

109TH CONGRESS
2^D SESSION

H. R. 6069

To reform acquisition practices of the Federal Government.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 2006

Mr. WAXMAN (for himself, Mr. CARDOZA, Mr. OBEY, Ms. NORTON, and Mr. TIERNEY) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committees on Armed Services, Rules, and Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reform acquisition practices of the Federal Government.

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 AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Clean Contracting Act”.

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

Sec. 1. Short title and table of contents.

TITLE I—PROMOTING COMPETITION IN THE AWARD OF
CONTRACTS

Sec. 101. Limitation on length of noncompetitive contracts.

- Sec. 102. Competition in multiple award contracts.
- Sec. 103. Minimizing sole-source contracts.
- Sec. 104. Public disclosure of justification and approval documents and other determinations for noncompetitive contracts.

TITLE II—LIMITING THE USE OF ABUSE-PRONE CONTRACTS

- Sec. 201. Prohibition on award of monopoly contracts.
- Sec. 202. Limitations on tiering of subcontractors.
- Sec. 203. Minimizing cost-reimbursement type contracts.

TITLE III—PREVENTING THE ABUSE OF CONTRACT FLEXIBILITIES

- Sec. 301. Preventing abuse of commercial item authority.
- Sec. 302. Preventing abuse of other transaction authority.
- Sec. 303. Preventing abuse of interagency contracts.
- Sec. 304. Preventing abuse of Government credit cards.
- Sec. 305. Repeal of Alaska Native Corporation loophole.

TITLE IV—INCREASING CONTRACT OVERSIGHT

- Sec. 401. Funding contract oversight.
- Sec. 402. Prohibition on contractor conflicts of interest.
- Sec. 403. Disclosure of Government contractor overcharges.
- Sec. 404. Public availability of Federal contract awards.
- Sec. 405. Provision of information to Congress.
- Sec. 406. Oversight by the Government Reform Committee.
- Sec. 407. Nonpartisan Chief Acquisition Officers.
- Sec. 408. Improving the Federal Procurement Data System.
- Sec. 409. Enforcement through bid protest.

TITLE V—PREVENTING UNJUSTIFIED AWARD FEES

- Sec. 501. Encouraging excellent contract performance.

TITLE VI—DETECTING CORRUPTION IN CONTRACTING

- Sec. 601. Closing the revolving door.
- Sec. 602. Requiring contractor integrity and business ethics.
- Sec. 603. Enhancement of whistleblower protections.

1 **TITLE I—PROMOTING COMPETITION IN THE AWARD OF CONTRACTS**

4 **SEC. 101. LIMITATION ON LENGTH OF NONCOMPETITIVE CONTRACTS.**

6 (a) REVISION OF FAR.—Not later than one year
7 after the date of the enactment of this Act, the Federal

1 Acquisition Regulation shall be revised to restrict the con-
2 tract period of any contract described in subsection (c)
3 to the minimum contract period necessary—

4 (1) to meet the urgent and compelling require-
5 ments of the work to be performed under the con-
6 tract; and

7 (2) to enter into another contract for the re-
8 quired goods or services through the use of competi-
9 tive procedures.

10 (b) CONTRACT PERIOD.—The regulations promul-
11 gated under subsection (a) shall require the contract pe-
12 riod to not exceed 240 days, unless the head of the execu-
13 tive agency concerned determines that exceptional cir-
14 cumstances apply.

15 (c) COVERED CONTRACTS.—This section applies to
16 any contract in an amount greater than the simplified ac-
17 quisition threshold entered into by an executive agency
18 using procedures other than competitive procedures pursu-
19 ant to the exception provided in section 303(c)(2) of the
20 Federal Property and Administrative Services Act of 1949
21 (41 U.S.C. 253(c)(2)) or section 2304(c)(2) of title 10,
22 United States Code.

23 (d) DEFINITIONS.—In this section:

1 contract shall be made on a competitive basis unless a con-
2 tracting officer of the executive agency—

3 “(A) waives the requirement on the basis of a
4 determination that—

5 “(i) one of the circumstances described in
6 paragraphs (1) through (4) of section 303J(b)
7 applies to such individual purchase; or

8 “(ii) a statute expressly authorizes or re-
9 quires that the purchase be made from a speci-
10 fied source; and

11 “(B) justifies the determination in writing.

12 “(2) For purposes of this subsection, an individual
13 purchase of goods or services is made on a competitive
14 basis only if it is made pursuant to procedures that—

15 “(A) require fair notice of the intent to make
16 that purchase (including a description of the work to
17 be performed and the basis on which the selection
18 will be made) to be provided to all contractors offer-
19 ing such goods or services under the multiple award
20 contract; and

21 “(B) afford all contractors responding to the
22 notice a fair opportunity to make an offer and have
23 that offer fairly considered by the official making
24 the purchase.

1 “(3) Notwithstanding paragraph (2), notice may be
2 provided to fewer than all contractors offering such goods
3 or services under a multiple award contract described in
4 subsection (c)(2)(A) if notice is provided to as many con-
5 tractors as practicable.

6 “(4) A purchase may not be made pursuant to a no-
7 tice that is provided to fewer than all contractors under
8 paragraph (3) unless—

9 “(A) offers were received from at least three
10 qualified contractors; or

11 “(B) a contracting officer of the executive agen-
12 cy determines in writing that no additional qualified
13 contractors were able to be identified despite reason-
14 able efforts to do so.

15 “(c) DEFINITIONS.—In this section:

16 “(1) The term ‘individual purchase’ means a
17 task order, delivery order, or other purchase.

