

Competition in Contracting Act (CICA)

TITLE VII—COMPETITION IN CONTRACTING

Short Title

Sec. 2701. This title may be cited as the "Competition in Contracting Act of 1984".

SUBTITLE A—AMENDMENTS TO THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

Competitive Procedures

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

"Competition Requirements

"Sec. 303. (a)(1) Except as provided in subsections (b) and (c) and except in the case of procurement procedures otherwise expressly authorized by statute, an executive agency—

"(A) shall comply with the full and open competition requirements set out in this title and in the modifications to regulations promulgated pursuant to section 2572 of the Competition in Contracting Act of 1984; and

"(B) shall use, in entering into a contract for property or services, the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement action.

"(2) The head of an executive agency, when using competitive procedures—

"(A) shall solicit sealed bids if—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(7) the head of the executive agency —

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

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

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

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

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

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

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

"(A) the use of such procedures is justified in writing and the accuracy and completeness of the justification are certified by the contracting officer for the contract;

"(B)(i) in the case of a contract for an amount exceeding \$100,000, such justification is approved by the competition advocate for the procuring activity;

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

"(iii) in the case of contract for an amount exceeding \$10,000,000, such justification is approved by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)); and

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

"(2) In the case of procurements permitted by subsection (c)(2), the justification and approvals required by paragraph (1) may be made after the procurement has occurred. The justification and approvals required by paragraph (1) shall not be required in the case of procurements permitted by subsection (c)(7) or in the case of procurements conducted pursuant to the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act.

"(3) The statement of justification required by paragraph (1)(A) shall include —

"(A) a description of the agency's needs;

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

"(C) a determination that the anticipated cost is fair and reasonable;

"(D) a description of the market survey conducted or a statement of the reason a market survey was not conducted;

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

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

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

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

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

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

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

"(g)(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, regulations shall provide for special simplified procedures for small purchases of property and services.

"(2) A small purchase is a purchase or contract which does not exceed \$25,000.

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

"(4) The head of an agency, in using small purchase procedures, shall promote competition under such procedures to the maximum extent practicable."

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

"Planning and Solicitation Requirements

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

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

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

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

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

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

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

"(3) For the purposes of paragraph (1), the type of specification included in a solicitation shall depend on the nature of the needs of the executive agency and the market available

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to satisfy such needs. Subject to such needs, specifications may be stated in terms of—

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

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

“(C) design requirements

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

“(1) a statement of—

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

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

“(2)(A) in the case of sealed bids—

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

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

“(B) in the case of competitive proposals—

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

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

“Evaluation and Award

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

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

“(c) Sealed bids shall be opened publicly at the time and place stated in the solicitation. The executive agency shall evaluate the bids without discussions with the bidders and shall, except as provided in subsection (b), award a contract with reasonable promptness to the responsible bidder whose bid conforms to the solicitation and is most advantageous to the United States, considering only the price and the other price-related factors included in the solicitation under section 303A(b)(1). The award of a contract shall be made by transmitting written notice of the award to the successful bidder

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

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

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

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

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

“(4) The executive agency shall, except as otherwise provided in subsection (b), award a contract with reasonable promptness to the responsible sources whose proposal is most advantageous to the United States, considering price and the factors included in the solicitation under section 303A(b)(1). The executive agency shall award the contract by transmitting written notice of the award to such offeror and shall promptly notify all other offerors of the rejection of their proposals.

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

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

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

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

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

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

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

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

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

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

“Sec. 303. Competition requirements.”

“Sec. 303A. Planning and Solicitation requirements.

“Sec. 303B. Evaluation of bids; awards.”

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

Cost or Pricing Data

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

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

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

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

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

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

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

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

"(4) The requirements of this subsection need not be applied to contracts or subcontracts where the price is passed on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, prices set by law or regulation or, in exceptional cases where the head of the executive agency determines that the requirements of this subsection may be waived and states in writing his reasons for such determination.

