

110TH CONGRESS
2D SESSION

S. 3702

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2008

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 2008”.

6 **SEC. 2. COMPETITION REQUIREMENTS.**

7 In entering into a contract to procure property or
8 services in connection with natural disaster reconstruction
9 efforts, the head of an executive agency shall comply with
10 the requirements under section 303 of the Federal Prop-

1 erty and Administrative Services Act of 1949 (41 U.S.C.
2 253), except that the exceptions to the requirement for
3 competitive procedures provided under paragraphs (3),
4 (4), and (7) of subsection (c) of such section shall not
5 apply to such contract.

6 **SEC. 3. WRITTEN APPROVAL FOR USE OF NON-COMPETI-**
7 **TIVE PROCEDURES REQUIRED FOR CERTAIN**
8 **CONTRACTS.**

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

15 (b) CONGRESSIONAL NOTIFICATION REQUIRED.—In
16 any case in which procedures other than full and open
17 competitive procedures are to be used to enter into such
18 a contract, the head of such executive agency shall submit
19 not later than 7 calendar days before the award of the
20 contract a notification to the Committee on Appropria-
21 tions of the Senate, the Committee on Appropriations of
22 the House of Representatives, and the standing commit-
23 tees of the Senate and the House of Representatives that
24 have jurisdiction over the executive agency. Such notifica-
25 tion shall provide the justification for use of other than

1 full and open competitive procedures, a brief description
2 of the contract's scope, the amount of the contract, a dis-
3 cussion of how the contracting agency identified and solici-
4 ited offers from contractors, a list of the contractors solici-
5 ited, and the justification and approval documents (as re-
6 quired under section 303(f)(1) of the Federal Property
7 and Administrative Services Act of 1949 (41 U.S.C.
8 253(f)(1)) on which was based the determination of use
9 of procedures other than full and open competitive proce-
10 dures.

11 (c) SCOPE OF REQUIREMENTS.—

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

14 (2) APPLICABILITY.—This section also shall
15 apply to any extension, amendment, or modification
16 of contracts for the procurement of property or serv-
17 ices in connection with natural disaster reconstruc-
18 tion efforts entered into prior to the enactment of
19 this Act using other than full and open competitive
20 procedures.

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

24 **SEC. 4. DISCLOSURE REQUIRED.**

25 (a) PUBLICATION AND PUBLIC AVAILABILITY.—

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

11 (A) The amount of the contract.

12 (B) A brief description of the scope of the
13 contract.

14 (C) A discussion of how the executive
15 agency identified, and solicited offers from, po-
16 tential contractors to perform the contract, to-
17 gether with a list of the potential contractors
18 that were issued solicitations for the offers.

19 (D) The justification and approval docu-
20 ments (as required under section 303(f)(1) of
21 the Federal Property and Administrative Serv-
22 ices Act of 1949 (41 U.S.C. 253(f)(1)) on
23 which was based the determination to use pro-
24 cedures other than competitive procedures.

25 (2) SCOPE OF REQUIREMENTS.—

1 (A) SIZE OF CONTRACTS.—This section
2 shall not apply to contracts of less than
3 \$5,000,000.

4 (B) APPLICABILITY.—This section shall
5 also apply to any extension, amendment, or
6 modification of contracts entered into prior to
7 the enactment of this Act using other than full
8 and open competitive procedures.

9 (C) SMALL BUSINESS EXCEPTION.—This
10 section shall not apply to contracts authorized
11 by the Small Business Act (15 U.S.C. 631 et
12 seq.).

13 (b) RELATIONSHIP TO OTHER DISCLOSURE LAWS.—
14 Nothing in this section shall be construed as affecting obli-
15 gations to disclose United States Government information
16 under any other provision of law.

17 **SEC. 5. CONTRACTS ENTERED INTO UNDER UNUSUAL AND**
18 **COMPELLING URGENCY EXCEPTION.**

19 (a) REQUIREMENT FOR PERFORMANCE WITHIN 6-
20 MONTH PERIOD.—The head of an executive agency may
21 not rely on the exception provided under section 303(c)(2)
22 of the Federal Property and Administrative Services Act
23 of 1949 (41 U.S.C. 253(c)(2)) to enter into a contract
24 to procure property or services in connection with natural
25 disaster reconstruction efforts using procedures other than

1 competitive procedures unless the contract will be per-
2 formed within a 6-month period.

3 (b) EXTENDED NOTIFICATION AND DISCLOSURE
4 DEADLINES.—The notification and disclosure deadlines
5 specified in section 3(b) and section 4(a)(1), respectively,
6 shall be 7 calendar days after the date a contract is en-
7 tered into in the case of a contract described in subsection
8 (a).

9 **SEC. 6. DEFINITIONS.**

10 In this Act:

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

15 (2) FULL AND OPEN COMPETITIVE PROCE-
16 DURES.—The term “full and open competition” has
17 the meaning given the term in section 4 of the Of-
18 fice of Federal Procurement Policy Act (41 U.S.C.
19 403).

20 (3) NATURAL DISASTER RECONSTRUCTION EF-
21 FORTS.—The term “natural disaster reconstruction
22 efforts” means reconstruction efforts undertaken in
23 an area subject to a declaration by the President of
24 a major disaster under section 401 of the Robert T.

- 1 Stafford Disaster Relief and Emergency Assistance
- 2 Act (42 U.S.C. 5170).

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