

AMENDMENT NO. _____ Calendar No. _____

Purpose: To prohibit the award of certain no-bid contracts without justification.

IN THE SENATE OF THE UNITED STATES—112th Cong., 1st Sess.

S. 772

To protect Federal employees and visitors, improve the security of Federal facilities and authorize and modernize the Federal Protective Service.

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. McCAIN

Viz:

1 At the appropriate place, insert the following:

2 **SEC. __. PROHIBITION ON CERTAIN NO-BID CONTRACTS.**

3 (a) DEFINITIONS.—In this section—

4 (1) the term “appropriate official” has the
5 same meaning as in section 811 of the National De-
6 fense Authorization Act for Fiscal Year 2010 (Pub-
7 lic Law 111–84; 123 Stat. 2405);

8 (2) the term “covered participant” means an
9 Indian tribe, Alaska Native Corporation or Alaska
10 Native Village, Native Hawaiian Organization, or
11 community development corporation participating in

1 the program under section 8(a) of the Small Busi-
2 ness Act (15 U.S.C. 637(a));

3 (3) the term “covered procurement” means a
4 covered procurement, as defined in section 811 of
5 the National Defense Authorization Act for Fiscal
6 Year 2010 (Public Law 111–84; 123 Stat. 2405), by
7 the Department of Homeland Security;

8 (4) the term “Department” means the Depart-
9 ment of Homeland Security; and

10 (5) the term “Secretary” means the Secretary
11 of Homeland Security.

12 (b) IN GENERAL.—The Federal Acquisition Regu-
13 latory Council shall amend the Federal Acquisition Regu-
14 lation to provide that the Secretary may not award a sole-
15 source contract in a covered procurement to a covered par-
16 ticipant for an amount exceeding \$4,000,000, if the cov-
17 ered contract is for the procurement of services, or
18 \$6,500,000 if the covered contract is for the procurement
19 of goods, unless—

20 (1) the contracting officer for the contract justi-
21 fies the use of a sole-source contract in writing;

22 (2) the justification is approved by the appro-
23 priate official designated to approve contract awards
24 for dollar amounts that are comparable to the
25 amount of the sole-source contract; and

1 (3) the justification and related information are
2 made public as provided in subsection (e)(1)(C) or
3 subsection (f) of section 3304 of title 41, United
4 States Code, as applicable.

5 (c) ELEMENTS OF JUSTIFICATION.—The justification
6 of a sole-source contract required under subsection (b)
7 shall include—

8 (1) a description of the needs of the Depart-
9 ment for the matters covered by the contract;

10 (2) a specification of the statutory provision
11 providing the exception from the requirement to use
12 competitive procedures in entering into the contract;

13 (3) a determination that the use of a sole-
14 source contract is in the best interest of the Depart-
15 ment;

16 (4) a determination that the anticipated cost of
17 the contract will be fair and reasonable; and

18 (5) such other matters as the Secretary shall
19 specify for purposes of this section.

20 (d) ADJUSTMENT OF AMOUNTS.—The dollar
21 amounts described in subsection (b) shall be adjusted for
22 inflation in accordance with section 1908 of title 41,
23 United States Code.