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

Automated Data Processing Dispute Resolution

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

"(h)(1) Upon request of any interested party in connection with any procurement conducted under the authority of this section, including procurements conducted under blanket delegations of procurement authority, the board of contract appeals of the General Services Administration (hereafter in this subsection referred to as the "board"), shall review any decision by a contracting officer alleged to violate statute or regulation, or both, under the standard applicable to review of contracting officer final decisions by boards of contract

appeals. An interested party who has filed a protest action under section 3551 of title 31, United States Code, with respect to any procurement may not file a protest action with respect to such procurement under this subsection.

"(2) When a protest action under this subsection is filed before award of the challenged procurement, the board, at the request of any interested party and within 10 days of the filing of the protest action, shall hold a hearing to determine whether it should suspend the procurement authority of the Administrator or the Administrator's delegation of procurement authority for the challenged procurement on an interim basis until the board can decide the protest action. The delegation of procurement authority shall be suspended unless the agency establishes that —

"(A) absent action by the board, contract award is likely to occur within 30 days of the hearing; and

"(B) urgent and compelling circumstances which significantly affect interests of the United States will not permit awaiting the decision of the board.

"(3) At the request of any interested party, when a protest action is filed within 30 days after the date of publication of award by the Secretary of Commerce or the date of receipt of written notice of award by the party challenging the award, whichever comes first, the board shall, within 10 days after the date of the filing of the protest action, hold a hearing to determine whether it should suspend the procurement authority of the Administrator or the Administrator's delegation of procurement authority for the challenged procurement on an interim basis. The board shall suspend the agency's authority to acquire any goods or services under the contract which are not previously delivered and accepted unless the agency establishes that urgent and compelling circumstances which significantly affect interests of the United States will not permit awaiting the decision of the board.

"(4) The board shall conduct such proceedings and allow such discovery as may be required for the expeditious, fair, and reasonable resolution of the protest action. The board shall give priority to protest actions filed under this subsection and shall issue its final decision within 45 working days after the date of protest unless the board's chairman determines that the specific and unique circumstances of the protest require a longer period. However, nothing contained in this subsection shall conflict with any deadlines imposed by section 9(a) of the Contract Disputes Act of 1978 (41 U.S.C. 608(a)). In making a decision on the merits of protest actions brought under this section, the board shall accord due weight to the policies of this section, and the goals of economic and efficient procurement set forth in this section. When the board determines that challenged agency action violates a procurement statute or regulation or the conditions of any delegation of procurement authority issued pursuant to this section, the board may suspend, revoke, or revise the delegation of procurement authority applicable to the challenged procurement. Whenever the board makes such a determination, it may, in accordance with section 1304 of title 31, United States Code, further declare the entitlement of an appropriate party to the costs of (A) filing and pursuing the protest, including reasonable attorney's fees, and (B) bid and proposal preparation, the final decision of the board may be appealed by the head of the agency involved and by any interested party, including interested parties who intervene in any protest action filed under this subsection, as set forth in the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.). If the board revokes or suspends the procurement authority of the Administrator or the Administrator's delegation of procurement authority after contract

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award, the affected contract shall be presumed valid as to all goods or services delivered and accepted thereunder prior to the suspension, revocation, or revision of the delegation of procurement authority. Nothing contained in this subsection shall affect the board's power to order any additional relief which it is authorized to provide under any statute or regulation. However, the procedures set forth in this subsection shall only apply to procurements conducted under the authority contained in this section. In addition, nothing contained in this subsection shall affect the right of any person to file protests with the contracting agency or to file actions in the district court or the United States Claims Court.

"(5) The board is authorized to dismiss any protest action determined to be frivolous or which, on its face, does not state a valid basis for protest.

"(6) The board shall, within 180 days after the date of enactment of this subsection, adopt and issue such rules and procedures, not inconsistent with this section, as may be necessary to the expeditious disposition of protest actions filed under authority of this subsection.

"(7) For purposes of this subsection—

"(A) the term 'protest' means a challenge to a solicitation, or to the award or proposed award of any procurement contract; and

"(B) the term 'interested party' means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or nonaward of the contract."

