

110TH CONGRESS }
1st Session

HOUSE OF REPRESENTATIVES

{ REPT. 110-47
Part 2

ACCOUNTABILITY IN CONTRACTING ACT

R E P O R T

OF THE

COMMITTEE ON ARMED SERVICES HOUSE OF REPRESENTATIVES

ON

H.R. 1362

[Including cost estimate of the Congressional Budget Office]



MARCH 14, 2007.—Committed to the Committee of the Whole House on
the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

59-006

WASHINGTON : 2007

HOUSE COMMITTEE ON ARMED SERVICES

ONE HUNDRED TENTH CONGRESS

IKE SKELTON, Missouri

JOHN SPRATT, South Carolina
SOLOMON P. ORTIZ, Texas
GENE TAYLOR, Mississippi
NEIL ABERCROMBIE, Hawaii
MARTY MEEHAN, Massachusetts
SILVESTRE REYES, Texas
VIC SNYDER, Arkansas
ADAM SMITH, Washington
LORETTA SANCHEZ, California
MIKE MCINTYRE, North Carolina
ELLEN O. TAUSCHER, California
ROBERT A. BRADY, Pennsylvania
ROBERT ANDREWS, New Jersey
SUSAN A. DAVIS, California
RICK LARSEN, Washington
JIM COOPER, Tennessee
JIM MARSHALL, Georgia
MADELEINE Z. BORDALLO, Guam
MARK UDALL, Colorado
DAN BOREN, Oklahoma
BRAD ELLSWORTH, Indiana
NANCY BOYDA, Kansas
PATRICK J. MURPHY, Pennsylvania
HANK JOHNSON, Georgia
CAROL SHEA-PORTER, New Hampshire
JOE COURTNEY, Connecticut
DAVID LOEBSACK, Iowa
KIRSTEN GILLIBRAND, New York
JOE SESTAK, Pennsylvania
GABRIELLE GIFFORDS, Arizona
ELIJAH E. CUMMINGS, Maryland
KENDRICK B. MEEK, Florida
KATHY CASTOR, Florida

DUNCAN HUNTER, California
JIM SEXTON, New Jersey
JOHN M. McHUGH, New York
TERRY EVERETT, Alabama
ROSCOE G. BARTLETT, Maryland
HOWARD P. "BUCK" McKEON, California
MAC THORNBERRY, Texas
WALTER B. JONES, North Carolina
ROBIN HAYES, North Carolina
KEN CALVERT, California
JO ANN DAVIS, Virginia
W. TODD AKIN, Missouri
J. RANDY FORBES, Virginia
JEFF MILLER, Florida
JOE WILSON, South Carolina
FRANK A. LoBIONDO, New Jersey
TOM COLE, Oklahoma
ROB BISHOP, Utah
MICHAEL TURNER, Ohio
JOHN KLINE, Minnesota
CANDICE S. MILLER, Michigan
PHIL GINGREY, Georgia
MIKE ROGERS, Alabama
TRENT FRANKS, Arizona
THELMA DRAKE, Virginia
CATHY McMORRIS RODGERS, Washington
K. MICHAEL CONAWAY, Texas
GEOFF DAVIS, Kentucky

ERIN CONATON, *Staff Director*

CONTENTS

	Page
Purpose and Background	5
Legislative History	6
Section-by-Section Analysis	6
Section 1—Short Title; Table of Contents	6
TITLE I—IMPROVING THE QUALITY OF CONTRACTS	6
Section 101—Limitation on Length of Noncompetitive Contracts	6
Section 102—Minimizing Sole-Source Contracts	7
Section 103—Maximizing Fixed-Price Procurement Contracts	8
TITLE II—INCREASING CONTRACT OVERSIGHT	8
Section 201—Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts	8
Section 202—Disclosure of Government Contractor Audit Findings	8
Section 203—Study of Acquisition Workforce	9
Section 204—Repeal of Sunset of Training Fund	10
TITLE III—PROMOTING INTEGRITY IN CONTRACTING	10
Section 301—Additional Provisions Relating to Procurement Officials	10
Committee Position	10
Congressional Budget Office Estimate	11
Committee Cost Estimate	12
Oversight Findings	12
Constitutional Authority Statement	12
Earmarks	12
Statement of Federal Mandates	12
Record Vote	12
Changes in Existing Law Made by the Bill, as Reported	14

ACCOUNTABILITY IN CONTRACTING ACT

MARCH 14, 2007.—Ordered to be printed

Mr. SKELTON, from the Committee on Armed Services,
submitted the following

R E P O R T

[To accompany H.R. 1362]

[Including cost estimate of the Congressional Budget Office]

The Committee on Armed Services, to whom was referred the bill (H.R. 1362) to reform acquisition practices of the Federal Government, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Accountability in Contracting Act”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—IMPROVING THE QUALITY OF CONTRACTS

Sec. 101. Limitation on length of noncompetitive contracts.
Sec. 102. Minimizing sole-source contracts.
Sec. 103. Maximizing fixed-price procurement contracts.

