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# TITLE XIV—SERVICES ACQUISITION REFORM

Sec. 1401. Short title.

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3 **SEC. 1401. SHORT TITLE.**

4 This title may be cited as the “Services Acquisition Re-  
5 form Act of 2003”.

6 **Subtitle A—Acquisition Workforce**  
7 **and Training**

8 **SEC. 1411. DEFINITION OF ACQUISITION.**

9 Section 4 of the Office of Federal Procurement Policy Act  
10 (41 U.S.C. 403) is amended by adding at the end the following:

11 “(16) The term ‘acquisition’—

12 “(A) means the process of acquiring, with appro-  
13 priated funds, by contract for purchase or lease, prop-  
14 erty or services (including construction) that support



1 the missions and goals of an executive agency, from the  
2 point at which the requirements of the executive agency  
3 are established in consultation with the chief acquisi-  
4 tion officer of the executive agency; and

5 “(B) includes—

6 “(i) the process of acquiring property or serv-  
7 ices that are already in existence, or that must be  
8 created, developed, demonstrated, and evaluated;

9 “(ii) the description of requirements to satisfy  
10 agency needs;

11 “(iii) solicitation and selection of sources;

12 “(iv) award of contracts;

13 “(v) contract performance;

14 “(vi) contract financing;

15 “(vii) management and measurement of con-  
16 tract performance through final delivery and pay-  
17 ment; and

18 “(viii) technical and management functions di-  
19 rectly related to the process of fulfilling agency re-  
20 quirements by contract.”.

21 **SEC. 1412. ACQUISITION WORKFORCE TRAINING FUND.**

22 (a) PURPOSES.—The purposes of this section are to en-  
23 sure that the Federal acquisition workforce—

24 (1) adapts to fundamental changes in the nature of  
25 Federal Government acquisition of property and services  
26 associated with the changing roles of the Federal Govern-  
27 ment; and

28 (2) acquires new skills and a new perspective to enable  
29 it to contribute effectively in the changing environment of  
30 the 21st century.

31 (b) ESTABLISHMENT OF FUND.—Section 37 of the Office  
32 of Federal Procurement Policy Act (41 U.S.C. 433) is amended  
33 by adding at the end of subsection (h) the following new para-  
34 graph:

35 “(3) ACQUISITION WORKFORCE TRAINING FUND.—(A)  
36 The Administrator of General Services shall establish an  
37 acquisition workforce training fund. The Administrator



1 shall manage the fund through the Federal Acquisition In-  
2 stitute to support the training of the acquisition workforce  
3 of the executive agencies other than the Department of De-  
4 fense. The Administrator shall consult with the Adminis-  
5 trator for Federal Procurement Policy in managing the  
6 fund.

7 “(B) There shall be credited to the acquisition work-  
8 force training fund 5 percent of the fees collected by execu-  
9 tive agencies (other than the Department of Defense)  
10 under the following contracts:

11 “(i) Governmentwide task and delivery-order con-  
12 tracts entered into under sections 303H and 303I of  
13 the Federal Property and Administrative Services Act  
14 of 1949 (41 U.S.C. 253h and 253i).

15 “(ii) Governmentwide contracts for the acquisition  
16 of information technology as defined in section 11101  
17 of title 40, United States Code, and multiagency acqui-  
18 sition contracts for such technology authorized by sec-  
19 tion 11314 of such title.

20 “(iii) Multiple-award schedule contracts entered  
21 into by the Administrator of General Services.

22 “(C) The head of an executive agency that administers  
23 a contract described in subparagraph (B) shall remit to the  
24 General Services Administration the amount required to be  
25 credited to the fund with respect to such contract at the  
26 end of each quarter of the fiscal year.

27 “(D) The Administrator of General Services, through  
28 the Office of Federal Acquisition Policy, shall ensure that  
29 funds collected for training under this section are not used  
30 for any purpose other than the purpose specified in sub-  
31 paragraph (A).

32 “(E) Amounts credited to the fund shall be in addition  
33 to funds requested and appropriated for education and  
34 training referred to in paragraph (1).

35 “(F) Amounts credited to the fund shall remain avail-  
36 able to be expended only in the fiscal year for which cred-  
37 ited and the two succeeding fiscal years.



1           “(G) This paragraph shall cease to be effective five  
2           years after the date of the enactment of the National De-  
3           fense Authorization Act for Fiscal Year 2004.”.

4           (c) EXCEPTION.—This section and the amendments made  
5           by this section shall not apply to the acquisition workforce of  
6           the Department of Defense. Fees charged to the Department  
7           of Defense under contracts covered by section 37(h)(3) of the  
8           Office of Federal Procurement Policy Act, as added by sub-  
9           section (b), shall be reduced by 5 percent to reflect the Depart-  
10          ment’s nonparticipation in the acquisition workforce training  
11          fund established by such section.

