

107TH CONGRESS
1ST SESSION

S. 1152

To ensure that the business of the Federal Government is conducted in the public interest and in a manner that provides for public accountability, efficient delivery of services, reasonable cost savings, and prevention of unwarranted Government expenses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 29, 2001

Mr. DURBIN (for himself, Mr. DASCHLE, Mrs. MURRAY, Mr. CORZINE, Ms. LANDRIEU, Mr. FEINGOLD, Mr. LIEBERMAN, Mr. KENNEDY, Mr. SARBANES, Ms. MIKULSKI, Mr. TORRICELLI, Mr. REID, Mr. SCHUMER, Ms. STABENOW, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To ensure that the business of the Federal Government is conducted in the public interest and in a manner that provides for public accountability, efficient delivery of services, reasonable cost savings, and prevention of unwarranted Government expenses, and for other purposes.

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

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

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Truthfulness, Responsibility, and Accountability in Con-
4 tracting Act of 2001”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Certification of compliance.
- Sec. 4. Agency reporting systems and required reports.
- Sec. 5. Requirement for public-private competition.
- Sec. 6. Review of contractor performance.
- Sec. 7. Survey of wages and benefits provided by contractors.
- Sec. 8. Comptroller General reports.
- Sec. 9. Applicability.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) AGENCY.—The term “agency” means any
10 department, agency, bureau, commission, activity, or
11 organization of the United States, that employs an
12 employee as defined under paragraph (6).

13 (2) CONTRACTING.—The term “contracting”
14 means—

15 (A) the performance of a function by non-
16 Federal personnel under a contract between an
17 agency and an individual or another entity; and

18 (B) includes privatization, outsourcing,
19 contracting out, and contracting in, unless oth-
20 erwise specifically provided.

1 (3) CONTRACTING IN.—The term “contracting
2 in” is the conversion of the performance of a func-
3 tion by non-Federal personnel under a contract be-
4 tween an agency and an individual or other entity to
5 the performance by employees.

6 (4) CONTRACTING OUT.—The term “con-
7 tracting out” means the conversion by an agency of
8 the performance of a function to performance by
9 non-Federal personnel under a contract between an
10 agency and an individual or other entity.

11 (5) CONTRACTOR.—The term “contractor”
12 means an individual or entity that performs a func-
13 tion for an agency under a contract with non-Fed-
14 eral personnel.

15 (6) EMPLOYEE.—The term “employee” means
16 any individual employed—

17 (A) as a civilian in a military department
18 (as defined in section 102 of title 5, United
19 States Code);

20 (B) in an Executive agency (as defined in
21 section 105 of title 5, United States Code), in-
22 cluding an employee who is paid from non-
23 appropriated funds;

1 (C) in those units of the legislative and ju-
2 dicial branches of the Federal Government hav-
3 ing positions in the competitive service;

4 (D) in the Library of Congress;

5 (E) in the Government Printing Office; or

6 (F) by the Governors of the Federal Re-
7 serve System.

8 (7) FUNCTION.—The term “function” means a
9 service activity, not procurement of goods.

10 (8) NON-FEDERAL PERSONNEL.—The term
11 “non-Federal personnel” means employed individ-
12 uals who are not employees as defined under para-
13 graph (6).

14 (9) OUTSOURCING.—The term “outsourcing”
15 means the action by an agency to acquire services
16 from external sources, either from a non-Federal
17 source or through interservice support agreements,
18 through a contract.

19 (10) PATIENT CARE.—The term “patient
20 care”—

21 (A) means direct patient medical and hos-
22 pital care that the Department of Veterans Af-
23 fairs or other Federal hospitals or clinics are
24 not capable of furnishing because of geo-
25 graphical inaccessibility, medical emergency, or

1 particularly unique type of care or service re-
2 quired; and

3 (B) does not include support and adminis-
4 trative services for hospital and clinic oper-
5 ations, including food service, laundry services,
6 grounds maintenance, transportation services,
7 office operations, and supply processing and
8 distribution services.

9 (11) PRIVATIZATION.—The term “privatiza-
10 tion” means the action by an agency to exit a busi-
11 ness line, terminate an activity, or sell Government
12 owned assets or operational capabilities to the non-
13 Federal sector.