18 “(2) The term ‘multiple award contract’
19 means—

20 “(A) a contract that is entered into by the
21 Administrator of General Services under the
22 multiple award schedule program referred to in
23 section 309(b)(3);

24 “(B) a multiple award task order contract
25 that is entered into under the authority of sec-

1 tions 2304a through 2304d of title 10, United
2 States Code, or sections 303H through 303K;
3 and

4 “(C) any other indefinite delivery, indefi-
5 nite quantity contract that is entered into by
6 the head of an executive agency with two or
7 more sources pursuant to the same solicitation.

8 “(d) APPLICABILITY.—The revisions to the Federal
9 Acquisition Regulation pursuant to subsection (a) shall
10 take effect not later than 180 days after the date of the
11 enactment of this section and shall apply to all individual
12 purchases of goods or services that are made under mul-
13 tiple award contracts on or after the effective date, with-
14 out regard to whether the multiple award contracts were
15 entered into before, on, or after such effective date.”.

16 (b) CONFORMING AMENDMENTS TO DEFENSE CON-
17 TRACT PROVISION.—Section 803 of the National Defense
18 Authorization Act for Fiscal Year 2002 (Public Law 107–
19 107; 10 U.S.C. 2304 note) is amended as follows:

20 (1) The section heading is amended by insert-
21 ing “**GOODS OR**” before “**SERVICES**”.

22 (2) Subsection (a) is amended by inserting
23 “goods and” before “services”.

1 (3) The following provisions are amended by in-
2 serting “goods or” before “services” each place it
3 appears:

4 (A) Paragraphs (1), (2), and (3) of sub-
5 section (b).

6 (B) Subsection (d).

7 (4) Such section is amended by adding at the
8 end the following new subsection:

9 “(e) APPLICABILITY TO GOODS.—The Secretary shall
10 revise the regulations promulgated pursuant to subsection
11 (a) to cover purchases of goods by the Department of De-
12 fense pursuant to multiple award contracts. The revised
13 regulations shall take effect in final form not later than
14 180 days after the date of the enactment of this subsection
15 and shall apply to all individual purchases of goods that
16 are made under multiple award contracts on or after the
17 effective date, without regard to whether the multiple
18 award contracts were entered into before, on, or after such
19 effective date.”.

20 **SEC. 103. MINIMIZING SOLE-SOURCE CONTRACTS.**

21 (a) PLANS REQUIRED.—The head of each executive
22 agency covered by title III of the Federal Property and
23 Administrative Services Act of 1949 (41 U.S.C. 251 et
24 seq.) and the head of each agency covered by chapter 137
25 of title 10, United States Code, shall develop and imple-

1 ment a plan to minimize the use of contracts entered into
2 using procedures other than competitive procedures by the
3 agency concerned. The plan shall contain measurable goals
4 and shall be completed and submitted to the Committee
5 on Government Reform of the House of Representatives
6 and the Committee on Homeland Security and Govern-
7 mental Affairs of the Senate, with a copy provided to the
8 Comptroller General, not later than 1 year after the date
9 of the enactment of this Act.

10 (b) **COMPTROLLER GENERAL REVIEW.**—The Comp-
11 troller General shall review the plans provided under sub-
12 section (a) and submit a report to Congress on the plans
13 not later than 18 months after the date of the enactment
14 of this Act.

15 **SEC. 104. PUBLIC DISCLOSURE OF JUSTIFICATION AND AP-**
16 **PROVAL DOCUMENTS AND OTHER DETER-**
17 **MINATIONS FOR NONCOMPETITIVE CON-**
18 **TRACTS.**

19 (a) **CIVILIAN AGENCY CONTRACTS.**—Section 303 of
20 the Federal Property and Administrative Services Act of
21 1949 (41 U.S.C. 253) is amended by adding at the end
22 the following new subsection:

23 “(j)(1) In the case of a procurement permitted by
24 subsection (c), the head of an executive agency shall make

1 publically available, within 14 days after the award of the
2 contract, the documents containing the following:

3 “(A) The justification and approval re-
4 quired by subsection (f)(1) with respect to the
5 procurement.

6 “(B) Any determination with respect to the
7 procurement that exceptional circumstances
8 apply, under section 101(b) of the Clean Con-
9 tracting Act.

10 “(C) Any determination with respect to the
11 procurement under section 303H(d)(3)(C) (re-
12 lating to a monopoly contract).

13 “(D) Any determination with respect to
14 the procurement that exceptional circumstances
15 apply, under section 202(b) of the Clean Con-
16 tracting Act.

17 “(2) The documents shall be made available on the
18 website of the agency and through the Federal Procure-
19 ment Data System.

20 “(3) Nothing in this subsection shall be construed to
21 supersede or otherwise affect section 552 of title 5.”.

22 (b) DEFENSE AGENCY CONTRACTS.—Section 2304
23 of title 10, United States Code, is amended by adding at
24 the end the following new subsection:

1 “(l)(1) In the case of a procurement permitted by
2 subsection (e), the head of an agency shall make publically
3 available, within 14 days after the award of the contract,
4 the documents containing the following:

5 “(A) The justification and approval re-
6 quired by subsection (f)(1) with respect to the
7 procurement.

8 “(B) Any determination with respect to the
9 procurement that exceptional circumstances
10 apply, under section 101(b) of the Clean Con-
11 tracting Act.

12 “(C) Any determination with respect to the
13 procurement under section 2304a(d)(4)(C) of
14 this title (relating to a monopoly contract).

15 “(D) Any determination with respect to
16 the procurement that exceptional circumstances
17 apply, under section 202(b) of the Clean Con-
18 tracting Act.

19 “(2) The documents shall be made available on the
20 website of the agency and through the Federal Procure-
21 ment Data System.

