Contents

SEC. ____. STREAMLINING COMPLIANCE AND COMPETITION PROCEDURAL REQUIREMENTS.

(a) SIMPLIFIED ACQUISITION THRESHOLD.—Section 134 of title 41, United States Code, is amended by striking "In division B" and all that follows and inserting the following:

"In division B, the term "simplified acquisition threshold" means—

(1) $250,000; or

(2) For the acquisition of commercial products and commercial services—

(A) $2,000,000 through September 30, 2027;

(B) $5,000,000 from October 1, 2027 through September 30, 2030; and

(C) $10,000,000 after September 30, 2030."

(b) SPECIAL SIMPLIFIED PROCEDURES.—

(1) Section 3205(a)(2) of title 10, United States Code, is amended by striking "$5,000,000" and inserting "$10,000,000 through September 30, 2027; $25 million from October 1, 2027 through September 30, 2030; and $50,000,000 thereafter".

(2) Section 1901(a)(2) of title 41, United States Code, is amended by striking "$5,000,000" and inserting "$10,000,000 through September 30, 2027; $25 million from October 1, 2027 through September 30, 2030; and $50,000,000 thereafter".

(3) Section 3305(a)(2) of title 41, United States Code, is amended by striking "$5,000,000" and inserting "$10,000,000 through September 30, 2027; $25 million from October 1, 2027 through September 30, 2030; and $50,000,000 thereafter".

(c) SMALL BUSINESS RESERVATION.—Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) is amended by striking "the simplified acquisition threshold" and inserting "$250,000".

(d) POSTING REQUIREMENTS.—

(1) Section 637 of title 15, United States Code, is amended—

(A) in subsection (e)—

(i) by amending paragraph (1) to read as follows:

"(1) Except as provided in subsection (g), an executive agency shall publish a notice described in subsection (f) if the agency intends to—

"(A) solicit bids or proposals for a contract for property or services for a price expected to exceed the micro-purchase threshold; or

"(B) place an order, expected to exceed the micro-purchase threshold, under a basic agreement, basic ordering agreement, or similar arrangement."

(ii) by striking paragraph (2);

(iii) by redesignating paragraph (3) as paragraph (2);

(iv) in paragraph (2)(B), as so redesignated—

(I) in clause (i), by striking "the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published" and inserting "30 days"; and

(II) in clause (ii), by striking "the date 45 days after the date the notice required by paragraph (1)(A)(i) is published" and inserting "45 days";

(B) in subsection (f), by striking "subparagraph (A) or (B) of subsection (e)(1)" and inserting "subsection (e)(1)(A)" after "required by"; and

(C) in subsection (k), by striking "by—" and all that follows and inserting "by a business concern that is a subcontractor or supplier (at any tier) to such

contractor having a subcontracting opportunity in excess of the micro-purchase threshold."

(2) Section 1708 of title 41, United States Code, is amended—

(A) in subsection (a)—

(i) by striking paragraph (1);

(ii) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively; and

(iii) in paragraph (1), as so redesignated, by striking "$25,000" both times it appears and inserting "the micro-purchase threshold under section 1902 of this title".

(B) in subsection (b)(2), by striking "(2)" and inserting "(1)";

(C) in subsection (c) by striking "paragraph (1) or (2) of subsection (a)" and inserting "subsection (a)(1)" after "required by";

(D) in subsection (e), by striking "(a)(2)" each place it appears and inserting "(a)(1)";

(E) by striking subsection (f); and

(F) by redesignating subsection (g) as subsection (f).

(e) THRESHOLD ALIGNMENT.— Section 4106(d) of title 41, United States Code, is amended—

(1) in the subsection heading, by striking "IN EXCESS OF $5,000,000"; and

(2) by striking "$5,000,000" and inserting "the greater of $5,000,000 or the simplified acquisition threshold, or for acquisitions of commercial products or

commercial services the greater of $5,000,000 or the threshold for using simplified acquisition procedures,”.

(f) CONFORMING AMENDMENTS.—

(1) Title 6, United States Code, is amended—

(A) in section 393—

(i) by striking subsection (c);

(ii) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively; and

(iii) in subsection (c), as redesignated—

(aa) by striking subparagraph (2); and

(bb) redesignating subparagraph (3) as subparagraph (2);

(B) by striking section 423; and

(C) in section 425(b)—

(i) in paragraph (1) by striking “$5,000,000”; and

(ii) in paragraph (2) by striking “$5,000,000” and inserting “the limitation provided in section 1901(a)(2) of title 41”.

(2) Section 1903(b) of title 41, United States Code, is amended by striking paragraphs (2) and (3) and inserting the following new paragraph after paragraph (1):

“(2) the term "simplified acquisition threshold" has the meaning given that term given in section 134 of this title except it means—

“(A) $750,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States, for other than commercial products and commercial services; and

"(B) $1,500,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, for other than commercial products and commercial services."

(g) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of title 6, United States Code, is amended by striking the items related to section 423.

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Overview and Justification

This legislative proposal would significantly improve the Federal acquisition system's ability to support mission needs with best value, timely solutions by increasing the simplified acquisition threshold (SAT) and expanding agencies' authority to use simplified acquisition procedures (SAP). The simplifications made by these changes will draw America's best and most innovative companies to a more competitive federal marketplace, slash administrative burdens, increase small business opportunities, and improve taxpayer value. These changes are consistent with Executive Order 14271, *Ensuring Commercial, Cost-Effective Solutions in Federal Contracts,* Executive Order 14275, *Restoring Common Sense to Federal Procurement*, and the 2024 Senate committee report entitled *Restoring Freedom's Forge*.

Contract actions under the SAT often bear a similarity to generally accepted commercial practices. SAT purchases subject contractors to fewer compliance requirements, including fewer formal programs and certifications and less reporting and oversight. SAT purchases also allow agencies to transact with interested sources using simplified acquisition procedures (SAP), which generally entail shorter solicitations and less stringent competition rules, greater reliance on a contractor's existing product literature, more flexibility in vendor selection, and minimal documentation requirements. This relief makes it easier and less costly for agencies and contractors to do business.

The SAT is currently set at $250,000, which limits the benefits of this authority to less than five percent of total annual contract spend over the micro-purchase threshold. All contracts above $250,000 – whether for $500,000 or several million dollars– are generally treated the same from a competition and compliance perspective as the largest most complex contracts awarded by an agency, which often are in the hundreds of millions and sometimes billions of dollars. Statute authorizes agencies to use SAP up to $5 million for the procurement of commercial products and services,[1] which is helpful, but SAP does not provide relief from most compliance

[1] Per 41 U.S.C. 1908(b), the FAR Council has adjusted the $5 million threshold at 41 U.S.C. 3305(a)(2) to $7.5 million.

requirements that drive up transaction costs and create barriers to entry for small and medium-sized businesses.

As detailed below, the core of this legislative proposal would raise the SAT for the acquisition of commercial products and commercial services from $250,000 to $10 million over a five-year period and raise the SAP for acquiring commercial products and services from $5 million to $50 million over the same phase-in period. Raising the SAT to $10 million for the acquisition of commercial products and commercial services could make up to an additional 14.6 percent of spend eligible for the relief provided by the SAT. This translates to over 100,000 Federal transactions being subject to less government-unique compliance burden and eligible for streamlined buying. These buys would not be subject to statutory small business set-asides, but longstanding regulatory set-asides would continue to facilitate access to meaningful opportunities for responsible small businesses that are able to submit competitive offers. Increasing the SAP threshold to $50 million for purchases of commercial products and services would make up to an additional $63.5 billion involving almost 9,000 transactions subject to streamlined buying. Additionally, and equally importantly, these changes will allow agency contracting officers to focus greater attention and better protect taxpayer dollars on the less than one percent of Federal contract actions that make up more than 80 percent of total annual contract spend, often involving mission critical requirements.

Summary of Key Changes

This legislative proposal would—

- Over a five-year phase-in period, increase the SAT to $10 million for the acquisition of commercial products and commercial services, and the threshold for SAP for commercial products and commercial services to $50 million. This phase-in period, with step changes after two and five years is designed to ensure agencies can execute change management strategies as thresholds rise to ensure the proper stewardship of taxpayer funds.

- Amend special higher SAT and SAP thresholds for emergencies and work performed overseas.

- Remove the existing link between the SAT (currently $250,000) and the small business reserve and making the small business reserve ceiling $250,000.

- Align the threshold for "enhanced competition" under multiple-award contracts with the SAT, or the SAP threshold for acquisitions of commercial products and commercial services; this alignment will ensure less formalized competition requirements – such as relief from creating and disclosing significant factors and subfactors – are available for competed task and delivery orders in sizes similar to competed stand-alone contracts awards under the SAT or SAP thresholds.

- Delete obsolete posting requirements that currently hamper lower-dollar purchasing. Currently, 15 U.S.C. 637(e) and 41 U.S.C. 1708(a)(1) require agencies to post a public notice for not less than 10 days of their intention to solicit bids and proposals for a price

expected to exceed $5,000 to $10,000 (15 U.S.C. 637(e)) or $15,000 (41 U.S.C. 1708(a)(1)) but not to exceed $25,000. This is an outdated requirement that envisioned paper copies of notices being physically posted in a public place. For example, Federal Acquisition Regulation section 5.101(a), which implements this requirement, talks about solicitations posted to satisfy this requirement being stamped by a contracting officer and posted in a "display room." This 10-day posting requirement now offers little benefit for the costs incurred by complying with it.

Section-by-Section Analysis

Subsection (a) would increase the simplified acquisition threshold (SAT) from $250,000 to $2 million for two years, then to $5 million for three years, then finally to $10 million.

Subsection (b) would increase the threshold for special simplified procedures for commercial products and services from $5 million to $10 million for two years, then to $25 million for three years, then finally to $50 million.

Subsection (c) would change the small business reservation ceiling, which is currently tied to the SAT (currently set at $250,000) to $250,000.

Subsection (d) would delete obsolete procurement opportunity posting requirements found in titles 15 and 41 and align the threshold for publishing notices of subcontracting opportunities to the micro-purchase threshold.

Subsection (e) would align the threshold for enhanced competition requirements for task and delivery orders with an increased SAT so that the substantial amount of annual spend that is awarded under multiple award task and delivery order contracts is also subject to compliance and process relief.

Subsection (f) contains conforming amendments.

- Subparagraphs (A) and (B) of paragraph (1) delete references to special emergency procurement authority thresholds that would fall below the proposed increases to the SAT; deleting these authorities will effectively apply the new, higher thresholds to emergency procurements. Subparagraph (C) of paragraph (1) would align the SAP for commercial items with the increased threshold proposed under subsection (b).

- Paragraph (2) is amending emergency acquisition thresholds to limit them to the purchase of non-commercial products and services. Commercial products and services would be exempted since this proposal would raise the SAT for those purchases above the existing SAT for emergency acquisitions.

Subsection (g) contains a clerical amendment that reflects that section deleted under subsection (e) are removed from the table of sections of that chapter.

Budget Implications: The proposal only addresses procurement processes and not amounts

appropriated for the procurement of items or services.

Resubmission Information: This is the first time this proposal has been submitted.

Changes to Existing Law: This proposal would amend sections 393, 423, and 425(b) of title 6, United States code; section 3205 of title 10, United States code; sections 637 and 644 of title 15, United States Code; and sections 134, 1708, 1901(a), 1903(b), 3305, and 4106(d) of title 41, United States Code. Existing law proposed to be omitted is shown with ~~strikethrough~~ markings, new matter is underlined, and existing law in which no change is proposed is shown in roman:

TITLE 6, UNITED STATES CODE

* * * * *

§393. Special streamlined acquisition authority

* * * * *

~~**(c) Simplified acquisition procedures**~~

~~**(1) In general**~~

~~With respect to a procurement described in subsection (a), the Secretary may deem the simplified acquisition threshold referred to in section 134 of title 41 to be~~

~~(A) in the case of a contract to be awarded and performed, or purchase to be made, within the United States, $200,000; and~~

~~(B) in the case of a contract to be awarded and performed, or purchase to be made, outside of the United States, $300,000.~~

~~**(2) Omitted**~~

~~**(d)**~~**(c) Application of certain commercial items authorities**

(1) In general

With respect to a procurement described in subsection (a), the Secretary may deem any item or service to be a commercial item for the purpose of Federal procurement laws.

~~**(2) Limitation**~~

~~The $5,000,000 limitation provided in section 1901(a)(2) of title 41 and section 3305(a)(2) of title 41 shall be deemed to be $7,500,000 for purposes of property or services under the authority of this subsection.~~

~~**(3)**~~**(2) Certain authority**

Authority under a provision of law referred to in paragraph (2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for a procurement described in subsection (a).

~~**(e)**~~**(d) Report**

Not later than 180 days after the end of fiscal year 2005, the Comptroller General shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government

Reform of the House of Representatives a report on the use of the authorities provided in this section. The report shall contain the following:

(1) An assessment of the extent to which property and services acquired using authorities provided under this section contributed to the capacity of the Federal workforce to facilitate the mission of the Department as described in section 111 of this title.

(2) An assessment of the extent to which prices for property and services acquired using authorities provided under this section reflected the best value.

(3) The number of employees designated by each executive agency under subsection (b)(1).

(4) An assessment of the extent to which the Department has implemented subsections (b)(2) and (b)(3) to monitor the use of procurement authority by employees designated under subsection (b)(1).

(5) Any recommendations of the Comptroller General for improving the effectiveness of the implementation of the provisions of this section.

* * * * *

~~**§423. Increased simplified acquisition threshold for procurements in support of humanitarian or peacekeeping operations or contingency operations**~~

~~**(a) Temporary threshold amounts**~~

~~For a procurement referred to in section 422 of this title that is carried out in support of a humanitarian or peacekeeping operation or a contingency operation, the simplified acquisition threshold definitions shall be applied as if the amount determined under the exception provided for such an operation in those definitions were-~~

~~(1) in the case of a contract to be awarded and performed, or purchase to be made, inside the United States, $200,000; or~~

~~(2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, $300,000.~~

~~**(b) Simplified acquisition threshold definitions**~~

~~In this section, the term "simplified acquisition threshold definitions" means the following:~~

~~(1) Section 134 of title 41.~~

~~(2) Section 153 of title 41.~~

~~(3) Section 3015 of title 10.~~

~~**(c) Small business reserve**~~

~~For a procurement carried out pursuant to subsection (a), section 644(j) of title 15 shall be applied as if the maximum anticipated value identified therein is equal to the amounts referred to in subsection (a).~~

* * * * *

§425. Application of certain commercial items authorities to certain procurements

(a) Authority

(1) In general

The head of an executive agency may apply the provisions of law listed in paragraph (2) to a procurement referred to in section 422 of this title without regard to whether the property or services are commercial items.

(2) Commercial item laws

The provisions of law referred to in paragraph (1) are as follows:

(A) Sections 1901 and 1906 of title 41.

(B) Section 3205 of title 10.

(C) Section 3305 of title 41.

(b) Inapplicability of limitation on use of simplified acquisition procedures

(1) In general

The ~~$5,000,000~~ limitation provided in section 1901(a)(2) of title 41, section 3205(a)(2) of title 10, and section 3305(a)(2) of title 41 shall not apply to purchases of property or services to which any of the provisions of law referred to in subsection (a) are applied under the authority of this section.

(2) OMB guidance

The Director of the Office of Management and Budget shall issue guidance and procedures for the use of simplified acquisition procedures for a purchase of property or services in excess of ~~$5,000,000~~the limitation provided in section 1901(a)(2) of title 41 under the authority of this section.

* * * * *

TITLE 10, UNITED STATES CODE

* * * * *

§3205. Simplified procedures for small purchases

(a) AUTHORIZATION.-In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for-

(1) special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold; and

(2) special simplified procedures for purchases of property and services for amounts greater than the simplified acquisition threshold but not greater than ~~$5,000,000~~ "$10,000,000 through September 30, 2027; $25,000,000 from October 1, 2027 through September 30, 2030; and $50,000,000 thereafter with respect to which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial products or commercial services.

(b) PROHIBITION ON DIVIDING CONTRACTS.-A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified procedures required by subsection (a).

(c) PROMOTION OF COMPETITION.-In using simplified procedures, the head of an agency shall promote competition to the maximum extent practicable.

(d) COMPLIANCE WITH SPECIAL REQUIREMENTS OF FEDERAL ACQUISITION REGULATION.-The head of an agency shall comply with the Federal Acquisition Regulation provisions referred to in section 1901(e) of title 41.

TITLE 15, UNITED STATES CODE

* * * * *

§637. Additional powers

* * * * *

(e) Covered executive agency activities; procurement notice; publication; time limitations

(1) ~~Except as provided in subsection (g)~~

(A) ~~an executive agency intending to~~

~~(i) solicit bids or proposals for a contract for property or services for a price expected to exceed $25,000; or~~

~~(ii) place an order, expected to exceed $25,000, under a basic agreement, basic ordering agreement, or similar arrangement,~~

~~shall publish a notice described in subsection (f);~~

(B) ~~an executive agency intending to solicit bids or proposals for a contract for property or services shall post, for a period of not less than ten days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (f)~~

~~(i) in the case of an executive agency other than the Department of Defense, if the contract is for a price expected to exceed $10,000, but not to exceed $25,000; and~~

~~(ii) in the case of the Department of Defense, if the contract is for a price expected to exceed $5,000, but not to exceed $25,000;~~

(C) ~~an executive agency awarding a contract for property or services for a price exceeding $100,000, or placing an order referred to in clause (A)(ii) exceeding $100,000, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be any subcontract under such contract or order.~~

(1) Except as provided in subsection (g), an executive agency shall publish a notice described in subsection (f) when it intends to—

(A) solicit bids or proposals for a contract for property or services for a price expected to exceed the micro-purchase threshold; or

(B) place an order, expected to exceed the micro-purchase threshold, under a basic agreement, basic ordering agreement, or similar arrangement.

~~(2)(A) A notice of solicitation required to be published under paragraph (1) may be published~~

~~(i) by electronic means that meet the accessibility requirements under section 1708(d) of~~

~~title 41; or~~

~~(ii) by the Secretary of Commerce in the Commerce Business Daily.~~

~~(B) The Secretary of Commerce shall promptly publish in the Commerce Business Daily each notice or announcement received under this subsection for publication by that means.~~

~~(3)~~(2) Whenever an executive agency is required by paragraph (1)(A) to publish a notice of solicitation, such executive agency may not-

(A) issue the solicitation earlier than 15 days after the date on which the notice is published; or

(B) in the case of a contract or order estimated to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that-

(i) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than ~~the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published~~ 30 days;

(ii) in the case of a solicitation for research and development, is earlier than ~~the date 45 days after the date the notice required by paragraph (1)(A)(i) is published~~ 45 days; or

(iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

(f) Contents of notice

Each notice of solicitation required by ~~subparagraph (A) or (B) of subsection (e)(1)~~ subsection(e)(1)(A) shall include-

(1) an accurate description of the property or services to be contracted for, which description (A) shall not be unnecessarily restrictive of competition, and (B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that-

(A) state whether the technical data required to respond to the solicitation will not be furnished as part of such solicitation, and identify the source in the Government, if any, from which the technical data may be obtained; and

(B) state whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and, if so, identify the office from which a qualification requirement may be obtained;

(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 (as appropriate) which shall be considered by the agency;

(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; and

(6) in the case of a contract in an amount estimated to be greater than ~~$25,000~~the micro-

purchase threshold but not greater than the simplified acquisition threshold-

(A) a description of the procedures to be used in awarding the contract; and

(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.

* * * * *

(k) Notices of subcontracting opportunities

(1) In general

Notices of subcontracting opportunities may be submitted for publication on the appropriate Federal Web site (as determined by the Administrator) ~~by-~~

~~(A) a business concern awarded a contract by an executive agency subject to subsection (e)(1)(C); and~~

~~(B) a business concern that is a subcontractor or supplier (at any tier) to such contractor having a subcontracting opportunity in excess of $10,000~~ by a business concern that is a subcontractor or supplier (at any tier) to such contractor having a subcontracting opportunity in excess of the micro-purchase threshold.

* * * * *

§644. Awards or contracts

* * * * *

(j) Small business reservation

(1) Each contract for the purchase of goods and services that has an anticipated value greater than the micro-purchase threshold, but not greater than ~~the simplified acquisition threshold~~$250,000 shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

(2) In carrying out paragraph (1), a contracting officer shall consider a responsive offer timely received from an eligible small business offeror.

(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not greater than $100,000 under the authority of subsection (a) of section 637 of this title, section 712 [3] of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656; 15 U.S.C. 644 note), or section 7102 of the Federal Acquisition Streamlining Act of 1994.

* * * * *

TITLE 41, UNITED STATES CODE

* * * * *

§134. Simplified acquisition threshold

~~In division B, the term "simplified acquisition threshold" means $250,000~~ In division B, the term "simplified acquisition threshold" means—

(1) $250,000; or

(2) For the acquisition of commercial products and commercial services—

(A) $2,000,000 through September 30, 2027;

(B) $5,000,000 from October 1, 2027 through September 30, 2030; and

(C) $10,000,000 after September 30, 2030.

* * * * *

§1708. Procurement notice

(a) NOTICE REQUIREMENT.-Except as provided in subsection (b)-

(1) ~~an executive agency intending to solicit bids or proposals for a contract for property or services for a price expected to exceed $10,000, but not to exceed $25,000, shall post, for not less than 10 days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (c);~~

~~(2)~~(1) an executive agency shall publish a notice of solicitation described in subsection (c) if the agency intends to-

(A) solicit bids or proposals for a contract for property or services for a price expected to exceed ~~$25,000~~the micro-purchase threshold under section 1902 of this title; or

(B) place an order, expected to exceed ~~$25,000~~the micro-purchase threshold under section 1902 of this title, under a basic agreement, basic ordering agreement, or similar arrangement; and

~~(3)~~(2) an executive agency awarding a contract for property or services for a price exceeding ~~$25,000~~the micro-purchase threshold under section 1902 of this title, or placing an order exceeding ~~$25,000~~the micro-purchase threshold under section 1902 of this title under a basic agreement, basic ordering agreement, or similar arrangement, shall furnish for publication a notice announcing the award or order if there is likely to be a subcontract under the contract or order.

(b) EXEMPTIONS.-

(1) IN GENERAL.-A notice is not required under subsection (a) if-

(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be conducted by-

(i) using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and

(ii) permitting the public to respond to the solicitation electronically;

(B) the notice would disclose the executive agency's needs and disclosure would compromise national security;

(C) the proposed procurement would result from acceptance of-

(i) an unsolicited proposal that demonstrates a unique and innovative research concept

and publication of a notice of the unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 9 of the Small Business Act (15 U.S.C. 638);

(D) the procurement is made against an order placed under a requirements contract, a task order contract, or a delivery order contract;

(E) the procurement is made for perishable subsistence supplies;

(F) the procurement is for utility services, other than telecommunication services, and only one source is available; or

(G) the procurement is for the services of an expert for use in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government in a trial, hearing, or proceeding before a court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.

