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(Original Signature of Member)

108TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. TOM DAVIS of Virginia (for himself and Mr. Hunter) introduced the following bill; which was referred to the Committee on

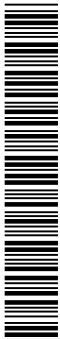
A BILL

To improve the Federal acquisition workforce and the process for the acquisition of services by the Federal Government, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Services Acquisition Reform Act of 2003”.



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

- Sec. 1. Short title; table of contents.
- Sec. 2. Executive agency defined.

TITLE I—ACQUISITION WORKFORCE AND TRAINING

- Sec. 101. Definition of acquisition.
- Sec. 102. Acquisition workforce training fund.
- Sec. 103. Government-industry exchange program.
- Sec. 104. Acquisition workforce recruitment and retention program.
- Sec. 105. Architectural and engineering acquisition workforce.

TITLE II—ADAPTATION OF BUSINESS ACQUISITION PRACTICES

Subtitle A—Adaptation of Business Management Practices

- Sec. 201. Chief Acquisition Officers.
- Sec. 202. Chief Acquisition Officers Council.
- Sec. 203. Statutory and regulatory review.

Subtitle B—Other Acquisition Improvements

- Sec. 211. Ensuring efficient payment.
- Sec. 212. Extension of authority to carry out franchise fund programs.
- Sec. 213. Agency acquisition protests.
- Sec. 214. Improvements in contracting for architectural and engineering services.
- Sec. 215. Authorization of telecommuting for Federal contractors.

TITLE III—CONTRACT INCENTIVES

- Sec. 301. Share-in-savings initiatives.
- Sec. 302. Incentives for contract efficiency.

TITLE IV—ACQUISITIONS OF COMMERCIAL ITEMS

- Sec. 401. Preference for performance-based contracting.
- Sec. 402. Authorization of additional commercial contract types.
- Sec. 403. Clarification of commercial services definition.
- Sec. 404. Designation of commercial business entities.

TITLE V—OTHER MATTERS

- Sec. 501. Authority to enter into certain procurement-related transactions and to carry out certain prototype projects.
- Sec. 502. Amendments relating to Federal emergency procurement flexibility.
- Sec. 503. Authority to make inflation adjustments to simplified acquisition threshold.
- Sec. 504. Technical corrections related to duplicative amendments.



1 **SEC. 2. EXECUTIVE AGENCY DEFINED.**

2 In this Act, the term “executive agency” has the
3 meaning given that term in section 4(1) of the Office of
4 Federal Procurement Policy Act (41 U.S.C. 403(1)), un-
5 less specifically stated otherwise.

6 **TITLE I—ACQUISITION**
7 **WORKFORCE AND TRAINING**

8 **SEC. 101. DEFINITION OF ACQUISITION.**

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

12 “(16) The term ‘acquisition’—

13 “(A) means the process of acquiring, with
14 appropriated funds, by contract for purchase or
15 lease, property or services (including construc-
16 tion) that support the missions and goals of an
17 executive agency, from the point at which the
18 requirements of the executive agency are estab-
19 lished in consultation with the chief acquisition
20 officer of the executive agency; and

21 “(B) includes—

22 “(i) the process of acquiring property
23 or services that are already in existence, or
24 that must be created, developed, dem-
25 onstrated, and evaluated;



1 “(ii) the description of requirements
2 to satisfy agency needs;

3 “(iii) solicitation and selection of
4 sources;

5 “(iv) award of contracts;

6 “(v) contract performance;

7 “(vi) contract financing;

8 “(vii) management and measurement
9 of contract performance through final de-
10 livery and payment; and

11 “(viii) technical and management
12 functions directly related to the process of
13 fulfilling agency requirements by con-
14 tract.”.

15 **SEC. 102. ACQUISITION WORKFORCE TRAINING FUND.**

16 (a) **PURPOSES.**—The purposes of this section are to
17 ensure that the Federal acquisition workforce—

18 (1) adapts to fundamental changes in the na-
19 ture of Federal Government acquisition of property
20 and services associated with the changing roles of
21 the Federal Government; and

22 (2) acquires new skills and a new perspective to
23 enable it to contribute effectively in the changing en-
24 vironment of the 21st century.

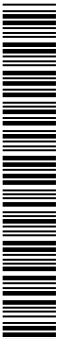


1 (b) ESTABLISHMENT OF FUND.—Section 37 of the
2 Office of Federal Procurement Policy Act (41 U.S.C. 433)
3 is amended by adding at the end of subsection (h) the
4 following new paragraph:

5 “(3) ACQUISITION WORKFORCE TRAINING
6 FUND.—(A) The Administrator of General Services
7 shall establish an acquisition workforce training
8 fund. The Administrator shall manage the fund
9 through the Federal Acquisition Institute to support
10 the training of the acquisition workforce of the execu-
11 tive agencies other than the Department of De-
12 fense. The Administrator shall consult with the Ad-
13 ministrator for Federal Procurement Policy in man-
14 aging the fund.

15 “(B) There shall be credited to the acquisition
16 workforce training fund 5 percent of the fees col-
17 lected by executive agencies under the following con-
18 tracts:

19 “(i) Governmentwide task and delivery-
20 order contracts entered into under sections
21 2304a and 2304b of title 10, United States
22 Code, or sections 303H and 303I of the Federal
23 Property and Administrative Services Act of
24 1949 (41 U.S.C. 253h and 253i).



1 “(ii) Governmentwide contracts for the ac-
2 quisition of information technology as defined
3 in section 11101 of title 40, United States
4 Code, and multiagency acquisition contracts for
5 such technology authorized by section 11314 of
6 such title.

7 “(iii) Multiple-award schedule contracts
8 entered into by the Administrator of General
9 Services.

10 “(C) The head of an executive agency that ad-
11 ministers a contract described in subparagraph (B)
12 shall remit to the General Services Administration
13 the amount required to be credited to the fund with
14 respect to such contract at the end of each quarter
15 of the fiscal year.

16 “(D) The Administrator of General Services,
17 through the Office of Federal Acquisition Policy,
18 shall ensure that funds collected for training under
19 this section are not used for any purpose other than
20 the purpose specified in subparagraph (A).

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

24 “(F) Amounts credited to the fund shall remain
25 available until expended.”.



1 **SEC. 103. GOVERNMENT-INDUSTRY EXCHANGE PROGRAM.**

2 (a) IN GENERAL.—Subpart B of part III of title 5,
3 United States Code, is amended by adding at the end the
4 following:

5 **“CHAPTER 38—ACQUISITION**
6 **PROFESSIONAL EXCHANGE PROGRAM**

“Sec.

“3801. Definitions.

“3802. General provisions.

“3803. Assignment of employees to private sector organizations.

“3804. Assignment of employees from private sector organizations.

“3805. Reporting requirement.

“3806. Regulations.

7 **“§ 3801. Definitions**

8 “For purposes of this chapter—

9 “(1) the term ‘agency’—

10 “(A) subject to subparagraph (B), means
11 an executive agency; and

12 “(B) does not include—

13 “(i) the General Accounting Office;

14 “(ii) an Office of Inspector General of
15 an establishment or a designated Federal
16 entity established under the Inspector Gen-
17 eral Act of 1978; and

18 “(iii) the Defense Contract Audit
19 Agency referred to in section 2313(b) of
20 title 10; and

21 “(2) the term ‘detail’ means—



1 “(A) the assignment or loan of an em-
2 ployee of an agency to a private sector organi-
3 zation without a change of position from the
4 agency that employs the individual, or

5 “(B) the assignment or loan of an em-
6 ployee of a private sector organization to an
7 agency without a change of position from the
8 private sector organization that employs the in-
9 dividual,

10 whichever is appropriate in the context in which
11 such term is used.

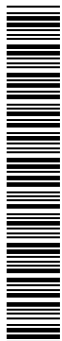
12 **“§ 3802. General provisions**

13 “(a) ASSIGNMENT AUTHORITY.—On request from or
14 with the agreement of a private sector organization, and
15 with the consent of the employee concerned, the head of
16 an agency may arrange for the assignment of an employee
17 of the agency to a private sector organization or an em-
18 ployee of a private sector organization to the agency. An
19 eligible employee is an individual who—

20 “(1) works in the field of Federal acquisition or
21 acquisition management;

22 “(2) is considered an exceptional performer by
23 the individual’s current employer; and

24 “(3) is expected to assume increased acquisition
25 management responsibilities in the future.



1 An employee of an agency shall be eligible to participate
2 in this program only if the employee is employed at the
3 GS-11 level or above (or equivalent) and is serving under
4 a career or career-conditional appointment or an appoint-
5 ment of equivalent tenure in the excepted service.

6 “(b) AGREEMENTS.—Each agency that exercises its
7 authority under this chapter shall provide for a written
8 agreement between the agency and the employee con-
9 cerned regarding the terms and conditions of the employ-
10 ee’s assignment. In the case of an employee of the agency,
11 the agreement shall—

12 “(1) require the employee to serve in the civil
13 service, upon completion of the assignment, for a pe-
14 riod equal to the length of the assignment; and

15 “(2) provide that, in the event the employee
16 fails to carry out the agreement (except for good and
17 sufficient reason, as determined by the head of the
18 agency from which assigned) the employee shall be
19 liable to the United States for payment of all ex-
20 penses of the assignment.