TITLE II—INCREASING CONTRACT OVERSIGHT

Sec. 201. Public disclosure of justification and approval documents for noncompetitive contracts.
Sec. 202. Disclosure of Government contractor audit findings.
Sec. 203. Study of acquisition workforce.
Sec. 204. Repeal of sunset of training fund.

TITLE III—PROMOTING INTEGRITY IN CONTRACTING

Sec. 301. Additional provisions relating to procurement officials.

TITLE I—IMPROVING THE QUALITY OF CONTRACTS

SEC. 101. LIMITATION ON LENGTH OF NONCOMPETITIVE CONTRACTS.

(a) REVISION OF FAR.—Not later than one year after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to restrict the con-

tract period of any contract described in subsection (c) to the minimum contract period necessary—

(1) to meet the urgent and compelling requirements of the work to be performed under the contract; and

(2) to enter into another contract for the required goods or services through the use of competitive procedures.

(b) **CONTRACT PERIOD.**—The regulations promulgated under subsection (a) shall require the contract period to not exceed one year, unless the head of the executive agency concerned determines that the Government would be seriously injured by the limitation on the contract period.

(c) **COVERED CONTRACTS.**—This section applies to any contract in an amount greater than \$1,000,000 entered into by an executive agency using procedures other than competitive procedures pursuant to the exception provided in section 303(c)(2) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(2)) or section 2304(c)(2) of title 10, United States Code.

(d) **DEFINITIONS.**—In this section:

(1) The term “executive agency” has the meaning provided in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

(2) The term “head of the executive agency” means the head of an executive agency except that, in the case of the Department of Defense, the term means—

(A) in the case of a military department, the Secretary of the military department;

(B) in the case of a Defense Agency, the head of the Defense Agency; and

(C) in the case of any part of the Department of Defense other than a military department or Defense Agency, the Under Secretary of Defense for Acquisition, Technology, and Logistics.

SEC. 102. MINIMIZING SOLE-SOURCE CONTRACTS.

(a) **PLANS REQUIRED.**—Subject to subsection (c), the head of each executive agency covered by title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) or, in the case of the Department of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall develop and implement a plan to minimize, to the maximum extent practicable, the use of contracts entered into using procedures other than competitive procedures by the agency or department concerned. The plan shall contain measurable goals and shall be completed and submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate and, in the case of the Department of Defense and the Department of Energy, the Committees on Armed Services of the Senate and the House of Representatives, with a copy provided to the Comptroller General, not later than 1 year after the date of the enactment of this Act.

(b) **COMPTROLLER GENERAL REVIEW.**—The Comptroller General shall review the plans provided under subsection (a) and submit a report to Congress on the plans not later than 18 months after the date of the enactment of this Act.

(c) **REQUIREMENT LIMITED TO CERTAIN AGENCIES.**—The requirement of subsection (a) shall apply only to those agencies that awarded contracts in a total amount of at least \$1,000,000,000 in the fiscal year preceding the fiscal year in which the report is submitted.

SEC. 103. MAXIMIZING FIXED-PRICE PROCUREMENT CONTRACTS.

(a) **PLANS REQUIRED.**—Subject to subsection (c), the head of each executive agency covered by title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) or, in the case of the Department of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall develop and implement a plan to maximize, to the fullest extent practicable, the use of fixed-price type contracts for the procurement of goods and services by the agency or department concerned. The plan shall contain measurable goals and shall be completed and submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate and, in the case of the Department of Defense and the Department of Energy, the Committees on Armed Services of the Senate and the House of Representatives, with a copy provided to the Comptroller General, not later than 1 year after the date of the enactment of this Act.

(b) **COMPTROLLER GENERAL REVIEW.**—The Comptroller General shall review the plans provided under subsection (a) and submit a report to Congress on the plans not later than 18 months after the date of the enactment of this Act.

(c) **REQUIREMENT LIMITED TO CERTAIN AGENCIES.**—The requirement of subsection (a) shall apply only to those agencies that awarded contracts in a total amount of

at least \$1,000,000,000 in the fiscal year preceding the fiscal year in which the report is submitted.

TITLE II—INCREASING CONTRACT OVERSIGHT

SEC. 201. PUBLIC DISCLOSURE OF JUSTIFICATION AND APPROVAL DOCUMENTS FOR NON-COMPETITIVE CONTRACTS.

(a) CIVILIAN AGENCY CONTRACTS.—

(1) IN GENERAL.—Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended by adding at the end the following new subsection:

“(j)(1)(A) Except as provided in subparagraph (B), in the case of a procurement permitted by subsection (c), the head of an executive agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (f)(1) with respect to the procurement.