(2) CERTAIN PROCUREMENTS.-The requirements of subsection (a)~~(2)~~(1) do not apply to a procurement-

(A) under conditions described in paragraph (2), (3), (4), (5), or (7) of section 3304(a) of this title or paragraph (2), (3), (4), (5), or (7) of section 3204(a) of title 10; or

(B) for which the head of the executive agency makes a determination in writing, after consultation with the Administrator and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

(3) IMPLEMENTATION CONSISTENT WITH INTERNATIONAL AGREEMENTS.-Paragraph (1)(A) shall be implemented in a manner consistent with applicable international agreements.

(c) CONTENTS OF NOTICE.-Each notice of solicitation required by ~~paragraph (1) or (2) of~~ subsection (a)(1) shall include-

(1) an accurate description of the property or services to be contracted for, which description-

(A) shall not be unnecessarily restrictive of competition; and

(B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that-

(A)(i) state whether the technical data required to respond to the solicitation will not be furnished as part of the solicitation; and

(ii) identify the source in the Federal Government, if any, from which the technical data may be obtained; and

(B)(i) state whether an offeror or its product or service must meet a qualification requirement in order to be eligible for award; and

(ii) if so, identify the office from which the qualification requirement may be obtained;

(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 (as appropriate) that the agency shall consider;

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

(6) in the case of a contract in an amount estimated to be greater than $25,000 but not greater than the simplified acquisition threshold, or a contract for the procurement of commercial products or commercial services using special simplified procedures-

(A) a description of the procedures to be used in awarding the contract; and

(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.

(d) ELECTRONIC PUBLICATION OF NOTICE OF SOLICITATION, AWARD, OR ORDER.-A notice of solicitation, award, or order required to be published under subsection (a) shall be published by electronic means. The notice must be electronically accessible in a form that allows convenient and universal user access through the single Government-wide point of entry designated in the Federal Acquisition Regulation.

(e) TIME LIMITATIONS.-

(1) ISSUING NOTICE OF SOLICITATION AND ESTABLISHING DEADLINE FOR SUBMITTING BIDS AND PROPOSALS.-An executive agency required by subsection (a)~~(2)~~(1)) to publish a notice of solicitation may not-

(A) issue the solicitation earlier than 15 days after the date on which the notice is published; or

(B) in the case of a contract or order expected to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by subsection (a)~~(2)~~(1) that-

(i) in the case of a solicitation for research and development, is earlier than 45 days after the date the notice required for a bid or proposal for a contract described in subsection (a)~~(2)~~(1)(A) is published;

(ii) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than 30 days after the date the notice required for an order described in subsection (a)~~(2)~~(1)(B) is published; or

(iii) in any other case, is earlier than 30 days after the date the solicitation is issued.

(2) ESTABLISHING DEADLINE WHEN NONE PROVIDED BY STATUTE.-An executive agency shall establish a deadline for the submission of all bids or proposals in response to a solicitation for which a deadline is not provided by statute. Each deadline for the submission of offers shall afford potential offerors a reasonable opportunity to respond.

(3) FLEXIBLE DEADLINES.-The Administrator shall prescribe regulations defining limited circumstances in which flexible deadlines can be used under paragraph (1) for the issuance of solicitations and the submission of bids or proposals for the procurement of commercial products or commercial services.

~~(f) CONSIDERATION OF CERTAIN TIMELY RECEIVED OFFERS.- An executive agency intending to solicit offers for a contract for which a notice of solicitation is required to be posted under~~

~~subsection (a)(1) shall ensure that contracting officers consider each responsive offer timely received from an offeror.~~

~~(g)~~(f) AVAILABILITY OF COMPLETE SOLICITATION PACKAGE AND PAYMENT OF FEE.-An executive agency shall make available to a business concern, or the authorized representative of a concern, the complete solicitation package for any on-going procurement announced pursuant to a notice of solicitation under subsection (a). An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of the package.

* * * * *

§1901. Simplified acquisition procedures

(a) When Procedures Are To Be Used.-To promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts-

(1) not greater than the simplified acquisition threshold; and

(2) greater than the simplified acquisition threshold but not greater than $10,000,000 through September 30, 2027; $25,000,000 from October 1, 2027 through September 30, 2030; and $50,000,000 thereafter ~~$5,000,000~~ for which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial products or commercial services.

(b) PROHIBITION ON DIVIDING PURCHASES.-A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts to use the simplified acquisition procedures required by subsection (a).

(c) PROMOTION OF COMPETITION REQUIRED.-When using simplified acquisition procedures, the head of an executive agency shall promote competition to the maximum extent practicable.

(d) CONSIDERATION OF OFFERS TIMELY RECEIVED.-The simplified acquisition procedures contained in the Federal Acquisition Regulation shall include a requirement that a contracting officer consider each responsive offer timely received from an eligible offeror.

(e) SPECIAL RULES FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES.-The Federal Acquisition Regulation shall provide that an executive agency using special simplified procedures to purchase commercial products or commercial services-

(1) shall publish a notice in accordance with section 1708 of this title and, as provided in section 1708(c)(4) of this title, permit all responsible sources to submit a bid, proposal, or quotation (as appropriate) that the agency shall consider;

(2) may not conduct the purchase on a sole source basis unless the need to do so is justified in writing and approved in accordance with section 3204(e) of title 10 or section 3304(e) of this title, as applicable; and

(3) shall include in the contract file a written description of the procedures used in awarding the contract and the number of offers received.

* * * * *

§1903. Special emergency procurement authority

(a) APPLICABILITY.—The authorities provided in subsections (b) and (c) apply with respect to

a procurement of property or services by or for an executive agency that the head of the executive agency determines are to be used—

(1) in support of a contingency operation (as defined in section 101(a) of title 10);

(2) to facilitate the defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack against the United States;

(3) in support of a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate the provision of international disaster assistance pursuant to chapter 9 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2292 et seq.); or

(4) in support of an emergency or major disaster (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)).

(b) INCREASED THRESHOLDS AND LIMITATION.—For a procurement to which this section applies under subsection (a)—

(1) the amount specified in section 1902(a), (d), and (e) of this title shall be deemed to be—

~~(A)~~ $15,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and

~~(B)~~ $25,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States;

~~(2) the term "simplified acquisition threshold" means—~~

~~(A) $750,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and~~

~~(B) $1,500,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States; and~~

~~(3) the $5,000,000 limitation in sections 1901(a)(2) and 3305(a)(2) of this title and section 3205(a)(2) of title 10 is deemed to be $10,000,000.~~

(2) the term "simplified acquisition threshold" has the meaning given that term given in section 134 of this title except it means—

(A) $750,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States, for other than commercial products and commercial services; and

(B) $1,500,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, for other than commercial products and commercial services.

~~(c)~~(b) AUTHORITY TO TREAT PROPERTY OR SERVICE AS COMMERCIAL PRODUCT OR COMMERCIAL SERVICE.—

(1) IN GENERAL.—The head of an executive agency carrying out a procurement of property or a service to which this section applies under subsection (a)(2) may treat the property or service as a commercial product or a commercial service for the purpose of carrying out the procurement.

(2) CERTAIN CONTRACTS NOT EXEMPT FROM STANDARDS OR REQUIREMENTS.—A contract in an amount of more than $15,000,000 that is awarded on a sole source basis for a product or service treated as a commercial product or a commercial service under paragraph (1) is not exempt from—

(A) cost accounting standards prescribed under section 1502 of this title; or

(B) cost or pricing data requirements (commonly referred to as truth in negotiating) under chapter 35 of this title and chapter 271 of title 10.

* * * * *

§3305. Simplified procedures for small purchases

(a) AUTHORIZATION.-To promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts-

(1) not greater than the simplified acquisition threshold; and

(2) greater than the simplified acquisition threshold but not greater than ~~$5,000,000~~ $10,000,000 through September 30, 2027; $25,000,000 from October 1, 2027 through September 30, 2030; and $50,000,000 thereafter for which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial products or commercial services.

(b) LEASEHOLD INTERESTS IN REAL PROPERTY.-The Administrator of General Services shall prescribe regulations that provide special simplified procedures for acquisitions of leasehold interests in real property at rental rates that do not exceed the simplified acquisition threshold. The rental rate under a multiyear lease does not exceed the simplified acquisition threshold if the average annual amount of the rent payable for the period of the lease does not exceed the simplified acquisition threshold.

(c) PROHIBITION ON DIVIDING CONTRACTS.-A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts to use the simplified procedures required by subsection (a).

(d) PROMOTION OF COMPETITION.-In using the simplified procedures, an executive agency shall promote competition to the maximum extent practicable.

(e) COMPLIANCE WITH SPECIAL REQUIREMENTS OF FEDERAL ACQUISITION REGULATION.-An executive agency shall comply with the Federal Acquisition Regulation provisions referred to in section 1901(e) of this title.

* * * * *

§4106. Orders

* * * * *

(d) ENHANCED COMPETITION FOR ORDERS ~~IN EXCESS OF $5,000,000~~.—In the case of a task or delivery order in excess of ~~$5,000,000~~ the greater of $5,000,000 or the simplified acquisition threshold, or for acquisitions of commercial products or commercial services the greater of $5,000,000 or the threshold for using simplified acquisition procedures, the requirement to provide all contractors a fair opportunity to be considered under subsection (c) is not met unless all such contractors are provided, at a minimum—

(1) a notice of the task or delivery order that includes a clear statement of the executive agency's requirements;

(2) a reasonable period of time to provide a proposal in response to the notice;

(3) disclosure of the significant factors and subfactors, including cost or price, that the

executive agency expects to consider in evaluating such proposals, and their relative importance;

(4) in the case of an award that is to be made on a best value basis, a written statement documenting—

(A) the basis for the award; and

(B) the relative importance of quality and price or cost factors; and

(5) an opportunity for a post-award debriefing consistent with the requirements of section 3704 of this title.

SEC. ____. COMMON-SENSE PROCEDURES FOR SMALL PURCHASES.

(a) MICRO-PURCHASE THRESHOLD.—Section 1902(a) of title 41, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following new paragraph (1):

"(1) Except as provided in paragraphs (2) and (3) of this subsection, for purposes of this section, the micro-purchase threshold is—

"(A) $25,000 through September 30, 2027;

"(B) $50,000 from October 1, 2027 through September 30, 2030; and

"(C) $100,000 after September 30, 2030."; and

(2) by inserting after paragraph (2) the following new paragraph:

"(3) The Administrator of General Services may establish a micro-purchase threshold not greater than the U.S. dollar thresholds established for application of subchapter I of chapter 13 of title 19, United States Code, applicable to multiple award schedules open to any responsible source that is offering domestic end products or domestic construction materials that have been certified by the source to be in compliance with chapter 83 of title 41, United States Code, and where award would achieve best value for the Federal Government."

(b) BUY AMERICAN ACT.—Section 8302(a)(2)(C) of title 41 is amended by striking everything after "not more than" and inserting "$10,000".

(c) CONFORMING AMENDMENT.—Section 1903(b) of title 41, United States Code, is amended by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

Overview and Justification

This legislative proposal would significantly streamline the Federal Government's smallest dollar purchases while simultaneously reducing administrative burden in purchasing domestic products and construction materials compliant with the Buy American Act (BAA). Specifically, the proposal would raise the micro-purchase threshold (MPT) from the current $10,000 to $100,000 through a phase-in process over five years. The proposal would also decouple the MPT from the threshold for applicability of the BAA so that purchases above $10,000 remain subject to domestic sourcing and America First policies.

Micro-purchases are the closest the Federal Government gets to following full commercial buying practices, as very few government-unique requirements attach to them. This commercial-style authority has enabled millions of buying actions to occur each year under $10,000 at the speed of taxpayer need, often same-day, through use of government purchase cards. Purchase cards allow agencies to shift the workload for these purchases from warranted contracting officers to purchase card holders, enabling acquisition training and expertise to be put to better use for higher dollar value acquisitions and reducing risk and securing value for taxpayers. In the three decades since the MPT was created, purchase cards have reduced administrative transaction costs for government payment offices by lowering the number of budgetary and accounting entries that need to be processed in financial management systems, allowed agencies to earn rebates, and helped vendors receive timely payment without the burden of having to process government invoices.

The MPT historically has waived the BAA, the foundational domestic sourcing law in Federal procurement that gives preference both to domestically manufactured end products that have been manufactured from components predominantly sourced from domestic producers and to domestic construction materials. This limited waiver of the BAA has facilitated use of the purchase cards as a buying instrument and the acquisition benefits stated above.

This proposal would decouple the MPT and BAA threshold to limit further waiver of the BAA. It would establish a permanent $10,000 waiver cap to preserve existing flexibilities, as described above, for the smallest federal purchases that represented only 4 percent of total federal spend in FY 2024. However, it would apply the BAA to micro-purchases above $10,000.

When the MPT increase is fully implemented at $100,000, it will streamline and reduce burden for over 500,000 transactions annually, currently conducted by warranted contracting officers. Simultaneously, by requiring application of the BAA to these purchases, the proposal will ensure that domestic sourcing remains front-of-mind for federal buyers and commercial sellers of routine every-day products and construction materials between $10,000 and $100,000 where roughly $18 billion in BAA activity occurs each year.

Warranted contracting officers will have an incentive to leverage increasingly sophisticated technology driven market research to quickly find common products and services at fair and reasonable prices from vendors who have certified that their products are BAA-compliant. Their incentive will come from being able to make directed purchases without being forced to engage in competitive actions that are not necessary for the type and size of market-

tested products being acquired or to apply an intricate set of price preferences typically associated with competitive awards subject to the BAA.

Open market MPT purchases above $10,000 may not be as easy to conduct with application of the BAA, which could limit use of the purchase card as a buying tool by non-warranted contracting officers. However, the authority can facilitate greater use of purchase cards as a payment mechanism for directed orders under multiple award contracts placed by either purchase card holders or contracting officers. A larger portion of buying is expected to be conducted as orders under existing, modified, and new centralized contracts as agencies work with the General Services Administration (GSA), the Office of Management and Budget, and each other to leverage the benefits of procurement consolidation. For example, GSA, consistent with its mission as the federal buyer and consolidator of acquisitions for common goods and services pursuant to E.O. 14240, *Eliminating Waste and Saving Taxpayer Dollars by Consolidating Procurement*, could establish one or more multiple award schedules open to any responsible source that is offering best value BAA-certified domestic end products or domestic construction materials. Purchases could then be easily acquired through direct purchasing of BAA-compliant products or materials by either a contracting officer or purchase card holder. To facilitate these benefits, the proposal would authorize GSA to allow directed awards using the authority of the MPT up to the relevant thresholds established for application of subchapter I of chapter 13 of title 19 of the United States Code for schedules where awards would be made to a responsible source offering BAA-compliant domestic end products or construction materials at prices determined to be fair and reasonable.

Micro-purchase procedures are inherently beneficial to small businesses, as most requirements unique to federal contracting that strain a small business' resources do not apply under the MPT. The proposed authority for GSA to apply a special MPT for a multiple award schedule open to any responsible source that is offering domestic end products or domestic construction materials will also result in more transparent micro-purchases than those made in the open market. Purchasing through such a managed channel will also allow federal buyers to achieve small business credit for these purchases, which incentivizes federal buyers to prioritize small businesses. Guidance implementing this authority will also seek to promote maximum practicable consideration of small business concerns.

Section by Section Analysis

Subsection (a) would increase the MPT incrementally, from $10,000 to $25,000 for two years, then to $50,000 for three years, then finally to $100,000. It would also authorize the GSA Administrator to create one or more Multiple Award Schedules open to any responsible source that is offering best value domestic end products or domestic construction materials that have been certified in accordance with the Buy American Act chapter 83 of title 41, United States Code, and allow agency ordering officials to make directed awards under those schedules up to the relevant thresholds established for application of subchapter I of chapter 13 of title 19 of the United States Code.

Subsection (b) would decouple the MPT from the BAA applicability threshold, creating a

permanent BAA applicability threshold of $10,000. Micro-purchases above this amount would remain subject to the BAA, but awards could be placed on a directed basis to offerors of domestic end products and domestic construction materials.

Subsection (c) would delete the emergency micro-purchase thresholds since both would now be less than the thresholds proposed under subsection (a).

Budget Implications: The proposal only addresses procurement processes and not amounts appropriated for the procurement of items or services.

Resubmission Information: This is the first time this proposal has been submitted.

Changes to Existing Law: This proposal would amend sections 1902, 1903 and 8302 of title 41, United States code. Existing law proposed to be omitted is shown with ~~strikethrough~~ markings, new matter is underlined, and existing law in which no change is proposed is shown in roman:

TITLE 41, UNITED STATES CODE

* * * * *

§1902. Procedures applicable to purchases below micro-purchase threshold

(a) DEFINITION.-

(1) ~~Except as provided in paragraph (2) of this subsection, for purposes of this section, the micro-purchase threshold is $10,000.~~

(1) Except as provided in paragraphs (2) and (3) of this subsection, for purposes of this section, the micro-purchase threshold is—

(A) $25,000 through September 30, 2027;

(B) $50,000 from October 1, 2027 through September 30, 2030; and

(C) $100,000 after September 30, 2030.

(2) For purposes of this section, the micro-purchase threshold for procurement activities administered under sections 6303 through 6305 of title 31 by institutions of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), or related or affiliated nonprofit entities, or by nonprofit research organizations or independent research institutes is-

(A) $10,000; or

(B) such higher threshold as determined appropriate by the head of the relevant executive agency and consistent with clean audit findings under chapter 75 of title 31, internal institutional risk assessment, or State law.

(3) The Administrator of General Services may establish a micro-purchase threshold not greater than the U.S. dollar thresholds established for application of subchapter I of chapter 13 of title 19, United States Code, applicable to multiple award schedules open to any responsible source that is offering domestic end products or domestic construction materials that have been certified by the source to be in compliance with chapter 83 of title 41, United

States Code, and where award would achieve best value for the Federal Government.

* * * * *

§1903. Special emergency procurement authority

(a) APPLICABILITY.—The authorities provided in subsections (b) and (c) apply with respect to a procurement of property or services by or for an executive agency that the head of the executive agency determines are to be used—

(1) in support of a contingency operation (as defined in section 101(a) of title 10);

(2) to facilitate the defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack against the United States;

(3) in support of a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate the provision of international disaster assistance pursuant to chapter 9 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2292 et seq.); or

(4) in support of an emergency or major disaster (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)).

(b) INCREASED THRESHOLDS AND LIMITATION.—For a procurement to which this section applies under subsection (a)—

~~(1) the amount specified in section 1902(a), (d), and (e) of this title shall be deemed to be—~~

~~(A) $15,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and~~

~~(B) $25,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States;~~

(1)~~(2)~~ the term "simplified acquisition threshold" means—

(A) $750,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and

(B) $1,500,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States; and

(2)~~(3)~~ the $5,000,000 limitation in sections 1901(a)(2) and 3305(a)(2) of this title and section 3205(a)(2) of title 10 is deemed to be $10,000,000.

* * * * *

§8302. American materials required for public use

§8302. American materials required for public use

(a) In General.-

(1) Allowable materials.-Only unmanufactured articles, materials, and supplies that have been mined or produced in the United States, and only manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States, shall be acquired for public use unless the head of the Federal agency concerned determines their acquisition to be inconsistent with the public interest, their cost to be

unreasonable, or that the articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(2) Exceptions.-This section does not apply

(A) to articles, materials, or supplies for use outside the United States;

(B) to any articles, materials, or supplies procured pursuant to a reciprocal defense procurement memorandum of understanding (as described in section 8304 of this title), or a trade agreement or least developed country designation described in subpart 25.400 of the Federal Acquisition Regulation; and

(C) to manufactured articles, materials, or supplies procured under any contract with an award value that is not more than ~~the micro-purchase threshold under section 1902 of this title~~$10,000.

SEC. ___. ENSURING FEDERAL PURCHASING EFFICIENCY.

Section 1908(c)(2) of title 41, United States Code is amended by striking "each year evenly divisible by 5," and inserting "2025 and every 3 years thereafter,".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would change the evaluation period for inflation adjustments for applicable title 41 thresholds (such as the micro purchase threshold) from every five years to every three years. This change allows the FAR to align procurement thresholds with inflation more regularly and give agencies the ability to use the increased thresholds to meet their mission.

Significantly, this proposal does not alter the criteria that determine whether a threshold will increase, just the timing of those adjustments. In practice, this means that a given threshold can be increased more closely to the time at it meets the requirement for an inflation-based adjustment. For example, if a threshold meets the requirements for an increase in 2026, under current law that threshold would not increase until 2030. Under this proposal, the threshold would be eligible for an increase in 2028 if it met the requirements at that time. As a result, this proposal will enable the Federal government to more quickly adapt its procurement processes to rising costs.

Resource Information: This proposal would have no significant net budgetary impacts. Resources affected by this proposal are incidental in nature and amount and are included within the Fiscal Year (FY) 2025 President's Budget request. This proposal would not impact net outlays or revenues.

Budget Implications: The proposal only addresses procurement processes and not amounts appropriated for the procurement of items or services.

Resubmission Information: This proposal is a new submission

Changes to Existing Law: This proposal would amend section 1908(c) of title 41, United States Code. Existing law proposed to be omitted is shown with ~~strikethrough~~ markings, new matter is underlined, and existing law in which no change is proposed is shown in roman:

(c) **REQUIREMENT FOR PERIODIC ADJUSTMENT**.—

(1) **BASELINE CONSTANT DOLLAR VALUE**.—For purposes of paragraph (2), the baseline constant dollar value for a dollar threshold—

(A) in effect on October 1, 2000, that was first specified in a law that took effect on or before October 1, 2000, is the October 1, 2000, constant dollar value of that dollar threshold; and

(B) specified in a law that takes effect after October 1, 2000, is the constant dollar value of that threshold as of the effective date of that dollar threshold pursuant to that law.

(2) **ADJUSTMENT**.—

On October 1 of ~~each year evenly divisible by 5~~2025 and every three years thereafter, the Council shall adjust each acquisition-related dollar threshold provided by law, as

described in subsection (b)(1), to the baseline constant dollar value of that threshold.

(3) **EXCLUSIVE MEANS OF ADJUSTMENT**.—

A dollar threshold adjustable under this section shall be adjusted only as provided in this section.

