

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to articles containing distilled spirits brought into the United States after September 30, 1985. 26 USC 7652 note.

## TITLE VII—COMPETITION IN CONTRACTING

Competition in Contracting Act of 1984.

### SHORT TITLE

SEC. 2701. This title may be cited as the “Competition in Contracting Act of 1984”. 41 USC 251 note.

## Subtitle A—Amendments to the Federal Property and Administrative Services Act of 1949

### PROCUREMENT PROCEDURES

SEC. 2711. (a)(1) Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended to read as follows:

#### “COMPETITION REQUIREMENTS

“SEC. 303. (a)(1) Except as provided in subsections (b), (c), and (g) and except in the case of procurement procedures otherwise expressly authorized by statute, an executive agency in conducting a procurement for property or services—

“(A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this title and the modifications to regulations promulgated pursuant to section 2752 of the Competition in Contracting Act of 1984; and

*Post*, p. 1203.

“(B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

“(2) In determining the competitive procedures appropriate under the circumstance, an executive agency—

“(A) shall solicit sealed bids if—

- “(i) time permits the solicitation, submission, and evaluation of sealed bids;
- “(ii) the award will be made on the basis of price and other price-related factors;
- “(iii) it is not necessary to conduct discussions with the responding sources about their bids; and
- “(iv) there is a reasonable expectation of receiving more than one sealed bid; and

“(B) shall request competitive proposals if sealed bids are not appropriate under clause (A).

“(b)(1) An executive agency may provide for the procurement of property or services covered by this section using competitive procedures but excluding a particular source in order to establish or maintain any alternative source or sources of supply for that property or service if the agency head determines that to do so—

“(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of such property or services;

“(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization; or

“(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

“(2) In fulfilling the statutory requirements relating to small business concerns and socially and economically disadvantaged small business concerns, an executive agency shall use competitive procedures but may restrict a solicitation to allow only such business concerns to compete.

“(c) An executive agency may use procedures other than competitive procedures only when—

“(1) the property or services needed by the executive agency are available from only one responsible source and no other type of property or services will satisfy the needs of the executive agency;

“(2) the executive agency’s need for the property or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the executive agency is permitted to limit the number of sources from which it solicits bids or proposals;

“(3) it is necessary to award the contract to a particular source or sources in order (A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization, or (B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

“(4) the terms of an international agreement or treaty between the United States Government and a foreign government or international organization, or the written directions of a foreign government reimbursing the executive agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures;

“(5) a statute expressly authorizes or requires that the procurement be made through another executive agency or from a specified source, or the agency’s need is for a brand-name commercial item for authorized resale;

“(6) the disclosure of the executive agency’s needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

“(7) the head of the executive agency—

“(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned, and

“(B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract.

“(d)(1) For the purposes of applying subsection (c)(1)—

“(A) in the case of a contract for property or services to be awarded on the basis of acceptance of an unsolicited research

proposal, the property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique and innovative concept the substance of which is not otherwise available to the United States and does not resemble the substance of a pending competitive procurement; and

“(B) in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment when it is likely that award to a source other than the original source would result in (i) substantial duplication of cost to the Government which is not expected to be recovered through competition, or (ii) unacceptable delays in fulfilling the executive agency’s needs, such property may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures.

“(2) The authority of the head of an executive agency under subsection (c)(7) may not be delegated.

“(e) An executive agency using procedures other than competitive procedures to procure property or services by reason of the application of subsection (c)(2) or (c)(6) shall request offers from as many potential sources as is practicable under the circumstances.

“(f)(1) Except as provided in paragraph (2), an executive agency may not award a contract using procedures other than competitive procedures unless—

“(A) the contracting officer for the contract justifies the use of such procedures in writing and certifies the accuracy and completeness of the justification;

“(B) the justification is approved—

“(i) in the case of a contract for an amount exceeding \$100,000 (but equal to or less than \$1,000,000), by the competition advocate for the procuring activity (without further delegation);

“(ii) in the case of a contract for an amount exceeding \$1,000,000 (but equal to or less than \$10,000,000), by the head of the procuring activity or a delegate who, if a member of the armed forces, is a general or flag officer or, if a civilian; is serving in a position in grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule); or

“(iii) in the case of a contract for an amount exceeding \$10,000,000, by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) (without further delegation); and

“(C) Any required notice has been published with respect to such contract pursuant to section 18 of the Office of Federal Procurement Policy Act and all bids or proposals received in response to such notice have been considered by such executive agency.

“(2) In the case of a procurement permitted by subsection (c)(2), the justification and approval required by paragraph (1) may be made after the contract is awarded. The justification and approval required by paragraph (1) is not required in the case of a procurement permitted by subsection (c)(7) or in the case of a procurement conducted under the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O’Day Act.

5 USC 5332.

97 Stat. 1330.

Post, p. 1196.

“(3) The justification required by paragraph (1)(A) shall include—

“(A) a description of the agency’s needs;

“(B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor’s qualifications or the nature of the procurement, of the reasons for using that exception;

“(C) a determination that the anticipated cost will be fair and reasonable;

“(D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;

“(E) a listing of the sources, if any, that expressed in writing an interest in the procurement; and

“(F) a statement of the actions, if any, the agency may take to remove or overcome a barrier to competition before a subsequent procurement for such needs.

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

“(5) In no case may an executive agency—

“(A) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions; or

“(B) procure property or services from another executive agency unless such other executive agency complies fully with the requirements of this title in its procurement of such property or services.

The restriction set out in clause (B) is in addition to, and not in lieu of, any other restriction provided by law.

“(g)(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the regulations modified, in accordance with section 2752 of the Competition in Contracting Act of 1984 shall provide for special simplified procedures for small purchases of property and services.

“(2) For the purposes of this title, a small purchase is a purchase or contract for an amount which does not exceed \$25,000.

“(3) A proposed purchase or contract for an amount above \$25,000 may not be divided into several purchases or contracts for lesser amounts in order to use the small purchase procedures required by paragraph (1).

“(4) In using small purchase procedures, an executive agency shall promote competition to the maximum extent practicable.”

(2) Title III of such Act is further amended by inserting after section 303 the following new sections:

“PLANNING AND SOLICITATION REQUIREMENTS

“Sec. 303A. (a)(1) In preparing for the procurement of property or services, an executive agency shall—

“(A) specify its needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

“(B) use advance procurement planning and market research; and

*Post*, p. 1203.

41 USC 253a.

“(C) develop specifications in such manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

“(2) Each solicitation under this title shall include specifications which—

“(A) consistent with the provisions of this title, permit full and open competition;

“(B) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the executive agency or as authorized by law.

“(3) For the purposes of paragraphs (1) and (2), the type of specification included in a solicitation shall depend on the nature of the needs of the executive agency and the market available to satisfy such needs. Subject to such needs, specifications may be stated in terms of—

“(A) function, so that a variety of products or services may qualify;

“(B) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

“(C) design requirements.

