

AMENDMENT TO H.R. 1585

**OFFERED BY MRS. BOYDA OF KANSAS, MR.
CUMMINGS OF MARYLAND, MR. TAYLOR OF
MISSISSIPPI, AND MS. SHEA-PORTER OF NEW
HAMPSHIRE**

Insert at the appropriate place in title III the following new subtitle:

1 **Subtitle ____—Workplace and**
2 **Depot Issues**

3 **SEC. ____01. MODIFICATION TO PUBLIC-PRIVATE COMPETI-**
4 **TION REQUIREMENTS BEFORE CONVERSION**
5 **TO CONTRACTOR PERFORMANCE.**

6 (a) COMPARISON OF RETIREMENT SYSTEM COSTS.—
7 Section 2461(a)(1) of title 10, United States Code is
8 amended—

9 (1) in subparagraph (F), by striking “and” at
10 the end;

11 (2) by redesignating subparagraph (G) as sub-
12 paragraph (H); and

13 (3) by inserting after subparagraph (F) the fol-
14 lowing new subparagraph (G):

1 “(G) requires that the contractor shall not re-
2 ceive an advantage for a proposal that would reduce
3 costs for the Department of Defense by—

4 “(i) not making an employer-sponsored
5 health insurance plan (or payment that could be
6 used in lieu of such a plan), health savings ac-
7 count, or medical savings account, available to
8 the workers who are to be employed to perform
9 the function under the contract;

10 “(ii) offering to such workers an employer-
11 sponsored health benefits plan that requires the
12 employer to contribute less towards the pre-
13 mium or subscription share than the amount
14 that is paid by the Department of Defense for
15 health benefits for civilian employees of the De-
16 partment under chapter 89 of title 5; or

17 “(iii) offering to such workers a retirement
18 benefit that, in any year, costs less than the an-
19 nual retirement cost factor applicable to civilian
20 employees of the Department of Defense under
21 chapter 84 of title 5; and”.

22 (b) CONFORMING AMENDMENTS.—Such title is fur-
23 ther amended—

24 (1) by striking section 2467; and

25 (2) in section 2461—

1 (A) by redesignating subsections (b)
2 through (d) as subsections (e) through (f); and

3 (B) by inserting after subsection (a) the
4 following new subsection (b):

5 “(b) REQUIREMENT TO CONSULT DOD EMPLOY-
6 EES.—(1) Each officer or employee of the Department of
7 Defense responsible for determining under Office of Man-
8 agement and Budget Circular A-76 whether to convert to
9 contractor performance any function of the Department
10 of Defense—

11 “(A) shall, at least monthly during the develop-
12 ment and preparation of the performance work
13 statement and the management efficiency study used
14 in making that determination, consult with civilian
15 employees who will be affected by that determination
16 and consider the views of such employees on the de-
17 velopment and preparation of that statement and
18 that study; and

19 “(B) may consult with such employees on other
20 matters relating to that determination.

21 “(2)(A) In the case of employees represented by a
22 labor organization accorded exclusive recognition under
23 section 7111 of title 5, consultation with representatives
24 of that labor organization shall satisfy the consultation re-
25 quirement in paragraph (1).

1 “(B) In the case of employees other than employees
2 referred to in subparagraph (A), consultation with appro-
3 priate representatives of those employees shall satisfy the
4 consultation requirement in paragraph (1).

5 “(C) The Secretary of Defense shall prescribe regula-
6 tions to carry out this subsection. The regulations shall
7 include provisions for the selection or designation of ap-
8 propriate representatives of employees referred to in para-
9 graph (2)(B) for purposes of consultation required by
10 paragraph (1)”.

11 (c) TECHNICAL AMENDMENTS.—Section 2461 of
12 such title, as amended by subsection (a) is further amend-
13 ed—

14 (1) in subsection (a)(1)—

15 (A) in subparagraph (B), by inserting after
16 “2003” the following: “, or any successor cir-
17 cular”; and

18 (B) in subparagraph (D), by striking “and
19 reliability” and inserting “, reliability, and
20 timeliness”; and

21 (2) in subsection (c)(2), as redesignated under
22 subsection (b)(2), by inserting “of” after “examina-
23 tion”.

