

In the Senate of the United States,

September 30, 1996.

Resolved, That the bill from the House of Representatives (H.R. 4194) entitled “An Act to reauthorize alternative means of dispute resolution in the Federal administrative process, and for other purposes.”, do pass with the following

AMENDMENT:

Page 12, after line 5 insert:

1 ***SEC. 12. JURISDICTION OF THE UNITED STATES COURT OF***
2 ***FEDERAL CLAIMS AND THE DISTRICT COURTS***
3 ***OF THE UNITED STATES: BID PROTESTS.***

4 *(a) BID PROTESTS.—Section 1491 of title 28, United*
5 *States Code, is amended—*

6 *(1) by redesignating subsection (b) as subsection*
7 *(c);*

8 *(2) in subsection (a) by striking out paragraph*
9 *(3); and*

10 *(3) by inserting after subsection (a), the follow-*
11 *ing new subsection;*

1 “(b)(1) *Both the United States Court of Federal Claims*
2 *and the district courts of the United States shall have juris-*
3 *isdiction to render judgment on an action by an interested*
4 *party objecting to a solicitation by a Federal agency for*
5 *bids or proposals for a proposed contract or to a proposed*
6 *award or the award of a contract or any alleged violation*
7 *of statute or regulation in connection with a procurement*
8 *or a proposed procurement. Both the United States Court*
9 *of Federal Claims and the district courts of the United*
10 *States shall have jurisdiction to entertain such an action*
11 *without regard to whether suit is instituted before or after*
12 *the contract is awarded.*

13 “(2) *To afford relief in such an action, the courts may*
14 *award any relief that the court considers proper, including*
15 *declaratory and injunctive relief except that any monetary*
16 *relief shall be limited to bid preparation and proposal costs.*

17 “(3) *In exercising jurisdiction under this sub-*
18 *section, the courts shall give due regard to the inter-*
19 *ests of national defense and national security and the*
20 *need for expeditious resolution of the action.*

21 “(4) *In any action under this subsection, the*
22 *courts shall review the agency’s decision pursuant to*
23 *the standards set forth in section 706 of title 5.”.*

24 **(b) EFFECTIVE DATE.**—*This section and the amend-*
25 *ments made by this section shall take effect on December*

1 31, 1996 and shall apply to all actions filed on or after
2 that date.

3 (c) *STUDY*.—No earlier than 2 years after the effective
4 date of this section, the United States General Accounting
5 Office shall undertake a study regarding the concurrent ju-
6 risdiction of the district courts of the United States and
7 the Court of Federal Claims over bid protests to determine
8 whether concurrent jurisdiction is necessary. Such a study
9 shall be completed no later than December 31, 1999, and
10 shall specifically consider the effect of any proposed change
11 on the ability of small businesses to challenge violations of
12 Federal procurement law.

13 (d) *SUNSET*.—The jurisdiction of the district courts of
14 the United States over the actions described in section
15 1491(b)(1) of title 28, United States Code (as amended by
16 subsection (a) of this section) shall terminate on January
17 1, 2001 unless extended by Congress. The savings provisions
18 in subsection (e) shall apply if the bid protest jurisdiction
19 of the district courts of the United States terminates under
20 this subsection.

21 (e) *SAVINGS PROVISIONS*.—

22 (1) *ORDERS*.—A termination under subsection
23 (d) shall not terminate the effectiveness of orders that
24 have been issued by a court in connection with an ac-
25 tion within the jurisdiction of that court on or before

1 *December 31, 2000. Such orders shall continue in ef-*
2 *fect according to their terms until modified, termi-*
3 *nated, superseded, set aside, or revoked by a court of*
4 *competent jurisdiction or by operation of law.*

5 (2) *PROCEEDINGS AND APPLICATIONS.*—(A) *a*
6 *termination under subsection (d) shall not affect the*
7 *jurisdiction of a court of the United States to con-*
8 *tinue with any proceeding that is pending before the*
9 *court on December 31, 2000.*

10 (B) *Orders may be issued in any such proceed-*
11 *ing, appeals may be taken therefrom, and payments*
12 *may be made pursuant to such orders, as if such ter-*
13 *mination had not occurred. An order issued in any*
14 *such proceeding shall continue in effect until modi-*
15 *fied, terminated, superseded, set aside, or revoked by*
16 *a court of competent jurisdiction or by operation of*
17 *law.*

18 (C) *Nothing in this paragraph prohibits the dis-*
19 *continuance or modification of any such proceeding*
20 *under the same terms and conditions and to the same*
21 *extent that proceeding could have been discontinued*
22 *or modified absent such termination.*

23 (f) *NONEXCLUSIVITY OF GAO REMEDIES.*—*In the*
24 *event that the bid protest jurisdiction of the district courts*
25 *of the United States is terminated pursuant to subsection*

- 1 *(d), then section 3556 of title 31, United States Code, shall*
- 2 *be amended by striking “a court of the United States or”*
- 3 *in the first sentence.*

Attest:

Secretary.

104TH CONGRESS
2D SESSION

H. R. 4194

AMENDMENT