“(B) In the case of a procurement permitted by subsection (c)(2), subparagraph (A) shall be applied by substituting ‘30 days’ for ‘14 days’.

“(2) The documents shall be made available on the website of the agency and through the Federal Procurement Data System.

“(3) This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5, United States Code.”.

(2) CONFORMING AMENDMENT.—Section 303(f) of such Act is amended—

(A) by striking paragraph (4); and

(B) by redesignating paragraph (5) as paragraph (4).

(b) DEFENSE AGENCY CONTRACTS.—

(1) IN GENERAL.—Section 2304 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(1)(1)(A) Except as provided in subparagraph (B), in the case of a procurement permitted by subsection (c), the head of an agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (f)(1) with respect to the procurement.

“(B) In the case of a procurement permitted by subsection (c)(2), subparagraph (A) shall be applied by substituting ‘30 days’ for ‘14 days’.

“(2) The documents shall be made available on the website of the agency and through the Federal Procurement Data System.

“(3) This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5.”.

(2) CONFORMING AMENDMENT.—Section 2304(f) of such title is amended—

(A) by striking paragraph (4); and

(B) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

SEC. 202. DISCLOSURE OF GOVERNMENT CONTRACTOR AUDIT FINDINGS.

(a) QUARTERLY REPORT TO CONGRESS.—

(1) The head of each Federal agency or department or, in the case of the Department of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall submit to the chairman and ranking member of each committee specified in paragraph (2) on a quarterly basis a report that includes the following:

(A) A list of completed audits performed by such agency or department issued during the applicable quarter that describe contractor costs in excess of \$10,000,000 that have been identified as unjustified, unsupported, questioned, or unreasonable under any contract, task or delivery order, or subcontract.

(B) The specific amounts of costs identified as unjustified, unsupported, questioned, or unreasonable and the percentage of their total value of the contract, task or delivery order, or subcontract.

(C) A list of completed audits performed by such agency or department issued during the applicable quarter that identify material deficiencies in the performance of any contractor or in any business system of any contractor under any contract, task or delivery order, or subcontract.

(2) The report described in paragraph (1) shall be submitted to—

(A) the Committee on Oversight and Government Reform of the House of Representatives;

(B) the Committee on Homeland Security and Governmental Affairs of the Senate;

(C) the Committees on Appropriations of the House of Representatives and the Senate;

(D) in the case of reports from the Department of Defense or the Department of Energy, the Committees on Armed Services of the Senate and the House of Representatives; and

(E) the committees of primary jurisdiction over the agency or department submitting the report.

(3) Paragraph (1) shall not apply to an agency or department with respect to a calendar quarter if no audits described in paragraph (1) were issued during that quarter.

(b) SUBMISSION OF INDIVIDUAL AUDITS.—

(1) The head of each Federal agency or department shall provide, within 14 days after a request in writing by the chairman or ranking member of any committee listed in paragraph (2), a full and unredacted copy of any audit described in subsection (a)(1). Such copy shall include an identification of information in the audit exempt from public disclosure under section 552(b) of title 5, United States Code.

(2) The committees listed in this paragraph are the following:

(A) The Committee on Oversight and Government Reform of the House of Representatives.

(B) The Committee on Homeland Security and Governmental Affairs of the Senate.

(C) The Committees on Appropriations of the House of Representatives and the Senate.

(D) In the case of the Department of Defense or the Department of Energy, the Committees on Armed Services of the Senate and House of Representatives.

(E) The committees of primary jurisdiction over the agency or department to which the request is made.

SEC. 203. STUDY OF ACQUISITION WORKFORCE.

(a) REQUIREMENT FOR STUDY.—The Administrator for Federal Procurement Policy shall conduct a study of the composition, scope, and functions of the Government-wide acquisition workforce and develop a comprehensive definition of, and method of measuring the size of, such workforce.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall submit to the relevant congressional committees a report on the results of the study required by subsection (a), with such findings and recommendations as the Administrator determines appropriate.

SEC. 204. REPEAL OF SUNSET OF TRAINING FUND.

Subparagraph (H) of section 37(h)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 433(h)(3)) is repealed.

TITLE III—PROMOTING INTEGRITY IN CONTRACTING

SEC. 301. ADDITIONAL PROVISIONS RELATING TO PROCUREMENT OFFICIALS.

(a) ELIMINATION OF LOOPHOLES THAT ALLOW FORMER FEDERAL OFFICIALS TO ACCEPT COMPENSATION FROM CONTRACTORS OR RELATED ENTITIES.—Section 27(d) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(d)) is amended—

(1) in paragraph (1) by striking “or consultant” and inserting “consultant, lawyer, or lobbyist”; and

(2) by amending paragraph (2) to read as follows:

“(2) Paragraph (1) shall not prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph if the agency’s designated ethics officer determines that the former official’s acceptance of compensation would not damage public confidence in the integrity of the procurement process.”