12          **SEC. 1413. ACQUISITION WORKFORCE RECRUITMENT**  
13          **PROGRAM.**

14          (a) DETERMINATION OF SHORTAGE CATEGORY POSI-  
15          TIONS.—For purposes of sections 3304, 5333, and 5753 of title  
16          5, United States Code, the head of a department or agency of  
17          the United States (other than the Secretary of Defense) may  
18          determine, under regulations prescribed by the Office of Per-  
19          sonnel Management, that certain Federal acquisition positions  
20          (as described in section 37(g)(1)(A) of the Office of Federal  
21          Procurement Policy Act (41 U.S.C. 433(g)(1)(A)) are shortage  
22          category positions in order to use the authorities in those sec-  
23          tions to recruit and appoint highly qualified persons directly to  
24          such positions in the department or agency.

25          (b) TERMINATION OF AUTHORITY.—The head of a depart-  
26          ment or agency may not appoint a person to a position of em-  
27          ployment under this section after September 30, 2007.

28          (c) REPORT.—Not later than March 31, 2007, the Direc-  
29          tor of the Office of Personnel Management, in consultation  
30          with the Administrator for Federal Procurement Policy, shall  
31          submit to Congress a report on the implementation of this sec-  
32          tion. The report shall include—

33                  (1) a list of the departments and agencies that exer-  
34                  cised the authority provided in this section, and whether  
35                  the exercise of the authority was carried out in accordance  
36                  with the regulations prescribed by the Office of Personnel  
37                  Management;



1 (2) the Director's assessment of the efficacy of the ex-  
2 ercise of the authority provided in this section in attracting  
3 employees with unusually high qualifications to the acquisi-  
4 tion workforce; and

5 (3) any recommendations considered appropriate by  
6 the Director on whether the authority to carry out the pro-  
7 gram should be extended.

8 **SEC. 1414. ARCHITECTURAL AND ENGINEERING ACQUI-**  
9 **SITION WORKFORCE.**

10 The Administrator for Federal Procurement Policy, in  
11 consultation with the Secretary of Defense, the Administrator  
12 of General Services, and the Director of the Office of Personnel  
13 Management, shall develop and implement a plan to ensure  
14 that the Federal Government maintains the necessary capa-  
15 bility with respect to the acquisition of architectural and engi-  
16 neering services to—

17 (1) ensure that Federal Government employees have  
18 the expertise to determine agency requirements for such  
19 services;

20 (2) establish priorities and programs (including acqui-  
21 sition plans);

22 (3) establish professional standards;

23 (4) develop scopes of work; and

24 (5) award and administer contracts for such services.

25 **Subtitle B—Adaptation of Business**  
26 **Acquisition Practices**

27 **PART I—ADAPTATION OF BUSINESS**  
28 **MANAGEMENT PRACTICES**

29 **SEC. 1421. CHIEF ACQUISITION OFFICERS.**

30 (a) APPOINTMENT OF CHIEF ACQUISITION OFFICERS.—

31 (1) Section 16 of the Office of Federal Procurement Policy Act  
32 (41 U.S.C. 414) is amended to read as follows:

33 **“SEC. 16. CHIEF ACQUISITION OFFICERS AND SENIOR**  
34 **PROCUREMENT EXECUTIVES.**

35 **“(a) ESTABLISHMENT OF AGENCY CHIEF ACQUISITION**  
36 **OFFICERS.—(1) The head of each executive agency described**  
37 **in section 901(b)(1) (other than the Department of Defense)**



1 or section 901(b)(2)(C) of title 31, United States Code, with  
2 a Chief Financial Officer appointed or designated under section  
3 901(a) of such title shall appoint or designate a non-career em-  
4 ployee as Chief Acquisition Officer for the agency, who shall—

5 “(A) have acquisition management as that official’s  
6 primary duty; and

7 “(B) advise and assist the head of the executive agen-  
8 cy and other agency officials to ensure that the mission of  
9 the executive agency is achieved through the management  
10 of the agency’s acquisition activities.

11 “(b) AUTHORITY AND FUNCTIONS OF AGENCY CHIEF AC-  
12 QUISSION OFFICERS.—The functions of each Chief Acquisition  
13 Officer shall include—

14 “(1) monitoring the performance of acquisition activi-  
15 ties and acquisition programs of the executive agency, eval-  
16 uating the performance of those programs on the basis of  
17 applicable performance measurements, and advising the  
18 head of the executive agency regarding the appropriate  
19 business strategy to achieve the mission of the executive  
20 agency;

21 “(2) increasing the use of full and open competition in  
22 the acquisition of property and services by the executive  
23 agency by establishing policies, procedures, and practices  
24 that ensure that the executive agency receives a sufficient  
25 number of sealed bids or competitive proposals from re-  
26 sponsible sources to fulfill the Government’s requirements  
27 (including performance and delivery schedules) at the low-  
28 est cost or best value considering the nature of the property  
29 or service procured;

30 “(3) increasing appropriate use of performance-based  
31 contracting and performance specifications;