21 An amount under paragraph (2) shall be treated as a debt
22 due the United States.

23 “(c) TERMINATION.—Assignments may be termi-
24 nated by the agency or private sector organization con-
25 cerned for any reason at any time.



1 “(d) DURATION.—Assignments under this chapter
2 shall be for a period of between 6 months and 1 year,
3 and may be extended in 3-month increments for a total
4 of not more than 1 additional year, except that no assign-
5 ment under this chapter may commence after the end of
6 the 5-year period beginning on the date of the enactment
7 of this chapter.

8 “(e) ASSISTANCE.—The Administrator for Federal
9 Procurement Policy, by agreement with the Office of Per-
10 sonnel Management, may assist in the administration of
11 this chapter, including by maintaining lists of potential
12 candidates for assignment under this chapter, establishing
13 mentoring relationships for the benefit of individuals who
14 are given assignments under this chapter, and publicizing
15 the program.

16 “(f) CONSIDERATIONS.—In exercising any authority
17 under this chapter, an agency shall take into
18 consideration—

19 “(1) the need to ensure that small business con-
20 cerns are appropriately represented with respect to
21 the assignments described in sections 3803 and
22 3804, respectively; and

23 “(2) how assignments described in section 3803
24 might best be used to help meet the needs of the



1 agency for the training of employees in acquisition
2 management.

3 **“§ 3803. Assignment of employees to private sector or-**
4 **ganizations**

5 “(a) IN GENERAL.—An employee of an agency as-
6 signed to a private sector organization under this chapter
7 is deemed, during the period of the assignment, to be on
8 detail to a regular work assignment in his agency.

9 “(b) COORDINATION WITH CHAPTER 81.—Notwith-
10 standing any other provision of law, an employee of an
11 agency assigned to a private sector organization under this
12 chapter is entitled to retain coverage, rights, and benefits
13 under subchapter I of chapter 81, and employment during
14 the assignment is deemed employment by the United
15 States, except that, if the employee or the employee’s de-
16 pendants receive from the private sector organization any
17 payment under an insurance policy for which the premium
18 is wholly paid by the private sector organization, or other
19 benefit of any kind on account of the same injury or death,
20 then, the amount of such payment or benefit shall be cred-
21 ited against any compensation otherwise payable under
22 subchapter I of chapter 81.

23 “(c) REIMBURSEMENTS.—The assignment of an em-
24 ployee to a private sector organization under this chapter
25 may be made with or without reimbursement by the pri-



1 vate sector organization for the travel and transportation
2 expenses to or from the place of assignment, subject to
3 the same terms and conditions as apply with respect to
4 an employee of a Federal agency or a State or local gov-
5 ernment under section 3375, and for the pay, or a part
6 thereof, of the employee during assignment. Any reim-
7 bursements shall be credited to the appropriation of the
8 agency used for paying the travel and transportation ex-
9 penses or pay.

10 “(d) TORT LIABILITY; SUPERVISION.—The Federal
11 Tort Claims Act and any other Federal tort liability stat-
12 ute apply to an employee of an agency assigned to a pri-
13 vate sector organization under this chapter. The super-
14 vision of the duties of an employee of an agency so as-
15 signed to a private sector organization may be governed
16 by an agreement between the agency and the organization.

17 “(e) SMALL BUSINESS CONCERNS.—

18 “(1) IN GENERAL.—The head of each agency
19 shall take such actions as may be necessary to en-
20 sure that, of the assignments made under this chap-
21 ter from such agency to private sector organizations
22 in each year, at least 20 percent are to small busi-
23 ness concerns.

24 “(2) DEFINITIONS.—For purposes of this
25 subsection—



1 “(A) the term ‘small business concern’
2 means a business concern that satisfies the
3 definitions and standards specified by the Ad-
4 ministrator of the Small Business Administra-
5 tion under section 3(a)(2) of the Small Busi-
6 ness Act (as from time to time amended by the
7 Administrator);

8 “(B) the term ‘year’ refers to the 12-
9 month period beginning on the date of the en-
10 actment of this chapter, and each succeeding
11 12-month period in which any assignments
12 under this chapter may be made; and

13 “(C) the assignments ‘made’ in a year are
14 those commencing in such year.

15 “(3) REPORTING REQUIREMENT.—An agency
16 which fails to comply with paragraph (1) in a year
17 shall, within 90 days after the end of such year, sub-
18 mit a report to the Committees on Government Re-
19 form and Small Business of the House of Represent-
20 atives and the Committees on Governmental Affairs
21 and Small Business of the Senate. The report shall
22 include—

23 “(A) the total number of assignments
24 made under this chapter from such agency to
25 private sector organizations in the year;



1 “(B) of that total number, the number
2 (and percentage) made to small business con-
3 cerns; and

4 “(C) the reasons for the agency’s non-
5 compliance with paragraph (1).

6 “(4) EXCLUSION.—This subsection shall not
7 apply to an agency in any year in which it makes
8 fewer than 5 assignments under this chapter to pri-
9 vate sector organizations.

10 **“§ 3804. Assignment of employees from private sector**
11 **organizations**

12 “(a) IN GENERAL.—An employee of a private sector
13 organization assigned to an agency under this chapter is
14 deemed, during the period of the assignment, to be on de-
15 tail to such agency.

16 “(b) TERMS AND CONDITIONS.—An employee of a
17 private sector organization assigned to an agency under
18 this chapter—

19 “(1) may continue to receive pay and benefits
20 from the private sector organization from which he
21 is assigned;

22 “(2) is deemed, notwithstanding subsection (a),
23 to be an employee of the agency for the purposes
24 of—

25 “(A) chapter 73;



1 “(B) sections 201, 203, 205, 207, 208,
2 209, 603, 606, 607, 643, 654, 1905, and 1913
3 of title 18;

4 “(C) sections 1343, 1344, and 1349(b) of
5 title 31;

6 “(D) the Federal Tort Claims Act and any
7 other Federal tort liability statute;

8 “(E) the Ethics in Government Act of
9 1978;

10 “(F) section 1043 of the Internal Revenue
11 Code of 1986; and

12 “(G) section 27 of the Office of Federal
13 Procurement Policy Act;

14 “(3) may not have access to any trade secrets
15 or to any other nonpublic information which is of
16 commercial value to the private sector organization
17 from which he is assigned; and

18 “(4) is subject to such regulations as the Presi-
19 dent may prescribe.

20 The supervision of an employee of a private sector organi-
21 zation assigned to an agency under this chapter may be
22 governed by agreement between the agency and the private
23 sector organization concerned. Such an assignment may
24 be made with or without reimbursement by the agency for
25 the pay, or a part thereof, of the employee during the pe-



1 riod of assignment, or for any contribution of the private
2 sector organization to employee benefit systems.

3 “(c) COORDINATION WITH CHAPTER 81.—An em-
4 ployee of a private sector organization assigned to an
5 agency under this chapter who suffers disability or dies
6 as a result of personal injury sustained while performing
7 duties during the assignment shall be treated, for the pur-
8 pose of subchapter I of chapter 81, as an employee as de-
9 fined by section 8101 who had sustained the injury in the
10 performance of duty, except that, if the employee or the
11 employee’s dependents receive from the private sector or-
12 ganization any payment under an insurance policy for
13 which the premium is wholly paid by the private sector
14 organization, or other benefit of any kind on account of
15 the same injury or death, then, the amount of such pay-
16 ment or benefit shall be credited against any compensation
17 otherwise payable under subchapter I of chapter 81.

18 “(d) PROHIBITION AGAINST CHARGING CERTAIN
19 COSTS TO THE FEDERAL GOVERNMENT.—A private sec-
20 tor organization may not charge the Federal Government,
21 as direct or indirect costs under a Federal contract, the
22 costs of pay or benefits paid by the organization to an
23 employee assigned to an agency under this chapter for the
24 period of the assignment.



1 **“§ 3805. Reporting requirement**

2 “(a) IN GENERAL.—The Office of Personnel Manage-
3 ment shall, not later than April 30 and October 31 of each
4 year, prepare and submit to the Committee on Govern-
5 ment Reform of the House of Representatives and the
6 Committee on Governmental Affairs of the Senate a semi-
7 annual report summarizing the operation of this chapter
8 during the immediately preceding 6-month period ending
9 on March 31 and September 30, respectively.

10 “(b) CONTENT.—Each report shall include, with re-
11 spect to the 6-month period to which such report relates—

12 “(1) the total number of individuals assigned
13 to, and the total number of individuals assigned
14 from, each agency during such period;

15 “(2) a brief description of each assignment in-
16 cluded under paragraph (1), including—

17 “(A) the name of the assigned individual,
18 as well as the private sector organization and
19 the agency (including the specific bureau or
20 other agency component) to or from which such
21 individual was assigned;

22 “(B) the respective positions to and from
23 which the individual was assigned, including the
24 duties and responsibilities and the pay grade or
25 level associated with each; and



1 “(C) the duration and objectives of the in-
2 dividual’s assignment; and

3 “(3) such other information as the Office con-
4 siders appropriate.

5 “(c) PUBLICATION.—A copy of each report submitted
6 under subsection (a)—

7 “(1) shall be published in the Federal Register;
8 and

9 “(2) shall be made publicly available on the
10 Internet.

