

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide temporary emergency flexibility for the procurement of property and services by the Federal Government.

IN THE SENATE OF THE UNITED STATES—107th Cong., 2d Sess.

S. 2452

To establish the Department of National Homeland Security and the National Office for Combating Terrorism.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. THOMPSON

Viz:

- 1 On page 154, between lines 15 and 16, insert the fol-
- 2 lowing:

1 **TITLE V—FEDERAL EMERGENCY**
2 **PROCUREMENT FLEXIBILITY**
3 **Subtitle A—Temporary Flexibility**
4 **for Certain Procurements**

5 **SEC. 501. PROCUREMENTS FOR DEFENSE AGAINST OR RE-**
6 **COVERY FROM TERRORISM OR NUCLEAR, BI-**
7 **OLOGICAL, CHEMICAL, OR RADIOLOGICAL**
8 **ATTACK.**

9 The authorities provided in this subtitle apply to any
10 procurement of property or services by or for an executive
11 agency that, as determined by the head of the executive
12 agency, are to be used to facilitate defense against or re-
13 covery from terrorism or nuclear, biological, chemical, or
14 radiological attack, but only if a solicitation of offers for
15 the procurement is issued during the one-year period be-
16 ginning on the date of the enactment of this Act.

17 **SEC. 502. INCREASED SIMPLIFIED ACQUISITION THRESH-**
18 **OLD FOR PROCUREMENTS IN SUPPORT OF**
19 **HUMANITARIAN OR PEACEKEEPING OPER-**
20 **ATIONS OR CONTINGENCY OPERATIONS.**

21 (a) **TEMPORARY THRESHOLD AMOUNTS.**—For a pro-
22 curement referred to in section 501 that is carried out
23 in support of a humanitarian or peacekeeping operation
24 or a contingency operation, the simplified acquisition
25 threshold definitions shall be applied as if the amount de-

1 terminated under the exception provided for such an oper-
2 ation in those definitions were—

3 (1) in the case of a contract to be awarded and
4 performed, or purchase to be made, inside the
5 United States, \$250,000; or

6 (2) in the case of a contract to be awarded and
7 performed, or purchase to be made, outside the
8 United States, \$500,000.

9 (b) SIMPLIFIED ACQUISITION THRESHOLD DEFINI-
10 TIONS.—In this section, the term “simplified acquisition
11 threshold definitions” means the following:

12 (1) Section 4(11) of the Office of Federal Pro-
13 curement Policy Act (41 U.S.C. 403(11)).

14 (2) Section 309(d) of the Federal Property and
15 Administrative Services Act of 1949 (41 U.S.C.
16 259(d)).

17 (3) Section 2302(7) of title 10, United States
18 Code.

19 (c) SMALL BUSINESS RESERVE.—For a procurement
20 carried out pursuant to subsection (a), section 15(j) of the
21 Small Business Act (15 U.S.C. 644(j)) shall be applied
22 as if the maximum anticipated value identified therein is
23 equal to the amounts referred to in subsection (a).

1 **SEC. 503. INCREASED MICRO-PURCHASE THRESHOLD FOR**
2 **CERTAIN PROCUREMENTS.**

3 In the administration of section 32 of the Office of
4 Federal Procurement Policy Act (41 U.S.C. 428) with re-
5 spect to a procurement referred to in section 501, the
6 amount specified in subsections (c), (d), and (f) of such
7 section 32 shall be deemed to be \$10,000.

8 **SEC. 504. APPLICATION OF CERTAIN COMMERCIAL ITEMS**
9 **AUTHORITIES TO CERTAIN PROCUREMENTS.**

10 (a) AUTHORITY.—

11 (1) IN GENERAL.—The head of an executive
12 agency may apply the provisions of law listed in
13 paragraph (2) to a procurement referred to in sec-
14 tion 501 without regard to whether the property or
15 services are commercial items.

16 (2) COMMERCIAL ITEM LAWS.—The provisions
17 of law referred to in paragraph (1) are as follows:

18 (A) Sections 31 and 34 of the Office of
19 Federal Procurement Policy Act (41 U.S.C.
20 427, 430).

21 (B) Section 2304(g) of title 10, United
22 States Code.

23 (C) Section 303(g) of the Federal Property
24 and Administrative Services Act of 1949 (41
25 U.S.C. 253(g)).

1 (b) INAPPLICABILITY OF LIMITATION ON USE OF
2 SIMPLIFIED ACQUISITION PROCEDURES.—

3 (1) IN GENERAL.—The \$5,000,000 limitation
4 provided in section 31(a)(2) of the Office of Federal
5 Procurement Policy Act (41 U.S.C. 427(a)(2)), sec-
6 tion 2304(g)(1)(B) of title 10, United States Code,
7 and section 303(g)(1)(B) of the Federal Property
8 and Administrative Services Act of 1949 (41 U.S.C.
9 253(g)(1)(B)) shall not apply to purchases of prop-
10 erty or services to which any of the provisions of law
11 referred to in subsection (a) are applied under the
12 authority of this section.

