

103^D CONGRESS
1ST SESSION

H. R. 2238

To amend laws relating to Federal procurement, to authorize functions and activities under the Federal Property and Administrative Services Act of 1949, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 24, 1993

Mr. CONYERS (for himself and Mr. DELLUMS) introduced the following bill; which was referred jointly to the Committees on Government Operations and Armed Services

A BILL

To amend laws relating to Federal procurement, to authorize functions and activities under the Federal Property and Administrative Services Act of 1949, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Acquisition
5 Improvement Act of 1993”.

1 **TITLE I—ENHANCEMENT OF**
2 **COMPETITION IN CONTRACTING**
3 **Subtitle A—Acquisition of**
4 **Commercial Items**

5 **SEC. 111. PREFERENCE FOR ACQUISITION OF COMMERCIAL**
6 **ITEMS.**

7 Section 16 of the Office of Federal Procurement Pol-
8 icy Act (41 U.S.C. 414) is amended by redesignating para-
9 graphs (2), (3), and (4) in order as paragraphs (3), (4),
10 and (5), respectively, and by inserting after paragraph (1)
11 the following new paragraph:

12 “(2) implement a preference for the acquisition
13 of commercial items by—

14 “(A) whenever practicable, stating speci-
15 fications in solicitation for bids and proposals in
16 terms such that bidders and offerors are en-
17 abled and encouraged to offer to supply com-
18 mercial items in response to agency solicita-
19 tions;

20 “(B) reducing impediments to the acquisi-
21 tion of commercial items in agency procurement
22 policies, practices, and procedures not required
23 by law; and

24 “(C) requiring training of appropriate per-
25 sonnel in the acquisition of commercial items;”.

1 **SEC. 112. ACQUISITION OF COMMERCIAL ITEMS.**

2 Section 28 of the Office of Federal Procurement Pol-
3 icy Act (41 U.S.C. 424) is amended to read as follows:

4 **“SEC. 28. ACQUISITION OF COMMERCIAL ITEMS.**

5 “(a) MARKET RESEARCH.—Before soliciting bids or
6 proposals for a contract for property or services, an execu-
7 tive agency shall conduct market research, appropriate to
8 the circumstances, to determine whether the needs of the
9 agency can be met by the acquisition of commercial items.

10 “(b) ADVOCATE FOR ACQUISITION OF COMMERCIAL
11 ITEMS.—

12 “(1) ESTABLISHMENT.—There is established in
13 the Office of Federal Procurement Policy the posi-
14 tion of Advocate for the Acquisition of Commercial
15 Items (hereinafter in this subsection referred to as
16 the ‘Advocate’).

17 “(2) FUNCTIONS.—The Advocate shall—

18 “(A) monitor compliance by executive
19 agencies with the preference required under sec-
20 tion 16(2) for the acquisition of commercial
21 items;

22 “(B) make recommendations and proposals
23 to the Administrator regarding the reform of
24 procurement statutes and regulations to imple-
25 ment that preference; and

1 “(C) report to the Administrator on the
2 prospective effect of proposed statutes and reg-
3 ulations on the acquisition of commercial
4 items.”.

5 **SEC. 113. REGULATIONS AND SIMPLIFIED FORM CON-**
6 **TRACTS.**

7 (a) REVISION OF FAR.—Unless otherwise specifically
8 provided in this title, not later than 180 days after the
9 date of the enactment of this title, the Federal Acquisition
10 Regulation issued under section 25(c) of the Office of Fed-
11 eral Procurement Policy Act (41 U.S.C. 421(c)) shall be
12 revised to implement the amendments made by this sub-
13 title.

14 (b) SIMPLIFIED UNIFORM CONTRACT.—(1)(A) The
15 revision of the Federal Acquisition Regulation under sub-
16 section (a) shall include issuance of one or more simplified
17 uniform contracts for the acquisition of commercial items
18 by Federal agencies and shall require that such simplified
19 uniform contract or contracts be used for the acquisition
20 of commercial items to the maximum extent practicable.
21 The uniform contract or contracts shall include only—

22 (i) those contract clauses that are required to
23 implement provisions of law applicable to such an
24 acquisition;

1 (ii) those contract clauses that are essential for
2 the protection of the Federal Government's interest
3 in such an acquisition; and

4 (iii) those contract clauses that are determined
5 to be consistent with standard commercial practice
6 and appropriate for inclusion in such contracts.

7 (B) In addition to the clauses described under sub-
8 paragraph (A), contracts for the acquisition of commercial
9 items may include such clauses as are essential for the
10 protection of the Federal Government's interest in—

11 (i) a particular contract, as determined in writ-
12 ing by the contracting officer for such contract; or

13 (ii) a class of contracts, as determined by the
14 agency head, in consultation with the Administrator
15 for Federal Procurement Policy.

16 (C) Contracts for the acquisition of commercial items
17 may not include any clause other than those clauses au-
18 thorized under subparagraph (A) or (B).

19 (2)(A) Except as provided in subparagraph (B), a
20 prime contractor under a Federal agency contract for the
21 acquisition of commercial items may only be required to
22 include in subcontracts under such contract—

23 (i) those contract clauses that are required to
24 implement provisions of law applicable to such sub-
25 contracts; and

1 (ii) those contract clauses that are essential for
2 the protection of the Federal Government's interest
3 in such subcontracts.

4 (B) In addition to the clauses described under sub-
5 paragraph (A), a contractor under a Federal agency con-
6 tract for the acquisition of commercial items may be re-
7 quired to include in a subcontract under such contract
8 such clauses as are essential for the protection of the Fed-
9 eral Government's interest in—

10 (i) a particular subcontract, as determined in
11 writing by the contracting officer for such contract;
12 or

13 (ii) a class of subcontracts, as determined by
14 the agency head, in consultation with the Adminis-
15 trator for Federal Procurement Policy.

16 (C) A Federal agency may not require a contractor
17 for the acquisition of commercial items to include in a sub-
18 contract for that acquisition any clause other than those
19 clauses authorized under subparagraph (A) or (B).

20 (3) Notwithstanding paragraphs (1) and (2) of this
21 subsection, the Department of Defense may use uniform
22 contract clauses developed under paragraphs (2) and (3)
23 of section 824(b) of the National Defense Authorization
24 Act for Fiscal Years 1990 and 1991 (10 U.S.C. 2325
25 note; Public Law 101-189) until September 30, 1995.

1 (c) WARRANTIES.—The Federal Acquisition Regula-
2 tion shall require that, to the maximum extent practicable,
3 Federal agencies take advantage of warranties offered by
4 commercial contractors and use such warranties for the
5 repair and replacement of commercial items.

6 (d) MARKET ACCEPTANCE.—The Federal Acquisition
7 Regulation shall direct agencies to require, where appro-
8 priate and in accordance with criteria prescribed in the
9 regulations, offerors to demonstrate in their offers that
10 products being offered have—

11 (1)(A) achieved a level of commercial market
12 acceptance necessary to indicate that the products
13 are suitable for the agency’s use; or

14 (B) been satisfactorily supplied under current
15 or recent contracts for the same or similar require-
16 ments; and

17 (2) otherwise meet the product description,
18 specifications, or other criteria prescribed by the
19 public notice and solicitation.

20 (e) PAST PERFORMANCE.—The Federal Acquisition
21 Regulation shall provide guidance to Federal agencies on
22 the use of past performance of products and sources as
23 a factor in award decisions.