11 “(d) AGENCY COOPERATION.—On request of the Of-
12 fice, agencies shall furnish such information and reports
13 as the Office may require in order to carry out this sec-
14 tion.

15 **“§ 3806. Regulations**

16 “The Director of the Office of Personnel Manage-
17 ment shall prescribe regulations for the administration of
18 this chapter.”.

19 (b) REPORT.—Not later than 4 years after the date
20 of the enactment of this Act, the General Accounting Of-
21 fice shall prepare and submit to the Committee on Govern-
22 ment Reform of the House of Representatives and the
23 Committee on Governmental Affairs of the Senate a report
24 on the operation of chapter 38 of title 5, United States



1 Code (as added by this section). Such report shall
2 include—

3 (1) an evaluation of the effectiveness of the pro-
4 gram established by such chapter; and

5 (2) a recommendation as to whether such pro-
6 gram should be continued (with or without modifica-
7 tion) or allowed to lapse.

8 (c) CLERICAL AMENDMENT.—The table of contents
9 at the beginning of part III of title 5, United States Code,
10 is amended by inserting after the item relating to chapter
11 37 the following:

“38. Acquisition Professional Exchange Program 3801”.

12 (d) ETHICS PROVISIONS.—

13 (1) ONE-YEAR RESTRICTION ON CERTAIN COM-
14 MUNICATIONS.—Section 207(c)(2)(A)(v) of title 18,
15 United States Code, is amended by inserting “or
16 38” after “chapter 37”.

17 (2) DISCLOSURE OF CONFIDENTIAL INFORMA-
18 TION.—Section 1905 of title 18, United States Code,
19 is amended by inserting “or 38” after “chapter 37”.

20 (3) CONTRACT ADVICE.—Section 207(l) of title
21 18, United States Code, is amended—

22 (A) in the subsection heading, by striking
23 “DETAILS.—” and inserting “DETAILEES.—”;
24 and



1 (B) by inserting “or 38” after “chapter
2 37”.

3 (4) RESTRICTION ON DISCLOSURE OF PRO-
4 CUREMENT INFORMATION.—Section 27 of the Office
5 of Federal Procurement Policy Act (41 U.S.C. 423)
6 is amended in the last sentence of subsection (a)(1)
7 by inserting “or 38” after “chapter 37”.

8 (e) TECHNICAL AND CONFORMING AMENDMENTS.—

9 (1) AMENDMENTS TO TITLE 5, UNITED
10 STATES CODE.—Title 5, United States Code, is
11 amended—

12 (A) in section 3111(d), by inserting “or 38”
13 after “chapter 37”;

14 (B) in section 7353(b)(4), by inserting “or 38”
15 after “chapter 37”.

16 (2) AMENDMENT TO TITLE 18, UNITED STATES
17 CODE.—Section 209(g) of title 18, United States
18 Code, is amended—

19 (A) in paragraph (1), by inserting “or 38” after
20 “chapter 37”; and

21 (B) by amending paragraph (2) to read as fol-
22 lows:

23 “(2) For purposes of this subsection, the term
24 ‘agency’—



1 “(A) with respect to assignments under chapter
2 37 of title 5, means an agency (as defined in section
3 3701 of title 5) and the Office of the Chief Tech-
4 nology Officer of the District of Columbia; and

5 “(B) with respect to assignments under chapter
6 38 of title 5, means an agency (as defined by section
7 3801 of title 5).”.

8 (3) ELIGIBILITY FOR THRIFT SAVINGS PLAN.—
9 Section 125(c)(1)(D) of Public Law 100–238 (101
10 Stat. 1757; 5 U.S.C. 8432 note) is amended by in-
11 serting “or 38” after “chapter 37”.

12 **SEC. 104. ACQUISITION WORKFORCE RECRUITMENT AND**
13 **RETENTION PROGRAM.**

14 (a) AUTHORITY TO CARRY OUT PROGRAM.—For
15 purposes of sections 3304, 5333, and 5753 of title 5,
16 United States Code, the head of a department or agency
17 of the United States (including the Secretary of Defense)
18 may determine that certain Federal acquisition positions
19 are “shortage category” positions in order to recruit and
20 appoint directly to positions of employment in the depart-
21 ment or agency highly qualified persons, such as any per-
22 son who—

23 (1) holds a bachelor’s degree from an accredited
24 institution of higher education;



1 (2) holds, from an accredited law school or an
2 accredited institution of higher education—

3 (A) a law degree; or

4 (B) a masters or equivalent degree in busi-
5 ness administration, public administration, or
6 systems engineering; or

7 (3) has significant experience with commercial
8 acquisition practices, terms, and conditions.

9 (b) REQUIREMENTS.—The exercise of authority to
10 take a personnel action under this section shall be subject
11 to policies prescribed by the Office of Personnel Manage-
12 ment that govern direct recruitment, including policies re-
13 quiring appointment of a preference eligible who satisfies
14 the qualification requirements.

15 (c) TERMINATION OF AUTHORITY.—The head of a
16 department or agency may not appoint a person to a posi-
17 tion of employment under this section after September 30,
18 2007.

19 (d) REPORT.—Not later than March 31, 2007, the
20 Administrator for Federal Procurement Policy shall sub-
21 mit to Congress a report on the implementation of this
22 section. The report shall include—

23 (1) the Administrator's assessment of the effi-
24 cacy of the exercise of the authority provided in this



1 section in attracting employees with unusually high
2 qualifications to the acquisition workforce; and

3 (2) any recommendations considered appro-
4 priate by the Administrator on whether the author-
5 ity to carry out the program should be extended.

6 **SEC. 105. ARCHITECTURAL AND ENGINEERING ACQUISSI-**
7 **TION WORKFORCE.**

8 The Administrator for Federal Procurement Policy,
9 in consultation with the Secretary of Defense, the Admin-
10 istrator of General Services, and the Director of the Office
11 of Personnel Management, shall develop and implement a
12 plan to ensure that the Federal Government maintains the
13 necessary capability with respect to the acquisition of ar-
14 chitectural and engineering services to—

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

18 (2) establish priorities and programs (including
19 acquisition plans);

20 (3) establish professional standards;

21 (4) develop scopes of work; and

22 (5) award and administer contracts for such
23 services.



1 **TITLE II—ADAPTATION OF BUSI-**
2 **NESS ACQUISITION PRAC-**
3 **TICES**

4 **Subtitle A—Adaptation of Business**
5 **Management Practices**

6 **SEC. 201. CHIEF ACQUISITION OFFICERS.**

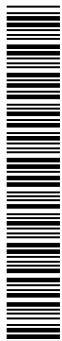
7 (a) APPOINTMENT OF CHIEF ACQUISITION OFFI-
8 CERS.—(1) Section 16 of the Office of Federal Procure-
9 ment Policy Act (41 U.S.C. 414) is amended to read as
10 follows:

11 **“SEC. 16. AGENCY CHIEF ACQUISITION OFFICERS.**

12 “(a) ESTABLISHMENT OF AGENCY CHIEF ACQUI-
13 TION OFFICERS.—The head of each executive agency
14 (other than the Department of Defense) shall appoint or
15 designate a non-career employee as Chief Acquisition Offi-
16 cer for the agency, who shall—

17 “(1) have acquisition management as that offi-
18 cial’s primary duty; and

19 “(2) advise and assist the head of the executive
20 agency and other agency officials to ensure that the
21 mission of the executive agency is achieved through
22 the management of the agency’s acquisition activi-
23 ties.



1 “(b) AUTHORITY AND FUNCTIONS OF AGENCY CHIEF
2 ACQUISITION OFFICERS.—The functions of each Chief Ac-
3 quisition Officer shall include—

4 “(1) monitoring the performance of acquisition
5 activities and acquisition programs of the executive
6 agency, evaluating the performance of those pro-
7 grams on the basis of applicable performance meas-
8 urements, and advising the head of the executive
9 agency regarding the appropriate business strategy
10 to achieve the mission of the executive agency;

11 “(2) increasing the use of full and open com-
12 petition in the acquisition of property and services
13 by the executive agency by establishing policies, pro-
14 cedures, and practices that ensure that the executive
15 agency receives a sufficient number of sealed bids or
16 competitive proposals from responsible sources to
17 fulfill the Government’s requirements (including per-
18 formance and delivery schedules) at the best value
19 considering the nature of the property or service
20 procured;

21 “(3) making acquisition decisions consistent
22 with all applicable laws and establishing clear lines
23 of authority, accountability, and responsibility for
24 acquisition decisionmaking within the executive
25 agency;



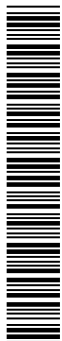
1 “(4) managing the direction of acquisition poli-
2 icy for the executive agency, including implementa-
3 tion of the unique acquisition policies, regulations,
4 and standards of the executive agency;

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

9 “(6) as part of the strategic planning and per-
10 formance evaluation process required under section
11 306 of title 5, United States Code, and sections
12 1105(a)(28), 1115, 1116, and 9703 of title 31,
13 United States Code—

14 “(A) assessing the requirements estab-
15 lished for agency personnel regarding knowl-
16 edge and skill in acquisition resources manage-
17 ment and the adequacy of such requirements
18 for facilitating the achievement of the perform-
19 ance goals established for acquisition manage-
20 ment;

21 “(B) in order to rectify any deficiency in
22 meeting such requirements, developing strate-
23 gies and specific plans for hiring, training, and
24 professional development; and



1 “(C) reporting to the head of the executive
2 agency on the progress made in improving ac-
3 quisition management capability.”.

