

FEDERAL ACQUISITION STREAMLINING ACT OF 1994¹

[P.L. 103–355, approved Oct. 13, 1994]

[As Amended Through P.L. 115–232, Enacted August 13, 2018]

【Currency: This publication is a compilation of the text of Public Law 103–355. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

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¹This table shows only those provisions included on pages 615 through 636 of this publication, which are provisions that did not amend existing laws. For a complete table of contents for the Federal Acquisition Streamlining Act of 1994, see Public Law 103–355.

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TITLE I—CONTRACT FORMATION

Subtitle A—Competition Statutes

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PART II—CIVILIAN AGENCY ACQUISITIONS

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Subpart C—Kinds of Contracts

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SEC. 1074. [31 U.S.C. 1535 note] ECONOMY ACT PURCHASES.

(a) REGULATIONS REQUIRED.—The Federal Acquisition Regulation shall be revised to include regulations governing the exercise of the authority under section 1535 of title 31, United States Code,² for Federal agencies to purchase goods and services under contracts entered into or administered by other agencies.

(b) CONTENT OF REGULATIONS.—The regulations prescribed pursuant to subsection (a) shall—

(1) require that each purchase described in subsection (a) be approved in advance by a contracting officer of the ordering agency with authority to contract for the goods or services to be purchased or by another official in a position specifically designated by regulation to approve such purchase;

(2) provide that such a purchase of goods or services may be made only if—

(A) the purchase is appropriately made under a contract that the agency filling the purchase order entered into, before the purchase order, in order to meet the requirements of such agency for the same or similar goods or services;

(B) the agency filling the purchase order is better qualified to enter into or administer the contract for such goods or services by reason of capabilities or expertise that is not available within the ordering agency; or

(C) the agency or unit filling the order is specifically authorized by law or regulations to purchase such goods or services on behalf of other agencies;

²Section 1535 of title 31, United States Code, referred to in subsection (a), is set forth beginning on page 788.

(3) prohibit any such purchase under a contract or other agreement entered into or administered by an agency not covered by the provisions of chapter 137 of title 10, United States Code, or title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) and not covered by the Federal Acquisition Regulation unless the purchase is approved in advance by the senior procurement official responsible for purchasing by the ordering agency; and

(4) prohibit any payment to the agency filling a purchase order of any fee that exceeds the actual cost or, if the actual cost is not known, the estimated cost of entering into and administering the contract or other agreement under which the order is filled.

(c) **MONITORING SYSTEM REQUIRED.**—The Administrator for Federal Procurement Policy shall ensure that, not later than one year after the date of the enactment of this Act, systems for collecting and evaluating procurement data are capable of collecting and evaluating appropriate data on procurements conducted under the regulations prescribed pursuant to subsection (a).

(d) **TERMINATION.**—This section shall cease to be effective one year after the date on which final regulations prescribed pursuant to subsection (a) take effect.

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TITLE II—CONTRACT ADMINISTRATION

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Subtitle B—Cost Principles

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PART III—ACQUISITIONS GENERALLY

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SEC. 2192. [41 U.S.C. 256 note] REVISION OF COST PRINCIPLE RELATING TO ENTERTAINMENT, GIFT, AND RECREATION COSTS FOR CONTRACTOR EMPLOYEES.

(a) **COSTS NOT ALLOWABLE.**—(1) The costs of gifts or recreation for employees of a contractor or members of their families that are provided by the contractor to improve employee morale or performance or for any other purpose are not allowable under a covered contract unless, within 120 days after the date of the enactment of this Act [Oct. 13, 1994], the Federal Acquisition Regulatory Council prescribes amendments to the Federal Acquisition Regulation specifying circumstances under which such costs are allowable under a covered contract.

(2) Not later than 90 days after the date of the enactment of this Act [Oct. 13, 1994], the Federal Acquisition Regulatory Council shall amend the cost principle in the Federal Acquisition Regulation that is set out in section 31.205–14 of title 48, Code of Fed-

eral Regulations, relating to unallowability of entertainment costs—

(A) by inserting in the cost principle a statement that costs made specifically unallowable under that cost principle are not allowable under any other cost principle; and

(B) by striking out “(but see 31.205–1 and 31.205–13)”.

(b) DEFINITIONS.—In this section:

(1) The term “employee” includes officers and directors of a contractor.

(2) The term “covered contract” has the meaning given such term in section 2324(l) of title 10, United States Code (as amended by section 2101(c)), and section 306(l) of the Federal Property and Administrative Services Act of 1949 (as added by section 2151).

(c) EFFECTIVE DATE.—Any amendments to the Federal Acquisition Regulation made pursuant to subsection (a) shall apply with respect to costs incurred after the date on which the amendments made by section 2101 apply (as provided in section 10001) or the date on which the amendments made by section 2151 apply (as provided in section 10001), whichever is later.