1 **SEC. ___ 02. PUBLIC-PRIVATE COMPETITION AT END OF PE-**
2 **RIOD SPECIFIED IN PERFORMANCE AGREE-**
3 **MENT NOT REQUIRED.**

4 Section 2461(a) of title 10, United States Code, is
5 amended by adding at the end the following new para-
6 graph:

7 “(4) A public-private competition may not be
8 required under Office of Management and Budget
9 Circular A-76 or any other provision of law at the
10 end of the period specified in the performance agree-
11 ment for any function of the Department of Defense
12 performed by Department of Defense civilian em-
13 ployees.”.

14 **SEC. ___ 03. GUIDELINES ON INSOURCING NEW AND CON-**
15 **TRACTED OUT FUNCTIONS.**

16 (a) CODIFICATION AND REVISION OF REQUIREMENT
17 FOR GUIDELINES.—

18 (1) IN GENERAL.—Chapter 146 of title 10,
19 United States Code, is amended by inserting after
20 section 2462 the following new section:

21 **“§ 2463. Guidelines for use of civilian employees to**
22 **perform Department of Defense functions**

23 **“(a) GUIDELINES REQUIRED.—**The Under Secretary
24 of Defense for Personnel and Readiness shall devise and
25 implement guidelines to ensure that consideration is given
26 to using, on a regular basis, civilian employees of the De-

1 partment of Defense to perform new functions and func-
2 tions that are performed by contractors and could be per-
3 formed by such civilian employees. The Secretary of a mili-
4 tary department may prescribe regulations, if the Sec-
5 retary determines such regulations are necessary for im-
6 plementing such guidelines within that military depart-
7 ment.

8 “(b) SPECIAL CONSIDERATION FOR CERTAIN FUNC-
9 TIONS.—The guidelines implemented under subsection (a)
10 shall provide for special consideration to be given to using
11 civilian employees of the Department of Defense to per-
12 form any function that—

13 “(1) was performed by a civilian employee of the De-
14 partment of Defense at any time on or after October 1,
15 1980;

16 “(2) is associated with the performance of an inher-
17 ently governmental function (as that term is defined in
18 section 5 of the Federal Activities Inventory Reform Act
19 of 1998 (31 U.S.C. 501 note));

20 “(3) has been performed by a contractor pursuant to
21 a contract awarded on a non-competitive basis; or

22 “(4) has been performed poorly by a contractor be-
23 cause of excessive costs or inferior quality, as determined
24 by a contracting officer.

1 “(c) EXCLUSION OF CERTAIN FUNCTIONS FROM
2 COMPETITIONS.—No public-private competition may be
3 required under this chapter for any function of the De-
4 partment of Defense that—

5 “(1) is associated with the performance of an inher-
6 ently governmental function;

7 “(2) has been performed by a contractor pursuant to
8 a contract that was awarded on a noncompetitive basis,
9 including a contract awarded without the conduct of a
10 public-private competition under this section; or

11 “(3) has been performed poorly by a contractor be-
12 cause of excessive costs or inferior quality, as determined
13 by a contracting officer.

14 “(d) LIMITATION ON COMPETITIONS FOR NEW AND
15 EXPANDED FUNCTIONS.—(1) A public-private competi-
16 tion may not be conducted under this section for any De-
17 partment of Defense function before—

18 “(A) the commencement of the performance by
19 civilian employees of the Department of Defense of
20 a new Department of Defense function;

21 “(B) the commencement of the performance by
22 civilian employees of the Department of Defense of
23 any Department of Defense function pursuant to the
24 guidelines implemented under subsection (a);

1 “(C) the expansion of the scope of any Depart-
2 ment of Defense function performed by civilian em-
3 ployees of the Department of Defense.

