

## **Amendment 596 – Would require all contracts, grants and cooperative agreements awarded under this act be competitively bid.**

The federal government awards hundreds of billions of dollars annually in contracts and grants.

It has become a common practice for agencies and Congress to bypass the federal acquisitions process for competitively awarding contracts and grants.

To ensure that Members of Congress and the federal government are good stewards of American taxpayer dollars, this amendment would simply require that all grants and contracts awarded under this act follow the government's guidelines and be competitively bid

## **President Obama supports making Government Spending More Accountable and Efficient**

President Obama has said that federal contracts over \$25,000 are to be competitively bid.<sup>[1]</sup>

President Obama will increase the efficiency of government programs through better use of technology, stronger management that demands accountability and by leveraging the government's high-volume purchasing power to get lower prices.<sup>[2]</sup>

## **Contracts and Grants Awarded Under This Bill Should Not Be Exempt From Existing Laws Requiring Competition For Federal Grants And Contracts.**

A “no-bid” grant or contract is government funding that is provided directly to an entity that bypasses the standard process for awarding government funding in which competing bids are solicited in order to select the most cost efficient and qualified entity to perform a service.

According to the most recently published Consolidated Federal Funds Report (CFFR), federal agencies award over \$880 billion in financial assistance alone: \$470 billion in grants, \$381 billion in contracts, and \$29 billion in direct loans.<sup>[3]</sup>

Specifically, the amendment calls for funds that result in contracts and grants awarded to come into compliance with the following laws:

- **Section 303 of the Federal Property and Administrative Services Act of 1949:** This section of law requires that competitive procedures be in place for all procurements unless there is a specific provision of law that makes an exemption. According to this

<sup>[1]</sup> <http://www.barackobama.com/issues/fiscal/>.

<sup>[2]</sup> <http://www.barackobama.com/issues/fiscal/>.

<sup>[3]</sup> U.S. Census Bureau, *Consolidated Federal Funds Report for Fiscal Year 2005*, September 2007, p. v, at <http://www.census.gov/prod/2007pubs/cffr-05.pdf>.

section, such exceptions include: only one source is available, national security needs, and the requirements of an international treaty.

- **10 U.S. Code 2304:** This section requires that competitive procedures be used for all Defense contracts. The Department of Homeland Security often contracts for defense-related goods and services, for which the rules are in a different place in the U.S. Code. There is no substantive difference between the competition rules in place for defense and civilian contracts.

- **Federal Acquisition Regulation:** This is the 2,000-page regulatory guide for federal procurement that provides a detailed explanation of how to conduct “full and open competitions.” Such procedures include publishing acquisition opportunities on FedBizOpps.gov, mandatory evidence of appropriate market research by agencies, and promotion of competition among many sources.

### **Competition Reduces Costs and Saves Taxpayers’ Money**

The competitive process helps ensure that the government receives the highest-quality products for the least amount of money. Without competition, earmarks and no-bid contracts have caused the American taxpayer to spend untold billions on wasteful purchases.

The Government Accountability Office has placed the Department of Defense contract management on its High-Risk List in part because of the increase in non-competitive contracting.

The tally for Hurricane Katrina waste has surpassed \$1 billion dollars because of lucrative government contracts awarded with little competition.<sup>[4]</sup> “Several of the contracts were hastily given to politically connected firms in the aftermath of the 2005 storm and were extended without warning months later. Critics say the arrangements promote waste and unfairly hurt small companies.

According to a report issued by the Democrat staff of the House Government Reform Committee, The government awarded 70 percent of its contracts for Hurricane Katrina work without full competition.

The report found that out of \$10.6 billion in contracts awarded after the storm, more than \$7.4 billion were handed out with limited or no competitive bidding. In addition, 19 contracts worth \$8.75 billion were found to have wasted taxpayer money at least in part, costing taxpayers hundreds of millions of dollars, according to the report.<sup>[5]</sup>

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<sup>[4]</sup> Hope Yen. “Katrina waste: \$1 billion just a beginning?; Auditors expect figure to balloon when no-bid contracts get scrutiny,” The Decatur Daily/Associated Press, December 26, 2006;

<sup>[5]</sup> “Study: Millions wasted in Katrina contracts; 70% of contracts awarded without full bidding, Democratic report says,” MSNBC, August 24, 2006; <http://www.msnbc.msn.com/id/14502390/>.

## **“No-bid” Contracts and Grants have been on the rise**

A recent House congressional report estimated that federal spending on contracts awarded without "full and open" competition has tripled, to \$207 billion, since 2000.<sup>[6]</sup>

According to a House Committee on Government Reform report the number of contracts awarded without full competition at DHS increased 739 percent from 2003 to 2005, to \$5.5 billion, more than half of the \$10 billion in contracts awarded by the Department that year.<sup>[7]</sup>

For Fiscal Year 2009, Pre-Disaster Mitigation grants, a competitive grant program, contained 51 earmarks totaling just under \$25 million, or close to a third of the funds available for the PDM competitive grant program.

