

107TH CONGRESS
1ST SESSION

S. 1780

To provide increased flexibility Governmentwide for the procurement of property and services to facilitate the defense against terrorism, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2001

Mr. THOMPSON (for himself and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To provide increased flexibility Governmentwide for the procurement of property and services to facilitate the defense against terrorism, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Emergency
5 Procurement Flexibility Act of 2001”.

1 **SEC. 2. CONTRACTING FOR HUMANITARIAN OR PEACE-**
2 **KEEPING OPERATIONS AND CONTINGENCY**
3 **OPERATIONS.**

4 (a) INCREASED THRESHOLD FOR SIMPLIFIED ACQUI-
5 SITIONS.—Section 4(11) of the Office of Federal Procure-
6 ment Policy Act (41 U.S.C. 403(11)) is amended to read
7 as follows:

8 “(11)(A) Except as provided in subparagraph
9 (B), the term ‘simplified acquisition threshold’
10 means \$100,000.

11 “(B) The term ‘simplified acquisition threshold’
12 means an amount equal to five times the amount
13 specified in subparagraph (A) in the case of a con-
14 tract to be awarded and performed, or purchase to
15 be made, in support of—

16 “(i) a military operation (not including
17 routine training, force rotation, or stationing)
18 in support of the provision of humanitarian or
19 foreign disaster assistance or in support of a
20 peacekeeping operation under chapter VI or VII
21 of the Charter of the United Nations; or

22 “(ii) a contingency operation (as defined in
23 section 101(a)(13) of title 10, United States
24 Code).”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) FEDERAL PROPERTY AND ADMINISTRATIVE
2 SERVICES ACT OF 1949.—Section 309(d) of the Fed-
3 eral Property and Administrative Services Act of
4 1949 (41 U.S.C. 259(d)) is amended—

5 (A) in paragraph (1)—

6 (i) by striking “(1)”; and

7 (ii) by striking “, except that,” and all
8 that follows through “section 4 of such
9 Act”; and

10 (B) by striking paragraph (2).

11 (2) TITLE 10, UNITED STATES CODE.—Section
12 2302(7) of title 10, United States Code, is amended
13 by striking “, except that,” and all that follows
14 through “section 4 of such Act”.

15 **SEC. 3. INCREASED MICRO-PURCHASE THRESHOLD FOR**
16 **CERTAIN PROCUREMENTS.**

17 In the administration of section 32 of the Office of
18 Federal Procurement Policy Act (41 U.S.C. 428) during
19 fiscal years 2002 and 2003 with respect to procurements
20 of property or services by or for an executive agency for
21 use to facilitate the defense against terrorism or NBCRT
22 attack, as determined by the head of the executive agency,
23 the amount specified in subsections (c), (d), and (f) of
24 such section shall be deemed to be \$25,000.

1 **SEC. 4. APPLICATION OF CERTAIN COMMERCIAL ITEMS AU-**
2 **THORITIES TO CERTAIN PROCUREMENTS.**

3 (a) **AUTHORITY.—**

4 (1) **IN GENERAL.—**The head of an executive
5 agency may apply the provisions of law listed in
6 paragraph (2) in the procurement of property or
7 services during fiscal years 2002 and 2003 by or for
8 the executive agency for use to facilitate defense
9 against terrorism or NBCRT attack, as determined
10 by the head of the executive agency, without regard
11 to whether the property or services are commercial
12 items.

13 (2) **COMMERCIAL ITEM LAWS.—**The provisions
14 of law referred to in paragraph (1) are as follows:

15 (A) Sections 31 and 34 of the Office of
16 Federal Procurement Policy Act (41 U.S.C.
17 427, 430).

18 (B) Section 2304(g) of title 10, United
19 States Code.

20 (C) Section 303(g) of the Federal Property
21 and Administrative Services Act of 1949 (41
22 U.S.C. 253(g)).