14 **SEC. 3. CERTIFICATION OF COMPLIANCE.**

15 (a) REQUIREMENTS FOR HEADS OF AGENCIES.—

16 (1) CERTIFICATIONS.—Not later than 180 days
17 after the date of enactment of this Act, the head of
18 each agency shall submit to the Director of the Of-
19 fice of Management and Budget a certification
20 that—

21 (A) the agency has established a central-
22 ized reporting system in accordance with sec-
23 tion 4;

24 (B) in the case of each function of the
25 agency that is being performed under con-

1 contracting undertaken after the date of enactment
2 of this Act, the contracting function decision
3 was based on a public-private competition de-
4 scribed under section 5;

5 (C) the agency is not managing Federal
6 employees by any arbitrary limitations in ac-
7 cordance with sections 5 and 6; and

8 (D) the agency is reviewing work per-
9 formed by contractors, recompeting or con-
10 tracting in work when appropriate, and sub-
11 jecting to public-private competition an approxi-
12 mate number of Federal employee and con-
13 tractor positions in accordance with section 6.

14 (2) PUBLIC AVAILABILITY.—The Director of
15 the Office of Management and Budget shall—

16 (A) promptly after receiving certifications
17 under paragraph (1)(B), publish in the Federal
18 Register notices of the availability of the certifi-
19 cations to the public, including the names, busi-
20 ness addresses, and business telephone numbers
21 of the officials from whom the certifications can
22 be obtained; and

23 (B) ensure that, after the removal of pro-
24 prietary information, the head of each agency

1 makes the certifications of that agency available
2 to the public—

3 (i) upon request; and

4 (ii) on the World Wide Web.

5 (b) SUSPENSION OF CONTRACTING FOR SERVICES
6 PENDING SATISFACTION OF CERTIFICATION REQUIRE-
7 MENT.—

8 (1) INITIAL DETERMINATIONS.—Beginning 180
9 days after the date of enactment of this Act, the
10 head of an agency may not enter into any contract
11 for the performance of services until the Director of
12 the Office of Management and Budget, after review-
13 ing the certification required under subsection
14 (a)(1), determines that the agency is making sub-
15 stantial progress toward meeting the requirements
16 under subsection (a)(1) (A), (B), (C), and (D).

17 (2) INAPPLICABILITY.—This subsection does
18 not apply to work performed in the non-Federal sec-
19 tor before the date of enactment of this Act.

20 (3) SUBSEQUENT DETERMINATIONS.—If an
21 agency head is prohibited from entering into a con-
22 tract after a determination is made under paragraph
23 (1), that agency head may subsequently request an-
24 other determination from the Director of the Office
25 of Management and Budget under that paragraph.

1 (4) PUBLIC AVAILABILITY.—The Director of
2 the Office of Management and Budget shall—

3 (A) promptly after making a determination
4 as to whether an agency is making substantial
5 progress under paragraph (1), publish that de-
6 termination in the Federal Register; and

7 (B) make that determination available to
8 the public—

9 (i) upon request; and

10 (ii) on the World Wide Web.

11 (c) WAIVER OF SUSPENSION.—

12 (1) IN GENERAL.—The Director of the Office of
13 Management and Budget may waive the applicability
14 of this section to a contract for services if the Direc-
15 tor determines that it is necessary to do so in the
16 interest of the national security, extraordinary eco-
17 nomic harm, or patient care.

18 (2) NOTICE.—After granting any waiver under
19 this subsection, the Director of the Office of Man-
20 agement and Budget shall promptly publish a notice
21 of that waiver in the Federal Register that—

22 (A) identifies the facilities, units, or activi-
23 ties affected;

24 (B) explains the justification for the waiv-
25 er; and

1 (C) identifies the duration of the waiver.

2 (d) GAO MONITORING.—While an agency is oper-
3 ating under a suspension of contracting authority under
4 subsection (b), the Comptroller General shall—

5 (1) monitor the agency’s compliance with the
6 requirements of this Act; and

7 (2) submit to Congress, every 60 days, a report
8 on the extent of the agency’s compliance with such
9 requirements.

10 (e) EXCEPTION.—

11 (1) IN GENERAL.—Notwithstanding subsection
12 (b), an agency may undertake a contracting effort of
13 a function if the function—

14 (A) is not performed by Federal employees
15 at the time of the undertaking; and

16 (B) under the contracting would be per-
17 formed by—

18 (i) the blind, as defined under section
19 5(1) of the Javits-Wagner-O’Day Act (41
20 U.S.C. 48b(1)); or

21 (ii) individuals with a disability as de-
22 fined under section 7(9) of the Rehabilita-
23 tion Act of 1973 (29 U.S.C. 705(9)).

24 (2) TERMINATION OF CONTRACT.—If the Direc-
25 tor of the Office of Management and Budget deter-

1 mines that the performance of the function in a con-
2 tract entered into under paragraph (1) is not being
3 performed by individuals described under clause (i)
4 or (ii) of paragraph (1)(B), the contract shall be im-
5 mediately terminated.

