Public Law 95-563
95th Congress

An Act

To provide for the resolution of claims and disputes relating to Government contracts awarded by executive agencies.

Nov. 1, 1978
[H.R. 11002]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Contract Disputes Act of 1978".

Contract Disputes Act of 1978.
41 USC 601 note.

DEFINITIONS

SEC. 2. As used in this Act— 41 USC 601.

(1) the term "agency head" means the head and any assistant head of an executive agency, and may "upon the designation by" the head of an executive agency include the chief official of any principal division of the agency;

(2) the term "executive agency" means an executive department as defined in section 101 of title 5, United States Code, an independent establishment as defined by section 104 of title 5, United States Code (except that it shall not include the General Accounting Office); a military department as defined by section 102 of title 5, United States Code, and a wholly owned Government corporation as defined by section 846 of title 31, United States Code, the United States Postal Service, and the Postal Rate Commission;

(3) The term "contracting officer" means any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts and make determinations and findings with respect thereto. The term also includes the authorized representative of the contracting officer, acting within the limits of his authority;

(4) the term "contractor" means a party to a Government contract other than the Government;

(5) The term "Administrator" means the Administrator for Federal Procurement Policy appointed pursuant to the Office of Federal Procurement Policy Act;

(6) The term "agency board" means an agency board of contract appeals established under section 8 of this Act; and

(7) The term "misrepresentation of fact" means a false statement of substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

APPLICABILITY OF LAW

SEC. 3. (a) Unless otherwise specifically provided herein, this Act applies to any express or implied contract (including those of the nonappropriated fund activities described in sections 1346 and 1491 of title 28, United States Code) entered into by an executive agency for— 41 USC 602.

(1) the procurement of property, other than real property in being;

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(2) the procurement of services;

(3) the procurement of construction, alteration, repair or maintenance of real property; or,

(4) the disposal of personal property.

Tennessee Valley Authority contracts.

(b) With respect to contracts of the Tennessee Valley Authority, the provisions of this Act shall apply only to those contracts which contain a disputes clause requiring that a contract dispute be resolved through an agency administrative process. Notwithstanding any other provision of this Act, contracts of the Tennessee Valley Authority for the sale of fertilizer or electric power or related to the conduct or operation of the electric power system shall be excluded from the Act.

(c) This Act does not apply to a contract with a foreign government, or agency thereof, or international organization, or subsidiary body thereof, if the head of the agency determines that the application of the Act to the contract would not be in the public interest.

MARITIME CONTRACTS

41 USC 603.

SEC. 4. Appeals under paragraph (g) of section 8 and suits under section 10, arising out of maritime contracts, shall be governed by the Act of March 9, 1920, as amended (41 Stat. 525, as amended; 46 U.S.C. 741–752) or the Act of March 3, 1925, as amended (43 Stat. 1112, as amended; 46 U.S.C. 781–790) as applicable, to the extent that those Acts are not inconsistent with this Act.

FRAUDULENT CLAIMS

41 USC 604.

SEC. 5. If a contractor is unable to support any part of his claim and it is determined that such inability is attributable to misrepresentation of fact or fraud on the part of the contractor, he shall be liable to the Government for an amount equal to such unsupported part of the claim in addition to all costs to the Government attributable to the cost of reviewing said part of his claim. Liability under this subsection shall be determined within six years of the commission of such misrepresentation of fact or fraud.

DECISION BY THE CONTRACTING OFFICER

Contractor claims.
41 USC 605.

SEC. 6. (a) All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision. All claims by the government against a contractor relating to a contract shall be the subject of a decision by the contracting officer. The contracting officer shall issue his decisions in writing, and shall mail or otherwise furnish a copy of the decision to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of his rights as provided in this Act. Specific findings of fact are not required, but, if made, shall not be binding in any subsequent proceeding. The authority of this subsection shall not extend to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another Federal agency is specifically authorized to administer, settle, or determine. This section shall not authorize any agency head to settle, compromise, pay, or otherwise adjust any claim involving fraud.

Information to contractor.

(b) The contracting officer's decision on the claim shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency, unless an appeal or suit is timely commenced as

authorized by this Act. Nothing in this Act shall prohibit executive agencies from including a clause in government contracts requiring that pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the contracting officer's decision.

(c) (1) A contracting officer shall issue a decision on any submitted claim of $50,000 or less within sixty days from his receipt of a written request from the contractor that a decision be rendered within that period. For claims of more than $50,000, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable. Certification.