32 “(4) making acquisition decisions consistent with all  
33 applicable laws and establishing clear lines of authority, ac-  
34 countability, and responsibility for acquisition decision-  
35 making within the executive agency;

36 “(5) managing the direction of acquisition policy for  
37 the executive agency, including implementation of the



1 unique acquisition policies, regulations, and standards of  
2 the executive agency;

3 “(6) developing and maintaining an acquisition career  
4 management program in the executive agency to ensure  
5 that there is an adequate professional workforce; and

6 “(7) as part of the strategic planning and performance  
7 evaluation process required under section 306 of title 5,  
8 United States Code, and sections 1105(a)(28), 1115, 1116,  
9 and 9703 of title 31, United States Code—

10 “(A) assessing the requirements established for  
11 agency personnel regarding knowledge and skill in ac-  
12 quisition resources management and the adequacy of  
13 such requirements for facilitating the achievement of  
14 the performance goals established for acquisition man-  
15 agement;

16 “(B) in order to rectify any deficiency in meeting  
17 such requirements, developing strategies and specific  
18 plans for hiring, training, and professional develop-  
19 ment; and

20 “(C) reporting to the head of the executive agency  
21 on the progress made in improving acquisition manage-  
22 ment capability.

23 “(c) SENIOR PROCUREMENT EXECUTIVE.—(1) The head  
24 of each executive agency shall designate a senior procurement  
25 executive who shall be responsible for management direction of  
26 the procurement system of the executive agency, including im-  
27 plementation of the unique procurement policies, regulations,  
28 and standards of the executive agency.

29 “(2) In the case of an executive agency for which a Chief  
30 Acquisition Officer has been appointed or designated under  
31 subsection (a), the head of such executive agency shall either—

32 “(A) designate the Chief Acquisition Officer as the  
33 senior procurement executive for the executive agency; or

34 “(B) ensure that the senior procurement executive  
35 designated for the executive agency under paragraph (1)  
36 reports directly to the Chief Acquisition Officer without in-  
37 tervening authority.”



1 (2) The item relating to section 16 in the table of contents  
2 in section 1(b) of such Act is amended to read as follows:

“Sec. 16. Chief Acquisition Officers and senior procurement executives.”.

3 (b) TECHNICAL CORRECTION.—Section 1115(a) of title  
4 31, United States Code, is amended by striking “section  
5 1105(a)(29)” and inserting “section 1105(a)(28)”.

6 **SEC. 1422. CHIEF ACQUISITION OFFICERS COUNCIL.**

7 (a) ESTABLISHMENT OF COUNCIL.—The Office of Federal  
8 Procurement Policy Act (41 U.S.C. 403 et seq.) is amended by  
9 inserting after section 16 the following new section:

10 **“SEC. 16A. CHIEF ACQUISITION OFFICERS COUNCIL.**

11 “(a) ESTABLISHMENT.—There is established in the execu-  
12 tive branch a Chief Acquisition Officers Council.

13 “(b) MEMBERSHIP.—The members of the Council shall be  
14 as follows:

15 “(1) The Deputy Director for Management of the Of-  
16 fice of Management and Budget, who shall act as Chair-  
17 man of the Council.

18 “(2) The Administrator for Federal Procurement Pol-  
19 icy.

20 “(3) The Under Secretary of Defense for Acquisition,  
21 Technology, and Logistics.

22 “(4) The chief acquisition officer of each executive  
23 agency that is required to have a chief acquisition officer  
24 under section 16 and the senior procurement executive of  
25 each military department.

26 “(5) Any other senior agency officer of each executive  
27 agency, appointed by the head of the agency in consultation  
28 with the Chairman, who can effectively assist the Council  
29 in performing the functions set forth in subsection (e) and  
30 supporting the associated range of acquisition activities.

31 “(c) LEADERSHIP; SUPPORT.—(1) The Administrator for  
32 Federal Procurement Policy shall lead the activities of the  
33 Council on behalf of the Deputy Director for Management.

34 “(2)(A) The Vice Chairman of the Council shall be se-  
35 lected by the Council from among its members.



1 “(B) The Vice Chairman shall serve a 1-year term, and  
2 may serve multiple terms.

3 “(3) The Administrator of General Services shall provide  
4 administrative and other support for the Council.

5 “(d) PRINCIPAL FORUM.—The Council is designated the  
6 principal interagency forum for monitoring and improving the  
7 Federal acquisition system.

8 “(e) FUNCTIONS.—The Council shall perform functions  
9 that include the following:

10 “(1) Develop recommendations for the Director of the  
11 Office of Management and Budget on Federal acquisition  
12 policies and requirements.

13 “(2) Share experiences, ideas, best practices, and inno-  
14 vative approaches related to Federal acquisition.

15 “(3) Assist the Administrator in the identification, de-  
16 velopment, and coordination of multiagency projects and  
17 other innovative initiatives to improve Federal acquisition.

