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Federal Acquisition Reform Act of 1996

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Abstract. Summarizes Division D of the 1996 Defense Authorization Act (P.L. 104-106), the Federal Acquisition Reform Act of 1996, concerning changes to government contracting statutes.

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CRS Report for Congress

Federal Acquisition Reform Act of 1996

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Summary

Division D of the 1996 Defense Authorization Act (P.L. 104-106), referred to as the Federal Acquisition Reform Act of 1996, concerns changes to the procurement requirements for armed services acquisitions and for civilian agency acquisitions. Although the provisions do not comprise a full-scale revamping of the procurement requirements, the changes are significant. The general effect of Subdivision D is to eliminate or to simplify certain of the contracting procedures. For example, one provision raises the dollar thresholds for contracts that use other than competitive procedures and are approved by high-level agency officials. Another provision limits the competitive range to the largest number permitting an efficient competition.¹ Supporters believe that these provisions will streamline government contracting and cut out unnecessary requirements. Detractors believe that they will eventually result in increased costs to the government (Division E of the act, which concerns information technology management reform, is not treated in this report).

Selected Provisions

Section 4101. Efficient Competition.

This provision amends 10 U.S.C. section 2304 and 41 U.S.C. section 253 to require that full and open competition in government contracting be implemented in a way that is consistent with the need to fulfill efficiently the government's requirements. The provision is not intended to change the requirement for full and open competition contained in these statutes.

¹ For information on the legislative history of the 1996 Defense Authorization Act, see H.Rept. 104-450, 104th Cong., 2d Sess. (1996).

Section 4102. Efficient Approval Procedures.

This provision amends 10 U.S.C. section 2304 and 41 U.S.C. section 253 to raise the dollar thresholds for contracts that use other than competitive procedures and which are approved by high-level agency officials.

Section 4103. Efficient Competitive Range Determinations.

This provision amends 10 U.S.C. section 2305 and 41 U.S.C. section 253b to allow a contracting officer to limit the number of proposals in a competitive range to the greatest number which will permit an efficient competition among the most highly rated competitors. This is perhaps one of the most significant changes in the government contracting area and one of the most controversial. Supporters believe that it helps to streamline government contracting and cut out unnecessary requirements. Opponents believe that it may result in increased costs to the government.

Section 4104. Preaward Debriefings.

Section 4104 amends 10 U.S.C. section 2305 and 41 U.S.C. section 253b to require that, before a contract is awarded, a contracting officer must provide a debriefing to any interested competitors concerning that competitor's exclusion from the competitive range.

Section 4105. Design-Build Selection Procedures.

This provision amends 10 U.S.C. section 2305a and 41 U.S.C. section 253m to authorize the use of two-phase selection procedures for entering into contracts for designing and constructing a public building, facility, or work. Details are provided concerning the considerations to be used by a contracting officer in determining whether to use two-phase selection procedures. The number of proposals to be considered in the second phase is limited to no more than five, unless the agency determines that a larger number would be in the best interests of the government.

Section 4201. Commercial Item Exception to Requirement for Cost or Pricing Data.

Section 4201 amends 10 U.S.C. section 2306a and 41 U.S.C. section 254b to exempt suppliers of commercial items under federal agency contracts from having to submit certified cost and pricing data. To the extent necessary, contracting officers are required to submit other data in order to determine price reasonableness.

Section 4202. Application of Simplified Procedures to Certain Commercial Items.

This provision allows using simplified procedures for the acquisition of commercial items with a purchase value of \$5,000,000 or less if the contracting officer reasonably expects that solicited offers would include only commercial items. Implementing regulations are required to provide that all responsible offerors be permitted to submit a bid, proposal, or quotation that the agency must consider. H.Rept. 104-450, in its section-by-section discussion of this provision, states that the flexible notice provision is intended to be implemented to provide offerors with a reasonable opportunity to respond. Sole source procurement is prohibited unless the need is justified in writing. The authority for

using simplified procedures would expire at the end of the three-year period which begins on the date when the final implementing regulations are issued.

Section 4203. Inapplicability of Certain Procurement Laws to Commercially Available Off-the-Shelf Items.

This provision requires that the Federal Acquisition Regulations include a list of competitive contracting provisions that are not applicable to contracts for procuring commercially available off-the-shelf items. Commercially available off-the-shelf items are defined as commercial items that are sold in substantial quantities to the general public and that are offered to the federal government in the same manner as they have been sold to the general public. Supporters believe that this provision will make it easier and cheaper for the federal government to purchase some of the more readily available items without having to go through a lengthy and costly contracting process.

Section 4205. Inapplicability of Cost Accounting Standards to Contracts and Subcontracts for Commercial Items.

Section 4205 exempts contracts and subcontracts for commercial items from application of the cost accounting standards issued under 41 U.S.C. section 422. The Cost Accounting Standards Board is required to make certain that contractors appropriately assign costs to contracts covered by the exemption. The Board shall issue standards to implement this provision.

Section 4301. Elimination of Certain Certification Requirements.

This provision eliminates many certification requirements for contractors and subcontractors with the federal government. There is a general requirement that the Administrator of the Office of Federal Procurement Policy amend the Federal Acquisition Regulations to remove certain certification requirements after a period for public notice and comment. Future certification requirements are prohibited unless imposed by statute or justified in writing and approved by the Federal Acquisition Regulatory Council and the Administrator of the Office of Federal Procurement Policy.

Section 4302. Authorities Conditioned on Federal Acquisition Computer Network (FACNET) Capability.

This provision removes a requirement that the test of alternative procurement procedures depends on implementing full federal acquisition computer network (FACNET) electronic commerce procedures. Section 4302 also limits the linkage between full FACNET implementation and federal agency use of simplified acquisition procedures to requiring an agency to have full FACNET capability by December 31, 1999, or return to a procurement threshold of \$50,000 below which simplified procedures are authorized.

Section 4303. International Competitiveness.

This provision amends section 21(e)(2) of the Arms Export Control Act (22 U.S.C. section 2761(e)(2)) to allow the President to waive recoupment charges for non-recurring research and development costs on foreign military sales of major defense equipment if

the charges would likely cause the loss of a sale or if eliminating the charges would save the government per unit costs for a particular item of equipment.

Section 4304. Procurement Integrity.

Section 4304 amends 41 U.S.C. section 423 to prohibit present or former federal employees from knowingly obtaining or disclosing contractor bid or proposal information or source selection information before the award of a contract. The provision also replaces the current agency-specific recusal and post-employment restrictions applicable to agency employees involved in procurement over \$10,000,000 for a one-year period.

Section 4309. Cooperative Purchasing.

This provision suspends the authority of the Administrator of General Services to allow state and local governments to use the federal supply schedules until the later of eighteen months after enactment of this act or thirty days after the date on which the Administrator has reviewed a General Accounting Office (GAO) report assessing the effects of state and local government use of the federal supply schedules. The GAO report must include an assessment of the impact on costs to federal agencies from the use of federal supply schedules by state and local governments.

Section 4311. Micro-Purchases without Competitive Quotations.

This provision amends 41 U.S.C. section 428 to provide greater flexibility to executive agencies in determining who may make purchases below \$2500 without having to receive competitive quotations.