SEC. ____. PERMANENT AUTHORITY TO ENABLE ENTREPRENEURS AND AGENCY MISSIONS.

Section 880 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 130 Stat. 2313), as most recently amended by section 7227(a) of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117–263, 136 Stat. 3675), is further amended—

(1) in the section heading, by striking "PILOT";

(2) in subsections (a) and (b), by striking "pilot" each place it appears;

(3) in subsection (b), by inserting ", or competitive procedures for purposes of chapter 221 of title 10, United States Code, whichever is appropriate" before the period at the end;

(4) subsection (c), by striking "$25,000,000" and inserting "$100,000,000";

(5) by striking subsections (e) and (g); and

(6) by redesignating subsection (f) as subsection (e).

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This legislative proposal would provide permanent Commercial Solutions Opening (CSO) authority for the Department of Homeland Security (DHS) and General Services Administration (GSA) for contracts up to $100 million. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 authorized CSO pilots for the Department of Defense (DoD),[2] DHS and GSA.[3] DoD subsequently gained permanent authority from the FY22 NDAA,[4] while the CSO pilots at DHS and GSA are set to expire on September 30, 2027.

[2] Section 879 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328, 130 Stat. 2312)
[3] Section 880 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328, 130 Stat. 2313)
[4] Section 803 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81, 135 Stat. 1814)

CSO Overview

CSO is a unique acquisition mechanism that improves the Government's access to innovative commercial solutions by tapping into non-traditional Government contractors. The purpose of the CSO program is for the Government to access solutions that are either currently only in the production/commercialization phase (i.e., not yet sold for mass consumption) or adaptations of existing commercial solutions. Unlike traditional acquisitions that are carried out in accordance with the Federal Acquisition Regulation (FAR), CSO procedures are not subject to the FAR.

CSO promotes competition with a streamlined approach to addressing specific needs for innovative commercial items. It offers a range of advantages to start-up companies and others who may not have significant work experience with the Federal Government, including–

- Streamlined solicitations requiring only minimal corporate and technical information, such as a brief description of the company instead of a multi-page narrative of the corporate background;
- Fast-track vendor selection timelines;
- Simplified contract administration procedures and requirements; and
- Preference for the vendor retaining core intellectual property, as appropriate.

CSO procedures focus on the merit of an idea. Because each proposal is evaluated on its individual merit, the Government has considerable latitude in determining which of the submitted proposals it will fund. Instead of evaluating proposals based on tradeoffs or best value, the Government uses peer review, a process where scientific, technological, or other subject matter experts within the Government review each proposal against specific selection criteria. As a result, CSO has improved engagement with non-traditional Government contractors, including start-up companies, by streamlining acquisition processes and simplifying contract terms. By opening up the field of competition, the Government and taxpayers benefit from a large pool of solutions with better cost and performance.

While other programs and mechanisms enable the Government to access innovative solutions through means other than the traditional acquisition process, those programs and mechanisms have limits. For example, CSO is different from Other Transactional Authority (OTA) in that CSO is to be used for commercial solutions, including emerging solutions, whereas OTA is used for non-commercial work, such as scientific research, technology development, and prototype projects.

Legislative History

On December 23, 2016, the FY17 NDAA authorized CSO pilots for DoD under section 879 and DHS and GSA under section 880. DoD's CSO pilot was generally limited to contracts not exceeding $100 million while the DHS and GSA pilot contracts could not exceed $10 million. All three pilots were set to expire on September 30, 2022.

On August 13, 2018, section 836 of the FY 2019 NDAA separated the definition of

"commercial item" at 41 U.S.C. 103 between "commercial product" and "commercial service."[5] Section 836 also made conforming edits to several acquisition statutes, including section 880 of the FY 2017 NDAA, by replacing "innovative commercial items" with "innovative commercial products."[6] As a result, beginning January 1, 2020, DHS and GSA could no longer acquire commercial services through their CSO pilots. The change to products effectively nullified those pilots as the CSO program, by its very nature, is for services. In contrast, the companion edit made to DoD's CSO pilot authority used different language, which did not limit the scope of their pilot to products.

In December 2022, DoD received permanent authority via section 803 of the FY22 NDAA.[7]

On September 30, 2022, the DHS and GSA pilot authorities were extended until December 16, 2022 by a continuing resolution.[8] On December 23, 2022, the FY23 NDAA amended the DHS and GSA pilot authorities to extend the pilots until September 30, 2027, allow commercial products and services, and increase the contract ceiling to $25 million.[9]

Recommendation

The CSO pilots at DHS and GSA have been successful, demonstrating that those authorities should become permanent. CSO has proven to be a faster, more efficient procurement technique that is particularly well suited for reaching non-traditional contractors, particularly innovative firms and startups. For example, GSA has awarded nine non-FAR based contracts under its CSO authority, predominantly in FY 2019 before the scope of the pilot was reduced to only commercial products. Six of the nine contractors (or 67%) had not previously worked with GSA prior to using CSO procedures, and one contractor (11%) had not previously worked with the Federal Government. Eight of the nine contractors (89%) appeared to be non-traditional defense contractors, based upon the definition at DFARS Subpart 202.1. Additionally, GSA found CSO contracts were awarded 19 days faster on average than comparable FAR-based contracts.

In addition to permanent CSO authority for DHS and GSA, this proposal would also increase the maximum value of contracts that DHS and GSA can award using CSO procedures to $100 million. GSA is positioned to ramp up use of awards using CSO procedures and an increased threshold to $100 million would align GSA's authority with its primary client, DoD, who can already award CSO contracts valued up to $100 million. Pursuing a permanent and increased CSO authority would better align with the Secretary of Defense memorandum dated

[5] Section 836 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232, 132 Stat. 1859)

[6] Section 836(f)(10) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232, 132 Stat. 1872)

[7] Section 803 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81, 135 Stat. 1814)

[8] Section 140 of the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 (Pub. L. 117-180, 136 Stat. 2123)

[9] Section 7227(a) of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117–263, 136 Stat. 3675)

March 6, 2025, *Directing Modern Software Acquisition to Maximize Lethality*, which directs DoD to use CSOs as the default solicitation for acquiring capabilities under its Software Acquisition Pathway.

Budget Implications: The proposal only addresses procurement processes and not amounts appropriated for the procurement of items or services.

Resubmission Information: This is the first time a proposal requesting permanent CSO authority for DHS and GSA has been submitted, although there have been previous proposals to extend the pilot termination date, amend the scope of the pilot, and increase the contract limitation, all of which are now reflected DHS' and GSA's CSO authority.

Changes to Existing Law: This proposal would amend Section 880 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 130 Stat. 2313), as most recently amended by section 7227(a) of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117–263, 136 Stat. 3675) (41 U.S.C. 3301 note). Existing law proposed to be omitted is shown with ~~strikethrough~~ markings, new matter is underlined, and existing law in which no change is proposed is shown in roman:

~~PILOT~~ PROGRAMS FOR AUTHORITY TO ACQUIRE INNOVATIVE COMMERCIAL ITEMS USING GENERAL SOLICITATION COMPETITIVE PROCEDURES

(a) AUTHORITY.—

~~(1)~~ IN GENERAL.—The head of an agency may carry out a ~~pilot~~ program, to be known as a "commercial solutions opening ~~pilot~~ program", under which innovative commercial products may be acquired through a competitive selection of proposals resulting from a general solicitation and the peer review of such proposals.

~~(2)~~ HEAD OF AN AGENCY.—In this section, the term "head of an agency" means the following:

~~(A)~~ The Secretary of Homeland Security.
~~(B)~~ The Administrator of General Services.

~~(3)~~ APPLICABILITY OF SECTION.—This section applies to the following agencies:

"(A) The Department of Homeland Security.
"(B) The General Services Administration.

(b) TREATMENT AS COMPETITIVE PROCEDURES.—Use of general solicitation competitive procedures for the ~~pilot~~ program under subsection (a) shall be considered, in the case of the Department of Homeland Security and the General Services Administration, to be use of competitive procedures for purposes of division C of [subtitle I of] title 41, United States Code (as defined in section 152 of such title), or competitive procedures for purposes of chapter 221 of title 10, United States Code, whichever is appropriate.

(c) LIMITATION.—The head of an agency may not enter into a contract under the ~~pilot~~ program for an amount in excess of ~~$25,000,000$100,000,000~~.

(d) GUIDANCE.—The head of an agency shall issue guidance for the implementation of the

~~pilot~~ program under this section within that agency. Such guidance shall be issued in consultation with the Office of Management and Budget and shall be posted for access by the public.

~~(e) Report Required.—~~

~~(1) In general.—Not later than three years after the date of the enactment of this Act [Dec. 23, 2016], the head of an agency shall submit to the congressional committees specified in paragraph (3) a report on the activities the agency carried out under the pilot program.~~

~~(2) Elements of report.—Each report under this subsection shall include the following:~~

~~(A) An assessment of the impact of the pilot program on competition.~~

~~(B) A comparison of acquisition timelines for—~~

~~(i) procurements made using the pilot program; and~~

~~(ii) procurements made using other competitive procedures that do not use general solicitations.~~

~~(C) A recommendation on whether the authority for the pilot program should be made permanent.~~

~~(3) Specified congressional committees.—The congressional committees specified in this paragraph are the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform [now Committee on Oversight and Accountability] of the House of Representatives.~~

~~(f)~~(e) DEFINITIONS.—In this section—

(1) the term “commercial product”—

(A) has the meaning given the term 'commercial item' in section 2.101 of the Federal Acquisition Regulation; and

(B) includes a commercial product or a commercial service, as defined in sections 103 and 103a, respectively, of title 41, United States Code; and

(2) the term “innovative” means—

(A) any new technology, process, or method, including research and development; or

(B) any new application of an existing technology, process, or method.

~~(g) Termination.—The authority to enter into a contract under a pilot program under this section terminates on September 30, 2027.~~

SEC. ___. NASA COMMERCIAL SOLUTIONS OPENINGS AUTHORITY AND AUTHORITY FOR OTHER TRANSACTION PROTOTYPE PROJECTS AND FOLLOW-ON PRODUCTION CONTRACTS.

(a) CSO PILOT PROGRAM.—

(1) AUTHORITY. -- The Administrator of the National Aeronautics and Space Administration may carry out a pilot program, to be known as the ‘‘civil space commercial solutions opening pilot program’’, under which the Administrator may acquire innovative commercial items, technologies, and services through a competitive selection of proposals resulting from a general solicitation and the peer review of such proposals.

(2) TREATMENT AS COMPETITIVE PROCEDURES.—Use of general solicitation competitive procedures for the pilot program under subsection (a)(1) shall be considered to be use of competitive procedures for purposes of chapter 221 of title 10, United States Code.

(3) LIMITATIONS.—

(A) IN GENERAL.—The Administrator may not enter into a contract under the pilot program for an amount in excess of $100,000,000 without a written determination from the senior procurement executive of the efficacy of the effort to meet mission needs of the National Aeronautics and Space Administration.

(B) FIXED-PRICE REQUIREMENT.—Contracts entered into under the program shall be fixed-price, including fixed-price incentive contracts.

(C) TREATMENT AS COMMERCIAL ITEMS.—In accordance with section 3451(1) of title 10, United States Code, products, technologies, and services acquired under the pilot program shall be treated as commercial products or commercial services.

(4) GUIDANCE.—Not later than six months after the date of the enactment of this Act, the Administrator shall issue guidance for the implementation of the pilot program under this section within the agency. Such guidance shall be issued in consultation with the Director of the Office of Management and Budget and shall be posted for access by the public.

(5) CONGRESSIONAL NOTIFICATION REQUIRED.—

(A) IN GENERAL.—Not later than 45 days after the award of a contract for an amount exceeding

$100,000,000 using the authority in paragraph (A), the Administrator shall notify the congressional committees of such award.

(B) ELEMENTS.—Notice of an award under paragraph (A) shall include the following:

(i) Description of the innovative commercial item, technology, or service acquired.

(ii) Description of the requirement, capability gap, or potential technological advancement with respect to which the innovative commercial item, technology, or service acquired provides a solution or a potential new capability.

(iii) Amount of the contract awarded.

(iv) Identification of contractor or entity awarded the contract.

(6) DEFINITION.—In this subsection, the term ‘‘innovative’’ means—

(A) any technology, process, or method, including research and development, that is new as of the date of submission of a proposal; or

(B) any application that is new as of the date of submission of a proposal of a technology, process, or method existing as of such date.

(7) SUNSET.—The authority to enter into contracts under the pilot program shall expire

on September 30, 2029.

(b) AUTHORITY FOR PRODUCTION CONTRACTS FOLLOWING OTHER TRANSACTION PROTOTYPE PROJECTS. -- Section 20113(e) of Title 51, United States Code, is amended by adding subsections (1) and (2) as follows:

"(1) In the case of other transactions to carry out prototype projects, a follow-on production or service contract may be awarded to participants in the prototype transaction without the use of competitive procedures, notwithstanding the requirements of section 2304 of Title 10 of the United States Code, if—

"(A) competitive procedures were used for the selection of parties for participation in the prototype transaction; and

"(B) the participants in the transaction performed successfully during the prototype project.

"(2) Transactions under this authority shall be treated as an agency procurement for purposes of chapter 21 of Title 41 of the United States Code with regard to procurement ethics.".

Section by Section Analysis

Sections (a) of this proposal would provide NASA a streamlined tool for rapidly acquiring technologically advanced commercial solutions. A Commercial Solutions Opening (CSO) is an alternative acquisition method to fulfill requirements that require specific, novel solutions. CSOs started as pilot programs for the Department of Defense (DoD), Department of Homeland Security (DHS), and the General Services Administration (GSA) through sections 879 and 880 of the Fiscal Year (FY) 2017

National Defense Authorization Act (NDAA). The success of these programs is reflected in the permanent authorization for DoD (section 803 of the FY22 NDAA) and the five-year extension of the pilot programs for DHS and GSA (section 7227 of the FY 23 NDAA).

This authority would provide contracting officers with additional procedural discretion and flexibility so that innovative commercial items, technology, and services may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry. It would also reduce barriers to entry for non- traditional government contracting firms and small firms into the

civilian space industry.

The CSO process would enable NASA to quickly select the vendor that best provides the innovative commercial solution being sought. Under a CSO, an agency could issue a general solicitation that broadly describes the agency's area of interest, outlines selection criteria, and provides solicitation instructions.
Unlike a traditional specification, an agency could identify an area of interest where a problem that the agency would like to solve or a technology that it would like to develop is described. This process eliminates the burdensome and time-consuming requirement of developing detailed statements of work or performance work statements. It also gives agencies the freedom to craft more flexible evaluation criteria than those required for a traditional procurement under the Federal Acquisition Regulation (FAR).

Furthermore, submissions could be evaluated on their own merits instead of being compared to one another, which would also save a significant amount of time in the acquisition process. Agencies could also utilize a multi-phase peer-review evaluation process by which the agency and the responding firm develop progressively more detailed scoped solutions to match the agency's area of interest. The CSO process can result in award of a FAR-based contract or an Other Transaction Authority (OTA) agreement. The benefit of the CSO process is the process itself, not the resulting legal instrument that is used by the government.

CSOs are similar to Broad Agency Announcements (BAA), which also provide a more streamlined evaluation process. BAAs, however, are generally restricted to basic and applied research. BAAs are to be used only when meaningful proposals with varying technical/scientific approaches can be reasonably anticipated. BAAs do not provide a streamlined evaluation mechanism for the government to acquire commercial items, technologies, or solutions.

In 2024, Russia and China announced plans to build shared nuclear reactor on the moon by 2035. China also landed an uncrewed spacecraft on the far side of the moon and retrieved the world's first rock and soil samples from the dark lunar hemisphere. A 2023 Brookings Institution report entitled: "How space exploration is fueling the Fourth Industrial Revolution" notes that scientific advancements and the convergence of technologies are leading to advances in space exploration, while advances in space are leading to the creation of new technologies and applications. We are in an unprecedented era of accessibility for new players in the space industry, from state actors to private companies. The Brookings Institution also noted that commercial space activity is at the center of the "modern space race."

The existing procurement processes ensure competition and fairness in government acquisitions. The length of time to properly conduct a procurement may hinder the ability of an agency to timely acquire cutting- edge commercial technology. Further, the traditional procurement process is often difficult for small businesses and non-traditional government contractors to navigate, resulting in these entities, which often are at the forefront of technology development, shying away from working with the government. Addition of CSO authority will allow NASA to better leverage the advances in commercial space activity and outcompete our rivals in exploration.

In 2024, NASA's Space Technology Mission Directorate released a list and sought input of nearly 200 topics in space technology where current technology requires additional development to meet NASA's future needs. NASA will use that input to help prioritize those technologies for future investment to bridge the shortfalls. This authority will allow NASA to obtain innovative solutions or potential capabilities that fulfill requirements; and to close capability gaps or provide potential

innovative technological advancements.

For the United States to maintain its role as a leader in aeronautical and space science and technology and in the application thereof to the conduct of peaceful activities within and outside the atmosphere, it must possess the ability to acquire the commercial items, technologies, and services that are being developed at unexpected speed at this time.

Subsection (b) of the legislative proposal would enable NASA to award follow-on production or service contracts resulting from prototype projects executed as other transactions, without the use of competitive procedures, provided that competitive procedures were used for the underlying prototype transaction. The authority being requested is consistent with DoD authority under Title 10 U.S.C §4022 and is appropriate for research and development and prototyping activities to enhance mission effectiveness.

Congress granted statutory authority to use "other transactions" (OT) to several Federal agencies, including NASA. Other transactions are legally binding instruments between the agency and a partner entity that are used to accomplish agency missions and objectives other than through contracts, grants, or cooperative agreements. Such transactions are generally exempt from Federal procurement laws and regulations.

The National Aeronautics and Space Act of 1958 (P.L. 85-568) granted NASA broad authority to "enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary" to accomplish its mission. (51 U.S.C. §§20113(e)).

The specific authority requested is to award follow-on production or service contracts resulting from prototype projects executed as other transactions, without the use of competitive procedures, provided that competitive procedures were used for the underlying prototype transaction. This would enable additional
innovative business arrangements to expedite the development and deployment of platforms, systems, components and materials that would be available for use in both NASA missions and U.S. commercial aerospace activities. This authority would facilitate development of new technologies by U.S. commercial entities, including private sector contribution to the costs of such development, and could enable more rapid production and availability of such technologies in the commercial market by reducing the time between the development phase and the operational phase of a project. This authority would enable the Government and its industry partners to invest in and carry out technology developmental projects with some certainty that the Government would be able to procure the technology or service following successful development.

OTAs will enable NASA to collaborate more flexibly with a wider array of partners, including those who might not usually engage with the government. This flexibility can result in quicker innovation, lower costs, and the opportunity to harness new technologies and capabilities.

More specifically, OTAs provide NASA with flexibility in entering agreements beyond traditional procurement contracts, grants, and cooperative agreements. OTAs can be particularly beneficial for programs that require rapid prototyping, innovative research and development, and partnerships with non-traditional contractors. Providing authority for follow-on contracts for prototype Other Transactions will provide a streamlined transition from development to production or service contracts, which:

- Leverages commercial innovation and opens options for industry

investment and ownership/operation paradigms that could improve competition;
- Shares costs with industry partners who develop cutting-edge innovations and technologies;
- Provides flexible approaches to intellectual property to incentivize future commercial use as well as benefit to future Government missions; and
- Lowers NASA's total mission costs and expands the industrial base which ultimately benefits the taxpayer.

NASA-specific examples that could benefit from this authority include:

- **Communications Services Project (CSP):** Historically, NASA has procured and operated near- Earth satellite communication (SATCOM) services for NASA missions. Moving forward, NASA seeks to bolster American industry, significantly reduce the cost of SATCOM services to NASA, and maximize interoperability between government and commercial service providers while promoting a diverse commercial market. The CSP established multiple partnerships between NASA and commercial SATCOM service providers, in order to minimize the need for NASA unique capabilities for spacecraft communications in favor of being one of many users of commercial SATCOM capabilities and subsequent services. The current strategy utilized a Funded OTA to partner with existing companies that provide communication services to terrestrial and aeronautical customers to demonstrate how NASA could incorporate commercial communications services into operations. Sequential awards are intended to enable capability development and demonstration efforts in a rolling wave approach. The first awarded participants will proceed through a two-to-three-year demonstration period in which one or more end-to-end service capabilities will be demonstrated. This rolling wave approach imposes a large burden on both industry and NASA to conduct periodic competitive acquisitions. The subject OTA and contract authority is ideally suited for application, because NASA could then award the service contract(s) on an individual provider basis when that provider is ready, rather than on a constrained rolling wave timeline.
- **Commercial Low-Earth Orbit (LEO) Destinations (CLD)**: NASA is looking to secure the Nation's long-term presence in Low-Earth Orbit (LEO) by partnering with industry to develop commercial orbital platforms and capabilities that the private sector and NASA can use after the retirement of the International Space Station (ISS). The current strategy awarded several Funded OTAs for Phase I to U.S. domestic partners to develop and demonstrate the capability. Phase II is planned to be a full and open FAR-based procurement for certification and services. If the subject OTA and contract authority was available, it would offer NASA the flexibility to adopt and incorporate business practices that reflect commercial industry standards and best practices to partners with demonstrated capability (i.e. implement innovative business models within the government that would not otherwise be feasible). OTAs can offer flexibility of tailored agreements to leverage commercial capabilities, and offer flexibility of funding and payment arrangements. Commercial partners are also more incentivized to participate in Phase I development if there is some certainty that the Government can acquire the services once developed.
- **Lunar Communications Relay and Navigation Services (LCRN)**: In the next four

to five years, both NASA, and commercial companies plan missions to the South Pole region of the Moon. Missions in this lunar geography may have extremely constrained operational windows for direct- to-Earth communications, and there may be limitations imposed by local terrain and multipath losses due to the Earth being very low or below the horizon. Further, science missions on the far side of the Moon are planned which require a lunar relay for any communications with Earth. NASA plans a Funded OTA to provide a prototype LCRN demonstration for one vendor, but fully expects the industry to seek to provide services commercially in the same time period. For the operational services, NASA intends to conduct a full and open competition for these services to allow broad industry participation, but the subject OTA would allow the timely award of a follow-on services contract to meet the time-critical mission communication and navigation service needs, should a robust commercial communication ecosystem still require maturation.

- **Mars Ascent Vehicle (MAV)(MSFC) Government Estimate: $200M - $400M:** NASA and the European Space Agency (ESA) are solidifying concepts for a Mars sample return mission after NASA's Perseverance rover collects rock and soil samples and stores them in sealed tubes on the planet's surface for potential future return to Earth.

