

107TH CONGRESS  
2D SESSION

# H. R. 4694

To provide for flexibility in making emergency Federal procurements, and  
for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 9, 2002

Mr. BURTON of Indiana (for himself and Mr. TOM DAVIS of Virginia) introduced the following bill; which was referred to the Committee on Government Reform

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## A BILL

To provide for flexibility in making emergency Federal  
procurements, and for other purposes.

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; DEFINITIONS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Federal Emergency Procurement Flexibility Act of  
6       2002”.

7       (b) DEFINITIONS.—In this Act:

8               (1) EXECUTIVE AGENCY.—The term “executive  
9       agency” has the meaning given the term in section

1 4(1) of the Office of Federal Procurement Policy  
2 Act (41 U.S.C. 403(1)).

3 (2) FISCAL YEAR 2002 OR 2003 PROCURE-  
4 MENT.—The term “fiscal year 2002 or 2003 pro-  
5 curement” means a procurement for which funds are  
6 obligated during fiscal year 2002 or 2003.

7 **TITLE I—FISCAL YEAR 2002 AND**  
8 **2003 EMERGENCY PROCURE-**  
9 **MENTS**

10 **SEC. 101. PROCUREMENTS FOR DEFENSE AGAINST, OR RE-**  
11 **COVERY FROM, TERRORISM OR NUCLEAR, BI-**  
12 **OLOGICAL, CHEMICAL, OR RADIOLOGICAL**  
13 **ATTACK.**

14 (a) APPLICABILITY.—The authorities provided in this  
15 title apply to any fiscal year 2002 or 2003 procurement  
16 of property or services by or for an executive agency that,  
17 as determined by the head of the executive agency, are  
18 to be used to facilitate the defense against, or recovery  
19 from, terrorism or nuclear, biological, chemical, or radio-  
20 logical attack.

21 (b) REQUIREMENT FOR ADVANCE APPROVAL.—The  
22 authorities under sections 102 through 104 of this title  
23 may only be exercised, except in cases of unusual and com-  
24 pelling urgency, with the advance approval of the head of  
25 the applicable executive agency or his designee.

1 **SEC. 102. INCREASED SIMPLIFIED ACQUISITION THRESH-**  
2 **OLD FOR PROCUREMENTS IN SUPPORT OF**  
3 **HUMANITARIAN OR PEACEKEEPING OPER-**  
4 **ATIONS OR CONTINGENCY OPERATIONS.**

5 (a) FISCAL YEAR 2002 AND 2003 THRESHOLD  
6 AMOUNTS.—For a procurement referred to in section 101  
7 that is carried out in support of a humanitarian or peace-  
8 keeping operation or a contingency operation, the sim-  
9 plified acquisition threshold definitions shall be applied as  
10 if the amount determined under the exception provided for  
11 such an operation in those definitions were—

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

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

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

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

23 (2) Section 309(d) of the Federal Property and  
24 Administrative Services Act of 1949 (41 U.S.C.  
25 259(d)).

1           (3) Section 2302(7) of title 10, United States  
2       Code.

3       **SEC. 103. INCREASED MICRO-PURCHASE THRESHOLD FOR**  
4                               **CERTAIN PROCUREMENTS.**

5           (a) IN GENERAL.—(1) The head of each agency may  
6       designate certain employees of the agency to make pro-  
7       curements described in section 101 for which in the ad-  
8       ministration of section 32 of the Office of Federal Pro-  
9       curement Policy Act (41 U.S.C. 428) the amount specified  
10      in subsections (c), (d), and (f) of such section 32 shall  
11      be deemed to be \$15,000.

12          (2) The number of employees designated under para-  
13      graph (1) shall be—

14                (A) fewer than the number of employees of the  
15                agency who are authorized to make purchases with-  
16                out obtaining competitive quotations, pursuant to  
17                section 32(c) of the Office of Federal Procurement  
18                Policy Act (41 U.S.C. 428(c)), unless otherwise au-  
19                thorized by the Director of the Office of Manage-  
20                ment and Budget;

21                (B) sufficient to ensure the geographic dispersal  
22                of the availability of the use of the procurement au-  
23                thority under such paragraph at locations reasonably  
24                considered to be potential terrorist targets; and

1 (C) sufficiently limited to allow for the careful  
2 monitoring of employees designated under such  
3 paragraph.

4 (b) CONFORMING AMENDMENT.—Section 836 of the  
5 National Defense Authorization Act for Fiscal Year 2002  
6 (Public Law 107–107; 10 U.S.C. 2302 note) is repealed.

7 **SEC. 104. APPLICATION OF CERTAIN COMMERCIAL ITEMS**

8 **AUTHORITIES TO CERTAIN PROCUREMENTS.**

9 (a) AUTHORITY.—

10 (1) IN GENERAL.—The head of an executive  
11 agency may apply the provisions of law listed in  
12 paragraph (2) to a procurement referred to in sec-  
13 tion 101 without regard to whether the property or  
14 services are commercial items.