22 “(3) Nothing in this subsection shall be construed to
23 supersede or otherwise affect section 552 of title 5, United
24 States Code.”.

1 **TITLE II—LIMITING THE USE OF**
2 **ABUSE-PRONE CONTRACTS**

3 **SEC. 201. PROHIBITION ON AWARD OF MONOPOLY CON-**
4 **TRACTS.**

5 (a) CIVILIAN AGENCY CONTRACTS.—

6 (1) Paragraph (3) of section 303H(d) of title
7 III of the Federal Property and Administrative Serv-
8 ices Act of 1949 (41 U.S.C. 253h(d)) is amended to
9 read as follows:

10 “(3)(A) The regulations implementing this sub-
11 section shall prohibit the award of monopoly con-
12 tracts.

13 “(B) In this subsection, the term ‘monopoly
14 contract’ means a task or delivery order contract in
15 an amount estimated to exceed \$10,000,000 (includ-
16 ing all options) awarded to a single contractor.

17 “(C) Notwithstanding subparagraph (A), a mo-
18 nopoly contract may be awarded if the head of the
19 agency determines in writing that—

20 “(i) for one of the reasons set forth in sec-
21 tion 303(e), a single task or delivery order con-
22 tract is in the best interest of the Federal Gov-
23 ernment; or

24 “(ii) the task orders expected under the
25 contract are so integrally related that only a

1 single contractor can reasonably perform the
2 work.”.

3 (2) Section 303H(d)(1) of such Act is amended
4 by striking “The head” and inserting “Subject to
5 paragraph (3), the head”.

6 (3) Subsection (e) of section 303I of such Act
7 (41 United States Code 253i) is amended to read as
8 follows:

9 “(e) MULTIPLE AWARDS.—Section 303H(d) applies
10 to a task or delivery order contract for the procurement
11 of advisory and assistance services under this section.”.

12 (b) DEFENSE CONTRACTS.—

13 (1) Section 2304a(d) of title 10, United States
14 Code, is amended by adding at the end the following
15 new paragraph:

16 “(4)(A) The regulations implementing this sub-
17 section shall prohibit the award of monopoly con-
18 tracts.

19 “(B) In this subsection, the term ‘monopoly
20 contract’ means a task or delivery order contract in
21 an amount estimated to exceed 10,000,000 (includ-
22 ing all options) awarded to a single contractor.

23 “(C) Notwithstanding subparagraph (A), a mo-
24 nopoly contract may be awarded if the head of the
25 agency determines in writing that—

1 “(i) for one of the reasons set forth in sec-
2 tion 2304(c), a single task or delivery order
3 contract is in the best interest of the Federal
4 Government; or

5 “(ii) the task orders expected under the
6 contract are so integrally related that only a
7 single contractor can reasonably perform the
8 work.”.

9 (2) Section 2304a(d)(1) of such title is amend-
10 ed by striking “The head” and inserting “Subject to
11 paragraph (4), the head”.

12 (3) Subsection (e) of section 2304b of such title
13 is amended to read as follows:

14 “(e) MULTIPLE AWARDS.—Section 2304a(d) of this
15 title applies to a task or delivery order contract for the
16 procurement of advisory and assistance services under this
17 section.”.

18 **SEC. 202. LIMITATIONS ON TIERING OF SUBCONTRACTORS.**

19 (a) REVISION OF FAR.—Not later than one year
20 after the date of the enactment of this Act, the Federal
21 Acquisition Regulation shall be revised to minimize the ex-
22 cessive use by contractors of subcontractors or tiers of
23 subcontractors to perform the principal work of any con-
24 tract described in subsection (c).

1 (b) SPECIFIC REQUIREMENT.—At a minimum, the
2 regulations promulgated under subsection (a) shall—

3 (1) preclude a contractor from using sub-
4 contracts for more than 65 percent of the cost of the
5 contract (not including overhead and profit), unless
6 the head of the executive agency concerned deter-
7 mines that exceptional circumstances apply; and

8 (2) preclude a subcontractor from using a lower
9 tier subcontractor for more than 65 percent of the
10 cost of the subcontract (not including overhead and
11 profit), unless the head of the executive agency con-
12 cerned determines that exceptional circumstances
13 apply.

14 (c) COVERED CONTRACTS.—This section applies to
15 any cost-reimbursement type contract in an amount great-
16 er than the simplified acquisition threshold entered into
17 by an executive agency.

18 (d) DEFINITIONS.—In this section:

19 (1) The term “executive agency” has the mean-
20 ing provided in section 4(1) of the Office of Federal
21 Procurement Policy Act (41 U.S.C. 403(1)).

22 (2) The term “head of the executive agency”
23 means the head of an executive agency except that,
24 in the case of a military department, the term means
25 the Secretary of Defense.

1 **SEC. 203. MINIMIZING COST-REIMBURSEMENT TYPE CON-**
2 **TRACTS.**

3 (a) PLANS REQUIRED.—The head of each executive
4 agency covered by title III of the Federal Property and
5 Administrative Services Act of 1949 (41 U.S.C. 251 et
6 seq.) and the head of each agency covered by chapter 137
7 of title 10, United States Code, shall develop and imple-
8 ment a plan to minimize the use of cost-reimbursement
9 type contracts by the agency concerned. The plan shall
10 contain measurable goals and shall be completed and sub-
11 mitted to the Committee on Government Reform of the
12 House of Representatives and the Committee on Home-
13 land Security and Governmental Affairs of the Senate,
14 with a copy provided to the Comptroller General, not later
15 than 1 year after the date of the enactment of this Act.

16 (b) COMPTROLLER GENERAL REVIEW.—The Comp-
17 troller General shall review the plans provided under sub-
18 section (a) and submit a report to Congress on the plans
19 not later than 18 months after the date of the enactment
20 of this Act.