“(b) In addition to the specifications described in subsection (a), each solicitation for sealed bids or competitive proposals (other than for small purchases) shall at a minimum include—

“(1) a statement of—

“(A) all significant factors (including price) which the executive agency reasonably expects to consider in evaluating sealed bids or competitive proposals; and

“(B) the relative importance assigned to each of those factors; and

“(2)(A) in the case of sealed bids—

“(i) a statement that sealed bids will be evaluated without discussions with the bidders; and

“(ii) the time and place for the opening of the sealed bids;

or

“(B) in the case of competitive proposals—

“(i) a statement that the proposals are intended to be evaluated with, and awards made after, discussions with the offerors, but might be evaluated and awarded without discussions with the offerors; and

“(ii) the time and place for submission of proposals.

#### “EVALUATION AND AWARD

“SEC. 303B. (a) An executive agency shall evaluate sealed bids and competitive proposals based solely on the factors specified in the solicitation. 41 USC 253b.

“(b) All sealed bids or competitive proposals received in response to a solicitation may be rejected if the agency head determines that such action is in the public interest.

“(c) Sealed bids shall be opened publicly at the time and place stated in the solicitation. The executive agency shall evaluate the bids without discussions with the bidders and, except as provided in subsection (b), shall award a contract with reasonable promptness to the responsible source whose bid conforms to the solicitation and is most advantageous to the United States, considering only price and the other price-related factors included in the solicitation. The

award of a contract shall be made by transmitting written notice of the award to the successful bidder.

“(d)(1) The executive agency shall evaluate competitive proposals and may award a contract—

“(A) after discussions conducted with the offerors at any time after receipt of the proposals and before the award of the contract; or

“(B) without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the Government.

“(2) In the case of award of a contract under paragraph (1)(A), the executive agency shall conduct, before such award, written or oral discussions with all responsible sources who submit proposals within the competitive range, considering only price and the other factors included in the solicitation.

“(3) In the case of award of a contract under paragraph (1)(B), the executive agency shall award the contract based on the proposals as received (and as clarified, if necessary, in discussions conducted for the purpose of minor clarification).

“(4) Except as otherwise provided in subsection (b), the executive agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the United States, considering only price and the other factors included in the solicitation. The executive agency shall award the contract by transmitting written notice of the award to such source and shall promptly notify all other offerors of the rejection of their proposals.

“(e) If the agency head considers that a bid or proposal evidences a violation of the antitrust laws, such agency head shall refer the bid or proposal to the Attorney General for appropriate action.”

(3) Section 309 of such Act (41 U.S.C. 259) is amended by adding at the end thereof the following new subsections:

“(b) The term ‘competitive procedures’ means procedures under which an executive agency enters into a contract pursuant to full and open competition. Such term also includes—

“(1) procurement of architectural or engineering services conducted in accordance with title IX of this Act (40 U.S.C. 541 et seq.);

“(2) the competitive selection of basic research proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of such proposals; and

“(3) the procedures established by the Administrator for the multiple awards schedule program of the General Services Administration if—

“(A) participation in the program has been open to all responsible sources; and

“(B) orders and contracts under such procedures result in the lowest overall cost alternative to meet the needs of the Government.

“(c) The terms ‘full and open competition’ and ‘responsible source’ have the same meanings provided such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).”

(b) The table of contents of such Act is amended by striking out the item relating to section 303 and inserting in lieu thereof the following:

"Sec. 303. Competition requirements.

"Sec. 303A. Planning and solicitation requirements.

"Sec. 303B. Evaluation and award."

(c) The amendments made by this section do not supersede or affect the provisions of section 8(a) of the Small Business Act (15 U.S.C. 637(a)). 41 USC 253 note.

#### COST OR PRICING DATA

SEC. 2712. Section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254) is amended by adding at the end thereof the following new subsection:

"(d)(1) A prime contractor or any subcontractor shall be required to submit cost or pricing data under the circumstances listed below, and shall be required to certify that, to the best of such contractor's or subcontractor's knowledge and belief, the cost or pricing data submitted were accurate, complete, and current—

"(A) before the award of any prime contract under this title using procedures other than sealed-bid procedures, if the contract price is expected to exceed \$100,000;

"(B) before the pricing of any contract change or modification, if the price adjustment is expected to exceed \$100,000, or such lesser amount as may be prescribed by the agency head;

"(C) before the award of a subcontract at any tier, when the prime contractor and each higher tier subcontractor have been required to furnish such a certificate, if the price of such subcontract is expected to exceed \$100,000; or

"(D) before the pricing of any contract change or modification to a subcontract covered by clause (C), if the price adjustment is expected to exceed \$100,000, or such lesser amount as may be prescribed by the agency head.

"(2) Any prime contract or change or modification thereto under which a certificate is required under paragraph (1) shall contain a provision that the price to the Government, including profit or fee, shall be adjusted to exclude any significant sums by which it may be determined by the agency head that such price was increased because the contractor or any subcontractor required to furnish such a certificate, furnished cost or pricing data which, as of a date agreed upon between the parties (which date shall be as close to the date of agreement on the price as is practicable), were inaccurate, incomplete, or noncurrent.

"(3) For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this subsection, any authorized representative of the agency who is an employee of the United States Government shall have the right, until the expiration of three years after final payment under the contract or subcontract, to examine all books, records, documents, and other data of the contractor or subcontractor related to the proposal for the contract, the discussions conducted on the proposal, pricing, or performance of the contract or subcontract.

"(4) When cost or pricing data are not required to be submitted by this subsection, such data may nevertheless be required by the agency if the agency head determines that such data are necessary for the evaluation by the executive agency of the reasonableness of the price of the contract or subcontract.

"(5) The requirements of this subsection need not be applied to contracts or subcontracts—

"(A) where the price is based on—

- “(i) adequate price competition,
  - “(ii) established catalog or market prices of commercial items sold in substantial quantities to the general public, or
  - “(iii) prices set by law or regulation, or
- “(B) in exceptional cases, where the agency head determines that the requirements of this subsection may be waived and states in writing the reasons for such determination.”.

AUTOMATED DATA PROCESSING DISPUTE RESOLUTION

SEC. 2713. (a) Section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) is amended by adding at the end thereof the following new subsection:

“(h)(1) Upon request of an interested party in connection with any procurement conducted under the authority of this section (including procurements conducted under delegations of procurement authority), the board of contract appeals of the General Services Administration (hereafter in this subsection referred to as the ‘board’), shall review any decision by a contracting officer alleged to violate a statute or regulation. Such review shall be conducted under the standard applicable to review of contracting officer final decisions by boards of contract appeals. An interested party who has filed a protest under subchapter V of chapter 35 of title 31, United States Code, with respect to a procurement or proposed procurement may not file a protest with respect to that procurement or proposed procurement under this subsection.

Post, p. 1199.

“(2)(A) When a protest under this subsection is filed before the award of a contract in a protested procurement, the board, at the request of an interested party and within 10 days of the filing of the protest, shall hold a hearing to determine whether the board should suspend the procurement authority of the Administrator or the Administrator’s delegation of procurement authority for the protested procurement on an interim basis until the board can decide the protest.

“(B) The board shall suspend the procurement authority of the Administrator or the Administrator’s delegation of procurement authority unless the Federal agency concerned establishes that—

- “(i) absent action by the board, contract award is likely to occur within 30 days of the hearing; and
- “(ii) urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the board.

