

112TH CONGRESS  
1ST SESSION

# S. 1736

To achieve cost savings through the reform of Federal acquisition practices and procedures.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 19, 2011

Mr. BROWN of Massachusetts (for himself, Ms. COLLINS, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To achieve cost savings through the reform of Federal acquisition practices and procedures.

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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Acquisition Savings Reform Act of 2011”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Use of reverse auction methods.
- Sec. 4. Federal Strategic Sourcing Initiative.
- Sec. 5. Savings through leveraging the Federal Government’s purchasing power.
- Sec. 6. Governmentwide contract vehicles.

- Sec. 7. Streamlining of contract closeouts.  
 Sec. 8. Affordability as a requirement for certain acquisition plans.  
 Sec. 9. Cost efficiency objectives for service contracts.  
 Sec. 10. Establishing governmentwide acquisition savings criteria.  
 Sec. 11. Office of Management and Budget savings requirements.  
 Sec. 12. Expedited payment to small business.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **APPROVED BUSINESS CASE.**—The term  
 4 “approved business case” means a business case ap-  
 5 proved by the senior procurement executive of an ex-  
 6 ecutive agency.

7 (2) **ACQUISITION.**—The term “acquisition” has  
 8 the meaning given the term in section 131 of title  
 9 41, United States Code.

10 (3) **COMMERCIAL ITEM.**—The term “commer-  
 11 cial item” has the meaning given the term in section  
 12 103 of title 41, United States Code.

13 (4) **EXECUTIVE AGENCY.**—The term “executive  
 14 agency” has the meaning given the term in section  
 15 133 of title 41, United States Code.

16 (5) **FEDERAL ACQUISITION REGULATION.**—The  
 17 term “Federal Acquisition Regulation” means the  
 18 Federal Acquisition Regulation maintained under  
 19 section 1303(a)(1) of title 41, United States Code.

20 (6) **FEDERAL ACQUISITION REGULATORY COUN-  
 21 CIL.**—The term “Federal Acquisition Regulatory  
 22 Council” means the Federal Acquisition Regulatory

1 Council established under section 1302(a) of title  
2 41, United States Code.

3 (7) FEDERAL STRATEGIC SOURCING VEHICLES  
4 (FSSVS).—The term “Federal Strategic Sourcing Ve-  
5 hicles” means a kind of governmentwide interagency  
6 acquisition contract or agreement designated by the  
7 Office of Management and Budget to leverage the  
8 Federal Government’s buying power and save tax-  
9 payers money.

10 (8) INTERAGENCY CONTRACT.—The term  
11 “interagency contract”—

12 (A) includes—

13 (i) governmentwide acquisition con-  
14 tracts as defined in Federal Acquisition  
15 Regulation part 2.101;

16 (ii) multi-agency contracts as defined  
17 in Federal Acquisition Regulation part  
18 2.101;

19 (iii) Federal Supply Schedule con-  
20 tracts; and

21 (iv) franchise funds; and

22 (B) does not include contracts entered into  
23 under the authority of section 1535 of title 31,  
24 United States Code.

1           (9) **PROCUREMENT.**—The term “procurement”  
2       has the meaning given the term in section 111 of  
3       title 41, United States Code.

4 **SEC. 3. USE OF REVERSE AUCTION METHODS.**

5       Not later than 270 days after the date of the enact-  
6       ment of this Act, the Federal Acquisition Regulatory  
7       Council shall amend the Federal Acquisition Regulation  
8       to require the heads of executive agencies, to the extent  
9       possible, to use online reverse auction, or an equivalent  
10      method, in the procurement of commercial items above the  
11      simplified acquisition threshold whenever doing so would  
12      be expected to result in savings to the agencies. The regu-  
13      latory guidance shall address the circumstances in which  
14      use of reverse auctions is appropriate, and shall direct  
15      agencies, in deciding whether to use auctions or an equiva-  
16      lent method, to consider the dollar volume of the acquisi-  
17      tion and potential to streamline the procurement for the  
18      agency and vendors.