4 “(2) The Secretary may use the flexible hiring au-
5 thority available to the Secretary under the National Secu-
6 rity Personnel System, as established pursuant to section
7 9902 of title 5 to facilitate the performance by civilian
8 employees of the Department of Defense of functions de-
9 scribed in subsection (b).”.

10 (2) CLERICAL AMENDMENT.—The table of sec-
11 tions at the beginning of such chapter is amended
12 by inserting after the item relating to section 2462
13 the following new item:

 “2463. Guidelines for use of civilian employees to perform Department of De-
 fense functions.”.

14 (3) DEADLINE FOR ISSUANCE OF GUIDE-
15 LINES.—

16 (A) DEADLINE.—The Secretary of Defense
17 shall implement the guidelines required under
18 section 2463 of title 10, United States Code, as
19 added by paragraph (1), by not later than 60
20 days after the date of the enactment of this
21 Act.

22 (B) MORATORIUM ON COMPETITIONS
23 UNTIL GUIDELINES ARE IMPLEMENTED.—No
24 study or competition may be begun or an-

1 nounced pursuant to section 2461 of title 10,
2 United States Code, or otherwise pursuant to
3 Office of Management and Budget Circular A-
4 76 relating to the possible conversion to per-
5 formance by a contractor of any Department of
6 Defense function until the guidelines required
7 under section 2463 of such title, as added by
8 paragraph (1) are implemented.

9 (b) ESTABLISHMENT OF INVENTORY OF WORK PER-
10 FORMED BY CONTRACTORS.— Section 115a of title 10,
11 United States Code is amended —

12 (1) in subsection (a)—

13 (A) by striking “and” at the end of para-
14 graph (1);

15 (B) by striking the period at the end of
16 paragraph (2) and inserting “; and”;

17 (C) by adding at the end the following new
18 paragraph:

19 “(3) the estimated manpower requirements of
20 each component of the Department of Defense pro-
21 jected to be met by contractor performance of De-
22 partment of Defense functions and the estimated
23 funding requirements associated with such con-
24 tractor performance for the next fiscal year.”.

1 (2) by adding at the end the following new sub-
2 section:

3 “(i) In each report, the Secretary shall include for
4 each military department, combatant command, and
5 major defense organization, a separate report describing
6 contractor performance of Department of Defense func-
7 tions during the preceding fiscal year. Chapter 35 of title
8 44 shall not apply to such report. In each such report,
9 the Secretary shall—

10 “(1) specify the number of work-year equiva-
11 lents performed by contractors in performing func-
12 tions for each Department;

13 “(2) identify the contracting organization, the
14 component of the Department of Defense admin-
15 istering the contract, and the organization whose re-
16 quirements are being met through the contractor
17 performance of the function, with an explanation in
18 the event these organizational elements are distinct.

19 “(3) identify each organization specified under
20 paragraph (2) at the unit level of detail, as main-
21 tained in the Department’s manpower documenta-
22 tion systems;

23 “(4) identify the funding source for the con-
24 tract under which the function is performed by ap-
25 propriation and operating agency, and the associated

1 funding levels obligated and disbursed for the re-
2 ported work-year equivalents;

3 “(5) identify the functions and missions per-
4 formed by the contractor;

5 “(6) specify whether the contract for the func-
6 tion was entered into pursuant to a public-private
7 competition; and

8 “(7) describe the process by which the Depart-
9 ment of Defense validates the contractor perform-
10 ance of such functions under section 2463 of this
11 title.”.

12 (c) CONFORMING REPEAL.—The National Defense
13 Authorization Act for Fiscal Year 2006 (Public Law 109-
14 163) is amended by striking section 343.