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

“Sec. 16. Chief Acquisition Officers.”.

7 (b) REFERENCES TO SENIOR PROCUREMENT EXECU-
8 TIVE.—(1) The Office of Federal Procurement Policy Act
9 (41 U.S.C. 403 et seq.), title III of the Federal Property
10 and Administrative Services Act of 1949, and title 10,
11 United States Code, are each amended by striking “senior
12 procurement executive” and “senior procurement execu-
13 tives” each place such terms appear and inserting “Chief
14 Acquisition Officer” and “Chief Acquisition Officers”, re-
15 spectively.

16 (2) Any reference to a senior procurement executive
17 of a department or agency of the United States in any
18 other provision of law or regulation, document, or record
19 of the United States shall be deemed to be a reference
20 to the Chief Acquisition Officer of the department or agen-
21 cy.

22 (c) TECHNICAL CORRECTION.—Section 1115(a) of
23 title 31, United States Code, is amended by striking “sec-
24 tion 1105(a)(29)” and inserting “section 1105(a)(28)”.



1 **SEC. 202. CHIEF ACQUISITION OFFICERS COUNCIL.**

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

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

7 “(a) ESTABLISHMENT.—There is established in the
8 executive branch a Chief Acquisition Officers Council.

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

11 “(1) The Deputy Director for Management of
12 the Office of Management and Budget, who shall act
13 as Chairman of the Council.

14 “(2) The Administrator for Federal Procure-
15 ment Policy.

16 “(3) The chief acquisition officer of each execu-
17 tive agency.

18 “(4) The Under Secretary of Defense for Ac-
19 quisition, Technology, and Logistics.

20 “(5) Any other officer or employee of the
21 United States designated by the Chairman.

22 “(c) LEADERSHIP; SUPPORT.—(1) The Adminis-
23 trator for Federal Procurement Policy shall lead the ac-
24 tivities of the Council on behalf of the Deputy Director
25 for Management.



1 “(2)(A) The Vice Chairman of the Council shall be
2 selected by the Council from among its members.

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

5 “(3) The Administrator of General Services shall pro-
6 vide administrative and other support for the Council.

7 “(d) PRINCIPAL FORUM.—The Council is designated
8 the principal interagency forum for monitoring and im-
9 proving the Federal acquisition system.

10 “(e) FUNCTIONS.—The Council shall perform func-
11 tions that include the following:

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

15 “(2) Share experiences, ideas, best practices,
16 and innovative approaches related to Federal acqui-
17 sition.

18 “(3) Assist the Administrator in the identifica-
19 tion, development, and coordination of multiagency
20 projects and other innovative initiatives to improve
21 Federal acquisition.

22 “(4) Promote effective business practices that
23 ensure the timely delivery of best value products to
24 the Federal Government and achieve appropriate
25 public policy objectives.



1 “(5) Further integrity, fairness, competition,
2 openness, and efficiency in the Federal acquisition
3 system.

4 “(6) Work with the Office of Personnel Man-
5 agement to assess and address the hiring, training,
6 and professional development needs of the Federal
7 Government related to acquisition.

8 “(7) Work with the Administrator and the Fed-
9 eral Acquisition Regulatory Council to promote the
10 business practices referred to in paragraph (4) and
11 other results of the functions carried out under this
12 subsection.”.

13 (b) CLERICAL AMENDMENT.—The table of contents
14 in section 1(b) of such Act is amended by inserting after
15 the item relating to section 16 the following new item:

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

16 **SEC. 203. STATUTORY AND REGULATORY REVIEW.**

17 (a) ESTABLISHMENT.—Not later than 90 days after
18 the date of the enactment of this Act, the Administrator
19 for Federal Procurement Policy shall establish an advisory
20 panel to review laws and regulations that hinder the use
21 of commercial practices, performance-based contracting,
22 the performance of acquisition functions across agency
23 lines of responsibility, and the use of Governmentwide con-
24 tracts.



1 (b) MEMBERSHIP.—The panel shall be composed of
2 at least nine individuals who are recognized experts in ac-
3 quisition law and Government acquisition policy. In mak-
4 ing appointments to the panel, the Administrator shall—

5 (1) consult with the Secretary of Defense, the
6 Administrator of General Services, the Committees
7 on Armed Services and Government Reform of the
8 House of Representatives, and the Committees on
9 Armed Services and Governmental Affairs of the
10 Senate, and

11 (2) ensure that the members of the panel reflect
12 the diverse experiences in the public and private sec-
13 tors.

14 (c) DUTIES.—The panel shall—

15 (1) review all Federal acquisition laws and reg-
16 ulations with a view toward ensuring increased use
17 of commercial practices and performance-based con-
18 tracting; and

19 (2) make any recommendations for the repeal
20 or amendment of such laws or regulations that are
21 considered necessary as a result of such review—

22 (A) to eliminate any provisions in such
23 laws or regulations that are unnecessary for the
24 effective, efficient, and fair award and adminis-



1 tration of contracts for the acquisition by the
2 Federal Government of goods and services;

3 (B) to ensure the continuing financial and
4 ethical integrity of acquisitions by the Federal
5 Government; and

6 (C) to protect the best interests of the
7 Federal Government.

8 (d) REPORT.—Not later than one year after the es-
9 tablishment of the panel, the panel shall submit to the Ad-
10 ministrators and to the Committees on Armed Services and
11 Government Reform of the House of Representatives and
12 the Committees on Armed Services and Governmental Af-
13 fairs of the Senate a report containing a detailed state-
14 ment of the findings, conclusions, and recommendations
15 of the panel.

16 **Subtitle B—Other Acquisition**
17 **Improvements**

18 **SEC. 211. ENSURING EFFICIENT PAYMENT.**

19 (a) REVISION TO FAR.—Not later than 180 days
20 after the date of the enactment of this Act, the Federal
21 Acquisition Regulation under sections 6 and 25 of the Of-
22 fice of Federal Procurement Policy Act shall be revised
23 to provide the following:

24 (1) Authority to permit, to the maximum extent
25 practicable, Federal contractors for services to sub-



1 mit to the Federal Government invoices for payment
2 either—

3 (A) biweekly through electronic means; or

4 (B) monthly.

5 (2) A requirement that for any such invoice
6 submitted through electronic means, the date of the
7 invoice shall be the date a proper invoice is received
8 by the Federal Government.

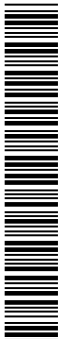
9 (3) A requirement that the Federal Government
10 accept or reject such an invoice submitted through
11 electronic means not later than 7 working days after
12 the date of the invoice.

13 (4) A requirement that all accepted invoices be
14 paid as soon as possible, but in no event later than
15 30 days after the date of the invoice.

16 (b) DEFINITIONS.—In this section:

17 (1) The term “payment” means an invoice pay-
18 ment as defined in section 32.001 of the Federal Ac-
19 quisition Regulation (48 C.F.R. 32.001), as in effect
20 on May 1, 2002.

21 (2) The term “proper invoice” has the meaning
22 given that term in section 3901(a)(3) of title 31,
23 United States Code.



1 **SEC. 212. EXTENSION OF AUTHORITY TO CARRY OUT FRAN-**
2 **CHISE FUND PROGRAMS.**

3 Section 403(f) of the Federal Financial Management
4 Act of 1994 (Public Law 103–356; 31 U.S.C. 501 note)
5 is amended by striking “October 1, 2001” and inserting
6 “October 1, 2006”.

7 **SEC. 213. AGENCY ACQUISITION PROTESTS.**

8 (a) DEFENSE CONTRACTS.—(1) Chapter 137 of title
9 10, United States Code, is amended by inserting after sec-
10 tion 2305a the following new section:

11 **“§ 2305b. Protests**

12 “(a) IN GENERAL.—An interested party may protest
13 an acquisition of supplies or services by an agency based
14 on an alleged violation of an acquisition law or regulation,
15 and a decision regarding such alleged violation shall be
16 made by the agency in accordance with this section.

17 “(b) RESTRICTION ON CONTRACT AWARD PENDING
18 DECISION.—(1) Except as provided in paragraph (2), a
19 contract may not be awarded by an agency after a protest
20 concerning the acquisition has been submitted under this
21 section and while the protest is pending.

22 “(2) The head of the acquisition activity responsible
23 for the award of the contract may authorize the award
24 of a contract, notwithstanding pending protest under this
25 section, upon making a written finding that urgent and



1 compelling circumstances do not allow for waiting for a
2 decision on the protest.

3 “(c) RESTRICTION ON CONTRACT PERFORMANCE
4 PENDING DECISION.—(1) Except as provided in para-
5 graph (2), performance of a contract may not be author-
6 ized (and performance of the contract shall cease if per-
7 formance has already begun) in any case in which a pro-
8 test of the contract award is submitted under this section
9 before the later of—

10 “(A) the date that is 10 days after the date of
11 contract award; or

12 “(B) the date that is five days after an agency
13 debriefing date offered to an unsuccessful offeror for
14 any debriefing that is requested and, when re-
15 quested, is required, under section 2305(b)(5) of
16 this title.