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Subtitle D—Claims and Disputes

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PART II—ACQUISITIONS GENERALLY

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SEC. 2353. [15 U.S.C. 644a note] EXPEDITED RESOLUTION OF CONTRACT ADMINISTRATION MATTERS.

(a) REGULATIONS REQUIRED.—(1) The Federal Acquisition Regulation shall include provisions that require a contracting officer—

(A) to make every reasonable effort to respond in writing within 30 days to any written request made to a contracting officer with respect to a matter relating to the administration of a contract that is received from a small business concern; and

(B) in the event that the contracting officer is unable to reply within the 30-day period, to transmit to the contractor within such period a written notification of a specific date by which the contracting officer expects to respond.

(2) The provisions shall not apply to a request for a contracting officer’s decision under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).³

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be considered as creating any rights under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

(c) DEFINITION.—In this section, the term “small business concern” means a business concern that meets the requirements of sec-

³The Contract Disputes Act of 1978, referred to in subsection (a)(2), is set forth beginning on page 953.

tion 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated pursuant to that section.

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Subtitle E—Miscellaneous

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PART II—ACQUISITIONS GENERALLY

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SEC. 2455. [31 U.S.C. 6101 note] UNIFORM SUSPENSION AND DEBARMENT.⁴

(a) REQUIREMENT FOR REGULATIONS.—Regulations shall be issued providing that provisions for the debarment, suspension, or other exclusion of a participant in a procurement activity under the Federal Acquisition Regulation, or in a nonprocurement activity under regulations issued pursuant to Executive Order No. 12549, shall have government-wide effect. No agency shall allow a party to participate in any procurement or nonprocurement activity if any agency has debarred, suspended, or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in a procurement or nonprocurement activity.

(b) AUTHORITY TO GRANT EXCEPTION.—The regulations issued pursuant to subsection (a) shall provide that an agency may grant an exception permitting a debarred, suspended, or otherwise excluded party to participate in procurement activities of that agency to the extent exceptions are authorized under the Federal Acquisition Regulation, or to participate in nonprocurement activities of that agency to the extent exceptions are authorized under regulations issued pursuant to Executive Order No. 12549.

(c) DEFINITIONS.—In this section:

(1) The term “procurement activities” means all acquisition programs and activities of the Federal Government, as defined in the Federal Acquisition Regulation. Such term includes subcontracts at any tier, other than subcontracts for commercially available off-the-shelf items (as defined in section 35(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c))), except that in the case of a contract for commercial products, such term includes only first-tier subcontracts.

(2) The term “nonprocurement activities” means all programs and activities involving Federal financial and non-financial assistance and benefits, as covered by Executive Order No. 12549 and the Office of Management and Budget guidelines implementing that order.

(3) The term “agency” means an Executive agency as defined in section 103 of title 5, United States Code.

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⁴For a provision containing a prohibition on the military departments from doing business with offerors or contractors debarred or suspended by another Federal agency, see section 2393 of title 10, United States Code, set forth beginning on page 225.

TITLE V—ACQUISITION MANAGEMENT

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Subtitle C—Pilot Programs**SEC. 5061. [41 U.S.C. 413 note] OFPP TEST PROGRAM FOR EXECUTIVE AGENCIES.**

(a) **IN GENERAL.**—The Administrator for Federal Procurement Policy (in this section referred to as the “Administrator”) may conduct a program of tests of alternative and innovative procurement procedures. To the extent consistent with this section, such program shall be conducted consistent with section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413). No more than 6 such tests shall be conducted under the authority of this subsection, and not more than 1 such test shall be conducted under such authority in an agency.

(b) **DESIGNATION OF AGENCIES.**—Each test conducted pursuant to subsection (a) shall be carried out in not more than 2 specific procuring activities in an agency designated by the Administrator. Each agency so designated shall select the procuring activities participating in the test with the approval of the Administrator and shall designate a procurement testing official who shall be responsible for the conduct and evaluation of tests within that agency.

(c) **TEST REQUIREMENTS AND LIMITATIONS.**—(1) Each test conducted under subsection (a)—

(A) shall be developed and structured by the Administrator or by the agency senior procurement executive designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) in close coordination with the Administrator; and

(B) shall be limited to specific programs of agencies or specific acquisitions.

(2) The total estimated life-cycle cost to the Federal Government for each test conducted under subsection (a) may not exceed \$100,000,000.

(3)(A) Except as provided in subparagraph (B), each contract awarded in conducting the tests under subsection (a) (including the cost of options if all options were to be exercised) may not exceed \$5,000,000.

(B) For one of the tests conducted under subsection (a), the amount of each contract awarded in conducting the test (including options) may exceed \$5,000,000.

(4) The program of tests conducted under subsection (a) shall include, either as a test or as part of a test, the use of the electronic commerce capability required by section 30 of the Office of Federal Procurement Policy Act for procurement actions in amounts greater than the simplified acquisition threshold.