“(3)(A) If the Board receives notice of a protest under this subsection after the contract has been awarded but within 10 days after the contract award, the board shall, at the request of an interested party and within 10 days after the date of the filing of the protest, hold a hearing to determine whether the board should suspend the procurement authority of the Administrator or the Administrator’s delegation of procurement authority for the challenged procurement on an interim basis until the board can decide the protest.

“(B) The board shall suspend the procurement authority of the Administrator or the Administrator’s delegation of procurement authority to acquire any goods or services under the contract which are not previously delivered and accepted unless the Federal agency concerned establishes that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the board.

“(4)(A) The board shall conduct such proceedings and allow such discovery as may be required for the expeditious, fair, and reasonable resolution of the protest.

“(B) Subject to any deadlines imposed by section 9(a) of the Contract Disputes Act of 1978 (41 U.S.C. 608(a)), the board shall give priority to protests filed under this subsection. The board shall issue its final decision within 45 working days after the date of the filing of the protest, unless the board’s chairman determines that the specific and unique circumstances of the protest require a longer period, in which case the board shall issue such decision within the longer period determined by the chairman.

“(C) The board may dismiss a protest the board determines is frivolous or which, on its face, does not state a valid basis for protest.

“(5)(A) In making a decision on the merits of protests brought under this section, the board shall accord due weight to the policies of this section and the goals of economic and efficient procurement set forth in this section.

“(B) If the board determines that a challenged agency action violates a statute or regulation or the conditions of any delegation of procurement authority issued pursuant to this section, the board may suspend, revoke, or revise the procurement authority of the Administrator or the Administrator’s delegation of procurement authority applicable to the challenged procurement.

“(C) Whenever the board makes such a determination, it may, in accordance with section 1304 of title 31, United States Code, further declare an appropriate interested party to be entitled to the costs of—

“(i) filing and pursuing the protest, including reasonable attorney’s fees, and

“(ii) bid and proposal preparation.

“(6)(A) The final decision of the board may be appealed by the head of the Federal agency concerned and by any interested party, including interested parties who intervene in any protest filed under this subsection, as set forth in the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

“(B) If the board revokes, suspends, or revises the procurement authority of the Administrator or the Administrator’s delegation of procurement authority after the contract award, the affected contract shall be presumed valid as to all goods or services delivered and accepted under the contract before the suspension, revocation, or revision of such procurement authority or delegation.

“(C) Nothing contained in this subsection shall affect the board’s power to order any additional relief which it is authorized to provide under any statute or regulation. However, the procedures set forth in this subsection shall only apply to procurements conducted under the authority contained in this section. In addition, nothing contained in this subsection shall affect the right of any interested party to file a protest with the contracting agency or to file an action in a district court of the United States or the United States Claims Court.

“(8) Not later than January 15, 1985, the board shall adopt and issue such rules and procedures as may be necessary to the expeditious disposition of protests filed under the authority of this subsection.

“(9) For purposes of this subsection—

“(A) the term ‘protest’ means a written objection by an interested party to a solicitation by a Federal agency for bids or

proposals for a proposed contract for the procurement of property or services or a written objection to a proposed award or the award of such a contract; and

“(B) the term ‘interested party’ means, with respect to a contract or proposed contract described in subparagraph (A), an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.”.

Effective date.  
40 USC 759 note.

(b) The amendment made by this section shall cease to be effective on January 15, 1988.

#### CONFORMING AMENDMENTS

SEC. 2714. (a)(1) Section 302 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252) is amended—

(A) by striking out the second sentence in subsection (b); and

(B) by striking out subsections (c), (d), (e), and (f) and inserting in lieu thereof the following:

“(c)(1) This title does not (A) authorize the erection, repair, or furnishing of any public building or public improvement, but such authorization shall be required in the same manner as heretofore, or (B) permit any contract for the construction or repair of buildings, roads, sidewalks, sewers, mains, or similar items using procedures other than sealed-bid procedures under section 303(a)(2)(A), if the conditions set forth in section 303(a)(2)(A) apply or the contract is to be performed outside the United States.

*Ante*, p. 1175.

“(2) Section 303(a)(2)(A) does not require the use of sealed-bid procedures in cases in which section 204(e) of title 23, United States Code, applies.”.

(2) The heading of section 304 of such Act (41 U.S.C. 254) is amended to read as follows:

#### “CONTRACT REQUIREMENTS”.

(3) Section 304 of such Act (41 U.S.C. 254) is amended—

(A) by striking out “negotiated pursuant to section 302(c)” in the first sentence of subsection (a) and inserting in lieu thereof “awarded after using procedures other than sealed-bid procedures”;

(B) by striking out “negotiated pursuant to section 302(c)” in the second sentence of subsection (a) and inserting in lieu thereof “awarded after using procedures other than sealed-bid procedures”; and

(C) by striking out “negotiated without advertising pursuant to authority contained in this Act” in the first sentence of subsection (c) and inserting in lieu thereof “awarded after using procedures other than sealed-bid procedures”.

(4) Section 307 of such Act (41 U.S.C. 257) is amended—

(A) by striking out the first sentence of subsection (a) and inserting in lieu thereof the following: “Determinations and decisions provided in this Act to be made by the Administrator or other agency head shall be final. Such determinations or decisions may be made with respect to individual purchases or contracts or, except for determinations or decisions under sections 303, 303A, and 303B, with respect to classes of purchases or contracts.”;

*Ante*, p. 1175.

(B) by striking out "Except as provided in subsection (b)," in the second sentence of subsection (a) and inserting in lieu thereof "Except as provided in section 303(d)(2),";

(C) by striking out "this chapter" in such sentence and inserting in lieu thereof "this Act";

(D) by striking out subsection (b);

(E) by striking out "by paragraphs (11), (12), (13), or (14) of section 302(c)," in subsection (c);

(F) by redesignating subsection (c) as subsection (b); and

(G) by striking out subsection (d).

(5) Section 308 of such Act (41 U.S.C. 258) is amended by striking out "entered into pursuant to section 302(c) without advertising," and inserting in lieu thereof "made or awarded after using procedures other than sealed-bid procedures".

(6) Section 310 of such Act (41 U.S.C. 260) is amended by striking out "section 302(c)(15) of this title without regard to the advertising requirements of sections 302(c) and 303" and inserting in lieu thereof "the provisions of this title relating to procedures other than sealed-bid procedures".

(b) The table of contents of such Act is amended by striking out the item relating to section 304 and inserting in lieu thereof the following:

"Sec. 304. Contract requirements."

## Subtitle B—Amendments to Title 10, United States Code

### DECLARATION OF POLICY

SEC. 2721. Section 2301 of title 10, United States Code, is amended to read as follows:

#### "§ 2301. Congressional defense procurement policy

"(a) The Congress finds that in order to ensure national defense preparedness, conserve fiscal resources, and enhance defense production capability, it is in the interest of the United States that property and services be acquired for the Department of Defense in the most timely, economic, and efficient manner. It is therefore the policy of Congress that—

"(1) full and open competitive procedures shall be used by the Department of Defense in accordance with the requirements of this chapter;

"(2) services and property (including weapon systems and associated items) for the Department of Defense be acquired by any kind of contract, other than cost-plus-a-percentage-of-cost contracts, but including multiyear contracts, that will promote the interest of the United States;

"(3) contracts, when appropriate, provide incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology;

"(4) contracts for advance procurement of components, parts, and materials necessary for manufacture or for logistics support of a weapon system should, if feasible and practicable, be entered into in a manner to achieve economic-lot purchases and more efficient production rates;

"(5) the head of an agency use advance procurement planning and market research and prepare contract specifications in such a manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired; and

"(6) the head of an agency encourage the development and maintenance of a procurement career management program to ensure a professional procurement work force.