(2) A contracting officer shall, within sixty days of receipt of a submitted certified claim over $50,000—

(A) issue a decision; or

(B) notify the contractor of the time within which a decision will be issued. Notification.

(3) The decision of a contracting officer on submitted claims shall be issued within a reasonable time, in accordance with regulations promulgated by the agency, taking into account such factors as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.

(4) A contractor may request the agency board of contract appeals to direct a contracting officer to issue a decision in a specified period of time, as determined by the board, in the event of undue delay on the part of the contracting officer.

(5) Any failure by the contracting officer to issue a decision on a contract claim within the period required will be deemed to be a decision by the contracting officer denying the claim and will authorize the commencement of the appeal or suit on the claim as otherwise provided in this Act. However, in the event an appeal or suit is so commenced in the absence of a prior decision by the contracting officer, the tribunal concerned may, at its option, stay the proceedings to obtain a decision on the claim by the contracting officer.

CONTRACTOR'S RIGHT OF APPEAL TO BOARD OF CONTRACT APPEALS

SEC. 7. Within ninety days from the date of receipt of a contracting officer's decision under section 6, the contractor may appeal such decision to an agency board of contract appeals, as provided in section 8. 41 USC 606.

AGENCY BOARDS OF CONTRACT APPEALS

SEC. 8. (a) (1) Except as provided in paragraph (2) an agency board of contract appeals may be established within an executive agency when the agency head, after consultation with the Administrator, determines from a workload study that the volume of contract claims justifies the establishment of a full-time agency board of at least three members who shall have no other inconsistent duties. Workload studies will be updated at least once every three years and submitted to the Administrator. Establishment, consultation. 41 USC 607.

(2) The Board of Directors of the Tennessee Valley Authority may establish a board of contract appeals for the Authority of an indeterminate number of members. Membership.

(b) (1) Except as provided in paragraph (2), the members of agency boards shall be selected and appointed to serve in the same manner as

hearing examiners appointed pursuant to section 3105 of title 5 of the United States Code, with an additional requirement that such members shall have had not fewer than five years' experience in public contract law. Full-time members of agency boards serving as such on the effective date of this Act shall be considered qualified. The chairman and vice chairman of each board shall be designated by the agency head from members so appointed. The chairman of each agency board shall receive compensation at a rate equal to that paid a GS–18 under the General Schedule contained in section 5332, United States Code, the vice chairman shall receive compensation at a rate equal to that paid a GS–17 under such General Schedule, and all other members shall receive compensation at a rate equal to that paid a GS–16 under such General Schedule. Such positions shall be in addition to the number of positions which may be placed in GS–16, GS–17, and GS–18 of such General Schedule under existing law.

5 USC 5332 note.

Appointment criteria and chairman.

Compensation.

(2) The Board of Directors of the Tennessee Valley Authority shall establish criteria for the appointment of members to its agency board of contract appeals established in subsection (a)(2), and shall designate a chairman of such board. The chairman of such board shall receive compensation at a rate equal to the daily rate paid a GS–18 under the General Schedule contained in section 5332, United States Code for each day he is engaged in the actual performance of his duties as a member of such board. All other members of such board shall receive compensation at a rate equal to the daily rate paid a GS–16 under such General Schedule for each day they are engaged in the actual performance of their duties as members of such board.

Appeals, arrangements.

(c) If the volume of contract claims is not sufficient to justify an agency board under subsection (a) or if he otherwise considers it appropriate, any agency head shall arrange for appeals from decisions by contracting officers of his agency to be decided by a board of contract appeals of another executive agency. In the event an agency head is unable to make such an arrangement with another agency, he shall submit the case to the Administrator for placement with an agency board. The provisions of this subsection shall not apply to the Tennessee Valley Authority.

Jurisdiction.

(d) Each agency board shall have jurisdiction to decide any appeal from a decision of a contracting officer (1) relative to a contract made by its agency, and (2) relative to a contract made by any other agency when such agency or the Administrator has designated the agency board to decide the appeal. In exercising this jurisdiction, the agency board is authorized to grant any relief that would be available to a litigant asserting a contract claim in the Court of Claims.

(e) An agency board shall provide to the fullest extent practicable, informal, expeditious, and inexpensive resolution of disputes, and shall issue a decision in writing or take other appropriate action on each appeal submitted, and shall mail or otherwise furnish a copy of the decision to the contractor and the contracting officer.

