all acquisitions, regulations and related matters which are in effect at the time the act becomes effective will remain in effect until they are superseded or expire.

Section 1700. Applicability of Subsequent Laws. This section ensures that any subsequent act enacted after the proposed act, is not be effective as an amendment to the proposed act unless it does so by specifically and explicitly makes reference to a provision of the proposed act. The purpose of this provision is to assure proper consideration of amendments to the proposed act.

Section 1800. Rule regarding Acquisition Legislation. This provision would amend the rules of the House of Representatives and the Senate to require joint referral of proposed legislation affecting the federal acquisition. Referral would be to the Congressional Committees on Armed Services and the Committees on Governmental Affairs and Government Operations. This section further provides that no bill or amendment dealing with the acquisition process can be considered in either House unless reported out by the committees named in this section.

Section 1900. Separability. This section ensures that if any provision of the proposed act is invalidated then the remainder of the act would continue to be valid. Prior actions taken under the invalidated provision would not be affected.

Section 2000. Amendments. The amendments made by the revisions contained in this proposal are set forth in this section.

Section 2100. Repeals. This section contains the repeals made necessary by the consolidation of procurement laws accomplished by the proposed act.

**A Bill**

To simplify and consolidate statutes affecting government acquisition and to make more efficient the government acquisition process

Be it enacted by the Senate and House of Representatives or the United States of America assembled,

**SHORT TITLE: TABLE OF CONTENTS**

Sec. 101. (a) SHORT TITLE. This act may be cited as the "Federal Acquisition Act of 1987".

(b) TABLE OF CONTENTS

Sec. 101. Short title; Table of Contents; Declaration of policy

Sec. 201. Definitions

Sec. 202. Applicability

Sec. 301. Acquisition Authority and Management

(a) Contracting Authority of an Agency

(b) Management Responsibilities

(c) Senior Acquisition Executives

Sec. 401. General Acquisition Requirements

Sec. 402. Full and Open Competition

Sec. 403. Limited Competition

Sec. 404. Procurement Without Competition

Sec. 405. Justifications and Approvals

Sec. 406. Planning and Solicitation Requirements

Sec. 407. Procurement Notice

- Sec. 408. Evaluation and Award
- Sec. 409. Small Purchases
- Sec. 410. Multiple Award Schedules
- Sec. 411. Basic Research
- Sec. 501. Commercial Product Acquisition Procedures
- Sec. 502. Architect-Engineer-Services
- Sec. 503. Professional Services
- Sec. 601. Technical Data
- Sec. 602. Validation of Technical Data Restrictions
- Sec. 701. Cost or Pricing Data
- Sec. 702. Commercial Pricing for Spare or Repair Parts
- Sec. 703. Prohibition of Contractors Limiting Subcontractor Sales Directly to the United States
- Sec. 801. Multi-Year Contracting
- Sec. 901. Contract Financing
- Sec. 902. Delegation
- Sec. 903. Remission of Liquidated Damages
- Sec. 904. Examination of Books and Records of Contractor
- Sec. 905. Encouraging New Competitors
- Sec. 906. Assignment and Delegation of Acquisition Functions and Responsibilities
- Sec. 907. Allocation of Appropriations
- Sec. 1000. Socioeconomic Provisions
- Sec. 1001. Small Business
- Sec. 1100. Adjustment of Dollar Thresholds
- Sec. 1200. Safeguard of Acquisition Information
- Sec. 1300. Regulations

Sec. 1400. Publication of Proposed Regulations

Sec. 1500. Applicability of Existing Acquisition Authority

Sec. 1600. Transitional Provisions

Sec. 1700. Applicability of Subsequent Laws

Sec. 1800. Separability

Sec. 1900. Rule Regarding Acquisition Laws

Sec. 2000. Amendments

Sec. 2100. Repeals