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111th Congress *2nd Session*	SENATE	REPORT 111–192

FEDERAL SUPPLY SCHEDULES USAGE ACT OF 2009

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 2868

TO PROVIDE INCREASED ACCESS TO THE GENERAL SERVICES ADMINISTRATION'S SCHEDULES PROGRAM BY THE AMERICAN RED CROSS AND STATE AND LOCAL GOVERNMENTS

MAY 17, 2010.—Ordered to be printed

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MAY 17, 2010.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 2868]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2868) to provide increased access to the General Services Administration's Schedules Program by the American Red Cross and State and local governments, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. PURPOSE AND SUMMARY

S. 2868 seeks to enhance the ability of the American National Red Cross ("American Red Cross") and state and local governments to effectively prepare for and respond to disasters by giving them the ability to purchase certain goods and services through pre-negotiated contracts established under the General Services Administration's (GSA) Federal Supply Schedules (FSS) program. This procurement authority will help the American Red Cross and state and local governments reduce the administrative costs of negotiating their own contracts by authorizing them to use the pre-negotiated contracts of GSA.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The GSA FSS program is also known as the GSA Schedules or Multiple Award Schedules program. The FSS program enables federal agencies to purchase goods and services under contracts that GSA has pre-negotiated. These contracts cover more than 11 million commercial goods and services and are listed in broad categories known as schedules. GSA pre-negotiates the terms and conditions of the contract, including discounted prices. The discounts result from the ability of the federal government, like many other

buyers who purchase large volumes of goods and services, to use its buying power to negotiate long-term contracts with suppliers seeking access to the large federal market. Federal agencies—and non-federal entities, as permitted—can place orders under FSS contracts, thus streamlining the acquisition process and reducing time and administrative costs associated with negotiating and awarding contracts. Use of the FSS contracts is voluntary for both purchasers and sellers. Non-federal entities, when authorized to use the Federal Supply Schedules for a specific purpose, are not required to do so; likewise, companies holding FSS contracts are not required to offer goods and services under them to non-federal entities. Nevertheless, most FSS vendors choose to offer their goods and services to non-federal entities under their FSS contracts, when authorized to do so, in order to reach a larger market.

THE AMERICAN RED CROSS

The American Red Cross is the largest nongovernmental provider of disaster response services in the United States. Congress first chartered the organization in 1900. The current charter, codified in 2007,[1] tasks the American Red Cross with providing volunteer aid in time of war to the sick and wounded of the armed forces; facilitating communication between members of the armed forces and U.S. citizens[2]; providing national and international relief to mitigate suffering caused by disasters; helping prevent disasters; and conducting other activities consistent with these purposes.[3]

The American Red Cross spends millions of dollars each year to assist Americans impacted by disasters large and small, to provide aid to members of the U.S. armed forces serving overseas, as well as to provide assistance when overseas disasters strike. For example, during 2009, the American Red Cross provided shelter, food, clothing, and other supplies to victims of flooding in Georgia, North Carolina, Alabama and Tennessee, and sheltered evacuees from the California wildfires. The American Red Cross provided disaster relief in American Samoa, giving things such as cots, flashlights, and cooking and clean-up supplies to victims of the earthquake and tsunami that struck on September 29, 2009; and it helped to rebuild homes after the 2008 earthquake in Sichuan, China. The American Red Cross also provides items such as clothing, furniture, and supplies to members of the U.S. military and their families at hospitals and Warrior Transition Units, which provide critical support to wounded soldiers who are expected to require at least six months of rehabilitative care and complex medical management.

The American Red Cross has long had access to FSS, but since 2001 GSA has interpreted the law giving that access—the Foreign Assistance Act of 1961[4]—as authorizing only purchases related to international relief efforts.[5] For the last and current fiscal year,

[1] Pub. L. 110–26, May 11, 2007.

[2] Through local chapters and call centers, the American Red Cross relays information related to family emergencies to service members stationed around the world.

[3] 36 U.S.C. §§ 300101–300111.