Other programs that may benefit from the OTA Authority include:

1. Artemis Program

2. Commercial Crew and Cargo Program

This program involves partnerships with private companies to transport crew and cargo to the International Space Station (ISS). OTA could enable more flexible contracting for developing new commercial capabilities and innovations.

3. NextSTEP (Next Space Technologies for Exploration Partnerships)

NextSTEP focuses on public-private partnerships to develop space exploration capabilities. OTA can facilitate innovative collaborations for in-space manufacturing, habitats, and life support systems.

4. Space Technology Mission Directorate (STMD)

STMD funds innovative research and development projects. OTA can streamline the process for engaging startups, small businesses, and academia in developing cutting-edge technologies.

5. NASA Innovative Advanced Concepts (NIAC) Program

NIAC supports visionary concepts that could transform future NASA missions. OTA could allow for more flexible engagement with unconventional partners and faster execution of exploratory projects.

6. Science Mission Directorate (SMD)

OTA can expedite the development and deployment of new sensors, data analytics tools, and collaborative research initiatives for Earth science missions, including monitoring environmental change and natural disasters.

7. Mars Sample Return Mission

This mission involves collecting and returning samples from Mars. OTA could facilitate partnerships with international space agencies and private companies for various mission components, such as sample collection, storage, and transportation.

8. Human Landing System (HLS)

The HLS program involves developing landers to transport astronauts to the lunar surface. OTA can enable more flexible partnerships and innovative approaches to lander design and development.

SEC. ____. IMPROVEMENTS TO TASK AND DELIVERY ORDER CONTRACT PROCEDURES.

Section 3306(c) of title 41, United States Code, is amended—

(1) in paragraph (3)—

(A) in the paragraph heading, by striking "acquired on an hourly rate";

(B) by striking "for services to be acquired on an hourly rate basis" and inserting "for the same or similar services (including construction) to be acquired"; and

(C) by striking "based on hourly rates"; and

(2) in paragraph (4)—

(A) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(B) by inserting after subparagraph (B) the following:

"(C) the contracting officer has no reason to believe would likely offer other than fair and reasonable pricing;".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would expand the authority granted by Section 876 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (codified at 41 U.S.C. 3306(c)) to any services contract where pricing will be competed prior to the award of an order. This change is necessary following a United States Court of Federal Claims protest decision in 2023 that effectively limited the usefulness of the Section 876 authority.

Section 876 Overview

Section 825 of the FY 2017 National Defense Authorization Act (10 U.S.C. 3206(c)(3)) granted defense agencies the authority to exclude cost or price as an evaluation factor when awarding multiple task or delivery order contracts for identical or similar services. This applies when the agency plans to issue contracts to all qualified offerors and when cost or price is

considered during the issuance of task or delivery orders under the resulting contracts. Two years later, through Section 876 of the FY 2019 National Defense Authorization Act (41 U.S.C. 3306(c)), Congress granted a comparable authority to civilian agencies.

Section 876 represented a significant advancement for multiple-award task or delivery order contracts, where pricing is initially theoretical since actual prices are only established when agencies define requirements and place orders. The intent of Section 876 was to ensure contractors with superior technical capabilities secure positions on these multiple-award contracts, while encouraging robust price competition at the task order stage. This strategy reduces administrative expenses by freeing both contractors and the Government from the burden of developing hypothetical pricing models. Additionally, evaluating prices at the order level diminishes administrative barriers to entry for companies looking to obtain federal contracts.

Impact of Polaris Protest

GSA subsequently used the Section 876 authority for Polaris, a small business set-aside government-wide acquisition contract (GWAC) for custom information technology services and services-based solutions that was anticipated to result in awards worth up to $100 billion over the life of the program. GSA intended to award contracts to vendors meeting certain small business qualifications, and agencies were intended to issue task orders against those contracts. In making those contract awards, GSA would not evaluate price but instead use the Section 876 authority to have cost and price evaluated at the individual task order level.

However, the U.S. Court of Federal Claims (COFC), in an April 21, 2023, decision regarding a protest of the Polaris program, *SH Synergy, LLC and VCH Partners, LLC v. The United States*, concluded that GSA's interpretation of Section 876 was overly broad. COFC determined that the plain language of the statute, specifically, "acquired on an hourly rate basis," means the authority is limited to those contract types for acquiring supplies or services based on direct hours involved at hourly rates, namely, time-and-materials and labor-hours contract types. The COFC decision effectively prohibited the use of Section 876 authority for multiple award contracts that permit firm-fixed price or cost reimbursement task orders.

The COFC decision has essentially made the Section 876 authority unusable, as time-and-materials and labor-hours contract types are not the Government's preferred contract types for services. This decision has upended the plans for multi-billion dollar contract programs and is forcing the Government to continue to establish hypothetical prices that would be more effectively formed when orders are competed. Furthermore, the Government now faces a discrepancy between defense and civilian authorities when evaluating offers for multiple task and delivery order contracts. Since the Competition in Contracting Act was enacted and procurement regulations were consolidated into a single Federal Acquisition Regulation (FAR), there have been ongoing efforts to standardize procurement processes across federal agencies to improve efficiency and create a common understanding.

The United States Senate recognized the challenge with the Section 876 authority when it

introduced the bipartisan Conforming Procedures for Federal Task and Delivery Order Contracts Act of 2024. That bill was reported by the Senate Committee on Homeland Security & Governmental Affairs in November 2024 but was not enacted before the end of the 118th Congress.

Legislative Text

The legislative text contained in this proposal mirrors the text found in section 2 of the Conforming Procedures for Federal Task and Delivery Order Contracts Act of 2024.

The proposed amendments to 41 U.S.C. 3306(c)(3) would restore the original intent of Section 876 by ensuring the authority would not be limited to only time-and-materials and labor-hour contracts. It would also clarify that this authority can be used for construction contracts.

The proposed amendments to 41 U.S.C. 3306(c)(4) will establish that one of the conditions under which cost and price need not be considered for the contract is when the contracting officer has no reason to believe an offeror would likely offer other than fair and reasonable pricing.

Budget Implications: The proposal only addresses procurement processes and not amounts appropriated for the procurement of items or services.

Resubmission Information: This is the first time this proposal has been submitted.

Changes to Existing Law: This proposal would amend section 3306(c) of title 41, United States Code. Existing law proposed to be omitted is shown with ~~strikethrough~~ markings, new matter is underlined, and existing law in which no change is proposed is shown in roman:

(c) EVALUATION FACTORS.-

(1) IN GENERAL.-In prescribing the evaluation factors to be included in each solicitation for competitive proposals, an executive agency shall-

(A) establish clearly the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

(B) except as provided in paragraph (3), include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

(C) except as provided in paragraph (3), disclose to offerors whether all evaluation factors other than cost or price, when combined, are-

(i) significantly more important than cost or price;

(ii) approximately equal in importance to cost or price; or

(iii) significantly less important than cost or price.

(2) RESTRICTION ON IMPLEMENTING REGULATIONS.-Regulations implementing paragraph (1)(C) may not define the terms "significantly more important" and "significantly less important" as specific numeric weights that would be applied uniformly to all solicitations or a

class of solicitations.

(3) EXCEPTIONS FOR CERTAIN INDEFINITE DELIVERY, INDEFINITE QUANTITY MULTIPLE-AWARD CONTRACTS AND CERTAIN FEDERAL SUPPLY SCHEDULE CONTRACTS FOR SERVICES ~~ACQUIRED ON AN HOURLY RATE~~.-If an executive agency issues a solicitation for one or more contracts ~~for services to be acquired on an hourly rate basis~~ for the same or similar services (including construction) to be acquired under the authority of sections 4103 and 4106 of this title or section 152(3) of this title and section 501(b) of title 40 and the executive agency intends to make a contract award to each qualifying offeror and the contract or contracts will feature individually competed task or delivery orders ~~based on hourly rates~~-

(A) the contracting officer need not consider price as an evaluation factor for contract award; and

(B) if, pursuant to subparagraph (A), price is not considered as an evaluation factor for contract award, cost or price to the Federal Government shall be considered in conjunction with the issuance pursuant to sections 4106(c) and 152(3) of this title of any task or delivery order under any contract resulting from the solicitation.

(4) DEFINITION.-In paragraph (3), the term "qualifying offeror" means an offeror that-

(A) is determined to be a responsible source;

(B) submits a proposal that conforms to the requirements of the solicitation;

(C) the contracting officer has no reason to believe would likely offer other than fair and reasonable pricing;

(~~C~~)(D) meets all technical requirements; and

(~~D~~)(E) is otherwise eligible for award.

SEC. ____. COMMON SENSE FEES FOR THE INTEGRATED AWARD ENVIRONMENT.

Section 321 of Chapter 3 of title 40, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2)(C), by striking "." and inserting "; and"; and

(B) by adding at the end the following new subparagraph:

"(D) receipts from non-federal entities charged fees for use of the capabilities in the Federal Integrated Award Environment pursuant to rates established by the Administrator, in consultation with the Director of the Office of Management and Budget, under subsection (h).";

(2) in subsection (c), by adding at the end the following new paragraph:

"(3) INTEGRATED AWARD ENVIRONMENT FEE USE.—Funds received pursuant to subsection (h) of this section shall be used for GSA's operation, maintenance, and modernization of systems that allow the Federal Government to support the Federal Integrated Award Environment.";

(3) by redesignating subsections (h) and (i) as subsections (i) and (j), respectively; and

(4) by inserting after subsection (g) the following new subsection:

"(h) FEDERAL INTEGRATED AWARD ENVIRONMENT FEE.—For services provided by the Federal Integrated Award Environment, non-federal entities shall pay fees as determined necessary by the Administrator in consultation with the Director of the Office of Management and Budget, not to exceed the total cost of operating, maintaining, and modernizing the Federal Integrated Award Environment.".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This legislative proposal would grant the U.S. General Services Administration (GSA) statutory authority to supplement collections from agency contributions by assessing a nominal user fee on Integrated Award Environment (IAE) users who benefit from the system, such as those gaining entity validation and obtaining annual registration. Agency contributions that fund the IAE are falling far short of its operating expenses and the current funding is not responsive to spikes in usage. In response, GSA is working towards significant cost reductions for IAE, and is seeking to balance the funding model, continuing agency contributions, and introducing an IAE user fee.

Background

GSA is the managing partner for the IAE, a suite of online systems that support businesses, grantees, loan guarantors, federal assistance recipients, and federal agencies in their engagement with the federal awards lifecycle. This includes SAM.gov, as well as several systems which collect data about federal awards and about the contractor or grantee performance on those awards.

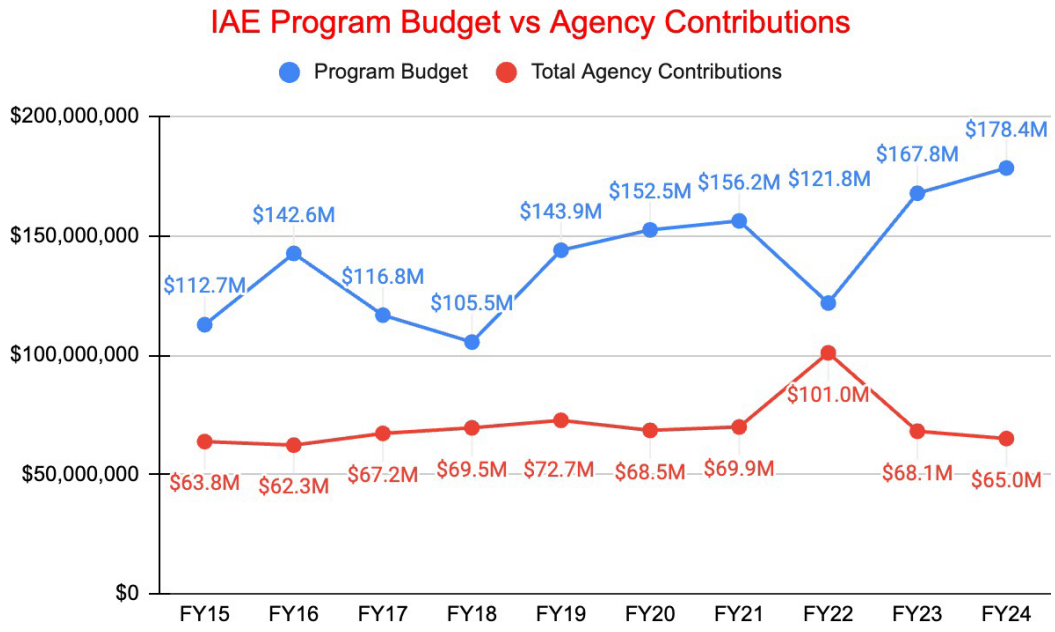
The IAE gives agency contracting and grants officers the information they need to make awards. This includes up-to-date information regarding contractor exclusions, integrity records, and awardee performance history, and other factors needed to ensure that taxpayer dollars are used appropriately.

For potential federal awardees, subawardees, and other prime awardee partners who do not have a bona fide need to register in SAM (e.g. entities looking to do business with State and local governments, non-profits, or other institutions), the IAE program provides an entity validation process and a resulting Unique Entity Identifier (UEI). For both potential and current federal awardees, the IAE program is a gateway to access a wealth of data and information about federal contract opportunities and financial assistance listings. The IAE also reduces awardees' burden managing post-award reporting requirements such as prime and subaward reporting to USAspending.

The IAE supports over 780,000 active registered entities, who must renew their registration annually to remain active, in accessing over 20,000 new contract award opportunities each month, as well as more than 250,000 annual new entities that need to complete entity validation to receive a UEI. The IAE also maintains a wealth of historical data including: over 100M award records, 9M subaward records, over 2M inactive entity registration records, and over 5M award opportunity records, all of which serve as an important resource into understanding federal government spending. Further, the IAE provides insight into over 150,000 active exclusion records and 1,400 integrity records, helping awarding officials do business with trustworthy partners. Over $1.6 trillion in annual federal spending - approximately $1 trillion in grants and over $600 billion in contracts - is supported by IAE. Each dollar spent to operate the IAE supports more than $10,000 in federal award funding, meaning the operational overhead of the IAE is less than 0.01%.

Integrated Award Environment Program Funding

Currently, each of the 24 Chief Financial Officers (CFO) Act[10] agencies pay annual contributions into the Acquisition Services Fund (ASF) to support the IAE program.[11] However, for the past ten years, Federal agency contributions to the ASF have fallen well short of covering the total cost of operating and maintaining the IAE. The financial delta between agency contributions and annual program costs to operate and maintain the IAE has been borne by the ASF. Since FY 2018, this annual shortfall has averaged approximately $73 million and while GSA is actively generating savings and efficiencies in IAE's operations, this shortfall is anticipated to still be about $40 million annually after FY 2025. Since 2015, the ASF has absorbed $690 million of the IAE program's operating and modernization budget shortfall.



Over the last two years, GSA has focused its technical developmental efforts on supporting legislative and regulatory compliance in addition to maintaining its six systems for millions of users. During this time, GSA's current financial model has not been able to address demand for updates and new features from agency partners, nor technical modernization to reduce its maintenance costs and respond more quickly and with less investment required for updates. In response, GSA is taking proactive action to reduce reliance on legacy vendors and successfully negotiating for reduced costs of legacy vendors as it drives towards an overall lower cost.

[10] Pub. L. 101-576

[11] The yearly agency contribution to IAE is determined by the Award Committee for E-Government membership agencies..

As part of an aggressive strategy to manage cost growth, GSA has taken a number of actions including:

- launching a multi-pronged process improvement initiative in 2023 to streamline internal intake, customer experience, and technical development work to enhance quality delivery in a cost effective manner;
- redesigning IAE's acquisition strategy in Q2 FY 2025 to drive further cost effectiveness, efficiency, and cost savings by reducing dependence on sole source vendors and legacy vendors disincentivized financially to modernize; and
- further cutting costs in Q2 FY 2025, eliminating or renegotiating contracts with sole source and legacy vendors, and recommending policy changes to reduce unnecessary data entry and reporting burdens on users;

All of this has been accomplished while annual CFO Act agency contributions remain under $70 million, which does not even cover basic operations, let alone minor updates. However, even with these measures and reductions in place, IAE's planned budget for FY25 is expected to remain over $100 million. Further reducing the fixed costs of the program requires upfront investment to modernize, which will reduce program costs by deprecating legacy software, exiting legacy vendors, and facilitating faster and less expensive implementation of agency requests. However, there are large variable costs, primarily entity validation and the support desk. The specific users who drive those costs are the populations for which the IAE is looking to assess a nominal user fee in alignment with OMB Circular A-25.

Legislative Proposal

In order to close the IAE's operating deficit and base the funding model on where variable costs are driven, GSA is seeking the authority to supplement collections from agency contributions by assessing a nominal fee on certain users of the IAE.

In the legislative text for a similar proposal to the 118th Congress, GSA sought to exclude small business concerns from the user fees it was proposing, while some stakeholders encouraged GSA to apply even more exceptions. In this prior proposal, GSA also proposed applying the fees only to awardees, rather than all users. However, GSA has since determined the prior proposal would be excessively difficult to implement while significantly reducing the user population subject to fees. As such, this proposal will charge all users without any exceptions, allowing a simpler technical implementation that ensures fair fees across all entities.

If granted this authority, GSA intends to charge minimized fees to a broader set of entities earlier in the user journey. GSA now proposes to apply (1) a one-time flat fee to any entity who receives a new UEI and must go through entity validation and (2) a minimal annual flat fee for each entity registration that has secured an award from the Federal Government. This means the fees will be applied at the source of major program costs and directly linked to the actual usage of SAM.gov that drives the variable costs of the IAE. This fee will also apply to the entities that use IAE resources to obtain a UEI with no intention of entering into awards with the Federal government, as is sometimes the case for entities needing validation with other state or local governments.

Based on updated FY25 and FY26 overall target operating budgets for the IAE, GSA is looking to collect approximately $40 million in fees to supplement agency collections. While the exact fee will be determined after more detailed financial modeling and stakeholder engagement, GSA projects a one-time fee of roughly $75 to $125 to obtain a UEI and an annual registration fee of $25 to $50, with the goal of keeping this low enough to not be a barrier to entry. Along with being simpler to implement, the fee is placed where major variable program costs are actually incurred: registration, entity validation, and the Federal Service Desk support.

There are a wide variety of programs across the Federal government that leverage user fees to help support program operations which benefit a well-defined group of users (e.g. HHS's Payment Management System fees, TSA security fees, USDA inspection fees, U.S. CIS benefits fees). Allowing GSA to assess fees on users will ensure IAE proactively addresses regulatory requirements and delivers needed capability through a streamlined, modernized and efficient technical platform.

Budget Implications: This proposal would not impact appropriations. It will allow GSA to set fees paid by non-Federal users of the IAE.

Resubmission Information: GSA most recently submitted a similar proposal for consideration by the 118th Congress. The proposal was not enacted.

Changes to Existing Law: This proposal would amend section 321 of title 40, United States Code. Existing law proposed to be omitted is shown with ~~strikethrough~~ markings, new matter is underlined, and existing law in which no change is proposed is shown in roman:

TITLE 40, UNITED STATES CODE

* * * * *

§321. Acquisition Services Fund

(a) EXISTENCE.-The Acquisition Services Fund is a special fund in the Treasury.

(b) COMPOSITION.-

(1) IN GENERAL.-The Fund is composed of amounts authorized to be transferred to the Fund or otherwise made available to the Fund.

(2) OTHER CREDITS.-The Fund shall be credited with all reimbursements, advances, and refunds or recoveries relating to personal property or services procured through the Fund, including-

(A) the net proceeds of disposal of surplus personal property; and

(B) receipts from carriers and others for loss of, or damage to, personal property; and

(C) receipts from agencies charged fees pursuant to rates established by the Administrator~~.~~; and

(D) receipts from non-federal entities charged fees for use of the capabilities in the Federal Integrated Award Environment pursuant to rates established by the Administrator, in consultation with the Director of the Office of Management and Budget, under subsection (h).

(3) COST AND CAPITAL REQUIREMENTS.-The Administrator shall determine the cost and capital requirements of the Fund for each fiscal year and shall develop a plan concerning such requirements in consultation with the Chief Financial Officer of the General Services Administration. Any change to the cost and capital requirements of the Fund for a fiscal year shall be approved by the Administrator. The Administrator shall establish rates to be charged agencies provided, or to be provided, supply of personal property and non-personal services through the Fund, in accordance with the plan.

(4) DEPOSIT OF FEES.-Fees collected by the Administrator under section 313 of this title may be deposited in the Fund to be used for the purposes of the Fund.

(c) USES.-

(1) IN GENERAL.-The Fund is available for use by or under the direction and control of the Administrator for-

(A) procuring, for the use of federal agencies in the proper discharge of their responsibilities-

(i) personal property (including the purchase from or through the Director of the Government Publishing Office, for warehouse issue, of standard forms, blankbook work, standard specifications, and other printed material in common use by federal agencies and not available through the Superintendent of Documents);

(ii) nonpersonal services; and

(iii) personal services related to the provision of information technology (as defined in section 11101(6) of this title);

(B) paying the purchase price, cost of transportation of personal property and services, and cost of personal services employed directly in the repair, rehabilitation, and conversion of personal property; and

(C) paying other direct costs of, and indirect costs that are reasonably related to, contracting, procurement, inspection, storage, management, distribution, and accountability of property and nonpersonal services provided by the General Services Administration or by special order through the Administration.

(2) OTHER USES.-The Fund may be used for the procurement of personal property and nonpersonal services authorized to be acquired by-

(A) mixed-ownership Government corporations;

(B) the municipal government of the District of Columbia; or

(C) a requisitioning non-federal agency when the function of a federal agency authorized to procure for it is transferred to the Administration.

(3) Federal Integrated Award Environment Fee Use.—Funds received pursuant to subsection (h) of this section shall be used for GSA's operation, maintenance, and modernization of systems that allow the Federal Government to support the Federal Integrated Award Environment.

(d) PAYMENT FOR PROPERTY AND SERVICES.-

(1) IN GENERAL.-For property or services procured through the Fund for requisitioning agencies, the agencies shall pay prices the Administrator fixes under this subsection.

(2) PRICES FIXED BY ADMINISTRATOR.-The Administrator shall fix prices at levels sufficient to recover-

(A) so far as practicable-

(i) the purchase price;

(ii) the transportation cost;

(iii) inventory losses;

(iv) the cost of personal services employed directly in the repair, rehabilitation, and conversion of personal property;

(v) the cost of personal services employed directly in providing information technology (as defined in section 11101(6) of this title); and

(vi) the cost of amortization and repair of equipment used for lease or rent to executive agencies; and

(B) properly allocable costs payable by the Fund under subsection (c)(1)(C).