1 **TITLE III—PREVENTING THE**
2 **ABUSE OF CONTRACT FLEXI-**
3 **BILITIES**

4 **SEC. 301. PREVENTING ABUSE OF COMMERCIAL ITEM AU-**
5 **THORITY.**

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

8 (1) by striking the following:

9 “(C) Any item that, but for—

10 “(i) modifications of a type custom-
11 arily available in the commercial market-
12 place, or

13 “(ii) minor modifications made to
14 meet Federal Government requirements,
15 would satisfy the criteria in subparagraph (A)
16 or (B).”; and

17 (2) in subparagraphs (D) and (E), by striking
18 “(C),” each place it appears.

19 **SEC. 302. PREVENTING ABUSE OF OTHER TRANSACTION**
20 **AUTHORITY.**

21 Section 845(d)(1) of the National Defense Authoriza-
22 tion Act for Fiscal Year 1994 (10 U.S.C. 2371 note) is
23 amended—

1 (1) by striking “unless—” and all that follows
2 in subparagraph (A) through “at least” and insert-
3 ing “unless there is at least”;

4 (2) by striking “; or” and inserting a period;
5 and

6 (3) by striking the following:

7 “(B) no nontraditional defense contractor
8 is participating to a significant extent in the
9 prototype project, but at least one of the fol-
10 lowing circumstances exists:

11 “(i) At least one third of the total cost
12 of the prototype project is to be paid out
13 of funds provided by parties to the trans-
14 action other than the Federal Government.

15 “(ii) The senior procurement executive
16 for the agency (as designated for the pur-
17 poses of section 16(3) of the Office of Fed-
18 eral Procurement Policy Act (41 U.S.C.
19 414(3)) determines in writing that excep-
20 tional circumstances justify the use of a
21 transaction that provides for innovative
22 business arrangements or structures that
23 would not be feasible or appropriate under
24 a contract.”.

1 **SEC. 303. PREVENTING ABUSE OF INTERAGENCY CON-**
2 **TRACTS.**

3 (a) OFFICE OF MANAGEMENT AND BUDGET POLICY
4 GUIDANCE.—

5 (1) REPORT AND GUIDELINES.—Not later than
6 one year after the date of the enactment of this Act,
7 the Director of the Office of Management and Budg-
8 et shall—

9 (A) submit to Congress a comprehensive
10 report on interagency acquisitions, including
11 their frequency of use, management controls,
12 cost-effectiveness, and savings generated; and

13 (B) issue guidelines to assist the heads of
14 executive agencies in improving the manage-
15 ment of interagency acquisitions.

16 (2) MATTERS COVERED BY GUIDELINES.—For
17 purposes of paragraph (1)(B), the Director shall in-
18 clude guidelines on the following matters:

19 (A) Procedures for the use of interagency
20 acquisitions to maximize competition, deliver
21 best value to executive agencies, and minimize
22 waste, fraud, and abuse.

23 (B) Categories of contracting inappropriate
24 for interagency acquisition, due to high risk of
25 waste, fraud, or abuse.

1 (C) Requirements for training acquisition
2 workforce personnel in the proper use of inter-
3 agency acquisitions.

4 (b) REGULATIONS REQUIRED.—Not later than one
5 year after the date of the enactment of this Act, the Fed-
6 eral Acquisition Regulation shall be revised to require that
7 all interagency acquisitions—

8 (1) include a written agreement between the re-
9 questing agency and the servicing agency assigning
10 responsibility for the administration and manage-
11 ment of the contract;

12 (2) include a determination that an interagency
13 acquisition is the best procurement alternative; and

14 (3) include sufficient documentation to ensure
15 an adequate audit.

16 (c) AGENCY REPORTING REQUIREMENT.—The senior
17 procurement executive for each executive agency shall, as
18 directed by the Director of the Office of Management and
19 Budget, submit to the Director annual reports on the ac-
20 tions taken by the executive agency pursuant to the guide-
21 lines issued under subsection (a).

22 (d) DEFINITIONS.—In this section:

23 (1) The term “executive agency” has the mean-
24 ing given such term in section 4(1) of the Office of
25 Federal Procurement Policy Act (41 U.S.C. 403(1)).

1 (2) The term “head of executive agency” means
2 the head of an executive agency except that, in the
3 case of a military department, the term means the
4 Secretary of Defense.

5 (3) The term “interagency acquisition” means
6 a procedure by which an executive agency needing
7 supplies or services (the requesting agency) obtains
8 them from another executive agency (the servicing
9 agency). The term includes acquisitions under sec-
10 tion 1535 of title 31, United States Code (commonly
11 referred to as the “Economy Act”, Federal Supply
12 Schedules, and government-wide acquisition con-
13 tracts.

14 **SEC. 304. PREVENTING ABUSE OF GOVERNMENT CREDIT**
15 **CARDS.**

16 (a) OFFICE OF MANAGEMENT AND BUDGET POLICY
17 GUIDANCE.—Not later than 180 days after the date of
18 enactment of this Act, the Director of the Office of Man-
19 agement and Budget shall revise Appendix B of OMB Cir-
20 cular A–123 to ensure the adequacy of the following:

21 (1) Procedures for identifying employees who
22 should receive government credit cards.

23 (2) Requirements for training employees in the
24 proper use of government credit cards.

1 (3) Procedures for monitoring and auditing
2 government credit cards to prevent waste, fraud, and
3 abuse.

4 (4) Procedures for preventing the use of gov-
5 ernment credit cards for personal purchases.

6 (5) Requirements to ensure adequate personnel
7 for monitoring and auditing government credit card
8 use.