"(b) Further, it is the policy of Congress that procurement policies and procedures for the agencies named in section 2303 of this title shall in accordance with the requirements of this chapter—

"(1) promote full and open competition;

"(2) be implemented to support the requirements of such agencies in time of war or national emergency as well as in peacetime;

"(3) promote responsiveness of the procurement system to agency needs by simplifying and streamlining procurement processes;

"(4) promote the attainment and maintenance of essential capability in the defense industrial base and the capability of the United States for industrial mobilization;

"(5) provide incentives to encourage contractors to take actions and make recommendations that would reduce the costs to the United States relating to the purchase or use of property or services to be acquired under contracts;

"(6) promote the use of commercial products whenever practicable; and

"(7) require descriptions of agency requirements, whenever practicable, in terms of functions to be performed or performance required.

"(c) Further, it is the policy of Congress that a fair proportion of the purchases and contracts entered into under this chapter be placed with small business concerns."

**CLARIFICATION OF APPLICABILITY OF CHAPTER 137 OF TITLE 10 TO THE SECRETARY OF DEFENSE; DEFINITIONS**

SEC. 2722. (a) Section 2302 of title 10, United States Code, is amended to read as follows:

**"§ 2302. Definitions**

"In this chapter:

"(1) 'Head of an agency' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration.

"(2) 'Competitive procedures' means procedures under which the head of an agency enters into a contract pursuant to full and open competition. Such term also includes—

"(A) procurement of architectural or engineering services conducted in accordance with title IX of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 541 et seq.);

"(B) the competitive selection for award of basic research proposals resulting from a general solicitation and the peer

review or scientific review (as appropriate) of such proposals; and

“(C) the procedures established by the Administrator of General Services for the multiple award schedule program of the General Services Administration if—

“(i) participation in the program has been open to all responsible sources; and

“(ii) orders and contracts under such program result in the lowest overall cost alternative to meet the needs of the United States.

“(3) The terms ‘full and open competition’ and ‘responsible source’ have the same meanings provided such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).”

(b) Section 2303 of such title is amended—

(1) in subsection (a)—

(A) by striking out “purchase, and contract to purchase,” and inserting in lieu thereof “procurement”;

(B) by striking out “named in subsection (b), and all services,” and inserting in lieu thereof “(other than land) and all services”;

(C) by redesignating clauses (1) through (5) as clauses (2) through (6), respectively; and

(D) by inserting before clause (2) (as so redesignated) the following new clause:

“(1) The Department of Defense.”;

(2) by striking out subsection (b); and

(3) by redesignating subsection (c) as subsection (b).

*Post*, p. 1195.  
10 USC 2303.

#### PROCUREMENT PROCEDURES

SEC. 2723. (a)(1) Section 2304 of title 10, United States Code, is amended—

(A) by striking out subsections (a) through (e) and (g), (h), and (i);

(B) by redesignating subsection (f) as subsection (h); and

(C) by inserting after the section heading the following:

“(a)(1) Except as provided in subsections (b), (c), and (g) and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

“(A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this chapter and the modifications to regulations promulgated pursuant to section 2752 of the Competition in Contracting Act of 1984; and

“(B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

“(2) In determining the competitive procedure appropriate under the circumstances, the head of an agency—

“(A) shall solicit sealed bids if—

“(i) time permits the solicitation, submission, and evaluation of sealed bids;

“(ii) the award will be made on the basis of price and other price-related factors;

*Post*, p. 1203.

“(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

“(iv) there is a reasonable expectation of receiving more than one sealed bid; and

“(B) shall request competitive proposals if sealed bids are not appropriate under clause (A).

“(b)(1) The head of an agency may provide for the procurement of property or services covered by this chapter using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service if the head of the agency determines that to do so—

“(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of property or services;

“(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization; or

“(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

“(2) In fulfilling the statutory requirements relating to small business concerns and socially and economically disadvantaged small business concerns, the head of an agency shall use competitive procedures but may restrict a solicitation to allow only such business concerns to compete.

“(c) The head of an agency may use procedures other than competitive procedures only when—

“(1) the property or services needed by the agency are available from only one responsible source and no other type of property or services will satisfy the needs of the agency;

“(2) the agency's need for the property or services is of such an unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

“(3) it is necessary to award the contract to a particular source or sources in order (A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization, or (B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

“(4) the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures;

“(5) a statute expressly authorizes or requires that the procurement be made through another agency or from a specified source, or the agency's need is for a brand-name commercial item for authorized resale;

“(6) the disclosure of the agency’s needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

“(7) the head of the agency—

“(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned, and

“(B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract.

“(d)(1) For the purposes of applying subsection (c)(1)—

“(A) in the case of a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique and innovative concept the substance of which is not otherwise available to the United States and does not resemble the substance of a pending competitive procurement; and

“(B) in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment when it is likely that award to a source other than the original source would result in (i) substantial duplication of cost to the United States which is not expected to be recovered through competition, or (ii) unacceptable delays in fulfilling the agency’s needs, such property may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures.

“(2) The authority of the head of an agency under subsection (c)(7) may not be delegated.

“(e) The head of an agency using procedures other than competitive procedures to procure property or services by reason of the application of subsection (c)(2) or (c)(6) shall request offers from as many potential sources as is practicable under the circumstances.

“(f)(1) Except as provided in paragraph (2), the head of an agency may not award a contract using procedures other than competitive procedures unless—

“(A) the contracting officer for the contract justifies the use of such procedures in writing and certifies the accuracy and completeness of the justification;

“(B) the justification is approved—

“(i) in the case of a contract for an amount exceeding \$100,000 (but equal to or less than \$1,000,000), by the competition advocate for the procuring activity (without further delegation);

“(ii) in the case of a contract for an amount exceeding \$1,000,000 (but equal to or less than \$10,000,000), by the head of the procuring activity or a delegate who, if a member of the armed forces, is a general or flag officer or, if a civilian, is serving in a position in grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule); or

“(iii) in the case of a contract for an amount exceeding \$10,000,000, by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) (without further delegation); and

5 USC 5332.

97 Stat. 1330.

*Post*, p. 1196.

“(C) any required notice has been published with respect to such contract pursuant to section 18 of the Office of Federal Procurement Policy Act and all bids or proposals received in response to that notice have been considered by the head of the agency.

“(2) In the case of a procurement permitted by subsection (c)(2), the justification and approval required by paragraph (1) may be made after the contract is awarded. The justification and approval required by paragraph (1) is not required in the case of a procurement permitted by subsection (c)(7) or in the case of a procurement conducted under the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O’Day Act.