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

17 (A) Sections 31 and 34 of the Office of  
18 Federal Procurement Policy Act (41 U.S.C.  
19 427, 430), except that no provision in such sec-  
20 tion 34 or regulation issued to implement such  
21 section shall be construed as exempting con-  
22 tracts awarded under the authority of this sec-  
23 tion from the provisions in section 2306a of title  
24 10, United States Code, or section 304A of the  
25 Federal Property and Administrative Services

1 Act of 1949 (41 U.S.C. 254b), relating to truth  
2 in negotiations, or section 26 of the Office of  
3 Federal Procurement Policy Act (41 U.S.C.  
4 422), relating to cost accounting standards).

5 (B) Section 2304(g) of title 10, United  
6 States Code.

7 (C) Section 303(g) of the Federal Property  
8 and Administrative Services Act of 1949 (41  
9 U.S.C. 253(g)).

10 (b) INAPPLICABILITY OF LIMITATION ON USE OF  
11 SIMPLIFIED ACQUISITION PROCEDURES.—The  
12 \$5,000,000 limitation provided in section 31(a)(2) of the  
13 Office of Federal Procurement Policy Act (41 U.S.C.  
14 427(a)(2)), section 2304(g)(1)(B) of title 10, United  
15 States Code, and section 303(g)(1)(B) of the Federal  
16 Property and Administrative Services Act of 1949 (41  
17 U.S.C. 253(g)(1)(B)) shall be deemed to be \$10,000,000  
18 for purposes of property or services to which any of the  
19 provisions of law referred to in subsection (a) are applied  
20 under the authority of this section.

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

1 shall, notwithstanding such section, continue to apply for  
2 a fiscal year 2002 or 2003 procurement as provided in  
3 subsections (a) and (b).

4 **SEC. 105. USE OF STREAMLINED PROCEDURES.**

5 (a) IN GENERAL.—The head of an executive agency  
6 shall, when appropriate, use streamlined acquisition au-  
7 thorities and procedures authorized by law for a procure-  
8 ment referred to in section 101, including authorities and  
9 procedures that are provided under the following provi-  
10 sions of law:

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

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

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

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

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

of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

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

(3) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)), relating to inapplicability of a requirement for procurement notice.

(b) NON-DISCRIMINATION AGAINST SMALL-BUSINESS CONCERNS.—Subsection (a) shall be applied in a manner that does not discriminate against small-business concerns (within the meaning of such term as used in the Small Business Act (15 U.S.C. 632 et seq.)) or any type of small-business concern.

**SEC. 106. OFFICE OF MANAGEMENT AND BUDGET GUIDANCE.**

(a) IN GENERAL.—The Director of the Office of Management and Budget shall issue guidance and procedures regarding—

(1) the types of procurements that qualify under section 101 as facilitating the defense against, or recovery from, terrorism or nuclear, biological, chemical, or radiological attack;



1           (2) the implementation of section 103, includ-  
2           ing the appropriate number of employees that should  
3           be designated under section 103; and

4           (3) the use of simplified acquisition procedures  
5           for a purchase of property or services under the au-  
6           thority of section 104.

7           (b) NUMBER OF DESIGNATED EMPLOYEES.—The  
8           guidance under subsection (a)(1) shall include provisions  
9           that provide the following:

10           (1) Procurements made under the authority of  
11           section 103 should be subject to review by a des-  
12           ignated supervisor on not less than a monthly basis.

13           (2) The supervisor responsible for the review  
14           described in paragraph (1) shall be responsible for  
15           no more than 7 employees making procurements  
16           under section 103.

17 **SEC. 107. REVIEW AND REPORT BY COMPTROLLER GEN-**  
18 **ERAL.**

19           Not later than 180 days after the end of fiscal year  
20           2003, the Comptroller General shall submit to the Com-  
21           mittee on Governmental Affairs of the Senate and the  
22           Committee on Government Reform of the House of Rep-  
23           resentatives a report on the use of the authorities provided  
24           in this title. The report shall contain the following:

1           (1) An assessment of the extent to which prop-  
2       erty and services acquired using authorities provided  
3       under this title contributed to the capacity of the  
4       Federal workforce to facilitate the defense against,  
5       or recovery from, terrorism or nuclear, biological,  
6       chemical, or radiological attack.

7           (2) An assessment of the extent to which prices  
8       for property and services acquired using authorities  
9       provided under this title reflected the best value.

10          (3) The number of employees designated by  
11       each executive agency under section 103.