19 **SEC. 4. FEDERAL STRATEGIC SOURCING INITIATIVE.**

20       (a) **CONSIDERATION IN ACQUISITION PLANNING**  
21 **PROCESS.**—Not later than 270 days after the date of the  
22      enactment of this Act, the Federal Acquisition Regulatory  
23      Council shall amend the Federal Acquisition Regulation  
24      to require the consideration of Federal Strategic Sourcing  
25      Vehicles in the acquisition planning process, by including

1 a listing of Federal Strategic Sourcing Vehicles in the  
2 “Priorities for use of Government supply sources” for  
3 Supplies and Services. The Office of Management and  
4 Budget shall maintain a website with the current list of  
5 Federal Strategic Sourcing Vehicles. The Supplies priority  
6 shall be after the priority for wholesale supply services.  
7 The Services priority shall be after services which are on  
8 the Procurement List maintained by the Committee for  
9 Purchase From People Who are Blind or Severely Dis-  
10 abled. The Federal Acquisition Regulation shall be amend-  
11 ed to authorize purchases from other than from Federal  
12 Strategic Sourcing Vehicles, provided that consideration  
13 is given to its use in the acquisition planning process. The  
14 plan will be documented to acknowledge why usage of  
15 other than Federal Strategic Sourcing Vehicles is war-  
16 ranted. The acknowledgment shall indicate that such ac-  
17 tion is judged to be in the best interest of the Federal  
18 Government in terms of the combination quality, timeli-  
19 ness, and cost that best meets the requirement. Cost com-  
20 parisons shall include the administrative cost of the acqui-  
21 sition. Unusual and compelling urgency as prescribed in  
22 the Federal Acquisition Regulation shall also be an au-  
23 thorized reason from deviating from the Federal Strategic  
24 Sourcing Vehicles.

1           (b) MAXIMIZATION OF SMALL BUSINESS AND OTHER  
2 SOCIOECONOMIC CATEGORIES IN FEDERAL STRATEGIC  
3 SOURCING VEHICLES.—The Administrator for Federal  
4 Procurement Policy shall issue policy maximizing the par-  
5 ticipation of small business and other socioeconomic cat-  
6 egories such as service-disabled veteran-owned small busi-  
7 ness in these Federal Strategic Sourcing Vehicles. Agen-  
8 cies shall also be credited towards their small business  
9 goals when awarding to small business Federal Strategic  
10 Sourcing Vehicle contract holders.

11           (c) IDENTIFICATION OF DESIGNATED FEDERAL  
12 STRATEGIC SOURCE VEHICLES.—The Office of Manage-  
13 ment and Budget shall identify on its website a list of all  
14 Federal Strategic Source Vehicle contracts and agree-  
15 ments and awardees.

16           (d) INCLUSION OF INFORMATION TECHNOLOGY PUR-  
17 CHASES AND SERVICES IN INITIATIVE.—

18               (1) DATA COLLECTION.—The Director of the  
19 Office of Management and Budget shall prescribe  
20 regulations requiring Chief Information Officers and  
21 Chief Acquisition Officers of executive agencies to  
22 develop and gather such data on information tech-  
23 nology purchases and service acquisitions by North  
24 American Industrial Classification codes.

1           (2) ANNUAL REPORT.—The regulations pre-  
2       scribed under this subsection shall require the head  
3       of each executive agency to submit to the Director  
4       of Office of Management and Budget an annual re-  
5       port through fiscal year 2016 including the data col-  
6       lected under paragraph (1) and a plan for the stra-  
7       tegic sourcing of information technology purchases  
8       and common commercial services. The plan shall in-  
9       clude specific milestones, measurable savings, and  
10      evaluation criteria.

11       (e) REPORTING.—The head of each executive agency  
12      shall submit to the Director of the Office of Management  
13      and Budget an annual report for each of fiscal years 2013  
14      through 2016, estimating the amount of savings achieved  
15      through the usage of Federal Strategic Sourcing Vehicles  
16      and through other measurable acquisition savings methods  
17      approved by the Administrator for Federal Procurement  
18      Policy. The report shall also specify by each Federal Stra-  
19      tegic Sourcing Vehicle commodity what guidance the agen-  
20      cy has issued to employees instructing them to procure  
21      goods or services through the Federal Strategic Sourcing  
22      Vehicle. If the agency has not issued such guidance to  
23      their employees, the agency shall submit an explanation.

1 **SEC. 5. SAVINGS THROUGH LEVERAGING THE FEDERAL**  
2 **GOVERNMENT'S PURCHASING POWER.**

3 Not later than 120 days after the date of the enact-  
4 ment of this Act, the Director of the Office of Manage-  
5 ment and Budget shall develop a plan to achieve not less  
6 than \$1,000,000,000 in measurable savings through Fed-  
7 eral Strategic Sourcing Vehicles for fiscal years 2013  
8 through 2016. The plan shall include an annual scorecard  
9 measuring the success of each executive agency in achiev-  
10 ing savings.

