SEC. 804. PERMANENT AUTHORITY FOR USE OF SIMPLIFIED ACQUISITION PROCEDURES FOR CERTAIN COMMERCIAL ITEMS.

Section 4202 of the Clinger-Cohen Act of 1996 (division D of Public Law 104–106; 10 U.S.C. 2304 note) is amended by striking subsection (e).

Section-by-Section Analysis

This proposal would amend section 4202 of the Clinger-Cohen Act of 1996 (div. D of P.L. 104-106; 10 U.S.C. 2304 note) by repealing the termination date in subsection (e). Section 4202 authorized the use of simplified acquisition procedures—previously allowed for small purchases—for commercial items not exceeding $5 million under the Test Program for Certain Commercial Items (test program)[1]. Section 4202 established this authority for an initial period of 3 years. The test program aimed to simplify the contracting process by providing contracting officers with additional procedural discretion and flexibility for the acquisition of commercial items. Since being enacted, Congress has extended this authority eight separate times, and it is now set to expire on January 1, 2015. On two occasions, the authority has expired, leaving contracting officers uncertain as to which procedures they may apply to their in-process procurements. The authority expired for 28 days in 2008. The authority expired again on January 1, 2012, when the authority was not extended in time. The timeframe of authority with a January 1st expiration could be problematic if the NDAA is not enacted by the beginning of the calendar year.

For the FY 2013 legislative proposal cycle, the Department requested permanent authority in OLC 296, *Permanent Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items*, which was transmitted to Congress on April 6, 2012. The FY 2013 NDAA (P.L. 112-239), enacted on January 2, 2013, contained Section 822, Extension of authority for use of simplified acquisition procedures for certain commercial items. Congress extended the authority for use of the test program retroactively from January 1, 2012, to January 1, 2015.

Earlier this year, the Government Accountability Office (GAO) submitted a report to Congress (GAO-14-178, February 4, 2014), discussing the use of the test authority by the Department and two civilian agencies (the Departments of Homeland Security and the Interior). GAO found that the test program reduced contracting lead time and administrative burdens with manageable risks. The GAO noted that agencies' use of the test program is small, relatively speaking, and recommended that DOD, DHS, and DOI "*collect and assess data to determine whether their agencies are using the simplified procedures authorized by the test program to the maximum extent practicable, as required by the Federal Acquisition Regulation*." Of particular note, DHS and DOI both pointed out that the temporary nature of the test program hindered its use and recommended the authority be made permanent."

The use of this authority has been extremely beneficial to the Department and civilian agencies and will continue to be so given the current budgetary limitations for resources. This

authority, which provides flexibility to streamline acquisition processes for certain commercial items, allows contracting activities to better use their limited resources and provides an essential tool for acquisitions in support of Continental United States operations as well as contingency contracting operations Outside the Continental United States (OCONUS). The test program provides benefits in terms of reducing lead time and administrative workload and enables faster delivery of much needed supplies and equipment to the Warfighter. For example, the U.S. Army Contracting Command Rock Island Contracting Center, which provides reach-back support to the theater, used this authority to execute several contract requirements in direct support of the United States Central Command (CENTCOM) theater of operations in FY 2011. Without this authority, the procurement lead time would have doubled. This could have led to mission failure in OCONUS contingency operations, particularly those in the CENTCOM theater of operations. In addition, this authority is extremely beneficial in responding to domestic crises such as Hurricane Katrina, Midwest flooding, and recent tornados.

Budget Implications: None. This proposal simply requests the authority to use simplified acquisition procedures for certain commercial items be made permanent. The proposal only addresses procurement processes and not amounts appropriated for procurement of items or services.

Changes to Existing Law: This proposal would amend section 4202 of the Clinger-Cohen Act of 1996 (division D of Public Law 104-106; 10 U.S.C. 2304 note) by striking subsection (e), as follows:

SEC. 4202. APPLICATION OF SIMPLIFIED PROCEDURES TO CERTAIN COMMERCIAL ITEMS.

(a) * * *

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[(e) EFFECTIVE DATE.—The authority to issue solicitations for purchases of commercial items in excess of the simplified acquisition threshold pursuant to the special simplified procedures authorized by section 2304(g)(1) of title 10, United States Code, section 3305(a) of title 41, United States Code, and section 1901(a) of title 41, United States Code, shall expire January 1, 2015. Contracts may be awarded pursuant to solicitations that have been issued before such authority expires, notwithstanding the expiration of such authority.**]**