1 **Subtitle B—Miscellaneous**

2 **SEC. 121. TRUTH IN NEGOTIATIONS ACT.**

3 (a) AMENDMENTS.—Section 304(d)(4) of the Federal
4 Property and Administrative Services Act of 1949 (41
5 U.S.C. 254(d)(4)) is amended to read as follows:

6 “(4) AUTHORITY TO REQUIRE COST OR PRICING
7 DATA.—When cost or pricing data need not be re-
8 quired to be submitted pursuant to paragraph (5),
9 such data shall not be required to be submitted un-
10 less the head of the agency determines that such
11 data are necessary for the evaluation by the agency
12 of the reasonableness of the price of the contract or
13 subcontract. In any case in which the head of the
14 agency requires such data to be submitted under
15 this paragraph, the head of the agency shall docu-
16 ment in writing the reasons for such requirement.”.

17 (b) REQUIREMENT FOR REVISED REGULATIONS.—
18 Not later than 180 days after the date of enactment of
19 this Act, the Federal Acquisition Regulation issued under
20 section 25(c) of the Office of Federal Procurement Policy
21 Act (41 U.S.C. 421(c)) shall be revised to implement sec-
22 tion 304(d)(4) of the Federal Property and Administrative
23 Services Act of 1949 (41 U.S.C. 254(d)) and section
24 2306a(b) of title 10, United States Code, as amended by
25 subsection (a) and section 302.

1 (c) PROVISIONS TO BE INCLUDED.—(1) In the case
2 of contracts other than cost-reimbursement research and
3 development contracts, the revised regulations promul-
4 gated under subsection (b) shall provide that cost or pric-
5 ing data may not be requested from a contractor when
6 it is likely that circumstances will exist in which an excep-
7 tion to the requirement to provide such data is authorized
8 by section 304(d)(5) of the Federal Property and Adminis-
9 trative Services Act of 1949 (41 U.S.C. 254(d)) or section
10 2306a(b) of title 10, United States Code, unless the head
11 of the agency determines in writing that such data are
12 necessary for the evaluation by the agency of the reason-
13 ableness of the price of the contract or subcontract.

14 (2) The regulations also shall provide clear standards
15 for determining whether the exceptions authorized by such
16 sections apply. In the case of the exception provided under
17 section 304(d)(5)(A)(i) of such Act and section
18 2306a(b)(1)(A) of such title (relating to adequate price
19 competition), the regulations shall specify the criteria that
20 will be used to determine whether adequate price competi-
21 tion exists. In the case of the exception provided under
22 section 304(d)(5)(A)(ii) of such Act and section
23 2306a(b)(1)(B) of such title (relating to established cata-
24 log or market prices of commercial items sold in substan-
25 tial quantities to the general public), the regulations shall

1 preclude the consideration of sales to the government, in-
2 cluding the percentage of an item’s overall sales that are
3 made to the Government, when determining whether the
4 item has been sold in substantial quantities to the public.

5 (3) The regulations also shall establish reasonable
6 limitations on requests for sales data relating to commer-
7 cial items.

8 **SEC. 122. DEFINITIONS.**

9 (a) OFPP ACT.—Section 4 of the Office of Federal
10 Procurement Policy Act (41 U.S.C. 403) is amended by—

11 (1) striking “and” at the end of paragraph
12 (10);

13 (2) striking the period at the end of paragraph
14 (11) and inserting “; and”; and

15 (3) adding at the end the following new para-
16 graph:

17 “(12) the term ‘commercial items’ means items
18 regularly used in the course of normal business oper-
19 ations for other than Government purposes, that—

20 “(A) have been sold, leased, or licensed to
21 the general public;

22 “(B) have been offered for sale, lease, or
23 license to the general public;

24 “(C) are not yet available in the commer-
25 cial marketplace, but will be available in time to

1 satisfy the delivery requirements under a Gov-
2 ernment solicitation; or

3 “(D) are items that, but for minor modi-
4 fications made to meet Government require-
5 ments, would satisfy the criteria set forth in
6 subparagraph (A), (B), or (C).”.

7 (b) FEDERAL PROPERTY AND ADMINISTRATIVE
8 SERVICES ACT OF 1949.—Section 309(c) of the Federal
9 Property and Administrative Services Act of 1949 (40
10 U.S.C. 259(c)) is amended by inserting “‘commercial
11 items’,” immediately after “‘item of supply’,”.

12 (c) COMMERCIAL ITEM DEFINED.—In this title, the
13 term “commercial items” has the meaning given that term
14 in section 4 of the Office of Federal Procurement Policy
15 Act (41 U.S.C. 403), as amended by subsection (a).

16 **SEC. 123. EFFECTIVE DATE.**

17 Unless otherwise specifically provided in this title, the
18 amendments made by this title shall be effective 180 days
19 after the date of the enactment of this title.

20 **SEC. 124. PROVISIONS NOT AFFECTED.**

21 Nothing in this title shall be construed as amending,
22 modifying, or superseding, or is intended to impair or re-
23 strict authorities or responsibilities under—

24 (1) section 111 of the Federal Property and
25 Administrative Services Act of 1949 (40 U.S.C.

1 759), commonly referred to as the “Brooks Auto-
2 matic Data Processing Act”;

3 (2) title IX of the Federal Property and Admin-
4 istrative Services Act of 1949 (40 U.S.C. 541 et
5 seq.), commonly referred to as the “Brooks Archi-
6 tect-Engineers Act”;

7 (3) the Small Business Act (15 U.S.C. 631 et
8 seq.), including section 8(a) of that Act (15 U.S.C.
9 637(a)); or

10 (4) the Act of June 25, 1938 (41 U.S.C. 46-
11 48c), commonly referred to as the “Javits-Wagner-
12 O’Day Act”.

13 **TITLE II—AMENDMENTS TO FED-**
14 **ERAL PROPERTY AND ADMIN-**
15 **ISTRATIVE SERVICES ACT OF**
16 **1949**

17 **SEC. 201. AWARD OF MULTIPLE CONTRACTS.**

18 Section 303B of the Federal Property and Adminis-
19 trative Services Act of 1949 (41 U.S.C. 253b) is amended
20 by adding at the end the following:

21 “(g) AWARD OF MULTIPLE CONTRACTS.—In procur-
22 ing any supply or service using competitive procedures, an
23 executive agency may award more than one contract for
24 the same supply or service in any case in which the head
25 of the agency determines that it is in the best interests

1 of the Government to award those contracts for the pur-
2 pose of maintaining a continuous source for the supply
3 or service.”.

4 **SEC. 202. SOLICITATION EVALUATION AND AWARD.**

5 (a) SOLICITATION REQUIREMENTS.—Section 303A
6 of the Federal Property and Administrative Services Act
7 of 1949 (41 U.S.C. 253a) is amended—

8 (1) in subsection (b)(1)(A)—

9 (A) by inserting “and significant
10 subfactors” after “all significant factors”; and

11 (B) by striking “(including price)” and in-
12 serting “(including cost or price, cost- or price-
13 related factors, and noncost- or nonprice-related
14 factors)”;

15 (2) in subsection (b)(1)(B) by inserting “and
16 subfactors” after “factors”;

17 (3) in subsection (b)(2)(B) by amending clause
18 (i) to read as follows:

19 “(i) a statement that the proposals
20 are intended to be evaluated with, and
21 award made after, discussions with the
22 offerors, or that the proposals are intended
23 to be evaluated, and award made, without
24 discussions with the offerors (other than
25 discussions conducted for the purpose of

1 minor clarification), unless discussions are
2 determined to be necessary; and”); and

3 (4) by adding at the end the following new sub-
4 section:

5 “(c) ESTABLISHING IMPORTANCE OF FACTORS.—(1)

6 In prescribing the evaluation factors to be included in each
7 solicitation for competitive proposals, the head of an agen-
8 cy—

9 “(A) shall clearly establish the relative impor-
10 tance assigned to the evaluation factors and
11 subfactors, including the quality of the product or
12 services to be provided (including technical capabil-
13 ity, management capability, and prior experience of
14 the offeror); and

15 “(B) shall include cost or price to the Govern-
16 ment as an evaluation factor that must be consid-
17 ered in the evaluation of proposals; and

18 “(C) shall, at a minimum, disclose to offerors
19 whether all evaluation factors other than price or
20 cost, when combined, are—

21 “(i) significantly more important than
22 price or cost,

23 “(ii) approximately equal in importance to
24 price or cost, or

1 “(iii) significantly less important than
2 price or cost.

