

108TH CONGRESS  
2D SESSION

# S. 2438

To amend title 31, United States Code, to provide Federal Government employees with bid protest rights in actions under Office of Management and Budget Circular A-76, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

MAY 19, 2004

Ms. COLLINS (for herself, Mr. LEVIN, Mr. CHAFEE, Mr. LIEBERMAN, Mr. AKAKA, Mr. SARBANES, and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

---

## A BILL

To amend title 31, United States Code, to provide Federal Government employees with bid protest rights in actions under Office of Management and Budget Circular A-76, 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,*

1 **SECTION 1. BID PROTESTS BY FEDERAL EMPLOYEES IN AC-**  
2 **TIONS UNDER OFFICE OF MANAGEMENT AND**  
3 **BUDGET CIRCULAR A-76.**

4 (a) ELIGIBILITY TO PROTEST.—(1) Section 3551(2)  
5 of title 31, United States Code, is amended to read as  
6 follows:

7 “(2) The term ‘interested party’—

8 “(A) with respect to a contract or a solici-  
9 tation or other request for offers described in  
10 paragraph (1), means an actual or prospective  
11 bidder or offeror whose direct economic interest  
12 would be affected by the award of the contract  
13 or by failure to award the contract; and

14 “(B) with respect to a public-private com-  
15 petition conducted under Office of Management  
16 and Budget Circular A-76 regarding perform-  
17 ance of an activity or function of a Federal  
18 agency, includes—

19 “(i) any official who submitted the  
20 agency tender in such competition; and

21 “(ii) any one person who, for the pur-  
22 pose of representing them in a protest  
23 under this subchapter that relates to such  
24 competition, has been designated as their  
25 agent by a majority of the employees of  
26 such Federal agency who are engaged in

1           the performance of such activity or func-  
2           tion.”.

3           (2)(A) Subchapter V of chapter 35 of such title is  
4 amended by adding at the end the following new section:

5 **“§ 3557. Expedited action in protests for public-pri-  
6           vate competitions**

7           “For protests in cases of public-private competitions  
8 conducted under Office of Management and Budget Cir-  
9 cular A-76 regarding performance of an activity or func-  
10 tion of Federal agencies, the Comptroller General shall ad-  
11 minister the provisions of this subchapter in a manner  
12 best suited for expediting final resolution of such protests  
13 and final action in such competitions.”.

14           (B) The chapter analysis at the beginning of such  
15 chapter is amended by inserting after the item relating  
16 to section 3556 the following new item:

          “3557. Expedited action in protests for public-private competitions.”.

17           (b) RIGHT TO INTERVENE IN CIVIL ACTION.—Sec-  
18 tion 1491(b) of title 28, United States Code, is amended  
19 by adding at the end the following new paragraph:

20           “(5) If a private sector interested party commences  
21 an action described in paragraph (1) in the case of a pub-  
22 lic-private competition conducted under Office of Manage-  
23 ment and Budget Circular A-76 regarding performance  
24 of an activity or function of a Federal agency, then an

1 official or person described in section 3551(2)(B) of title  
2 31 shall be entitled to intervene in that action.”.

3 (c) APPLICABILITY.—Subparagraph (B) of section  
4 3551(2) of title 31, United States Code (as added by sub-  
5 section (a)), and paragraph (5) of section 1491(b) of title  
6 28, United States Code (as added by subsection (b)), shall  
7 apply to—

8 (1) protests and civil actions that challenge  
9 final selections of sources of performance of an ac-  
10 tivity or function of a Federal agency that are made  
11 pursuant to studies initiated under Office of Man-  
12 agement and Budget Circular A–76 on or after Jan-  
13 uary 1, 2004; and

14 (2) any other protests and civil actions that re-  
15 late to public-private competitions initiated under  
16 Office of Management and Budget Circular A–76 on  
17 or after the date of the enactment of this Act.

○