18 “(4) Promote effective business practices that ensure  
19 the timely delivery of best value products to the Federal  
20 Government and achieve appropriate public policy objec-  
21 tives.

22 “(5) Further integrity, fairness, competition, openness,  
23 and efficiency in the Federal acquisition system.

24 “(6) Work with the Office of Personnel Management  
25 to assess and address the hiring, training, and professional  
26 development needs of the Federal Government related to  
27 acquisition.

28 “(7) Work with the Administrator and the Federal Ac-  
29 quisition Regulatory Council to promote the business prac-  
30 tices referred to in paragraph (4) and other results of the  
31 functions carried out under this subsection.”.

32 (b) CLERICAL AMENDMENT.—The table of contents in sec-  
33 tion 1(b) of such Act is amended by inserting after the item  
34 relating to section 16 the following new item:

“Sec. 16A. Chief Acquisition Officers Council.”.



1 **SEC. 1423. STATUTORY AND REGULATORY REVIEW.**

2 (a) ESTABLISHMENT.—Not later than 90 days after the  
3 date of the enactment of this Act, the Administrator for Fed-  
4 eral Procurement Policy shall establish an advisory panel to re-  
5 view laws and regulations regarding the use of commercial  
6 practices, performance-based contracting, the performance of  
7 acquisition functions across agency lines of responsibility, and  
8 the use of Governmentwide contracts.

9 (b) MEMBERSHIP.—The panel shall be composed of at  
10 least nine individuals who are recognized experts in acquisition  
11 law and Government acquisition policy. In making appoint-  
12 ments to the panel, the Administrator shall—

13 (1) consult with the Secretary of Defense, the Admin-  
14 istrator of General Services, the Committees on Armed  
15 Services and Government Reform of the House of Rep-  
16 resentatives, and the Committees on Armed Services and  
17 Governmental Affairs of the Senate; and

18 (2) ensure that the members of the panel reflect the  
19 diverse experiences in both the public and private sectors,  
20 including academia.

21 (c) DUTIES.—The panel shall—

22 (1) review all Federal acquisition laws and regulations,  
23 and, to the extent practicable, government-wide acquisition  
24 policies, with a view toward ensuring effective and appro-  
25 priate use of commercial practices and performance-based  
26 contracting; and

27 (2) make any recommendations for the modification of  
28 such laws, regulations, or policies that are considered nec-  
29 essary as a result of such review—

30 (A) to protect the best interests of the Federal  
31 Government;

32 (B) to ensure the continuing financial and ethical  
33 integrity of acquisitions by the Federal Government;  
34 and

35 (C) to amend or eliminate any provisions in such  
36 laws, regulations, or policies that are unnecessary for  
37 the effective, efficient, and fair award and administra-



1 tion of contracts for the acquisition by the Federal  
2 Government of goods and services.

3 (d) REPORT.—Not later than one year after the establish-  
4 ment of the panel, the panel shall submit to the Administrator  
5 and to the Committees on Armed Services and Government Re-  
6 form of the House of Representatives and the Committees on  
7 Armed Services and Governmental Affairs of the Senate a re-  
8 port containing a detailed statement of the findings, conclu-  
9 sions, and recommendations of the panel.

10 **PART II—OTHER ACQUISITION**  
11 **IMPROVEMENTS**

12 **SEC. 1426. EXTENSION OF AUTHORITY TO CARRY OUT**  
13 **FRANCHISE FUND PROGRAMS.**

14 Section 403(f) of the Federal Financial Management Act  
15 of 1994 (Public Law 103-356; 31 U.S.C. 501 note) is amended  
16 by striking “October 1, 2003” and inserting “December 31,  
17 2004”.

18 **SEC. 1427. IMPROVEMENTS IN CONTRACTING FOR AR-**  
19 **CHITECTURAL AND ENGINEERING SERV-**  
20 **ICES.**

21 (a) TITLE 10.—Section 2855(b) of title 10, United States  
22 Code, is amended in paragraph (2), by striking “\$85,000” and  
23 inserting “\$300,000”.

24 (b) ARCHITECTURAL AND ENGINEERING SERVICES.—Ar-  
25 chitectural and engineering services (as defined in section 1102  
26 of title 40, United States Code) shall not be offered under mul-  
27 tiple-award schedule contracts entered into by the Adminis-  
28 trator of General Services or under Governmentwide task and  
29 delivery order contracts entered into under sections 2304a and  
30 2304b of title 10, United States Code, or sections 303H and  
31 303I of the Federal Property and Administrative Services Act  
32 of 1949 (41 U.S.C. 253h and 253i) unless such services—

33 (1) are performed under the direct supervision of a  
34 professional architect or engineer licensed, registered, or  
35 certified in the State, territory (including the Common-  
36 wealth of Puerto Rico), possession, or Federal District in  
37 which the services are to be performed; and



1 (2) are awarded in accordance with the selection pro-  
2 cedures set forth in chapter 11 of title 40, United States  
3 Code.