(3) TIMING OF PAYMENTS.-

(A) PAYMENT IN ADVANCE.-A requisitioning agency shall pay in advance when the Administrator determines that there is insufficient capital otherwise available in the Fund. Payment in advance may also be made under an agreement between a requisitioning agency and the Administrator.

(B) PROMPT REIMBURSEMENT.-If payment is not made in advance, the Administration shall be reimbursed promptly out of amounts of the requisitioning agency in accordance with accounting procedures approved by the Comptroller General.

(C) FAILURE TO MAKE PROMPT REIMBURSEMENT.-The Administrator may obtain reimbursement by the issuance of transfer and counterwarrants, or other lawful transfer documents, supported by itemized invoices, if payment is not made by a requisitioning agency within 45 days after the later of-

(i) the date of billing by the Administrator; or

(ii) the date on which actual liability for personal property or services is incurred by the Administrator.

(e) REIMBURSEMENT FOR EQUIPMENT PURCHASED FOR CONGRESS.-The Administrator may accept periodic reimbursement from the Senate and from the House of Representatives for the cost of any equipment purchased for the Senate or the House of Representatives with money from the Fund. The amount of each periodic reimbursement shall be computed by amortizing the total cost of each item of equipment over the useful life of the equipment, as determined by the Administrator, in consultation with the Sergeant at Arms and Doorkeeper of the Senate or the Chief Administrative Officer of the House of Representatives, as appropriate.

(f) TRANSFER OF UNCOMMITTED BALANCES.-Following the close of each fiscal year, after making provision for a sufficient level of inventory of personal property to meet the needs of Federal agencies, the replacement cost of motor vehicles, and other anticipated operating needs reflected in the cost and capital plan developed under subsection (b), the uncommitted balance of any funds remaining in the Fund shall be transferred to the general fund of the Treasury as miscellaneous receipts.

(g) AUDITS.-The Comptroller General shall audit the Fund in accordance with the provisions of chapter 35 of title 31 and report the results of the audits.

(h) FEDERAL INTEGRATED AWARD ENVIRONMENT FEE.—For services provided by the Federal Integrated Award Environment, non-federal entities shall pay fees as determined necessary by the Administrator, in consultation with the Director of the Office of Management and Budget, not to exceed the total cost of operating, maintaining, and modernizing the Federal award environment.

~~(h)~~(i) [1] REQUIREMENT FOR ANNUAL REPORT TO CONGRESS.-Not later than September 30 of each year, the Administrator shall submit to the Committee on Oversight and Accountability of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report that includes, at a minimum, a list of each program within the Technology Transformation Services funded by expenditures during the previous fiscal year, or that have been funded by expenditures in the previous 5-year period, including the following:

(1) An explanation of the program.

(2) Information about how the program is funded, including the amount of expenditures the program received in the previous fiscal year and total amount.

(3) The amount of reimbursements associated with or anticipated to be associated with the program from another source of funds or another agency, if applicable.

(4) A description of projects or initiatives associated with the program, including-

(A) information about when the projects or initiatives were initiated and completed; and

(B) funding information, to the extent practicable.

(5) Any additional information, data, or analysis used to determine the information estimated within the report, if applicable.

~~(i)~~(j) [1] DEFINITIONS.-In this section:

(1) ADMINISTRATOR.-The term "Administrator" means the Administrator of General Services.

(2) EXPENDITURE.-The term "expenditure" means any obligation of funds from the Acquisition Services Fund for programs referenced in subsection (h).

---

[1] *See Delayed Effective Date of Amendment note below.*

Amendment by section 2(b) of Pub. L. 118–182 adding subsecs. (h) and (i) of this section effective on the commencement of the first fiscal year after Dec. 23, 2024. See 2024 Amendment note below.

***2024**-Subsecs. (h), (i). Pub. L. 118–182 added subsecs. (h) and (i).*

SEC. ___. ACQUISITION WORKFORCE TRAINING INVESTMENTS.

Section 1703(i)(3) of title 41, United States Code is amended by striking "Five" and inserting "Seven and a half".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would bolster acquisition workforce training by increasing the Acquisition Workforce Training Fund (AWTF) credit from five percent (5%) to seven and a half percent (7.5%). The proposal would allocate a larger share of the fees already paid by federal agencies for the use of certain interagency contracts to the Federal Acquisition Institute (FAI) and Defense Acquisition University (DAU) to make a greater investment in training the acquisition workforce.

The purpose of this legislative proposal is to address a critical deficiency in the training and support the Government provides to our acquisition professionals and position the acquisition workforce to procure, deliver, and sustain mission-execution resources. Increasing the AWTF credit will allow the Government to keep up with short-term training demands (e.g. new training legislation, increased contract expenditures) and meet long-term workforce challenges (such as technical knowledge gaps, new acquisition laws and regulations, and an aging acquisition workforce). Without the additional funding authority, the Government risks being unable to adequately implement new statutory training requirements, deliver fundamental training to new entrants to the acquisition workforce, and develop and deliver the advanced training needed to keep up with a continuously evolving procurement environment.

The Federal Acquisition Workforce

The federal acquisition workforce is described in 41 U.S.C. 1703 as employees serving in entry-level and senior positions in the General Schedule Contracting Series (GS-1102), positions in the General Schedule Purchasing Series (GS-1105), and "positions in other General Schedule series in which significant acquisition-related functions are performed…".[12] The latter may include employees developing contract requirements, evaluating proposals, and administering contracts. The increasingly complex nature of federal procurement requires the expertise of employees in wide ranging disciplines, including but not limited to, program and project management, finance, information technology, personnel identification and access, and supply chain risk management.

In FY 2023, the federal acquisition workforce, consisting of tens of thousands of contracting officers and hundreds of thousands more employees performing significant acquisition-related functions, oversaw $759 billion in contracts for goods and services.

FAI and DAU

The FAI and DAU are the largest sources of training for the federal acquisition workforce. FAI was established under the auspices of the Office of Management and Budget's Office of Federal Procurement Policy (OFPP) to facilitate and promote career development and

[12] 41 U.S.C. 1703(a) and (g)(1)(A)

training for the acquisition workforce of all civilian agencies. The National Defense Authorization Act for Fiscal Year 2012 gave FAI twelve statutory responsibilities, beginning with a mandate to develop a highly professional workforce.[13] In 2013, OFPP delegated FAI's operational and resource management duties to the General Services Administration (GSA).

FAI trains and certifies nearly 200,000 members of the acquisition workforce at any given time in three main acquisition disciplines: Federal Acquisition Certification in Contracting (FAC-C), Contracting Officer Representatives (FAC-COR), and Program/Project Management (FAC-P/PM). FAI is regularly tasked with development of training and tools for the entire acquisition workforce, though most of the acquisition training for Department of Defense (DoD) employees is handled by DAU. FAI is also being tasked to train employees in emerging disciplines with acquisition impacts, such as "officials with supply chain risk management responsibilities at Federal agencies…", as required by the Supply Chain Security Training Act of 2021.[14]

DAU was established in October 1991 and currently supports approximately 165,000 defense acquisition workforce members with about 550 faculty staff. It provides the education and training standards and courses for the civilian and military acquisition workforce as required by the Defense Acquisition Workforce Improvement Act (DAWIA).[15] The DAU courses required to meet those education and training standards are commonly referred to as being "DAWIA curricula." Similarly, certifications that are awarded upon meeting such standards are often referred to as "DAWIA certification," although those certifications are the responsibility of each service and defense agency to administer. DAWIA certifications are only available to DoD employees, military and civilians assigned to an acquisition-coded position, as well as select military officers whose career development will include assignment to acquisition-coded positions.

AWTF

The AWTF was established by the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2004 on November 24, 2003.[16] GSA manages the fund through FAI, in consultation with OFPP and the FAI Board of Directors. The fund is financed through a credit of 5% of the fees collected from executive agencies (other than DoD) for certain Governmentwide contracts, including ones managed by GSA, the Department of Veterans Affairs, Department of Health and Human Services, and the National Aeronautics and Space Administration.[17] Receipts are available for expenditure in the fiscal year collected, as well as the two following fiscal years. GSA is statutorily required to transfer fees collected from DoD's use of the aforementioned

[13] Pub. L. 112–81, div. A, title VIII, §864(b)(1), Dec. 31, 2011, 125 Stat. 1523.
[14] Pub. L. 117–145, §2(a), June 16, 2022, 136 Stat. 1269.
[15] Pub. L. 101-510, div. A, title XII, Nov. 5, 1990, 104 Stat. 1638.
[16] Pub. L. 93–400, §37(h)(3), as added Pub. L. 108–136, div. A, title XIV, §1412(b), Nov. 24, 2003, 117 Stat. 1664.
[17] 41 U.S.C. 1703(i)(3)

contracts back to DoD to use for acquisition workforce training.[18] GSA and DoD split AWTF collections, with GSA retaining 60% for FAI and distributing the remaining 40% to DoD.[19]

FAI is solely funded by the AWTF. DAU is funded through three sources: annual appropriations, the Defense Acquisition Workforce Development Account (DAWDA), and the portion of the fees paid into the AWTF by DoD ordering activities.

Need for New Acquisition Workforce Training Investments

Federal contracting requirements are growing in complexity with a greater need for services contracting, technology acquisition, and, more recently, supply chain security concerns. This is true not only for contracting officers but also those program office professionals—namely contracting officer's representatives and program and project managers—overseeing contract performance, all of whom are considered part of the acquisition workforce. Indeed, Congress has recognized the importance of training to meet these challenges and recently passed the Supply Chain Security Training Act of 2021 and the Artificial Intelligence Training for the Acquisition Workforce Act ("AI Training Act"). Other bills that emphasize acquisition workforce training, such as 2024's FIT Procurement Act (H.R.9595 and S.4066), have also been considered.

The FY2020 NDAA[20] also required DoD to implement a professional certification program based on standards developed by a third-party accredited program that utilizes nationally or internationally recognized standards. FAI is implementing similar changes to its certification programs to ensure there is consistent training and accreditation between the defense and civilian agencies, which will require additional funding. This will allow greater workforce agility, which is important to attracting and retaining talent.

Finally, the AWTF collection rate has also remained static at 5% since its inception in 2003, while demands on FAI and DAU continue to grow. For example, FAI's twelve statutory responsibilities were enacted 8 years after the AWTF was established.[21]

Boosting AWTF Collections

Increasing the AWTF collection rate is a relatively frictionless way, without appropriations, of ensuring the federal acquisition workforce is prepared for the challenges of today and tomorrow. Since GSA manages the fund through FAI but also contributes about 90% of the fees credited to it, this proposal would essentially authorize GSA to reallocate a greater proportion of fees it already collects for acquisition workforce training.

---

[18] 41 U.S.C. 1703(i)(5)

[19] The current distribution ratio was established in a memo from the GSA Office of the Chief Financial Officer to DAU dated March 23, 2022.

[20] Pub. L. 116-92, div. A, title VIII, §861, Dec. 20, 2019, 133 Stat. 1515.

[21] Pub. L. 112–81, div. A, title VIII, §864(b)(1), Dec. 31, 2011, 125 Stat. 1523.

This proposal entails increasing the AWTF collection rate from 5% to 7.5%. If the AWTF rate had been increased to 7.5% for FY 2024, there would have been a $14 million increase to the fund's collections, with FAI retaining $8 million of the new funds and the remaining $6 million being transferred to DAU.

In FY 2024, about $28 million was credited to the fund, with FAI retaining $18 million and the balance transferred to DAU. Approximately $25 million of those credits came from fees collected by GSA for the use of its applicable contracts (e.g. Federal Supply Schedules, Governmentwide Acquisition Contracts). If the FY 2024 collection rate (5%) was increased to the proposed 7.5% rate, total collections would have been approximately $42 million, with $25 million being retained by FAI and $17 million being transferred to DAU. GSA-collected fees would have accounted for $38 million of the total $42 million in fund credits.

Resource Information: This proposal would have no significant net budgetary impacts. Resources affected by this proposal are incidental in nature and amount and are included within the Fiscal Year (FY) 2025 President's Budget request. This proposal would not impact net outlays or revenues. It would increase credits to the AWTF by 50% by increasing the portion of fees already collected by federal agencies (primarily GSA).

Budget Implications: The proposal only addresses procurement processes and not amounts appropriated for the procurement of items or services.

Resubmission Information: This proposal was previously submitted for consideration by the 118th Congress.

Changes to Existing Law: This proposal would amend section 1703(i) of title 41, United States Code. Existing law proposed to be omitted is shown with ~~strikethrough~~ markings, new matter is underlined, and existing law in which no change is proposed is shown in roman:

(i) TRAINING FUND.-
(1) PURPOSES.-The purposes of this subsection are to ensure that the Federal acquisition workforce-
(A) adapts to fundamental changes in the nature of Federal Government acquisition of property and services associated with the changing roles of the Federal Government; and
(B) acquires new skills and a new perspective to enable it to contribute effectively in the changing environment of the 21st century.

(2) ESTABLISHMENT AND MANAGEMENT OF FUND.-There is an acquisition workforce training fund. The Administrator of General Services shall manage the fund through the Federal Acquisition Institute to support the activities set forth in section 1201(a) of this title, except as provided in paragraph (5). The Administrator of General Services shall consult with the Administrator in managing the fund.
(3) CREDITS TO FUND.-~~Five~~ Seven and a half percent of the fees collected by executive agencies (other than the Department of Defense) under the following contracts shall be credited to the fund:

(A) Government-wide task and delivery-order contracts entered into under sections 4103 and 4105 of this title.

(B) Government-wide contracts for the acquisition of information technology as defined in section 11101 of title 40 and multiagency acquisition contracts for that technology authorized by section 11314 of title 40.

(C) multiple-award schedule contracts entered into by the Administrator of General Services.

(4) REMITTANCE BY HEAD OF EXECUTIVE AGENCY.-The head of an executive agency that administers a contract described in paragraph (3) shall remit to the General Services Administration the amount required to be credited to the fund with respect to the contract at the end of each quarter of the fiscal year.

(5) TRANSFER AND USE OF FEES COLLECTED FROM DEPARTMENT OF DEFENSE.-The Administrator of General Services shall transfer to the Secretary of Defense fees collected from the Department of Defense pursuant to paragraph (3). The Defense Acquisition University shall use the fees for acquisition workforce training.

(6) AMOUNTS NOT TO BE USED FOR OTHER PURPOSES.-The Administrator of General Services, through the Office of Federal Procurememt [1] Policy, shall ensure that amounts collected under this section are not used for a purpose other than the activities set forth in section 1201(a) of this title.

(7) AMOUNTS ARE IN ADDITION TO OTHER AMOUNTS FOR EDUCATION AND TRAINING.-Amounts credited to the fund are in addition to amounts requested and appropriated for education and training referred to in subsection (h)(1).

(8) AVAILABILITY OF AMOUNTS.-Amounts credited to the fund remain available to be expended only in the fiscal year for which they are credited and the 2 succeeding fiscal years.

[1] *So in original. Probably should be "Procurement".*

SEC. ____. PROMOTING SMALL BUSINESS INNOVATION.

Section 9 of the Small Business Act (15 U.S.C. § 638) is amended by adding at the end the following:

"(aaa) ASSISTANCE WITH SBIR AND STTR AWARDS.

(1) ASSISTANCE FOR PARTICIPATING AGENCIES. Each Federal agency required by this section to conduct an SBIR program or STTR program may request and accept assistance from another Federal agency, with authority to provide such assistance, with the process of awarding and/or administering a funding agreement to a small business concern under the SBIR or STTR program.

(2) ASSISTANCE FOR PHASE III AWARDS. Any Federal agency may request and accept assistance from another Federal agency, with authority to provide such assistance, to award and/or administer a phase III funding agreement to a business concern under the SBIR or STTR program."

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

The General Services Administration (GSA) is seeking explicit statutory authority to provide assisted acquisition services with respect to Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs by Federal agencies not required to establish such programs of their own.

Leveraging the acquisition expertise of Federal agencies not required to establish their own SBIR and/or STTR programs will increase the capability and capacity of these programs to develop innovative solutions that meet the Government's mission while promoting economic growth. The expected results would be consistent with Congress's original intent for establishing the SBIR and STTR programs, ensuring research and development (R&D) is a major factor in the growth and progress of industry and assisting small business concerns to enable them to obtain the benefits of R&D. In turn, these results help maintain and strengthen the competitive free enterprise system and the national economy.

SBIR/STTR Programs

The SBIR program is a highly competitive awards-based program that encourages domestic small businesses to explore their research/research and development (R/R&D) potential by establishing a path to commercialization. The program is structured into three phases: Phases I and II focus on R/R&D, while Phase III is for SBIR/STTR-derived products or services intended for use by the Federal Government, funded by non-SBIR/STTR sources of Federal funding or continuation of SBIR/STTR work, or funded by non-SBIR/STTR sources of Federal funding including R/R&D. The STTR program is like the SBIR program in that it seeks to expand opportunities for domestic small businesses in the R&D field and consists of three phases; the primary difference is that Phases I and II of the STTR program requires a small business to partner with a nonprofit research institution.

Both the SBIR and STTR programs are authorized in section 9 of the Small Business Act (15 U.S.C. § 638). Section 9 requires Federal agencies with extramural R&D budgets that exceed $100 million to reserve 3.2 percent of their R&D budget for the SBIR program, and Federal agencies with extramural R&D budgets that exceed $1 billion to reserve 0.45 percent of their R&D budget for the STTR program. Based on these requirements, 11 agencies currently participate in the SBIR program and 5 agencies currently participate in the STTR program.

The Small Business Administration (SBA) is the coordinating agency and responsible for issuing policy directives for the general conduct of both programs. There are enough similarities between the SBIR and STTR programs such that SBA decided to combine the policy directives for each program into a single policy directive covering both programs.

Assisted Acquisitions

Assisted acquisition services entail one agency ("servicing agency") awarding and administering a contract or order on behalf of another agency ("requesting agency"). Federal agencies and small businesses have requested this assistance with respect to SBIR and STTR program contracts, concerned by a lack of contracting officers at participating agencies. By offering assisted acquisition services for the SBIR and STTR programs, servicing agencies are connecting needs across multiple departments or agencies and creating opportunities for highly innovative small businesses. GSA and other servicing agencies like the Department of the Interior have provided assisted acquisition services to SBIR and STTR participating agencies.

GSA began receiving several requests from DoD and other participating agencies for assisted acquisition services under the SBIR program in late 2017. GSA consulted with SBA on whether it could provide these services, and, in February 2018, SBA provided a legal opinion that allowed GSA to do so. In October 2020, SBA's SBIR/STTR Policy Directive was also updated to allow each SBIR/STTR participating agency to use assisted acquisition providers under the terms and conditions of a properly executed Interagency Agreement. The SBA reiterated this position as well in its subsequent May 2023 SBIR/STTR Policy Directive.

In Fiscal Year (FY) 2018, GSA began providing assisted acquisition services under the SBIR program for Phase III. In providing such assisted acquisition support, GSA is scaling

proven R&D solutions across the Government while also creating more opportunities for small businesses to increase their business with the Government. Through the end of FY 2024, GSA awarded approximately 112 contracts and 392 task orders totaling approximately $12.6 billion on behalf of DoD under the SBIR program. GSA has also made SBIR Phase III awards on behalf of the U.S. Departments of Energy, Veterans Affairs and Health and Human Services. In FY 2018, GSA began a pilot to provide assisted acquisition support for SBIR and STTR Phase III work.

From May 2018 through September 2023, GSA obligated 20% of the total Federal Government spend for Phase III work and has become a major contributor in this space. GSA's support in awarding Phase III contracts was critical to helping the Navy achieve over $1.1 billion in Phase III contracts in FY 2023 and facilitating the commercialization into acquisition programs of record fleet and force use. Without these assisted acquisition services, it is unlikely some of these awards would have been made to the innovative small businesses that participate in the SBIR program. Since SBIR and STTR participating agencies are required to expend a designated amount of funding each year under the program, they focus their limited resources on executing funding agreements with small businesses under Phases I and II, leaving little to no time or resources available for Phase III awards. Customer program offices advised GSA that many of these contracts would not have been awarded without GSA's support because they did not have acquisition personnel available for the procurement process.

The SBIR and STTR programs have several objectives, with the primary one being to transition SBIR and STTR technologies into the Federal marketplace and, when applicable, into the private sector. The assisted acquisition services provided by agencies such as GSA and DOI are the perfect solution to the dilemma: Federal agencies who wish to spend non-SBIR/STTR funds for Phase III work can enter into an interagency agreement to obtain a servicing agency's support to award and manage contracts on their behalf, allowing the requesting agencies to devote their own contracting resources to meeting the required Phases I and II missions. Servicing agency support in awarding Phase III contracts has been critical to providing innovative technology to assist DoD's mission and in continuing to grow an innovative industrial base of small businesses capable of providing such solutions.

However, servicing agencies currently operate under an SBA legal opinion and language in the SBIR/STTR Policy Directive, which is subject to change to provide services beyond those currently authorized. As such, explicit language in the Small Business Act[22] would allay the concern of agencies that are uncertain about the authority for a non-participating Federal agency to provide SBIR and STTR assisted acquisition support or are unaware of SBA's legal opinion and directive. In addition, such an authorization would encourage innovation on the part of agencies and small businesses because these entities would recognize that there is an acquisition solution in place to translate ideas into action. Furthermore, having a shared service through assisted acquisition for conducting SBIR and STTR procurements would ensure that both SBIR and STTR participating agencies and small businesses have access to needed acquisition expertise.

[22] 15 U.S.C. § 638

As such, GSA is proposing to amend the Small Business Act to directly authorize assisted acquisition services under SBIR and STTR to bolster the participation and confidence of small businesses and agencies under these programs, ensuring that participating agencies have the support they need to accomplish all phases of SBIR and STTR. Since other Federal agencies can already make phase III awards, the proposed legislative text also ensures those Federal agencies will have the same opportunity to use an assisted acquisition service provider in making phase III awards.

Budget Implications: The proposal only addresses procurement processes and not amounts appropriated for the procurement of items or services.

Resubmission Information: This proposal was previously submitted for consideration by the 116th and 117th Congresses.

Changes to Existing Law: This proposal would amend section 9 of the Small Business Act (15 U.S.C. § 638) by adding at the end the following:

TITLE 15, UNITED STATES CODE

* * * * *

§638. Research and development

* * * * *

(aaa) Assistance With SBIR and STTR Awards.

(1) Assistance for participating agencies.

Each Federal agency required by this section to conduct an SBIR program or STTR program may request and accept assistance from another Federal agency, with authority to provide such assistance, with the process of awarding and/or administering a funding agreement to a small business concern under the SBIR or STTR program.

(2) Assistance for phase III awards.

