

Administrator for Federal Procurement Policy shall establish a center of excellence in contracting for services. The center of excellence shall assist the acquisition community by identifying and serving as a clearinghouse for, best practices in contracting for services in the public and private sectors.

(c) **REPEAL OF SUPERSEDED PROVISION.**—Subsection (b) of section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398; 114 Stat. 1654A-218; 10 U.S.C. 2302 note) is repealed.

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

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

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

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

SEC. 1432. AUTHORIZATION OF ADDITIONAL COMMERCIAL CONTRACT TYPES.

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

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

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

(3) by adding after subparagraph (B) (as so redesignated) the following new subparagraph:

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

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

(5) by adding at the end the following new paragraphs:

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

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

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

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

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

“(iii) authorizes any subsequent change in the ceiling price only upon a determination, documented in the contract file, that it is in the best interest of the procuring agency to change such ceiling price.

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

“(A) Commercial services procured for support of a commercial item, as described in section 4(12)(E) of the Of-

Office of Federal Procurement Policy Act (41 U.S.C. 403(12)(E)).

"(B) Any other category of commercial services that is designated by the Administrator for Federal Procurement Policy in the Federal Acquisition Regulation for the purposes of this paragraph on the basis that—

"(i) the commercial services in such category are of a type of commercial services that are commonly sold to the general public through use of time-and-materials or labor-hour contracts; and

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

SEC. 1433. CLARIFICATION OF COMMERCIAL SERVICES DEFINITION.

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

Subtitle D—Other Matters

SEC. 1441. AUTHORITY TO ENTER INTO CERTAIN TRANSACTIONS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.

(a) AUTHORITY.—

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

(A) are necessary to the responsibilities of such official's executive agency in the field of research and development, and

(B) have the potential to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack,

may exercise the same authority (subject to the same restrictions and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code, except for subsections (b) and (f) of such section 2371.

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

(3) **APPLICATION OF REQUIREMENTS AND CONDITIONS.**—In applying the requirements and conditions of section 845 of the

service contracting to assist the acquisition community in identifying best practices in service contracting.

The Senate amendment contained a provision (section 811) that would extend the authority in section 821(b) of the Floyd Spence National Defense Authorization Act for fiscal year 2001 to treat Department of Defense performance based services contracts as contracts for the procurement of commercial items and raise the ceiling on such contracts to \$10.0 million.

The Senate recedes with an amendment that would make the new government-wide contract authority consistent with existing authority applicable to the DOD, extend the authority for ten years, and raise the ceiling to \$25.0 million.

✓ Authorization of additional commercial contract types (sec. 1432)

The House bill contained a provision (sec. 1442) that would amend section 8002(d) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) to provide that the federal acquisition regulations include authority for time and material contracts or labor hour contracts to be used for the acquisition of a commercial service commonly sold to the general public through such contracts.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would place additional safeguards and limitations on the use of time-and-materials and labor-hour contracts for the procurement of commercial services.

The conferees note that section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398) establishes a statutory preference for performance-based contracts and performance-based task orders that contain firm fixed prices for the specific tasks to be performed. The provision recommended by the conferees does not change that preference. The provision would make a time-and-materials contract or a labor-hours contract an available option only if the contracting officer executes a determination and finding that no other contract type is suitable. A performance-based contract or task order that contains firm fixed prices for the specific tasks to be performed remains the preferred option for the acquisition of either commercial or non-commercial items.

The conferees direct the Comptroller General to review the use of this authority and to report to the Armed Services Committees of the Senate and the House of Representatives, the Governmental Affairs Committee of the Senate, and the Government Reform and Oversight Committee of the House of Representatives not later than one year after the date of enactment of this Act. The Comptroller General's report should address, at a minimum: the extent to which the authority provided in this provision has been used; the types of contracts for which the authority has been used; and the degree to which such use has been in compliance with the safeguards included in this section (including the requirement that time-and-materials contracts be used only where no other contract type is suitable).