4 **SEC. 1428. AUTHORIZATION OF TELECOMMUTING FOR**  
5 **FEDERAL CONTRACTORS.**

6 (a) AMENDMENT TO THE FEDERAL ACQUISITION REGU-  
7 LATION.—Not later than 180 days after the date of the enact-  
8 ment of this Act, the Federal Acquisition Regulatory Council  
9 shall amend the Federal Acquisition Regulation issued in ac-  
10 cordance with sections 6 and 25 of the Office of Federal Pro-  
11 curement Policy Act (41 U.S.C. 405 and 421) to permit tele-  
12 commuting by employees of Federal Government contractors in  
13 the performance of contracts entered into with executive agen-  
14 cies.

15 (b) CONTENT OF AMENDMENT.—The regulation issued  
16 pursuant to subsection (a) shall, at a minimum, provide that  
17 solicitations for the acquisition of property or services may not  
18 set forth any requirement or evaluation criteria that would—

19 (1) render an offeror ineligible to enter into a contract  
20 on the basis of the inclusion of a plan of the offeror to per-  
21 mit the offeror's employees to telecommute, unless the con-  
22 tracting officer concerned first determines that the require-  
23 ments of the agency, including security requirements, can-  
24 not be met if the telecommuting is permitted and docu-  
25 ments in writing the basis for that determination; or

26 (2) reduce the scoring of an offer on the basis of the  
27 inclusion in the offer of a plan of the offeror to permit the  
28 offeror's employees to telecommute, unless the contracting  
29 officer concerned first determines that the requirements of  
30 the agency, including security requirements, would be ad-  
31 versely impacted if telecommuting is permitted and docu-  
32 ments in writing the basis for that determination.

33 (c) DEFINITION.—In this section, the term “executive  
34 agency” has the meaning given that term in section 4(1) of the  
35 Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).



1                                   **Subtitle C—Acquisitions of**  
2                                   **Commercial Items**

3       **SEC. 1431. ADDITIONAL INCENTIVE FOR USE OF PER-**  
4                                   **FORMANCE-BASED CONTRACTING FOR**  
5                                   **SERVICES.**

6           (a) IN GENERAL.—The Office of Federal Procurement  
7 Policy Act (41 U.S.C. 403 et seq.) is amended by adding at  
8 the end the following new section:

9       **“SEC. 41. INCENTIVES FOR EFFICIENT PERFORMANCE**  
10                                   **OF SERVICES CONTRACTS.**

11           “(a) INCENTIVE FOR USE OF PERFORMANCE-BASED  
12 SERVICES CONTRACTS.— A performance-based contract for the  
13 procurement of services entered into by an executive agency or  
14 a performance-based task order for services issued by an execu-  
15 tive agency may be treated as a contract for the procurement  
16 of commercial items if—

17                   “(1) the value of the contract or task order is esti-  
18 mated not to exceed \$25,000,000;

19                   “(2) the contract or task order sets forth specifically  
20 each task to be performed and, for each task—

21                           “(A) defines the task in measurable, mission-re-  
22 lated terms;

23                           “(B) identifies the specific end products or output  
24 to be achieved; and

25                           “(C) contains firm, fixed prices for specific tasks  
26 to be performed or outcomes to be achieved; and

27                   “(3) the source of the services provides similar services  
28 to the general public under terms and conditions similar to  
29 those offered to the Federal Government.

30           “(b) REGULATIONS.—The regulations implementing this  
31 section shall require agencies to collect and maintain reliable  
32 data sufficient to identify the contracts or task orders treated  
33 as contracts for commercial items using the authority of this  
34 section. The data may be collected using the Federal Procure-  
35 ment Data System or other reporting mechanism.

36           “(c) REPORT.—Not later than two years after the date of  
37 the enactment of this section, the Director of the Office of



1 Management and Budget shall prepare and submit to the Com-  
2 mittees on Governmental Affairs and on Armed Services of the  
3 Senate and the Committees on Government Reform and on  
4 Armed Services of the House of Representatives a report on the  
5 contracts or task orders treated as contracts for commercial  
6 items using the authority of this section. The report shall in-  
7 clude data on the use of such authority both government-wide  
8 and for each department and agency.

9 “(d) EXPIRATION.—The authority under this section shall  
10 expire 10 years after the date of the enactment of this sec-  
11 tion.”

12 (b) CENTER OF EXCELLENCE IN SERVICE CON-  
13 TRACTING.—Not later than 180 days after the date of the en-  
14 actment of this Act, the Administrator for Federal Procure-  
15 ment Policy shall establish a center of excellence in contracting  
16 for services. The center of excellence shall assist the acquisition  
17 community by identifying, and serving as a clearinghouse for,  
18 best practices in contracting for services in the public and pri-  
19 vate sectors.