“(3) The justification required by paragraph (1)(A) shall include—

“(A) a description of the agency’s needs;

“(B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor’s qualifications or the nature of the procurement, of the reasons for using that exception;

“(C) a determination that the anticipated cost will be fair and reasonable;

“(D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;

“(E) a listing of the sources, if any, that expressed in writing an interest in the procurement; and

“(F) a statement of the actions, if any, the agency may take to remove or overcome any barrier to competition before a subsequent procurement for such needs.

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

5 USC 552.

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

“(A) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions; or

“(B) procure property or services from another agency unless such other agency complies fully with the requirements of this chapter in its procurement of such property or services.

The restriction contained in clause (B) is in addition to, and not in lieu of, any other restriction provided by law.

“(g)(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the regulations modified in accordance with section 2752 of the Competition in Contracting Act of 1984 shall provide for special simplified procedures for small purchases of property and services.

*Post*, p. 1203.

“(2) For the purposes of this chapter, a small purchase is a purchase or contract for an amount which does not exceed \$25,000.

“(3) A proposed purchase or contract for an amount above \$25,000 may not be divided into several purchases or contracts for lesser amounts in order to use the small purchase procedures required by paragraph (1).

“(4) In using small purchase procedures, the head of an agency shall promote competition to the maximum extent practicable.”.

(2) The heading of such section is amended to read as follows:

**“§ 2304. Contracts: competition requirements”.**

(b) Section 2305 of such title is amended to read as follows: 10 USC 2305.

**“§ 2305. Contracts: planning, solicitation, evaluation, and award procedures**

“(a)(1)(A) In preparing for the procurement of property or services, the head of an agency shall—

“(i) specify the agency’s needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

“(ii) use advance procurement planning and market research; and

“(iii) develop specifications in such manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

“(B) Each solicitation under this chapter shall include specifications which—

“(i) consistent with the provisions of this chapter, permit full and open competition; and

“(ii) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

“(C) For the purposes of subparagraphs (A) and (B), the type of specification included in a solicitation shall depend on the nature of the needs of the agency and the market available to satisfy such needs. Subject to such needs, specifications may be stated in terms of—

“(i) function, so that a variety of products or services may qualify;

“(ii) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

“(iii) design requirements.

“(2) In addition to the specifications described in paragraph (1), a solicitation for sealed bids or competitive proposals (other than for small purchases) shall at a minimum include—

“(A) a statement of—

“(i) all significant factors (including price) which the head of the agency reasonably expects to consider in evaluating sealed bids or competitive proposals; and

“(ii) the relative importance assigned to each of those factors; and

“(B)(i) in the case of sealed bids—

“(I) a statement that sealed bids will be evaluated without discussions with the bidders; and

“(II) the time and place for the opening of the sealed bids; or

“(ii) in the case of competitive proposals—

“(I) a statement that the proposals are intended to be evaluated with, and awards made after, discussions with the offerors, but might be evaluated and awarded without discussions with the offerors; and

“(II) the time and place for submission of proposals.

(b)(1) The head of an agency shall evaluate sealed bids and competitive proposals based solely on the factors specified in the solicitation.

"(2) All sealed bids or competitive proposals received in response to a solicitation may be rejected if the head of the agency determines that such action is in the public interest.

"(3) Sealed bids shall be opened publicly at the time and place stated in the solicitation. The head of the agency shall evaluate the bids without discussions with the bidders and, except as provided in paragraph (2), shall award a contract with reasonable promptness to the responsible bidder whose bid conforms to the solicitation and is most advantageous to the United States, considering only price and the other price-related factors included in the solicitation. The award of a contract shall be made by transmitting written notice of the award to the successful bidder.

"(4)(A) The head of an agency shall evaluate competitive proposals and may award a contract—

"(i) after discussions conducted with the offerors at any time after receipt of the proposals and before the award of the contract; or

"(ii) without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the United States.

"(B) In the case of award of a contract under subparagraph (A)(i), the head of the agency shall conduct, before such award, written or oral discussions with all responsible sources who submit proposals within the competitive range, considering only price and the other factors included in the solicitation.

"(C) In the case of award of a contract under subparagraph (A)(ii), the head of the agency shall award the contract based on the proposals received (and as clarified, if necessary, in discussions conducted for the purpose of minor clarification).

"(D) Except as provided in paragraph (2), the head of the agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the United States, considering only price and the other factors included in the solicitation. The head of the agency shall award the contract by transmitting written notice of the award to such source and shall promptly notify all other offerors of the rejection of their proposals.

"(5) If the head of an agency considers that a bid or proposal evidences a violation of the antitrust laws, he shall refer the bid or proposal to the Attorney General for appropriate action."

(c) The amendments made by this section do not supersede or affect the provisions of section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

#### COST OR PRICING DATA; CONFORMING AMENDMENTS

SEC. 2724. (a) The second sentence of subsection (a) of section 2306 of title 10, United States Code, is amended to read as follows: "Subject to the limitation in the preceding sentence, the other provisions of this section, and other applicable provisions of law, the head of an agency, in awarding contracts under this chapter after using procedures other than sealed-bid procedures, may enter into any kind of contract that he considers will promote the best interests of the United States".

(b) Subsection (b) of such section is amended by striking out “negotiated under section 2304” in the first sentence of subsection (b) and inserting in lieu thereof “awarded under this chapter after using procedures other than sealed-bid procedures”.

(c) Subsection (c) of such section is amended by striking out “section 2304 of this title,” and inserting in lieu thereof “this chapter”.

(d) Subsection (e) of such section is amended by striking out “\$25,000 or” in clause (2) and inserting in lieu thereof “the greater of (A) the small purchase amount under section 2304(g) of this title, or (B)”.

(e) Subsection (f) of such section is amended—

(A) in paragraph (1)—

(i) by striking out “his” in the matter preceding clause (A) and inserting in lieu thereof “such contractor’s or subcontractor’s”;

(ii) by striking out “he” in the matter preceding clause (A);

(iii) by striking out “negotiated prime contract under this title where” in clause (A) and inserting in lieu thereof “prime contract under this chapter entered into after using procedures other than sealed-bid procedures, if”;

(iv) by striking out “for which” in clauses (B) and (D) and inserting in lieu thereof “if”;

(v) by striking out “where” in clause (C) and inserting in lieu thereof “when”;

(vi) by striking out “\$500,000” each place it appears and inserting in lieu thereof “\$100,000”; and

(vii) by striking out “prior to” each place it appears and inserting in lieu thereof “before”;

(B) in paragraph (2), by striking out “negotiated” both places it appears;

(C) by redesignating paragraph (3) as paragraph (5) and striking out “negotiation,” in such paragraph and inserting in lieu thereof “proposal for the contract, the discussions conducted on the proposal”;

(D) by inserting a period after “noncurrent” in paragraph (2);

(E) by striking out “: *Provided*, That the requirements” in paragraph (2) and inserting in lieu thereof the following:

“(3) The requirements”; and

(F) by inserting after paragraph (3) (as designated by clause (E)) the following new paragraph:

“(4) When cost or pricing data is not required to be submitted by this subsection, such data may nevertheless be required by the head of the agency if the head of the agency determines that such data is necessary for the evaluation by the agency of the reasonableness of the price of the contract or subcontract.”.

(f) The heading of such section is amended to read as follows:

“§ 2306. Kinds of contracts; cost or pricing data: truth in negotiation”.