(b) The amendment made by this section shall cease to be effective three years after such amendment first takes effect in accordance with section 2751

Conforming Amendments

Sec. 2714. (a) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended—

(1) in section 302 (41 U.S.C. 252)—

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

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

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

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

(C) by redesignating subsection (f) as subsection (d);

(2) by striking out the heading of section 304 and inserting in lieu thereof the following:

"Contract Requirements";

(3) in section 304 (41 U.S.C. 254)—

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

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

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

(4) in section 307 (41 U.S.C. 257)—

(A) by striking out "Except as provided in subsection (b), and except" in the second sentence of subsection (a) and inserting in lieu thereof "Except";

(B) by striking out subsection (b);

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

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

(E) by striking out subsection (d);

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

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

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

"Sec. 304 Contract requirements.";

Subtitle B—[Amendments to Title 10, United States Code], Defense Procurement Declaration of Policy.

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

"§2301 Congressional defense procurement policy

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

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

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

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

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

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

"(6) the head of an agency encourage the development and maintenance of a procurement career management

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program to ensure a professional procurement work force.

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

"(1) promote full and open competition;

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

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

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

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

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

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

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

Clarification of Applicability of

Chapter 137 of Title 10 to the Secretary of Defense;

Definition of Competitive Procedures

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

"§2302. Definitions

"In this chapter: "

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

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

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

"(B) the competitive selection for award of basic research proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of such proposals; and

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

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

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

"(3) The terms 'full and open competition' and 'responsible source' have the meanings given such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)."

(b) Section 2303 of such title is amended—

(1) in subsection (a)—

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

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

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

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

"(i) The Department of Defense.":

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

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

Competitive Procedures

Sec. 2723. (a) Sections 2304 and 2305 of title 10, United States Code, are amended to read as follows:

"§2304. Competition requirements

"(a)(1) Except as provided in subsections (b) and (c) and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency—

"(A) shall comply with the full and open competition requirements set out in this chapter and in the modifications to regulations promulgated pursuant to section 2572 of the Competition in Contracting Act of 1984; and

"(B) shall use in entering into a contract for property or services, the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement action.

"(2) The head of an agency, when using competitive procedures—

"(A) shall solicit sealed bids if—

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

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

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

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

"(B) shall request competitive proposals from responding sources if sealed bids are not appropriate under clause (A).

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

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

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

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

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

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

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

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

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

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

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

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

"(7) the head of executive agency —

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

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

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

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

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

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

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

"(A) the use of such procedures is justified in writing and the accuracy and completeness of the justification are certified by the contracting officer for the contract;

"(B) the justification is approved —

"(i) in the case of a contract for an amount exceeding \$100,000, by the competition advocate for the procuring activity;

"(ii) in the case of a contract for an amount exceeding \$1,000,000, by an officer or official who, if a member of the armed forces, is a general or flag officer or if a civilian, is serving in a position in grade GS-16 or above under the General Schedule or in a comparable or higher position under another schedule; or

"(iii) in the case of a contract for an amount exceeding \$10,000,000, by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)); and

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

"(2) In the case of procurements permitted by subsection (c)(2), the justification and approvals required by paragraph (1) may be made after the procurement has occurred. The justification and approvals required by paragraph (1) shall not be required in the case of procurements permitted by subsection (c)(7) or in the case of procurements conducted pursuant to the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act.

"(3) The statement of justification required by paragraph (1)(A) shall include —

"(A) a description of the agency's needs;

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

"(C) a determination that the anticipated cost is fair and reasonable;

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

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

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

"(4) The justification required by paragraph (1)(A) and any related account, document, or other record shall be made available for inspection by the public consistent with the provisions of section 552 of title 5.

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

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

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

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

"(g)(1) In order to promote efficiency and economy in contracting and to avoid unnecessary for agencies and contractors, regulations shall provide for special simplified procedures for small purchases of property and services.