20 (c) REPEAL OF SUPERSEDED PROVISION.—Subsection (b)  
21 of section 821 of the Floyd D. Spence National Defense Au-  
22 thorization Act for Fiscal Year 2001 (as enacted into law by  
23 Public Law 106-398; 114 Stat. 1654A-218; 10 U.S.C. 2302  
24 note) is repealed.

25 (d) CLERICAL AND TECHNICAL AMENDMENTS.—(1) The  
26 table of contents in section 1(b) of such Act is amended by  
27 striking the last item and inserting the following:

“Sec. 40. Protection of constitutional rights of contractors.

“Sec. 41. Incentives for efficient performance of services contracts.”

28 (2) The section before section 41 of such Act (as added  
29 by subsection (a)) is redesignated as section 40.

30 **SEC. 1432. AUTHORIZATION OF ADDITIONAL COMMERCIAL CONTRACT TYPES.**  
31

32 Section 8002(d) of the Federal Acquisition Streamlining  
33 Act of 1994 (Public Law 103-355; 108 Stat. 3387; 41 U.S.C.  
34 264 note) is amended—



## 14–15

1 (1) by redesignating paragraph (1) as subparagraph  
2 (A) and in that subparagraph by striking “and”;

3 (2) by redesignating paragraph (2) as subparagraph  
4 (B) and in that subparagraph by striking the period at the  
5 end and inserting “; and”;

6 (3) by adding after subparagraph (B) (as so redesign-  
7 nated) the following new subparagraph:

8 “(C) subject to paragraph (2), authority for use of a  
9 time-and-materials contract or a labor-hour contract for the  
10 procurement of commercial services that are commonly sold  
11 to the general public through such contracts and are pur-  
12 chased by the procuring agency on a competitive basis.”;

13 (4) by striking “USE OF FIRM, FIXED PRICE CON-  
14 TRACTS.—The” and inserting “PROVISIONS RELATING TO  
15 TYPES OF CONTRACTS FOR COMMERCIAL ITEMS.—(1)”;  
16 and

17 (5) by adding at the end the following new para-  
18 graphs:

19 “(2) A time-and-materials contract or a labor-hour con-  
20 tract may be used pursuant to the authority referred to in  
21 paragraph (1)(C)—

22 “(A) only for a procurement of commercial services in  
23 a category of commercial services described in paragraph  
24 (3); and—

25 “(B) only if the contracting officer for such  
26 procurement—

27 “(i) executes a determination and findings that no  
28 other contract type is suitable;

29 “(ii) includes in the contract a ceiling price that  
30 the contractor exceeds at its own risk; and

31 “(iii) authorizes any subsequent change in the ceil-  
32 ing price only upon a determination, documented in the  
33 contract file, that it is in the best interest of the pro-  
34 curing agency to change such ceiling price.

35 “(3) The categories of commercial services referred to in  
36 paragraph (2) are as follows:



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1 “(A) Commercial services procured for support of  
2 a commercial item, as described in section 4(12)(E) of  
3 the Office of Federal Procurement Policy Act (41  
4 U.S.C. 403(12)(E)).

5 “(B) Any other category of commercial services  
6 that is designated by the Administrator for Federal  
7 Procurement Policy in the Federal Acquisition Regula-  
8 tion for the purposes of this paragraph on the basis  
9 that—

10 “(i) the commercial services in such category  
11 are of a type of commercial services that are com-  
12 monly sold to the general public through use of  
13 time-and-materials or labor-hour contracts; and

14 “(ii) it would be in the best interests of the  
15 Federal Government to authorize use of time-and-  
16 materials or labor-hour contracts for purchases of  
17 the commercial services in such category.”

18 **SEC. 1433. CLARIFICATION OF COMMERCIAL SERVICES**  
19 **DEFINITION.**

20 Section 4 of the Office of Federal Procurement Policy Act  
21 (41 U.S.C. 403) is amended in paragraph (12)(F) by inserting  
22 “or specific outcomes to be achieved” after “performed”.

23 **Subtitle D—Other Matters**

24 **SEC. 1441. AUTHORITY TO ENTER INTO CERTAIN TRANS-**  
25 **ACTIONS FOR DEFENSE AGAINST OR RECOV-**  
26 **ERY FROM TERRORISM OR NUCLEAR, BIO-**  
27 **LOGICAL, CHEMICAL, OR RADIOLOGICAL AT-**  
28 **TACK.**

29 (a) AUTHORITY.—

30 (1) IN GENERAL.—The head of an executive agency  
31 who engages in basic research, applied research, advanced  
32 research, and development projects that—

33 (A) are necessary to the responsibilities of such of-  
34 ficial’s executive agency in the field of research and de-  
35 velopment, and

36 (B) have the potential to facilitate defense against  
37 or recovery from terrorism or nuclear, biological, chem-  
38 ical, or radiological attack,



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1 may exercise the same authority (subject to the same re-  
2 strictions and conditions) with respect to such research and  
3 projects as the Secretary of Defense may exercise under  
4 section 2371 of title 10, United States Code, except for  
5 subsections (b) and (f) of such section 2371.