(d) **LIMITATION ON TOTAL VALUE OF CONTRACTS UNDER PROGRAM.**—(1) The Administrator shall ensure that the total amount obligated under contracts awarded pursuant to the program under this section does not exceed \$600,000,000. In calculating such amount, the Administrator shall not include any contract awarded

for the test conducted by the National Aeronautics and Space Administration pursuant to section 5062 of this Act.

(2) The Administrator shall monitor the value of contracts awarded pursuant to the program under this section.

(3) No contract may be awarded under the program under this section if the award of the contract would result in obligation of more than \$600,000,000 under contracts awarded pursuant to the program under this section.

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

(1) Publication of agency needs before drafting of a solicitation.

(2) Issuance of draft solicitations for comment.

(3) Streamlined solicitations that specify as the evaluation factors the minimum factors necessary, require sources to submit the minimum information necessary, provide abbreviated periods for submission of offers, and specify page limitations for offers.

(4) Limitation of source selection factors to—

(A) cost to the Federal Government;

(B) past experience and performance; and

(C) quality of the content of the offer.

(5) Evaluation of proposals by small teams of highly qualified people over a period not greater than 30 days.

(6) Restriction of competitions to sources determined capable in a precompetition screening process, provided that the screening process affords all interested sources a fair opportunity to be considered.

(7) Restriction of competitions to sources of preevaluated products, provided that the preevaluation process affords all interested sources a fair opportunity to be considered.

(8) Alternative notice and publication requirements.

(9) A process in which—

(A) the competitive process is initiated by publication in the Commerce Business Daily of a notice that—

(i) contains a synopsis of the functional and performance needs of the executive agency conducting the test, and, for purposes of guidance only, other specifications; and

(ii) invites any interested source to submit information or samples showing the suitability of its product for meeting those needs, together with a price quotation, or, if appropriate, showing the source's technical capability, past performance, product supportability, or other qualifications (including, as appropriate, information regarding rates and other cost-related factors);

(B) contracting officials develop a request for proposals (including appropriate specifications and evaluation criteria) after reviewing the submissions of interested sources and, if the officials determine necessary, after consultation with those sources; and

(C) a contract is awarded after a streamlined competition that is limited to all sources that timely provided

product information in response to the notice or, if appropriate, to those sources determined most capable based on the qualification-based factors included in an invitation to submit information pursuant to subparagraph (A).

(f) MEASURABLE TEST CRITERIA.—The Administrator shall require each agency conducting a test pursuant to subsection (a) to establish, to the maximum extent practicable, measurable criteria for evaluation of the effects of the procedure or technique to be tested.

(g) TEST PLAN.—At least 270 days before a test may be conducted under this section, the Administrator shall—

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

(2) provide a copy of the plan to the appropriate authorization and appropriations committees of the House of Representatives and the Senate; and

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

(h) WAIVER OF PROCUREMENT REGULATIONS.—(1) For purposes of a test conducted under subsection (a), the Administrator may waive—

(A) any provision of the Federal Acquisition Regulation that is not required by statute; and

(B) any provision of the Federal Acquisition Regulation that is required by a provision of law described in paragraph (2), the waiver of which the Administrator determines in writing to be necessary to conduct any test of any of the procedures described in subsection (e).

(2) The provisions of law referred to in paragraph (1) are as follows:

(A) The following provisions of title 10, United States Code:

- (i) Section 2304.
- (ii) Section 2305.
- (iii) Section 2319.

(B) Subsections (e), (f), and (g) of section 8 of the Small Business Act (15 U.S.C. 637).

(C) The following provisions of the Revised Statutes:

- (i) Section 3709 (41 U.S.C. 5).
- (ii) Section 3710 (41 U.S.C. 8).
- (iii) Section 3735 (41 U.S.C. 13).

(D) The following provisions of the Federal Property and Administrative Services Act of 1949:

- (i) Section 303 (41 U.S.C. 253).
- (ii) Section 303A (41 U.S.C. 253a).
- (iii) Section 303B (41 U.S.C. 253b).
- (iv) Section 303C (41 U.S.C. 253c).
- (v) Section 310 (41 U.S.C. 260).

(E) The following provisions of the Office of Federal Procurement Policy Act:

- (i) Section 4(6) (41 U.S.C. 403(6)).

(ii) Section 18 (41 U.S.C. 416).

(3) If the Administrator determines that the conduct of a test requires the waiver of a law not listed in paragraph (2) or requires approval of an estimated dollar amount not permitted under subsection (c)(4), the Administrator may propose legislation to authorize the waiver or grant the approval. Before proposing such legislation, the Administrator may provide and publish a test plan as described in subsection (g).

(i) REPORT.—Not later than 6 months after completion of a test conducted under subsection (a), the Comptroller General shall submit to Congress a report for the test setting forth in detail the results of the test, including such recommendations as the Comptroller General considers appropriate.

