

TO AMEND TITLE 41, UNITED STATES CODE, TO EXTEND THE SUNSET
DATE FOR CERTAIN PROTESTS OF TASK AND DELIVER ORDER CON-
TRACTS

MARCH 17, 2011.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. ISSA, from the Committee on Oversight and Government
Reform, submitted the following

R E P O R T

[To accompany H.R. 899]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom
was referred the bill (H.R. 899) to amend title 41, United States
Code, to extend the sunset date for certain protests of task and de-
liver order contracts, having considered the same, report favorably
thereon without amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

The purpose of this bill is to extend the sunset date to allow the
Government Accountability Office (GAO) to continue to hear bid
protests on civilian agency task and delivery orders until Sep-
tember 30, 2016.

BACKGROUND AND NEED FOR LEGISLATION

Section 825 of the Ike Skelton National Defense Authorization Act of for FY 2011 (PL 111–383) extended the sunset date for GAO bid protests on task and delivery orders for defense acquisitions until September 30, 2016. It did not address civilian agency acquisitions. Therefore, this bill is necessary to align the two procurement systems—defense and civilian—and alleviate uncertainty in the contracting community. In addition, allowing protests at the task and delivery order level increases transparency and accountability, while providing an alternative to costly litigation.

Extending GAO’s jurisdiction to encompass bid protests over task and delivery orders was a recommendation made in the January 2007 Report of the Acquisition Advisory Working Group (commonly referred to as the “SARA Panel”). The SARA Panel made the recommendation based on the following findings: (1) improper use of certain contracting vehicles, (2) a need for increased competition, (3) the frequency with which agencies make “significant purchases of complex services using task and delivery orders,” and (4) the desire to increase transparency.¹

LEGISLATIVE HISTORY

Section 843 of the National Defense Authorization Act (NDAA) of 2008 (PL 110–181) expanded the GAO jurisdiction to hear bid protests by authorizing GAO to hear protests on task and delivery orders valued in excess of \$10 million. This provision covered both defense (Title 10) and civilian acquisitions (Title 41). It sunsets in May 2011.

SECTION-BY-SECTION

Section 1

This bill contains one section which amends 41 U.S.C. 4106(f) to allow GAO to continue to hear bid protests on task and delivery orders over \$10 million until September 30, 2016.

EXPLANATION OF AMENDMENTS

No amendments were offered to the bill.

COMMITTEE CONSIDERATION

On March 10, 2011, the Committee met in open session and ordered reported favorably the bill, H.R. 899, by voice vote, a quorum being present.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill extends the sunset date to allow the Government Accountability Office (GAO) to continue to hear bid protests on civilian agency task and delivery orders until

¹Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the U.S. Cong., available at <https://www.acquisition.gov/comp/aap/documents/Chapter1.pdf> (Jan. 2007).

September 30, 2016. As such this bill does not relate to employment or access to public services and accommodations.

Legislative branch employees and their families, to the extent that they are otherwise eligible for the benefits provided by this legislation, have equal access to its benefits.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 899 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of Rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 899. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Represent-

atives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 899 from the Director of Congressional Budget Office:

MARCH 16, 2011.

Hon. DARRELL ISSA,
Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 899, a bill to amend title 41, United States Code, to extend the sunset date for certain protests of task and deliver order contracts.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 899—A bill to amend title 41, United States Code, to extend the sunset date for certain protests of task and deliver order contracts

H.R. 899 would amend federal law to extend the process for protesting the awards of certain civilian agency procurements. Under the legislation, contractors could protest certain task and delivery order contracts through September 30, 2016.

Task and delivery order contracts authorize deliveries during the life of the contract without specifying a firm quantity of supplies or services. Such contracts are often used when an agency cannot determine the precise number of supplies or services that will be required. Under current law, contractors under such orders can protest the award of any order valued over \$10 million, and the Government Accountability Office (GAO) has exclusive jurisdiction to hear those protests through May 2011. H.R. 899 would extend those procedures through September 2016.

Information from GAO and several civilian agencies indicates that more than 100 cases have been filed to protest contract awards during the past two years; 50 percent of the protestors have reported obtaining some form of relief from the procuring agency. The form of relief can vary from improvements in the procurement process to reimbursement of the protestors' costs. Based on that information, CBO expects that complying with the bill would increase the administrative expenses of federal agencies for contract personnel, lawyers, and general administrative overhead. Such expenses would generally be paid from agencies' salaries and expense budgets, which are subject to annual appropriation. CBO estimates that such costs would total a few million dollars over the 2011–2016 period.

Enacting H.R. 899 also could affect direct spending by agencies not funded through annual appropriations, such as the Tennessee Valley Authority and the Bonneville Power Administration; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting H.R. 899 would not affect revenues.

H.R. 899 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 41, UNITED STATES CODE

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SUBTITLE I—FEDERAL PROCUREMENT POLICY

* * * * *

CHAPTER 41—TASK AND DELIVERY ORDER CONTRACTS

* * * * *

§ 4106. Orders

(a) * * *

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(f) PROTESTS.—

(1) * * *

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[(3) EFFECTIVE PERIOD.—This subsection shall be in effect for three years, beginning on the date that is 120 days after January 28, 2008.]

(3) *EFFECTIVE PERIOD.—Paragraph (1)(B) and paragraph (2) of this subsection shall not be in effect after September 30, 2016.*

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