6 (2) PROTOTYPE PROJECTS.—The head of an executive  
7 agency may, under the authority of paragraph (1), carry  
8 out prototype projects that meet the requirements of sub-  
9 paragraphs (A) and (B) of paragraph (1) in accordance  
10 with the requirements and conditions provided for carrying  
11 out prototype projects under section 845 of the National  
12 Defense Authorization Act for Fiscal Year 1994 (Public  
13 Law 103-160; 10 U.S.C. 2371 note), including that, to the  
14 maximum extent practicable, competitive procedures shall  
15 be used when entering into agreements to carry out  
16 projects under subsection (a) of that section and that the  
17 period of authority to carry out projects under such sub-  
18 section (a) terminates as provided in subsection (g) of that  
19 section.

20 (3) APPLICATION OF REQUIREMENTS AND CONDI-  
21 TIONS.—In applying the requirements and conditions of  
22 section 845 of the National Defense Authorization Act for  
23 Fiscal Year 1994 under this subsection—

24 (A) subsection (c) of that section shall apply with  
25 respect to prototype projects carried out under this  
26 paragraph; and

27 (B) the Director of the Office of Management and  
28 Budget shall perform the functions of the Secretary of  
29 Defense under subsection (d) of that section.

30 (4) APPLICABILITY TO SELECTED EXECUTIVE AGEN-  
31 CIES.—

32 (A) OMB AUTHORIZATION REQUIRED.—The head  
33 of an executive agency may exercise authority under  
34 this subsection for a project only if authorized by the  
35 Director of the Office of Management and Budget to  
36 use the authority for such project.



1 (B) RELATIONSHIP TO AUTHORITY OF DEPART-  
2 MENT OF HOMELAND SECURITY.—The authority under  
3 this subsection shall not apply to the Secretary of  
4 Homeland Security while section 831 of the Homeland  
5 Security Act of 2002 (Public Law 107-296; 116 Stat.  
6 2224) is in effect.

7 (b) ANNUAL REPORT.—The annual report of the head of  
8 an executive agency that is required under subsection (h) of  
9 section 2371 of title 10, United States Code, as applied to the  
10 head of the executive agency by subsection (a), shall be sub-  
11 mitted to the Committee on Governmental Affairs of the Senate  
12 and the Committee on Government Reform of the House of  
13 Representatives.

14 (c) REGULATIONS.—The Director of the Office of Manage-  
15 ment and Budget shall prescribe regulations to carry out this  
16 section. No transaction may be conducted under the authority  
17 of this section before the date on which such regulations take  
18 effect.

19 (d) TERMINATION OF AUTHORITY.—The authority to  
20 carry out transactions under subsection (a) shall terminate on  
21 September 30, 2008.

22 **SEC. 1442. PUBLIC DISCLOSURE OF NONCOMPETITIVE**  
23 **CONTRACTING FOR THE RECONSTRUCTION**  
24 **OF INFRASTRUCTURE IN IRAQ.**

25 (a) DISCLOSURE REQUIRED.—

26 (1) PUBLICATION AND PUBLIC AVAILABILITY.—The  
27 head of an executive agency of the United States that en-  
28 ters into a contract for the repair, maintenance, or con-  
29 struction of infrastructure in Iraq without full and open  
30 competition shall publish in the Federal Register or Com-  
31 merce Business Daily and otherwise make available to the  
32 public, not later than 30 days after the date on which the  
33 contract is entered into, the following information:

34 (A) The amount of the contract.

35 (B) A brief description of the scope of the con-  
36 tract.



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1 (C) A discussion of how the executive agency iden-  
2 tified, and solicited offers from, potential contractors to  
3 perform the contract, together with a list of the poten-  
4 tial contractors that were issued solicitations for the of-  
5 fers.

6 (D) The justification and approval documents on  
7 which was based the determination to use procedures  
8 other than procedures that provide for full and open  
9 competition.

10 (2) INAPPLICABILITY TO CONTRACTS AFTER FISCAL  
11 YEAR 2005.—Paragraph (1) does not apply to a contract  
12 entered into after September 30, 2005.

13 (b) CLASSIFIED INFORMATION.—

14 (1) AUTHORITY TO WITHHOLD.—The head of an exec-  
15 utive agency may—

16 (A) withhold from publication and disclosure  
17 under subsection (a) any document that is classified for  
18 restricted access in accordance with an Executive order  
19 in the interest of national defense or foreign policy; and

20 (B) redact any part so classified that is in a docu-  
21 ment not so classified before publication and disclosure  
22 of the document under subsection (a).

23 (2) AVAILABILITY TO CONGRESS.—In any case in  
24 which the head of an executive agency withholds informa-  
25 tion under paragraph (1), the head of such executive agen-  
26 cy shall make available an unredacted version of the docu-  
27 ment containing that information to the chairman and  
28 ranking member of each of the following committees of  
29 Congress:

30 (A) The Committee on Governmental Affairs of  
31 the Senate and the Committee on Government Reform  
32 of the House of Representatives.