(j) COMMENCEMENT AND EXPIRATION OF AUTHORITY.—(1) The Administrator may not exercise the authority to conduct a test under subsection (a) in an agency and to award contracts under such a test before the date on which the head of the agency certifies to Congress under section 30A(a)(2) of the Office of Federal Procurement Policy Act that the agency has implemented a full FACNET capability.

(2) The authority to conduct a test under subsection (a) in an agency and to award contracts under such a test shall expire 4 years after the date on which the head of the agency makes the certification referred to in paragraph (1). Contracts entered into before such authority expires in an agency pursuant to a test shall remain in effect, notwithstanding the expiration of the authority to conduct the test under this section.

(k) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the appropriation or obligation of funds for the tests conducted pursuant to subsection (a).

SEC. 5062. [42 U.S.C. 2473 note] NASA MID-RANGE PROCUREMENT TEST PROGRAM.

(a) IN GENERAL.—The Administrator of the National Aeronautics and Space Administration (in this section referred to as the “Administrator”) may conduct a test of alternative notice and publication requirements for procurements conducted by the National Aeronautics and Space Administration. To the extent consistent with this section, such program shall be conducted consistent with section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413).⁵

(b) APPLICABILITY.—The test conducted under subsection (a) shall apply to acquisitions with an estimated annual total obligation of funds of \$500,000 or less.

(c) LIMITATION ON TOTAL COST.—The total estimated life-cycle cost to the Federal Government for the test conducted under subsection (a) may not exceed \$100,000,000.

(d) WAIVER OF PROCUREMENT REGULATIONS.—(1) In conducting the test under this section, the Administrator, with the approval of the Administrator for Federal Procurement Policy, may waive—

(A) any provision of the Federal Acquisition Regulation that is not required by statute; and

⁵ Section 15 of the Office of Federal Procurement Policy Act, referred to in subsection (a), is set forth beginning on page 574.

(B) any provision of the Federal Acquisition Regulation that is required by a provision of law described in paragraph (2), the waiver of which the Administrator determines in writing to be necessary to conduct the test.

(2) The provisions of law referred to in paragraph (1) are as follows:

(A) Subsections (e), (f), and (g) of section 8 of the Small Business Act (15 U.S.C. 637).

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

(e) REPORT.—Not later than 6 months after completion of the test conducted under subsection (a), the Comptroller General shall submit to Congress a report for the test setting forth in detail the results of the test, including such recommendations as the Comptroller General considers appropriate.

(f) EXPIRATION OF AUTHORITY.—The authority to conduct the test under subsection (a) and to award contracts under such test shall expire 4 years after the date of the enactment of this Act. Contracts entered into before such authority expires shall remain in effect, notwithstanding the expiration of the authority to conduct the test under this section.

(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the appropriation or obligation of funds for the test conducted pursuant to subsection (a).

SEC. 5063. [49 U.S.C. 40110 note] FEDERAL AVIATION ADMINISTRATION ACQUISITION PILOT PROGRAM.

(a) AUTHORITY.—The Secretary of Transportation may conduct a test of alternative and innovative procurement procedures in carrying out acquisitions for one of the modernization programs under the Airway Capital Investment Plan prepared pursuant to section 44501(b) of title 49, United States Code. In conducting such test, the Secretary shall consult with the Administrator for Federal Procurement Policy.

(b) PILOT PROGRAM IMPLEMENTATION.—(1) The Secretary of Transportation should prescribe policies and procedures for the interaction of the program manager and the end user executive responsible for the requirement for the equipment acquired. Such policies and procedures should include provisions for enabling the end user executive to participate in acceptance testing.

(2) Not later than 45 days after the date of enactment of this Act, the Secretary of Transportation shall identify for the pilot program quantitative measures and goals for reducing acquisition management costs.

(3) The Secretary of Transportation shall establish for the pilot program a review process that provides senior acquisition officials with reports on the minimum necessary data items required to ensure the appropriate expenditure of funds appropriated for the program and that—

(A) contain essential information on program results at appropriate intervals, including the criteria to be used in measuring the success of the program; and

(B) reduce data requirements from the current program review reporting requirements.

(c) SPECIAL AUTHORITIES.—The authority provided by subsection (a) shall include authority for the Secretary of Transportation—

(1) to apply any amendment or repeal of a provision of law made in this Act to the pilot program before the effective date of such amendment or repeal; and

(2) to apply to a procurement of items other than commercial items under such program—

(A) any authority provided in this Act (or in an amendment made by a provision of this Act) to waive a provision of law in the case of commercial items, and

(B) any exception applicable under this Act (or an amendment made by a provision of this Act) in the case of commercial items,

before the effective date of such provision (or amendment) to the extent that the Secretary determines necessary to test the application of such waiver or exception to procurements of items other than commercial items.