17 “(2) The head of the acquisition activity responsible
18 for the award of a contract may authorize performance
19 of the contract notwithstanding a pending protest under
20 this section upon making a written finding that urgent
21 and compelling circumstances do not allow for waiting for
22 a decision on the protest.

23 “(d) DEADLINE FOR DECISION.—The head of an
24 agency shall issue a decision on a protest under this sec-
25 tion not later than the date that is 20 working days after



1 the date on which the protest is submitted to such head
2 of an agency.

3 “(e) CONSTRUCTION.—Nothing in this section shall
4 affect the right of an interested party to file a protest with
5 the Comptroller General under subchapter V of chapter
6 35 of title 31 or in the United States Court of Federal
7 Claims.

8 “(f) DEFINITIONS.—In this section, the terms ‘pro-
9 test’ and ‘interested party’ have the meanings given such
10 terms in section 3551 of title 31.”.

11 (2) The table of sections at the beginning of such
12 chapter is amended by inserting after the item relating
13 to section 2305a the following new item:

“2305b. Protests.”.

14 (b) OTHER AGENCIES.—(1) Title III of the Federal
15 Property and Administrative Services Act of 1949 is
16 amended by inserting after section 303M (41 U.S.C.
17 253m) the following new section:

18 **“SEC. 303N. PROTESTS.**

19 “(a) IN GENERAL.—An interested party may protest
20 an acquisition of supplies or services by an executive agen-
21 cy based on an alleged violation of an acquisition law or
22 regulation, and a decision regarding such alleged violation
23 shall be made by the agency in accordance with this sec-
24 tion.



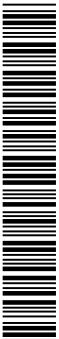
1 “(b) RESTRICTION ON CONTRACT AWARD PENDING
2 DECISION.—(1) Except as provided in paragraph (2), a
3 contract may not be awarded by an agency after a protest
4 concerning the acquisition has been submitted under this
5 section and while the protest is pending.

6 “(2) The head of the acquisition activity responsible
7 for the award of a contract may authorize the award of
8 the contract, notwithstanding a pending protest under this
9 section, upon making a written finding that urgent and
10 compelling circumstances do not allow for waiting for a
11 decision on the protest.

12 “(c) RESTRICTION ON CONTRACT PERFORMANCE
13 PENDING DECISION.—(1) Except as provided in para-
14 graph (2), performance of a contract may not be author-
15 ized (and performance of the contract shall cease if per-
16 formance has already begun) in any case in which a pro-
17 test of the contract award is submitted under this section
18 before the later of—

19 “(A) the date that is 10 days after the date of
20 contract award; or

21 “(B) the date that is five days after an agency
22 debriefing date offered to an unsuccessful offeror for
23 any debriefing that is requested and, when re-
24 quested, is required, under section 303B(e) of this
25 title.



1 “(2) The head of the acquisition activity responsible
2 for the award of a contract may authorize performance
3 of the contract notwithstanding a pending protest under
4 this section upon making a written finding that urgent
5 and compelling circumstances do not allow for waiting for
6 a decision on the protest.

7 “(d) DEADLINE FOR DECISION.—The head of an ex-
8 ecutive agency shall issue a decision on a protest under
9 this section not later than the date that is 20 working
10 days after the date on which the protest is submitted to
11 the executive agency.

12 “(e) CONSTRUCTION.—Nothing in this section shall
13 affect the right of an interested party to file a protest with
14 the Comptroller General under subchapter V of chapter
15 35 of title 31, United States Code, or in the United States
16 Court of Federal Claims.

17 “(f) DEFINITIONS.—In this section, the terms ‘pro-
18 test’ and ‘interested party’ have the meanings given such
19 terms in section 3551 of title 31, United States Code.”.

20 (2) The table of contents in section 1(b) of such Act
21 is amended by inserting after the item relating to section
22 303M the following new item:

“303N. Protests.”.

23 “(c) CONFORMING AMENDMENT.—Section 3553(d)(4)
24 of title 31, United States Code, is amended—



1 (1) in subparagraph (A), by striking “or” at
2 the end;

3 (2) by striking the period at the end of sub-
4 paragraph (B) and inserting “; or”; and

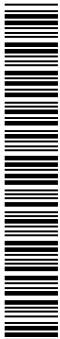
5 (3) by adding at the end the following new sub-
6 paragraph:

7 “(C) in the case of a protest of the same matter
8 regarding such contract that is submitted under sec-
9 tion 2305b of title 10 or section 303N of the Fed-
10 eral Property and Administrative Services Act of
11 1949, the date that is 5 days after the date on
12 which a decision on that protest is issued.”.

13 **SEC. 214. IMPROVEMENTS IN CONTRACTING FOR ARCHI-
14 TECTURAL AND ENGINEERING SERVICES.**

15 (a) CLARIFICATION OF DEFINITION OF SURVEYING
16 AND MAPPING.—(1) Section 1102 of title 40, United
17 States Code, is amended by adding at the end the fol-
18 lowing new paragraph:

19 “(4) SURVEYING AND MAPPING.—The term
20 ‘surveying and mapping’ means services performed
21 by professionals such as surveyors,
22 photogrammetrists, hydrographers, geodesists, or
23 cartographers in the collection, storage, retrieval, or
24 dissemination of graphical or digital data to depict
25 natural or manmade physical features, phenomena,



1 or boundaries of the earth and any information re-
2 lated to such data, including any such data that
3 comprises a survey, map, chart, geographic informa-
4 tion system, remotely sensed image or data, or an
5 aerial photograph.”.

6 (2) The Federal Acquisition Regulation shall be re-
7 vised to include the definition added by subsection (a) of
8 this section.

9 (b) TITLE 10.—Section 2855(b) of title 10, United
10 States Code, is amended—

11 (1) in paragraph (2), by striking “\$85,000”
12 and inserting “\$300,000”; and

13 (2) by adding at the end the following new
14 paragraph:

15 “(4) The selection and competition require-
16 ments described in subsection (a) shall apply to any
17 contract for architectural and engineering services
18 (including surveying and mapping services) that is
19 entered into by the head of an agency (as such term
20 is defined in section 2302 of this title).”.

21 (c) ARCHITECTURAL AND ENGINEERING SERV-
22 ICES.—Architectural and engineering services (as defined
23 in section 1102 of title 40, United States Code) shall not
24 be offered under multiple-award schedule contracts en-
25 tered into by the Administrator of General Services or



1 under Governmentwide task and delivery-order contracts
2 entered into under sections 2304a and 2304b of title 10,
3 United States Code, or sections 303H and 303I of the
4 Federal Property and Administrative Services Act of 1949
5 (41 U.S.C. 253h and 253i) unless such services—

6 (1) are performed under the direct supervision
7 of a professional engineer licensed in a State; and

8 (2) are awarded in accordance with the selec-
9 tion procedures set forth in chapter 11 of title 40,
10 United States Code.

11 **SEC. 215. AUTHORIZATION OF TELECOMMUTING FOR FED-**
12 **ERAL CONTRACTORS.**

13 (a) AMENDMENT TO THE FEDERAL ACQUISITION
14 REGULATION.—Not later than 180 days after the date of
15 the enactment of this Act, the Federal Acquisition Regu-
16 latory Council shall amend the Federal Acquisition Regu-
17 lation issued in accordance with sections 6 and 25 of the
18 Office of Federal Procurement Policy Act (41 U.S.C. 405
19 and 421) to permit telecommuting by employees of Fed-
20 eral Government contractors in the performance of con-
21 tracts entered into with executive agencies.

22 (b) CONTENT OF AMENDMENT.—The regulation
23 issued pursuant to subsection (a) shall, at a minimum,
24 provide that solicitations for the acquisition of property



1 or services may not set forth any requirement or evalua-
2 tion criteria that would—

3 (1) render an offeror ineligible to enter into a
4 contract on the basis of the inclusion of a plan of
5 the offeror to permit the offeror's employees to tele-
6 commute; or

7 (2) reduce the scoring of an offer on the basis
8 of the inclusion in the offer of a plan of the offeror
9 to permit the offeror's employees to telecommute,
10 unless the contracting officer concerned first—

11 (A) determines that the requirements of
12 the agency, including the security requirements
13 of the agency, cannot be met if the telecom-
14 muting is permitted; and

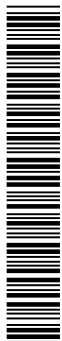
15 (B) documents in writing the basis for that
16 determination.

17 (c) GAO REPORT.—Not later than one year after the
18 date on which the regulation required by subsection (a)
19 is published in the Federal Register, the Comptroller Gen-
20 eral shall submit to Congress—

21 (1) an evaluation of—

22 (A) the conformance of the regulations
23 with law; and

24 (B) the compliance by executive agencies
25 with the regulations; and



1 (2) any recommendations that the Comptroller
2 General considers appropriate.

3 (d) DEFINITION.—In this section, the term “execu-
4 tive agency” has the meaning given that term in section
5 4 of the Office of Federal Procurement Policy Act (41
6 U.S.C. 403).

