

103^D CONGRESS
1ST SESSION

S. 554

To amend the Federal Property and Administrative Services Act of 1949 to enhance the solicitation process in certain Government contracts and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 10 (legislative day, MARCH 3), 1993

Mr. GLENN (for himself, Mr. PRYOR, and Mr. COHEN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend the Federal Property and Administrative Services Act of 1949 to enhance the solicitation process in certain Government contracts 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 “Solicitation Enhance-
5 ment Act of 1993”.

6 **SEC. 2. SOLICITATION EVALUATION AND AWARD.**

7 (a) SOLICITATION REQUIREMENTS.—Section 303A
8 of the Federal Property and Administrative Services Act
9 of 1949 (41 U.S.C. 253a) is amended—

1 (1) in subsection (b)(1)(A)—

2 (A) by inserting “and significant
3 subfactors” after “all significant factors”; and

4 (B) by striking “(including price)” and in-
5 serting “(including cost or price, cost- or price-
6 related factors, and noncost- or nonprice-related
7 factors)”; and

8 (2) in subsection (b)(1)(B) by inserting “and
9 significant subfactors” after “factors”; and

10 (3) by adding at the end the following new sub-
11 section:

12 “(c) In prescribing the evaluation factors to be in-
13 cluded in each solicitation for competitive proposals, the
14 head of an agency or his designee shall clearly establish
15 the relative importance assigned to the evaluation factors
16 and significant subfactors, including the quality of the
17 product or services to be provided (including technical ca-
18 pability, management capability, and prior experience of
19 the offeror).”.

20 (b) EVALUATION AND AWARD.—Section 303B of the
21 Federal Property and Administrative Services Act of 1949
22 (41 U.S.C. 253b) is amended—

23 (1) in subsection (a) by inserting “and award a
24 contract” after “competitive proposals”;

1 (2) in subsection (c) in the second sentence by
2 inserting “in accordance with subsection (a)” after
3 “shall evaluate the bids”;

4 (3) in subsection (d) by amending paragraph
5 (1) to read as follows:

6 “(1) The executive agency shall evaluate competitive
7 proposals in accordance with subsection (a) and may
8 award a contract—

9 “(A) after discussions with the offerors, if writ-
10 ten or oral discussions have been conducted with all
11 responsible offerors who submit proposals within the
12 competitive range; or

13 “(B) without discussions with the offerors
14 (other than discussions conducted for the purpose of
15 minor clarification), if the solicitation included a
16 statement that an award could be made, without dis-
17 cussions, unless discussions are determined to be
18 necessary.”; and

19 (4) in subsection (d) by striking paragraphs (2)
20 and (3) and by redesignating paragraph (4) as para-
21 graph (2).

22 (c) APPLICATION.—(1) Except as provided in para-
23 graph (2), the amendments made by this section shall
24 apply to—

1 (A) solicitations for sealed bids or competitive
2 proposals issued after the end of the 120-day period
3 beginning on the date of the enactment of this Act;
4 and

5 (B) contracts awarded pursuant to those solici-
6 tations.

7 (2) The head of an agency may apply the amend-
8 ments made by this section to solicitations issued before
9 the end of the period referred to in paragraph (1). The
10 head of the agency shall publish in the Federal Register
11 notice of any such earlier date of application before the
12 beginning of the 10-day period ending on that date.

13 **SEC. 3. CONTRACTING FUNCTIONS PERFORMED BY FED-**
14 **ERAL PERSONNEL.**

15 (a) PROHIBITION OF EXPENDITURES.—(1) No ap-
16 propriated funds may be expended by any agency to award
17 a contract for goods or services to which the Federal Prop-
18 erty and Administrative Services Act of 1949 applies, un-
19 less such agency uses employees who are adequately
20 trained and capable of conducting evaluations and analy-
21 ses of proposals submitted for such acquisitions. No per-
22 son who is not an employee may be paid by an agency
23 for services to conduct evaluations or analyses of any as-
24 pect of a proposal submitted for an acquisition, unless em-
25 ployees with adequate training and capabilities to perform

1 such evaluations and analyses are not readily available
2 within the agency or any other Federal agency.

3 (2) In the administration of this subsection, the head
4 of each agency shall determine the standards of adequate
5 training and capability of employees to conduct such ac-
6 quisitions.

7 (b) DELEGATION OF PROCUREMENT AUTHORITY.—
8 With respect to acquisitions subject to section 111 of the
9 Federal Property and Administrative Services Act of
10 1949, the Administrator of General Services may not issue
11 a delegation of procurement authority for an acquisition
12 without first receiving certification from the contracting
13 agency that—

14 (1) such agency has employees within the agen-
15 cy or available from another agency who are ade-
16 quately trained and capable of conducting evalua-
17 tions and analyses of proposals submitted for such
18 an acquisition; or

19 (2)(A) such agency does not have employees
20 within the agency who are adequately trained and
21 capable of conducting evaluations and analyses of
22 proposals submitted for such an acquisition; and

23 (B) such adequately trained and capable em-
24 ployees are not readily available from other agencies
25 in accordance with regulations promulgated by the

1 Federal Acquisition Regulatory Council under sub-
2 section (c).

3 (c) FEDERAL ACQUISITION REGULATORY COUN-
4 CIL.—No later than 90 days after the date of the enact-
5 ment of this Act, the Federal Acquisition Regulatory
6 Council shall—

7 (1) review part 37 of title 48 of the Code of
8 Federal Regulations as it relates to the use of advi-
9 sory and assistance services and provide guidance
10 and promulgate regulations regarding what actions
11 agencies are required to take to determine if exper-
12 tise is readily available within the Government be-
13 fore contracting for advisory and technical services
14 to conduct acquisitions; and

15 (2) provide guidance and promulgate regula-
16 tions regarding the manner in which Federal em-
17 ployees with expertise may be shared with agencies
18 needing expertise for such acquisitions.

19 (d) DEFINITION.—For purposes of this section the
20 term “employee” shall have the same meaning as such
21 term is defined under section 2105 of title 5, United
22 States Code.

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