Any Federal agency may request and accept assistance from another Federal agency, with authority to provide such assistance, to award and/or administer a phase III funding agreement to a business concern under the SBIR or STTR program.

SEC. ___. TASK AND DELIVERY ORDER PROTEST THRESHOLD PARITY.

Section 4106(f)(1)(B) of title 41, United States Code, is amended by striking "valued in excess of $10,000,000" and inserting ", including those awarded under the multiple awards schedule program of the General Services Administration referred to in section 152(3) of this title, valued in excess of $35,000,000".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal seeks to standardize the task and delivery order protest dollar threshold for defense and civilian agencies by raising the civilian agency threshold from $10 million to equal the defense agency threshold at $35 million. Standardization is necessary because the current disparity deprives defense agencies of the benefit of its $35 million threshold when entering into agreements with civilian agencies to award task and delivery orders against indefinite-delivery indefinite-quantity (IDIQ) contracts on their behalf. Providing parity for all agencies will also simplify protest procedures for ordering activities and interested bidders.

Background

The Federal Acquisition Streamlining Act of 1994 (FASA) enacted procedures for IDIQ contracts.[23] Yet, FASA did not provide for protests of defense and civilian agency task and delivery orders issued under multiple-award IDIQ contracts, with the exception of those protests alleging that an order increases the scope, period, or maximum value of an underlying IDIQ contract. However, in 2008, the Government Accountability Office (GAO) was granted limited jurisdiction to hear the following protests for task and delivery orders awarded against a multiple award indefinite-delivery indefinite-quantity contracts:

> (A) a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued; or
> (B) a protest of an order valued in excess of $10,000,000.[24]

These criteria applied to defense and civilian agencies and remained into effect until September 30, 2016, when GAO's authority expired except for orders subject to title 10 of the United States Code.[25] On December 14, 2016, GAO's jurisdiction was reinstated,[26] and on December 23, 2016, the title 10 order protest threshold was raised to $25 million, while the civilian agency threshold under title 41 remained at $10 million.[27] The title 10 authority was further increased to $35 million in 2024[28] while the title 41 threshold remained at $10 million.

Rationale

---

[23] Pub. L. No. 103-355, 108 Stat. 3243, 3253, 3264.

[24] *See* National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 843, 122 Stat. 3, 236-39 (codified as amended at 41 U.S.C. § 4106(f)).

[25] The original authority (via Pub. L. 110-181) was to sunset 3 years and 120 days after the date of the FY2008 NDAA. This would have been until 2011. In 2011, via Pub. L. 112-81, the sunset was extended to September 30, 2016.

[26] *See* Government Accountability Office Civilian Task and Delivery Order Protest Authority Act of 2016, Pub. L. No. 114-260, 130 Stat. 1361 (codified as amended at 41 U.S.C. § 4106(f)(3)).

[27] *See* National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 835, 130 Stat. 2000, 2285 (codified as amended at 41 U.S.C. § 4106(f)).

[28] *See* Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025, Pub. L. No. 118–159, div. A, title VIII, §885(f), 138 Stat. 2022 (codified as at 10 U.S.C. § 3406(f)).

Raising the civilian agency protest threshold to $35 million will provide parity for all agencies, thereby simplifying protest procedures for ordering activities and interested bidders. Moreover, providing a consistent threshold for all agencies will not negatively impact bidding contractors because of statutory measures in place to promote competition. Additionally, actions are being taken to enhance debriefings for unsuccessful bidders in order to provide feedback that will improve their competitive performance and alleviate the need for some protests.

The bifurcation of the defense and civilian agency thresholds becomes problematic when defense agencies enlist civilian agencies to acquire mission essential solutions. For example, the General Services Administration (GSA) routinely performs assisted acquisitions on behalf of defense agencies yet is subject to the $10 million protest threshold under title 41 of the United States Code. This scenario was affirmed by GAO in its decision regarding HP Enterprise Services, LLC's protest of a task order awarded by GSA under its ALLIANT IDIQ contract to acquire various IT support services for the Department of Defense's Joint Service Provider.[29]

Standardizing the task and delivery order threshold would provide benefits without putting bidders at a competitive disadvantage. First, protest procedures at 41 U.S.C. 4106(f) will still allow interested parties to protest on the ground that the task or delivery order increases the scope, period, or maximum value of the contract under which the order is issued. Secondly, 41 U.S.C. 4106(c) will still require agencies to ensure contractors are afforded a fair opportunity to be considered for the award of task and delivery orders.

Budget Implications: The proposal only addresses procurement processes and not amounts appropriated for the procurement of items or services.

Resubmission Information: GSA most recently submitted a similar proposal for consideration for the FY2020 NDAA. Although the proposal was not enacted, no deficiencies were identified.

Changes to Existing Law: This proposal would amend section 4106(f) of title 41, United States Code. Existing law proposed to be omitted is shown with ~~strikethrough~~ markings, new matter is underlined, and existing law in which no change is proposed is shown in roman:

TITLE 41, UNITED STATES CODE

* * * * *

§4106. Orders

(a) APPLICATION.-This section applies to task and delivery order contracts entered into under sections 4103 and 4105 of this title.

(b) ACTIONS NOT REQUIRED FOR ISSUANCE OF ORDERS.-The following actions are not required for issuance of a task or delivery order under a task or delivery order contract:

[29] *See* U.S. Government Accountability Office decision in the matter of HP Enterprise Services, LLC—Reconsideration, B-413382.3 (January 26, 2017).

(1) A separate notice for the order under section 1708 of this title or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(2) Except as provided in subsection (c), a competition (or a waiver of competition approved in accordance with section 3304(e) of this title) that is separate from that used for entering into the contract.

(c) MULTIPLE AWARD CONTRACTS.-When multiple contracts are awarded under section 4103(d)(1)(B) or 4105(f) of this title, all contractors awarded the contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task or delivery order in excess of the micro-purchase threshold under section 1902 of this title that is to be issued under any of the contracts, unless-

(1) the executive agency's need for the services or property ordered is of such unusual urgency that providing the opportunity to all of those contractors would result in unacceptable delays in fulfilling that need;

(2) only one of those contractors is capable of providing the services or property required at the level of quality required because the services or property ordered are unique or highly specialized;

(3) the task or delivery order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task or delivery order already issued on a competitive basis; or

(4) it is necessary to place the order with a particular contractor to satisfy a minimum guarantee.

(d) ENHANCED COMPETITION FOR ORDERS IN EXCESS OF $5,000,000.-In the case of a task or delivery order in excess of $5,000,000, the requirement to provide all contractors a fair opportunity to be considered under subsection (c) is not met unless all such contractors are provided, at a minimum-

(1) a notice of the task or delivery order that includes a clear statement of the executive agency's requirements;

(2) a reasonable period of time to provide a proposal in response to the notice;

(3) disclosure of the significant factors and subfactors, including cost or price, that the executive agency expects to consider in evaluating such proposals, and their relative importance;

(4) in the case of an award that is to be made on a best value basis, a written statement documenting-

(A) the basis for the award; and

(B) the relative importance of quality and price or cost factors; and

(5) an opportunity for a post-award debriefing consistent with the requirements of section 3704 of this title.

(e) STATEMENT OF WORK.-A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.

(f) PROTESTS.-

(1) PROTEST NOT AUTHORIZED.-A protest is not authorized in connection with the issuance or

proposed issuance of a task or delivery order except for-

(A) a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued; or

(B) a protest of an order, including those awarded under the multiple awards schedule program of the General Services Administration referred to in section 152(3) of this title, ~~valued in excess of $10,000,000~~ valued in excess of $35,000,000.

(2) JURISDICTION OVER PROTESTS.-Notwithstanding section 3556 of title 31, the Comptroller General shall have exclusive jurisdiction of a protest authorized under paragraph (1)(B).

(g) TASK AND DELIVERY ORDER OMBUDSMAN.-

(1) APPOINTMENT OR DESIGNATION AND RESPONSIBILITIES.-The head of each executive agency who awards multiple task or delivery order contracts under section 4103(d)(1)(B) or 4105(f) of this title shall appoint or designate a task and delivery order ombudsman who shall be responsible for reviewing complaints from the contractors on those contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders when required under subsection (c).

(2) WHO IS ELIGIBLE.-The task and delivery order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the executive agency's advocate for competition.

SEC. ____. PROVIDING BEST VALUE THROUGH THE MULTIPLE AWARD SCHEDULE PROGRAM.

(a) COMPETITIVE PROCEDURES. — Section 152(3) of title 41, United States Code, is amended by—

(1) striking subparagraph (B); and

(2) inserting the following new subparagraph:

"(B) contracts and orders under such program result in the award of best value products and services for the Federal Government;".

(b) CONFORMING AMENDMENTS. — Section 3012(3) of title 10, United States Code, is amended by—

(1) striking subparagraph (B); and

(2) inserting the following new subparagraph:

"(B) contracts and orders under such program result in the award of best value products and services for the Federal Government;".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This legislative proposal would update the 1984 statutory standard for the U.S. General Services Administration (GSA) Multiple Award Schedule (MAS) program. Specifically, "lowest overall cost alternative" would be updated with a plain-language "best value" standard to provide clarity for acquisition stakeholders. "Best value," as defined by the Federal Acquisition Regulation (FAR) 2.101, "means the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement."

The current "lowest overall cost alternative" standard is sometimes inaccurately equated with "lowest price." Plainly, "price" is simply the price, but "lowest overall cost alternative" includes consideration of price as well as administrative costs, etc. The proposed amendments would provide clarity for federal agencies and industry and align with Congressional mandates for acquisition to place less emphasis on price and more emphasis on best value. "Best value"

also reflects the current realities of how ordering activities use the GSA MAS program per its ordering procedures in the FAR.[30] Putting the GSA MAS program on a level playing field with other acquisition procedures would expand opportunities for small businesses in the GSA MAS program, increase competition, and help GSA better fulfill public policy objectives that contribute to the price of a product or service, particularly in terms of supply chain risk management.

Background

GSA's MAS program is the Government's most-used contracting vehicle for acquiring commercial products and services. It offers federal agencies a simplified process for acquiring over 28 million commercial products and services offered by more than 14,000 contractors, over 80% of which are small businesses. It accounted for more than 6 percent of all federal contract dollars, with $51 billion spent through the program in fiscal year 2024.[31]

GSA awards contracts with five-year base terms and multiple option periods that can extend a contract for up to 20 years under the GSA MAS program. It establishes the terms and conditions, which include approved products and services, relevant contract clauses and provisions, and ceiling prices. Federal agencies and other eligible users place orders directly with the contractors in accordance with the streamlined competitive procedures at FAR subpart 8.4.

The Competition in Contracting Act of 1984 ("CICA") established competitive procedures that continue to serve as the bedrock of the Federal Acquisition System. CICA stipulated that the GSA MAS program satisfies those competition requirements if—

> (A) participation in the program has been open to all responsible sources; and
> (B) orders and contracts under those procedures result in the lowest overall cost alternative to meet the needs of the Federal Government.[32]

The "lowest overall cost alternative" standard applies to "orders and contracts," which includes the GSA MAS contracts between GSA and the contractor and subsequent orders placed by agencies against those contracts.

Outdated Emphasis on Price

When CICA was enacted in 1984, the GSA MAS program was centered on products, often built to federal specifications, so a product's price was usually its differentiating factor and, accordingly, GSA MAS procedures that implemented CICA were geared toward capturing a contractor's lowest price. The modern acquisition system, built on the foundation laid by CICA, evolved over nearly four decades through further statutory reform, such as the Federal

[30] *See* FAR 8.404(d).

[31] GSA has delegated authority to procure medical supplies to the Department of Veterans Affairs (VA) under the VA Federal Supply Schedules Program. The figures in this proposal do not include the VA program.

[32] 41 U.S.C. 152(3).

Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103-355) and the resulting procedures in FAR part 12, which aim to "establish policies more closely resembling those of the commercial marketplace." Additionally, Congress began to place less emphasis on price, where appropriate, and emphasize, for example, "best value" as the Government's preferred acquisition objective.[33]

In 2016, GSA launched the Transactional Data Reporting (TDR) pilot as an alternative way of ensuring GSA MAS contracts result in the "lowest overall cost alternative." The TDR pilot requires participating contractors to report transactional data (such as prices paid) from GSA MAS orders instead of complying with the legacy pricing requirements. To date, the TDR pilot has resulted in better prices, lower reporting burdens, and more robust small business participation.

However, GSA's MAS pricing procedures are its most burdensome information collections under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.), with public reporting costs estimated to be a combined $130 million a year as of 2022.[34] GSA MAS contractors claim that these requirements increase their administrative costs, which leads them to charge the Government higher prices. Burdensome pricing procedures—the legacy pricing procedures in particular—also pose a barrier to entry for small businesses to the federal marketplace and can hinder GSA's ability to add new products and services to GSA MAS when agencies need them. Finally, contractors also single out the legacy procedures as among the most complicated and burdensome requirements in federal contracting.

Order-level Competition

GSA MAS contracts are awarded to responsible sources and the orders against them are placed in a highly competitive environment guided by regulatory ordering procedures and fueled by a suite of e-tools that connect buyers and sellers. It is at the order level where agencies customize acquisition strategies to meet their specific mission needs and objectives, such as how buyers define how the product or service will be used, set an appropriate small business usage strategy, identify necessary cybersecurity measures, set delivery timeframes, and customize other technical requirements. GSA's efforts at the contract-level ensure that buyers are getting a fair and reasonable price, but order-level competition is where the Government gets its best value.

Delivering Best Value

GSA is already working within the existing statutory framework to ensure that the GSA MAS program provides best value products and services. However, the anachronistic "lowest

[33] Examples include sections 813, 814, and 892 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114-328) and sections 822, 832, 882, and 1002 of the FY 2018 NDAA (Pub. L. 115-91).

[34] As part of the most recent Office of Management and Budget (OMB) approvals for the information collections associated with the legacy pricing procedures (OMB control number 3090-0235; 77 FR 15370) and TDR pilot (OMB control number 3090-0306; 87 FR 51418) in 2022, GSA estimated the annual reporting burdens to be $117.8 million for the legacy pricing procedures and $13.3 million for the TDR pilot. This information collection approval expires on 1/31/2026.

overall cost alternative" standard, and varying interpretations of its meaning, are limiting the Government's ability to fully embrace 21st century practices that align with recent Congressional action. Even the FAR, which in section 1.102(a) states the "vision for the Federal Acquisition System is to deliver on a timely basis the *best value* product or service to the customer…" [emphasis added], communicates a more muddled message for GSA MAS orders by requiring them to result in "best value" and be the "lowest overall cost alternative."(FAR 8.404(d)).

The proposed amendments would improve GSA's ability to better leverage modern technology, such as data analytics and artificial intelligence, and provide more value to its customers while reducing administrative burdens for itself and its contractors. They would allow the GSA to manage the program holistically, prioritizing activities at the contract level that best support agencies at the order level.

Budget Implications: The proposal only addresses procurement processes and not amounts appropriated for the procurement of items or services.

Resubmission Information: This proposal was previously submitted for consideration by the 118th Congress.

Changes to Existing Law: This proposal would amend section 3012(3)(B) of title 10, United States Code and section 152(3) of title 41, United States Code. Existing law proposed to be omitted is shown with ~~strikethrough~~ markings, new matter is underlined, and existing law in which no change is proposed is shown in roman:

TITLE 10, UNITED STATES CODE

* * * * *

§3012. Competitive procedures

In this part, the term "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—

(1) procurement of architectural or engineering services conducted in accordance with chapter 11 of title 40;

(2) the competitive selection for award of science and technology proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of such proposals;

(3) the procedures established by the Administrator of General Services for the multiple award 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 program result in the lowest overall cost alternative to meet the needs of the United States;~~

(B) contracts and orders under such program result in the award of best value products and services for the Federal Government;

TITLE 41, UNITED STATES CODE

* * * * *

§152. Competitive procedures

In division C, the term "competitive procedures" means procedures under which an executive agency enters into a contract pursuant to full and open competition. The term also includes—

(1) procurement of architectural or engineering services conducted in accordance with chapter 11 of title 40;

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

(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 those procedures result in the lowest overall cost alternative to meet the needs of the Federal Government;~~

(B) contracts and orders under such program result in the award of best value products and services for the Federal Government;

(4) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for those procurements are permitted to compete; and

(5) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of that Act (15 U.S.C. 638).

SEC. ____. REVISION TO THE MANDATORY USE OF THE COST ACCOUNTING STANDARDS

(a) MANDATORY USE OF STANDARDS – Paragraph (1) of section 1502(b) of title 41, United States Code, is amended –-

(1) In subparagraph (B) by striking "the amount set forth in section 3702(a)(1)(A) of title 10 as the amount is adjusted in accordance with applicable requirements of law" and inserting "or equal to $35 million"; and

(2) In subparagraph (C)—

(A) by adding "or" at the end of clause (ii);

(B) by striking "; or" at the end of clause (iii) and inserting a period; and

(C) by striking clause "(iv) a contract or subcontract with a value of less than $7,500,000 if, when the contract or subcontract is entered into, the segment of the contractor or subcontractor that will perform the work has not been awarded at least one contract or subcontract with a value of more than $7,500,000 that is covered by the standards."

(b) EFFECTIVE DATE. – The amendments made by this section shall take effect upon enactment

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would modify 41 U.S.C. § 1502 to decouple the monetary threshold for Cost Accounting Standards (CAS) applicability from the monetary threshold for Truth in Negotiations Act (TINA) applicability set forth at 10 U.S.C. § 3702(a)(1)(A) and increase the basic threshold for CAS applicability from $2 million to $35 million. The proposal would also eliminate the trigger contract exemption. This exemption currently provides relief from CAS coverage for federal contractors who receive contract awards of $2 million or greater but do not receive at least one contract during the fiscal year over the trigger amount, which is currently $7.5 million. By establishing a basic monetary threshold above the current trigger threshold amount, a trigger would no longer be necessary.

Currently, there are four monetary thresholds that establish the nature and extent of CAS coverage: (i) the basic applicability threshold for CAS coverage, which is currently tied to the TINA threshold, which is $2 million; (ii) the $7.5 million trigger contract threshold; (iii) the $50-million threshold for full-CAS coverage (contracts below this threshold are subject to "modified" CAS coverage requiring compliance with just four of the 19 standards); and (iv) the $50 million threshold for requiring a disclosure statement (explaining the entity's accounting practices and changes the entity has made to such practices while it holds CAS-covered contracts).

Except for the first threshold, which was adjusted in 2018 when Congress raised the TINA threshold, the CAS thresholds have remained unchanged for over two decades. The current threshold amounts are largely based on an assessment performed by the Government Accountability Office (GAO) which conducted a comprehensive review of CAS and its program requirements in the late 1990s. In proposing the amounts that Congress subsequently adopted, GAO sought to strike a balance between the probable costs and benefits received from implementing CAS. In making its assessment, GAO expressly acknowledged that some companies would not enter the federal market if the resulting contract was to be CAS-covered.

In 2018, the Advisory Panel on Streamlining and Codifying Acquisition Regulations (Section 809 Panel) issued a report on CAS that included recommended adjustments to the CAS thresholds. Specifically, the Panel proposed to decouple the CAS and TINA thresholds, raise the basic threshold from $2 million to $25 million, eliminate the trigger contract, and raise the thresholds for full-CAS coverage and disclosure statements to $100 million. The Panel projected that these proposed changes would substantially reduce the number of CAS-covered business segments while maintaining coverage for the vast majority of dollars covered by CAS under the existing thresholds.

The Administration agrees with the Panel's recommendations and believes action by Congress would help reduce the barrier to entry created by CAS while still protecting the tax payer's interest on the highest risk contracts. TINA and CAS serve different purposes. TINA seeks to provide taxpayer protections for cost-based contracts that have not had the benefit of adequate price competition by requiring contractors to certify that the data on which the contract price has been negotiated is accurate, current and complete at the time of settlement on a single contract. While CAS also addresses cost-based contracts, its requirements are systemic in nature, not transactional. The benefits CAS provide come with a greater compliance burden and a learning curve for new entrants seeking to provide disruptive technology developed through private investment. These challenges have deterred some commercial companies from doing business with the Federal Government and created sizeable barriers to entry.

The proposal increases the basic threshold to $35 million (which reflects the Panel's recommendation adjusted for inflation from 2018 to 2025 with additional rounding) and eliminates the trigger contract threshold. These actions will reduce the barrier to entry into the federal marketplace and provide a simplified process for determining CAS applicability. The Administration estimates this increase would retain coverage on over 90 percent of the dollars but remove coverage to 51 percent of entities. The Administration is currently assessing the thresholds for full-CAS coverage and disclosure statements which do not require statutory changes to implement.

Budget Implications: The proposal only addresses procurement processes and not amounts appropriated for the procurement of items or services.

Changes to Existing Law: This proposal would make the following changes to chapter 15 of title 41 of the United States Code:

TITLE 41 – PUBLIC CONTRACTS

CHAPTER 15 – COST ACCOUNTING STANDARDS

§ 1502. COST ACCOUNTING STANDARDS

(a) AUTHORITY.—

(1) COST ACCOUNTING STANDARDS BOARD.—The Cost Accounting Standards Board has exclusive authority to prescribe, amend, and rescind cost accounting standards, and interpretations of the standards, designed to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation of costs to contracts with the Federal Government.

(2) ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY.—The Administrator, after consultation with the Board, shall prescribe rules and procedures governing actions of the Board under this chapter. The rules and procedures shall require that any action to prescribe, amend, or rescind a standard or interpretation be approved by majority vote of the Board.

(b) MANDATORY USE OF STANDARDS.—

(1) SUBCONRACT.—

(A) DEFINITION.— In this paragraph, the term "subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(B) WHEN STANDARDS ARE TO BE USED.— Cost accounting standards prescribed under this chapter are mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with the pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the Federal Government in excess of ~~the amount set forth in section 3702(a)(1)(A) of title 10 as the amount is adjusted in accordance with applicable requirements of law~~ or equal to $35 million.

(C) NONAPPLICATION OF STANDARDS.— Subparagraph (B) does not apply to—

(i) a contract or subcontract for the acquisition of a commercial product or commercial service;

(ii) a contract or subcontract where the price negotiated is based on a price set by law or regulation; or

~~(iii)~~ a firm, fixed-price contract or subcontract awarded on the basis of adequate price competition without submission of certified cost or pricing data~~; or.~~

~~(iv) a contract or subcontract with a value of less than $7,500,000 if, when the contract or subcontract is entered into, the segment of the contractor or subcontractor that will perform the work has not been awarded at least one contract or subcontract with a value of more than $7,500,000 that is covered by the standards.~~

(2) EXEMPTIONS AND WAIVERS BY BOARD.— The Board may--

(A) exempt classes of contractors and subcontractors from the requirements of this chapter; and

(B) establish procedures for the waiver of the requirements of this chapter for individual contracts and subcontracts.

