SEC. 1011. CLARIFICATION OF JURISDICTION OF THE UNITED STATES DISTRICT COURTS TO HEAR BID PROTEST DISPUTES INVOLVING MARITIME CONTRACTS.

(a) EXCLUSIVE JURISDICTION.—Section 1491(b) of title 28, United States Code, is amended by adding at the end the following new paragraph:

"(6) Jurisdiction over any action described in paragraph (1) arising out of a maritime contract, or a solicitation for a proposed maritime contract, shall be governed by this section and shall not be subject to the jurisdiction of the district courts of the United States under the Suits in Admiralty Act (chapter 309 of title 46) or the Public Vessels Act (chapter 311 of title 46).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any cause of action filed on or after the first day of the first month beginning more than 30 days after the date of the enactment of this Act.

Section-by-Section Analysis

This proposal would establish the United States Court of Federal Claims (COFC) as the exclusive Federal court forum for bid protests. Section 1491(b)(1) of title 28, United States Code, provided temporary concurrent federal jurisdiction between the COFC and the United States District Courts to hear pre-award or post-award bid protest matters. Section 12(d) of the Administrative Disputes Resolution Act of 1996 (Public. Law 104-320; 110 Stat. 3870; 5 U.S.C. 571 note) (ADRA), contained a sunset provision that terminated District Court jurisdiction to hear such bid protests under section 1491 as of January 1, 2001, leaving all ADRA bid protest cases under the jurisdiction of the COFC. Nonetheless, independent federal jurisdiction over bid protests involving maritime contracts has been upheld by the District Courts under the Suits in Admiralty Act, (46 U.S.C. 30901), as amended (SAA). As a result, federal jurisdiction to hear bid protest actions arising out of maritime contracts or prospective maritime contracts continues to be recognized in some U.S. District Courts rather than exclusively in the COFC.

Bid protest disputes are unique to government contract law and regulation and have no private maritime sector equivalent proceeding, which is a basis for the waiver of sovereign immunity under the SAA. Conversely, section 1491(b)(1) of title 28 is specifically directed to bid protest claims, and its provisions and limitations should be applied equally to all plaintiffs. Current practice now permits disappointed bidders to maintain a bid protest claim in the District Courts under a separate and unrelated statutory scheme (SAA), simply because the contract or prospective contract is maritime in nature.

The ADRA does not address maritime contracts. However, the ability to invoke admiralty jurisdiction in bid protest cases merely because the case involves a maritime contract evades Congressional intent under the sunset provision of the ADRA to prevent forum shopping among the District Courts and the COFC and to provide national uniformity in resolving federal bid solicitation disputes. 142 Cong. Rec. S11848-11850 (daily ed. Sept. 30, 1996) (statements of Sen. Cohen and Sen. Levin). Senator Levin, who together with Senator Grassley introduced the ADRA legislation, specifically remarked that the Acquisition Law Advisory Panel had recommended that there be only one forum for bid protests, and that this forum should have jurisdiction to "consider all protests which can now be considered by the district courts and by the COFC." 142 Cong. Rec. S11849 (daily ed. Sept. 30, 1996). Senator Levin described the bid protest provision of the ADRA such that after the sunset provision took effect, "the jurisdiction of the district courts would terminate, and the [COFC] would exercise exclusive judicial jurisdiction over procurement protests." 142 Cong. Rec. S11849-11850. See also, H.R. Conf. Rep. No. 104-841, at 10 (1996) ("It is the intention . . . to give the [COFC] exclusive jurisdiction over the full range of procurement protest cases previously subject to review in the federal district courts and the [COFC].").

The District Courts are vested with exclusive admiralty jurisdiction and are recognized as having specific expertise in the unique area of maritime and admiralty law. However, government contract law has developed as a separate specialty practice in its own right and bid protest disputes have been resolved in the federal courts largely by the COFC, rather than U.S. District Courts. Bid protests involve government procurement law and regulation, whether or not arising out of a maritime contract, and do not require the application of the expertise for which the District Courts are recognized in maritime matters.