Appeal disposition acceleration.

(f) The rules of each agency board shall include a procedure for the accelerated disposition of any appeal from a decision of a contracting officer where the amount in dispute is $50,000 or less. The accelerated procedure shall be applicable at the sole election of only the contractor. Appeals under the accelerated procedure shall be resolved, whenever possible, within one hundred and eighty days from the date the contractor elects to utilize such procedure.

(g) (1) The decision of an agency board of contract appeals shall be final, except that— Judicial review.

(A) a contractor may appeal such a decision to the Court of Claims within one hundred twenty days after the date of receipt of a copy of such decision, or

(B) the agency head, if he determines that an appeal should be taken, and with the prior approval of the Attorney General, transmits the decision of the board of contract appeals to the United States Court of Claims for judicial review, under section 2510 of title 28, United States Code, as amended herein, within one hundred and twenty days from the date of the agency's receipt of a copy of the board's decision.

(2) Notwithstanding the provisions of paragraph (1), the decision of the board of contract appeals of the Tennessee Valley Authority shall be final, except that—

(A) a contractor may appeal such a decision to a United States district court pursuant to the provisions of section 1337 of title 28, United States Code within one hundred twenty days after the date of receipt of a copy of such decision, or

(B) The Tennessee Valley Authority may appeal the decision to a United States district court pursuant to the provisions of section 1337 of title 28, United States Code, within one hundred twenty days after the date of the decision in any case.

(h) Pursuant to the authority conferred under the Office of Federal Procurement Policy Act, the Administrator is authorized and directed, as may be necessary or desirable to carry out the provisions of this Act, to issue guidelines with respect to criteria for the establishment, functions, and procedures of the agency boards (except for a board established by the Tennessee Valley Authority). Guidelines. 41 USC 401 note.

(i) Within one hundred and twenty days from the date of enactment of this Act, all agency boards, except that of the Tennessee Valley Authority, of three or more full time members shall develop workload studies for approval by the agency head as specified in section 8(a)(1). Workload studies.

SMALL CLAIMS

SEC. 9. (a) The rules of each agency board shall include a procedure for the expedited disposition of any appeal from a decision of a contracting officer where the amount in dispute is $10,000 or less. The small claims procedure shall be applicable at the sole election of the contractor. Procedure rules, provisions. 41 USC 608.

(b) The small claims procedure shall provide for simplified rules of procedure to facilitate the decision of any appeal thereunder. Such appeals may be decided by a single member of the agency board with such concurrences as may be provided by rule or regulation.

(c) Appeals under the small claims procedure shall be resolved, whenever possible, within one hundred twenty days from the date on which the contractor elects to utilize such procedure.

(d) A decision against the Government or the contractor reached under the small claims procedure shall be final and conclusive and shall not be set aside except in cases of fraud.

(e) Administrative determinations and final decisions under this section shall have no value as precedent for future cases under this Act.

(f) The Administrator is authorized to review at least every three years, beginning with the third year after the enactment of the Act, Review.

the dollar amount defined in section 9(a) as a small claim, and based upon economic indexes selected by the Administrator adjust that level accordingly.

ACTIONS IN COURT: JUDICIAL REVIEW OF BOARD DECISIONS

41 USC 609.

SEC. 10. (a)(1) Except as provided in paragraph (2), and in lieu of appealing the decision of the contracting officer under section 6 to an agency board, a contractor may bring an action directly on the claim in the United States Court of Claims, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(2) In the case of an action against the Tennessee Valley Authority, the contractor may only bring an action directly on the claim in a United States district court pursuant to section 1337 of title 28, United States Code, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(3) Any action under paragraph (1) or (2) shall be filed within twelve months from the date of the receipt by the contractor of the decision of the contracting officer concerning the claim, and shall proceed de novo in accordance with the rules of the appropriate court.

(b) In the event of an appeal by a contractor or the Government from a decision of any agency board pursuant to section 8, notwithstanding any contract provision, regulation, or rules of law to the contrary, the decision of the agency board on any question of law shall not be final or conclusive, but the decision on any question of fact shall be final and conclusive and shall not be set aside unless the decision is fraudulent, or arbitrary, or capricious, or so grossly erroneous as to necessarily imply bad faith, or if such decision is not supported by substantial evidence.