#### DETERMINATIONS AND DECISIONS

SEC. 2725. Section 2310 of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting “, except for determinations and decisions under section 2304 or 2305 of title,” in the first sentence after “contract or”; and

(B) by inserting “, including a determination or decision under section 2304 or 2305 of this title,” in the second sentence after “decision”; and

(2) by striking out subsection (b) and inserting in lieu thereof the following:

“(b) Each determination or decision under section 2306(c), 2306(g)(1), 2307(c), or 2313(c) of this title shall be based on a written finding by the person making the determination or decision, which finding shall set out facts and circumstances that—

“(1) clearly indicate why the type of contract selected under section 2306(c) of this title is likely to be less costly than any other type or that it is impracticable to obtain property or services of the kind or quality required except under such a contract;

“(2) support the findings required by section 2306(g)(1) of this title;

“(3) clearly indicate why advance payments under section 2307(c) of this title would be in the public interest; or

“(4) clearly indicate why the application of section 2313(b) of this title to a contract or subcontract with a foreign contractor or foreign subcontractor would not be in the public interest. Such a finding is final and shall be kept available in the agency for at least six years after the date of the determination or decision. A copy of the finding shall be submitted to the General Accounting Office with each contract to which it applies.”

#### LIMITATION ON AUTHORITY TO DELEGATE CERTAIN FUNCTIONS

SEC. 2726. Section 2311 of title 10, United States Code, is amended—

(1) by striking out “The head” and inserting in lieu thereof “Except as provided in section 2304(d)(2) of this title, the head”; and

(2) by striking out “chapter” and all that follows and inserting in lieu thereof “chapter.”

#### CONFORMING AMENDMENTS

SEC. 2727. (a) The table of sections at the beginning of chapter 137 of title 10, United States Code, is amended—

(1) by striking out the item relating to section 2301 and inserting in lieu thereof the following:

“2301. Congressional defense procurement policy.”; and

(2) by striking out the items relating to sections 2304, 2305, and 2306 and inserting in lieu thereof the following:

“2304. Contracts: competition requirements.

“2305. Contracts: planning, solicitation, evaluation, and award procedures.

“2306. Kinds of contracts; cost or pricing data: truth in negotiation.”

(b) Subsection (h) of section 2304 of such title (as redesignated by section 2723(a)(1)(B)) is amended—

(1) by striking out “negotiated under this section” and inserting in lieu thereof “awarded after using procedures other than sealed-bid procedures”; and

(2) by striking out “formal advertising” and inserting in lieu thereof “sealed-bid procedures”.

(c) Section 2313(b) of such title is amended by striking out “negotiated under this chapter” and inserting in lieu thereof “awarded after using procedures other than sealed-bid procedures”. 10 USC 2313.

(d) Section 2356 of such title is amended by striking out “the formal advertising prescribed by section 2305 of this title” and inserting in lieu thereof “a solicitation for sealed bids under chapter 137 of this title”. 10 USC 2356.

## Subtitle C—Amendments to the Office of Federal Procurement Policy Act

### DEFINITIONS

SEC. 2731. The section of the Office of Federal Procurement Policy Act relating to definitions (41 U.S.C. 403) is redesignated as section 4 and is amended— 97 Stat. 1326.

(1) by striking out “and” at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof “; and”; and

(3) by adding at the end thereof the following new paragraphs:

“(6) the term ‘competitive procedures’ means procedures under which an agency enters into a contract pursuant to full and open competition;

“(7) the term ‘full and open competition’, when used with respect to a procurement, means that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement; and

“(8) the term ‘responsible source’ means a prospective contractor who—

“(A) has adequate financial resources to perform the contract or the ability to obtain such resources;

“(B) is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and Government business commitments;

“(C) has a satisfactory performance record;

“(D) has a satisfactory record of integrity and business ethics;

“(E) has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain such organization, experience, controls, and skills;

“(F) has the necessary production, construction, and technical equipment and facilities, or the ability to obtain such equipment and facilities; and

“(G) is otherwise qualified and eligible to receive an award under applicable laws and regulations.”.

### PROCUREMENT NOTICE AND RECORDS; ADVOCATES FOR COMPETITION

SEC. 2732. (a) The Office of Federal Procurement Policy Act is further amended by adding at the end thereof the following new sections:

## "PROCUREMENT NOTICE"

41 USC 416.

"SEC. 18. (a)(1) Except as provided in subsection (c)—

"(A) an executive agency intending to solicit bids or proposals for a contract for property or services for a price expected to exceed \$10,000 shall furnish for publication by the Secretary of Commerce a notice described in subsection (b); and

"(B) an executive agency awarding a contract for property or services for a price exceeding \$25,000 shall furnish for publication by the Secretary of Commerce a notice announcing such award if there is likely to be any subcontract under such contract.

Commerce  
Business Daily,  
publication.

"(2) The Secretary of Commerce shall publish promptly in the Commerce Business Daily each notice required by paragraph (1).

"(3) Whenever an executive agency is required by paragraph (1)(A) to furnish a notice of a solicitation to the Secretary of Commerce, such executive agency may not—

"(A) issue such solicitation earlier than 15 days after the date on which such notice is published by the Secretary of Commerce; or

"(B) establish a deadline for the submission of all bids or proposals in response to such solicitation that is earlier than 30 days after the date on which such solicitation is issued.

"(b) Each notice required by subsection (a)(1)(A) shall include—

"(1) an accurate description of the property or services to be contracted for, which description is not unnecessarily restrictive of competition;

"(2) the name, business address, and telephone number of the officer or employee of the executive agency who may be contacted for the purpose of obtaining a copy of the solicitation;

"(3) the name, business address, and telephone number of the contracting officer;

"(4) a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the executive agency; and

"(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of such procedures and the identity of the intended source.

"(c)(1) A notice is not required under subsection (a)(1) if—

"(A) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

"(B) the proposed procurement would result from acceptance of any unsolicited proposal that demonstrates a unique and innovative research concept, and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal;

"(C) the procurement is made against an order placed under a requirements contract, or

"(D) the procurement is made for perishable subsistence supplies.

"(2) The requirements of subsection (a)(1)(A) do not apply to any procurement under conditions described in clause (2), (3), (4), (5), or (7) of section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)) or clause (2), (3), (4), (5), or (7) of section 2304(c) of title 10, United States Code.

Ante, p. 1175.  
Ante, p. 1187.

“(3) The requirements of subsection (a)(1)(A) shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, with the concurrence of the Administrator, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

“RECORD REQUIREMENTS

“SEC. 19. (a) Each executive agency shall establish and maintain for a period of five years a computer file, by fiscal year, containing unclassified records of all procurements, other than small purchases, in such fiscal year. 41 USC 417.

“(b) The record established under subsection (a) shall include—

“(1) with respect to each procurement carried out using competitive procedures—

“(A) the date of contract award;

“(B) information identifying the source to whom the contract was awarded;

“(C) the property or services obtained by the Government under the procurement; and

“(D) the total cost of the procurement;

“(2) with respect to each procurement carried out using procedures other than competitive procedures—

“(A) the information described in clauses (1)(A), (1)(B), (1)(C), and (1)(D);

“(B) the reason under section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)) or section 2304(c) of title 10, United States Code, as the case may be, for the use of such procedures; and

“(C) the identity of the organization or activity which conducted the procurement.