6 **SEC. 4. AGENCY REPORTING SYSTEMS AND REQUIRED RE-**
7 **PORTS.**

8 (a) **CENTRALIZED REPORTING SYSTEM.**—Not later
9 than 180 days after the date of enactment of this Act,
10 each agency shall establish a centralized reporting system
11 in accordance with guidance promulgated by the Director
12 of the Office of Management and Budget that allows the
13 agency to generate periodic reports on the contracting ef-
14 forts of the agency. Such centralized reporting system
15 shall be designed to enable the agency to generate reports
16 on efforts regarding both contracting out and contracting
17 in.

18 (b) **REPORTS ON CONTRACTING EFFORTS.**—

19 (1) **INITIAL REPORTS.**—Not later than 180
20 days after the date of enactment of this Act, every
21 agency shall generate and submit to the Director of
22 the Office of Management and Budget a report on
23 the contracting efforts of the agency undertaken
24 during the fiscal year immediately preceding the fis-
25 cal year during which this Act is enacted. Such re-

1 port shall comply with the requirements in para-
2 graph (3).

3 (2) SUBSEQUENT REPORTS.—For the current
4 fiscal year and every fiscal year thereafter, every
5 agency shall complete and submit to the Director of
6 the Office of Management and Budget a report on
7 the contracting efforts undertaken by the agency
8 during that fiscal year. The report for a fiscal year
9 shall comply with the requirements in paragraph (3),
10 and shall be completed and submitted not later than
11 the end of the first fiscal quarter of the subsequent
12 fiscal year.

13 (3) CONTENTS.—With regard to each con-
14 tracting effort undertaken by the agency, the reports
15 referred to in this subsection shall include the fol-
16 lowing information:

17 (A) The contract number and the Federal
18 supply class or service code.

19 (B) The names, business addresses, and
20 business telephone numbers of the officials who
21 supervised the contracting effort.

22 (C) The competitive process used or the
23 statutory or regulatory authority relied on to
24 enter into the contract without public-private
25 competition.

1 (D) The cost of Federal employee perform-
2 ance at the time the work was contracted out
3 (if the work had previously been performed by
4 Federal employees).

5 (E) The cost of Federal employee perform-
6 ance under the most efficient organization plan
7 identified for that performance (if the work was
8 contracted out through OMB Circular A-76).

9 (F) The anticipated cost of contractor per-
10 formance, based on the award.

11 (G) The current cost of contractor per-
12 formance.

13 (H) The actual savings, expressed both as
14 a dollar amount and as a percentage of the cost
15 of performance by Federal employees, based on
16 the current cost, and an explanation of the dif-
17 ference, if any.

18 (I) A description of the quality control
19 process used by the agency in connection with
20 monitoring the contracting effort, identification
21 of the applicable quality control standards, the
22 frequency of the preparation of quality control
23 reports, and an assessment of whether the con-
24 tractor met, exceeded, or failed to achieve the
25 quality control standards.

1 (J) The number of employees performing
2 the contracting effort under the contract and
3 any related subcontracts.

4 (c) REPORT ON CONTRACTING IN EFFORTS.—

5 (1) IN GENERAL.—For the current fiscal year
6 and every fiscal year thereafter, every agency shall
7 complete and submit to the Director of the Office of
8 Management and Budget a report on the contracting
9 in efforts undertaken by the agency during that fis-
10 cal year. The report for a fiscal year shall comply
11 with the requirements in paragraph (2), and shall be
12 completed and submitted not later than the end of
13 the first fiscal quarter of the subsequent fiscal year.

14 (2) CONTENTS.—The reports referred to in
15 paragraph (1) shall include for each contracting in
16 effort undertaken by the agency the following infor-
17 mation:

18 (A) A description of the type of work in-
19 volved.

20 (B) The names, business addresses, and
21 business telephone numbers of the officials who
22 supervised the contracting in effort.

23 (C) The cost of performance at the time
24 the work was contracted in.

1 (D) The current cost of performance by
2 Federal employees or military personnel.

3 (d) REPORT ON EMPLOYEE POSITIONS.—Not later
4 than 30 days after the end of each fiscal year, every agen-
5 cy shall submit to the Office of Management and Budget
6 a report on the number of Federal employee positions and
7 positions held by non-Federal employees under a contract
8 between the agency and an individual or entity that has
9 been subject to public-private competition during that fis-
10 cal year.