[4] Pub. L. 87–195 § 607, as amended, 22 U.S.C. 2357.

[5] From 1992 until 2001, GSA interpreted the language in that Act to permit the American Red Cross to use the Federal Supply Schedules for all of its work, regardless of whether the work was foreign or domestic. In 2001, however, GSA re-interpreted the Act to limit American Red Cross usage of FSS to supporting only overseas activities. Letter from G. Martin Wagner, Associate Administrator, GSA, to Mr. John D. Campbell, Chief Financial Officer, American Red Cross, December 26, 2001.

provisions in appropriations Acts have given the American Red Cross authority to use FSS purchase supplies and services for its disaster-related domestic work.[6] S. 2868 would make that authority permanent by authorizing the American Red Cross to use FSS to purchase supplies and services to serve any of the purposes authorized under its congressional charter.

The bill makes clear, however, that the American Red Cross's access to FSS is limited to purchasing goods and services specifically in support of purposes stated in the congressional charter. It may not, for example, purchase pharmaceuticals or equipment and supplies for its blood supply services mission. In addition, the bill explicitly prohibits purchasing from FSS for resale.

The American Red Cross has in recent years suffered from financial difficulties. In response to the American Red Cross's financial problems during the 2008 disaster season caused by increased disaster activity and lower contributions due to the recession, Congress in 2009 provided $100 million to reimburse the American Red Cross for disaster relief and recovery expenditures and emergency services for disasters that occurred during 2008.[7] The American Red Cross's financial situation has recently started to improve; its financial statement for fiscal year 2009, which ended in June 2009, indicates that the American Red Cross ended year with a $33.5 million operating deficit, a significant improvement over its $209 million operating deficit in fiscal year 2008. The ability to make additional purchases using the Federal Supply Schedules to support members of the armed forces and to stockpile supplies in advance of disasters will stretch American Red Cross dollars further and help it continue to improve its operating finances.

STATE AND LOCAL GOVERNMENTS

State and local government entities currently are eligible to purchase certain goods and services using FSS contracts under several authorities.

Under the Cooperative Purchasing Program, state and local governments are permitted to purchase selected information technology products and services using FSS contracts.[8] State and local government entities may also purchase alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services.[9]

The 1122 Program—so called because it is authorized by section 1122 of the fiscal year 1994 National Defense Authorization Act—permits states and units of local government to purchase law enforcement equipment through federal procurement channels, provided that the equipment is used in the performance of counterdrug activities.

Under the Disaster Recovery Purchasing Program, state and local governments have been authorized since 2007 to purchase goods and services to facilitate recovery from a major disaster that

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[6] Pub. L. 111–8 § 517; Pub. L. 111–117, Div. C, Title V, § 516.

[7] Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. 110–329, Div. B, Title I, Chapter 5, § 10502.

[8] The authority to purchase information technology products was granted under the E-Government Act of 2002, Pub. L. 107–347 § 211.

[9] Authorized by the Local Preparedness Acquisition Act, Pub. L. 110–248.

has been declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act[10] or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack.[11]

In addition to these three programs, in August 2009 the Administrator of GSA, under GSA's general authorities,[12] granted state, local, territorial, and tribal governments access to FSS to purchase goods and services when expending federal grant funds in response to Public Health Emergencies declared by the Secretary of Health and Human Services under section 319 of the Public Health Services Act.[13]

However, none of these programs permit state and local governments to purchase goods and services to help prepare for disasters in advance of a disaster declaration, and there is no specific statutory authority related to disaster response.[14] This bill will rectify these omissions, thus permitting state and local governments to reduce time and resources spent on negotiating and awarding contracts for needed goods and services by purchasing through the Federal Supply Schedules for these activities.

III. LEGISLATIVE HISTORY

On December 10, 2009, S. 2868 was introduced by Senator Lieberman and referred to the Senate Committee on Homeland Security and Governmental Affairs. On December 16, 2009, the Committee favorably reported S. 2868, without amendment, by voice vote. Members present for the vote on the bill were Senators Lieberman, Akaka, Carper, Pryor, McCaskill, Tester, Burris, Kirk, and Collins. On January 20, 2010, Senator Carper became a cosponsor of the bill.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 designates the name of the act as the "Federal Supply Schedules Usage Act of 2009."