23 (b) **INAPPLICABILITY OF LIMITATION ON USE OF**
24 **SIMPLIFIED ACQUISITION PROCEDURES.—**

25 (1) **IN GENERAL.—**The \$5,000,000 limitation
26 provided in section 31(a)(2) of the Office of Federal

1 Procurement Policy Act (41 U.S.C. 427(a)(2)), sec-
2 tion 2304(g)(1)(B) of title 10, United States Code,
3 and section 303(g)(1)(B) of the Federal Property
4 and Administrative Services Act of 1949 (41 U.S.C.
5 253(g)(1)(B)) shall not apply to purchases of prop-
6 erty or services to which any of the provisions of law
7 referred to in subsection (a) are applied under the
8 authority of this section.

9 (2) OMB GUIDANCE.—The Director of the Of-
10 fice of Management and Budget shall issue guidance
11 and procedures for the use of simplified acquisition
12 procedures for a purchase of property or services in
13 excess of \$5,000,000 under the authority of this sec-
14 tion.

15 (c) CONTINUATION OF AUTHORITY FOR SIMPLIFIED
16 PURCHASE PROCEDURES.—Authority under a provision of
17 law referred to in subsection (a)(2) that expires under sec-
18 tion 4202(e) of the Clinger-Cohen Act of 1996 (divisions
19 D and E of Public Law 104–106; 10 U.S.C. 2304 note)
20 shall, notwithstanding such section, continue to apply for
21 use by the head of an executive agency as provided in sub-
22 sections (a) and (b).

23 **SEC. 5. USE OF STREAMLINED PROCEDURES.**

24 The head of an executive agency shall, when appro-
25 priate, use streamlined acquisition authorities and proce-

1 dures authorized by law for an acquisition, during fiscal
2 years 2002 and 2003, of property or services that, as de-
3 termined by such official, would facilitate the defense
4 against terrorism or NBCRT attack, including authorities
5 and procedures that are provided under the following pro-
6 visions of law:

7 (1) FEDERAL PROPERTY AND ADMINISTRATIVE
8 SERVICES ACT OF 1949.—In title III of the Federal
9 Property and Administrative Services Act of 1949:

10 (A) Paragraphs (1), (2), (6), and (7) of
11 subsection (c) of section 303 (41 U.S.C. 253),
12 relating to use of procedures other than com-
13 petitive procedures under certain circumstances
14 (subject to subsection (e) of such section).

15 (B) Section 303J (41 U.S.C. 253j), relat-
16 ing to orders under task and delivery order con-
17 tracts.

18 (2) TITLE 10, UNITED STATES CODE.—In chap-
19 ter 137 of title 10, United States Code:

20 (A) Paragraphs (1), (2), (6), and (7) of
21 subsection (c) of section 2304, relating to use
22 of procedures other than competitive procedures
23 under certain circumstances (subject to sub-
24 section (e) of such section).

1 (B) Section 2304c, relating to orders
2 under task and delivery order contracts.

3 (3) OFFICE OF FEDERAL PROCUREMENT POL-
4 ICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of
5 section 18(c) of the Office of Federal Procurement
6 Policy Act (41 U.S.C. 416(c)), relating to inapplica-
7 bility of a requirement for procurement notice.

8 **SEC. 6. CERTAIN RESEARCH AND DEVELOPMENT BY CIVIL-**
9 **IAN AGENCIES.**

10 (a) AUTHORITY.—

11 (1) IN GENERAL.—Title III of the Federal
12 Property and Administrative Services Act of 1949
13 (41 U.S.C. 251 et seq.) is amended by adding at the
14 end the following new section:

15 **“SEC. 317. RESEARCH AND DEVELOPMENT TO FACILITATE**
16 **DEFENSE AGAINST TERRORISM OR NBCRT**
17 **ATTACK.**

18 “(a) AUTHORITY.—

19 “(1) IN GENERAL.—The head of an executive
20 agency may engage in basic research, applied re-
21 search, advanced research, and development projects
22 that—

23 “(A) are necessary to the responsibilities of
24 such official’s executive agency in the field of
25 research and development; and

1 “(B) have the potential to facilitate de-
2 fense against terrorism or NBCRT attack.

3 “(2) AUTHORIZED MEANS.—To engage in
4 projects authorized under paragraph (1), the head of
5 an executive agency may exercise the same authority
6 (subject to the same restrictions and conditions) as
7 the Secretary of Defense may exercise under sections
8 2358 and 2371 of title 10, United States Code, ex-
9 cept for subsections (b), (f), and (g) of such section
10 2371.