11 **SEC. 6. GOVERNMENTWIDE CONTRACT VEHICLES.**

12 Not later than 270 days after the date of the enact-  
13 ment of this Act, the Federal Acquisition Regulatory  
14 Council shall amend the Federal Acquisition Regulation  
15 to provide that—

16 (1) where an agency is unable to satisfy the re-  
17 quirements from a mandatory source, agencies are  
18 strongly encouraged to utilize Federal Supply Sched-  
19 ules, governmentwide acquisition contracts, multi-  
20 agency contracts, and any other procurement instru-  
21 ments intended for use by multiple agencies, includ-  
22 ing blanket purchase agreements (BPAs) under Fed-  
23 eral Supply Schedule contracts absent a written jus-  
24 tification that the governmentwide contract is not in  
25 the best interest of the Federal Government;



1           (2) agencies shall promote acquisition strategies  
2           utilizing these vehicles to maximize participation of  
3           small businesses and other socioeconomic categories,  
4           including set-asides of acquisitions under these vehi-  
5           cles; and

6           (3) contracting officers shall be encouraged by  
7           agency guidance to maximize competition under  
8           these vehicles to the maximum amount practicable  
9           with the goal of achieving the best value to the Fed-  
10          eral Government.

11 **SEC. 7. STREAMLINING OF CONTRACT CLOSEOUTS.**

12          (a) **AUTHORITY TO WAIVE CONTRACT CLOSEOUT**  
13 **AUDITS.—**

14           (1) **AUTHORITY.**—Not later than 270 days  
15          after the date of the enactment of this Act, the Fed-  
16          eral Acquisition Regulatory Council shall amend the  
17          Federal Acquisition Regulation to provide con-  
18          tracting officers the authority to waive contract  
19          closeout audits above the simplified acquisition pur-  
20          chase threshold based on risk assessments. Factors  
21          upon which an assessment of low risk may include  
22          time and material contracts, low dollar cost type  
23          contracts, and contractors with approved business  
24          systems, strong internal controls, and good past per-  
25          formance ratings.

1           (2) GUIDANCE.—Not later than 270 days after  
2 the date of the enactment of this Act, the Adminis-  
3 trator for Federal Procurement Policy, in collabora-  
4 tion with the Director of the Defense Procurement  
5 and Acquisition Policy, shall issue guidance for as-  
6 sisting contracting officials in determining when  
7 waivers of contract closeout audits pursuant to para-  
8 graph (1) are appropriate.

9           (3) USE OF ABILITYONE PROGRAM.—Where  
10 practicable, and in accordance with the Javits-Wag-  
11 ner-O’Day Act (41 U.S.C. 46 et seq.) as adminis-  
12 tered by the Committee For Purchase From People  
13 Who Are Blind or Severely Disabled, utilize the  
14 AbilityOne Program to accomplish non-inherently  
15 governmental tasks associated with contract or grant  
16 close-out in those cases where a Federal agency uti-  
17 lizes contractor support for close-out functions.

18           (b) FIRM-FIXED CONTRACTS.—Not later than 270  
19 days after the date of the enactment of this Act, the Fed-  
20 eral Acquisition Regulatory Council shall amend the Fed-  
21 eral Acquisition Regulation to provide that, on firm-fixed  
22 contracts—

23           (1) contractors shall submit a final invoice  
24 within 60 days of Federal Government acceptance or

1       relinquish payment unless exempted by the con-  
2       tracting officer;

3             (2) the contracting officer may—

4                     (A) close a contract without a final invoice  
5                     if the amount due is less than \$1,000 and less  
6                     than 10 percent of the contract value; and

7                     (B) unilaterally deobligate any unliqui-  
8                     dated obligations remaining on the contract;  
9                     and

10            (3) such contracts may be closed with missing  
11            contract documentation if no additional product or  
12            service will be received by the Federal Government  
13            and there are no outstanding administrative actions.