15 (d) INSPECTOR GENERAL REPORT.—Not later than
16 90 days after the date of the enactment of this Act, the
17 Inspector General of the Department of Defense shall sub-
18 mit to the congressional defense committees a report on
19 the implementation of this section and the amendments
20 made by this section. The report shall contain the assess-
21 ment of the Inspector General of whether—

22 (1) the guidelines required under section
23 2463(a) of title 10, United States Code, as added by
24 subsection (a), have been implemented;

1 (2) such guidelines, if developed, conform to the
2 requirements of that section;

3 (3) a contractor inventory has been established
4 pursuant to subsections (a)(3) and (i) of section
5 115a of such title, as added by subsection (b);

6 (4) functions for which the performance of
7 which the Secretary of Defense has entered into a
8 contract are being reviewed on a regular basis for
9 possible conversion to performance by civilian em-
10 ployees of the Department of Defense; and

11 (5) performance by civilian employees of the
12 Department of Defense is being considered to the
13 maximum extent practicable for all new functions of
14 the Department of Defense.

15 **SEC. ___ 04. ADDITIONAL REQUIREMENTS FOR ANNUAL RE-**
16 **PORT ON PUBLIC-PRIVATE COMPETITIONS.**

17 Paragraph (1) of subsection (b) of section 2462 is
18 amended by adding at the end the following new para-
19 graphs:

20 “(4) For any function converted to performance
21 by a contractor, the effect of such conversion on the
22 quality of the performance of the function.

23 “(5) For any function for which a public-pri-
24 vate competition is anticipated during any subse-
25 quent fiscal year, an assessment of whether any

1 method of business reform or reengineering other
2 than a public-private competition, including a deci-
3 sion to consolidate, restructure, or reengineer an or-
4 ganization, function, or activity covered under sec-
5 tion 2475 of this title, could, if implemented in the
6 future, achieve any anticipated or budgeted sav-
7 ings.”.

8 **SEC. ____ 05. RESTRICTION ON OFFICE OF MANAGEMENT**
9 **AND BUDGET INFLUENCE OVER DEPART-**
10 **MENT OF DEFENSE PUBLIC-PRIVATE COM-**
11 **PETITIONS.**

12 (a) RESTRICTION ON OFFICE OF MANAGEMENT AND
13 BUDGET.—The Office of Management and Budget may
14 not direct or require the Secretary of Defense or the Sec-
15 retary of a military department to prepare for, undertake,
16 continue, or complete a public-private competition or di-
17 rect conversion of a Department of Defense function to
18 performance by a contractor under Office of Management
19 and Budget Circular A-76, or any other successor regula-
20 tion, directive, or policy.

21 (b) RESTRICTION ON SECRETARY OF DEFENSE.—
22 The Secretary of Defense or the Secretary of a military
23 department may not prepare for, undertake, continue, or
24 complete a public-private competition or direct conversion
25 of a Department of Defense function to performance by

1 a contractor under Office of Management and Budget Cir-
2 cular A-76, or any other successor regulation, directive,
3 or policy by reason of any direction or requirement pro-
4 vided by the Office of Management and Budget.

5 (c) SUSPENSION AND REVIEW OF ONGOING PUBLIC-
6 PRIVATE COMPETITIONS.—

7 (1) SUSPENSION.—During the 90-day period
8 that begins on the date of the enactment of this Act,
9 the Secretary of Defense shall suspend any review or
10 public-private competition pursuant to Office of
11 Management and Budget Circular A-76 that is being
12 carried out on the date of the enactment of this Act.

13 (2) REVIEW.—During the 90-day period de-
14 scribed in paragraph (1), the Secretary of Defense
15 shall review each suspended review and public-pri-
16 vate competition and shall determine, wholly inde-
17 pendently and without regard to direction, guidance,
18 encouragement, or requirement from the Office of
19 Management and Budget, whether to cancel or con-
20 tinue each review or public-private competition.

21 (3) CRITERIA FOR CONTINUATION.—The Sec-
22 retary of Defense may not continue a review or pub-
23 lic-private competition pursuant to a determination
24 under paragraph (2) unless the official responsible
25 for the performance of the function and the Sec-

1 retary of the military department concerned or agen-
2 cy head submits to the congressional defense com-
3 mittees a certification that the determination was
4 made wholly independently and without regard to di-
5 rection, guidance, encouragement, or requirement
6 from the Office of Management and Budget and
7 after considering less costly and controversial alter-
8 natives to such review or public-private competition.