(b) REQUIREMENT FOR FEDERAL PROCUREMENT OFFICERS TO DISCLOSE JOB OFFERS MADE ON BEHALF OF RELATIVES.—Section 27(c)(1) of such Act (41 U.S.C. 423(c)(1)) is amended by inserting after “that official” the following: “or for a relative of that official (as defined in section 3110 of title 5, United States Code)”.

(c) REQUIREMENT ON AWARD OF GOVERNMENT CONTRACTS TO FORMER EMPLOYERS.—Section 27 of such Act (41 U.S.C. 423) is amended by adding at the end the following new subsection:

“(i) PROHIBITION ON INVOLVEMENT BY CERTAIN FORMER CONTRACTOR EMPLOYEES IN PROCUREMENTS.—An employee of the Federal Government who is a former employee of a contractor with the Federal Government shall not be personally and substantially involved with any award of a contract to the employee’s former employer for the one-year period beginning on the date on which the employee leaves the employment of the contractor unless the employee has received a waiver from the agency’s designated ethics officer. In determining whether to issue a waiver, the designated ethics officer shall take into account the agency’s need for the involvement of the employee and the impact a waiver would have on public confidence in the integrity of the procurement process.”

(d) REGULATIONS.—Section 27 of such Act (41 U.S.C. 423) is further amended by adding at the end the following new subsection:

“(j) REGULATIONS.—The Administrator, in consultation with the Director of the Office of Government Ethics, shall—

“(1) promulgate regulations to carry out and ensure the enforcement of this section; and

“(2) monitor and investigate individual and agency compliance with this section.”

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

PURPOSE AND BACKGROUND

The purpose of H.R. 1362, the “Accountability in Contracting Act,” is to amend titles 10 and 41, United States Code, and to establish other new statutory requirements, to improve the quality of government contracts, increase contract oversight, and promote integrity in contracting.

The committee has worked for decades to improve the contracting process at the Department of Defense, where more than half of all government contracts are administered. Although a number of the committee’s legislative efforts have been major additions or revisions to the United States Code, such as the creation of the Federal Acquisition Streamlining Act (FASA) of 1994 (Public Law 103–355), the Federal Acquisition Reform Act (FARA) of 1996 (Public Law 104–106) and the Services Acquisition Reform Act (SARA) of 2003 (Public Law 108–136) the committee has also worked steadily in each annual defense authorization act to exercise oversight of the defense contracting process and to make improvements, large and small, to acquisition law. The committee utilized the experience gained in these legislative efforts to formulate its recommendations on H.R. 1362.

Currently, U.S. military forces are deployed worldwide in support of Operation Iraqi Freedom, efforts in Afghanistan and elsewhere as part of the war on terrorism, and other military operations. These contingency operations have generated a large number of contracts, many of substantial scope. In particular, the Department has expended billions of dollars on support and reconstruction contracts that have been awarded, administered, and overseen in the most challenging of conditions, presenting unique challenges to the acquisition system. H.R. 1362 would help address these challenges by empowering the secretaries of the military departments and the heads of the defense agencies to ensure the proper use of a variety of contract types, both competitive and non-competitive, and further empower Congress in its oversight of such contracts. It would also ensure continued faith in the integrity of the procurement system, without which the acquisition system cannot function.

This bill would improve the ability of the heads of all federal agencies, and in the case of the Department, the Under Secretary of Defense for Acquisition, Technology, and Logistics, to promote

competition in contracting and to maximize the use of efficient contracting methods such as fixed price contracting in procurement programs. This bill would also provide Congress and the general public greater oversight of contracts by making the contract documents used to justify limiting competition publicly available within 14 or 30 days, depending on the type of contract. This bill would codify the right and ability of Congress to obtain copies of completed audits relating to findings on contractor costs in excess of \$10.0 million and of material performance deficiencies. This bill also would require a government-wide study of the acquisition workforce. This bill would amend title 41, United States Code, to make permanent the acquisition workforce training fund. It would further amend title 41 to strengthen requirements relating to the pre- and post-government employment of procurement officials.

LEGISLATIVE HISTORY

H.R. 1362 was introduced on March 6, 2007, and referred to the Committee on Oversight and Government Reform and the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned. On March 8, 2007, the Committee on Oversight and Government Reform ordered H.R. 1362, as amended, reported to the House with a favorable recommendation by voice vote.

On March 13, 2007, the Committee on Armed Services held a mark-up session to consider H.R. 1362, as introduced. By unanimous consent the committee agreed to consider Chairman Skelton's amendment in the nature of a substitute as the base text. The committee ordered H.R. 1362, as amended, reported to the House with a favorable recommendation by a record vote of 53-0, a quorum being present.

SECTION-BY-SECTION ANALYSIS

The following is a section-by-section analysis of those sections of H.R. 1362, as amended by the Committee on Armed Services.

Section 1—Short title; table of contents

This section would establish the short title of the bill as the "Accountability in Contracting Act."