13 (2) OMB GUIDANCE.—The Director of the Of-
14 fice of Management and Budget shall issue guidance
15 and procedures for the use of simplified acquisition
16 procedures for a purchase of property or services in
17 excess of \$5,000,000 under the authority of this sec-
18 tion.

19 (c) CONTINUATION OF AUTHORITY FOR SIMPLIFIED
20 PURCHASE PROCEDURES.—Authority under a provision of
21 law referred to in subsection (a)(2) that expires under sec-
22 tion 4202(e) of the Clinger-Cohen Act of 1996 (divisions
23 D and E of Public Law 104–106; 10 U.S.C. 2304 note)
24 shall, notwithstanding such section, continue to apply for

1 use by the head of an executive agency as provided in sub-
2 sections (a) and (b).

3 **SEC. 505. USE OF STREAMLINED PROCEDURES.**

4 (a) **REQUIRED USE.**—The head of an executive agen-
5 cy shall, when appropriate, use streamlined acquisition au-
6 thorities and procedures authorized by law for a procure-
7 ment referred to in section 501, including authorities and
8 procedures that are provided under the following provi-
9 sions of law:

10 (1) **FEDERAL PROPERTY AND ADMINISTRATIVE**
11 **SERVICES ACT OF 1949.**—In title III of the Federal
12 **Property and Administrative Services Act of 1949:**

13 (A) Paragraphs (1), (2), (6), and (7) of
14 subsection (c) of section 303 (41 U.S.C. 253),
15 relating to use of procedures other than com-
16 petitive procedures under certain circumstances
17 (subject to subsection (e) of such section).

18 (B) Section 303J (41 U.S.C. 253j), relat-
19 ing to orders under task and delivery order con-
20 tracts.

21 (2) **TITLE 10, UNITED STATES CODE.**—In chap-
22 **ter 137 of title 10, United States Code:**

23 (A) Paragraphs (1), (2), (6), and (7) of
24 subsection (c) of section 2304, relating to use
25 of procedures other than competitive procedures

1 under certain circumstances (subject to sub-
2 section (e) of such section).

3 (B) Section 2304c, relating to orders
4 under task and delivery order contracts.

5 (3) OFFICE OF FEDERAL PROCUREMENT POL-
6 ICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of
7 section 18(c) of the Office of Federal Procurement
8 Policy Act (41 U.S.C. 416(c)), relating to inapplica-
9 bility of a requirement for procurement notice.

10 (b) WAIVER OF CERTAIN SMALL BUSINESS THRESH-
11 OLD REQUIREMENTS.—Subclause (II) of section
12 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C.
13 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of
14 such Act (15 U.S.C. 657a(b)(2)(A)) shall not apply in the
15 use of streamlined acquisition authorities and procedures
16 referred to in paragraphs (1)(A) and (2)(A) of subsection
17 (a) for a procurement referred to in section 501.

18 **SEC. 506. REVIEW AND REPORT BY COMPTROLLER GEN-**
19 **ERAL.**

20 (a) REQUIREMENTS.—Not later than March 31,
21 2004, the Comptroller General shall—

22 (1) complete a review of the extent to which
23 procurements of property and services have been
24 made in accordance with this subtitle; and

1 (2) submit a report on the results of the review
2 to the Committee on Governmental Affairs of the
3 Senate and the Committee on Government Reform
4 of the House of Representatives.

5 (b) CONTENT OF REPORT.—The report under sub-
6 section (a)(2) shall include the following matters:

7 (1) ASSESSMENT.—The Comptroller General’s
8 assessment of—

9 (A) the extent to which property and serv-
10 ices procured in accordance with this title have
11 contributed to the capacity of the workforce of
12 Federal Government employees within each ex-
13 ecutive agency to carry out the mission of the
14 executive agency; and

15 (B) the extent to which Federal Govern-
16 ment employees have been trained on the use of
17 technology.

18 (2) RECOMMENDATIONS.—Any recommenda-
19 tions of the Comptroller General resulting from the
20 assessment described in paragraph (1).

21 (c) CONSULTATION.—In preparing for the review
22 under subsection (a)(1), the Comptroller shall consult with
23 the Committee on Governmental Affairs of the Senate and
24 the Committee on Government Reform of the House of
25 Representatives on the specific issues and topics to be re-

1 viewed. The extent of coverage needed in areas such as
2 technology integration, employee training, and human
3 capital management, as well as the data requirements of
4 the study, shall be included as part of the consultation.

5 **Subtitle B—Other Matters**

6 **SEC. 511. IDENTIFICATION OF NEW ENTRANTS INTO THE** 7 **FEDERAL MARKETPLACE.**

8 The head of each executive agency shall conduct mar-
9 ket research on an ongoing basis to identify effectively the
10 capabilities, including the capabilities of small businesses
11 and new entrants into Federal contracting, that are avail-
12 able in the marketplace for meeting the requirements of
13 the executive agency in furtherance of defense against or
14 recovery from terrorism or nuclear, biological, chemical,
15 or radiological attack. The head of the executive agency
16 shall, to the maximum extent practicable, take advantage
17 of commercially available market research methods, in-
18 cluding use of commercial databases, to carry out the re-
19 search.