9 **SEC. ___ 06. BID PROTESTS BY FEDERAL EMPLOYEES IN AC-**
10 **TIONS UNDER OFFICE OF MANAGEMENT**
11 **BUDGET CIRCULAR A-76.**

12 (a) ELIGIBILITY TO PROTEST PUBLIC-PRIVATE COM-
13 PETITIONS.—Section 3551(2) of title 31, United States
14 Code, is amended to read as follows:

15 “(2) The term ‘interested party’—

16 “(A) with respect to a contract or a solici-
17 tation or other request for offers described in
18 paragraph (1), means an actual or prospective
19 bidder or offeror whose direct economic interest
20 would be affected by the award of the contract
21 or by failure to award the contract; and

22 “(B) with respect to a public-private com-
23 petition conducted under Office of Management
24 and Budget Circular A-76 with respect to the
25 performance of an activity or function of a Fed-

1 eral agency, or a decision to convert a function
2 performed by Federal employees to private sec-
3 tor performance without a competition under
4 Office of Management and Budget Circular A-
5 76, includes—

6 “(i) any official who submitted the
7 agency tender in such competition; and

8 “(ii) any one individual who, for the
9 purpose of representing the Federal em-
10 ployees engaged in the performance of the
11 activity or function for which the public-
12 private competition is conducted in a pro-
13 test under this subchapter that relates to
14 such public-private competition, has been
15 designated as the agent of the Federal em-
16 ployees by a majority of such employees.”.

17 (b) EXPEDITED ACTION.—

18 (1) IN GENERAL.—Subchapter V of chapter 35
19 of such title is amended by adding at the end the
20 following new section:

21 **“SEC. 3557. EXPEDITED ACTION IN PROTESTS OF PUBLIC-**
22 **PRIVATE COMPETITIONS.**

23 “For any protest of a public-private competition con-
24 ducted under Office of Management and Budget Circular
25 A-76 with respect to the performance of an activity or

1 function of a Federal agency, the Comptroller General
2 shall administer the provisions of this subchapter in the
3 manner best suited for expediting the final resolution of
4 the protest and the final action in the public-private com-
5 petition.”.

6 (2) CLERICAL AMENDMENT.—The chapter anal-
7 ysis at the beginning of such chapter is amended by
8 inserting after the item relating to section 3556 the
9 following new item:

“3557. Expedited action in protests of public-private competitions.”.

10 (b) RIGHT TO INTERVENE IN CIVIL ACTION.—Sec-
11 tion 1491(b) of title 28, United States Code, is amended
12 by adding at the end the following new paragraph:

13 “(5) If an interested party who is a member of
14 the private sector commences an action described in
15 paragraph (1) with respect to a public-private com-
16 petition conducted under Office of Management and
17 Budget Circular A-76 regarding the performance of
18 an activity or function of a Federal agency, or a de-
19 cision to convert a function performed by Federal
20 employees to private sector performance without a
21 competition under Office of Management and Budg-
22 et Circular A-76, then an interested party described
23 in section 3551(2)(B) of title 31 shall be entitled to
24 intervene in that action.”.

1 (c) APPLICABILITY.—Subparagraph (B) of section
2 3551(2) of title 31, United States Code (as added by sub-
3 section (a)), and paragraph (5) of section 1491(b) of title
4 28, United States Code (as added by subsection (c)), shall
5 apply to—

6 (1) a protest or civil action that challenges final
7 selection of the source of performance of an activity
8 or function of a Federal agency that is made pursu-
9 ant to a study initiated under Office of Management
10 and Budget Circular A-76 on or after January 1,
11 2004; and

12 (2) any other protest or civil action that relates
13 to a public-private competition initiated under Office
14 of Management and Budget Circular A-76, or to a
15 decision to convert a function performed by Federal
16 employees to private sector performance without a
17 competition under Office of Management and Budg-
18 et Circular A-76, on or after the date of the enact-
19 ment of this Act.