Section 2. Use of Federal Supply Schedules by the Red Cross

Section 2 adds a new subsection to 40 U.S.C. § 502. It authorizes the General Services Administration to grant the American Red Cross access to the Federal Supply Schedules to purchase goods and services in support of the purposes authorized by the American Red Cross's federal charter under 36 U.S.C. § 300102. Section 2 prohibits the American Red Cross from reselling goods and services purchased through Federal Supply Schedule contracts.

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[10] Pub. L. 100–707.

[11] The authority was granted by section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. 109–364.

[12] 40 U.S.C. 501 grants the Administrator of GSA general authorities to take actions advantageous to the economy, efficiency or service of the government, and to procure and supply personal property and nonpersonal services for executive agencies to use in the proper discharge of their responsibilities.

[13] Codified at 42 U.S.C. § 247d.

[14] Disaster response refers to the actions taken immediately after a disaster; recovery refers to the longer-term effort to rebuild the infrastructure. Response and recovery efforts can occur simultaneously.

Section 3. Duty of users regarding use of supply schedules

Section 3 adds a new subsection to 40 U.S.C. § 502. The new subsection will impose a positive duty upon all users of the Federal Supply Schedules, both federal and non-federal, to act in accordance with the guidance on placing orders under the Federal Supply Schedules that GSA provides.

Section 4. Authority of State and local governments to use supply schedules for certain goods and services

Section 4 amends 40 U.S.C. § 502(d) to permit state and local governments to use the Federal Supply Schedules to purchase goods and services for the purpose of disaster preparation and response. Section 502(d) already permits state and local governments to use the Federal Supply Schedules to purchase goods and services to facilitate recovery from a major disaster that has been declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. The Congressional Budget Office states that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandate Reform Act and would not effect state, local, and tribal governments. The enactment of this legislation will not have significant regulatory impact.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

DECEMBER 23, 2009.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2868, the Federal Supply Schedules Usage Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 2868—Federal Supply Schedules Usage Act of 2009

S. 2868 would amend federal law to allow the American Red Cross, as well as state and local governments, to use the federal supply schedules of the General Services Administration to procure goods and services from private firms for disaster preparedness and response activities. Because the legislation would codify and clarify current policy and practice, CBO estimates that implementing S. 2868 would have no significant impact on the federal budget. Enacting the bill would not affect direct spending or revenues. S. 2868 contains no intergovernmental or private-sector mandates as de-

fined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VII. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 2868 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 40—PUBLIC BUILDINGS, PROPERTY, AND WORKS

Subtitle I—Federal Property and Administrative Services

CHAPTER 5—PROPERTY MANAGEMENT

Subchapter I—Procurement and Warehousing

* * * * * * *

Sec. 502. Services for other entities

(a) * * *
(b) * * *
(c) * * *
(d) USE OF SUPPLY SCHEDULES FOR CERTAIN GOODS AND SERVICES.—

(1) IN GENERAL.—The Administrator may provide for the use by State or local governments of Federal supply schedules of the General Services Administration for goods or services that are to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), *to facilitate disaster preparedness or response,* or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack.

(2) * * *
(3) * * *
(4) * * *

(e) USE OF SUPPLY SCHEDULES BY THE RED CROSS.—

(1) IN GENERAL.—The Administrator may provide for the use by the American National Red Cross of Federal supply schedules. Purchases under this authority shall be used in furtherance of the purposes of the American National Red Cross set forth in section 300102 of title 36, United States Code.

(2) LIMITATION.—The authority under this subsection may not be used to purchase supplies for resale.

(f) DUTY OF NON-FEDERAL USERS REGARDING USE OF FEDERAL SUPPLY SCHEDULES.—All users of Federal supply schedules, including non-Federal users, shall use the schedules in accordance with

the ordering guidance provided by the Administrator of General Services.

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