(d) APPLICABILITY.—Subsection (c) applies with respect to—

(1) a contract that is awarded or modified after the date occurring 45 days after the date of the enactment of this Act; and

(2) a contract that is awarded before such date and is to be performed (or may be performed), in whole or in part, after such date.

(e) PROCEDURES AUTHORIZED.—The test conducted under this section may include any of the following procedures:

(1) Restriction of competitions to sources determined capable in a precompetition screening process, provided that the screening process affords all interested sources a fair opportunity to be considered.

(2) Restriction of competitions to sources of preevaluated products, provided that the preevaluation process affords all interested sources a fair opportunity to be considered.

(3) Alternative notice and publication requirements.

(4) A process in which—

(A) the competitive process is initiated by publication in the Commerce Business Daily, or by dissemination through FACNET, of a notice that—

(i) contains a synopsis of the functional and performance needs of the executive agency conducting the test, and, for purposes of guidance only, other specifications; and

(ii) invites any interested source to submit information or samples showing the suitability of its product for meeting those needs, together with a price quotation, or, if appropriate, showing the source's technical capability, past performance, product supportability, or other qualifications (including, as appropriate, information regarding rates and other cost-related factors);

(B) contracting officials develop a request for proposals (including appropriate specifications and evaluation criteria) after reviewing the submissions of interested sources

and, if the officials determine necessary, after consultation with those sources; and

(C) a contract is awarded after a streamlined competition that is limited to all sources that timely provided product information in response to the notice or, if appropriate, to those sources determined most capable based on the qualification-based factors included in an invitation to submit information pursuant to subparagraph (A).

(f) WAIVER OF PROCUREMENT REGULATIONS.—(1) In conducting the test under this section, the Secretary of Transportation, with the approval of the Administrator for Federal Procurement Policy, may waive—

(A) any provision of the Federal Acquisition Regulation that is not required by statute; and

(B) any provision of the Federal Acquisition Regulation that is required by a provision of law described in paragraph (2), the waiver of which the Administrator determines in writing to be necessary to test procedures authorized by subsection (e).

(2) The provisions of law referred to in paragraph (1) are as follows:

(A) Subsections (e), (f), and (g) of section 8 of the Small Business Act (15 U.S.C. 637).

(B) The following provisions of the Federal Property and Administrative Services Act of 1949:

(i) Section 303 (41 U.S.C. 253).

(ii) Section 303A (41 U.S.C. 253a).

(iii) Section 303B (41 U.S.C. 253b).

(iv) Section 303C (41 U.S.C. 253c).

(C) The following provisions of the Office of Federal Procurement Policy Act:

(i) Section 4(6) (41 U.S.C. 403(6)).

(ii) Section 18 (41 U.S.C. 416).

(g) DEFINITION.—In this section, the term “commercial item” has the meaning provided that term in section 4(12) of the Office of Federal Procurement Policy Act.

(h) EXPIRATION OF AUTHORITY.—The authority to conduct the test under subsection (a) and to award contracts under such test shall expire 4 years after the date of the enactment of this Act. Contracts entered into before such authority expires shall remain in effect, notwithstanding the expiration of the authority to conduct the test under this section.

(i) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the appropriation or obligation of funds for the test conducted pursuant to subsection (a).

【Section 5064 was repealed by section 812(b)(42) of division A of Public Law 115–232.】

Subtitle D—Miscellaneous

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SEC. 5093. SENSE OF CONGRESS ON NEGOTIATED RULEMAKING.

(a) **FINDINGS.**—The Congress finds the following:

(1) The use of negotiated rulemaking or similar policy discussion group techniques can be an appropriate tool for—

(A) fostering effective implementation of, and compliance with, laws and regulations;

(B) avoiding litigation; and

(C) achieving more productive and equitable relationships between the Federal Government and the regulated segments of the private sector.

(2) The use of negotiated rulemaking or similar techniques in Federal procurement regulations could be appropriate given the extreme complexity and intricate interactions between buyer and seller in Federal procurements.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that, in prescribing acquisition regulations, the Federal Acquisition Regulatory Council should consider using negotiated rulemaking procedures in appropriate circumstances in accordance with sections 561 through 570 of title 5, United States Code, or similar techniques intended to achieve the benefits described in subsection (a)(1).

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TITLE VII—SMALL BUSINESS AND SOCIOECONOMIC LAWS

Subtitle A—Small Business Laws

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SEC. 7102. [15 U.S.C. 644 note] CONTRACTING PROGRAM FOR CERTAIN SMALL BUSINESS CONCERNS.