11 (e) SUBMISSION OF REPORTS TO CONGRESS.—

12 (1) IN GENERAL.—The Director of the Office of
13 Management and Budget shall compile all reports
14 submitted under this section and submit the reports
15 to the committees referred to under paragraph (2),
16 not later than 120 days after the end of the applica-
17 ble fiscal year.

18 (2) COMMITTEES.—The reports compiled under
19 this subsection shall be submitted to the Committee
20 on Government Reform of the House of Representa-
21 tives and to the Committee on Governmental Affairs
22 of the Senate.

23 (f) PUBLIC AVAILABILITY OF REPORTS.—

24 (1) PUBLICATIONS.—The Director of the Office
25 of Management and Budget shall promptly publish

1 in the Federal Register notices including a descrip-
2 tion of when the reports referred to in this section
3 are available to the public and the names, business
4 addresses, and business telephone numbers of the of-
5 ficials from whom the reports may be obtained.

6 (2) AVAILABILITY ON INTERNET.—The reports
7 referred to in this section shall be made available
8 through the Internet.

9 (3) PROPRIETARY AND NATIONAL SECURITY IN-
10 FORMATION.—Proprietary information or informa-
11 tion to which section 552(b)(1) of title 5, United
12 States Code, applies shall be excised from informa-
13 tion published or reports made available under this
14 subsection.

15 (g) REVIEW.—The Director of the Office of Manage-
16 ment and Budget shall review the reports referred to in
17 this section and consult with the head of the agency re-
18 garding the content of such reports.

19 **SEC. 5. REQUIREMENT FOR PUBLIC-PRIVATE COMPETI-**
20 **TION.**

21 (a) IN GENERAL.—

22 (1) PUBLIC-PRIVATE COMPETITION.—After the
23 date of enactment of this Act and in accordance with
24 section 3, any decision by an agency to initiate or
25 continue a privatization, outsourcing, contracting in,

1 or contracting out for the performance of a function
2 shall be based on the results of a public-private com-
3 petition process that—

4 (A) formally compares the costs of Federal
5 employee performance of the function with the
6 costs of the performance by a contractor;

7 (B) employs the most efficient organization
8 process described in OMB Circular A-76; and

9 (C) is conducted in consultation or through
10 bargaining with the exclusive representative of
11 the Federal employees performing the function,
12 if applicable.

13 (2) INAPPLICABILITY.—This subsection does
14 not apply to—

15 (A) work performed in the non-Federal
16 sector before the date of enactment of this Act;
17 or

18 (B) contracts with values less than
19 \$1,000,000 for work not performed at the time
20 by Federal employees, if the work is not di-
21 vided, modified, or in any way changed for the
22 purpose of not performing a public-private com-
23 petition.

24 (b) DETERMINATION OF COSTS.—

1 (1) IN GENERAL.—An agency shall commence
2 or continue the performance of a function by Fed-
3 eral employees if, under a cost comparison per-
4 formed under a public-private competition process
5 described in subsection (a), the agency determines
6 that at least a 10-percent cost savings would not be
7 achieved by performance of the function by a con-
8 tractor.

9 (2) UNDERTAKING CONTRACTING EFFORT DUR-
10 ING SUSPENSION.—During the suspension estab-
11 lished under section 3, an agency may undertake a
12 contracting effort made under the issuance of a
13 waiver granted under section 3 for a function that
14 is not currently performed by Federal employees if
15 the agency has determined the total cost to the
16 agency of performing the function by a contractor
17 and the total cost to the agency of having those
18 services performed by Federal employees and that
19 the contractor performance costs are less than the
20 Federal employee performance costs.

21 (c) INAPPLICABILITY OF CERTAIN LIMITATION.—
22 Notwithstanding any limitation on the number of Federal
23 employees established by law, regulation, or policy, an
24 agency may continue to employ, or may hire, such Federal
25 employees as are necessary to perform work acquired

1 through public-private competition required by this sec-
2 tion.

3 **SEC. 6. REVIEW OF CONTRACTOR PERFORMANCE.**

4 (a) IN GENERAL.—

5 (1) AGENCY ACTION AFTER REVIEW.—If a re-
6 port completed under section 4 indicates that, for 2
7 consecutive years, the actual cost of privatization,
8 outsourcing, or contracting out of a particular func-
9 tion exceeds the anticipated cost of contractor per-
10 formance, based on the award (referred to in section
11 4(b)(3)(G)), or fails to substantially meet quality
12 control standards (referred to in section 4(b)(3)(J)),
13 the agency shall either conduct a new public-private
14 competition or convert the function to performance
15 by Federal employees not later than the earlier of
16 the date of the expiration of the contract or the be-
17 ginning of the first fiscal year which is not more
18 than 12 months after the initial determination that
19 the cost of a contracting effort exceeds the antici-
20 pated cost of contractor performance or that quality
21 standards have not been substantially met. Any re-
22 sulting terminations for convenience may be under-
23 taken without cost to the United States Government.