3 “(2) Nothing in this subsection prohibits an agency
4 from—

5 “(A) providing additional information in a solic-
6 itation, including numeric weights for all evaluation
7 factors; or

8 “(B) stating in a solicitation that award will be
9 made to the offeror that meets the solicitation’s
10 mandatory requirements at the lowest price or
11 cost.”.

12 (b) EVALUATION AND AWARD.—Section 303B of the
13 Federal Property and Administrative Services Act of 1949
14 (41 U.S.C. 253b) is amended—

15 (1) in subsection (a) by inserting “and award a
16 contract” after “competitive proposals”;

17 (2) in subsection (c) in the second sentence by
18 inserting “in accordance with subsection (a)” after
19 “shall evaluate the bids”;

20 (3) in subsection (d) by amending paragraph
21 (1) to read as follows:

22 “(1) The executive agency shall evaluate competitive
23 proposals in accordance with subsection (a) and may
24 award a contract—

1 “(A) after discussions with the offerors, if writ-
2 ten or oral discussions have been conducted with all
3 responsible offerors who submit proposals within the
4 competitive range; or

5 “(B) without discussions with the offerors
6 (other than discussions conducted for the purpose of
7 minor clarification), if the solicitation included a
8 statement that proposals are intended to be evalu-
9 ated, and award made, without discussions, unless
10 discussions are determined to be necessary.”; and

11 (4) in subsection (d) by striking paragraphs (2)
12 and (3) and by redesignating paragraph (4) as para-
13 graph (2).

14 (c) APPLICATION.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), the amendments made by this section
17 shall apply to—

18 (A) solicitations for sealed bids or competi-
19 tive proposals issued after the end of the 180-
20 day period beginning on the date of the enact-
21 ment of this Act; and

22 (B) contracts awarded pursuant to those
23 solicitations.

24 (2) EARLIER APPLICATION.—The head of an
25 agency may apply the amendments made by this sec-

1 tion to solicitations issued before the end of the pe-
2 riod referred to in paragraph (1). The head of the
3 agency shall publish in the Federal Register notice
4 of any such earlier date of application before the be-
5 ginning of the 10-day period ending on that date.

6 **SEC. 203. CERTIFIED COST OR PRICING DATA THRESHOLD.**

7 (a) CERTIFYING DATA.—

8 (1) AFFECTED CONTRACTS.—Section 304(d) of
9 the Federal Property and Administrative Services
10 Act of 1949 (41 U.S.C. 254(d)) is amended—

11 (A) by striking out “\$100,000” each place
12 it appears and inserting in lieu thereof “the
13 cost or pricing data threshold”; and

14 (B) by adding at the end the following new
15 paragraph:

16 “(6) For the purposes of this subsection, the
17 term ‘the cost or pricing data threshold’ means
18 \$500,000, or, after December 31, 1995, \$100,000.”.

19 (2) APPLICATION.—The amendments made by
20 this subsection shall apply to—

21 (A) prime contracts, or subcontracts (with-
22 out regard to the date on which the associated
23 prime contract was awarded), entered into after
24 the date on which the Federal Acquisition Reg-

1 ulation is promulgated pursuant to section 204;
2 and

3 (B) changes or modifications to prime con-
4 tracts or subcontracts when those changes or
5 modifications are entered into after the date on
6 which a final revision of the Federal Acquisition
7 Regulation is issued pursuant to section 204.

8 (3) MODIFICATION.—Upon the request of a
9 contractor, the head of an agency may modify a con-
10 tract to reflect the dollar thresholds set forth in the
11 revision to the Federal Acquisition Regulation issued
12 pursuant to section 204. Any such modification shall
13 be made without requiring consideration.

14 (b) REGULATIONS FOR BELOW-THRESHOLD PRO-
15 CUREMENTS.—

16 (1) TYPE OF PROCUREMENTS.—The Adminis-
17 trator of General Services, in consultation with the
18 Administrator for Federal Procurement Policy, shall
19 prescribe regulations identifying the type of procure-
20 ments for which contracting officers should consider
21 requiring the submission of certified cost or pricing
22 data under section 304(d) of the Federal Property
23 and Administrative Services Act of 1949 (41 U.S.C
24 254).

1 (2) TYPES OF INFORMATION.—The Adminis-
2 trator of General Services, in consultation with the
3 Administrator for Federal Procurement Policy, shall
4 prescribe regulations concerning the types of infor-
5 mation that offerors may be required to submit for
6 a contracting officer to consider in determining
7 whether the price of a procurement to the Govern-
8 ment is fair and reasonable when certified cost or
9 pricing data are not required to be submitted under
10 section 304(d) of such Act because the price of the
11 procurement to the United States is not expected to
12 exceed \$500,000. Such information, at a minimum,
13 shall include appropriate information on the prices
14 at which such offeror has previously sold the same
15 or similar products.

16 (3) DEADLINE.—The regulations required
17 under this subsection shall be prescribed no later
18 than 6 months after the date of the enactment of
19 this Act.

20 (c) REPEAL OF COMMERCIAL PRICING REQUIRE-
21 MENTS.—

22 (1) REPEAL.—Section 303E of the Federal
23 Property and Administrative Services Act of 1949
24 (41 U.S.C. 253e) is repealed.

1 (2) CLERICAL AMENDMENT.—The first section
2 of the Federal Property and Administrative Services
3 Act of 1949 is amended in the table of contents by
4 striking the item relating to section 303E.

5 (d) REVIEW OF AMENDMENTS.—

6 (1) IN GENERAL.—After the amendments made
7 by subsections (a) and (c) have been in effect for 1
8 year, the Comptroller General shall conduct a review
9 of the effects of the amendments. The Comptroller
10 General shall coordinate that review, insofar as pos-
11 sible, with the review conducted by the Inspector
12 General of the Department of Defense pursuant to
13 section 803(b) of the National Defense Authoriza-
14 tion Act for Fiscal Year 1991 (Public Law 101-
15 510).

16 (2) FACTORS CONSIDERED.—The review con-
17 ducted under paragraph (1) shall address whether
18 the amendments made by subsections (a) and (c)
19 have improved the acquisition process in terms of re-
20 duced paperwork, financial or other savings to the
21 Government, an increase in the number of contrac-
22 tors participating in the contracting process, and the
23 adequacy of information available to contracting offi-
24 cers in cases in which certified cost or pricing data
25 are not required.

1 (3) REPORT.—Not later than the date on which
2 the President submits the budget for fiscal year
3 1996 to the Congress pursuant to section 1105 of
4 title 31, United States Code, the Comptroller Gen-
5 eral shall submit to the Congress a report on the re-
6 view conducted under paragraph (1). The report
7 shall include the comments of the Administrator for
8 Federal Procurement Policy and the Administrator
9 of General Services.

