

112TH CONGRESS
1ST SESSION

S. 129

To provide for full and open competition for Federal contracts related to natural disaster reconstruction efforts.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

Mr. VITTER introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To provide for full and open competition for Federal contracts related to natural disaster reconstruction efforts.

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 “Natural Disaster Fair-
5 ness in Contracting Act of 2011”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) EXECUTIVE AGENCY.—The term “executive
9 agency” has the meaning given the term in section

1 4 of the Office of Federal Procurement Policy Act
2 (41 U.S.C. 403).

3 (2) FULL AND OPEN COMPETITIVE PROCE-
4 DURES.—The term “full and open competitive proce-
5 dures” has the meaning given the term “full and
6 open competition” in section 4 of the Office of Fed-
7 eral Procurement Policy Act (41 U.S.C. 403).

8 (3) NATURAL DISASTER RECONSTRUCTION EF-
9 FORTS.—The term “natural disaster reconstruction
10 efforts” means reconstruction efforts undertaken in
11 an area subject to a declaration by the President of
12 a major disaster under section 401 of the Robert T.
13 Stafford Disaster Relief and Emergency Assistance
14 Act (42 U.S.C. 5170).

15 **SEC. 3. COMPETITION REQUIREMENTS.**

16 (a) IN GENERAL.—Except as provided under sub-
17 section (b), the head of an executive agency, in entering
18 into a contract to procure property or services in connec-
19 tion with natural disaster reconstruction efforts, shall
20 comply with the requirements under section 303 of the
21 Federal Property and Administrative Services Act of 1949
22 (41 U.S.C. 253).

23 (b) EXCEPTIONS.—The exceptions to the requirement
24 for competitive procedures provided under paragraphs (3),

1 (4), and (7) of section 303(c) of such Act shall not apply
2 to a contract described in subsection (a).

3 **SEC. 4. WRITTEN APPROVAL FOR USE OF NONCOMPETI-**
4 **TIVE PROCEDURES REQUIRED FOR CERTAIN**
5 **CONTRACTS.**

6 (a) APPROVAL REQUIRED.—The head of an executive
7 agency may enter into a contract to procure property or
8 services in connection with natural disaster reconstruction
9 efforts using other than full and open competition only
10 upon the written approval of the President or the Presi-
11 dent's designee.

12 (b) CONGRESSIONAL NOTIFICATION REQUIRED.—

13 (1) IN GENERAL.—If procedures other than full
14 and open competitive procedures are to be used to
15 enter into a contract described in subsection (a), the
16 head of the executive agency negotiating such con-
17 tract shall notify the Committee on Appropriations
18 of the Senate, the Committee on Appropriations of
19 the House of Representatives, and the standing com-
20 mittees of the Senate and the House of Representa-
21 tives that have jurisdiction over the executive agency
22 not later than 7 calendar days before the award of
23 the contract.

24 (2) JUSTIFICATION.—The notification under
25 paragraph (1) shall include—

1 (A) the justification for the use of other
2 than full and open competitive procedures;

3 (B) a brief description of the contract's
4 scope;

5 (C) the amount of the contract;

6 (D) a discussion of how the contracting
7 agency identified and solicited offers from con-
8 tractors;

9 (E) a list of the contractors solicited; and

10 (F) the justification and approval docu-
11 ments, required under section 303(f)(1) of the
12 Federal Property and Administrative Services
13 Act of 1949 (41 U.S.C. 253(f)(1)), upon which
14 the determination of use of procedures other
15 than full and open competitive procedures was
16 based.

17 (c) SCOPE OF REQUIREMENTS.—

18 (1) SIZE OF CONTRACTS.—This section shall
19 not apply to contracts of less than \$5,000,000.

20 (2) APPLICABILITY.—This section shall apply
21 to any extension, amendment, or modification of a
22 contract for the procurement of property or services
23 in connection with natural disaster reconstruction ef-
24 forts entered into before the date of the enactment

1 of this Act using other than full and open competi-
2 tive procedures.

3 (3) SMALL BUSINESS EXCEPTION.—This sec-
4 tion shall not apply to contracts authorized under
5 the Small Business Act (15 U.S.C. 631 et seq.).

6 **SEC. 5. DISCLOSURE REQUIRED.**

7 (a) PUBLICATION AND PUBLIC AVAILABILITY.—

8 (1) IN GENERAL.—The head of an executive
9 agency that enters into a contract for the procure-
10 ment of property or services in connection with nat-
11 ural disaster reconstruction efforts through the use
12 of other than full and open competitive procedures
13 shall publish in the Federal Register or Federal
14 Business Opportunities, and otherwise make avail-
15 able to the public not later than 7 calendar days be-
16 fore the date on which the contract is finalized—

17 (A) the amount of the contract;

18 (B) a brief description of the scope of the
19 contract;

20 (C) an explanation of how the executive
21 agency identified, and solicited offers from, po-
22 tential contractors to perform the contract, and
23 a list of the potential contractors that were
24 issued solicitations for the offers; and

1 (D) the justification and approval docu-
2 ments, required under section 303(f)(1) of the
3 Federal Property and Administrative Services
4 Act of 1949 (41 U.S.C. 253(f)(1)), on which
5 was based the determination to use procedures
6 other than competitive procedures.

7 (2) SCOPE OF REQUIREMENTS.—

8 (A) SIZE OF CONTRACTS.—This section
9 shall not apply to contracts of less than
10 \$5,000,000.

11 (B) APPLICABILITY.—This section shall
12 apply to any extension, amendment, or modi-
13 fication of a contract entered into before the
14 date of the enactment of this Act using other
15 than full and open competitive procedures.

16 (C) SMALL BUSINESS EXCEPTION.—This
17 section shall not apply to contracts authorized
18 under the Small Business Act (15 U.S.C. 631
19 et seq.).

20 (b) RELATIONSHIP TO OTHER DISCLOSURE LAWS.—
21 Nothing in this section may be construed as affecting obli-
22 gations to disclose United States Government information
23 under any other provision of law.

1 **SEC. 6. CONTRACTS ENTERED INTO UNDER UNUSUAL AND**
2 **COMPELLING URGENCY EXCEPTION.**

3 (a) **REQUIREMENT FOR PERFORMANCE WITHIN 6-**
4 **MONTH PERIOD.**—The head of an executive agency may
5 not rely on the exception under section 303(c)(2) of the
6 Federal Property and Administrative Services Act of 1949
7 (41 U.S.C. 253(c)(2)) to enter into a contract to procure
8 property or services in connection with natural disaster re-
9 construction efforts using procedures other than competi-
10 tive procedures unless the contract will be performed with-
11 in a 6-month period.

12 (b) **EXTENDED NOTIFICATION AND DISCLOSURE**
13 **DEADLINES.**—The notification and disclosure deadlines
14 under sections 4(b) and 5(a)(1), respectively, shall be 7
15 calendar days after the date on which a contract described
16 in subsection (a) is finalized.

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