7 **TITLE III—CONTRACT** 8 **INCENTIVES**

9 **SEC. 301. SHARE-IN-SAVINGS INITIATIVES.**

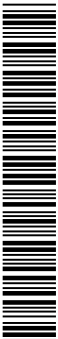
10 (a) DEFENSE CONTRACTS.—Section 2332 of title 10,
11 United States Code, is amended to read as follows:

12 **“§ 2332. Share-in-savings contracts**

13 “(a) AUTHORITY TO ENTER INTO SHARE-IN-SAV-
14 INGS CONTRACTS.—(1) The head of an agency may enter
15 into a share-in-savings contract in which the Government
16 awards a contract to improve mission-related or adminis-
17 trative processes or to accelerate the achievement of its
18 mission and share with the contractor in savings achieved
19 through contract performance.

20 “(2)(A) Except as provided in subparagraph (B), a
21 share-in-savings contract shall be awarded for a period of
22 not more than five years.

23 “(B) A share-in-savings contract may be awarded for
24 a period greater than five years, but not more than 10



1 years, if the head of the agency determines in writing prior
2 to award of the contract that—

3 “(i) the level of risk to be assumed and the in-
4 vestment to be undertaken by the contractor is likely
5 to inhibit the government from obtaining the needed
6 performance competitively at a fair and reasonable
7 price if the contract is limited in duration to a pe-
8 riod of five years or less; and

9 “(ii) the performance to be acquired is likely to
10 continue for a period of time sufficient to generate
11 reasonable benefit for the government.

12 “(3) Contracts awarded pursuant to the authority of
13 this section shall, to the maximum extent practicable, be
14 performance-based contracts that identify objective out-
15 comes and contain performance standards that will be
16 used to measure achievement and milestones that must
17 be met before payment is made.

18 “(4) Contracts awarded pursuant to the authority of
19 this section shall include a provision containing a quantifi-
20 able baseline that is to be the basis upon which a savings
21 share ratio is established that governs the amount of pay-
22 ment a contractor is to receive under the contract. Before
23 commencement of performance of such a contract, the
24 chief acquisition officer of the agency shall determine in



1 writing that the terms of the provision are quantifiable
2 and will likely yield value to the Government.

3 “(5)(A) The head of the agency may retain savings
4 realized through the use of a share-in-savings contract
5 under this section that are in excess of the total amount
6 of savings paid to the contractor under the contract. Ex-
7 cept as provided in subparagraph (B), savings shall be
8 credited to the appropriation or fund against which
9 charges were made to carry out the contract.

10 “(B) Amounts retained by the agency under this sub-
11 section shall—

12 “(i) without further appropriation, remain
13 available until expended; and

14 “(ii) be applied first to fund any contingent li-
15 abilities associated with share-in-savings procure-
16 ments that are not fully funded.

17 “(b) CANCELLATION AND TERMINATION.—(1) If
18 funds are not made available for the continuation of a
19 share-in-savings contract entered into under this section
20 in a subsequent fiscal year, the contract shall be canceled
21 or terminated. The costs of cancellation or termination
22 may be paid out of—

23 “(A) appropriations available for the perform-
24 ance of the contract;



1 “(B) appropriations available for acquisition of
2 the type of property or services procured under the
3 contract, and not otherwise obligated; or

4 “(C) funds subsequently appropriated for pay-
5 ments of costs of cancellation or termination, subject
6 to the limitations in paragraph (3).

7 “(2) The amount payable in the event of cancellation
8 or termination of a share-in-savings contract shall be ne-
9 gotiated with the contractor at the time the contract is
10 entered into.

11 “(3) The head of an agency may enter into share-
12 in-savings contracts under this section in any given fiscal
13 year even if funds are not made specifically available for
14 the full costs of cancellation or termination of the contract
15 if funds are available and sufficient to make payments
16 with respect to the first fiscal year of the contract and
17 the following conditions are met regarding the funding of
18 cancellation and termination liability:

19 “(A) The amount of unfunded contingent liabil-
20 ity for the contract does not exceed the lesser of—

21 “(i) 50 percent of the estimated costs of a
22 cancellation or termination; or

23 “(ii) \$10,000,000.

24 “(B) Unfunded contingent liability in excess of
25 \$5,000,000 has been approved by the Director of the



1 Office of Management and Budget or the Director's
2 designee.

3 “(c) DEFINITIONS.—In this section:

4 “(1) The term ‘contractor’ means a private en-
5 tity that enters into a contract with an agency.

6 “(2) The term ‘savings’ means—

7 “(A) monetary savings to an agency; or

8 “(B) savings in time or other benefits real-
9 ized by the agency, including enhanced reve-
10 nues.

11 “(3) The term ‘share-in-savings contract’ means
12 a contract under which—

13 “(A) a contractor provides solutions for—

14 “(i) improving the agency’s mission-
15 related or administrative processes; or

16 “(ii) accelerating the achievement of
17 agency missions; and

18 “(B) the head of the agency pays the con-
19 tractor an amount equal to a portion of the sav-
20 ings derived by the agency from—

21 “(i) any improvements in mission-re-
22 lated or administrative processes that re-
23 sult from implementation of the solution;
24 or



1 “(ii) acceleration of achievement of
2 agency missions.”.

3 (b) OTHER CONTRACTS.—Section 317 of the Federal
4 Property and Administrative Services Act of 1949 is
5 amended to read as follows:

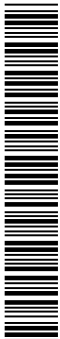
6 **“SEC. 317. SHARE-IN-SAVINGS CONTRACTS.**

7 “(a) AUTHORITY TO ENTER INTO SHARE-IN-SAV-
8 INGS CONTRACTS.—(1) The head of an executive agency
9 may enter into a share-in-savings contract in which the
10 Government awards a contract to improve mission-related
11 or administrative processes or to accelerate the achieve-
12 ment of its mission and share with the contractor in sav-
13 ings achieved through contract performance.

14 “(2)(A) Except as provided in subparagraph (B), a
15 share-in-savings contract shall be awarded for a period of
16 not more than five years.

17 “(B) A share-in-savings contract may be awarded for
18 a period greater than five years, but not more than 10
19 years, if the head of the agency determines in writing prior
20 to award of the contract that—

21 “(i) the level of risk to be assumed and the in-
22 vestment to be undertaken by the contractor is likely
23 to inhibit the government from obtaining the needed
24 performance competitively at a fair and reasonable



1 price if the contract is limited in duration to a pe-
2 riod of five years or less; and

3 “(ii) the performance to be acquired is likely to
4 continue for a period of time sufficient to generate
5 reasonable benefit for the government.

6 “(3) Contracts awarded pursuant to the authority of
7 this section shall, to the maximum extent practicable, be
8 performance-based contracts that identify objective out-
9 comes and contain performance standards that will be
10 used to measure achievement and milestones that must
11 be met before payment is made.

12 “(4) Contracts awarded pursuant to the authority of
13 this section shall include a provision containing a quantifi-
14 able baseline that is to be the basis upon which a savings
15 share ratio is established that governs the amount of pay-
16 ment a contractor is to receive under the contract. Before
17 commencement of performance of such a contract, the
18 chief acquisition officer of the agency shall determine in
19 writing that the terms of the provision are quantifiable
20 and will likely yield value to the Government.

21 “(5)(A) The head of the agency may retain savings
22 realized through the use of a share-in-savings contract
23 under this section that are in excess of the total amount
24 of savings paid to the contractor under the contract. Ex-
25 cept as provided in subparagraph (B), savings shall be



1 credited to the appropriation or fund against which
2 charges were made to carry out the contract.

3 “(B) Amounts retained by the agency under this sub-
4 section shall—

5 “(i) without further appropriation, remain
6 available until expended; and

7 “(ii) be applied first to fund any contingent li-
8 abilities associated with share-in-savings procure-
9 ments that are not fully funded.

10 “(b) CANCELLATION AND TERMINATION.—(1) If
11 funds are not made available for the continuation of a
12 share-in-savings contract entered into under this section
13 in a subsequent fiscal year, the contract shall be canceled
14 or terminated. The costs of cancellation or termination
15 may be paid out of—

16 “(A) appropriations available for the perform-
17 ance of the contract;

18 “(B) appropriations available for acquisition of
19 the type of property or services procured under the
20 contract, and not otherwise obligated; or

21 “(C) funds subsequently appropriated for pay-
22 ments of costs of cancellation or termination, subject
23 to the limitations in paragraph (3).

24 “(2) The amount payable in the event of cancellation
25 or termination of a share-in-savings contract shall be ne-



1 negotiated with the contractor at the time the contract is
2 entered into.

3 “(3) The head of an executive agency may enter into
4 share-in-savings contracts under this section in any given
5 fiscal year even if funds are not made specifically available
6 for the full costs of cancellation or termination of the con-
7 tract if funds are available and sufficient to make pay-
8 ments with respect to the first fiscal year of the contract
9 and the following conditions are met regarding the funding
10 of cancellation and termination liability:

11 “(A) The amount of unfunded contingent liabil-
12 ity for the contract does not exceed the lesser of—

13 “(i) 50 percent of the estimated costs of a
14 cancellation or termination; or

15 “(ii) \$10,000,000.

16 “(B) Unfunded contingent liability in excess of
17 \$5,000,000 has been approved by the Director of the
18 Office of Management and Budget or the Director’s
19 designee.

20 “(c) DEFINITIONS—In this section:

21 “(1) The term ‘contractor’ means a private en-
22 tity that enters into a contract with an agency.