10 **SEC. 204. REVISION OF FEDERAL ACQUISITION REGULA-**
11 **TION; EFFECTIVE DATE.**

12 (a) REVISION OF FAR.—Unless otherwise specifically
13 provided in this title, not later than 180 days after the
14 date of the enactment of this Act, the Federal Acquisition
15 Regulation issued under section 25(c) of the Office of Fed-
16 eral Procurement Policy Act (41 U.S.C. 421(c)) shall be
17 revised to reflect the amendments made by sections 201,
18 202, 203(a) and (c), and 301.

19 (b) EFFECTIVE DATE.—Unless otherwise specifically
20 provided in this title, the amendments made by this title
21 and section 301 shall be effective 180 days after the date
22 of the enactment of this Act.

23 (c) STANDARDS AND REQUIREMENTS FOR COST AND
24 PRICE AS EVALUATION FACTORS.—

1 (1) IN GENERAL.—The Federal Acquisition
2 Regulation, as revised pursuant to subsection (a),
3 shall establish standards and requirements for the
4 consideration of cost and price to the Government as
5 evaluation factors under the amendments made by
6 sections 202(a)(4) and 301.

7 (2) STANDARDS AND REQUIREMENTS.—Stand-
8 ards and requirements established under paragraph
9 (1) shall be adequate to ensure that, to the maxi-
10 mum extent practicable consistent with the needs of
11 the Federal Government in conducting procure-
12 ments—

13 (A) cost or price is an evaluation factor of
14 sufficient weight to affect each source selection
15 decision; and

16 (B) competition among competing offerors
17 is affected by cost or price.

18 **TITLE III—AMENDMENTS RELAT-**
19 **ING TO TITLE 10, UNITED**
20 **STATES CODE**

21 **SEC. 301. SOURCE SELECTION FACTORS.**

22 Paragraph 2305(a)(3) of title 10, United States
23 Code, is amended to read as follows:

1 “(3)(A) In prescribing the evaluation factors to
2 be included in each solicitation for competitive pro-
3 posals, the head of an agency—

4 “(i) shall clearly establish the relative im-
5 portance assigned to the evaluation factors and
6 subfactors, including the quality of the product
7 or services to be provided (including technical
8 capability, management capability, and prior ex-
9 perience of the offeror);

10 “(ii) shall include cost or price to the Gov-
11 ernment as an evaluation factor that must be
12 considered in the evaluation of proposals; and

13 “(iii) shall, at a minimum, disclose to
14 offerors whether all evaluation factors other
15 than price or cost, when combined, are—

16 “(I) significantly more important than
17 price or cost,

18 “(II) approximately equal in impor-
19 tance to price or cost, or

20 “(III) significantly less important
21 than price or cost.

22 “(B) Nothing in this paragraph prohibits an
23 agency from—

1 “(i) providing additional information in a
2 solicitation, including numeric weights for all
3 evaluation factors; or

4 “(ii) stating in a solicitation that award
5 will be made to the offeror that meets the solici-
6 tation’s mandatory requirements at the lowest
7 price or cost.”.

8 **SEC. 302. TRUTH IN NEGOTIATIONS.**

9 Section 2306a(c) of title 10, United States Code, is
10 amended to read as follows:

11 “(c) **AUTHORITY TO REQUIRE COST OR PRICING**
12 **DATA.**—When cost or pricing data need not be required
13 to be submitted pursuant to subsection (b), such data shall
14 not be required to be submitted unless the head of the
15 agency determines that such data are necessary for the
16 evaluation by the agency of the reasonableness of the price
17 of the contract or subcontract. In any case in which the
18 head of the agency requires such data to be submitted
19 under this subsection, the head of the agency shall docu-
20 ment in writing the reasons for such requirement.”.

1 **TITLE IV—BROOKS ACT**
2 **AMENDMENTS**

3 **SEC. 401. SHORT TITLES OF CERTAIN PROVISIONS OF FED-**
4 **ERAL PROPERTY AND ADMINISTRATIVE**
5 **SERVICES ACT OF 1949.**

6 (a) AUTOMATIC DATA PROCESSING EQUIPMENT
7 PROVISIONS.—Section 111 of the Federal Property and
8 Administrative Services Act of 1949 (40 U.S.C. 759) is
9 amended by adding at the end the following new sub-
10 section:

11 “(i) This section may be cited as the ‘Brooks Auto-
12 matic Data Processing Act’.”.

13 (b) ARCHITECTURAL AND ENGINEERING SERVICES
14 PROVISIONS.—Title IX of the Federal Property and Ad-
15 ministrative Services Act of 1949 (40 U.S.C. 541–544)
16 is amended by adding at the end the following new section:

17 **“SEC. 905. SHORT TITLE.**

18 “‘This title may be cited as the ‘Brooks Architect-En-
19 gineers Act’.”.

20 **SEC. 402. DISMISSAL; AWARD OF COSTS.**

21 Section 111(f)(4) of the Federal Property and Ad-
22 ministrative Services Act of 1949 (40 U.S.C. 759(f)(4))
23 is amended by striking subparagraph (C) and inserting
24 the following:

1 “(C) The board may dismiss a protest that the board
2 determines—

3 “(i) is frivolous,

4 “(ii) has been brought in bad faith, or

5 “(iii) on its face does not state a valid basis for
6 protest.

7 “(D) If a party violates or fails to comply in good
8 faith with, or causes a violation of or failure to comply
9 in good faith with, an order or decision of the board, the
10 board may require that party to pay to any other party
11 the amount of any reasonable costs, including attorney’s
12 fees, incurred by the other party in seeking compliance
13 with such order or decision.”.

14 **SEC. 403. OVERSIGHT OF ACQUISITION OF AUTOMATIC**
15 **DATA PROCESSING EQUIPMENT BY FEDERAL**
16 **AGENCIES.**

17 Section 111 of the Federal Property and Administra-
18 tive Services Act of 1949 (40 U.S.C. 759), as amended
19 by this Act, is further amended by inserting after sub-
20 section (g) the following new subsection:

21 “(h)(1) The Administrator shall collect and compile
22 data from Federal agencies regarding the procurement of
23 automatic data processing equipment under this section.
24 That data shall include, at a minimum, with regard to

1 those procurements specified by the Administrator in reg-
2 ulation—

3 “(A) the procuring agency,

4 “(B) the contractor,

5 “(C) the automatic data processing equipment
6 and services procured,

7 “(D) the manufacturer of the equipment pro-
8 cured,

9 “(E) the amount of the contract,

10 “(F) the type of contract used,

11 “(G) the extent of competition for award,

12 “(H) compatibility restrictions, and

13 “(I) significant modifications of the contract.

14 “(2) The head of each Federal agency shall report
15 to the Administrator in accordance with regulations issued
16 by the Administrator all information required to be com-
17 piled by the Administrator under paragraph (1).

18 “(3) The Administrator—

19 “(A) shall carry out a systematic review and
20 conduct periodic audits of information received
21 under this subsection;

22 “(B) shall use such information as appropriate
23 to determine the compliance of Federal agencies
24 with the requirements of this section; and

1 “(C) may suspend the delegation to an agency
2 of authority to lease and purchase automatic data
3 processing equipment upon any substantial failure
4 by the head of the agency to report to the Adminis-
5 trator in accordance with this subsection.

6 “(4) The Administrator shall, upon receipt of infor-
7 mation that a Federal agency has failed to comply with
8 the terms of any delegation of authority to lease or pur-
9 chase automatic data processing equipment or has failed
10 to comply with any applicable law or regulation, take ap-
11 propriate corrective action.