(c) In any appeal by a contractor or the Government from a decision of an agency board pursuant to section 8, the court may render an opinion and judgment and remand the case for further action by the agency board or by the executive agency as appropriate, with such direction as the court considers just and proper, or, in its discretion and in lieu of remand it may retain the case and take such additional evidence or action as may be necessary for final disposition of the case.

(d) If two or more suits arising from one contract are filed in the Court of Claims and one or more agency boards, for the convenience of parties or witnesses or in the interest of justice, the Court of Claims may order the consolidation of such suits in that court or transfer any suits to or among the agency boards involved.

(e) In any suit filed pursuant to this Act involving two or more claims, counterclaims, cross-claims, or third-party claims, and where a portion of one such claim can be divided for purposes of decision or judgment, and in any such suit where multiple parties are involved, the court, whenever such action is appropriate, may enter a judgment as to one or more but fewer than all of the claims, portions thereof, or parties.

SUBPENA, DISCOVERY, AND DEPOSITION

41 USC 610.

SEC. 11. A member of an agency board of contract appeals may administer oaths to witnesses, authorize depositions and discovery proceedings, and require by subpena the attendance of witnesses, and production of books and papers, for the taking of testimony or evidence by deposition or in the hearing of an appeal by the agency board.

In case of contumacy or refusal to obey a subpena by a person who resides, is found, or transacts business within the jurisdiction of a United States district court, the court, upon application of the agency board through the Attorney General; or upon application by the board of contract appeals of the Tennessee Valley Authority, shall have jurisdiction to issue the person an order requiring him to appear before the agency board or a member thereof, to produce evidence or to give testimony, or both. Any failure of any such person to obey the order of the court may be punished by the court as a contempt thereof.

INTEREST

SEC. 12. Interest on amounts found due contractors on claims shall be paid to the contractor from the date the contracting officer receives the claim pursuant to section 6(a) from the contractor until payment thereof. The interest provided for in this section shall be paid at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board. 41 USC 611.

APPROPRIATIONS

SEC. 13. (a) Any judgment against the United States on a claim under this Act shall be paid promptly in accordance with the procedures provided by section 1302 of the Act of July 27, 1956, (70 Stat. 694, as amended; 31 U.S.C. 724a). 41 USC 612.

(b) Any monetary award to a contractor by an agency board of contract appeals shall be paid promptly in accordance with the procedures contained in subsection (a) above.

(c) Payments made pursuant to subsections (a) and (b) shall be reimbursed to the fund provided by section 1302 of the Act of July 27, 1956, (70 Stat. 694, as amended; 31 U.S.C. 724a) by the agency whose appropriations were used for the contract out of available funds or by obtaining additional appropriations for such purposes.

(d)(1) Notwithstanding the provisions of subsection (a) through (c), any judgment against the Tennessee Valley Authority on a claim under this Act shall be paid promptly in accordance with the provisions of section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831(h)). 16 USC 831h.

(2) Notwithstanding the provisions of subsection (a) through (c), any monetary award to a contractor by the board of contract appeals for the Tennessee Valley Authority shall be paid in accordance with the provisions of section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831(h)).

AMENDMENTS AND REPEALS

SEC. 14. (a) The first sentence of section 1346(a)(2) of title 28, United States Code, is amended by inserting before the period a comma and the following: "except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978". *Ante*, p. 2383.

(b) Section 2401(a) of title 28, United States Code, is amended by striking out "Every" at the beginning and inserting in lieu thereof "Except as provided by the Contract Disputes Act of 1978, every".

(c) Section 1302 of the Act of July 27, 1956, as amended (70 Stat. 694, as amended; 31 U.S.C. 724a), is amended by adding after "2677 of title 28" the words "and decisions of boards of contract appeals".

(d) Section 2414 of title 28, United States Code, is amended by striking out "Payment" at the beginning and inserting in lieu thereof "Except as provided by the Contract Disputes Act of 1978, payment".

(e) Section 2517(a) of title 28, United States Code, is amended by striking out "Every" at the beginning and inserting in lieu thereof "Except as provided by the Contract Disputes Act of 1978, every".

(f) Section 2517(b) of title 28, United States Code, is amended by inserting after "case or controversy" the following: ", unless the judgment is designated a partial judgment, in which event only the matters described therein shall be discharged,".