23 “(2) The term ‘savings’ means—

24 “(A) monetary savings to an agency; or



1 “(B) savings in time or other benefits real-
2 ized by the agency, including enhanced reve-
3 nues.

4 “(3) The term ‘share-in-savings contract’ means
5 a contract under which—

6 “(A) a contractor provides solutions for—

7 “(i) improving the agency’s mission-
8 related or administrative processes; or

9 “(ii) accelerating the achievement of
10 agency missions; and

11 “(B) the head of the agency pays the con-
12 tractor an amount equal to a portion of the sav-
13 ings derived by the agency from—

14 “(i) any improvements in mission-re-
15 lated or administrative processes that re-
16 sult from implementation of the solution;
17 or

18 “(ii) acceleration of achievement of
19 agency missions.”.

20 (c) DEVELOPMENT OF INCENTIVES.—The Director
21 of the Office of Management and Budget shall—

22 (1) identify potential opportunities for the use
23 of share-in-savings contracts;

24 (2) provide guidance to executive agencies for
25 determining mutually beneficial savings share ratios



1 and baselines from which savings may be measured;
2 and

3 (3) in consultation with the Committee on Gov-
4 ernmental Affairs of the Senate, the Committee on
5 Government Reform of the House of Representa-
6 tives, and executive agencies, develop techniques to
7 permit an executive agency to retain a portion of the
8 savings (after payment of the contractor's share of
9 the savings) derived from share-in-savings contracts
10 as funds are appropriated to the agency in future
11 fiscal years.

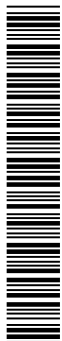
12 (d) REGULATIONS.—Not later than 180 days after
13 the date of the enactment of this Act, the Federal Acquisi-
14 tion Regulation shall be revised to implement the provi-
15 sions enacted by this section. Such revisions shall—

16 (1) provide for the use of competitive proce-
17 dures in the selection and award of share-in-savings
18 contracts to—

19 (A) ensure the contractor's share of sav-
20 ings reflects the risk involved and market condi-
21 tions; and

22 (B) otherwise yield best value to the gov-
23 ernment; and

24 (2) allow appropriate regulatory flexibility to fa-
25 cilitate the use of share-in-savings contracts by exec-



1 utive agencies, including the use of innovative provi-
2 sions for technology refreshment and nonstandard
3 Federal Acquisition Regulation contract clauses.

4 (e) OMB REPORT TO CONGRESS.—In consultation
5 with executive agencies, the Director of the Office of Man-
6 agement and Budget shall, not later than 2 years after
7 the completion of the revisions to the Federal Acquisition
8 Regulation under subsection (d), submit to Congress a re-
9 port containing—

10 (1) a description of the number of share-in-sav-
11 ings contracts entered into by each executive agency
12 under by this section and the amendments made by
13 this section, and, for each contract identified—

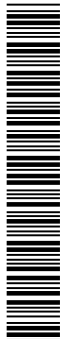
14 (A) the performance acquired;

15 (B) the total amount of payments made to
16 the contractor; and

17 (C) the total amount of savings or other
18 measurable benefits realized;

19 (2) a description of the ability of agencies to de-
20 termine the baseline costs of a project against which
21 savings can be measured; and

22 (3) any recommendations, as the Director
23 deems appropriate, regarding additional changes in
24 law that may be necessary to ensure effective use of
25 share-in-savings contracts by executive agencies.



1 (f) DEFINITIONS.—In this section, the terms “con-
2 tractor”, “savings”, and “share-in-savings contract” have
3 the meanings given those terms in section 2332 of title
4 10, United States Code, and section 317 of the Federal
5 Property and Administrative Services Act of 1949 (as
6 amended by subsections (a) and (b)).

7 (g) REPEAL OF SUPERSEDED PROVISIONS.—Sub-
8 sections (c), (d), (e), (f), (g), and (i) of section 210 of
9 the E-Government Act of 2002 (Public Law 107–317; 116
10 Stat. 2936) are repealed.

11 **SEC. 302. INCENTIVES FOR CONTRACT EFFICIENCY.**

12 (a) INCENTIVES FOR CONTRACT EFFICIENCY.—The
13 Office of Federal Procurement Policy Act (41 U.S.C. 403
14 et seq.) is amended by adding at the end the following
15 new section:

16 **“SEC. 41. INCENTIVES FOR EFFICIENT PERFORMANCE OF**
17 **SERVICES CONTRACTS.**

18 “(a) OPTIONS FOR SERVICES CONTRACTS.—The
19 head of an executive agency may include in a contract for
20 the performance of services an option to extend the con-
21 tract by one or more additional periods on the basis of
22 exceptional performance by the contractor. A contract that
23 provides for such extensions shall include performance
24 standards for measuring performance under the contract



1 and, to the maximum extent practicable, be performance-
2 based.

3 “(b) DEFINITION OF PERFORMANCE-BASED.—In
4 this section, the term ‘performance-based’, with respect to
5 a contract, task order, or contracting, means that the con-
6 tract, task order, or contracting, respectively, includes the
7 use of performance work statements that set forth con-
8 tract requirements in clear, specific, and objective terms
9 with measurable outcomes.”.

10 (b) CLERICAL AND TECHNICAL AMENDMENTS.—(1)
11 The table of contents in section 1(b) of such Act is amend-
12 ed by 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.”.

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

15 **TITLE IV—ACQUISITIONS OF**
16 **COMMERCIAL ITEMS**

17 **SEC. 401. ADDITIONAL INCENTIVE FOR USE OF PERFORM-**
18 **ANCE-BASED CONTRACTING FOR SERVICES.**

19 (a) OTHER CONTRACTS.—Section 41 of the Office of
20 Federal Procurement Policy Act, as added by section 302,
21 is amended—

22 (1) by redesignating subsection (b) as sub-
23 section (c); and



1 (2) by inserting after subsection (a) the fol-
2 lowing new subsection:

3 “(b) INCENTIVE FOR USE OF PERFORMANCE-BASED
4 SERVICES CONTRACTS.—A performance-based contract
5 for the procurement of services entered into by an execu-
6 tive agency or a performance-based task order for services
7 issued by an executive agency may be treated as a contract
8 for the procurement of commercial items if—

9 “(1) the contract or task order sets forth spe-
10 cifically each task to be performed and, for each
11 task—

12 “(A) defines the task in measurable, mis-
13 sion-related terms; and

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

16 “(2) the source of the services provides similar
17 services to the general public under terms and condi-
18 tions similar to those offered to the Federal Govern-
19 ment.”.

20 (c) CENTER OF EXCELLENCE IN SERVICE CON-
21 TRACTING.—Not later than 180 days after the date of the
22 enactment of this Act, the Administrator for Federal Pro-
23 curement Policy shall establish a center of excellence in
24 contracting for services. The center of excellence shall as-
25 sist the acquisition community by identifying, and serving



1 as a clearinghouse for, best practices in contracting for
2 services in the public and private sectors.

3 (d) REPEAL OF SUPERSEDED PROVISION.—Sub-
4 section (b) of section 821 of the Floyd D. Spence National
5 Defense Authorization Act for Fiscal Year 2001 (as en-
6 acted into law by Public Law 106–398; 114 Stat. 1654A–
7 218) is repealed.

8 **SEC. 402. AUTHORIZATION OF ADDITIONAL COMMERCIAL**
9 **CONTRACT TYPES.**

10 Section 8002(d) of the Federal Acquisition Stream-
11 lining Act of 1994 (Public Law 103–355; 108 Stat. 3387;
12 41 U.S.C. 264 note) is amended—

13 (1) in paragraph (1), by striking “and”;

14 (2) by striking the period at the end of para-
15 graph (2) and inserting “; and”; and

16 (3) by adding at the end the following new
17 paragraph:

18 “(3) authority for use of a time and materials
19 contract or a labor-hour contract for the procure-
20 ment of commercial services that are commonly sold
21 to the general public through such contracts.”

22 **SEC. 403. CLARIFICATION OF COMMERCIAL SERVICES DEF-**
23 **INITION.**

24 Section 4(12) of the Office of Federal Procurement
25 Policy Act (41 U.S.C. 403(12)) is amended—



1 (1) in subparagraph (A), by striking “, other
2 than real property,” and inserting “(other than real
3 property) or service”;

4 (2) in subparagraph (C), by inserting “or serv-
5 ice” after “item”;

6 (3) in subparagraph (D), by striking “(C), or
7 (E)” and inserting “or (C), or any combination of
8 services meeting the requirements of subparagraphs
9 (A) or (C),”;

10 (4) by striking subparagraphs (E) and (F);

11 (5) by redesignating subparagraphs (G) and
12 (H) as subparagraphs (E) and (F), respectively; and

13 (6) in subparagraph (E), as so redesignated, by
14 striking “through (F)” and inserting “through (D)”.