(a) **PROCUREMENT PROCEDURES AUTHORIZED.**—(1) To facilitate the attainment of a goal for the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals that is established for a Federal agency pursuant to section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)),⁷ the head of the agency may enter into contracts using—

(A) less than full and open competition by restricting the competition for such awards to small business concerns owned and controlled by socially and economically disadvantaged individuals described in subsection (d)(3)(C) of section 8 of the Small Business Act (15 U.S.C. 637); and

(B) a price evaluation preference not in excess of 10 percent when evaluating an offer received from such a small business concern as the result of an unrestricted solicitation.

(2) Paragraph (1) does not apply to the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(b) **IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION REGULATION.**—

⁷ Section 15(g) of the Small Business Act, referred to in section 7102(a)(1), is set forth beginning on page 711.

(1) IN GENERAL.—The Federal Acquisition Regulation shall be revised to provide for uniform implementation of the authority provided in subsection (a).

(2) MATTERS TO BE ADDRESSED.—The revisions of the Federal Acquisition Regulation made pursuant to paragraph (1) shall include—

(A) conditions for the use of advance payments;

(B) provisions for contract payment terms that provide for—

(i) accelerated payment for work performed during the period for contract performance; and

(ii) full payment for work performed;

(C) guidance on how contracting officers may use, in solicitations for various classes of products or services, a price evaluation preference pursuant to subsection (a)(1)(B), to provide a reasonable advantage to small business concerns owned and controlled by socially and economically disadvantaged individuals without effectively eliminating any participation of other small business concerns; and

(D)(i) procedures for a person to request the head of a Federal agency to determine whether the use of competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals at a contracting activity of such agency has caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity; and

(ii) guidance for limiting the use of such restricted competitions in the case of any contracting activity and class of contracts determined in accordance with such procedures to have caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity.

(c) TERMINATION.—This section shall cease to be effective at the end of September 30, 2003.

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SEC. 7104. [15 U.S.C. 644a] SMALL BUSINESS PROCUREMENT ADVISORY COUNCIL.

(a) ESTABLISHMENT.—There is hereby established an inter-agency council to be known as the “Small Business Procurement Advisory Council” (hereinafter in this section referred to as the “Council”).

(b) DUTIES.—The duties of the Council are—

(1) to develop positions on proposed procurement regulations affecting the small business community;

(2) to submit comments reflecting such positions to appropriate regulatory authorities;

(3) to conduct reviews of each Office of Small and Disadvantaged Business Utilization established under section 15(k) of the Small Business Act (15 U.S.C. 644(k)) to determine the compliance of each Office with requirements under such section;

(4) to identify best practices for maximizing small business utilization in Federal contracting that may be implemented by Federal agencies having procurement powers; and

(5) to submit, annually, to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report describing—

(A) the comments submitted under paragraph (2) during the 1-year period ending on the date on which the report is submitted, including any outcomes related to the comments;

(B) the results of reviews conducted under paragraph (3) during such 1-year period; and

(C) best practices identified under paragraph (4) during such 1-year period.

(c) MEMBERSHIP.—The Council shall be composed of the following members:

(1) The Administrator of the Small Business Administration (or the designee of the Administrator).

(2) The Director of the Minority Business Development Agency.

(3) The head of each Office of Small and Disadvantaged Business Utilization in each Federal agency having procurement powers.

(d) CHAIRMAN.—The Council shall be chaired by the Administrator of the Small Business Administration (or the designee of the Administrator).

(e) MEETINGS.—The Council shall meet at the call of the chairman as necessary to consider proposed procurement regulations affecting the small business community.

(f) CONSIDERATION OF COUNCIL COMMENTS.—The Federal Acquisition Regulatory Council and other appropriate regulatory authorities shall consider comments submitted in a timely manner pursuant to subsection (b)(2).

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SEC. 7107. [41 U.S.C. 405 note] DEVELOPMENT OF DEFINITIONS REGARDING CERTAIN SMALL BUSINESS CONCERNS.

(a) REVIEW REQUIRED.—(1) The Administrator for Federal Procurement Policy shall conduct a comprehensive review of Federal laws, as in effect on November 1, 1994, to identify and catalogue all of the provisions in such laws that define (or describe for definitional purposes) the small business concerns set forth in paragraph (2) for purposes of authorizing the participation of such small business concerns as prime contractors or subcontractors in—

(A) contracts awarded directly by the Federal Government or subcontracts awarded under such contracts; or

(B) contracts and subcontracts funded, in whole or in part, by Federal financial assistance under grants, cooperative agreements, or other forms of Federal assistance.

(2) The small business concerns referred to in paragraph (1) are as follows:

(A) Small business concerns owned and controlled by socially and economically disadvantaged individuals.