9 (6) Procedures for the collection and dissemina-
10 tion of best practices and successful strategies for
11 achieving savings through the use of government
12 credit cards.

13 (b) REPORTING REQUIREMENT.—Not later than one
14 year after the date of the enactment of this Act, the Direc-
15 tor of the Office of Management and Budget shall report
16 to Congress a Government-wide summary for the previous
17 fiscal year of the information required to be reported to
18 OMB by executive agencies pursuant to OMB Circular A-
19 123 (as revised February, 2006).

20 (c) DEFINITIONS.—In this section the term “govern-
21 ment credit card” means an account established by a com-
22 mercial financial institution on behalf of agencies or indi-
23 vidual agency employees to which the cost of purchasing
24 goods and services may be charged and includes govern-
25 ment-issued purchase, travel, and fleet cards.

1 **SEC. 305. REPEAL OF ALASKA NATIVE CORPORATION LOOP-**
2 **HOLE.**

3 Section 602(a) of the Business Opportunity Develop-
4 ment Reform Act of 1988 (Public Law 100–656; 15
5 U.S.C. 637 note) is hereby repealed.

6 **TITLE IV—INCREASING**
7 **CONTRACT OVERSIGHT**

8 **SEC. 401. FUNDING CONTRACT OVERSIGHT.**

9 (a) CIVILIAN AGENCY CONTRACTS.—Title III of the
10 Federal Property and Administrative Services Act of 1949
11 (41 U.S.C. 251 et seq.) is amended by adding at the end
12 the following new section:

13 **“SEC. 318. REQUIREMENT FOR 1 PERCENT OF CONTRACT**
14 **AMOUNTS TO BE USED FOR CONTRACT PER-**
15 **SONNEL, ADMINISTRATION, OVERSIGHT, AND**
16 **PLANNING.**

17 “In addition to the sums used for the purposes listed
18 in this section as of the date of the enactment of this sec-
19 tion, each fiscal year, the head of an executive agency shall
20 ensure that the agency uses an additional amount equal
21 to 1 percent of the aggregate amount of contracts entered
22 into by the agency during that fiscal year for the following
23 purposes:

24 “(1) Hiring and training of acquisition work-
25 force personnel.

26 “(2) Contract planning.

1 “(3) Contract administration and oversight.

2 “(4) Contract audits and enforcement.”.

3 (b) DEFENSE CONTRACTS.—Chapter 141 of title 10,
4 United States Code, is amended by adding at the end the
5 following new section:

6 **“§ 2410p. Requirement for 1 percent of contract**
7 **amounts to be used for contract per-**
8 **sonnel, administration, oversight, and**
9 **planning**

10 “In addition to the sums used for the purposes listed
11 in this section as of the date of the enactment of this sec-
12 tion, each fiscal year, the head of an agency (as defined
13 in section 2302(1) of this title) shall ensure that the agen-
14 cy uses an additional amount equal to 1 percent of the
15 aggregate amount of contracts entered into by the agency
16 during that fiscal year for the following purposes:

17 “(1) Hiring and training of acquisition work-
18 force personnel.

19 “(2) Contract planning.

20 “(3) Contract administration and oversight.

21 “(4) Contract audits and enforcement.”.

22 **SEC. 402. PROHIBITION ON CONTRACTOR CONFLICTS OF**
23 **INTEREST.**

24 (a) PROHIBITION.—An agency may not enter into a
25 contract for the performance of a function relating to con-

1 tract oversight with any contractor with a conflict of inter-
2 est.

3 (b) DEFINITIONS.—In this section:

4 (1) The term “function relating to contract
5 oversight” includes the following specific functions:

6 (A) Evaluation of a contractor’s perform-
7 ance.

8 (B) Evaluation of contract proposals.

9 (C) Development of statements of work.

10 (D) Services in support of acquisition plan-
11 ning.

12 (E) Contract management.

13 (2) The term “conflict of interest” includes
14 cases in which the contractor performing the func-
15 tion relating to contract oversight, or any related en-
16 tity—

17 (A) is performing all or some of the work
18 to be overseen;

19 (B) has a separate ongoing business rela-
20 tionship, such as a joint venture or contract,
21 with any of the contractors to be overseen or
22 any related entity;

23 (C) would be placed in a position to affect
24 the value or performance of work it or any re-

1 lated entity is doing under any other Govern-
2 ment contract;

3 (D) has a reverse role with the contractor
4 to be overseen under one or more separate Gov-
5 ernment contracts; and

6 (E) has some other relationship with the
7 contractor to be overseen that could reasonably
8 appear to bias the contractor’s judgment.

9 (3) The term “related entity”, with respect to
10 a contractor, means any subsidiary, parent, affiliate,
11 joint venture, or other entity related to the con-
12 tractor.

13 (c) CONTRACTS RELATING TO INHERENTLY GOV-
14 ERNMENTAL FUNCTIONS.—An agency may not enter into
15 a contract for the performance of inherently governmental
16 functions for contract oversight (as described in subpart
17 7.5 of part 7 of the Federal Acquisition Regulation).

18 (d) EFFECTIVE DATE AND APPLICABILITY.—This
19 section shall take effect on the date of enactment of this
20 Act and shall apply to—

21 (1) contracts entered into on or after such date;

22 (2) any task or delivery order issued on or after
23 such date under a contract entered into before, on,
24 or after such date; and

1 (C) A list of audits or other reports issued
2 during the applicable quarter that identify sig-
3 nificant or substantial deficiencies in the per-
4 formance of any contractor or in any business
5 system of any contractor under any contract,
6 task or delivery order, or subcontract.