(3) WAIVER BY HEAD OF EXECUTIVE AGENCY.—

(A) IN GENERAL—The head of an executive agency may waive the applicability of the cost accounting standards for a contract or subcontract with a value of less than $100,000,000 if that official determines in writing that the segment of the contractor or subcontractor that will perform the work--

(i) is primarily engaged in the sale of commercial products or commercial services; and

(ii) would not otherwise be subject to the cost accounting standards under this section.

(B) IN EXCEPTIONAL CIRCUMSTANCES.— The head of an executive agency may waive the applicability of the cost accounting standards for a contract or subcontract under exceptional circumstances when necessary to meet the needs of the agency. A determination to waive the applicability of the standards under this subparagraph shall be set forth in writing and shall include a statement of the circumstances justifying the waiver.

(C) RESTRICTION ON DELEGATION OF AUTHORITY.— The head of an executive agency may not delegate the authority under subparagraph (A) or (B) to an official in the executive agency below the senior policymaking level in the executive agency.

(D) CONTENTS OF FEDERAL ACQUISITION REGULATION.— The Federal Acquisition Regulation shall include--

(i) criteria for selecting an official to be delegated authority to grant waivers under subparagraph (A) or (B); and

(ii) the specific circumstances under which the waiver may be granted.

(E) REPORT.— The head of each executive agency shall report the waivers granted under subparagraphs (A) and (B) for that agency to the Board on an annual basis.

(c) REQUIRED BOARD ACTION FOR PRESCRIBING STANDARDS AND INTERPRETATIONS.— Before prescribing cost accounting standards and interpretations, the Board shall--

(1) take into account, after consultation and discussions with the Comptroller General, professional accounting organizations, contractors, and other interested parties--

(A) the probable costs of implementation, including any inflationary effects, compared to the probable benefits;

(B) the advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contracts; and

(C) the scope of, and alternatives available to, the action proposed to be taken;

(2) prepare and publish a report in the Federal Register on the issues reviewed under paragraph (1);

(3) (A) publish an advanced notice of proposed rulemaking in the Federal Register to solicit comments on the report prepared under paragraph (2);

(B) provide all parties affected at least 60 days after publication to submit their views and comments; and

(C) during the 60-day period, consult with the Comptroller General and consider any recommendation the Comptroller General may make; and

(4) publish a notice of proposed rulemaking in the Federal Register and provide all parties affected at least 60 days after publication to submit their views and comments.

(d) EFFECTIVE DATES.— Rules, regulations, cost accounting standards, and modifications thereof prescribed or amended under this chapter shall have the full force and effect of law, and shall become effective within 120 days after publication in the Federal Register in final form, unless the Board determines that a longer period is necessary. The Board shall determine implementation dates for contractors and subcontractors. The dates may not be later than the beginning of the second fiscal year of the contractor or subcontractor after the standard becomes effective.

(e) ACCOMPANYING MATERIAL—Rules, regulations, cost accounting standards, and modifications thereof prescribed or amended under this chapter shall be accompanied by prefatory comments and by illustrations, if necessary.

(f) IMPLEMENTING REGULATIONS.— The Board shall prescribe regulations for the implementation of cost accounting standards prescribed or interpreted under this section. The regulations shall be incorporated into the Federal Acquisition Regulation and shall require contractors and subcontractors as a condition of contracting with the Federal Government to--

(1) disclose in writing their cost accounting practices, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs; and

(2) agree to a contract price adjustment, with interest, for any increased costs paid to the contractor or subcontractor by the Federal Government because of a change in the contractor's or subcontractor's cost accounting practices or a failure by the contractor or subcontractor to comply with applicable cost accounting standards.

(g) NONAPPLICATION OF CERTAIN SECTIONS OF TITLE 5.-- Functions exercised under this chapter are not subject to sections 551, 553 to 559, and 701 to 706 of title 5.

SEC. ____. REPEAL OF EXECUTIVE COMPENSATION REPORTING.

The Government Funding Transparency Act of 2008 (Public Law 110-252, title VI, chapter 2 (Sec. 6201, 6202); 122 Stat. 2387) is repealed.

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal aims to repeal the executive compensation reporting requirements implemented in section 2(b)(1) of the Federal Funding Accountability and Transparency Act (Public Law 109–282; 31 U.S.C. 6101 note) by chapter 2 of title VI of the Supplemental Appropriations Act, 2008, also known as the Government Funding Transparency Act of 2008. This provision, which requires awardees of Federal contracts and grants to report the names and total compensation of their five most highly compensated officers, has provided no utility while imposing an administrative burden on organizations that is passed on to the Government in the form of higher prices.

Background

The Government Funding Transparency Act of 2008 amended Section 2(b)(1) of the Federal Funding Accountability and Transparency Act of 2006 (FFATA) to require awardees of Federal contracts and grants to report the names and total compensation of their five most highly compensated officers under three conditions:

1. The companies' Federal awards must equate to at least 80 percent of annual gross revenue;
2. Such awards must account for at least $25 million in annual gross revenue; and
3. The public information on executive compensation is not available through other channels, such as reports required by the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.[35]

These statutory requirements were subsequently implemented in the Federal Acquisition Regulation (FAR) and 2 CFR part 170. When the FAR interim rule was published in the Federal Register on July 8, 2010, it was perceived in 2010 as one that imposes burdens without producing any real benefit to the Government or taxpayer.[36] Numerous public comments reflected objection to the reporting of total compensation, on several grounds, including such information having no practical utility and the same data already being reported through other means. Since then, public comments on the information collection renewals under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.) have repeated these concerns and noted executive compensation reporting is a deterrent for organizations to work with the Federal

[35] Pub. L. 109-282; 31 U.S.C. 6101 note

[36] 75 FR 39414

Government because of the administrative burden and sensitive nature of the information being collected.[37]

Following the finalization of the FAR requirements in 2012, the U.S. Government Accountability Office (GAO) noted that the consistency and validity of the executive compensation data is unable to be tested "because agencies frequently do not maintain records to verify the information reported by the awardees."[38] However, the statute does not require a verification mechanism for the information provided by contractors and the FAR does not require agencies to review data for which it would not normally have supporting information, such as the executive compensation information.

In addition to the problem noted by GAO, executive compensation information has limited usage due to the absence of any requirement to consider the information for future actions; e.g., the FAR does not include a requirement that agencies consider the executive compensation information in source selection for future contract actions. As such, it can be inferred that the Government is funding, either directly or indirectly, an estimated 266,169 annual responses by contractors to fulfill a Government need that does not, on a practical level, even exist.[39] And this does not even include the estimated 536,394 annual responses by grantees.

Recommendation

This legislative proposal would eliminate executive compensation reporting requirements. This information has not proven to be useful in the 16 years since the requirement was enacted, while repealing it would:

- Decrease the risk of sharing competition-sensitive data;
- Lower the cost of doing business with the Government;
- Promote competition by removing a disincentive for Government contractors; and
- Eliminate the need for the Government to maintain database information that is not useful to acquisition professionals.

Budget Implications: The proposal only addresses procurement processes and financial management processes for grants and other forms of assistance, not amounts appropriated for the procurement of items or services or financial assistance.

---

[37] The Office of Management and Budget (OMB) has approved two information collections in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.) to facilitate FFATA reporting requirements, including executive compensation reporting. The information collection under OMB control number 9000-0177 is for contractors and first-tier subcontractors, while the information collection under OMB control number 3090-0292 is for subaward data.

[38] GAO-14-476, Data Transparency: Oversight Needed to Address Underreporting and Inconsistencies on Federal Award Website, June 2014.

[39] The two information collections related to FFATA reporting requirements were last approved by OMB in September 2024. The Government reported 266,169 responses for the information collection associated with OMB control number 9000-0177 and 536,394 responses for subaward reports required under the information collection associated with OMB control number 3090-0292.

Resubmission Information: This is the first time this proposal has been submitted.

Changes to Existing Law: This proposal would repeal chapter 2 of title VI of the Supplemental Appropriations Act, 2008, also known as the Government Funding Transparency Act of 2008 (Public Law 110-252; 122 Stat. 2387). Existing law proposed to be omitted is shown with ~~strikethrough~~ markings, new matter is underlined, and existing law in which no change is proposed is shown in roman:

~~**CHAPTER 2—GOVERNMENT FUNDING TRANSPARENCY**~~

~~SHORT TITLE~~

~~SEC. 6201. This chapter may be cited as the ''Government Funding Transparency Act of 2008''.~~

~~FINANCIAL DISCLOSURE REQUIREMENTS FOR CERTAIN RECIPIENTS OF FEDERAL AWARDS~~

~~SEC. 6202. (a) DISCLOSURE REQUIREMENTS.—Section 2(b)(1) of the Federal Funding Accountability and Transparency Act (Public Law 109–282; 31 U.S.C. 6101 note) is amended—~~

~~(1) by striking ''and'' at the end of subparagraph (E);~~

~~(2) by redesignating subparagraph (F) as subparagraph (G); and~~

~~(3) by inserting after subparagraph (E) the following new subparagraph:~~

~~''(F) the names and total compensation of the five most highly compensated officers of the entity if—~~

~~''(i) the entity in the preceding fiscal year received—~~

~~''(I) 80 percent or more of its annual gross revenues in Federal awards; and~~

~~''(II) $25,000,000 or more in annual gross revenues from Federal awards; and~~

~~''(ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.''.~~

~~(b) REGULATIONS REQUIRED.—The Director of the Office of Management and Budget shall promulgate regulations to implement the amendment made by this chapter. Such regulations shall include a definition of ''total compensation'' that is consistent with regulations of the Securities and Exchange Commission at section 402 of part 229 of title 17 of the Code of Federal Regulations (or any subsequent regulation).~~

SEC.___. SERVICE CONTRACT INVENTORY BURDEN REDUCTION

Section 743 of Division C, Title VII, of the FY 2010 Consolidated Appropriations Act, Pub. L. 111-117 (31 U.S.C. 501 note), as amended by Pub. L. 112-74, Div. C, Title VII, § 740, is amended by –

(a) revising subsection (c) to read as follows:

"(c) Publication.-Not later than 30 days after the date on which the inventory under subsection (a)(3) is required to be submitted to the Office of Management and Budget, the head of each executive agency shall make the inventory available to the public.";

(b) striking subsections (d) and (f); and

(c) redesignating subsections (e), (g), (h), and (i) as subsections (d), (e), (f), and (g), respectively.

Section-by-Section Analysis

This proposal strikes two annual reporting requirements from P.L. 111-117, which addresses the development of inventories of service contracts. As required by statute, covered agencies collect data for the service contract inventory annually, Typically, the inventory lists approximately 80,000 service contracts with a value of $150,000 or more. The inventory includes a description of the service, vendor name, total value, amount invoiced, labor hours, place of performance and several other attributes for each contract. At the end of a reporting cycle, GSA consolidates the information into a single database. After OMB review, the inventory is posted on www.acquisition.gov for public use.

Covered agencies are separately required to report their service contracts and ensure contractors are being used appropriately. If contractors are found to be performing inherently governmental work, the agency is expected to convert positions, i.e. rebalance the workforce. The reports are sent to OMB and, after review, are posted on agency public websites.

The data collected from contractors for the inventory on labor costs, such as the amount invoiced and the labor hours performed, has shown the potential to be useful as one potential flag of inefficiency in analyses of government spending that could lead to cost savings. For example, an agency could compare the labor costs incurred under its contract to the average for other service contracts for similar work. If the rates appear to be significantly higher than average, the agency could take a closer look to determine if there is a reasonable explanation or if more analysis is required to determine if renegotiation should be considered.

By contrast, little value has been shown by requiring agencies to annually analyze

whether contracted work should be considered for insourcing. Over the years, only a small number of conversions have been reported. Typically, an agency analysis states that their review of service contracts did not surface any concerns requiring a rebalancing of the workforce performing the work.

Since approximately 55 agencies participate in the process annually, the resources expended on creating, reviewing and releasing the reports to identify the potential need to insource is significant. The legal requirement is being fulfilled, but the government is not receiving value for time and effort invested. Additionally, the FAR contains guidance to agencies on steps to be taken prior to contract award to ensure contractors are not performing inherently governmental functions. Eliminating the annual agency reporting requirement on insourcing will allow agencies to increase their focus on working with their contractors to improve data quality that can help agencies more efficiently identify opportunities for cost savings.

Resource Information: This proposal has no impact on the use of resources requested within the FY26 President's Budget.

Resubmission Information: This proposal is being submitted for the first time.

Component Subject Matter Expert: Jim Wade, Policy Analyst, OFPP

Reviewing Legal Counsel:

Reviewing Comptroller POC:

Component Contact for OMB:

Changes to Existing Law: This proposal would amend 31 USC 501 note as follows:

SERVICE CONTRACT INVENTORY

Pub. L. 111–117, div. C, title VII, §743, Dec. 16, 2009, 123 Stat. 3216 , as amended by Pub. L. 112–74, div. C, title VII, §740, Dec. 23, 2011, 125 Stat. 939 , provided that:

"(a) Service Contract Inventory Requirement.-

"(1) Guidance.-Not later than March 1, 2010, the Director of the Office of Management and Budget shall develop and disseminate guidance to aid executive agencies in establishing systems for the collection of information required to meet the requirements of this section and to ensure consistency of inventories across agencies.

"(2) Report.-Not later than July 31, 2010, the Director of the Office of Management and Budget shall submit a report to Congress on the status of efforts to enable executive agencies to prepare the inventories required under paragraph (3), including the development, as appropriate, of guidance, methodologies, and technical tools.

"(3) Inventory contents.-Not later than December 31, 2010, and annually thereafter, the head of each executive agency required to submit an inventory in accordance with the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270; 31 U.S.C. 501 note), other

than the Department of Defense, shall submit to the Office of Management and Budget an annual inventory of service contracts awarded or extended through the exercise of an option, and task orders issued under any such contract, on or after April 1, 2010, for or on behalf of such agency. For each service contract, the entry for an inventory under this section shall include, for the preceding fiscal year, the following:

"(A) A description of the services purchased by the executive agency and the role the services played in achieving agency objectives, regardless of whether such a purchase was made through a contract or task order.
"(B) The organizational component of the executive agency administering the contract, and the organizational component of the agency whose requirements are being met through contractor performance of the service.
"(C) The total dollar amount obligated for services under the contract and the funding source for the contract.
"(D) The total dollar amount invoiced for services under the contract.
"(E) The contract type and date of award.
"(F) The name of the contractor and place of performance.
"(G) The number and work location of contractor and subcontractor employees, expressed as full-time equivalents for direct labor, compensated under the contract.
"(H) Whether the contract is a personal services contract.
"(I) Whether the contract was awarded on a noncompetitive basis, regardless of date of award.

"(b) Form.-Reports required under this section shall be submitted in unclassified form, but may include a classified annex.

"(c) Publication.-Not later than 30 days after the date on which the inventory under subsection (a)(3) is required to be submitted to the Office of Management and Budget, the head of each executive agency shall-

~~"(1)~~ make the inventory available to the public~~; and~~

~~"(2) publish in the Federal Register a notice that the inventory is available to the public.~~

~~"(d) Government-wide Inventory Report.-Not later than 90 days after the deadline for submitting inventories under subsection (a)(3), and annually thereafter, the Director of the Office of Management and Budget shall submit to Congress and make publicly available on the Office of Management and Budget website a report on the inventories submitted. The report shall identify whether each agency required to submit an inventory under subsection (a)(3) has met such requirement and summarize the information submitted by each executive agency required to have a Chief Financial Officer pursuant to section 901 of title 31, United States Code.~~

"(d~~e~~) Review and Planning Requirements.-Not later than 180 days after the deadline for submitting inventories under subsection (a)(3) for an executive agency, the head of the executive agency, or an official designated by the agency head shall-

"(1) review the contracts and information in the inventory;

"(2) ensure that-

"(A) each contract in the inventory that is a personal services contract has been entered into, and is being performed, in accordance with applicable laws and regulations;
"(B) the agency is giving special management attention to functions that are closely associated with inherently governmental functions;
"(C) the agency is not using contractor employees to perform inherently governmental functions;
"(D) the agency has specific safeguards and monitoring systems in place to ensure that work being performed by contractors has not changed or expanded during performance to become an inherently governmental function;
"(E) the agency is not using contractor employees to perform critical functions in such a way that could affect the ability of the agency to maintain control of its mission and operations; and
"(F) there are sufficient internal agency resources to manage and oversee contracts effectively;

"(3) identify contracts that have been poorly performed, as determined by a contracting officer, because of excessive costs or inferior quality; and

"(4) identify contracts that should be considered for conversion to-

"(A) performance by Federal employees of the executive agency in accordance with agency insourcing guidelines required under section 736 of the Financial Services and General Government Appropriations Act, 2009 (Public Law 111–8, division D) [amending provisions set out as a note below]; or
"(B) an alternative acquisition approach that would better enable the agency to efficiently utilize its assets and achieve its public mission.

~~"(f) Report on Actions Taken in Response to Annual Inventory.- Not later than one year after submitting an annual inventory under subsection (a)(3), the head of each executive agency submitting such an inventory shall submit to the Office of Management and Budget a report summarizing the actions taken pursuant to subsection (e), including any actions taken to consider and convert functions from contractor to Federal employee performance. The report shall be included as an attachment to the next annual inventory and made publicly available in accordance with subsection (c).~~

"(~~e~~g) Submission of Service Contract Inventory Before Public-private Competition.- Notwithstanding any other provision of law, beginning in fiscal year 2011, if an executive agency has not submitted to the Office of Management and Budget the inventory required under subsection (a)(3) for the prior fiscal year, the agency may not begin, plan for, or announce a study or public-private competition regarding the conversion to contractor performance of any function performed by Federal employees pursuant to Office of Management and Budget Circular A–76 or any other administrative regulation or directive until such time as the inventory is submitted for the prior fiscal year.

"(~~f~~h) GAO Reports on Implementation.-

"(1) Report on guidance.-Not later than 120 days after submission of the report by the Director of the Office of Management and Budget required under subsection (a)(2), the Comptroller General of the United States shall report on the guidance issued and actions taken by the Director. The report shall be submitted to the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate and the Committee on Oversight and Government Reform [now Committee on Oversight and Accountability] and the Committee on Appropriations of the House of Representatives.

"(2) Reports on inventories.-

"(A) Initial inventory.-Not later than September 30, 2011, the Comptroller General of the United States shall submit a report to the Committees named in the preceding paragraph on the initial implementation by executive agencies of the inventory requirement in subsection (a)(3) with respect to inventories required to be submitted by December 31, 2010.
"(B) Second inventory.-Not later than September 30, 2012, the Comptroller General shall submit a report to the same Committees on annual inventories required to be submitted by December 31, 2011.

"(3) Periodic briefings.-The Comptroller General shall provide periodic briefings, as may be requested by the Committees, on matters related to implementation of this section.

"(g~~i~~) Executive Agency Defined.-In this section, the term 'executive agency' has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 403) [see 41 U.S.C. 133]."

SEC.___. FEDERAL ACTIVITIES INVENTORY REFORM (FAIR) ACT BURDEN REDUCTION

Public Law 105-270 (31 U.S.C. 501 note), as amended by Pub. L. 108-271, § 8(b), and Pub. L. 109-115, Div. A, Title VIII, § 840, is amended—

(a) In Section 2—

(1) by amending subsection (a) to read as follows:

"(a) Lists Required.-Not later than the end of the third quarter of each fiscal year, the head of each executive agency shall submit to the Director of the Office of Management and Budget a list of activities performed by Federal Government sources for the executive agency that, in the judgment of the head of the executive agency, are not inherently governmental functions. The entry for an activity on the list shall include the number of full-time employees (or its equivalent) that are necessary for the performance of the activity by a Federal Government source.";

(2) in subsection (b), by inserting ", as needed" following the second occurrence of "fiscal year";

(3) by amending subsection (c) to read as follows:

"(c) Public Availability of Lists.-

"(1) Publication.-Upon the completion of the review and consultation regarding a list of an executive agency the head of the executive agency shall promptly make the list available to the public.

"(2) Changes.-If the list changes as a result of the resolution of a challenge under section 3, the head of the executive agency shall promptly make each such change

available to the public.";

(4) in subsection (d), by striking "after the date on which a notice of the public availability of a list is published under subsection (c)";

(b) In Section 3—

(1) in subsection (a), by striking "for which a notice of public availability has been published under section 2"; and

(2) by amending subsection (c) to read as follows:

"(c) Time for Submission.-A challenge to a list shall be submitted to the executive agency concerned within 30 days after such executive agency makes the list available to the public.".

Section-by-Section Analysis

The Federal Activities Inventory Reform (FAIR) Act of 1998 (Pub. L. 105-270, as amended, 31 U.S.C. 501 note) is amended by striking the annual requirements for (1) covered agencies to send a copy of their FAIR Act inventory to Congress; and (2) OMB to publish a summary of agency submissions in the Federal Register. The legislation is further amended by striking the requirement to include a data element in the inventory that is outdated, and streamlining another data collection requirement.

The FAIR Act requires covered agencies to submit an inventory of non-inherently governmental functions to OMB annually. OMB Circular A-76, Performance of Commercial Activities, provides covered agencies with instructions for preparing and submitting an inventory along with a coding system for classifying the functions. After OMB review, agencies transmit a copy of the inventory to Congress and post it on their public website. At the end of a reporting cycle, OMB publishes a summary in the Federal Register. Currently, approximately 55 agencies participate in the annual process.

The proposal requires covered agencies to prepare an inventory and make it available both on its website and on a centralized website with links to agency inventories managed by OMB, www.whitehouse.gov, but the requirement to send a copy to Congress would be eliminated along with the requirement for OMB to publish a summary in the Federal Register.

The proposal also modifies the inventory contents by eliminating the requirement for agencies to report the first year a function was included in the inventory and the name of a Federal Government employee who can provide additional information for each function. In many cases, the first year a function was included is not known. After 27 years, much of this information is not available or unreliable. Furthermore, GSA maintains a list of Department-level points of contact for each agency.

Finally, the proposal provides OMB with the discretion to conduct consultations with the agencies as needed, as opposed to mandating consultations in all cases.

Resource Information: This proposal has no impact on the use of resources requested within the FY26 President's Budget.

Resubmission Information: This proposal is being submitted for the first time.