12          (4) An assessment of the extent to which the  
13       number of employees designated under section 103  
14       by each executive agency is reasonable and necessary  
15       to achieve the purpose of facilitating the defense  
16       against, or recovery from, terrorism or nuclear, bio-  
17       logical, chemical, or radiological attack.

18          (5) An assessment of the extent to which execu-  
19       tive agencies have monitored the use of procurement  
20       authority by employees designated under section 103  
21       to prevent fraud and abuse.

22          (6) Any recommendations of the Comptroller  
23       General for improving the effectiveness of the imple-  
24       mentation of the provisions of this Act, taking into

1 account the assessment performed under paragraphs  
 2 (1), (4), and (5).

3 **TITLE II—GOVERNMENTWIDE**  
 4 **TRANSACTION AND PROJECT**  
 5 **AUTHORITY**

6 **SEC. 201. AUTHORITY TO ENTER INTO CERTAIN PROCURE-**  
 7 **MENT-RELATED TRANSACTIONS.**

8 (a) **AUTHORITY.**—Title III of the Federal Property  
 9 and Administrative Services Act of 1949 (41 U.S.C. 251  
 10 et seq.) is amended by adding at the end the following  
 11 new section:

12 **“SEC. 317. AUTHORITY TO ENTER INTO CERTAIN TRANS-**  
 13 **ACTIONS FOR DEFENSE AGAINST, OR RECOV-**  
 14 **ERY FROM, TERRORISM OR NUCLEAR, BIO-**  
 15 **LOGICAL, CHEMICAL, OR RADIOLOGICAL AT-**  
 16 **TACK.**

17 “(a) **AUTHORITY.**—

18 “(1) **IN GENERAL.**—The head of an executive  
 19 agency who engages in basic research, applied re-  
 20 search, advanced research, and development projects  
 21 that—

22 “(A) are necessary to the responsibilities of  
 23 such official’s executive agency in the field of  
 24 research and development, and

1           “(B) have the potential to facilitate de-  
2           fense against, or recovery from, terrorism or  
3           nuclear, biological, chemical, or radiological at-  
4           tack,

5           may exercise the same authority (subject to the  
6           same restrictions and conditions) with respect to  
7           such research and projects as the Secretary of De-  
8           fense may exercise under section 2371 of title 10,  
9           United States Code, except for subsections (b), (f),  
10          and (g) of such section.

11          “(2) APPLICABILITY TO SELECTED EXECUTIVE  
12          AGENCIES.—The head of an executive agency may  
13          exercise authority under this subsection only if au-  
14          thorized by the Director of the Office of Manage-  
15          ment and Budget to do so.

16          “(b) ANNUAL REPORT.—The annual report of the  
17          head of an executive agency that is required under sub-  
18          section (h) of section 2371 of title 10, United States Code,  
19          as applied to the head of an executive agency by subsection  
20          (a), shall be submitted to the Committee on Governmental  
21          Affairs of the Senate and the Committee on Government  
22          Reform of the House of Representatives.

23          “(c) REGULATIONS.—The Director of the Office of  
24          Management and Budget shall prescribe regulations to  
25          carry out this section.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
 2 in section 1(b) of such Act is amended by inserting after  
 3 the item relating to section 316 the following new item:

“Sec. 317. Authority to enter into certain transactions for defense against,  
 or recovery from, terrorism or nuclear, biological, chem-  
 ical, or radiological attack.”.

4 **SEC. 202. TEMPORARY AUTHORITY FOR CARRYING OUT**  
 5 **CERTAIN PROTOTYPE PROJECTS.**

6 (a) IN GENERAL.—The head of an executive agency  
 7 designated by the Director of the Office of Management  
 8 and Budget to do so may, under the authority of section  
 9 317 of the Federal Property and Administrative Services  
 10 Act of 1949 (as added by subsection (a)), carry out proto-  
 11 type projects that meet the requirements of subparagraphs  
 12 (A) and (B) of subsection (a)(1) of such section in accord-  
 13 ance with the same requirements and conditions as are  
 14 provided for carrying out prototype projects under section  
 15 845 of the National Defense Authorization Act for Fiscal  
 16 Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

17 (b) CONFORMING AUTHORITY.—In the application of  
 18 the requirements and conditions of section 845 of the Na-  
 19 tional Defense Authorization Act for Fiscal Year 1994  
 20 (Public Law 103–160; 10 U.S.C. 2371 note) to the admin-  
 21 istration of authority under subsection (a)—

22 (1) subsection (c) of such section shall apply  
 23 with respect to prototype projects carried out under  
 24 this subsection; and

1           (2) the Director of the Office of Management  
2           and Budget shall perform the function of the Sec-  
3           retary of Defense under subsection (d) of such sec-  
4           tion.

## 5           **TITLE III—OTHER MATTERS**

### 6   **SEC. 301. 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.

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