7 (2) The report described in paragraph (1) shall
8 be submitted to the Committee on Government Re-
9 form of the House of Representatives, the Com-
10 mittee on Homeland Security and Governmental Af-
11 fairs of the Senate, and other committees of jurisdic-
12 tion.

13 (b) SUBMISSION OF INDIVIDUAL AUDITS.—The head
14 of each Federal agency or department shall provide, within
15 14 days after a request in writing by the chairman or
16 ranking member of any of the committees described in
17 subsection (a)(2), a full and unredacted copy of any audit
18 or other report described in subsection (a)(1).

19 **SEC. 404. PUBLIC AVAILABILITY OF FEDERAL CONTRACT**
20 **AWARDS.**

21 (a) AMENDMENT.—The Office of Federal Procure-
22 ment Policy Act (41 U.S.C. 403 et seq.) is amended by
23 inserting after section 19 the following new section:

1 **“SEC. 19A. PUBLIC AVAILABILITY OF CONTRACT AWARD IN-**
2 **FORMATION.**

3 “(a) IN GENERAL.—Except as provided in subsection
4 (b), not later than 14 days after the award of a contract
5 by an executive agency, the head of the executive agency
6 shall make publicly available, including by posting on the
7 Internet in a searchable database, the following informa-
8 tion with respect to the contract:

9 “(1) The name and address of the contractor.

10 “(2) The date of award of the contract.

11 “(3) The number of offers received in response
12 to the solicitation.

13 “(4) The total amount of the contract.

14 “(5) The contract type.

15 “(6) The items, quantities, and any stated unit
16 price of items or services to be procured under the
17 contract.

18 “(7) With respect to a procurement carried out
19 using procedures other than competitive proce-
20 dures—

21 “(A) the authority for using such proce-
22 dures under section 303(c) of title III of the
23 Federal Property and Administrative Services
24 Act of 1949 (41 U.S.C. 253(c)) or section
25 2304(c) of title 10, United States Code; and

1 “(B) the number of sources from which
2 bids or proposals were solicited.

3 “(8) The general reasons for selecting the con-
4 tractor.

5 “(9) The name of the executive agency that will
6 receive the goods or services procured under the con-
7 tract, if other than the agency awarding the con-
8 tract.

9 “(b) EXCEPTION.—Nothing in this section shall re-
10 quire the disclosure of classified information.”.

11 (b) CLERICAL AMENDMENT.—The table of contents
12 contained in section 1(b) of such Act is amended by insert-
13 ing after the item relating to section 19 the following new
14 item:

 “Sec. 19A. Public availability of contract award information.”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this Act shall apply to contracts entered into more than
17 90 days after the date of the enactment of this Act.

18 **SEC. 405. PROVISION OF INFORMATION TO CONGRESS.**

19 (a) PROVISION OF INFORMATION TO CONGRESS.—
20 Upon request of the chairman or ranking member of a
21 committee described in subsection (b), the head of an execu-
22 tive agency shall provide, with respect to any contract
23 or task or delivery order under a task or delivery order
24 contract entered into by the agency, within 14 days after
25 receipt of the request, unredacted copies of any documents

1 required to be maintained in the contracting office con-
2 tract file, the contract administration office contract file,
3 and the paying office contract file pursuant to subpart 4.8
4 of the Federal Acquisition Regulation, including—

- 5 (1) copies of the contract and all modifications;
- 6 (2) orders issued under the contract;
- 7 (3) justifications and approvals;
- 8 (4) any government estimate of contract price;
- 9 (5) source selection documentation;
- 10 (6) cost or price analysis;
- 11 (7) audit reports and other evaluations;
- 12 (8) justification for type of contract;
- 13 (9) authority for deviations from regulations,
14 statutory requirements, or other restrictions;
- 15 (10) bills, invoices, vouchers, and supporting
16 documents;
- 17 (11) records of payments or receipts; and
- 18 (12) compensation determinations.

19 (b) COMMITTEES.—The committees referred to in
20 subsection (a) are the following:

- 21 (1) The Committee on Governmental Affairs of
22 the Senate and the Committee on Government Re-
23 form of the House of Representatives.
- 24 (2) The Committees on Appropriations of the
25 Senate and House of Representatives.

1 (3) Each committee that the head of the execu-
2 tive agency determines has legislative jurisdiction for
3 the operations of the department or agency to which
4 the contract, task or delivery order, or other infor-
5 mation referred to in subsection (a) relates.

6 (4) A subcommittee of jurisdiction of any of the
7 committees referred to in paragraphs (1), (2), or
8 (3).

9 **SEC. 406. OVERSIGHT BY THE GOVERNMENT REFORM COM-**
10 **MITTEE.**

11 Clause (4)(c) of Rule X of the Rules of the House
12 of Representatives is amended by adding at the end the
13 following new subparagraph:

14 “(3) In addition to its duties under subpara-
15 graph (1), the Committee on Government Reform,
16 or their subcommittees of jurisdiction, shall hold
17 hearings to investigate credible evidence or allega-
18 tions of waste, fraud, abuse, or mismanagement in
19 Federal contracts, including allegations or evidence
20 presented in reports by an Inspector General of a
21 Federal agency, the Government Accountability Of-
22 fice, or the Defense Contract Audit Agency.”.

1 **SEC. 407. NONPARTISAN CHIEF ACQUISITION OFFICERS.**

2 Section 16 of the Office of Federal Procurement Pol-
3 icy Act (41 U.S.C. 414) is amended in subsection (a)(1)
4 by striking “non-career employee as”.