## **The Senate Has Supported Competition In The Past**

In May 2006, the Senate voted 98 to zero to require that emergency hurricane relief and recovery contracts exceeding \$500,000 be subject to competitive procedures.<sup>[8]</sup>

Three other similar amendments regarding no bid contracts were agreed to by unanimous consent in the Senate.<sup>[9]</sup>

## **Byrne Program Talking Points**

This bill authorizes \$546 million for Byrne JAG, \$178.5 million for Byrne Discretionary and \$30 million for Byrne Competitive Grants.

### **Byrne grants are contrary to the principle of federalism.**

Byrne grants subsidize the everyday activities of local law enforcement, such as police officer salaries. These activities “assign to the federal government functions that fall

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<sup>[6]</sup> House Government reform Committee, “More Dollars, less Sense: Worsening Contracting Trends,” June 2007, <http://oversight.house.gov/features/moredollars/moredollars.pdf>.

<sup>[7]</sup> House Committee on Government Reform report: *Waste, Abuse, and Mismanagement in Department of Homeland Security Contracts*; July 2006, pg 3.

<sup>[8]</sup> [http://hsgac.senate.gov/index.cfm?FuseAction=PressReleases.Detail&Affiliation=r&PressRelease\\_id=%20494%20%20&Month=9&Year=2003](http://hsgac.senate.gov/index.cfm?FuseAction=PressReleases.Detail&Affiliation=r&PressRelease_id=%20494%20%20&Month=9&Year=2003)

<sup>[9]</sup> Senate Amendment 2605 to S. 2020, November 17, 2005, <http://www.congress.gov/cgi-lis/bdquery/D?d109:1./temp/~bdAxyV:dbs=n:/billsumm/billsumm.php?id=2>; Senate Amendment 4254 to S.2766, June 16, 2006, <http://www.congress.gov/cgi-lis/bdquery/D?d109:6./temp/~bdAxyV:dbs=n:/billsumm/billsumm.php?id=2>; Senate Amendment 4624 to H.R.5441, July 12, 2006, <http://www.congress.gov/cgi-lis/bdquery/D?d109:7./temp/~bdAxyV:dbs=n:/billsumm/billsumm.php?id=2>

within the expertise, jurisdiction, and constitutional responsibilities of state and local governments.”<sup>[10]</sup>

### **The federal government has not traditionally funded state and local law enforcement.**

“Originally, the federal government had no role in subsidizing the routine responsibilities of state and local law enforcement. Most if not all federal law enforcement grant programs run counter to the Founders’ vision for the federal government. In *The Federalist* No. 45, James Madison wrote:

- The powers delegated by the proposed Constitution to the federal government are few and define. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce: with which last the power of taxation will, for the most part, be connected. *The powers reserved to the several States will extend to all objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.*

Law enforcement clearly falls within the category of “objects that concern the internal order, improvement and prosperity of the State”; thus, it is a principle responsibility of state and local governments.”<sup>[11]</sup>

Federal funding should be spent on purposes that are truly interstate in nature, and then should be done with significant oversight and accountability to ensure both effective allocation of limited resources and the best crime prevention efforts.

### **Byrne Discretionary Grants have not been authorized since 2004.**

Congress has continued to fund state and local law enforcement through discretionary funds via heavy earmarks within the CJS Appropriations legislation. As a result, these “grants” are technically EARMARKS despite its misleading title of “discretionary.”<sup>[12]</sup>

### **Byrne Competitive Grants are currently the only way Byrne funds are competitively awarded.**

This program is an anomaly since it was only created in 2008 by the Appropriations Committee with no authorizing legislation.<sup>[13]</sup>

In FY2008 CJS Appropriations legislation, \$170,433,000 was appropriated for the Byrne Memorial Justice Assistance Grant (JAG) program \$187,513,000 for the Byrne

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<sup>[10]</sup> David Muhlhausen, Heritage Foundation, “More Byrne JAG and COPS Money Will Not Stimulate the Economy,” January 28, 2009.

<sup>[11]</sup> David Muhlhausen and Erica Little, Heritage Foundation, “Federal Law Enforcement Grants and Crime Rates: No Connection Except for Waste and Abuse,” March 14, 2007

<sup>[12]</sup> Congressional Research Service Expert Nathan James, Analyst in Crime Policy.

<sup>[13]</sup> *Id.*

Discretionary Grant program, and \$16,000,000 for the Byrne Competitive Grant program, for a total of \$373,946,000 for all "Byrne" programs. \$187,512,040 of the Byrne Discretionary Grant program was earmarked, meaning that 50.1% of the total funding for the "Byrne" programs was earmarked for this year.

**Even the ACLU believes that Byrne grants are ineffective.**

“The lack of meaningful federal oversight over these grants results in the proliferation of corruption and abuse....Byrne grants should be prohibited for States that do not exercise effective control over these task forces.”<sup>[14]</sup>

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<sup>[14]</sup> American Civil Liberties Union, Coalition Letter to the House of Representatives In Support of “No More Tulias: Drug Law Enforcement Evidentiary Standards Improvement Act of 2005” (5/25/2005) at [www.aclu.org/drugpolicy/gen/10246leg20050525.html](http://www.aclu.org/drugpolicy/gen/10246leg20050525.html) (accessed February 27, 2008).