12 “(5) Data collected pursuant to this section shall be
13 drawn from existing Federal agency information re-
14 sources, and no new or additional information reporting
15 requirements may be imposed on offerors or contractors
16 for that purpose.”.

17 **SEC. 404. EFFECTIVE DATE.**

18 The amendments made by this title shall take effect
19 on the date which is 180 days after the date of the enact-
20 ment of this title.

1 **TITLE V—MISCELLANEOUS**
2 **PROVISIONS**

3 **SEC. 501. PROCUREMENT PROTEST SYSTEM IMPROVE-**
4 **MENTS.**

5 (a) GAO RECOMMENDATIONS ON PROTESTS.—Sec-
6 tion 3554 of title 31, United States Code, is amended—

7 (1) in subsection (b) by adding at the end the
8 following new paragraph:

9 “(3) The head of the procuring activity responsible
10 for the solicitation, proposed award, or award of a contract
11 shall report to the Comptroller General if the Federal
12 agency has not fully implemented recommendations of the
13 Comptroller General under this subsection with respect to
14 that contract within 60 days after receiving the rec-
15 ommendations, by not later than the end of that 60-day
16 period.”;

17 (2) in subsection (c)(1) by striking “declare an
18 appropriate interested party to be entitled to” and
19 inserting “recommend that the Federal agency con-
20 ducting the procurement pay to an appropriate in-
21 terested party”;

22 (3) by amending subsection (c)(2) to read as
23 follows:

24 “(2) If the Comptroller General recommends
25 under paragraph (1) that a Federal agency pay an

1 amount of costs to an interested party, the Federal
2 agency shall—

3 “(A) pay the amount promptly out of
4 amounts appropriated by section 1304 of this
5 title for the payment of judgments, and reim-
6 burse that appropriation account out of avail-
7 able funds or by obtaining additional appropria-
8 tions for that purpose, or

9 “(B) report to the Comptroller General
10 promptly why the recommendation will not be
11 followed by the agency.”.

12 (4) by adding at the end of subsection (c) the
13 following new paragraph:

14 “(3) An interested party to which the Comptroller
15 General has recommended that costs be paid under para-
16 graph (1) and the Federal agency recommended to pay
17 those costs shall attempt to reach agreement on the
18 amount of the costs to be paid, but if they are unable to
19 agree, a party may request that the Comptroller General
20 recommend the amount of the costs to be paid.”; and

21 (5) by amending subsection (e) to read as fol-
22 lows:

23 “(e)(1) The Comptroller General shall report prompt-
24 ly to the Committee on Government Operations and the
25 Committee on Appropriations of the House of Representa-

1 tives and to the Committee on Governmental Affairs and
2 the Committee on Appropriations of the Senate in any
3 case in which a Federal agency fails to implement fully
4 a recommendation of the Comptroller General under sub-
5 section (b) or (c). The report shall include—

6 “(A) a comprehensive review of the pertinent
7 procurement, including the circumstances of the fail-
8 ure of the Federal agency to implement a rec-
9 ommendation of the Comptroller General, and

10 “(B) a recommendation regarding whether, in
11 order to correct inequity or to preserve the integrity
12 of the procurement process, the Congress should
13 consider—

14 “(i) private relief legislation;

15 “(ii) legislative rescission or cancellation of
16 funds;

17 “(iii) further investigation by the Congress;

18 or

19 “(iv) other action.

20 “(2) Not later than January 31 of each year, the
21 Comptroller General shall transmit to the Congress a sum-
22 mary report describing each instance in which a Federal
23 agency did not fully implement a recommendation of the
24 Comptroller General under subsection (b) or (c) during
25 the preceding year.”.

1 (b) RATIFICATION OF PRIOR AWARDS.—Amounts to
2 which the Comptroller General declared an interested
3 party to be entitled under section 3554 of title 31, United
4 States Code, as in effect immediately before the enactment
5 of this Act, shall, if not paid or otherwise satisfied by the
6 Federal agency concerned before the date of the enact-
7 ment of this Act, be paid promptly from the appropriation
8 made by section 1304 of title 31, United States Code, for
9 the payment of judgments, and the Federal agency shall
10 reimburse that appropriation account out of available
11 funds or by obtaining additional appropriations for that
12 purpose.

13 (c) EFFECTIVE DATE.—The amendments made by
14 subsection (a) shall take effect at the end of the 45-day
15 period beginning on the date of the enactment of this Act.

16 **SEC. 502. POST-AWARD DEBRIEFINGS.**

17 (a) AMENDMENT TO OFFICE OF FEDERAL PROCURE-
18 MENT POLICY ACT.—The Office of Federal Procurement
19 Policy Act (41 U.S.C. et seq.) is amended by adding at
20 the end the following new section:

21 **“SEC. 29. POST-AWARD DEBRIEFINGS.**

22 “(a) DEBRIEFING GUIDELINES.—The Federal Acqui-
23 sition Regulation shall be revised to include guidelines for
24 the debriefing of unsuccessful offerors for any contract for
25 an amount in excess of the small purchase threshold which

1 was awarded on a basis other than price alone. Such
2 guidelines shall provide that such debriefings shall occur
3 upon the written request of an unsuccessful offeror and
4 in a timely manner. Such guidelines shall require, to the
5 maximum extent practicable, such debriefings to include
6 at least the following:

7 “(1) A detailed review of the offeror’s proposal
8 in relation to the evaluation factors and subfactors
9 specified in the solicitation for the contract, includ-
10 ing identification of any weaknesses and strengths of
11 the proposal, results of any past performance analy-
12 ses, and cost realism assessment.

13 “(2) A description of the rationale for the
14 award of the contract.

15 “(3) The overall evaluated cost and combined
16 technical and cost scores of the awardee and the de-
17 briefed offeror, and the technical point scores of the
18 awardee and the debriefed offeror.

19 “(4) The overall ranking of all offerors.

20 “(b) INFORMATION NOT PROVIDED.—A debriefing
21 under subsection (a) shall not make point-by-point com-
22 parisons with other offerors’ proposals and shall not dis-
23 close any information that is not subject to disclosure
24 under section 552 of title 5, United States Code, including
25 information relating to—

1 “(1) trade secrets;

2 “(2) privileged or confidential manufacturing
3 processes and techniques; and

4 “(3) commercial and financial information that
5 is privileged or confidential, including cost break-
6 downs, profit, indirect cost rates, and similar infor-
7 mation.

8 “(c) NOTIFICATION OF DISCLOSURE.—Each solicita-
9 tion for contracts subject to subsection (a) shall notify
10 participating offerors that the categories of information
11 described in subsection (a) may be disclosed by the
12 Government in post-award debriefings.”.

13 (b) REGULATIONS.—The Federal Acquisition Regu-
14 latory Council shall issue a final revision of the Federal
15 Acquisition Regulation implementing section 29 of the Of-
16 fice of Federal Procurement Policy Act, as added by sub-
17 section (a), not later than 180 days after the date of the
18 enactment of this Act.

19 (c) EFFECTIVE DATE.—Section 29 of the Office of
20 Federal Procurement Policy Act, as added by subsection
21 (a), shall apply with respect to solicitations for contracts
22 issued after the expiration of the 180-day period beginning
23 on the date of the enactment of this Act.