5 **SEC. 408. IMPROVING THE FEDERAL PROCUREMENT DATA**
6 **SYSTEM.**

7 (a) AVAILABILITY ON SINGLE WEBSITE.—

8 (1) REQUIREMENT.—The Federal Procurement
9 Data System described in section 6(d)(4) of the Of-
10 fice of Federal Procurement Policy Act (41 U.S.C.
11 405(d)(4)) shall be modified, under the direction of
12 the Administrator for Federal Procurement Policy,
13 so that not later than one year after the date of the
14 enactment of this Act, the complete data contained
15 in the system are available from a single Internet
16 website that—

17 (A) allows for downloading of the data;

18 (B) is publicly accessible at no cost;

19 (C) is user-friendly; and

20 (D) is in a format that is easily searchable
21 and that can be aggregated by data element.

22 (2) COMPTROLLER GENERAL REPORT.—Not
23 later than 1 year after the date of the enactment of
24 this Act, the Comptroller General shall submit to
25 Congress a report on compliance with the require-
26 ment of paragraph (1).

1 (b) CLASSIFIED ANNEX.—

2 (1) REQUIREMENT.—The Federal Procurement
3 Data System also shall be modified, under the direc-
4 tion of the Administrator for Federal Procurement
5 Policy, to contain a classified annex. The annex shall
6 contain the same information for classified contracts
7 that is required for unclassified contracts. The
8 annex shall be protected at all times by procedures
9 established for information that has been specifically
10 authorized under criteria established by an Execu-
11 tive order or an Act of Congress to be kept classified
12 in the interest of national defense or foreign policy.

13 (2) AGENCY REPORTING REQUIREMENT.—The
14 head of each executive agency shall submit to Con-
15 gress each year a report, in unclassified form, that
16 includes the following:

17 (A) The agency's total budget for classified
18 procurement spending.

19 (B) The percentage of that agency's an-
20 nual classified procurement spending that is
21 awarded for contracts—

22 (i) entered into using procedures other
23 than competitive procedures when the
24 goods or services are available from only
25 one responsible source;

1 (ii) entered into using procedures
2 other than competitive procedures when
3 the goods or services are available from a
4 limited number of responsible sources; and
5 (iii) entered into using full and open
6 competition.

7 (c) AGENCY REPORTING REQUIREMENT.—The senior
8 procurement officer for each executive agency shall, as di-
9 rected by the Director of the Office of Management and
10 Budget, submit to the Director annual reports on the ac-
11 tions taken by the executive agency pursuant to the guide-
12 lines issued under subsection (a).

13 **SEC. 409. ENFORCEMENT THROUGH BID PROTEST.**

14 Any aggrieved party may protest a lack of compliance
15 with sections 101, 102, 201, 202, or 602 of this Act or
16 any amendments made by those sections, including an ar-
17 bitrary decision by the agency head. Nothing in the pre-
18 ceding sentence shall be interpreted to affect protest rights
19 available to an aggrieved party under other provisions of
20 law.

1 **TITLE V—PREVENTING**
2 **UNJUSTIFIED AWARD FEES**

3 **SEC. 501. ENCOURAGING EXCELLENT CONTRACT PER-**
4 **FORMANCE.**

5 (a) **LIMITATION.**—For any cost-based contract en-
6 tered into by the Federal Government that includes an
7 award or incentive fee—

8 (1) the fee may be paid only for above-satisfac-
9 tory performance of the contract; and

10 (2) at a minimum, the following factors shall be
11 considered in making a determination regarding
12 whether, and in what amount, the fee shall be paid
13 to the contractor:

14 (A) Whether the contractor met cost goals.

15 (B) Whether the contractor met schedule
16 goals.

17 (C) Whether the contractor met perform-
18 ance goals and delivered the goods or services
19 required to be provided under the contract.

20 (b) **DEFINITION.**—In this section, the term “above-
21 satisfactory performance” includes ratings of excellent,
22 outstanding, and very good, as well as equivalent ratings,
23 but excludes ratings of acceptable, average, expected,
24 good, and satisfactory, as well as equivalent ratings.

1 **TITLE VI—DETECTING**
2 **CORRUPTION IN CONTRACTING**

3 **SEC. 601. CLOSING THE REVOLVING DOOR.**

4 (a) ELIMINATION OF LOOPHOLES THAT ALLOW
5 FORMER FEDERAL OFFICIALS TO ACCEPT COMPENSA-
6 TION FROM CONTRACTORS OR RELATED ENTITIES.—Sec-
7 tion 27(d) of the Office of Federal Procurement Policy
8 Act (41 U.S.C. 423(d)) is amended—

9 (1) in paragraph (1)—

10 (A) by striking “or consultant” and insert-
11 ing “consultant, lawyer, or lobbyist”;

12 (B) by striking “one year” and inserting
13 “two years”; and

14 (C) in subparagraph (C), by striking “per-
15 sonally made for the Federal agency—” and in-
16 serting “participated personally and substan-
17 tially in—”; and

18 (2) by amending paragraph (2) to read as fol-
19 lows:

20 “(2) Paragraph (1) shall not prohibit a former
21 official of a Federal agency from accepting com-
22 pensation from any division or affiliate of a con-
23 tractor that does not produce the same or similar
24 products or services as the entity of the contractor
25 that is responsible for the contract referred to in

1 subparagraph (A), (B), or (C) of such paragraph if
2 the agency’s designated ethics officer determines
3 that—

4 “(A) the offer of compensation is not a re-
5 ward for any action described in paragraph (1);
6 and

7 “(B) acceptance of the compensation is ap-
8 propriate and will not affect the integrity of the
9 procurement process.”.

10 (b) REQUIREMENT FOR FEDERAL PROCUREMENT
11 OFFICERS TO DISCLOSE JOB OFFERS MADE TO REL-
12 ATIVES.—Section 27(c)(1) of such Act (41 U.S.C.
13 423(c)(1)) is amended by inserting after “that official”
14 the following: “or for a relative of that official (as defined
15 in section 3110 of title 5, United States Code),”.