*Ante*, p. 1175.  
*Ante*, p. 1187.

“(c) The information that is included in such record pursuant to subsection (b)(1) and relates to procurements resulting in the submission of a bid or proposal by only one responsible source shall be separately categorized from the information relating to other procurements included in such record. The record of such information shall be designated ‘noncompetitive procurements using competitive procedures’.

“(d) The information included in the record established and maintained under subsection (a) shall be transmitted to the General Services Administration and shall be entered in the Federal Procurement Data System referred to in section 6(d)(4).

“ADVOCATES FOR COMPETITION

“SEC. 20. (a)(1) There is established in each executive agency an advocate for competition. 41 USC 418.

“(2) The head of each executive agency shall—

“(A) designate for the executive agency and for each procuring activity of the executive agency one officer or employee serving in a position authorized for such executive agency on the date of enactment of the Competition in Contracting Act of 1984 (other than the senior procurement executive designated pursuant to section 16(3)) to serve as the advocate for competition;

*Ante*, p. 1175.  
97 Stat. 1330.  
41 USC 414.

“(B) not assign such officers or employees any duties or responsibilities that are inconsistent with the duties and responsibilities of the advocates for competition; and

“(C) provide such officers or employees with such staff or assistance as may be necessary to carry out the duties and responsibilities of the advocate for competition, such as persons who are specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small and disadvantaged business concerns.

“(b) The advocate for competition of an executive agency shall—

“(1) be responsible for challenging barriers to and promoting full and open competition in the procurement of property and services by the executive agency;

“(2) review the procurement activities of the executive agency;

“(3) identify and report to the senior procurement executive of the executive agency designated pursuant to section 16(3)—

“(A) opportunities and actions taken to achieve full and open competition in the procurement activities of the executive agency; and

“(B) any condition or action which has the effect of unnecessarily restricting competition in the procurement actions of the executive agency; and

“(4) prepare and transmit to such senior procurement executive an annual report describing—

“(A) such advocate's activities under this section;

“(B) new initiatives required to increase competition; and

“(C) barriers to full and open competition that remain;

“(5) recommend to the senior procurement executive of the executive agency goals and the plans for increasing competition on a fiscal year basis;

“(6) recommend to the senior procurement executive of the executive agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in procurement programs; and

“(7) describe other ways in which the executive agency has emphasized competition in programs for procurement training and research.

“(c) The advocate for competition for each procuring activity shall be responsible for challenging barriers to and promoting full and open competition in the procuring activity, including unnecessarily detailed specifications and unnecessarily restrictive statements of need.

#### “ANNUAL REPORT ON COMPETITION

“SEC. 21. (a) Not later than January 31 of each of 1986, 1987, 1988, 1989, and 1990, the head of each executive agency shall transmit to each House of Congress a report including the information specified in subsection (b).

“(b) Each report under subsection (a) shall include—

“(1) a specific description of all actions that the head of the executive agency intends to take during the current fiscal year to—

97 Stat. 1330.  
41 USC 414.

Report.

41 USC 419.

“(A) increase competition for contracts with the executive agency on the basis of cost and other significant factors; and

“(B) reduce the number and dollar value of noncompetitive contracts entered into by the executive agency; and

“(2) a summary of the activities and accomplishments of the advocate for competition of the executive agency during the preceding fiscal year.”.

(b)(1) Section 6(e) of such Act (41 U.S.C. 405(e)) is amended by striking out “subsection (c)” and inserting in lieu thereof “subsection (d)”.

97 Stat. 1326.

(2) Section 16(1) of such Act (41 U.S.C. 414(1)) is amended to read as follows:

97 Stat. 1330.

“(1) increase the use of full and open competition in the procurement of property or services by the executive agency by establishing policies, procedures, and practices that assure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government’s requirements (including performance and delivery schedules) at the lowest reasonable cost considering the nature of the property or service procured;”.

## Subtitle D—Procurement Protest System

### PROCUREMENT PROTEST SYSTEM

SEC. 2741. (a) Chapter 35 of title 31, United States Code, is amended by adding at the end thereof the following new subchapter:

#### “SUBCHAPTER V—PROCUREMENT PROTEST SYSTEM

##### “§ 3551. Definitions

31 USC 3551.

“In this subchapter—

“(1) ‘protest’ means a written objection by an interested party to a solicitation by an executive agency for bids or proposals for a proposed contract for the procurement of property or services or a written objection by an interested party to a proposed award or the award of such a contract;

“(2) ‘interested party’, with respect to a contract or proposed contract described in paragraph (1), means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract; and

“(3) ‘Federal agency’ has the meaning given such term by section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

##### “§ 3552. Protests by interested parties concerning procurement actions

31 USC 3552.

“A protest concerning an alleged violation of a procurement statute or regulation shall be decided by the Comptroller General if filed in accordance with this subchapter. An interested party who has filed a protest under section 111(h) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(h)) with respect to a procurement or proposed procurement may not file a protest with respect to that procurement under this subchapter.

*Ante*, p. 1182.

31 USC 3553.

**“§ 3553. Review of protests; effect on contracts pending decision**

Post, p. 1202.

“(a) Under procedures prescribed under section 3555 of this title, the Comptroller General shall decide a protest submitted to the Comptroller General by an interested party.

“(b)(1) Within one working day of the receipt of a protest, the Comptroller General shall notify the Federal agency involved of the protest.

Report.

“(2) Except as provided in paragraph (3) of this subsection, a Federal agency receiving a notice of a protested procurement under paragraph (1) of this subsection shall submit to the Comptroller General a complete report (including all relevant documents) on the protested procurement—

“(A) within 25 working days from the date of the agency’s receipt of that notice;

“(B) if the Comptroller General, upon a showing by the Federal agency, determines (and states the reasons in writing) that the specific circumstances of the protest require a longer period, within the longer period determined by the Comptroller General; or

“(C) in a case determined by the Comptroller General to be suitable for the express option under section 3554(a)(2) of this title, within 10 working days from the date of the Federal agency’s receipt of that determination.

Post, p. 1201.

“(3) A Federal agency need not submit a report to the Comptroller General pursuant to paragraph (2) of this subsection if the agency is sooner notified by the Comptroller General that the protest concerned has been dismissed under section 3554(a)(3) of this title.

“(c)(1) Except as provided in paragraph (2) of this subsection, a contract may not be awarded in any procurement after the Federal agency has received notice of a protest with respect to such procurement from the Comptroller General and while the protest is pending.

“(2) The head of the procuring activity responsible for award of a contract may authorize the award of the contract (notwithstanding a protest of which the Federal agency has notice under this section)—

“(A) upon a written finding that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General under this subchapter; and

“(B) after the Comptroller General is advised of that finding.

“(3) A finding may not be made under paragraph (2)(A) of this subsection unless the award of the contract is otherwise likely to occur within 30 days thereafter.

“(d)(1) If a Federal agency receives notice of a protest under this section after the contract has been awarded but within 10 days of the date of the contract award, the Federal agency (except as provided under paragraph (2)) shall, upon receipt of that notice, immediately direct the contractor to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the United States under that contract. Performance of the contract may not be resumed while the protest is pending.