TITLE I—IMPROVING THE QUALITY OF CONTRACTS

Section 101—Limitation on length of noncompetitive contracts

This section would require a revision of the Federal Acquisition Regulation, within one year following the date of enactment, in order to limit the period of performance on certain contracts. This section would apply only to contracts valued at more than \$1.0 million that, due to urgent and compelling need, are awarded using procedures other than full and open competition. This section would also limit the contract period to the minimum period necessary to meet the urgent and compelling requirement and to enter into a follow-on contract through the use of competitive procedures. In general, this section limits the contract period to not more than one year. The contract period limitation can be waived by the head

of the executive agency or, in the case of the Department of Defense, the secretary of a military department, the head of a defense agency, or the Under Secretary of Defense for Acquisition, Technology, and Logistics, upon a determination that the Government would be seriously injured by the limitation on the contract period.

The committee acknowledges that there may be circumstances, particularly during a time of war, during which the Department may require the use of noncompetitive contracts on the basis of urgent and compelling need. The committee believes that, in most circumstances, it should be possible to negotiate follow-on contracts using competitive procedures within a one-year period. The committee provides a waiver to this limitation in recognition of the fact that, in some cases, it may be possible that the limitation on the contract period would result in injury to the Government. The committee has not limited the delegation of this waiver authority, but expects that it will be assigned at a level appropriate for making a determination on the possibility of serious injury occurring due to the limitation of the contract period.

Section 102—Minimizing sole-source contracts

This section would require each executive agency that awards contracts in a total amount of \$1.0 billion or more during the previous fiscal year to develop and implement a plan to minimize, to the maximum extent practicable, the use of all contracts entered into using procedures other than competitive procedures, including a single plan for the Department of Defense. All plans must include measurable goals and be submitted to Congress and to the Comptroller General within one year. This section would also require the Comptroller General to review the agency plans and submit a report to Congress within six months of receiving the plans.

The committee is aware that the Competition in Contracting Act (Public Law 98-369) provides a number of exceptions to the requirement for the use of competitive procedures for procurement of goods and services. The committee does not intend to limit the appropriate use of sole-source contracts or contracts awarded on the basis of limited competition. For example, the committee is aware that, in certain circumstances, agencies are authorized to limit competition to participation only by small business concerns; likewise, there are other exceptions to competition requirements that are allowed in order to advance important public policy goals. The committee does not intend the implementation of the required plans to reduce the use of other than competitive procedures in a way that would undermine these policy goals. Rather, the committee recommends that the Under Secretary of Defense for Acquisition, Technology, and Logistics evaluate methods to maximize the use of competitive procedures. Such an evaluation should include, for example, an assessment of the benefits of the use of contingency contracts in preparation for national emergencies and contracts to develop secondary sources for goods and services currently available from only one responsible source.

Finally, the committee understands that an urgent and compelling need for goods or services may shorten the time period available for defining contract terms, negotiating agreements on allowable costs, and protecting the Government's interest in contracts awarded using procedures other than competitive procedures. As a

result of these challenges, it is of great importance that the Government be able to maintain the highest degree of visibility into the costs of executing such contracts and to maintain the highest degree of negotiating leverage with the contractor as possible. The committee is concerned that the award of these contracts to foreign firms, or to firms which relocate overseas, could reduce both visibility and the Government's negotiating leverage. The committee intends for agency heads to address these concerns in the plan that this section would require.

Section 103—Maximizing fixed-price procurement contracts

This section would require each executive agency that awarded contracts in a total amount of \$1.0 billion or more during the previous fiscal year to develop and implement a plan to maximize, where appropriate, the use of fixed-price type contracts for the procurement of goods and services, including a single plan for the Department of Defense. All plans must contain measurable goals and be submitted to Congress and the Comptroller General within one year. This section would also require the Comptroller General to review the agency plans and submit a report to Congress within six months of receiving the plans.

The committee believes that fixed-price type contracts are appropriately used when the risk involved can be predicted with an acceptable degree of certainty. The committee also believes that, in the case of complex contract requirements, particularly those unique to the government, cost-reimbursement contracts can be fully appropriate. This is especially true for complex research and development contracts, when performance uncertainties or the likelihood of changes makes it difficult to estimate performance costs in advance. The committee recommends the Under Secretary of Defense for Acquisition, Technology, and Logistics evaluate methods to reduce risk to the Government in procurement contracts and, as a result, appropriately maximize the use of fixed-price type contracts for procurement.

TITLE II—INCREASING CONTRACT OVERSIGHT

Section 201—Public disclosure of justification and approval documents for noncompetitive contracts

This section would require the head of an executive agency to make certain justification and approval documents relating to the use of noncompetitive procedures in contracting available on the website of the agency and through the Federal Procurement Data System within 14 days of contract award. In the case of noncompetitive contracts awarded on the basis of urgent and compelling needs, the documents would have to be posted within 30 days. The Competition in Contracting Act (Public Law 98-369) already requires that such justification and approval documents be made available for inspection by the public, subject to the exemptions from public disclosure provided in the Freedom of Information Act (5 U.S.C. 552).