20 **SEC. ___ 07. PUBLIC-PRIVATE COMPETITION REQUIRED BE-**
21 **FORE CONVERSION TO CONTRACTOR PER-**
22 **FORMANCE.**

23 (a) IN GENERAL.—The Office of Federal Procure-
24 ment Policy Act (41 U.S.C. 403 et seq.) is amended by
25 adding at the end the following new section:

1 **“SEC. 43. PUBLIC-PRIVATE COMPETITION REQUIRED BE-**
2 **FORE CONVERSION TO CONTRACTOR PER-**
3 **FORMANCE.**

4 “(a) PUBLIC-PRIVATE COMPETITION.—(1) A func-
5 tion of an executive agency performed by 10 or more agen-
6 cy civilian employees may not be converted, in whole or
7 in part, to performance by a contractor unless the conver-
8 sion is based on the results of a public-private competition
9 that—

10 “(A) formally compares the cost of performance
11 of the function by agency civilian employees with the
12 cost of performance by a contractor;

13 “(B) creates an agency tender, including a most
14 efficient organization plan, in accordance with Office
15 of Management and Budget Circular A-76, as imple-
16 mented on May 29, 2003, or any successor circular;

17 “(C) includes the issuance of a solicitation;

18 “(D) determines whether the submitted offers
19 meet the needs of the executive agency with respect
20 to factors other than cost, including quality, reli-
21 ability, and timeliness;

22 “(E) examines the cost of performance of the
23 function by agency civilian employees and the cost of
24 performance of the function by one or more contrac-
25 tors to demonstrate whether converting to perform-

1 ance by a contractor will result in savings to the
2 Government over the life of the contract, including—

3 “(i) the estimated cost to the Government
4 (based on offers received) for performance of
5 the function by a contractor;

6 “(ii) the estimated cost to the Government
7 for performance of the function by agency civil-
8 ian employees; and

9 “(iii) an estimate of all other costs and ex-
10 penditures that the Government would incur be-
11 cause of the award of such a contract;

12 “(F) requires continued performance of the
13 function by agency civilian employees unless the dif-
14 ference in the cost of performance of the function by
15 a contractor compared to the cost of performance of
16 the function by agency civilian employees would,
17 over all performance periods required by the solicita-
18 tion, be equal to or exceed the lesser of—

19 “(i) 10 percent of the personnel-related
20 costs for performance of that function in the
21 agency tender; or

22 “(ii) \$10,000,000; and

23 “(G) examines the effect of performance of the
24 function by a contractor on the agency mission asso-
25 ciated with the performance of the function.

1 “(2) A function that is performed by the executive
2 agency and is reengineered, reorganized, modernized, up-
3 graded, expanded, or changed to become more efficient,
4 but still essentially provides the same service, shall not be
5 considered a new requirement.

6 “(3) In no case may a function being performed by
7 executive agency personnel be—

8 “(A) modified, reorganized, divided, or in any
9 way changed for the purpose of exempting the con-
10 version of the function from the requirements of this
11 section; or

12 “(B) converted to performance by a contractor
13 to circumvent a civilian personnel ceiling.

14 “(b) REQUIREMENT TO CONSULT EMPLOYEES.—(1)
15 Each civilian employee of an executive agency responsible
16 for determining under Office of Management and Budget
17 Circular A-76 whether to convert to contractor perform-
18 ance any function of the executive agency—

19 “(A) shall, at least monthly during the develop-
20 ment and preparation of the performance work
21 statement and the management efficiency study used
22 in making that determination, consult with civilian
23 employees who will be affected by that determination
24 and consider the views of such employees on the de-

1 velopment and preparation of that statement and
2 that study; and

3 “(B) may consult with such employees on other
4 matters relating to that determination.

5 “(2)(A) In the case of employees represented by a
6 labor organization accorded exclusive recognition under
7 section 7111 of title 5, consultation with representatives
8 of that labor organization shall satisfy the consultation re-
9 quirement in paragraph (1).