- (B) Minority-owned small business concerns.
- (C) Small business concerns owned and controlled by women.
- (D) Woman-owned small business concerns.
- (b) MATTERS TO BE DEVELOPED.—On the basis of the results of the review carried out under subsection (a), the Administrator for Federal Procurement Policy shall develop—
 - (1) uniform definitions for the small business concerns referred to in subsection (a)(2);
 - (2) uniform agency certification standards and procedures for—
 - (A) determinations of whether a small business concern qualifies as a small business concern referred to in subsection (a)(2) under an applicable standard for purposes of contracts and subcontracts referred to in subsection (a)(1); and
 - (B) reciprocal recognition by an agency of a decision of another agency regarding whether a small business concern qualifies as a small business concern referred to in subsection (a)(2) for such purposes; and
 - (3) such other related recommendations as the Administrator determines appropriate consistent with the review results.
- (c) PROCEDURES AND SCHEDULE.—(1) The Administrator for Federal Procurement Policy shall provide for the participation in the review and activities under subsections (a) and (b) by representatives of—
 - (A) the Small Business Administration (including the Office of the Chief Counsel for Advocacy);
 - (B) the Minority Business Development Agency of the Department of Commerce;
 - (C) the Department of Transportation;
 - (D) the Environmental Protection Agency; and
 - (E) such other executive departments and agencies as the Administrator considers appropriate.
- (2) In carrying out subsections (a) and (b), the Administrator shall consult with representatives of organizations representing—
 - (A) minority-owned business enterprises;
 - (B) women-owned business enterprises; and
 - (C) other organizations that the Administrator considers appropriate.
- (3) Not later than 60 days after the date of the enactment of this Act, the Administrator shall publish in the Federal Register a notice which—
 - (A) lists the provisions of law identified in the review carried out under subsection (a);
 - (B) describes the matters to be developed on the basis of the results of the review pursuant to subsection (b);
 - (C) solicits public comment regarding the matters described in the notice pursuant to subparagraphs (A) and (B) for a period of not less than 60 days; and
 - (D) addresses such other matters as the Administrator considers appropriate to ensure the comprehensiveness of the review and activities under subsections (a) and (b).

(d) REPORT.—Not later than May 1, 1996, the Administrator for Federal Procurement Policy shall submit to the Committees on Small Business of the Senate and the House of Representatives a report on the results of the review carried out under subsection (a) and the actions taken under subsection (b). The report shall include a discussion of the results of the review, a description of the consultations conducted and public comments received, and the Administrator’s recommendations with regard to the matters identified under subsection (b).

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Subtitle B—Socioeconomic Laws

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SEC. 7204. MAXIMUM PRACTICABLE OPPORTUNITIES FOR APPRENTICES ON FEDERAL CONSTRUCTION PROJECTS.

It is the sense of the House of Representatives that—

(1) contractors performing Federal construction contracts should, to the maximum extent practicable, give preference in the selection of subcontractors to subcontractors participating in apprenticeship programs registered with the Department of Labor or with a State apprenticeship agency recognized by such Department; and

(2) contractors and subcontractors performing Federal construction contracts should provide maximum practicable opportunities for employment of apprentices who are participating in or who have completed such apprenticeship programs.

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TITLE VIII—COMMERCIAL ITEMS

Subtitle A—Definitions and Regulations

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【Section 8002 was repealed by section 7(b) of Public Law 111–350; 124 Stat. 3855, which provides for the codification of title 41, U.S.C. into positive law.】

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Subtitle D—Acquisitions Generally

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SEC. 8304. [41 U.S.C. 264 note] PROVISIONS NOT AFFECTED.

Nothing in this title shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under—

(1) section 7102 of the Federal Acquisition Streamlining Act of 1994;

(2) the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759));

(3) Brooks Architect-Engineers Act (title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.));

(4) subsections (a) and (d) of section 8 of the Small Business Act (15 U.S.C. 637 (a) and (d)); or

(5) the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c).

SEC. 8305. [41 U.S.C. 264b note] COMPTROLLER GENERAL REVIEW OF FEDERAL GOVERNMENT USE OF MARKET RESEARCH.

(a) REPORT REQUIRED.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Congress a report on the use of market research by the Federal Government in support of the procurement of commercial items and nondevelopmental items.

(b) CONTENT OF REPORT.—The report shall include the following:

(1) A review of existing Federal Government market research efforts to gather data concerning commercial and other nondevelopmental items.

(2) A review of the feasibility of creating a Government-wide data base for storing, retrieving, and analyzing market data, including use of existing Federal Government resources.

(3) Any recommendations for changes in law or regulations that the Comptroller General considers appropriate.

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TITLE X—EFFECTIVE DATES AND IMPLEMENTATION

SEC. 10001. [41 U.S.C. 251 note] EFFECTIVE DATE AND APPLICABILITY.

(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) APPLICABILITY OF AMENDMENTS.—(1) An amendment made by this Act shall apply, in the manner prescribed in the final regulations promulgated pursuant to section 10002 to implement such amendment, with respect to any solicitation that is issued, any unsolicited proposal that is received, and any contract entered into pursuant to such a solicitation or proposal, on or after the date described in paragraph (3).