Section 202—Disclosure of government contractor audit findings

This section would require the head of each federal agency or department, in the case of the Department of Defense, the Under Sec-

retary of Defense for Acquisition, Technology and Logistics, to submit quarterly reports to Congress on completed audits of contractors performed by the agency or department. Such reports would describe contractor costs in excess of \$10,000,000 that a completed audit identified as unjustified, unsupported, questioned, or unreasonable. This section would also require such reports to list completed audits identifying material performance deficiencies of a contractor or a contractor business system.

This section would also require the head of each federal agency or department to provide, within 14 days after a request in writing by the chairman or ranking member of the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, the Senate Committee on Appropriations and the House Committee on Appropriations, and in the case of audits performed by the Department of Defense or the Department of Energy, the Senate Committee on Armed Services and the House Committee on Armed Services, and the committees of primary jurisdiction, a full and unredacted copy of any completed audit referenced in a quarterly report. This section would require such a copy to identify information exempt from public disclosure under the Freedom of Information Act (5 U.S.C. 552).

The committee does not intend this section to alter current procedures, formats, or findings of completed audits. The committee seeks to create a mechanism to make Congress aware of major audit findings, while also seeking to minimize the administrative burden of the requirement. In particular, this section requires only the transmission of audits that have been completed, and does not extend to interim audit findings. Also, the committee expects that the lists of audits will focus on those audits which specifically evaluate the legitimacy of contractor cost claims and contract performance evaluations. The committee expects that this will consist of completed incurred-cost audits and audits of policies, procedures, and internal controls relative to accounting and management systems. Such a report should only include completed audits that document material findings of noncompliance with disclosed or established practices, cost accounting standards, or the Federal Acquisition Regulation, or material performance deficiencies.

The committee notes that the threshold for reporting audit findings relating to contractor costs was established to ensure that issues of significance and material importance would be brought to the attention of Congress. The committee expects that agency heads will not modify or subdivide contracts or task orders in order to remain below the threshold of this provision, and expects that audit agencies will continue to review contracts according to the audit procedures established by the Comptroller General.

Section 203—Study of acquisition workforce

This section would require the Administrator of the Office of Federal Procurement Policy to conduct a study of the composition, scope, and functions of the government-wide acquisition workforce and develop a comprehensive definition of, and method of measuring the size of, such workforce.

This section would also require the Administrator for Federal Procurement Policy to submit a report on the results of the study,

along with findings and recommendations, to the relevant congressional committees, no later than one year after the date of enactment of this Act.

Section 204—Repeal of sunset of training fund

This section would make permanent the acquisition workforce training fund. Under current law, the fund expires on November 24, 2008.

TITLE III—PROMOTING INTEGRITY IN CONTRACTING

Section 301—Additional provisions relating to procurement officials

This section would expand several provisions relating to current and former procurement officials. This section would extend the prohibition on procurement officials receiving compensation from certain contractors to include restrictions on receiving compensation as lawyers or lobbyists for the contractor. This section would also limit the ability of former procurement officials to accept compensation from divisions or affiliates of a contractor with unrelated business lines, subject to a determination by the official's ethics officer. Additionally, this section would expand notification and recusal requirements for procurement officials who make contact or are contacted about employment for a relative. This section would establish a new requirement that procurement officials who are previous employees of a contractor could not be personally and substantially involved in contract awards to that contractor for a period of one year. This new requirement could be waived if the official's involvement is necessary and does not damage public confidence in the integrity of the procurement process. Finally, this section would direct the Administrator of the Office of Federal Procurement Policy to promulgate regulations implementing these provisions and to ensure the monitoring and enforcement of these requirements.

The committee recognizes the critical importance of attracting talented and skilled individuals to government service, particularly in the area of contracting and program management. The committee does not wish to unduly restrict employment options following government service. Rather, the committee believes that the changes in this provision will address certain obvious cases where conflicts of interest were not addressed by existing law. At the same time, the intent of the committee is to provide flexibility in the form of waiver authority given to an agency's designated ethics officer to allow that officer to evaluate whether the preponderance of evidence supports the participation of a current or former procurement official in a procurement process. The committee expects that the Administrator of the Office of Federal Procurement Policy will reflect the need for balance in the implementation of these provisions, in any guidance issued to agency ethics officials in the criteria to be considered for the waiver authorities granted in this section, and in the monitoring and enforcement of these provisions.

COMMITTEE POSITION

On March 13, 2007, the Committee on Armed Services, a quorum being present, adopted H.R. 1362, as amended by a voice vote and

then ordered H.R. 1362, as amended, reported with a favorable recommendation by a record vote of 53 ayes to 0 noes.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 402 of the Congressional Budget Act of 1974 is as follows:

MARCH 14, 2007.