1 (2) INAPPLICABILITY.—This subsection does
2 not apply to work performed in the non-Federal sec-
3 tor before the date of enactment of this Act.

4 (b) PUBLIC-PRIVATE COMPETITION.—

5 (1) IN GENERAL.—For each fiscal year, an
6 agency shall subject to public-private competition an
7 approximate number of Federal employee positions
8 and positions held by non-Federal employees under
9 a contract between an agency and an individual or
10 entity.

11 (2) PARTICULAR FUNCTIONS.—In complying
12 with this section, agencies shall, to the extent pos-
13 sible, subject to public-private competition those po-
14 sitions held by non-Federal employees under a con-
15 tract between an agency and an individual or entity
16 that is associated with functions that are or have
17 been performed at least in part by Federal employ-
18 ees at any time on or after October 1, 1980.

19 (c) INAPPLICABILITY OF CERTAIN LIMITATION.—
20 Notwithstanding any limitation on the number of Federal
21 employees established by law, regulation, or policy, an
22 agency may continue to employ or may hire such Federal
23 employees as are necessary to perform work acquired
24 through public-private competition required by this sec-
25 tion.

1 **SEC. 7. SURVEY OF WAGES AND BENEFITS PROVIDED BY**
2 **CONTRACTORS.**

3 (a) **REQUIREMENT TO CONDUCT SURVEY.**—Using
4 information provided by agencies, the Secretary of Labor
5 shall conduct a survey of the wages and quantifiable bene-
6 fits provided by contractors to non-Federal personnel
7 working in various occupations under contracts between
8 agencies and individuals or entities that were entered into
9 during the 2 fiscal years immediately preceding the date
10 of enactment of this Act.

11 (b) **REVIEW.**—

12 (1) **IN GENERAL.**—The Director of the Office of
13 Personnel Management shall—

14 (A) review the analysis prepared by the
15 Secretary of Labor under subsection (a) and
16 determine the extent to which the wages and
17 quantifiable benefits paid by contractors are
18 comparable to the wages and quantifiable bene-
19 fits earned by Federal employees; and

20 (B) issue a report on the findings of the
21 review.

22 (2) **SUBMISSION.**—Not later than 180 days
23 after the date of enactment of this Act, the report
24 shall be submitted to the Committee on Government
25 Reform of the House of Representatives and to the

1 Committee on Governmental Affairs of the Senate,
2 and published in the Federal Register.

3 (3) PROPRIETARY AND NATIONAL SECURITY IN-
4 FORMATION.—Proprietary information or informa-
5 tion to which section 552(b)(1) of title 5, United
6 States Code, applies shall be excised from informa-
7 tion published or reports made available under this
8 subsection.

9 (c) GUIDANCE.—The Director of the Office of Man-
10 agement and Budget shall issue guidance to implement
11 this section.

12 **SEC. 8. COMPTROLLER GENERAL REPORTS.**

13 The Comptroller General shall report to the Com-
14 mittee on Government Reform of the House of Represent-
15 atives and the Committee on Governmental Affairs of the
16 Senate every 60 days after the date of enactment of this
17 Act on the compliance by agencies with the requirements
18 of this Act.

19 **SEC. 9. REPEAL OF CERTAIN REPORTING REQUIREMENTS.**

20 (a) IN GENERAL.—Sections 2461, 2461a, 2463, and
21 2467(c) of title 10, United States Code, are repealed.

22 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
23 The table of sections for chapter 141 of title 10, United
24 States Code, is amended by striking the items relating to
25 sections 2461, 2461a, and 2463.

1 **SEC. 10. APPLICABILITY.**

2 This Act does not apply with respect to the following:

3 (1) The General Accounting Office.

4 (2) Depot-level maintenance and repair of the
5 Department of Defense (as defined in section 2460
6 of title 10, United States Code).

7 (3) Contracts for the study, planning, sur-
8 veying, design, engineering, and construction of new
9 structures or the remodeling of or additions made to
10 existing structures, facilities, and capital projects,
11 except this Act shall apply to all contracts for the
12 repair and maintenance of any structures.

13 (4) Financial assistance awards (including
14 grants and cooperative agreements).

15 (5) Specialized scientific and technical contracts
16 for work not performed at the time by Federal em-
17 ployees that are undertaken for research and devel-
18 opment, except this Act shall apply to all contracts
19 for work in support of research and development.

○