Changes to Existing Law: This proposal would amend 31 USC 501 note as follows. Existing law proposed to be omitted is shown with ~~strikethrough~~ markings, new matter is underlined, and existing law in which no change is proposed is shown in roman:

FEDERAL ACTIVITIES INVENTORY REFORM

Pub. L. 105–270, Oct. 19, 1998, 112 Stat. 2382 , as amended by Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814 ; Pub. L. 109–115, div. A, title VIII, §840, Nov. 30, 2005, 119 Stat. 2505 , provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Federal Activities Inventory Reform Act of 1998'.

"SEC. 2. ANNUAL LISTS OF GOVERNMENT ACTIVITIES NOT INHERENTLY GOVERNMENTAL IN NATURE.

"(a) Lists Required.-Not later than the end of the third quarter of each fiscal year, the head of each executive agency shall submit to the Director of the Office of Management and Budget a list of activities performed by Federal Government sources for the executive agency that, in the judgment of the head of the executive agency, are not inherently governmental functions. The entry for an activity on the list shall include ~~the following:~~

~~"(1) The fiscal year for which the activity first appeared on a list prepared under this section.~~

~~"(2) The~~ the number of full-time employees (or its equivalent) that are necessary for the performance of the activity by a Federal Government source.

~~"(3) The name of a Federal Government employee responsible for the activity from whom additional information about the activity may be obtained.~~

"(b) OMB Review and Consultation.-The Director of the Office of Management and Budget shall review the executive agency's list for a fiscal year and consult with the head of the executive agency regarding the content of the final list for that fiscal year, as needed.

"(c) Public Availability of Lists.-

"(1) Publication.-Upon the completion of the review and consultation regarding a list of an executive agency-

"(A) the head of the executive agency shall promptly ~~transmit a copy of the list to Congress and~~ make the list available to the public.~~; and~~

~~"(B) the Director of the Office of Management and Budget shall promptly publish in the Federal Register a notice that the list is available to the public.~~

"(2) Changes.-If the list changes ~~after the publication of the notice~~ as a result of the resolution of a challenge under section 3, the head of the executive agency shall promptly-

"(A) make each such change available to the public. ~~and transmit a copy of the change to Congress; and~~

~~"(B) publish in the Federal Register a notice that the change is available to the public.~~

"(d) Competition Required.-Within a reasonable time ~~after the date on which a notice of the public availability of a list is published under subsection (c)~~, the head of the executive agency concerned shall review the activities on the list. Each time that the head of the executive agency considers contracting with a private sector source for the performance of such an activity, the head of the executive agency shall use a competitive process to select the source (except as may otherwise be provided in a law other than this Act, an Executive order, regulations, or any executive branch circular setting forth requirements or guidance that is issued by competent executive authority). The Director of the Office of Management and Budget shall issue guidance for the administration of this subsection.

"(e) Realistic and Fair Cost Comparisons.-For the purpose of determining whether to contract with a source in the private sector for the performance of an executive agency activity on the list on the basis of a comparison of the costs of procuring services from such a source with the costs of performing that activity by the executive agency, the head of the executive agency shall ensure that all costs (including the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs) are considered and that the costs considered are realistic and fair.

"SEC. 3. CHALLENGES TO THE LIST.

"(a) Challenge Authorized.-An interested party may submit to an executive agency a challenge of an omission of a particular activity from, or an inclusion of a particular activity on, a list. ~~for which a notice of public availability has been published under section 2.~~

"(b) Interested Party Defined.-For the purposes of this section, the term 'interested party', with respect to an activity referred to in subsection (a), means the following:

"(1) A private sector source that-

"(A) is an actual or prospective offeror for any contract, or other form of agreement, to perform the activity; and

"(B) has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source.

"(2) A representative of any business or professional association that includes within its membership private sector sources referred to in paragraph (1).

"(3) An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity.

"(4) The head of any labor organization referred to in section 7103(a)(4) of title 5, United States Code, that includes within its membership officers or employees of an organization referred to in paragraph (3).

"(c) Time for Submission.-A challenge to a list shall be submitted to the executive agency concerned within 30 days after such executive agencies make the list available to the public.~~the publication of the notice of the public availability of the list under section 2.~~

"(d) Initial Decision.-Within 28 days after an executive agency receives a challenge, an official designated by the head of the executive agency shall-

"(1) decide the challenge; and

"(2) transmit to the party submitting the challenge a written notification of the decision together with a discussion of the rationale for the decision and an explanation of the party's right to appeal under subsection (e).

"(e) Appeal.-

"(1) Authorization of appeal.-An interested party may appeal an adverse decision of the official to the head of the executive agency within 10 days after receiving a notification of the decision under subsection (d).

"(2) Decision on appeal.-Within 10 days after the head of an executive agency receives an appeal of a decision under paragraph (1), the head of the executive agency shall decide the appeal and transmit to the party submitting the appeal a written notification of the decision together with a discussion of the rationale for the decision.

"SEC. 4. APPLICABILITY.

"(a) Executive Agencies Covered.-Except as provided in subsection (b), this Act applies to the following executive agencies:

"(1) Executive department.-An executive department named in section 101 of title 5, United States Code.

"(2) Military department.-A military department named in section 102 of title 5, United States Code.

"(3) Independent establishment.-An independent establishment, as defined in section 104 of title 5, United States Code.

"(b) Exceptions.-This Act does not apply to or with respect to the following:

"(1) Government accountability office.-The Government Accountability Office.

"(2) Government corporation.-A Government corporation or a Government controlled corporation, as those terms are defined in section 103 of title 5, United States Code.

"(3) Nonappropriated funds instrumentality.-A part of a department or agency if all of the employees of that part of the department or agency are employees referred to in section 2105(c) of title 5, United States Code.

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

"(5) Executive agencies with fewer than 100 full-time employees as of the first day of the fiscal year. However, such an agency shall be subject to section 2 to the extent it plans to conduct a public-private competition for the performance of an activity that is not inherently governmental.

"SEC. 5. DEFINITIONS.

"In this Act:

"(1) Federal government source.-The term 'Federal Government source', with respect to performance of an activity, means any organization within an executive agency that uses Federal Government employees to perform the activity.

"(2) Inherently governmental function.-

"(A) Definition.-The term 'inherently governmental function' means a function that is so intimately related to the public interest as to require performance by Federal Government employees.

"(B) Functions included.-The term includes activities that require either the exercise of discretion in applying Federal Government authority or the making of value judgments in making decisions for the Federal Government, including judgments relating to monetary transactions and entitlements. An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as-

"(i) to bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

"(ii) to determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

"(iii) to significantly affect the life, liberty, or property of private persons;

"(iv) to commission, appoint, direct, or control officers or employees of

the United States; or

"(v) to exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

"(C) Functions excluded.-The term does not normally include-

"(i) gathering information for or providing advice, opinions, recommendations, or ideas to Federal Government officials; or

"(ii) any function that is primarily ministerial and internal in nature (such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services).

"SEC. 6. EFFECTIVE DATE.

"This Act shall take effect on October 1, 1998."

SEC.___. SUDAN WAIVERS REPORT TRANSFER

The Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174, §§ 1 to 12, as amended by Pub. L. 111-195, Title II, § 205(a)) (50 U.S.C. 1701 note) is amended–

(a) in Section 6, by amending paragraph (c)(2) to read as follows:

"(2) Reporting requirement.—If the President grants a waiver under paragraph (1), the agency for which a waiver was granted shall promptly submit to the appropriate congressional committees a report on the waiver.

Section-by-Section Analysis

The Sudan Accountability and Divestment Act of 2007 prohibits executive agencies from contracting with firms that conduct restricted business operations in Sudan. Section 6(c)(1) of the Act states that the President may waive the requirement on a case-by-case basis if the President determines and certifies, in writing to the appropriate congressional committees, that it is in the national interest to do so. If a waiver is needed, agencies submit requests through the Office of Federal Procurement Policy (OFPP). In accordance with Section 6(c)(2) of the Act, the OFPP Administrator must submit a semi-annual report on waivers granted to the appropriate congressional committees.

Currently, OFPP sends a survey to executive agencies every six months to collect information for a potential report to Congress. In response to the surveys, executive agencies have never reported any requests for waivers. Because waivers are so rare, there is limited value in central coordination of reporting to Congress. Therefore agencies should be directed to report individually if a waiver is granted. This more efficient approach to reporting will have no effect on transparency; nor will it affect restrictions imposed by the underlying statute.

Resource Information: This proposal has no impact on the use of resources requested within the FY26 President's Budget.

Resubmission Information: This proposal is being submitted for the first time.

Component Subject Matter Expert: Jim Wade, Policy Analyst, OFPP

Reviewing Legal Counsel:

Reviewing Comptroller POC:

Component Contact for OMB:

Changes to Existing Law: This proposal amends Section 6(c) of the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174, 50 U.S.C. 1701 note) as follows:

SUDAN ACCOUNTABILITY AND DIVESTMENT

Pub. L. 110–174, Dec. 31, 2007, 121 Stat. 2516 , as amended by Pub. L. 111–195, title II, §205(a), July 1, 2010, 124 Stat. 1344 , provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Sudan Accountability and Divestment Act of 2007'.

"SEC. 2. DEFINITIONS.

"In this Act:

"(1) Appropriate congressional committees.-The term 'appropriate congressional committees' means-

"(A) the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

"(B) the Committee on Financial Services, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives.

"(2) Business operations.-The term 'business operations' means engaging in commerce in any form in Sudan, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

"(3) Executive agency.-The term 'executive agency' has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 403) [see 41 U.S.C. 133].

"(4) Government of Sudan.-The term 'Government of Sudan'-

"(A) means the government in Khartoum, Sudan, which is led by the National Congress Party (formerly known as the National Islamic Front) or any successor government formed on or after October 13, 2006 (including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan); and

"(B) does not include the regional government of southern Sudan.

"(5) Marginalized populations of Sudan.-The term 'marginalized populations of Sudan' refers to-

"(A) adversely affected groups in regions authorized to receive assistance under section 8(c) of the Darfur Peace and Accountability Act [of 2006] (Public Law 109–344; 50 U.S.C. 1701 note); and

"(B) marginalized areas in Northern Sudan described in section 4(9) of such Act.

"(6) Military equipment.-The term 'military equipment' means-

"(A) weapons, arms, military supplies, and equipment that readily may be used for military purposes, including radar systems or military-grade transport vehicles; or

"(B) supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

"(7) Mineral extraction activities.-The term 'mineral extraction activities' means exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc.

"(8) Oil-related activities.-

"(A) In general.-Except as provided in subparagraph (B), the term 'oil-related activities' means-

"(i) exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading oil; and

"(ii) constructing, maintaining, or operating a pipeline, refinery, or other oilfield infrastructure.

"(B) Exclusions.-A person shall not be considered to be involved in an oil-related activity if-

"(i) the person is involved in the retail sale of gasoline or related consumer products in Sudan but is not involved in any other activity described in subparagraph (A); or

"(ii) the person is involved in leasing, or owns, rights to an oil block in Sudan but is not involved in any other activity described in subparagraph (A).

"(9) Person.-The term 'person' means-

"(A) a natural person, corporation, company, business association, partnership, society, trust, any other nongovernmental entity, organization, or group;

"(B) any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3))); and

"(C) any successor, subunit, parent company or subsidiary of any entity described in subparagraph (A) or (B).

"(10) Power production activities.-The term 'power production activities' means any business operation that involves a project commissioned by the National Electricity Corporation of Sudan or other similar entity of the Government of Sudan whose purpose is to facilitate power generation and delivery, including establishing power-generating plants or hydroelectric dams, selling or installing components for the project, or providing service contracts related to the installation or maintenance of the project.

"(11) State.-The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(12) State or local government.-The term 'State or local government' includes-

"(A) any State and any agency or instrumentality thereof;

"(B) any local government within a State, and any agency or instrumentality thereof;

"(C) any other governmental instrumentality; and

"(D) any public institution of higher education within the meaning of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

"SEC. 3. AUTHORITY OF STATE AND LOCAL GOVERNMENTS TO DIVEST FROM CERTAIN COMPANIES DIRECTLY INVESTED IN CERTAIN SUDANESE SECTORS.

"(a) Sense of Congress.-It is the sense of Congress that the United States Government should support the decision of any State or local government to divest from, or to prohibit the investment of assets of the State or local government in, a person that the State or local government determines poses a financial or reputational risk.

"(b) Authority To Divest.-Notwithstanding any other provision of law, a State or local government may adopt and enforce measures that meet the requirements of subsection (e) to divest the assets of the State or local government from, or prohibit investment of the assets of the State or local government in, persons that the State or local government determines, using credible information available to the public, are conducting or have direct investments in business operations described in subsection (d).

"(c) Notice to Department of Justice.-Not later than 30 days after adopting a measure pursuant to subsection (b), a State or local government shall submit written notice to the Attorney General describing the measure.

"(d) Business Operations Described.-

"(1) In general.-Business operations described in this subsection are business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment.

"(2) Exceptions.-Business operations described in this subsection do not include business operations that the person conducting the business operations can demonstrate-

"(A) are conducted under contract directly and exclusively with the regional government of southern Sudan;

"(B) are conducted under a license from the Office of Foreign Assets Control, or are expressly exempted under Federal law from the requirement to be conducted under such a license;

"(C) consist of providing goods or services to marginalized populations of Sudan;

"(D) consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

"(E) consist of providing goods or services that are used only to promote health or education; or

"(F) have been voluntarily suspended.

"(e) Requirements.-Any measure taken by a State or local government under subsection (b) shall meet the following requirements:

"(1) Notice.-The State or local government shall provide written notice and an opportunity to comment in writing to each person to whom a measure is to be applied.

"(2) Timing.-The measure shall apply to a person not earlier than the date that is 90 days after the date on which written notice is provided to the person under paragraph (1).

"(3) Applicability.-The measure shall not apply to a person that demonstrates to the State or local government that the person does not conduct or have direct investments in business operations described in subsection (d).

"(4) Sense of congress on avoiding erroneous targeting.-It is the sense of Congress that a State or local government should not adopt a measure under subsection (b) with respect to a person unless the State or local government has made every effort to avoid erroneously targeting the person and has verified that the person conducts or has direct investments in business operations described in subsection (d).

"(f) Definitions.-In this section:

"(1) Investment.-The 'investment' of assets, with respect to a State or local government, includes-

"(A) a commitment or contribution of assets;

"(B) a loan or other extension of credit of assets; and

"(C) the entry into or renewal of a contract for goods or services.

"(2) Assets.-

"(A) In general.-Except as provided in subparagraph (B), the term 'assets' refers to public monies and includes any pension, retirement, annuity, or endowment fund, or similar instrument, that is controlled by a State or local government.

"(B) Exception.-The term 'assets' does not include employee benefit plans covered by title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

"(g) Nonpreemption.-A measure of a State or local government authorized under subsection (b) is not preempted by any Federal law or regulation.

"(h) Effective Date.-

"(1) In general.-Except as provided in paragraph (2), this section applies to measures adopted by a State or local government before, on, or after the date of the enactment of this Act [Dec. 31, 2007].

"(2) Notice requirements.-Subsections (c) and (e) apply to measures adopted by a State or local government on or after the date of the enactment of this Act.

"SEC. 4. SAFE HARBOR FOR CHANGES OF INVESTMENT POLICIES BY ASSET MANAGERS.

"(a) In General.-[Amended section 80a–13 of Title 15, Commerce and Trade]

"(b) SEC Regulations.-Not later than 120 days after the date of the enactment of this Act [Dec. 31, 2007], the Securities and Exchange Commission shall prescribe regulations, in the public interest and for the protection of investors, to require disclosure by each registered investment company that divests itself of securities in accordance with section 13(c) of the Investment Company Act of 1940 [15 U.S.C. 80a–13(c)]. Such rules shall require the disclosure to be included in the next periodic report filed with the Commission under section 30 of such Act (15 U.S.C. 80a–29) following such divestiture.

"SEC. 5. SENSE OF CONGRESS REGARDING CERTAIN ERISA PLAN INVESTMENTS.

"It is the sense of Congress that a fiduciary of an employee benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)), may divest plan assets from, or avoid investing plan assets in, any person the fiduciary determines is conducting or has direct investments in business operations in Sudan described in section 3(d) of this Act, without breaching the responsibilities, obligations, or duties imposed upon the fiduciary by subparagraph (A) or (B) of section 404(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)(1)), if-

"(1) the fiduciary makes such determination using credible information that is available to the public; and

"(2) the fiduciary prudently determines that the result of such divestment or avoidance of investment would not be expected to provide the employee benefit plan with-

"(A) a lower rate of return than alternative investments with commensurate degrees of risk; or

"(B) a higher degree of risk than alternative investments with commensurate rates of return.

"SEC. 6. PROHIBITION ON UNITED STATES GOVERNMENT CONTRACTS.

"(a) Certification Requirement.-The head of each executive agency shall ensure that each contract entered into by such executive agency for the procurement of goods or services includes a clause that requires the contractor to certify to the contracting officer that the contractor does not conduct business operations in Sudan described in section 3(d).

"(b) Remedies.-

"(1) In general.-The head of an executive agency may impose remedies as provided in this subsection if the head of the executive agency determines that the contractor has submitted a false certification under subsection (a) after the date the Federal Acquisition Regulation is amended under subsection (e) to implement the requirements of this section.

"(2) Termination.-The head of an executive agency may terminate a covered contract upon the determination of a false certification under paragraph (1).

"(3) Suspension and debarment.-The head of an executive agency may debar or suspend a contractor from eligibility for Federal contracts upon the determination of a false certification under paragraph (1). The debarment period may not exceed 3 years.

"(4) Inclusion on list of parties excluded from federal procurement and nonprocurement programs.-The Administrator of General Services shall include on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the Administrator under part 9 of the Federal Acquisition Regulation issued under section 25 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 421) [see 41 U.S.C. 1303] each contractor that is debarred, suspended, proposed for debarment or suspension, or declared ineligible by the head of an executive agency on the basis of a determination of a false certification under paragraph (1).

"(5) Rule of construction.-This section shall not be construed to limit the use of other remedies available to the head of an executive agency or any other official of the Federal Government on the basis of a determination of a false certification under paragraph (1).

"(c) Waiver.-

"(1) In general.-The President may waive the requirement of subsection (a) on a case-by-case basis if the President determines and certifies in writing to the appropriate congressional committees that it is in the national interest to do so.

"(2) Reporting requirement.-~~Not later than April 15, 2008, and semi-annually thereafter, the Administrator for Federal Procurement Policy shall submit to the appropriate congressional committees a report on waivers granted under paragraph (1).~~If the President grants a waiver under paragraph (1), the agency for which a waiver was granted shall promptly submit to the appropriate congressional committees a report on the waiver.

"(d) Implementation Through the Federal Acquisition Regulation.-Not later than 120 days after the date of the enactment of this Act [Dec. 31, 2007], the Federal Acquisition Regulatory Council shall amend the Federal Acquisition Regulation issued pursuant to section 25 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 421) [see 41 U.S.C. 1303] to provide for the implementation of the requirements of this section.

"(e) Report.-Not later than one year after the date the Federal Acquisition Regulation is amended under subsection (e) to implement the requirements of this section, the Administrator of General Services, with the assistance of other executive agencies, shall submit to the Office of Management and Budget and the appropriate congressional committees a report on the actions taken under this section.

"SEC. 7. SENSE OF CONGRESS ON EFFORTS BY OTHER COUNTRIES.

"It is the sense of Congress that the governments of all other countries should adopt measures, similar to those contained in this Act, to publicize the activities of all persons that, through their financial dealings, knowingly or unknowingly enable the Government of Sudan to continue to oppress and commit genocide against people in the Darfur region and other regions of Sudan, and to authorize divestment from, and the avoidance of further investment in, such persons.

"SEC. 8. SENSE OF CONGRESS ON PEACEKEEPING EFFORTS IN SUDAN.

"It is the sense of Congress that the President should-

"(1) continue to work with other members of the international community, including the Permanent Members of the United Nations Security Council, the African Union, the European Union, the Arab League, and the Government of Sudan to facilitate the urgent deployment of a peacekeeping force to Sudan; and

"(2) bring before the United Nations Security Council, and call for a vote on, a resolution requiring meaningful multilateral sanctions against the Government of Sudan in response to its acts of genocide against the people of Darfur and its continued refusal to allow the implementation of a peacekeeping force in Sudan.

"SEC. 9. SENSE OF CONGRESS ON THE INTERNATIONAL OBLIGATIONS OF THE UNITED STATES.

"It is the sense of Congress that nothing in this Act-

"(1) conflicts with the international obligations or commitments of the United States; or

"(2) affects article VI, clause 2, of the Constitution of the United States.

"SEC. 10. REPORTS ON SANCTIONS IN SUPPORT OF PEACE IN DARFUR.

"(a) In General.-The Secretary of State and the Secretary of the Treasury shall submit to the appropriate congressional committees a report assessing the effectiveness of sanctions imposed with respect to Sudan at the time the Secretary of State and the Secretary of the Treasury submits [sic] reports required under-

"(1) the Sudan Peace Act (Public Law 107–245; 50 U.S.C. 1701 note) [formerly set out as a note below];

"(2) the Comprehensive Peace in Sudan Act of 2004 (Public Law 108–497; 50 U.S.C. 1701 note) [formerly set out as a note below]; and

"(3) the Darfur Peace and Accountability Act of 2006 (Public Law 109–344; 50 U.S.C. 1701 note).

"(b) Additional Report by the Secretary of the Treasury.-The Secretary of the Treasury shall submit to the appropriate congressional committees a report assessing the effectiveness of sanctions imposed with respect to Sudan under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) at the time the President submits the reports required by section 204(c) of such Act (50 U.S.C. 1703(c)) with respect to Executive Order 13,067 [13067] (50 U.S.C. 1701 note; relating to blocking property of persons in connection with the conflict in Sudan's region of Darfur).

"(c) Contents.-The reports required by subsections (a) and (b) shall include-

"(1) a description of each sanction imposed under a law or executive order described in subsection (a) or (b);

"(2) the name of the person subject to the sanction, if any; and

"(3) whether or not the person subject to the sanction is also subject to sanctions imposed by the United Nations.

"SEC. 11. REPEAL OF REPORTING REQUIREMENT.

"Section 6305 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110–28; 121 Stat. 172) is repealed.

"SEC. 12. TERMINATION.

"The provisions of sections 3, 4, 5, 6, and 10 shall terminate 30 days after the date on which the President has certified to Congress that the Government of Sudan has honored its commitments to-

"(1) abide by United Nations Security Council Resolution 1769 (2007);

"(2) cease attacks on civilians;

"(3) demobilize and demilitarize the Janjaweed and associated militias;

"(4) grant free and unfettered access for delivery of humanitarian assistance; and

"(5) allow for the safe and voluntary return of refugees and internally displaced persons."