11 “(3) APPLICABILITY TO SELECTED EXECUTIVE
12 AGENCIES.—The head of an executive agency may
13 exercise authority under this subsection only if au-
14 thorized by the Director of the Office of Manage-
15 ment and Budget to do so.

16 “(b) NBCRT ATTACK DEFINED.—In this section,
17 the term ‘NBCRT attack’ means a nuclear, biological,
18 chemical, or radiological attack on the United States, or
19 a technological attack on a national security system (as
20 defined in section 5142 of the Clinger-Cohen Act of 1996
21 (divisions D and E of Public Law 104–106; 40 U.S.C.
22 1452)).

23 “(c) ANNUAL REPORT.—The annual report of the
24 head of an executive agency that is required under sub-
25 section (h) of section 2371 of title 10, United States Code,

1 as applied to the head of an executive agency by subsection
2 (a), shall be submitted to the Committee on Governmental
3 Affairs of the Senate and the Committee on Government
4 Reform of the House of Representatives.

5 “(d) REGULATIONS.—The Director of the Office of
6 Management and Budget shall prescribe regulations to
7 carry out this section.”.

8 (2) CLERICAL AMENDMENT.—The table of sec-
9 tions in section 1(b) is amended by inserting after
10 the item relating to section 316 the following new
11 item:

“Sec. 317. Research and development to facilitate defense against terrorism
or NBCRT attack.”.

12 (b) TEMPORARY AUTHORITY FOR CARRYING OUT
13 CERTAIN PROTOTYPE PROJECTS.—

14 (1) IN GENERAL.—The head of an executive
15 agency designated by the Director of the Office of
16 Management and Budget to do so may, under the
17 authority of section 317 of the Federal Property and
18 Administrative Services Act of 1949 (as added by
19 subsection (a)), carry out prototype projects that
20 meet the requirements of subparagraphs (A) and
21 (B) of subsection (a)(1) of such section in accord-
22 ance with the same requirements and conditions as
23 are provided for carrying out prototype projects
24 under section 845 of the National Defense Author-

1 ization Act for Fiscal Year 1994 (Public Law 103–
2 160; 10 U.S.C. 2371 note).

3 (2) CONFORMING AUTHORITY.—In the applica-
4 tion of the requirements and conditions of section
5 845 of the National Defense Authorization Act for
6 Fiscal Year 1994 (Public Law 103–160; 10 U.S.C.
7 2371 note) to the administration of authority under
8 paragraph (1)—

9 (A) subsection (c) of such section shall
10 apply with respect to prototype projects carried
11 out under this subsection; and

12 (B) the Director of the Office of Manage-
13 ment and Budget shall perform the function of
14 the Secretary of Defense under subsection (d)
15 of such section.

16 **SEC. 7. IDENTIFICATION OF NEW ENTRANTS INTO THE**
17 **FEDERAL MARKETPLACE.**

18 The head of each executive agency shall conduct mar-
19 ket research on an ongoing basis to identify effectively the
20 capabilities, including the capabilities of small businesses
21 and new entrants into Federal contracting, that are avail-
22 able in the marketplace for meeting the requirements of
23 the executive agency in furtherance of defense against ter-
24 rorism or NBCRT attack. The head of the executive agen-
25 cy shall, to the maximum extent practicable, take advan-

1 tage of commercially available market research methods,
2 including use of commercial databases, to carry out the
3 research.

4 **SEC. 8. DEFINITIONS.**

5 In this Act:

6 (1) **NBCRT ATTACK.**—The term “NBCRT at-
7 tack” means a nuclear, biological, chemical, or radio-
8 logical attack against the United States, or a techno-
9 logical attack against a national security system (as
10 defined in section 5142 of the Clinger-Cohen Act of
11 1996 (divisions D and E of Public Law 104–106; 40
12 U.S.C. 1452)).

13 (2) **EXECUTIVE AGENCY.**—The term “executive
14 agency” has the meaning given the term in section
15 4(1) of the Office of Federal Procurement Policy
16 Act (41 U.S.C. 403(1)).

○