1 **SEC. 503. INCREASE IN THE SMALL PURCHASE THRESH-**
2 **OLD; IMPLEMENTATION OF ELECTRONIC**
3 **DATA INTERCHANGE SYSTEMS FOR PRO-**
4 **CUREMENT INFORMATION.**

5 (a) INCREASE.—

6 (1) IN GENERAL.—Section 4(11) of the Office
7 of Federal Procurement Policy Act (41 U.S.C. 403)
8 is amended to read as follows:

9 “(11) the term ‘small purchase threshold’
10 means—

11 “(A) \$50,000, adjusted on October 1 of
12 each year divisible by 5 to the amount equal to
13 \$50,000 in constant fiscal year 1990 dollars
14 (rounded to the nearest \$1,000); or

15 “(B) an amount that is equal to twice the
16 amount described in subparagraph (A), in the
17 case of any procurement in which solicitation of
18 bids or proposals, placement of an order, award
19 of a contract, provision of notice of award of a
20 contract, and all other similar actions necessary
21 for the acquisition of property or services by an
22 executive agency are performed through an elec-
23 tronic data interchange system for procurement
24 information that is approved and certified by
25 the Administrator under section 30(f);”.

1 (2) INTERIM RULE.—Notwithstanding para-
2 graph (1), during the 5-year period beginning on the
3 issuance of final form of revisions to the Federal Ac-
4 quisition Regulation under subsection (b), buying ac-
5 tivities shall continue to report, pursuant to section
6 19(d) of the Office of Federal Procurement Policy
7 Act (41 U.S.C. 417(d)), procurement awards with a
8 dollar value of at least \$25,000, but less than
9 \$100,000, in conformity with the procedures for the
10 reporting of a contract award in excess of \$25,000
11 which were in effect on May 24, 1993.

12 (3) EFFECTIVE DATE.—The amendment made
13 by paragraph (1) shall take effect upon, and apply
14 to solicitations made and orders placed after the ef-
15 fective date of the revisions to the Federal Acquisi-
16 tion Regulation under subsection (b).

17 (b) IMPROVED NOTICE OF SMALL PURCHASE CON-
18 TRACTING OPPORTUNITIES.—The Federal Acquisition
19 Regulation shall be revised to—

20 (1) provide prospective offerors, especially small
21 business concerns (including small business concerns
22 owned and controlled by socially and economically
23 disadvantaged individuals), with improved access to
24 information regarding small purchase procurement
25 opportunities meeting the standards of section 18 of

1 the Office of Federal Procurement Policy Act (41
2 U.S.C. 416) through the use of techniques appro-
3 priate for each buying activity (or class of buying ac-
4 tivities), including to the extent practicable providing
5 remote access to such information through electronic
6 data interchange; and

7 (2) to ensure that—

8 (A) agencies comply with the requirements
9 of section 8(a) of the Small Business Act (15
10 U.S.C. 637(a)) and section 2323 of title 10,
11 United States Code, in awarding any contract
12 with a price exceeding \$25,000; and

13 (B) the authority under part 13.106(a)(1)
14 of the Federal Acquisition Regulation (48
15 C.F.R. 13.106(a)(1)), as in effect on May 19,
16 1993, to make purchases without securing com-
17 petitive quotations shall not apply to any pur-
18 chases with a price exceeding \$2,500.

19 (c) PERFORMANCE TEST AND REPORT.—

20 (1) PERFORMANCE TEST.—The Comptroller
21 General of the United States shall monitor and col-
22 lect data on the results of the increase in the small
23 purchase threshold made by the amendment made
24 by subsection (a), to ascertain its effects on the par-
25 ticipation of small business concerns (including small

1 business concerns owned and controlled by socially
2 and economically disadvantaged individuals) in pro-
3 curement awards of less than \$100,000 and the ben-
4 efits and detriments, if any, to the buying activities
5 of the various Executive agencies.

6 (2) DATA TO BE COLLECTED.—Data collected
7 under paragraph (1) shall include data regarding
8 whether the amendment made by subsection (a) has
9 improved the acquisition process in terms of reduced
10 paperwork, financial or other savings to the Govern-
11 ment, and any increase in the number of contractors
12 participating in the contracting process.

13 (3) PERIOD.—Data shall be collected for pur-
14 poses of paragraph (1) during the period beginning
15 with the first full fiscal year quarter after the effec-
16 tive date of the amendment made by subsection (a)
17 and ending September 30, 1995.

18 (4) REPORT.—By March 1, 1996, the Comp-
19 troller General of the United States shall report to
20 the Committee on Government Operations of the
21 House of Representatives, the Committee on Govern-
22 mental Affairs of the Senate, and the Committees on
23 Small Business of the House of Representatives and
24 the Senate on the effects of the increase in the small

1 purchase threshold made by the amendment made
2 by subsection (a).

3 (d) FUNCTIONS OF ADMINISTRATOR FOR FEDERAL
4 PROCUREMENT POLICY.—Section 6(d) of the Office of
5 Federal Procurement Policy Act (41 U.S.C. 405(d)) is
6 amended—

7 (1) in paragraph (7) by striking “and” after
8 the semicolon at the end; and

9 (2) by redesignating paragraph (8) as para-
10 graph (10) and inserting after paragraph (7) the
11 following:

12 “(8) developing policies, in consultation with
13 the Administrator of the Small Business Administra-
14 tion, that ensure that small businesses and small
15 businesses owned and controlled by socially and eco-
16 nomically disadvantaged persons are provided with
17 the maximum practicable opportunities to partici-
18 pate in procurements that are conducted below the
19 small purchase threshold; and

20 “(9) developing policies that will promote
21 achievement of goals for participation by small busi-
22 nesses and small businesses owned and controlled by
23 socially and economically disadvantaged individ-
24 uals.”.

1 (e) IMPLEMENTATION OF ELECTRONIC DATA INTER-
2 CHANGE SYSTEMS FOR PROCUREMENT INFORMATION.—
3 The Office of Federal Procurement Policy Act (41 U.S.C.
4 401 et seq.) is further amended by adding after section
5 29 (as added by section 502) the following:

6 **“SEC. 30. ELECTRONIC DATA INTERCHANGE SYSTEMS FOR**
7 **PROCUREMENT INFORMATION.**

8 “(a) IN GENERAL.—The Administrator shall estab-
9 lish a program for, and provide overall direction of policy
10 and leadership in, the development, coordination, installa-
11 tion, and completion of implementation by executive agen-
12 cies, by not later than 5 years after the effective date of
13 this section, of electronic data interchange systems for
14 procurement information (in this section referred to as
15 ‘systems’).

16 “(b) FUNCTIONS OF ADMINISTRATOR OF GENERAL
17 SERVICES.—The Administrator of General Services
18 shall—

19 “(1) establish acquisition and support programs
20 to facilitate efficient and widespread implementation
21 of systems by executive agencies;

22 “(2) assist the Director of the National Insti-
23 tute of Standards and Technology in the develop-
24 ment of standards for those systems;

1 “(3) ensure compliance with section 111 of the
2 Federal Property and Administrative Services Act of
3 1949 in the establishment of systems by executive
4 agencies, including by limiting the scope of delega-
5 tions under subsection (a) of that section;

6 “(4) submit to the Congress, on the date that
7 is one year after the effective date of this section
8 and on that date in each of the 5 years thereafter,
9 a report on the overall progress by the executive
10 branch and by each executive agency in establishing
11 systems; and

12 “(5) coordinate with the Administrator to facili-
13 tate the efficient and widespread implementation of
14 systems by executive agencies.

15 “(c) ESTABLISHMENT OF SYSTEMS BY EXECUTIVE
16 AGENCIES.—

17 “(1) IN GENERAL.—The head of each executive
18 agency shall cooperate with the Administrator and
19 the Administrator of General Services to establish a
20 system for the agency.