(2) An amendment made by this Act shall also apply, to the extent and in the manner prescribed in the final regulations promulgated pursuant to section 10002 to implement such amendment, with respect to any matter related to—

(A) a contract that is in effect on the date described in paragraph (3);

(B) an offer under consideration on the date described in paragraph (3); or

(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

(3) The date referred to in paragraphs (1) and (2) is the date specified in such final regulations. The date so specified shall be October 1, 1995, or any earlier date that is not within 30 days after the date on which such final regulations are published.

(c) IMMEDIATE APPLICABILITY OF CERTAIN AMENDMENTS.—Notwithstanding subsection (b), the amendments made by the following provisions of this Act apply on and after the date of the enactment of this Act: sections 1001, 1021, 1031, 1051, 1071, 1092, 1201, 1506(a), 1507, 1554, 2002(a), 2191, 3062(a), 3063, 3064, 3065(a)(1), 3065(b), 3066, 3067, 6001(a), 7101, 7103, 7205, and 7206, the provisions of subtitles A, B, and C of title III, and the provisions of title V.

SEC. 10002. [41 U.S.C. 251 note] IMPLEMENTING REGULATIONS.

(a) PROPOSED REVISIONS.—Proposed revisions to the Federal Acquisition Regulation and such other proposed regulations (or revisions to existing regulations) as may be necessary to implement this Act shall be published in the Federal Register not later than 210 days after the date of the enactment of this Act.

(b) PUBLIC COMMENT.—The proposed regulations described in subsection (a) shall be made available for public comment for a period of not less than 60 days.

(c) FINAL REGULATIONS.—Final regulations shall be published in the Federal Register not later than 330 days after the date of enactment of this Act.

(d) MODIFICATIONS.—Final regulations promulgated pursuant to this section to implement an amendment made by this Act may provide for modification of an existing contract without consideration upon the request of the contractor.

(e) REQUIREMENT FOR CLARITY.—Officers and employees of the Federal Government who prescribe regulations to implement this Act and the amendments made by this Act shall make every effort practicable to ensure that the regulations are concise and are easily understandable by potential offerors as well as by Government officials.

(f) SAVINGS PROVISIONS.—(1) Nothing in this Act shall be construed to affect the validity of any action taken or any contract entered into before the date specified in the regulations pursuant to section 10001(b)(3) except to the extent and in the manner prescribed in such regulations.

(2) Except as specifically provided in this Act, nothing in this Act shall be construed to require the renegotiation or modification of contracts in existence on the date of the enactment of this Act.

(3) Except as otherwise provided in this Act, a law amended by this Act shall continue to be applied according to the provisions thereof as such law was in effect on the day before the date of the enactment of this Act until—

(A) the date specified in final regulations implementing the amendment of that law (as promulgated pursuant to this section); or

(B) if no such date is specified in regulations, October 1, 1995.

Sec. 10003 FEDERAL ACQUISITION STREAMLINING ACT OF 1994 20**SEC. 10003. [41 U.S.C. 251 note] EVALUATION BY THE COMPTROLLER GENERAL.**

(a) EVALUATION RELATING TO ISSUANCE OF REGULATIONS.—Not later than 180 days after the issuance in final form of revisions to the Federal Acquisition Regulation pursuant to section 10002, the Comptroller General shall submit to Congress a report evaluating compliance with such section.

(b) EVALUATION OF IMPLEMENTATION OF REGULATIONS.—Not later than 18 months after issuance in final form of revisions to the Federal Acquisition Regulation pursuant to section 10002, the Comptroller General shall submit to the committees referred to in subsection (c) a report evaluating the effectiveness of the regulations implementing this Act in streamlining the acquisition system and fulfilling the other purposes of this Act.

(c) COMMITTEES DESIGNATED TO RECEIVE THE REPORTS.—The Comptroller General shall submit the reports required by this section to—

- (1) the Committees on Governmental Affairs, on Armed Services, and on Small Business of the Senate; and
- (2) the Committees on Government Operations, on Armed Services, and on Small Business of the House of Representatives.

SEC. 10004. [41 U.S.C. 405 note] DATA COLLECTION THROUGH THE FEDERAL PROCUREMENT DATA SYSTEM.

(a) DATA COLLECTION REQUIRED.—The Federal Procurement Data System described in section 6(d)(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4)(A)) shall be modified to collect from contracts in excess of the simplified acquisition threshold data identifying the following matters:

- (1) Contract awards made pursuant to competitions conducted pursuant to section 7102 of the Federal Acquisition Streamlining Act of 1994.
- (2) Awards to business concerns owned and controlled by women.
- (3) Number of offers received in response to a solicitation.
- (4) Task order contracts.
- (5) Contracts for the acquisition of commercial items.

(b) DEFINITION.—In this section, the term “simplified acquisition threshold” has the meaning given such term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).