

Public Law 98-72
98th Congress

An Act

To improve small business access to Federal procurement information.

Aug. 11, 1983
[S. 272]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 8(e) of the Small Business Act is amended to read as follows:

Small Business
Act,
amendment.
15 USC 637.

“(e)(1) It shall be the duty of the Secretary of Commerce, and the Secretary is hereby empowered, to obtain notice of all proposed competitive and noncompetitive civilian and defense procurement actions of \$10,000 and above from any Federal department, establishment or agency (hereinafter in this subsection referred to as ‘department’) engaged in procurement of property, supplies, and services in the United States; and to publicize such notices in the daily publication Commerce Business Daily, immediately after the necessity for the procurement is established: *Provided*, That nothing in this paragraph shall require publication of such notices with respect to those procurements in which it is determined on a case-by-case basis that (A) the procurement for security reasons is of a classified nature; (B) the Federal department’s need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the time periods provided for in paragraph (2) were complied with; (C) a foreign government reimburses the Federal department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty; (D) the procurement is made from another Government department or agency, or a mandatory source of supply; (E) the procurement is for utility services and only one source is available; (F) the procurement is made against an order placed under a requirement or similar contract, including orders for perishable subsistence supplies; (G) the procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research; or (H) it is determined in writing by the head of the Federal department, with the concurrence of the Administrator, that advance notice is not appropriate or reasonable.

Proposed
procurement
action notices,
publication.

15 USC 631 note.

“(2) Whenever a Federal department is required to publish notice of procurement actions pursuant to paragraph (1) of this subsection, such department shall not—

Procurement
actions by
Federal
departments,
notice
requirements.

“(A) issue a solicitation until at least fifteen days have elapsed from the date of publication of a proper notice of the action in the Commerce Business Daily, except if the solicitation is for procurement of requirements categorized as research or

development effort, in which case until at least thirty days have elapsed from the date of such publication;

"(B) foreclosure competition until at least thirty days have elapsed from either (i) the date of issuance of the solicitation, or (ii) in the case of orders under a basic agreement, basic ordering agreement, or similar arrangement, the date of publication of a proper notice of intent to place the order; or

"(C) commence negotiations for the award of a sole source contract until at least thirty days have elapsed from the date of publication of a proper notice of intent to contract: *Provided*, That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information.

Notice format.

"(3) Whenever notice is required by paragraph (1), such notice shall include—

"(A) a clear description of the property, supplies, or services to be contracted for, which description is not unnecessarily restrictive of competition;

"(B) the name, address and telephone number of the officer or employee of the Federal department who may be contacted for the purpose of obtaining a copy of either the solicitation or, if the notice is for an intent to contract on a sole source basis, such specification and information as practicable regarding the service or performance to be awarded; and

"(C) solely with respect to notice of intent to contract on a sole source basis, a statement that interested persons are invited to identify their interest and capability to respond to such requirement, or to submit proposals in response to such notice, within the stated period of time provided under paragraph (2).

"(4) Notwithstanding any other provision of law, unless the negotiations would be conducted pursuant to this section or section 9 of this Act or unless a Federal department's need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the provisions of this paragraph were complied with, a Federal department may not commence negotiations for the award of a sole source contract or a contract that results from an unsolicited proposal for more than \$1,000,000 in fiscal year 1984, for more than \$500,000 in fiscal year 1985 and for more than \$300,000 in fiscal year 1986 and each year thereafter unless—

"(A) the head of the procuring activity or his deputy, on a nondelegable basis, has approved the authority to enter into such contract, and

"(B) the contracting officer for such contract has evaluated the responses to the notice of procurement action required in subparagraph (3)(C):

Provided, That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information. Annually, each department shall report to the Congress on each negotiation above the stated amount if the head of the procuring activity or his deputy did not approve the authority to enter into such contract.

Report to Congress.

"(5) In the case of all procurement actions in excess of \$25,000 in which the award of a contract is likely to result in the award of subcontracts under such contract, unless the procurement for security reasons is of a classified nature, the Federal department shall

15 USC 638.

promptly furnish for publication by the Secretary of Commerce a notice announcing the award in the Commerce Business Daily.

“(6) As used in this subsection—

“(A) the term ‘sole source contract’ means a contract for the purchase of property, supplies or services which is entered into or proposed to be entered into by a Federal department after soliciting and negotiating with only one source.

“Sole source contract.”

“(B) the term ‘unsolicited proposal’ means a proposal that is submitted to a Federal department on the initiative of the submitter for the purpose of obtaining a contract with the United States Government, and which is not in response to a formal or informal request (other than a departmental request constituting a publicized general statement of need in areas of science and technology-based research and development that are of interest to the department).”

“Unsolicited proposal.”

(b)(1) Except as to the amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act, the amendments made by this Act shall apply to procurement actions initiated ninety days after the date of enactment of this Act.

15 USC 637 note.

(2) The amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act shall apply to procurement actions initiated on or after October 1, 1983.

(3) The provisions of this Act shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.

Approved August 11, 1983.

LEGISLATIVE HISTORY—S. 272 (H.R. 1043):

HOUSE REPORTS: No. 98-3 accompanying H.R. 1043 (Comm. on Small Business) and No. 98-263 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 129 (1983):

Feb. 3, considered and passed Senate.

Feb. 15, H.R. 1043 considered and passed House.

Mar. 8, considered and passed House, amended, in lieu of H.R. 1043.

June 27, Senate agreed to conference report; disagreed to House amendment.

Aug. 1, House agreed to conference report; receded from its amendment.