(g) There shall be added to subsection (c) of section 5108 of title 5, United States Code, a paragraph (17) reading as follows:

"(17) the heads of executive departments or agencies in which boards of contract appeals are established pursuant to the Contract Disputes Act of 1978, and subject to the standards and procedures prescribed by this chapter, but without regard to subsection (d) of this section, may place additional positions, not to exceed seventy in number, in GS–16, GS–17, and GS–18 for the independent quasi-judicial determination of contract disputes, with the allocation of such positions among such executive departments and agencies determined by the Administrator for Federal Procurement Policy on the basis of relative case load."

5 USC 5332 note.

Cases, referral.

(h)(1) Section 2510 of title 28, United States Code, is amended by—

(A) inserting "(a)" immediately before such section; and

(B) adding the following new subsection at the end thereof:

"(b)(1) The head of any executive department or agency may, with the prior approval of the Attorney General, refer to the Court of Claims for judicial review any final decision rendered by a board of contract appeals pursuant to the terms of any contract with the United States awarded by that department or agency which such head of such department or agency has concluded is not entitled to finality pursuant to the review standards specified in section 10(b) of the Contracts Disputes Act of 1978. The head of each executive department or agency shall make any referral under this section within one hundred and twenty days of the receipt of a copy of the final appeal decision.

"(2) The Court of Claims shall review the matter referred in accordance with the standards specified in section 10(b) of the Contracts Disputes Act of 1978. The Court shall proceed with judicial review on the administrative record made before the board of contract appeals on matters so referred as in other cases pending in such court, shall determine the issue of finality of the appeal decision, and shall, as appropriate, render judgment thereon, take additional evidence, or remand the matter pursuant to the authority specified in section 1491 of this title.".

28 USC 1491.

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

"§ 2510. Referral of cases by the Comptroller General or the head of an executive department or agency.".

(B) The item relating to section 2510 in the table of sections for chapter 165 of title 28, United States Code, is amended to read as follows:

"2510. Referral of cases by the Comptroller General or the head of an executive department or agency.".

(i) Section 1491 of title 28, United States Code, is amended by adding the following sentence at the end of the first paragraph thereof: "The Court of Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under the Contract Disputes Act of 1978.". Jurisdiction.

SEVERABILITY CLAUSE

SEC. 15. If any provision of this Act, or the application of such provision to any persons or circumstances, is held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby. 41 USC 613.

EFFECTIVE DATE OF ACT

SEC. 16. This Act shall apply to contracts entered into one hundred twenty days after the date of enactment. Notwithstanding any provision in a contract made before the effective date of this Act, the contractor may elect to proceed under this Act with respect to any claim pending then before the contracting officer or initiated thereafter. 41 USC 601 note.

Approved November 1, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1556 (Comm. on the Judiciary).
SENATE REPORT No. 95-1118, accompanying S. 3178 (Comm. on Governmental Affairs and Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 124 (1978):
Sept. 26, considered and passed House.
Oct. 12, considered and passed Senate, amended.
Oct. 13, House concurred in Senate amendments.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 14, No. 44:
Nov. 1, Presidential Statement.

Public Law 97-219
97th Congress

An Act

To amend the Small Business Act to strengthen the role of the small, innovative firms in federally funded research and development, and to utilize Federal research and development as a base for technological innovation to meet agency needs and to contribute to the growth and strength of the Nation's economy.

July 22, 1982
[S. 881]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Small Business Innovation Development Act of 1982
15 USC 631 note

SECTION 1. This Act may be cited as the "Small Business Innovation Development Act of 1982".

15 USC 638 note

SEC. 2. (a) The Congress finds that—

(1) technological innovation creates jobs, increases productivity, competition, and economic growth, and is a valuable counterforce to inflation and the United States balance-of-payments deficit;

(2) while small business is the principal source of significant innovations in the Nation, the vast majority of federally funded research and development is conducted by large businesses, universities, and Government laboratories; and

(3) small businesses are among the most cost-effective performers of research and development and are particularly capable of developing research and development results into new products.

(b) Therefore, the purposes of the Act are—

(1) to stimulate technological innovation;

(2) to use small business to meet Federal research and development needs;

(3) to foster and encourage participation by minority and disadvantaged persons in technological innovation; and

(4) to increase private sector commercialization innovations derived from Federal research and development.

15 USC 638.

SEC. 3. Section 9(b) of the Small Business Act is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

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

"(4) to develop and maintain a source file and an information program to assure each qualified and interested small business concern the opportunity to participate in Federal agency small business innovation research programs;

"(5) to coordinate with participating agencies a schedule for release of SBIR solicitations, and to prepare a master release schedule so as to maximize small businesses' opportunities to respond to solicitations;

"(6) to independently survey and monitor the operation of SBIR programs within participating Federal agencies; and

Report to congressional committees.