14        (c) **AUTHORITY TO WRITE OFF UNRECONCILED**  
15 **BALANCES FOR LOW-RISK CONTRACTS.**—Not later than  
16 270 days after the date of the enactment of this Act, the  
17 Federal Acquisition Regulatory Council shall amend the  
18 Federal Acquisition Regulation to provide contracting offi-  
19 cers, with approval one level above the contracting officer  
20 concerned, the authority to write off unreconciled balances  
21 on low-risk contracts in cases in which—

22                     (1) all administrative actions are complete, in-  
23                     cluding final payment to the contractor unless ex-  
24                     empted under subsection (b)(1); and

1           (2) a written notice of the action has been sent  
2           to the payment office responsible for the contract.

3           (d) **AUTHORITY TO GRANT EXEMPTIONS.**—The reg-  
4           ulations promulgated under this section shall permit the  
5           head of contracting activity to grant exemptions to the re-  
6           quirements under this section, with the exemptions in-  
7           cluded in the contract file.

8           (e) **CONTRACTING OFFICER DEFINED.**—In this sec-  
9           tion, the term “contracting officer” includes procuring and  
10          administrative contracting officers.

11 **SEC. 8. AFFORDABILITY AS A REQUIREMENT FOR CERTAIN**  
12 **ACQUISITION PLANS.**

13          (a) **IN GENERAL.**—Not later than 270 days after the  
14          date of the enactment of this Act, the Federal Acquisition  
15          Regulatory Council shall amend the Federal Acquisition  
16          Regulation to require heads of executive agencies to man-  
17          date that affordability be included as a requirement for  
18          major systems, research and development, construction  
19          and architect-engineering acquisitions prior to the ap-  
20          proval of any acquisition plan exceeding \$100,000,000.

21          (b) **AFFORDABILITY DEFINED.**—In this section, the  
22          term “affordability” refers to conducting an acquisition  
23          program at a cost constrained by the maximum resources  
24          that an executive agency can allocate for a particular ca-  
25          pability.

1 **SEC. 9. COST EFFICIENCY OBJECTIVES FOR SERVICE CON-**  
2 **TRACTS.**

3 Not later than 270 days after the date of the enact-  
4 ment of this Act, the Federal Acquisition Regulatory  
5 Council shall amend the Federal Acquisition Regulation  
6 to require service contracts valued at more than  
7 \$100,000,000 include provisions to achieve productivity  
8 improvements and cost efficiencies. The regulation shall  
9 permit the head of contracting activity to grant exceptions  
10 to this requirement which shall be included in the contract  
11 file.

12 **SEC. 10. ESTABLISHING GOVERNMENTWIDE ACQUISITION**  
13 **SAVINGS CRITERIA.**

14 The Administrator for Federal Procurement Policy,  
15 in collaboration with the Director of the Defense Procure-  
16 ment and Acquisition Policy, shall establish at least one  
17 year from enactment a methodology to track and monitor  
18 progress made by executive agencies in achieving measur-  
19 able acquisition savings. Measurable acquisition savings  
20 should include price reductions and cost savings through  
21 reduced acquisition costs such as administrative costs.

22 **SEC. 11. OFFICE OF MANAGEMENT AND BUDGET SAVINGS**  
23 **REQUIREMENTS.**

24 (a) **PLAN FOR REDUCED USE OF TIME AND MATE-**  
25 **RIALS CONTRACTS.**—Not later than 270 days after the  
26 date of the enactment of this Act, the Administrator for

1 Federal Procurement Policy, in coordination with the Ad-  
2 ministrator of General Services and the Secretary of De-  
3 fense, shall develop a plan for reducing the use of time  
4 and materials and labor hour contracts, including for or-  
5 ders under indefinite delivery/indefinite quantity con-  
6 tracts.

7 (b) REPORT ON SPENDING ON MANAGEMENT SUP-  
8 PORT SERVICE CONTRACTS.—Not later than one year  
9 after the date of the enactment of this Act, the Adminis-  
10 trator for Federal Procurement Policy, in collaboration  
11 with the Director of the Defense Procurement and Acqui-  
12 sition Policy, shall submit to Congress a report on reduced  
13 spending on management support service contracts.

14 **SEC. 12. EXPEDITED PAYMENT TO SMALL BUSINESS.**

15 Not later than 270 days after the date of the enact-  
16 ment of this Act, the Federal Acquisition Regulatory  
17 Council shall amend the Federal Acquisition Regulation  
18 to reflect that governmentwide policy is to assist small  
19 business concerns by paying them as quickly as possible  
20 after invoices and all proper documentation, including ac-  
21 ceptance, are received and before normal payment due  
22 dates established in the contract.

○