Hon. IKE SKELTON,
*Chairman, Committee on Armed Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1362, the Accountability in Contracting Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is David Newman.

Sincerely,

PETER R. ORSZAG,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 1362 would amend federal contracting rules. Specifically the legislation would require federal agencies to limit the length of noncompetitive contracts. It also would require agencies to limit the use of sole-source contracts and maximize the use of fixed-price contracts, when possible. Those provisions could increase the costs to administer contracts, but also could result in the use of contractual arrangements that might lower costs to the government. CBO has no basis for estimating the net impact on the budget of those provisions. Such impacts would primarily affect discretionary spending, although small changes in mandatory spending could occur.

The legislation also would require federal agencies to report to the Congress on overcharges by contractors and on the use of noncompetitive contracts. In addition, H.R. 1362 would require reviews and reports by the Government Accountability Office on the use of federal contracts. Based on the cost of similar activities, CBO estimates that those provisions would increase federal administrative costs by less than \$10 million a year, assuming appropriation of the necessary amounts.

H.R. 1362 would amend restrictions on where federal procurement officials can work after they leave the government. Enacting those changes could affect federal revenues as a result of new civil penalties for violations of those restrictions. Collections of civil penalties are recorded in the budget as revenues. CBO estimates, however, that any increase in revenues that would result from enacting the bill would not be significant.

H.R. 1362 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On March 12, 2007, CBO transmitted a cost estimate for H.R. 1362, the Accountability in Contracting Act, as ordered reported by

the Committee on Oversight and Government Reform on March 8, 2007. The two versions of the bill are generally similar. Unlike the Armed Services Committee's version, the earlier version would authorize additional appropriations for contract management, which CBO estimates would cost \$20 billion over the next four years.

The CBO staff contacts for this estimate are David Newman and Matthew Pickford. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d) of rule XIII of the Rules of the House of Representatives, the committee generally concurs with the estimate as contained in the report of the Congressional Budget Office.

OVERSIGHT FINDINGS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities pursuant to clause 2(b)(1) of rule X, are incorporated in the descriptive portions of this report.

With respect to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, this legislation does not include any new spending or credit authority, nor does it provide for any increase or decrease in tax revenues or expenditures.

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the bill does not authorize specific program funding.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, section 8 of the United States Constitution.

EARMARKS

Pursuant to clause 9 of Rule XXI, H.R. 1362, the Accountability in Contracting Act, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

STATEMENT OF FEDERAL MANDATES

Pursuant to section 423 of Public Law 104-4, this legislation contains no federal mandates with respect to state, local, and tribal governments, nor with respect to the private sector. Similarly, the bill provides no unfunded federal intergovernmental mandates.

RECORD VOTE

In accordance with clause 3(b) of rule XIII of the Rules of the House of Representatives, a record vote was taken with respect to the committee's consideration of H.R. 1362. The record vote is attached to this report.

The committee ordered H.R. 1362, as amended, reported to the House with a favorable recommendation by a record vote of 53-0, a quorum being present.

COMMITTEE ON ARMED SERVICES
110TH CONGRESS
ROLL CALL

Amendment in the Nature of a Substitute Date: 03/13/07
H.R. 1362 Offered by: Skelton

Voice Vote Ayes Noes

Rep.	Aye	Noes	Present	Rep.	Aye	Noes	Present
Mr. Skelton	X			Mr. Hunter	X		
Mr. Spratt				Mr. Saxton	X		
Mr. Ortiz	X			Mr. McHugh	X		
Mr. Taylor	X			Mr. Everett	X		
Mr. Abercrombie	X			Mr. Bartlett	X		
Mr. Meehan				Mr. McKeon			
Mr. Reyes	X			Mr. Thornberry	X		
Dr. Snyder	X			Mr. Jones	X		
Mr. Smith	X			Mr. Hayes	X		
Ms. Sanchez				Mr. Calvert			
Mr. McIntyre	X			Mrs. Davis (VA)			
Ms. Tauscher	X			Mr. Akin	X		
Mr. Brady				Mr. Forbes	X		
Mr. Andrews	X			Mr. Miller (FL)			
Mrs. Davis (CA)	X			Mr. Wilson	X		
Mr. Larsen	X			Mr. LoBiondo	X		
Mr. Cooper				Mr. Cole	X		
Mr. Marshall	X			Mr. Bishop	X		
Ms. Bordallo	X			Mr. Turner	X		
Mr. Udall	X			Mr. Kline	X		
Mr. Boren	X			Mrs. Miller (MI)	X		
Mr. Ellsworth	X			Dr. Gingrey	X		
Mrs. Boyda	X			Mr. Rogers	X		
Mr. Murphy	X			Mr. Franks	X		
Mr. Johnson	X			Mrs. Drake	X		
Ms. Shea-Porter	X			Mrs. McMorris Rodgers	X		
Mr. Courtney	X			Mr. Conaway	X		
Mr. Loebsack	X			Mr. Davis (KY)	X		
Ms. Gillibrand	X						
Mr. Sestak	X						
Ms. Giffords	X						
Mr. Cummings	X						
Mr. Meek	X						
Ms. Castor	X						

Roll Call Vote Total:

53 Ayes 0 Noes Present

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

TITLE III—PROCUREMENT PROCEDURE

* * * * *

SEC. 303. COMPETITION REQUIREMENTS.