"(7) to report not less than annually to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives on the SBIR programs

of the Federal agencies and the Administration's information and monitoring efforts related to the SBIR programs.".

15 USC 638.

SEC. 4. Section 9 of the Small Business Act is amended by adding at the end thereof the following new subsections:

Definitions.

"(e) For the purpose of this section—

"(1) the term 'extramural budget' means the sum of the total obligations minus amounts obligated for such activities by employees of the agency in or through Government-owned, Government-operated facilities, except that for the Agency for International Development it shall not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries;

"(2) the term 'Federal agency' means an executive agency as defined in section 105 of title 5, United States Code, or a military department as defined in section 102 of such title, except that it does not include any agency within the Intelligence Community (as the term is defined in section 3.4(f) of Executive Order 12333 or its successor orders);

"(3) the term 'funding agreement' means any contract, grant, or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government;

"(4) the term 'Small Business Innovation Research Program' or 'SBIR' means a program under which a portion of a Federal agency's research or research and development effort is reserved for award to small business concerns through a uniform process having—

"(A) a first phase for determining, insofar as possible, the scientific and technical merit and feasibility of ideas submitted pursuant to SBIR program solicitations;

"(B) a second phase to further develop the proposed ideas to meet the particular program needs, the awarding of which shall take into consideration the scientific and technical merit and feasibility evidenced by the first phase and, where two or more proposals are evaluated as being of approximately equal scientific and technical merit and feasibility, special consideration shall be given to those proposals that have demonstrated third phase, non-Federal capital commitments; and

"(C) where appropriate, a third phase in which non-Federal capital pursues commercial applications of the research or research and development and which may also involve follow-on non-SBIR funded production contracts with a Federal agency for products or processes intended for use by the United States Government; and

"(5) the term 'research' or 'research and development' means any activity which is (A) a systematic, intensive study directed toward greater knowledge or understanding of the subject studied; (B) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or (C) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

Research or research and development, budget.

"(f)(1) Each Federal agency which has an extramural budget for research or research and development in excess of $100,000,000 for

fiscal year 1982, or any fiscal year thereafter, shall expend not less than 0.2 per centum of its extramural budget in fiscal year 1983 or in such subsequent fiscal year as the agency has such budget, not less than 0.6 per centum of such budget in the second fiscal year thereafter, not less than 1 per centum of such budget in the third fiscal year thereafter, and not less than 1.25 per centum of such budget in all subsequent fiscal years with small business concerns specifically in connection with a small business innovation research program which meets the requirements of the Small Business Innovation Development Act of 1982 and regulations issued thereunder: *Provided,* That any Federal agency which has an extramural budget for research or research and development in excess of $10,000,000,000 for fiscal year 1982 shall expend not less than 0.1 per centum of its extramural budget in fiscal year 1983, not less than 0.3 per centum of such budget in the second fiscal year thereafter, not less than 0.5 per centum of such budget in the third fiscal year thereafter, not less than 1 per centum of such budget in the fourth fiscal year thereafter, and not less than 1.25 per centum of such budget in all subsequent fiscal years with small business concerns specifically in connection with a small business innovation research program which meets the requirements of the Small Business Innovation Development Act of 1982 and regulations issued thereunder: *Provided further,* That a Federal agency shall not make available for the purpose of meeting the requirements of this subsection an amount of its extramural budget for basic research or research and development which exceeds the percentages specified herein. Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than under a small business innovation research program shall not be counted as meeting any portion of the percentage requirements of this subsection.

"(2) Amounts appropriated for atomic energy defense programs of the Department of Energy shall for the purposes of paragraph (1) be excluded from the amount of the research or research and development budget of that Department.

Small business innovation research program, requirements.

"(g) Each Federal agency required by subsection (f) to establish a small business innovation research program shall, in accordance with this Act and regulations issued hereunder—

"(1) unilaterally determine categories of projects to be in its SBIR program;

"(2) issue small business innovation research solicitations in accordance with a schedule determined cooperatively with the Small Business Administration;

"(3) unilaterally receive and evaluate proposals resulting from SBIR proposals;

"(4) unilaterally select awardees for its SBIR funding agreements;

"(5) administer its own SBIR funding agreements (or delegate such administration to another agency);

"(6) make payments to recipients of SBIR funding agreements on the basis of progress toward or completion of the funding agreement requirements; and

"(7) make an annual report on the SBIR program to the Small Business Administration and the Office of Science and Technology Policy.