"(2) A small purchase is a purchase or contract which does not exceed \$25,000

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

"(4) The head of an agency, in using small purchase procedures, shall promote competition under such procedures to the maximum extent practicable

"§2305 Planning, solicitation, evaluation, and award procedures

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

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

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

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

"(B) Each solicitation under this title shall include specifications which—

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

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

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

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

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

"(iii) design requirements.

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

"(A) a statement of—

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

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

"(B)(i) in the case of sealed bids—

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

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

"(ii) in the case of competitive proposals—

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

"(II) the time and place for submission of proposals

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

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

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

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

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

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

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

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

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

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

(b) The table of section at the beginning of such chapter is amended—

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

"2301. Congressional defense procurement policy."; and

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

"2304. Competition requirements.

"2305. Planning, solicitation, evaluation, and award procedures."

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

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Conforming Amendments

Sec. 2724. Chapter 137 of title 10, United States Code, is amended —

(1) in section 2306 —

(A) by striking out “may, in negotiating contracts under section 2304,” in the second sentence of subsection (a) and inserting in lieu thereof “may in awarding contracts after using other than sealed bid procedures”;

(B) by striking out “negotiated under section 2304” in the first sentence of subsection (b) and inserting in lieu thereof “awarded after using other than sealed bid procedures”;

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(C) by striking out “section 2304 of this title,” in subsection (c) and inserting in lieu thereof “this chapter”;

(D) in subsection (f)(1) —

(i) by striking out clause (A) and inserting in lieu thereof the following:

“(A) prior to the award of any prime contract under this title after using other than sealed bid procedures where the contract price is expected to exceed \$100,000;”;

(ii) by striking out “negotiated” each place it appears in the second paragraph;

(iii) by striking out “negotiation,” in the third paragraph and inserting in lieu thereof “proposal for the contract, the discussions conducted on the proposal under this title.”;

(iv) by striking out “\$500,000” each place it appears in clauses (B), (C), and (D) and inserting in lieu “\$100,000”, and

(v) by inserting after paragraph (3) the following new paragraph:

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

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

“(b) Each determination or decision under section 2306(c), section 2306(g)(1), section 2307(c), or section 2313(c) of this title shall be based on a written finding by the person making the determination or decision, which finding shall set out facts and circumstances that (1) clearly indicate why the type of contract selected under section 2306(c) is likely to be less costly than any other type or that it is impracticable to obtain property or services of the kind or quality required except under such a contract, (2) support the findings required by section 2306(g)(1), (3) clearly indicate why advance payments under section 2307(c) would be in the public interest, or (4) clearly indicate why the application of section 2313(b) to a contract or subcontract with a foreign contractor or foreign subcontractor would not be in the public interest. Such a finding is final and shall be kept available in the agency for at least six years after the date of the determination or decision. A copy of the finding shall be submitted to the General Accounting Office with each contract to which it applies.”;

(3) by striking out section 2311; and

(4) by striking out “negotiated” in the second sentence of section 2313(b) and inserting in lieu thereof “awarded after using other than sealed bid procedures”

SUBTITLE C — AMENDMENTS TO THE OFFICE

OF FEDERAL PROCUREMENT

POLICY ACT Definitions

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

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

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

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

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

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

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

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

“(C) has a satisfactory performance record;

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

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

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

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

Procurement Notice and Records;

Advocate for Competition

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

“Procurement Notice

“Sec. 18. (a)(1) Except as provided in subsection (c) —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Record Requirements

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

"(b) The record established under subsection (a) shall include

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

"(A) the date of contract award;

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

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

"(D) the total cost of the procurement;

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

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

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

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

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

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

"Advocates for Competition

Sec. 20. (a)(1) There is established in each executive agency an advocate for competition.

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

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

"(B) not assign such officer or employee any duty or responsibility that is inconsistent with the duties and responsibilities of the advocate for competition; and

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

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

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

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

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

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

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

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

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"(A) such advocate's activities under this section.

