

107TH CONGRESS
2D SESSION

S. 3076

To provide risk sharing and indemnification for government contractors supplying anti-terrorism technology and services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 8, 2002

Mr. WARNER (for himself and Mr. ALLEN) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To provide risk sharing and indemnification for government contractors supplying anti-terrorism technology and services, 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. APPLICATION OF INDEMNIFICATION AUTHOR-**
4 **ITY.**

5 (a) IN GENERAL.—The discretionary authority under
6 Public Law 85–804 (50 U.S.C. 1431 et seq.) includes au-
7 thority for the President to provide under such law for
8 the indemnification of a contractor or subcontractor in
9 connection with procurement of an anti-terrorism tech-
10 nology or an anti-terrorism service from the contractor or

1 subcontractor for the purpose of preventing, detecting,
2 identifying, otherwise deterring, or recovering from acts
3 of terrorism.

4 (b) EXERCISE OF AUTHORITY.—The authority to
5 provide under Public Law 85–804 for indemnification of
6 contractors and subcontractors in connection with pro-
7 curements described in subsection (a) includes authority
8 for the President to provide for—

9 (1) indemnification for economic damages not
10 fully covered by private liability insurance within the
11 scope of the losses or damages of the indemnification
12 coverage;

13 (2) negotiation for inclusion of an indemnifica-
14 tion clause in a contract prior to the commencement
15 of the performance of the contract;

16 (3) coverage of information technology used to
17 prevent, detect, identify, otherwise deter, or recover
18 from acts of terrorism; and

19 (4) applicability of the authority to procure-
20 ments by the United States Postal Service.

21 **SEC. 2. APPLICATION OF INDEMNIFICATION AUTHORITY**
22 **TO STATE AND LOCAL GOVERNMENT CON-**
23 **TRACTORS.**

24 (a) AUTHORITY.—Subject to the limitations of sub-
25 section (b), the President may exercise the discretionary

1 authority under Public Law 85–804 (50 U.S.C. 1431 et
2 seq.) so as to provide under such law for indemnification
3 of contractors and subcontractors in procurements by
4 States or units of local government of an anti-terrorism
5 technology or an anti-terrorism service for the purpose of
6 preventing, detecting, identifying, otherwise deterring, or
7 recovering from acts of terrorism.

8 (b) LIMITATIONS.—Any authority that is delegated
9 by the President under subsection (a) to the head of a
10 Federal agency to provide for the indemnification of con-
11 tractors and subcontractors under Public Law 85–804 (50
12 U.S.C. 1431 et seq.) for procurements by States or units
13 of local government may be exercised only—

14 (1) in the case of a procurement by a State or
15 unit of local government that—

16 (A) is made under a contract awarded pur-
17 suant to section 3; and

18 (B) is approved, in writing, for the provi-
19 sion of indemnification by the President or the
20 official designated by the President under sec-
21 tion 3(a); and

22 (2) with respect to—

23 (A) amounts of losses or damages not fully
24 covered by private liability insurance and State

or local government-provided indemnification;
and

(B) liabilities of a contractor or subcontractor not arising out of willful misconduct or lack of good faith on the part of the contractor or subcontractor, respectively.

SEC. 3. PROCUREMENTS OF ANTI-TERRORISM TECHNOLOGIES AND ANTI-TERRORISM SERVICES BY STATE AND LOCAL GOVERNMENTS THROUGH FEDERAL CONTRACTS.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROGRAM.—The President shall designate an officer or employee of the United States to establish, and the designated official shall establish, a program under which States and units of local government may procure through contracts entered into by the designated official anti-terrorism technologies or anti-terrorism services for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(2) DESIGNATED FEDERAL PROCUREMENT OFFICIAL FOR PROGRAM.—In this section, the officer or employee designated by the President under para-

1 graph (1) shall be referred to as the “designated
2 Federal procurement official”.

3 (3) AUTHORITIES.—Under the program, the
4 designated Federal procurement official may, but
5 shall not be required to, award contracts using the
6 same authorities as are provided to the Adminis-
7 trator of General Services under section 309(b)(3) of
8 the Federal Property and Administrative Services
9 Act (41 U.S.C. 259(b)(3)).

10 (4) OFFERS NOT REQUIRED TO STATE AND
11 LOCAL GOVERNMENTS.—A contractor that sells anti-
12 terrorism technology or anti-terrorism services to the
13 Federal Government may not be required to offer
14 such technology or services to a State or unit of
15 local government under the program.

16 (b) RESPONSIBILITIES OF THE CONTRACTING OFFI-
17 CIAL.—In carrying out the program established under this
18 section, the designated Federal procurement official
19 shall—

20 (1) produce and maintain a catalog of anti-ter-
21 rorism technologies and anti-terrorism services suit-
22 able for procurement by States and units of local
23 government under this program; and

24 (2) establish procedures in accordance with sub-
25 section (c) to address the procurement of anti-ter-

rorism technologies and anti-terrorism services by States and units of local government under contracts awarded by the designated official.