10 “(B) In the case of employees other than employees
11 referred to in subparagraph (A), consultation with appro-
12 priate representatives of those employees shall satisfy the
13 consultation requirement in paragraph (1).

14 “(C) The head of each executive agency shall pre-
15 scribe regulations to carry out this subsection. The regula-
16 tions shall include provisions for the selection or designa-
17 tion of appropriate representatives of employees referred
18 to in paragraph (2)(B) for purposes of consultation re-
19 quired by paragraph (1).

20 “(c) CONGRESSIONAL NOTIFICATION.—(1) Before
21 commencing a public-private competition under subsection
22 (a), the head of an executive agency shall submit to Con-
23 gress a report containing the following:

24 “(A) The function for which such public-private
25 competition is to be conducted.

1 “(B) The location at which the function is per-
2 formed by agency civilian employees.

3 “(C) The number of agency civilian employee
4 positions potentially affected.

5 “(D) The anticipated length and cost of the
6 public-private competition, and a specific identifica-
7 tion of the budgetary line item from which funds will
8 be used to cover the cost of the public-private com-
9 petition.

10 “(E) A certification that a proposed perform-
11 ance of the function by a contractor is not a result
12 of a decision by an official of an executive agency to
13 impose predetermined constraints or limitations on
14 such employees in terms of man years, end
15 strengths, full-time equivalent positions, or max-
16 imum number of employees.

17 “(2) The report required under paragraph (1) shall
18 include an examination of the potential economic effect of
19 performance of the function by a contractor on—

20 “(A) agency civilian employees who would be af-
21 fected by such a conversion in performance; and

22 “(B) the local community and the Government,
23 if more than 50 agency civilian employees perform
24 the function.

1 “(3)(A) A representative individual or entity at
2 a facility where a public-private competition is con-
3 ducted may submit to the head of the executive
4 agency an objection to the public private competition
5 on the grounds that the report required by para-
6 graph (1) has not been submitted or that the certifi-
7 cation required by paragraph (1)(E) is not included
8 in the report submitted as a condition for the public
9 private competition. The objection shall be in writing
10 and shall be submitted within 90 days after the fol-
11 lowing date:

12 “(i) In the case of a failure to submit the
13 report when required, the date on which the
14 representative individual or an official of the
15 representative entity authorized to pose the ob-
16 jection first knew or should have known of that
17 failure.

18 “(ii) In the case of a failure to include the
19 certification in a submitted report, the date on
20 which the report was submitted to Congress.

21 “(B) If the head of the executive agency deter-
22 mines that the report required by paragraph (1) was
23 not submitted or that the required certification was
24 not included in the submitted report, the function
25 for which the public-private competition was con-

1 ducted for which the objection was submitted may
2 not be the subject of a solicitation of offers for, or
3 award of, a contract until, respectively, the report is
4 submitted or a report containing the certification in
5 full compliance with the certification requirement is
6 submitted.

7 “(d) EXEMPTION FOR THE PURCHASE OF PRODUCTS
8 AND SERVICES OF THE BLIND AND OTHER SEVERELY
9 HANDICAPPED PERSONS.—This section shall not apply to
10 a commercial or industrial type function of an executive
11 agency that—

12 “(1) is included on the procurement list estab-
13 lished pursuant to section 2 of the Javits-Wagner-
14 O’Day Act (41 U.S.C. 47); or

15 “(2) is planned to be changed to performance
16 by a qualified nonprofit agency for the blind or by
17 a qualified nonprofit agency for other severely handi-
18 capped persons in accordance with that Act.

19 “(e) INAPPLICABILITY DURING WAR OR EMER-
20 GENCY.—The provisions of this section shall not apply
21 during war or during a period of national emergency de-
22 clared by the President or Congress.”.

23 (b) CLERICAL AMENDMENT.—The table of sections
24 in section 1(b) of such Act is amended by adding at the
25 end the following new item:

“Sec. 43. Public-private competition required before conversion to contractor performance.”.