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

20 “(i) PROHIBITION ON INVOLVEMENT BY CERTAIN
21 FORMER CONTRACTOR EMPLOYEES IN PROCURE-
22 MENTS.—An employee of the Federal Government who is
23 a former employee of a contractor with the Federal Gov-
24 ernment shall not be personally and substantially involved
25 with any award of a contract to the employee’s former em-

1 ployer, or the administration of such a contract, for the
2 two-year period beginning on the date on which the em-
3 ployee leaves the employment of the contractor.”.

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

7 “(j) REGULATIONS.—The Administrator, in consulta-
8 tion with the Director of the Office of Government Ethics,
9 shall—

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

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

14 **SEC. 602. REQUIRING CONTRACTOR INTEGRITY AND BUSI-**
15 **NESS ETHICS.**

16 (a) CIVILIAN AGENCY CONTRACTORS.—(1) Title III
17 of the Federal Property and Administrative Services Act
18 of 1949 (41 U.S.C. 251 et seq.) is amended by inserting
19 after section 303N, as added by section 102, the following
20 new section:

21 **“SEC. 303O. PROHIBITION OF AWARD TO UNETHICAL CON-**
22 **TRACTORS.**

23 “(a) IN GENERAL.—No prospective contractor may
24 be awarded a contract with an agency unless the con-
25 tracting officer for the contract determines that such pro-

1 prospective contractor has a satisfactory record of integrity
2 and business ethics.

3 “(b) DEFINITION.—No prospective contractor shall
4 be considered to have a satisfactory record of integrity and
5 business ethics if it—

6 “(1) has exhibited a pattern of overcharging the
7 Government under Federal contracts;

8 “(2) has exhibited a pattern of failing to comply
9 with the law, including tax, labor and employment,
10 environmental, antitrust, and consumer protection
11 laws; or

12 “(3) has an outstanding debt with a Federal
13 agency in a delinquent status.”

14 (2) The table of sections at the beginning of such Act
15 is amended by inserting after the item relating to section
16 303N, as added by section 102, the following new item:

“Sec. 303O. Prohibition of award to unethical contractors.”.

17 (b) DEFENSE CONTRACTORS.—(1) Chapter 137 of
18 title 10, United States Code, is amended by inserting after
19 section 2305a the following new section:

20 **“§ 2305b. Prohibition of award to unethical contrac-**
21 **tors**

22 “Section 303O of the Federal Property and Adminis-
23 trative Services Act of 1949 shall apply to a prospective
24 contractor that may be awarded a contract with an agency
25 under this title in the same manner as such section applies

1 to a prospective contractor that may be awarded a con-
2 tract with an agency covered by that section.”.

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

“2305b. Prohibition of award to unethical contractors.”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply with respect to contracts for which
8 solicitations are issued after the date of the enactment of
9 this Act.

10 **SEC. 603. ENHANCEMENT OF WHISTLEBLOWER PROTEC-**
11 **TIONS.**

12 (a) CIVILIAN AGENCY CONTRACTS.—Section 315(c)
13 of the Federal Property and Administrative Services Act
14 of 1949 (41 U.S.C. 265(c)), is amended—

15 (1) in paragraph (1), by striking “If the head”
16 and all that follows through “actions:” and inserting
17 the following: “Not later than 180 days after sub-
18 mission of a complaint under subsection (b), the
19 head of the executive agency concerned shall deter-
20 mine whether the contractor concerned has subjected
21 the complainant to a reprisal prohibited by sub-
22 section (a) and shall either issue an order denying
23 relief or shall take one or more of the following ac-
24 tions:”; and

1 (2) by redesignating paragraph (3) as para-
2 graph (4) and adding after paragraph (2) the fol-
3 lowing new paragraph (3):

4 “(3) If the head of an executive agency has not issued
5 an order within 180 days after the submission of a com-
6 plaint under subsection (b) and there is no showing that
7 such delay is due to the bad faith of the complainant, the
8 complainant shall be deemed to have exhausted his admin-
9 istrative remedies with respect to the complaint, and the
10 complainant may bring an action at law or equity for de
11 novo review to seek compensatory damages and other re-
12 lief available under this section in the appropriate district
13 court of the United States, which shall have jurisdiction
14 over such an action without regard to the amount in con-
15 troversy.”.

16 (b) ARMED SERVICES CONTRACTS.—Section 2409 of
17 title 10, United States Code, is amended—

18 (1) in paragraph (1), by striking “If the head”
19 and all that follows through “actions:” and inserting
20 the following: “Not later than 180 days after sub-
21 mission of a complaint under subsection (b), the
22 head of the agency concerned shall determine wheth-
23 er the contractor concerned has subjected the com-
24 plainant to a reprisal prohibited by subsection (a)

1 and shall either issue an order denying relief or shall
2 take one or more of the following actions:”; and

3 (2) by redesignating paragraph (3) as para-
4 graph (4) and adding after paragraph (2) the fol-
5 lowing new paragraph (3):

6 “(3) If the head of an agency has not issued an order
7 within 180 days after the submission of a complaint under
8 subsection (b) and there is no showing that such delay
9 is due to the bad faith of the complainant, the complainant
10 shall be deemed to have exhausted his administrative rem-
11 edies with respect to the complaint, and the complainant
12 may bring an action at law or equity for de novo review
13 to seek compensatory damages and other relief available
14 under this section in the appropriate district court of the
15 United States, which shall have jurisdiction over such an
16 action without regard to the amount in controversy.”.

○