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

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

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

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

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

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

"Annual Report on Competition

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

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

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

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

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

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

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

(2) Section 16(1) of such Act (41 U.S.C. 415(1)) is amended to read as follows:

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

SUBTITLE D—PROCUREMENT PROTEST SYSTEM

Procurement Protest System

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

"SUBCHAPTER V—PROCUREMENT PROTEST SYSTEM

"§351 Protests by interested parties concerning procurement actions

"(a) Protests concerning alleged violations of the procurement statutes and regulations shall be decided by the Comptroller General if filed in accordance with this section. Nothing contained in this section shall be construed to give the Comptroller General exclusive jurisdiction over protests. An interested party who has filed a protest action under section 111(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 759(h)) with respect to a procurement action may not file a protest action with respect to such procurement under this section.

"(b)(1) In accordance with the procedures issued pursuant to subsection (d), the Comptroller General shall have authority to decide a protest submitted by an interested party or referred by an executive agency or a court of the United States.

"(2) Except as provided in subsection (c)(1), the Comptroller General shall issue a final protest decision within 90 working days after the date of a protest unless the Comptroller General determines and states in writing the reasons that the specific circumstances of the protest require a longer period

"(3) The Comptroller General shall notify the executive agency within one working day after the date of the receipt of a protest and the executive agency shall submit a complete report (including all relevant documents) on the protested procurement to the Comptroller General within 25 working days after the agency's receipt of the notice of such protest, unless notified that the protest has been dismissed pursuant to subsection (c)(4) or unless the Comptroller General, upon a showing by such agency, determines and states in writing the reasons that the specific circumstances of the protest require a longer period. In a case determined by the Comptroller General to be suitable for the express option under subsection (c)(1), such report and documents shall be submitted within 10 working days after such receipt.

"(4)(A) A contract may not be awarded on the basis of the protested procurement after the contracting officer has received notice of a protest to the Comptroller General and while the protest is pending.

"(B) The head of the procurement activity responsible for award of the contract may authorize the award of a contract notwithstanding a protest of which the agency has notice under this paragraph —

"(i) upon a written finding that urgent and compelling circumstances which significantly affect interests of the United States will not permit awaiting the decision of the Comptroller General; and

"(ii) after the Comptroller General is advised of such finding.

"(C) Before the award of a contract, a finding may not be made under subparagraph (B)(i) unless the award of the contract is otherwise likely to occur within 30 days.

"(5)(A) If the contract has been awarded before the receipt of notice of a protest, contract performance shall be ceased or the contract shall be suspended upon receipt of such notice and while the protest is pending. This paragraph shall not apply when the protest is filed more than 10 days after award of the contract.

"(B) The head of the procurement activity responsible for award of the contract may, after notifying the Comptroller General of his findings, authorize the performance of a contract notwithstanding a protest of which the agency has notice under this paragraph —

"(i) upon a written finding that contract performance will be in the Government's best interests, except that if the head of the procurement activity makes such a find-

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ing, the Comptroller General shall make his determination of the appropriate recommended relief (if the protest is sustained) without regard to any costs or disruption from terminating, recompeting, or reawarding the contract; or

"(ii) upon a written finding that urgent and compelling circumstances which significantly affect interests of the United States will not permit awaiting the decision of the Comptroller General.

"(6) The authority of the head of the procuring activity to make findings and authorize award and performance of contracts under paragraphs (4) and (5) may not be delegated.

"(7) The Comptroller General is authorized to determine whether a solicitation, proposed award, or award protested under this section complies with procurement statutes and regulations. If the Comptroller General determines that the solicitation, proposed award, or award does not comply with a procurement statute or regulation, or both, the Comptroller General shall recommend that the agency —

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

"(B) recompete the contract immediately;

"(C) issue a new solicitation;

"(D) terminate the contract;

"(E) award a contract consistent with the requirements of such statutes and regulations;

"(F) comply with any combination of recommendations under clauses (A), (B), (C), (D), and (E); or

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

"(C)(1) To the maximum extent practicable, the Comptroller General shall provide for the inexpensive and expeditious resolution of protests under this section. The Comptroller General shall establish an express option for deciding those protests which the Comptroller General determines suitable for resolution within 45 days from the date of protest. Within such deadlines as the Comptroller General prescribes, each executive agency shall provide to an interested party any document relevant to the protested procurement action (including the report required by subsection (b)(3)) that would not give such party a competitive advantage and that such party is otherwise authorized by law to receive

"(2) Each decision of the Comptroller General under this section shall be signed by the Comptroller General, or a designee for such purpose. A copy of the decision shall be made available to the interested parties and the senior procurement executive of the executive agency or agencies involved.