21 “(2) DESIGNATION OF PROGRAM MANAGER.—

22 “(A) DESIGNATION.—The head of each ex-
23 ecutive agency shall designate a program man-
24 ager to establish a system for the agency and
25 otherwise implement this section.

1 “(B) FUNCTIONS.—A program manager
2 designated under this paragraph for an execu-
3 tive agency shall—

4 “(i) report directly to the senior pro-
5 curement executive designated for the
6 agency under section 16(3);

7 “(ii) be responsible for the timely and
8 cost-effective establishment of a system for
9 the agency that is responsive to the pro-
10 curement needs of the agency, national
11 business needs, and the public’s interest in
12 open government; and

13 “(iii) in carrying out this section,
14 comply with guidelines issued by the Ad-
15 ministrator under this section and program
16 directives issued by the Administrator of
17 General Services under section 111 of the
18 Federal Property and Administrative Serv-
19 ices Act of 1949.

20 “(d) FUNCTIONS OF NATIONAL INSTITUTE OF
21 STANDARDS AND TECHNOLOGY.—The Director of the Na-
22 tional Institute of Standards and Technology shall—

23 “(1) issue standards for systems established
24 under this section, including for the approval and
25 certification of systems under subsection (f); and

1 “(2) establish tests to facilitate the aims of this
2 section and support policies established by the Ad-
3 ministrator under this section.

4 “(e) FUNCTIONS OF SMALL BUSINESS ADMINISTRA-
5 TION.—The Administrator of the Small Business Adminis-
6 tration shall be principally responsible for—

7 “(1) promotion of the use by small businesses
8 of systems established by executive agencies; and

9 “(2) informing and providing training for small
10 businesses with respect to those systems.

11 “(f) APPROVAL AND CERTIFICATION OF SYSTEMS.—

12 “(1) IN GENERAL.—The Administrator shall es-
13 tablish standards and procedures for the submittal
14 by executive agencies, and the review, approval, and
15 certification by the Administrator for purposes of
16 section 4(11)(B) within 90 days after the date of
17 that submittal, of systems established by executive
18 agencies.

19 “(2) REQUIREMENTS FOR APPROVAL AND CER-
20 TIFICATION.—The Administrator may not approve
21 and certify a system established by an executive
22 agency unless the Administrator determines that the
23 system—

24 “(A) provides widespread public notice of
25 solicitations for bids and proposals issued by

1 the agency and of orders to be made by the
2 agency below the small purchase threshold; and

3 “(B) allows private users of the system to
4 electronically—

5 “(i) selectively access and review so-
6 licitations and orders;

7 “(ii) respond to solicitations and no-
8 tices of orders issued by the agency;

9 “(iii) receive orders from the agency;

10 “(iv) access information on awards of
11 contracts; and

12 “(v) receive prompt bank card or elec-
13 tronic funds transfer payment.”.

14 (f) TECHNICAL CORRECTION.—Section 18(d) of the
15 Office of Federal Procurement Policy Act (41 U.S.C. 416)
16 is amended by striking “(e)” in the first sentence and
17 inserting “(a)”.

18 **SEC. 504. TEST PROGRAM.**

19 (a) IN GENERAL.—The Administrator for Federal
20 Procurement Policy (in this section referred to as the “Ad-
21 ministrator”) may conduct a program of tests of alter-
22 native and innovative procurement procedures. To the ex-
23 tent consistent with this section, such program shall be
24 conducted consistent with section 15 of the Office of Fed-

1 eral Procurement Policy Act (41 U.S.C. 413). No more
2 than 6 such tests shall be conducted under this authority.

3 (b) DESIGNATION OF AGENCIES.—Each test con-
4 ducted pursuant to subsection (a) shall be limited to not
5 more than 2 specific contracting activities in an agency
6 designated by the Administrator. Each agency so des-
7 ignated shall select the contracting activities participating
8 in the test with the approval of the Administrator and
9 shall designate a procurement testing official who shall be
10 responsible for the conduct and evaluation of tests within
11 that agency.

12 (c) TEST REQUIREMENTS.—Tests conducted under
13 subsection (a)—

14 (1) shall be developed and structured by the
15 Administrator, in coordination with agency senior
16 procurement executives designated pursuant to sec-
17 tion 16(e) of the Office of Federal Procurement Pol-
18 icy Act (41 U.S.C. 414(3));

19 (2) shall be for a period of not greater than 4
20 years;

21 (3) shall be limited to specific programs of
22 agencies or specific acquisitions;

23 (4) may not include any test with a total esti-
24 mated life-cycle cost to the Government greater than
25 \$100,000,000;

1 (5) shall include—

2 (A) a test of simplified procurement proce-
3 dures for acquisitions with an estimated annual
4 total obligation of funds of \$500,000 or less by
5 the National Aeronautics and Space Adminis-
6 tration;

7 (B) a test of streamlined procedures for
8 competition among interested sources partici-
9 pating in the tailoring of a solicitation for the
10 purchase of commercial products by at least one
11 agency; and

12 (C) a test of commercial item acquisition
13 procedures in which all evaluation factors and
14 subfactors on which a contract award will be
15 based are disclosed in the solicitation, identify-
16 ing both the absolute and relative weight for
17 each factor and each subfactor; and

18 (6) shall not include any procurement the cost
19 of which is expected to exceed \$5,000,000 (including
20 options).

21 (d) LIMITATION ON TOTAL VALUE OF CONTRACTS
22 UNDER PROGRAM.—

23 (1) LIMITATION.—The Administrator shall en-
24 sure that the total amount obligated under contracts

1 awarded pursuant to the program under this section
2 does not exceed \$600,000,000.

3 (2) MONITORING.—The Administrator shall
4 monitor the value of contracts awarded pursuant to
5 the program under this section.

6 (3) PROHIBITION ON AWARDS IN EXCESS OF
7 LIMIT.—No contract may be awarded under the pro-
8 gram under this section if the award of the contract
9 would result in obligation of more than
10 \$600,000,000 under contracts under this section.

11 (e) PROCEDURES AUTHORIZED.—Tests conducted
12 under this section may include tests of any of the following
13 procedures:

14 (1) Publication of agency needs prior to draft-
15 ing of a solicitation.

16 (2) Screening of sources and competition
17 among capable vendors.

18 (3) Issuance of draft solicitations for comment.

19 (4) Streamlined solicitations, with a minimized
20 number of evaluation factors and information re-
21 quired from vendors, abbreviated periods for submis-
22 sion of offers, and page limitations on offers.

23 (5) Limitation of source selection factors to—

24 (A) cost to the Government;

25 (B) past experience; and

1 (C) quality of the contents of the offer.

2 (6) Evaluation of proposals by small teams of
3 highly qualified people, limited to 30 days.

4 (7) Competition among sources of preevaluated
5 products.

6 (8) Alternative notice and publication require-
7 ments.

8 (9) In not more than one of the tests, a process
9 in which—

10 (A) the competitive process is initiated by
11 a notice in the Commerce Business Daily syn-
12 opsizing the needs of the executive agency con-
13 ducting the test, in functional and performance
14 terms, with other specifications provided for
15 guidance only;

16 (B) the notice invites interested sources to
17 submit information or samples showing their
18 product's suitability for those needs (with price
19 quotations) or, if appropriate, showing the
20 sources' technical capability, past performance,
21 product supportability, or other qualifications
22 (with appropriate consideration to rates and
23 other cost-related factors);

24 (C) contracting officials develop a request
25 for proposals (including appropriate specifica-

1 tions and evaluation criteria) after reviewing
2 the submittals made by interested sources and,
3 if the officials determine necessary, after con-
4 sultation with those sources; and

5 (D) the contract is awarded after a
6 streamlined competition limited to all sources
7 that timely provided product information in re-
8 sponse to the notice or, if appropriate, to those
9 sources determined most capable based on those
10 qualification-based factors included in an invita-
11 tion to submit information pursuant to sub-
12 paragraph (B).