“(2) The head of the procuring activity responsible for award of a contract may authorize the performance of the contract (notwithstanding a protest of which the Federal agency has notice under this section)—

“(A) upon a written finding—

“(i) that performance of the contract is in the best interests of the United States; or

“(ii) that urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General concerning the protest; and

“(B) after the Comptroller General is notified of that finding.

“(e) The authority of the head of the procuring activity to make findings and to authorize the award and performance of contracts under subsections (c) and (d) of this section may not be delegated.

“(f) Within such deadlines as the Comptroller General prescribes, upon request each Federal agency shall provide to an interested party any document relevant to a protested procurement action (including the report required by subsection (b)(2) of this section) that would not give that party a competitive advantage and that the party is otherwise authorized by law to receive.

“§ 3554. Decisions on protests

31 USC 3554.

“(a)(1) To the maximum extent practicable, the Comptroller General shall provide for the inexpensive and expeditious resolution of protests under this subchapter. Except as provided under paragraph (2) of this subsection, the Comptroller General shall issue a final decision concerning a protest within 90 working days from the date the protest is submitted to the Comptroller General unless the Comptroller General determines and states in writing the reasons that the specific circumstances of the protest require a longer period.

“(2) The Comptroller General shall, by regulation prescribed pursuant to section 3555 of this title, establish an express option for deciding those protests which the Comptroller General determines suitable for resolution within 45 calendar days from the date the protest is submitted.

*Post*, p. 1202.

“(3) The Comptroller General may dismiss a protest that the Comptroller General determines is frivolous or which, on its face, does not state a valid basis for protest.

“(b)(1) With respect to a solicitation for a contract, or a proposed award or the award of a contract, protested under this subchapter, the Comptroller General may determine whether the solicitation, proposed award, or award complies with statute and regulation. If the Comptroller General determines that the solicitation, proposed award, or award does not comply with a statute or regulation, the Comptroller General shall recommend that the Federal agency—

“(A) refrain from exercising any of its options under the contract;

“(B) recompute the contract immediately;

“(C) issue a new solicitation;

“(D) terminate the contract;

“(E) award a contract consistent with the requirements of such statute and regulation;

“(F) implement any combination of recommendations under clauses (A), (B), (C), (D), and (E); or

“(G) implement such other recommendations as the Comptroller General determines to be necessary in order to promote compliance with procurement statutes and regulations.

“(2) If the head of the procuring activity responsible for a contract makes a finding under section 3553(d)(2)(A)(i) of this title, the Comp-

*Ante*, p. 1200.

troller General shall make recommendations under this subsection without regard to any cost or disruption from terminating, competing, or reawarding the contract.

“(c)(1) If the Comptroller General determines that a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation, the Comptroller General may declare an appropriate interested party to be entitled to the costs of—

“(A) filing and pursuing the protest, including reasonable attorneys’ fees; and

“(B) bid and proposal preparation.

“(2) Monetary awards to which a party is declared to be entitled under paragraph (1) of this subsection shall be paid promptly by the Federal agency concerned out of funds available to or for the use of the Federal agency for the procurement of property and services.

“(d) Each decision of the Comptroller General under this subchapter shall be signed by the Comptroller General or a designee for that purpose. A copy of the decision shall be made available to the interested parties, the head of the procuring activity responsible for the solicitation, proposed award, or award of the contract, and the senior procurement executive of the Federal agency involved.

“(e)(1) The head of the procuring activity responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General, if the Federal agency has not fully implemented those recommendations within 60 days of receipt of the Comptroller General’s recommendations under subsection (b) of this section.

Report.

“(2) Not later than January 31 of each year, the Comptroller General shall transmit to Congress a report describing each instance in which a Federal agency did not fully implement the Comptroller General’s recommendations during the preceding fiscal year.

31 USC 3555.

**“§ 3555. Regulations; authority of Comptroller General to verify assertions**

“(a) Not later than January 15, 1985, the Comptroller General shall prescribe such procedures as may be necessary to the expeditious decision of protests under this subchapter, including procedures for accelerated resolution of protests under the express option authorized by section 3554(a)(2) of this title. Such procedures shall provide that the protest process may not be delayed by the failure of a party to make a filing within the time provided for the filing.

Ante, p. 1201.

“(b) The Comptroller General may use any authority available under chapter 7 of this title and this chapter to verify assertions made by parties in protests under this subchapter.

31 USC 701 et seq.

31 USC 3556.

**“§ 3556. Nonexclusivity of remedies; matters included in agency record**

“This subchapter does not give the Comptroller General exclusive jurisdiction over protests, and nothing contained in this subchapter shall affect the right of any interested party to file a protest with the contracting agency or to file an action in a district court of the United States or the United States Claims Court. In any such action based on a procurement or proposed procurement with respect to which a protest has been filed under this subchapter, the reports required by sections 3553(b)(2) and 3554(e)(1) of this title with respect to such procurement or proposed procurement and any decision or recommendation of the Comptroller General under this subchapter

Ante, p. 1200.

with respect to such procurement or proposed procurement shall be considered to be part of the agency record subject to review.”.

(b) The analysis for such chapter is amended by adding at the end thereof the following:

“SUBCHAPTER V—PROCUREMENT PROTEST SYSTEM

“3551. Definitions.

“3552. Protests by interested parties concerning procurement actions.

“3553. Review of protests; effect on contracts pending decision.

“3554. Decisions on protests.

“3555. Regulations; authority of Comptroller General to verify assertions.

“3556. Nonexclusivity of remedies; matters included in agency record.”.

## Subtitle E—Effective Date; Regulations; Study

### EFFECTIVE DATES

SEC. 2751. (a) Except as provided in subsection (b), the amendments made by this title shall apply with respect to any solicitation for bids or proposals issued after March 31, 1985.

41 USC 251 note.

(b) The amendments made by section 2713 and subtitle D shall apply with respect to any protest filed after January 14, 1985.

*Ante*, pp. 1182, 1199.

### MODIFICATION OF FEDERAL ACQUISITION REGULATIONS

SEC. 2752. Not later than March 31, 1985, the single Government-wide procurement regulation referred to in section 4(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)(A)) shall be modified to conform to the requirements of this title and the amendments made by this title.

41 USC 403 note.

*Ante*, p. 1195.

### STUDY OF ALTERNATIVES

SEC. 2753. (a) Not later than January 31, 1985, the Administrator of the Office of Federal Procurement Policy, in consultation with the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration, shall complete a study of alternatives and recommend to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives a plan to increase the opportunities to achieve full and open competition on the basis of technical qualifications, quality, and other factors in the procurement of professional, technical, and managerial services.

41 USC 407 note.

(b) Such plan shall provide for testing the recommended alternative and be developed in accordance with section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413), and be consistent with the policies set forth in section 2 of such Act (41 U.S.C. 401).

97 Stat. 1329.

97 Stat. 1325.

## TITLE VIII—FEDERAL CREDIT UNION ACT AMENDMENTS

SEC. 2801. Section 201(b)(8) of the Federal Credit Union Act (12 U.S.C. 1781(b)(8)) is amended to read as follows:

“(8) to pay and maintain its deposit and to pay the premium charges for insurance imposed by this title; and”.