"(h) In addition to the requirements of subsection (f), each Federal agency which has a budget for research or research and develop-

ment in excess of $20,000,000 for any fiscal year beginning with fiscal year 1983 or subsequent fiscal year shall establish goals specifically for funding agreements for research or research and development to small business concerns, and no goal established under this subsection shall be less than the percentage of the agency's research or research and development budget expended under funding agreements with small business concerns in the immediately preceding fiscal year.

"(i) Each Federal agency required by this section to have an SBIR program or to establish goals shall report annually to the Small Business Administration the number of awards pursuant to grants, contracts, or cooperative agreements over $10,000 in amount and the dollar value of all such awards, identifying SBIR awards and comparing the number and amount of such awards with awards to other than small business concerns.

Policy directives.

"(j) The Small Business Administration, after consultation with the Administrator of the Office of Federal Procurement Policy, the Director of the Office of Science and Technology Policy, and the Intergovernmental Affairs Division of the Office of Management and Budget, shall, within one hundred and twenty days of the enactment of the Small Business Innovation Development Act of 1982, issue policy directives for the general conduct of the SBIR programs within the Federal Government, including providing for—

"(1) simplified, standardized, and timely SBIR solicitations;

"(2) a simplified, standardized funding process which provides for (A) the timely receipt and review of proposals; (B) outside peer review for at least phase two proposals, if appropriate; (C) protection of proprietary information provided in proposals; (D) selection of awardees; (E) retention of rights in data generated in the performance of the contract by the small business concern; (F) transfer of title to property provided by the agency to the small business concern if such a transfer would be more cost effective than recovery of the property by the agency; (G) cost sharing; and (H) cost principles and payment schedules;

"(3) exemptions from the regulations under paragraph (2) if national security or intelligence functions clearly would be jeopardized;

"(4) minimizing regulatory burden associated with participation in the SBIR program for the small business concern which will stimulate the cost-effective conduct of Federal research and development and the likelihood of commercialization of the results of research and development conducted under the SBIR program; and

"(5) simplified, standardized, and timely annual report on the SBIR program to the Small Business Administration and the Office of Science and Technology Policy.

"(k) The Director of the Office of Science and Technology Policy, in consultation with the Federal Coordinating Council for Science, Engineering and Research, shall, in addition to such other responsibilities imposed upon him by the Small Business Innovation Development Act of 1982—

"(1) independently survey and monitor all phases of the implementation and operation of SBIR programs within agencies required to establish an SBIR program, including compliance with the expenditures of funds according to the requirements of subsection (f) of this section; and

"(2) report not less than annually, and at such other times as the Director may deem appropriate, to the Committees on Small Business of the Senate and the House of Representatives on all phases of the implementation and operation of SBIR programs within agencies required to establish an SBIR program, together with such recommendations as the Director may deem appropriate.". Report to congressional committees.

SEC. 5. Effective October 1, 1988, paragraphs (4) through (7) of section 9(b) of the Small Business Act (as added by section 3) and subsections (e) through (k) of section 9 of the Small Business Act (as added by section 4) are repealed. 15 USC 638.

SEC. 6. The Comptroller General shall, not more than five years after the date of enactment of this Act, transmit a report to the Senate and the House of Representatives on the implementation of, and nature of research conducted under this Act, including the judgments of the heads of Departments and agencies as to the effect of this Act on research programs. Report to Congress. 15 USC 638 note.

Approved July 22, 1982.

LEGISLATIVE HISTORY—S. 881 (H.R. 4326):

HOUSE REPORTS: No. 97-349, Pts. I-7 accompanying H. R. 4326 (Comms. on Small Business; Energy and Commerce; Veterans' Affairs; Science and Technology; Foreign Affairs; Armed Services; and Permanent Select Committee on Intelligence), respectively.
SENATE REPORT No. 97-194 (Comm. on Small Business).
CONGRESSIONAL RECORD:
Vol. 127 (1981): Dec. 7, 8, considered and passed Senate.
Vol. 128 (1982): June 17, 22, 23, H.R. 4326 considered and passed House; passage vacated and S. 881, amended, passed in lieu.
June 29, Senate concurred in House amendment.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:
Vol. 18, No. 29 (1982): July 22, Presidential statement.