"(3) The head of the procurement activity responsible for award of the contract shall report to the Comptroller General, within 60 days of receipt of the Comptroller General's recommendations, if the agency has not fully complied with such recommendations. Not later than January 31 of each year, the Comptroller General shall transmit to each House of the Congress a report describing each instance of an agency failure to comply with the Comptroller General's recommendations during the preceding fiscal year.

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

"(5)(A) If the Comptroller General determines that a solicitation, proposed award, or award of a contract does not comply with a procurement statute or regulation, the Com-

troller General may further declare an appropriate party to be entitled to the costs of —

"(i) filing and pursuing the protest, including reasonable attorneys' fees; and

"(ii) bid and proposal preparation.

"(B) Monetary awards to which a party is declared to be entitled under subparagraph (A) shall be paid promptly by the executive agency concerned out of funds available to or for the use of such executive agency for the purpose of the procurement of property and services.

"(d)(1) Within 180 days after the date of enactment of this subchapter, the Comptroller General shall establish such procedures, not inconsistent with this section, as may be necessary to the expeditious execution of the protest decision function, including procedures for accelerated resolution of the protest under the express option authorized by subsection (c)(1). Such procedures shall provide that the protest process shall not be delayed by the failure of a party to make a filing within the time provided for such filing.

"(2) The Comptroller General may use any authority available under chapter 7 of this title and this chapter to verify contentions made by parties in protests under this section.

"(e) An interested party adversely affected or aggrieved by the action, or the failure to act, of a Government agency with respect to a solicitation or award may obtain judicial review thereof to the extent provided by sections 702 through 706 of title 5, including determinations necessary to resolve disputed material facts or when otherwise appropriate.

"(f) For purposes of this section —

"(1) the term 'protest' means a challenge to a solicitation or to the award or proposed award of a procurement contract; and

"(2) the term 'interested party', with respect to a contract, means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of or failure to award the contract." (b) The analysis for chapter 35 of title 31, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER V — PROCUREMENT

PROTEST SYSTEM

"3551. Protests by interested parties concerning procurement actions.

SUBTITLE E — EFFECTIVE DATE:

REGULATIONS: STUDY Effective Date

Sec. 2751. (a) Except as provided in subsection (b), the amendments made by this title shall apply with respect to any solicitations for bids or proposals issued on or after the date 270 days after the date of the enactment of this Act.

(b) The amendments made by section 2713 and subtitle D shall apply with respect to protests filed after 180 days after the date of enactment of this Act.

Modification of Federal

Acquisition Regulations

Sec. 2752. Not later than 270 days after the date of enactment of this Act, the single Government-wide procurement regulation referred to in section 414(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)(A)) shall be modified to conform to the requirements of this title and the amendments made by this title and to the policies

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contained in section 2 of the Office of Federal Procurement Policy Act (41 U.S.C. 401)

Study of Alternatives

Sec. 2753 Not later than January 31, 1985, the Administrator of the Office of Federal Procurement Policy, in consultation with the Secretary of Defense, the Administrator of the General Services Administration and the Administrator of the National Aeronautics and Space Administration, shall complete a study of alternatives and recommend

a plan to increase the opportunities to achieve full and open competition on the basis of technical qualifications, quality, and other factors in the procurement of professional, technical, and managerial services. The Administrator shall report to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives a plan for testing the recommended alternative, in accordance with section 9 of the Office of Federal Procurement Policy Act (41 U.S.C. 405 et seq.), and shall ensure such plan is consistent with the policies set forth in section 2 of such Act