(c) REQUIRED PROCEDURES.—The procedures required by subsection (b)(2) shall implement the following requirements and authorities:

(1) SUBMISSIONS BY STATES.—

(A) REQUESTS AND PAYMENTS.—Except as provided in subparagraph (B), each State desiring to participate in a procurement of anti-terrorism technologies or anti-terrorism services through a contract entered into by the designated Federal procurement official under this section shall submit to that official in such form and manner and at such times as such official prescribes, the following:

(i) REQUEST.—A request consisting of an enumeration of the technologies or services, respectively, that are desired by the State and units of local government within the State.

(ii) PAYMENT.—Advance payment for each requested technology or service in an amount determined by the designated official based on estimated or actual costs of

1 the technology or service and administra-
2 tive costs incurred by such official.

3 (B) OTHER CONTRACTS.—The designated
4 Federal procurement official may award and
5 designate contracts under which States and
6 units of local government may procure anti-ter-
7 rorism technologies and anti-terrorism services
8 directly from the contractors. No indemnifica-
9 tion may be provided under Public Law 85–804
10 pursuant to an exercise of authority under sec-
11 tion 2 for procurements that are made directly
12 between contractors and States or units of local
13 government.

14 (2) PERMITTED CATALOG TECHNOLOGIES AND
15 SERVICES.—A State may include in a request sub-
16 mitted under paragraph (1) only a technology or
17 service listed in the catalog produced under sub-
18 section (b)(1).

19 (3) COORDINATION OF LOCAL REQUESTS WITH-
20 IN STATE.—The Governor of a State may establish
21 such procedures as the Governor considers appro-
22 priate for administering and coordinating requests
23 for anti-terrorism technologies or anti-terrorism
24 services from units of local government within the
25 State.

1 (4) SHIPMENT AND TRANSPORTATION COSTS.—

2 A State requesting anti-terrorism technologies or
3 anti-terrorism services shall be responsible for ar-
4 ranging and paying for any shipment or transpor-
5 tation of the technologies or services, respectively, to
6 the State and localities within the State.

7 (d) REIMBURSEMENT OF ACTUAL COSTS.—In the
8 case of a procurement made by or for a State or unit of
9 local government under the procedures established under
10 this section, the designated Federal procurement official
11 shall require the State or unit of local government to reim-
12 burse the Department for the actual costs it has incurred
13 for such procurement.

14 (e) TIME FOR IMPLEMENTATION.—The catalog and
15 procedures required by subsection (b) of this section shall
16 be completed as soon as practicable and no later than 210
17 days after the enactment of this Act.

18 **SEC. 4. CONGRESSIONAL NOTIFICATION.**

19 (a) IN GENERAL.—The President shall ensure that
20 an appropriate officer of the United States submits to the
21 appropriate committees of Congress a written notification
22 of each contract for a procurement described in this Act
23 for which indemnification is provided under Public Law
24 85–804 within 30 days after the contract is entered into.

1 (b) CONGRESSIONAL COMMITTEES.—In this section,
2 the term “appropriate committees of Congress” means the
3 following:

4 (1) The Committee on Appropriations, Com-
5 mittee of Armed Services, and Committee on Gov-
6 ernmental Affairs of the Senate.

7 (2) The Committee on Appropriations, Com-
8 mittee of Armed Services, and Committee on Gov-
9 ernment Reform of the House of Representatives.

10 **SEC. 5. DEFINITIONS.**

11 In this Act:

12 (1) ANTI-TERRORISM TECHNOLOGY AND SERV-
13 ICE.—The terms “anti-terrorism technology” and
14 “anti-terrorism service” mean any product, equip-
15 ment, or device, including information technology,
16 and any service, system integration, or other kind of
17 service (including a support service), respectively,
18 that is related to technology and is designed, devel-
19 oped, modified, or procured for the purpose of pre-
20 venting, detecting, identifying, otherwise deterring,
21 or recovering from acts of terrorism.

22 (2) ACT OF TERRORISM.—The term “act of ter-
23 rorism” means a calculated attack or threat of at-
24 tack against any person, property, or infrastructure
25 to inculcate fear, or to intimidate or coerce a govern-

1 ment, the civilian population, or any segment there-
2 of, in the pursuit of political, religious, or ideological
3 objectives.

4 (3) INFORMATION TECHNOLOGY.—The term
5 “information technology” has the meaning such
6 term in section 11101(6) of title 40, United States
7 Code.

8 (4) STATE.—The term “State” includes the
9 District of Columbia, the Commonwealth of Puerto
10 Rico, the Commonwealth of the Northern Mariana
11 Islands, and any territory or possession of the
12 United States.

13 (5) UNIT OF LOCAL GOVERNMENT.—The term
14 “unit of local government” means any city, county,
15 township, town, borough, parish, village, or other
16 general purpose political subdivision of a State; an
17 Indian tribe which performs law enforcement func-
18 tions as determined by the Secretary of the Interior;
19 or any agency of the District of Columbia Govern-
20 ment or the United States Government performing
21 law enforcement functions in and for the District of
22 Columbia or the Trust Territory of the Pacific Is-
23 lands.

