

SUBTITLE B-AMENDMENTS RELATING TO GENERAL CONTRACTING AUTHORITIES, PROCEDURES, AND LIMITATIONS

Enhanced competition requirements for task and delivery order contracts (sec. 821)

The committee recommends a provision that would: (1) require that task or delivery order contracts for or on behalf of the Department of Defense (DOD) in excess of \$100.0 million be awarded to multiple contractors, with certain exceptions; and (2) establish enhanced competition requirements (including requirements for debriefings and authorization of bid protests) for task or delivery orders in excess of \$5.0 million under such multiple award contracts.

At the committee's April 19, 2007 hearing on DOD's management of costs under the Logistics Civil Augmentation Program (LOGCAP) contract in Iraq, Senator Levin asked why the Army had waited 5 years to split the LOGCAP contract among multiple contractors, allowing for the competition of individual task orders. The Assistant Secretary of the Army for Acquisition, Technology, and Logistics responded: "I don't have a good answer for you." The provision recommended by the committee would ensure that future contracts of this type provide for the competition of task and delivery orders unless there is a compelling reason not to do so.

The committee notes that the enhanced task and delivery order competition requirements in the provision would implement the recommendations of the Acquisition Advisory Panel chartered pursuant to section 1423 of the National Defense Authorization Act for Fiscal Year 2004 ([Public Law 108-136](#)).

Clarification of rules regarding the procurement of commercial items (sec. 822)

The committee recommends a provision that would address recent Inspector General reports regarding the use of questionable commercial item designations to deny the Department of Defense information that it needs to determine price reasonableness for sole-source purchases. The provision would: (1) clarify the circumstances in which a subsystem, component, or spare part for a major weapon system may be purchased as a commercial item; (2) clarify that the terms "general public" and "nongovernmental entity" do not include federal, state, local or foreign governments, or contractors acting on behalf of such governments for the purpose of determining whether an item qualifies as a commercial item; and (3) require the contractor offering a major weapon system, subsystem, component, or spare part as a commercial item to provide information other

than certified cost or pricing data that is adequate for evaluating the reasonableness of the proposed price.

Clarification of rules regarding the procurement of commercial services (sec. 823)

The committee recommends a provision that would limit the use of time and materials contracts to purchase commercial services for or on behalf of the Department of Defense (DOD).

Time and materials contracts for commercial services are potentially subject to abuse because the limited information the Department receives under commercial contracts makes it very difficult to ensure that prices are fair and reasonable. Section 1432 of the National Defense Authorization Act for Fiscal Year 2004 ([Public Law 108-136](#)) authorized the following categories of commercial services to be purchased under time and materials contracts: (1) commercial services procured in support of a commercial item; and (2) any other category that is designated by the Administrator of the Office of Federal Procurement Policy (OFPP) based on a determination that the commercial services in such category are commonly sold to the general public through time and materials contracts and it is in the best interest of the Federal Government to use time and materials contracts for such purchases.

OFPP determined that "a few types of services are sold predominantly on a [time and materials] basis-specifically, emergency repair services." OFPP determined that other categories of commercial services are commonly sold to the general public on a time and materials basis only "when requirements are not sufficiently well understood to complete a well-defined scope of work and risk can be managed by maintaining surveillance of costs and contractor performance." OFPP did not determine that these circumstances commonly occur in sales to the general public. Nonetheless, a final rule was published in the December 12, 2006 Federal Register, designating "all categories of services (i.e., any service) as being available for acquisition on a [time and materials] basis."

The committee concludes that the December 12, 2006 rule exceeds the authority provided by Congress in section 1432. Accordingly, the provision recommended by the committee would authorize the purchase of only the following categories of commercial services under time and materials contracts: (1) services procured in support of commercial items; and (2) emergency repair services. Under the provision, other categories of services may be purchased under time and materials contracts for or on behalf of the Department of Defense only if such contracts are entered in accordance with

rules applicable to non-commercial items.

Modification of competition requirements for purchases from Federal Prison Industries (sec. 824)

The committee recommends a provision that would clarify the competition requirements for Department of Defense (DOD) purchases from Federal Prison Industries (FPI).

[Section 2410n of title 10](#), as added by section 811 of the National Defense Authorization Act for Fiscal Year 2002 ([Public Law 107-107](#)) and amended by section 819 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 ([Public Law 107-314](#)), gives DOD procurement officials discretion whether to purchase a product from FPI. If DOD officials conclude that an FPI product is not comparable to the best products available from the private sector in terms of price, quality, and time of delivery, the product may be purchased only on a competitive basis.

Despite the enactment of this legislation, FPI officials continue to argue that DOD is required to purchase FPI products on a sole-source basis. The provision recommended by the committee would clarify the competition requirements in [section 2410n](#) to ensure that DOD purchases from FPI are made on a competitive basis.

Five-year extension of authority to carry out certain prototype projects (sec. 825)

The committee recommends a provision that would extend for 5 years the authority to carry out transactions other than contracts and grants in accordance with section 845 of the National Defense Authorization Act for Fiscal Year 1994 ([Public Law 103-160](#)).

Multiyear procurement authority for electricity from renewable energy sources (sec. 826)

The committee recommends a provision that would authorize the Secretary of Defense to enter into contracts for a period not to exceed 10 years for the purchase of electricity from sources of renewable energy, as defined in section 203(b)(2) of the Energy Policy Act of 2005 ([42 U.S.C. 15852\(b\)\(2\)](#)).