

107TH CONGRESS
2^D SESSION

H. R. 3645

To amend title 38, United States Code, to provide for improved procurement practices by the Department of Veterans Affairs in procuring health-care items.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 2002

Mr. EVANS (for himself, Mr. FILNER, Mr. GUTIERREZ, Ms. BROWN of Florida, Mr. REYES, Ms. CARSON of Indiana, Mr. LYNCH, Mr. SANDERS, Ms. KAPTUR, Mrs. JONES of Ohio, and Mr. DINGELL) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to provide for improved procurement practices by the Department of Veterans Affairs in procuring health-care items.

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 “Veterans Health-Care
5 Items Procurement Reform and Improvement Act of
6 2002”.

1 **SEC. 2. LIMITATION ON USE OF LOCAL CONTRACTS FOR**
2 **DEPARTMENT OF VETERANS AFFAIRS PRO-**
3 **UREMENT OF HEALTH-CARE ITEMS.**

4 (a) IN GENERAL.—Section 8125 of title 38, United
5 States Code, is amended to read as follows:

6 **“§ 8125. Procurement of health-care items**

7 “(a) Except as provided in subsection (b), any pro-
8 curement of a health-care item by any element of the De-
9 partment shall be made through the use of a Federal Sup-
10 ply Schedule contract, or a national contract, that meets
11 the requirements of subsection (d).

12 “(b)(1) A contract that is not a Federal Supply
13 Schedule contract or national contract meeting the re-
14 quirements of subsection (d) may be used for the procure-
15 ment of a health-care item in the case of a procurement—

16 “(A) that is necessary to meet a current or
17 near-term medical emergency at a medical center;

18 “(B) that is for a health-care item for which
19 there is a valid clinical need and that is not listed
20 in the Federal Supply Schedule or as part of a na-
21 tional contract;

22 “(C) that is part of a written and approved
23 sharing agreement between the Department of De-
24 fense and the Department of Veterans Affairs with
25 demonstrable cost per item savings for a health-care

1 item listed on the Federal Supply Schedule or a na-
2 tional contract; or

3 “(D) that supports prime or subcontracts with
4 small business concerns qualifying for a procurement
5 preference program under section 8 or 15 of the
6 Small Business Act (15 U.S.C. 637, 644), that dem-
7 onstrates at least cost parity with the health-care
8 item on the Federal Supply Schedule or national
9 contract and meets the requirements of subsections
10 (d)(1)(A) and (d)(2).

11 “(2) A procurement may be made as authorized
12 under subparagraph (B) of paragraph (1) only if the pro-
13 curement is specifically authorized in advance in writing
14 by the Secretary. The authority of the Secretary under
15 the preceding sentence may only be delegated to the Under
16 Secretary for Health and the senior procurement executive
17 of the Department acting jointly.

18 “(c) In the case of an emergency procurement of a
19 health-care item as authorized by subsection (b)(1)(A), the
20 quantity of the item procured may not exceed the quantity
21 of such item that is reasonably necessary to meet the
22 emergency need and the reasonably foreseeable need for
23 that item at the medical center concerned until resupply
24 can be achieved through procurement actions other than
25 emergency procurement.

1 “(d) A contract meets the requirements of this sub-
2 section if—

3 “(1) the contract includes—

4 “(A) provisions referred to as preaward
5 and postaward audit clauses; and

6 “(B) a provision referred to as a price re-
7 duction clause; and

8 “(2) any contract with a vendor that is a dis-
9 tributor will be for distribution services only, unless
10 the manufacturer of the product can clearly dem-
11 onstrate that at least 90 percent of its sales of the
12 item through distributor is to commercial customers
13 with negotiated product prices and the distributor
14 actually stocks and distributes the product.

15 “(e) The Secretary shall establish procedures to as-
16 sure compliance by each Department medical facility with
17 the provisions of this section and with applicable Federal
18 and Department procurement regulations.

19 “(f) The Secretary shall establish annual goals for
20 Department medical centers for the purchase of health-
21 care items from Federal Supply Schedule and national
22 contracts meeting the requirements of subsection (d).
23 Such goals shall be designed to maximize the percentage
24 of such purchases that are made from Federal Supply

1 Schedule and national contracts meeting the requirements
2 of subsection (d).

3 “(g) The Secretary shall include in the annual report
4 of the Secretary under section 529 of this title information
5 on the procurement of health-care items during the pre-
6 ceding fiscal year. Such information shall be shown by
7 geographical service area and shall include information on
8 procurements made under the authority of subsection
9 (b)(1)(B). Such information shall include the total dollar
10 amount of such procurements, the ratio of the dollar
11 amount of such procurements to the total dollar amount
12 of all procurements of health-care items, and a status re-
13 port on implementation of this subsection.

14 “(h) For the purposes of this section:

15 “(1) The term ‘health-care item’ includes any
16 item listed in, or (as determined by the Secretary)
17 of the same nature as an item listed in, Federal
18 Supply Classification (FSC) Group 65 or 66.

19 “(2) The term ‘emergency’ with respect to a
20 procurement of a health-care item, means a procure-
21 ment necessary to meet an emergency need affecting
22 the health or safety of a person being furnished
23 health-care services by the Department.

24 “(3) The term ‘Federal Supply Schedule con-
25 tract’ means a contract that is awarded and admin-

1 istered by the National Acquisition Center of the
2 Department under a delegation of authority from
3 the Administrator of the General Services Adminis-
4 tration.”.

5 “(4) The term ‘national contract’ means a con-
6 tract for procurement of an item that is entered into
7 by the National Acquisition Center of the Depart-
8 ment or another Department procurement activity,
9 as authorized by the Secretary, that is available for
10 use by all Department medical facilities.

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall take effect on September 30, 2002,
13 and shall apply to procurements by the Secretary of Vet-
14 erans Affairs after that date.

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