

112TH CONGRESS  
1ST SESSION

# S. 785

To require that the Federal Government procure from the private sector the goods and services necessary for the operations and management of certain Government agencies, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 12, 2011

Mr. THUNE (for himself, Mr. INHOFE, Mr. ROBERTS, Mr. ISAKSON, and Mr. BARRASSO) 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 require that the Federal Government procure from the private sector the goods and services necessary for the operations and management of certain Government agencies, 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.**

4       This Act may be cited as the “Freedom from Govern-  
5       ment Competition Act”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

1           (1) Private sector business concerns, which are  
2 free to respond to the private or public demands of  
3 the marketplace, constitute the strength of the  
4 United States economic system.

5           (2) Competitive private enterprises are the most  
6 productive, efficient, and effective sources of goods  
7 and services.

8           (3) Unfair Government competition with the  
9 private sector of the economy is detrimental to the  
10 United States economic system.

11           (4) Unfair Government competition with the  
12 private sector of the economy is at an unacceptably  
13 high level, both in scope and in dollar volume.

14           (5) Current law and policy have failed to ad-  
15 dress adequately the problem of unfair Government  
16 competition with the private sector of the economy.

17           (6) It is in the public interest that the Federal  
18 Government establish a consistent policy to rely on  
19 the private sector of the economy to provide goods  
20 and services necessary for or beneficial to the oper-  
21 ation and management of Federal agencies and to  
22 avoid unfair Government competition with the pri-  
23 vate sector of the economy.

24 **SEC. 3. DEFINITIONS.**

25 In this Act, the term “agency” means—

1           (1) an executive department as defined by sec-  
2           tion 101 of title 5, United States Code;

3           (2) a military department as defined by section  
4           102 of such title; and

5           (3) an independent establishment as defined by  
6           section 104(l) of such title.

7   **SEC. 4. PROCUREMENT FROM PRIVATE SOURCES.**

8           (a) **POLICY.**—In the process of governing, the Fed-  
9           eral Government should not compete with its citizens. The  
10          competitive enterprise system, characterized by individual  
11          freedom and initiative, is the primary source of national  
12          economic strength. In recognition of this principle, it has  
13          been and continues to be the general policy of the Federal  
14          Government—

15               (1) to rely on commercial sources to supply the  
16               products and services the Government needs;

17               (2) to refrain from providing a product or serv-  
18               ice if the product or service can be procured more  
19               economically from a commercial source; and

20               (3) to utilize Federal employees to perform in-  
21               herently governmental functions (as that term is de-  
22               fined in section 5 of the Federal Activities Inventory  
23               Reform Act of 1998 (Public Law 105–270; 31  
24               U.S.C. 501 note)).

1 (b) GENERAL RULE.—Except as provided in sub-  
2 section (c) and notwithstanding any other provision of law,  
3 each agency shall obtain all goods and services necessary  
4 for or beneficial to the accomplishment of its authorized  
5 functions by procurement from private sources.

6 (c) EXEMPTIONS.—Subsection (b) shall not apply to  
7 an agency with respect to goods or services if—

8 (1) the goods or services are required by law to  
9 be produced or performed, respectively, by the agen-  
10 cy; or

11 (2) the head of the agency determines and cer-  
12 tifies to Congress in accordance with regulations  
13 promulgated by the Director of the Office of Man-  
14 agement and Budget that—

15 (A) Federal Government production, man-  
16 ufacture, or provision of a good or service is  
17 necessary for the national defense or homeland  
18 security;

19 (B) a good or service is so inherently gov-  
20 ernmental in nature that it is in the public in-  
21 terest to require production or performance, re-  
22 spectively, by Government employees; or

23 (C) there is no private source capable of  
24 providing the good or service.

1 (d) METHOD OF PROCUREMENT.—The provision of  
2 goods and services not exempt by subsection (c)(1) or  
3 (c)(2) shall be performed by an entity in the private sector  
4 through—

5 (1) the divestiture of Federal involvement in the  
6 provision of a good or service;

7 (2) the award of a contract to an entity in the  
8 private sector, using competitive procedures, as de-  
9 fined in section 152 of title 41, United States Code,  
10 and section 2302 of title 10, United States Code;

11 (3) converting an activity to performance by a  
12 qualified firm under at least 51 percent ownership  
13 by an Indian tribe, as defined in section 4(e) of the  
14 Indian Self-Determination and Education Assistance  
15 Act (25 U.S.C. 450b(e)), or a Native Hawaiian Or-  
16 ganization, as defined in section 8(a)(15) of the  
17 Small Business Act (15 U.S.C. 637(a)(15)); or

18 (4) conducting a public-private competitive  
19 sourcing analysis in accordance with the procedures  
20 established by the Office of Management and Budg-  
21 et and determining that using the assets, facilities,  
22 and performance of the private sector is in the best  
23 interest of the United States and that production or  
24 performance, respectively, by the private sector pro-  
25 vides the best value to the taxpayer.

1 (e) CONTRACTED ACTIVITIES.—The head of an agen-  
2 cy may utilize Federal employees to provide goods or serv-  
3 ices previously provided by an entity in the private sector  
4 upon completion of a public-private competitive sourcing  
5 analysis described in subsection (d)(4), and after making  
6 a determination that the provision of such goods or serv-  
7 ices by Federal employees provides the best value to the  
8 taxpayer.

9 (f) REGULATIONS.—The Director of the Office of  
10 Management and Budget shall promulgate such regula-  
11 tions as the Director considers necessary to carry out this  
12 section. In promulgating such regulations, the Director  
13 shall assure that any State or territory, or political sub-  
14 division of a State or territory, complies with the policy  
15 and implements the requirements of this section when ex-  
16 pending Federal funds.

17 **SEC. 5. STUDY AND REPORT.**

18 The Director of the Office of Management and Budg-  
19 et, in conjunction with the Comptroller General of the  
20 United States, shall carry out a study to evaluate the ac-  
21 tivities carried out in each agency, including those identi-  
22 fied as commercial and inherently governmental in nature  
23 in the inventory prepared pursuant to the Federal Activi-  
24 ties Inventory Reform Act (Public Law 105–270; 31  
25 U.S.C. 501 note) and shall transmit a report to the Con-

1 gress prior to June 30 of each year. The report shall in-  
2 clude—

3 (1) an evaluation of the justification for ex-  
4 empting activities pursuant to section 4(c); and

5 (2) a schedule for the transfer of commercial  
6 activities to the private sector, pursuant to section  
7 4(d), to be completed within 5 years after the date  
8 on which such report is transmitted to the Congress.

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