(a) * * *

* * * * *

(f)(1) * * *

* * * * *

[(4) The justification required by paragraph (1)(A) and any related information shall be made available for inspection by the public consistent with the provisions of section 552 of title 5, United States Code.]

[(5) (4) In no case may an executive agency—

(A) * * *

* * * * *

(j)(1)(A) Except as provided in subparagraph (B), in the case of a procurement permitted by subsection (c), the head of an executive agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (f)(1) with respect to the procurement.

(B) In the case of a procurement permitted by subsection (c)(2), subparagraph (A) shall be applied by substituting “30 days” for “14 days”.

(2) The documents shall be made available on the website of the agency and through the Federal Procurement Data System.

(3) This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5, United States Code.

* * * * *

TITLE 10, UNITED STATES CODE

* * * * *

Subtitle A—General Military Law

* * * * *

**PART IV—SERVICE, SUPPLY, AND
PROCUREMENT**

* * * * *

CHAPTER 137—PROCUREMENT GENERALLY

* * * * *

§ 2304. CONTRACTS: COMPETITION REQUIREMENTS

(a) * * *

* * * * *

(f)(1) * * *

* * * * *

[(4) The justification required by paragraph (1)(A) and any related information, and any document prepared pursuant to paragraph (2)(E), shall be made available for inspection by the public consistent with the provisions of section 552 of title 5.]

[(5) (4) In no case may the head of an agency—

(A) * * *

* * * * *

[(6) (5)(A) The authority of the head of a procuring activity under paragraph (1)(B)(ii) may be delegated only to an officer or employee who—

(i) * * *

* * * * *

(1)(1)(A) Except as provided in subparagraph (B), in the case of a procurement permitted by subsection (c), the head of an agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (f)(1) with respect to the procurement.

(B) In the case of a procurement permitted by subsection (c)(2), subparagraph (A) shall be applied by substituting “30 days” for “14 days”.

(2) The documents shall be made available on the website of the agency and through the Federal Procurement Data System.

(3) This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5.

* * * * *

OFFICE OF FEDERAL PROCUREMENT POLICY ACT

* * * * *

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

(a) * * *

* * * * *

(c) **ACTIONS REQUIRED OF PROCUREMENT OFFICERS WHEN CONTACTED BY OFFERORS REGARDING NON-FEDERAL EMPLOYMENT.—(1)** If an agency official who is participating personally and substan-

tially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contacts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official or for a relative of that official (as defined in section 3110 of title 5, United States Code), the official shall—

(A) * * *

* * * * *

(d) PROHIBITION ON FORMER OFFICIAL'S ACCEPTANCE OF COMPENSATION FROM CONTRACTOR.—(1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, [or consultant] *consultant, lawyer, or lobbyist* of the contractor within a period of one year after such former official—

(A) * * *

* * * * *

[(2) Nothing in paragraph (1) may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph.]

(2) Paragraph (1) shall not prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph if the agency's designated ethics officer determines that the former official's acceptance of compensation would not damage public confidence in the integrity of the procurement process.

* * * * *

(i) PROHIBITION ON INVOLVEMENT BY CERTAIN FORMER CONTRACTOR EMPLOYEES IN PROCUREMENTS.—*An employee of the Federal Government who is a former employee of a contractor with the Federal Government shall not be personally and substantially involved with any award of a contract to the employee's former employer for the one-year period beginning on the date on which the employee leaves the employment of the contractor unless the employee has received a waiver from the agency's designated ethics officer. In determining whether to issue a waiver, the designated ethics officer shall take into account the agency's need for the involvement of the employee and the impact a waiver would have on public confidence in the integrity of the procurement process.*

(j) REGULATIONS.—*The Administrator, in consultation with the Director of the Office of Government Ethics, shall—*

(1) promulgate regulations to carry out and ensure the enforcement of this section; and

(2) monitor and investigate individual and agency compliance with this section.

* * * * *

SEC. 37. ACQUISITION WORKFORCE.

(a) * * *

* * * * *

(h) **EDUCATION AND TRAINING.—**

(1) * * *

* * * * *

(3) **ACQUISITION WORKFORCE TRAINING FUND.—(A)** * * *

* * * * *

[(H) This paragraph shall cease to be effective five years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004.]

* * * * *