33 (B) The Committees on Appropriations of the  
34 Senate and House of Representatives.

35 (C) Each committee that the head of the executive  
36 agency determines has legislative jurisdiction for the



1 operations of such department or agency to which the  
2 information relates.

3 (c) FISCAL YEAR 2003 CONTRACTS.—This section shall  
4 apply to contracts entered into on or after October 1, 2002, ex-  
5 cept that, in the case of a contract entered into before the date  
6 of the enactment of this Act, subsection (a) shall be applied as  
7 if the contract had been entered into on the date of the enact-  
8 ment of this Act.

9 (d) RELATIONSHIP TO OTHER DISCLOSURE LAWS.—Noth-  
10 ing in this section shall be construed as affecting obligations  
11 to disclose United States Government information under any  
12 other provision of law.

13 (e) DEFINITIONS.—In this section, the terms “executive  
14 agency” and “full and open competition” have the meanings  
15 given such terms in section 4 of the Office of Federal Procure-  
16 ment Policy Act (41 U.S.C. 403).

17 **SEC. 1443. SPECIAL EMERGENCY PROCUREMENT AU-**  
18 **THORITY.**

19 (a) PERMANENT AUTHORITY.—(1) The Office of Federal  
20 Procurement Policy Act (41 U.S.C. 403 et seq.) is amended by  
21 inserting after section 32 the following new section:

22 **“SEC. 32A. SPECIAL EMERGENCY PROCUREMENT AU-**  
23 **THORITY.**

24 “(a) APPLICABILITY.—The authorities provided in this  
25 section apply with respect to any procurement of property or  
26 services by or for an executive agency that, as determined by  
27 the head of such executive agency, are to be used—

28 “(1) in support of a contingency operation; or

29 “(2) to facilitate the defense against or recovery from  
30 nuclear, biological, chemical, or radiological attack against  
31 the United States.

32 “(b) INCREASED THRESHOLDS.—For a procurement to  
33 which this section applies under subsection (a)—

34 “(1) the amount specified in subsections (c), (d), and  
35 (f) of section 32 shall be deemed to be \$15,000; and

36 “(2) the term ‘simplified acquisition threshold’  
37 means—



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1           “(A) \$250,000 in the case of any contract to be  
2           awarded and performed, or purchase to be made, inside  
3           the United States; and

4           “(B) \$500,000 in the case of any contract to be  
5           awarded and performed, or purchase to be made, out-  
6           side the United States.

7           “(c) INCREASED LIMITATION ON USE OF SIMPLIFIED AC-  
8           QUISITION PROCEDURES.—For a procurement to which this  
9           section applies under subsection (a), the \$5,000,000 limitation  
10          in the following provisions of law shall be deemed to be  
11          \$10,000,000:

12           “(1) Section 31(a)(2) of this Act.

13           “(2) Section 2304(g)(1)(B) of title 10, United States  
14          Code.

15           “(3) Section 303(g)(1)(B) of the Federal Property and  
16          Administrative Services Act of 1949 (41 U.S.C.  
17          253(g)(1)(B)).

18           “(d) COMMERCIAL ITEMS AUTHORITY.—(1) The head of  
19          an executive agency carrying out a procurement of property or  
20          a service to which this section applies under subsection (a)(2)  
21          may treat such property or service as a commercial item for the  
22          purpose of carrying out such procurement.

23           “(2) A contract in an amount greater than \$15,000,000  
24          that is awarded on a sole source basis for an item or service  
25          treated as a commercial item under paragraph (1) shall not be  
26          exempt from—

27           “(A) cost accounting standards promulgated pursuant  
28          to section 26 of this Act; or

29           “(B) cost or pricing data requirements (commonly re-  
30          ferred to as truth in negotiating) under section 2306a of  
31          title 10, United States Code, and section 304A of title III  
32          of the Federal Property and Administrative Services Act of  
33          1949 (41 U.S.C. 254b).

34           “(e) CONTINGENCY OPERATION DEFINED.—In this sec-  
35          tion, the term ‘contingency operation’ has the meaning given  
36          such term in section 101(a)(13) of title 10, United States  
37          Code.”.



1 (2) The table of contents in section 1(b) of such Act is  
2 amended by inserting after the item relating to section 32 the  
3 following new item:

“Sec. 32A. Special emergency procurement authority.”.

4 (b) CONTINUATION OF AUTHORITY FOR USE OF SIM-  
5 PLIFIED ACQUISITION PROCEDURES.—Section 4202(e) of the  
6 Clinger-Cohen Act (division D of Public Law 104-106; 110  
7 Stat. 652; 10 U.S.C. 2304 note) is amended by striking “Janu-  
8 ary 1, 2004” and inserting “January 1, 2006”.