13 (f) TEST PLAN.—Not later than 60 days before im-
14 plementing any test program under this section, the
15 Administrator shall—

16 (1) provide a detailed test plan, including lists
17 of any regulations that are to be waived, and any
18 written determination under subsection (f)(1)(B) to
19 the Committee on Government Operations of the
20 House of Representatives and the Committee on
21 Governmental Affairs of the Senate;

22 (2) provide a copy of the plan to the appro-
23 priate authorizing committees of the House of Rep-
24 resentatives and the Senate; and

1 (3) publish the plan in the Federal Register
2 and provide an opportunity for public comment.

3 (g) WAIVER OF PROCUREMENT REGULATIONS.—

4 (1) IN GENERAL.—For purposes of a test con-
5 ducted under subsection (a), the Administrator may
6 waive—

7 (A) any provision of the Federal Acquisi-
8 tion Regulation that is not required by statute;
9 and

10 (B) any provision of the Federal Acquisi-
11 tion Regulation that is required by a provision
12 of law described in paragraph (2), the waiver of
13 which the Administrator determines in writing
14 to be necessary to conduct any test of any of
15 the 9 procedures described in subsection (e).

16 (2) PROVISIONS OF LAW DESCRIBED.—The pro-
17 visions of law referred to in paragraph (1) are the
18 following:

19 (A) Section 3709 of the Revised Statutes
20 (41 U.S.C. 5).

21 (B) Section 3710 of the Revised Statutes
22 (41 U.S.C. 8).

23 (C) Section 3735 of the Revised Statutes
24 (41 U.S.C. 13).

1 (D) Section 310 of the Federal Property
2 and Administrative Services Act of 1949 (41
3 U.S.C. 260).

4 (E) Section 303 of the Federal Property
5 and Administrative Services Act of 1949 (41
6 U.S.C. 253).

7 (F) Section 2304 of title 10, United States
8 Code.

9 (G) Section 303A of the Federal Property
10 and Administrative Services Act of 1949 (41
11 U.S.C. 253a).

12 (H) Section 303B of the Federal Property
13 and Administrative Services Act of 1949 (41
14 U.S.C. 253b).

15 (I) Section 2305 of title 10, United States
16 Code.

17 (J) Section 303C of the Federal Property
18 and Administrative Services Act of 1949 (41
19 U.S.C. 253c).

20 (K) Section 2319 of title 10, United States
21 Code.

22 (L) Section 4(6) of the Office of Federal
23 Procurement Policy Act (41 U.S.C. 403(6)).

24 (M) Section 18 of the Office of Federal
25 Procurement Policy Act (41 U.S.C. 416).

1 (N) Sections 8 (e), (f), and (g) of the
2 Small Business Act (15 U.S.C. 637 (e), (f), and
3 (g)).

4 (h) REPORTS AND REVIEWS.—

5 (1) ADMINISTRATOR.—The Administrator shall
6 report to the Congress on the results of each test
7 conducted under subsection (a).

8 (2) COMPTROLLER GENERAL.—The Comptrol-
9 ler General of the United States shall review each
10 test conducted under subsection (a) and report to
11 the Congress on each test and shall report annually
12 to the Congress on the conduct of and results of all
13 tests conducted under subsection (a).

14 (i) EXPIRATION OF AUTHORITY.—The authority to
15 conduct tests under this section and to award contracts
16 under such tests shall expire on October 1, 1997. Con-
17 tracts entered prior to October 1, 1997, pursuant to a test
18 shall remain in effect, notwithstanding the expiration of
19 the authority to conduct the test under this section.

20 **SEC. 505. SINGLE AUDIT UNDER BROOKS ARCHITECT-ENGI-**
21 **NEERS ACT.**

22 Section 904 of the Federal Property and Administra-
23 tive Services Act of 1949 (40 U.S.C. 544) is amended by
24 adding at the end the following:

1 ment Act of 1979 or any international agreement to which
2 the United States is a party.

3 (c) PROHIBITION OF CONTRACTS WITH PERSONS
4 FALSELY LABELING PRODUCTS AS MADE IN AMERICA.—
5 If the Administrator of General Services determines that
6 a person has been convicted of intentionally affixing a
7 label bearing a “Made in America” inscription to any
8 product sold in or shipped to the United States that is
9 not made in America, the Administrator shall determine,
10 not later than 90 days after determining that the person
11 has been so convicted, whether the person should be
12 debarred from contracting with the General Services Ad-
13 ministration. If the Administrator determines that the
14 person should not be debarred, the Administrator shall
15 submit to Congress a report on such determination not
16 later than 30 days after the determination is made.

17 (d) DEFINITIONS.—For purposes of this section—

18 (1) the term “Buy American Act” means title
19 III of the Act entitled “An Act making appropria-
20 tions for the Treasury and Post Office Departments
21 for the fiscal year ending June 30, 1934, and for
22 other purposes”, approved March 3, 1933 (41
23 U.S.C. 10a et seq.); and

24 (2) the term “debar” means to exclude, pursu-
25 ant to established administrative procedures, from

1 Government contracting and subcontracting for a
2 specified period of time commensurate with the seri-
3 ousness of the failure or offense or the inadequacy
4 of performance.

5 **TITLE VI—PROVISIONS RELAT-**
6 **ING TO GENERAL SERVICES**
7 **ADMINISTRATION**

8 **SEC. 601. AUTHORIZATION OF FUNCTIONS AND ACTIVITIES**
9 **UNDER THE FEDERAL PROPERTY AND AD-**
10 **MINISTRATIVE SERVICES ACT OF 1949.**

11 Section 603(a) of the Federal Property and Adminis-
12 trative Services Act of 1949 (40 U.S.C. 475) is amended
13 to read as follows:

14 “(a) There are authorized to be appropriated such
15 sums as may be necessary to carry out the provisions of
16 this Act for each fiscal year through the fiscal year ending
17 on September 30, 1996, including payment in advance,
18 when authorized by the Administrator, for library mem-
19 berships in societies whose publications are available to
20 members only, or to members at a price lower than that
21 charged to the general public. Nothing in this subsection
22 shall affect authorizations of appropriations or appropria-
23 tions set forth elsewhere in this Act.”.

1 **SEC. 602. REQUIREMENTS FOR APPOINTMENTS TO SENIOR**
2 **POSITIONS IN GENERAL SERVICES ADMINIS-**
3 **TRATION.**

4 (a) **IN GENERAL.**—Section 101 of the Federal Prop-
5 erty and Administrative Services Act of 1949 (40 U.S.C.
6 751) is amended by redesignating subsection (f) as sub-
7 section (g) and by inserting after subsection (e) the follow-
8 ing new subsection:

9 “(f) A person appointed as the Deputy Administrator
10 of General Services or as the head of a principal organiza-
11 tional unit of the General Services Administration shall,
12 in addition to any other minimum qualifications, have sig-
13 nificant previous management experience in government
14 or the private sector in an area or areas directly related
15 to the functions and responsibilities of the position to
16 which that person is appointed.”.

17 (b) **EFFECTIVE DATE.**—The amendments made by
18 subsection (a) shall not apply to any person in a position
19 affected by such amendments on the date of the enactment
20 of this Act.

○

HR 2238 IH—2

HR 2238 IH—3

HR 2238 IH—4