There is currently a split in U.S. District Courts regarding maritime contract bid protest jurisdiction. The Northern District of California has asserted jurisdiction. See, Puglia Eng'g v. U.S. Coast Guard, No. C 04-04794 CRB, 2005 WL 106785, (N.D. Cal. Jan. 18, 2005). See also Patriot Contract Services, LLC v. United States, No. 04-CV-5248 (April 13, 2005); and, Patriot Contract Services, LLC v United States, No. 05-1443 (October 19, 2005) (CAFC unable to render decision on jurisdiction for mootness of underlying case). The COFC and the District Court for the District of Columbia, however, have ruled that COFC has jurisdiction. See Transatlantic Lines, LLC v. United States., 68 Fed. Cl. 48 (2005); see also Sealift, Inc. v. Reilly, 496 F. Supp. 2d 52, 53-54 (D.D.C. 2007).

In a recent case, the COFC ruled it had jurisdiction to hear a maritime contract bid protest. See Red River Holdings, LLC v. U.S., 87 Fed. Cl. 768, 793-98 (2009). The sole matter of jurisdiction was appealed to the Court of Appeals for the Federal Circuit. Unfortunately, for the second time, the Court of Appeals for the Federal Circuit has been denied the opportunity to decide the issue because the appellant moved to dismiss before the court could issue a decision on jurisdiction. See, Red River Holdings, LLC v. U.S. and Sealift Inc., No. 2010-5019 (Fed. Cir. 2010). This legislative proposal is necessary to resolve the longstanding jurisdictional issue regarding maritime contract bid protests.

For these reasons, exclusive federal court jurisdiction over the full range of bid protest disputes should be vested in the COFC under 28 U.S.C. 1491.

Budget Implications: If enacted, this section would not increase the budgetary requirements of the Department of Defense and does not require a Program Budget Decision. Establishing the COFC as the sole forum to bring maritime contract bid protest actions will result in no additional cost to the Department of the Navy. Whether a case is filed in a U.S. District Court or in the COFC, the Department of the Navy will expend the same amounts of funding to defend the action.

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2012	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Army	+0	+0	+0	+0	+0	O&M, Army-		
Navy	+0	+0	+0	+0	+0	O&M, Navy –		
Marine Corps	+0	+0	+0	+0	+0	O&M, Marine Corps –		
Coast Guard	+0	+0	+0	+0	+0	O&M, Coast Guard		
Air Force	+0	+0	+0	+0	+0	O&M, Air Force – 3400		
Total								

NUMBER OF PERSONNEL AFFECTED							
	FY 2012	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**Appropriation To**	**Personnel Type (Officer, Enlisted, or Civilian)**
Army	0	0	0	0	0	N/A	N/A
Navy	0	0	0	0	0	N/A	N/A
*Marine Corps	0	0	0	0	0	N/A	N/A
Air Force	0	0	0	0	0	N/A	N/A
Total	0	0	0	0	0		

Changes to Existing Law: This section would make the following change to section 1491 of title 28, United States Code:

§ 1491. Claims against United States generally; actions involving Tennessee Valley Authority

(a)(1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 10(a)(1) of the Contract Disputes Act of 1978, including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act.

(b)(1) Both the Unites States Court of Federal Claims and the district courts of the United States shall have jurisdiction to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement. Both the United States Court of Federal Claims and the district courts of the United States shall have jurisdiction to entertain such an action without regard to whether suit is instituted before or after the contract is awarded.

(2) To afford relief in such an action, the courts may award any relief that the court considers proper, including declaratory and injunctive relief except that any monetary relief shall be limited to bid preparation and proposal costs.

(3) In exercising jurisdiction under this subsection, the courts shall give due regard to the interests of national defense and national security and the need for expeditious resolution of the action.

(4) In any action under this subsection, the courts shall review the agency's decision pursuant to the standards set forth in section 706 of title 5.

(5) If an interested party who is a member of the private sector commences an action described in paragraph (1) with respect to a public-private competition conducted under Office of Management and Budget Circular A-76 regarding the performance of an activity or function of a Federal agency, or a decision to convert a function performed by Federal employees to private sector performance without a competition under Office of Management and Budget

Circular A-76, then an interested party described in section 3551(2)(B) of title 31 shall be entitled to intervene in that action.

(6) Jurisdiction over any action described in paragraph (1) arising out of a maritime contract, or a solicitation for a proposed maritime contract, shall be governed by this section and shall not be subject to the jurisdiction of the district courts of the United States under the Suits in Admiralty Act (chapter 309 of title 46), or the Public Vessels Act (chapter 311 of title 46).

(c) Nothing herein shall be construed to give the United States Court of Federal Claims jurisdiction of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action against, or founded on conduct of, the Tennessee Valley Authority, or to amend or modify the provisions of the Tennessee Valley Authority Act of 1933 with respect to actions by or against the Authority.