15 **SEC. 404. DESIGNATION OF COMMERCIAL BUSINESS ENTI-**
16 **TIES.**

17 (a) IN GENERAL.—Section 4 of the Office of Federal
18 Procurement Policy Act (41 U.S.C. 403), as amended by
19 section 403, is further amended—

20 (1) by adding at the end of paragraph (12) the
21 following new subparagraph:

22 “(G) Items or services produced or pro-
23 vided by a commercial entity.”; and

24 (2) by adding at the end the following new
25 paragraph:



1 **“SEC. 318. AUTHORITY TO ENTER INTO CERTAIN TRANS-**
2 **ACTIONS FOR DEFENSE AGAINST OR RECOV-**
3 **ERY FROM TERRORISM OR NUCLEAR, BIO-**
4 **LOGICAL, CHEMICAL, OR RADIOLOGICAL AT-**
5 **TACK.**

6 “(a) AUTHORITY.—

7 “(1) IN GENERAL.—The head of an executive
8 agency who engages in basic research, applied re-
9 search, advanced research, and development projects
10 that—

11 “(A) are necessary to the responsibilities of
12 such official’s executive agency in the field of
13 research and development, and

14 “(B) have the potential to facilitate de-
15 fense against or recovery from terrorism or nu-
16 clear, biological, chemical, or radiological at-
17 tack,

18 may exercise the same authority (subject to the
19 same restrictions and conditions) with respect to
20 such research and projects as the Secretary of De-
21 fense may exercise under section 2371 of title 10,
22 United States Code, except for subsections (b) and
23 (f) of such section 2371.

24 “(2) PROTOTYPE PROJECTS.—The head of an
25 executive agency may, under the authority of para-
26 graph (1), carry out prototype projects that meet the



1 requirements of subparagraphs (A) and (B) of para-
2 graph (1) in accordance with the requirements and
3 conditions provided for carrying out prototype
4 projects under section 845 of the National Defense
5 Authorization Act for Fiscal Year 1994 (Public Law
6 103–160; 10 U.S.C. 2371 note). In applying the re-
7 quirements and conditions of that section 845—

8 “(A) subsection (c) of that section shall
9 apply with respect to prototype projects carried
10 out under this paragraph; and

11 “(B) the Director of the Office of Manage-
12 ment and Budget shall perform the functions of
13 the Secretary of Defense under subsection (d)
14 of that section.

15 “(3) APPLICABILITY TO SELECTED EXECUTIVE
16 AGENCIES.—

17 “(A) OMB AUTHORIZATION REQUIRED.—
18 The head of an executive agency may exercise
19 authority under this subsection only if author-
20 ized by the Director of the Office of Manage-
21 ment and Budget to do so.

22 “(B) RELATIONSHIP TO AUTHORITY OF
23 DEPARTMENT OF HOMELAND SECURITY.—The
24 authority under this subsection shall not apply
25 to the Secretary of Homeland Security while



1 section 831 of the Homeland Security Act of
2 2002 (Public Law 107-296; 116 Stat. 2224) is
3 in effect.

4 “(b) ANNUAL REPORT.—The annual report of the
5 head of an executive agency that is required under sub-
6 section (h) of section 2371 of title 10, United States Code,
7 as applied to the head of the executive agency by sub-
8 section (a), shall be submitted to the Committee on Gov-
9 ernmental Affairs of the Senate and the Committee on
10 Government Reform of the House of Representatives.

11 “(c) REGULATIONS.—The Director of the Office of
12 Management and Budget shall prescribe regulations to
13 carry out this section.”.

14 **SEC. 502. AMENDMENTS RELATING TO FEDERAL EMER-**
15 **GENCY PROCUREMENT FLEXIBILITY.**

16 (a) REPEAL OF SUNSET FOR AUTHORITIES APPLICA-
17 BLE TO PROCUREMENTS FOR DEFENSE AGAINST OR RE-
18 COVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL,
19 CHEMICAL, OR RADIOLOGICAL ATTACK.—Section 852 of
20 the Homeland Security Act of 2002 (Public Law 107–296;
21 116 Stat. 2235) is amended by striking “, but only if a
22 solicitation of offers for the procurement is issued during
23 the 1-year period beginning on the date of the enactment
24 of this Act”.



1 (b) APPLICABILITY OF INCREASED SIMPLIFIED AC-
2 QUISSION THRESHOLD.—(1) The matter preceding para-
3 graph (1) of section 853(a) of the Homeland Security Act
4 of 2002 (Public Law 107–296; 116 Stat. 2235) is amend-
5 ed to read as follows:

6 “(a) THRESHOLD AMOUNTS.—For a procurement re-
7 ferred to in section 852, the simplified acquisition thresh-
8 old referred to in section 4(11) of the Office of Federal
9 Procurement Policy Act (41 U.S.C. 403(11)) is deemed
10 to be—”.

11 (2) Subsections (b) and (c) of section 853 of such
12 Act are repealed.

13 (3) The heading of section 853 of such Act is amend-
14 ed to read as follows:

15 **“SEC. 853. INCREASED SIMPLIFIED ACQUISITION THRESH-**
16 **OLD FOR CERTAIN PROCUREMENTS.”.**

17 (4) The table of contents in section 1(b) of such Act
18 is amended by striking the item relating to section 853
19 and inserting the following:

“Sec. 853. Increased simplified acquisition threshold for certain procurements.”.

20 (5) Section 18(c)(1) of the Office of Federal Procure-
21 ment Policy Act (41 U.S.C. 416(c)(1)) is amended—

22 (A) by striking “or” at the end of subpara-
23 graph (G);

24 (B) by striking the period at the end of sub-
25 paragraph (H) and inserting “; or”; and



1 (C) by adding at the end the following:

2 “(I) the procurement is by the head of an
3 executive agency pursuant to the special proce-
4 dures provided in section 853 of the Homeland
5 Security Act of 2002 (Public Law 107–296).”.

6 (c) APPLICABILITY OF CERTAIN COMMERCIAL ITEMS
7 AUTHORITIES.—(1) Subsection (a) of section 855 of the
8 Homeland Security Act of 2002 (Public Law 107–296;
9 116 Stat. 2236) is amended to read as follows:

10 “(a) AUTHORITY.— With respect to a procurement
11 referred to in section 852, the head of an executive agency
12 may deem any item or service to be a commercial item
13 for the purpose of Federal procurement laws.”.

14 (2) Subsection (b)(1) of section 855 of such Act is
15 amended by striking “to which any of the provisions of
16 law referred to in subsection (a) are applied”.

17 (d) EXTENSION OF DEADLINE FOR REVIEW AND RE-
18 PORT.—Section 857(a) of the Homeland Security Act of
19 2002 (Public Law 107–296; 116 Stat. 2237) is amended
20 by striking “2004” and inserting “2006”.

21 **SEC. 503. AUTHORITY TO MAKE INFLATION ADJUSTMENTS**
22 **TO SIMPLIFIED ACQUISITION THRESHOLD.**

23 Section 4(11) of the Office of Federal Procurement
24 Policy Act (41 U.S.C. 403(11)) is amended by inserting
25 before the period at the end the following: “, except that



1 such amount may be adjusted by the Administrator every
2 five years to the amount equal to \$100,000 in constant
3 fiscal year 2003 dollars (rounded to the nearest
4 \$10,000)”.
5

6 **SEC. 504. TECHNICAL CORRECTIONS RELATED TO DUPLI-**
7 **CATIVE AMENDMENTS.**

8 (a) REPEAL OF SUPERSEDED SUBCHAPTER AND RE-
9 LATED CONFORMING AMENDMENTS.—(1) Subchapter II
10 of chapter 35 of title 44, United States Code, is repealed.

11 (2) Subchapter III of such chapter is redesignated
12 as subchapter II.

13 (3) Section 3549 of title 44, United States Code, is
14 amended by striking the sentence beginning with “While
15 this subchapter”.

16 (4) The table of sections at the beginning of chapter
17 35 of title 44, United States Code, is amended—

18 (A) by striking the items relating to sections
19 3531 through 3538; and

20 (B) by striking the heading “SUBCHAPTER
21 III”.

22 (5) Section 2224a of title 10, United States Code,
23 is repealed, and the table of sections at the beginning of
24 chapter 131 of such title is amended by striking the item
relating to such section.



1 (b) CONFORMING AMENDMENTS RELATED TO RE-
2 PEALS OF SHARE-IN-SAVINGS AND SOLUTIONS-BASED
3 CONTRACTING PILOT PROGRAMS.—(1) Chapter 115 of
4 title 40, United States Code, is repealed.

5 (2) The table of chapters at the beginning of subtitle
6 III of such title is amended by striking the item relating
7 to chapter 115.

8 (c) AMENDMENTS MADE BY E-GOVERNMENT ACT
9 MADE APPLICABLE.—The following provisions of law
10 shall read as if the amendments made by title X of the
11 Homeland Security Act of 2002 (Public Law 107–296)
12 to such provisions did not take effect:

13 (1) Section 2224 of title 10, United States
14 Code.

15 (2) Sections 20 and 21 of the National Insti-
16 tute of Standards and Technology Act (15 U.S.C.
17 278g-3 and 278g-4).

18 (3) Sections 11331 and 11332 of title 40,
19 United States Code.

20 (4) Subtitle G of title X of the Floyd D. Spence
21 National Defense Authorization Act for Fiscal Year
22 2001 (Public Law 106–398; 44 U.S.C. 3531 note).

23 (5) Sections 3504(g), 3505, and 3506(g) of
24 title 44, United States Code.



1 (d) CORRECTION OF CROSS REFERENCE.—Section
2 2224(c) of title 10, United States Code, as amended by
3 section 301(c)(1)(B)(iii) of the E-Government Act of 2002
4 (Public Law 107–347; 116 Stat. 2955), is amended by
5 striking “subchapter III” and inserting “subchapter II”.

