SEC. ___. USE OF INTERAGENCY ACQUISITIONS.

(a) IN GENERAL.—Section 865(b)(1) of the National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4550) is amended—

(1) by striking subparagraph (B); and

(2) by redesignating subparagraph (C) as subparagraph (B).

(b) CLERICAL AMENDMENT.—The heading of such section is amended by striking "**CONTRACTS**" and inserting "**ACQUISITIONS**".

Section-by-Section Analysis

This proposal seeks to improve the efficiency of federal contracting by rescinding a portion of section 865 of the National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417), which requires contracting officers to make a determination that an interagency acquisition is the best procurement alternative before placing an order over $550,000 against Federal Supply Schedule (FSS) contracts, or before placing any order against government-wide acquisition contracts or multi-agency contracts (regardless of dollar value). This requirement runs contrary to more recent Congressional direction and Government Accountability Office (GAO) recommendations for agencies to leverage purchasing power via interagency acquisition and to reduce unnecessary contract duplication.

Section 865 was enacted during a period when the management of interagency contracting was on the GAO High-Risk List. To address this risk, the Office of Management and Budget (OMB), the Federal Acquisition Regulatory Council, and agency Chief Acquisition Officers and Senior Procurement Executives pursued a number of strong corrective actions. These steps included: (1) issuance of a model interagency agreement to help agencies map out the respective roles and responsibilities played by servicing and customer agencies in awarding and managing interagency acquisitions; (2) comprehensive revisions to the Federal Acquisition Regulation to help agencies more effectively use interagency contracts; (3) guidance on developing, reviewing and approving business cases for interagency acquisitions; and (4) the creation of a council to facilitate coordinated procurement of common goods and services.

In removing the management of interagency contracting from the High-Risk List in 2013, GAO reaffirmed the central role of interagency acquisition in promoting efficiencies, and acknowledged that a variety of safeguards are in place to reduce risk. More importantly, GAO pushed the Executive Branch to make greater use of strategically sourced contract vehicles. Specifically, in its October 2016 report, *Smarter Buying Initiatives Can Achieve Additional Savings, but Improved Oversight and Accountability Needed*, http://www.gao.gov/assets/690/680634.pdf, GAO recommended that agencies set specific use targets and metrics to facilitate greater adoption of vehicles and solutions developed through

category management, a proven business practice where spending for common goods and services is supported by teams of subject matter experts who use their deep market intelligence to help agencies make better and more informed buying decisions and leverage government-wide solutions when they make sense. The GAO recommendation is consistent with a push by Congress, in section 836 of the NDAA for FY 2015 (Public Law 113-291), which requires contracting officers to justify any decision not to use a Federal Strategic Sourcing Initiative (FSSI) vehicle when one is available to meet their requirements. This proposal to rescind a portion of section 865 of the NDAA for FY 2009 supports recent GAO recommendations, and is consistent with section 836 of the NDAA for FY 2015; all encourage greater use of interagency solutions.

Although some members of the small business community have suggested that the requirement to justify interagency contracting as the best procurement alternative serves as a protection for small business participation because small businesses tend to fare well in open market transactions (i.e., the alternative to using existing interagency and strategically sourced vehicles), this suggestion is misplaced. Agencies remain responsible for meeting their small business contracting goals under the Small Business Act, irrespective of the extent to which they use interagency contracts. The removal of parts of section 865 would not, in any way, change this responsibility. In fact, buying trends through interagency vehicles evidence healthy small business participation: the percentage of dollars going to small businesses under FSS contracts increased from 33% in 2011 to 41% in 2016. In addition, managers of interagency contracts are statutorily required to address the interests of small businesses if a planned action constitutes a contract consolidation or bundling.

Budget Implications: There would be no budgetary impact for civilian agencies as a result of this legislative change because the proposal only addresses a policy preference and does not affect the overall budget requirements of agencies.

Changes to Existing Law: Section 865 of the NDAA for FY 2009, Public Law 110-417, is amended to read as follows:

SEC. 865. PREVENTING ABUSE OF INTERAGENCY ~~CONTRACTS~~ <u>ACQUISITIONS</u>.

(a) OFFICE OF MANAGEMENT AND BUDGET POLICY GUIDANCE.—

(1) REPORT AND GUIDELINES.—Not later than one year after the date of the enactment of this Act, the Director of the Office of Management and Budget shall— (A) submit to Congress a comprehensive report on interagency acquisitions, including their frequency of use, management controls, cost-effectiveness, and savings generated; and (B) issue guidelines to assist the heads of executive agencies in improving the management of interagency acquisitions.

(2) MATTERS COVERED BY GUIDELINES.—For purposes of paragraph (1)(B), the Director shall include guidelines on the following matters:

(A) Procedures for the use of interagency acquisitions to maximize competition, deliver best value to executive agencies, and minimize waste, fraud, and abuse.

(B) Categories of contracting inappropriate for interagency acquisition.

(C) Requirements for training acquisition workforce personnel in the proper use of interagency acquisitions.

(b) REGULATIONS REQUIRED.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to require that all interagency acquisitions—

(A) include a written agreement between the requesting agency and the servicing agency assigning responsibility for the administration and management of the contract;

~~(B) include a determination that an interagency acquisition is the best procurement alternative;~~ and

(~~C~~B) include sufficient documentation to ensure an adequate audit.

(2) MULTI-AGENCY CONTRACTS.—Not later than one year after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to require any multi-agency contract entered into by an executive agency after the effective date of such regulations to be supported by a business case analysis detailing the administration of such contract, including an analysis of all direct and indirect costs to the Federal Government of awarding and administering such contract and the impact such contract will have on the ability of the Federal Government to leverage its purchasing power.

(c) AGENCY REPORTING REQUIREMENT.—The senior procurement executive for each executive agency shall, as directed by the Director of the Office of Management and Budget, submit to the Director annual reports on the actions taken by the executive agency pursuant to the guidelines issued under subsection (a).

(d) DEFINITIONS.—In this section:

(1) The term ‘‘executive agency’’ has the meaning given such term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)), except that, in the case of a military department, it means the Department of Defense.

(2) The term ‘‘head of executive agency’’ means the head of an executive agency except that, in the case of a military department, the term means the Secretary of Defense.

(3) The term ‘‘interagency acquisition’’ means a procedure by which an executive agency needing supplies or services (the requesting agency) obtains them from another executive agency (the servicing agency). The term includes acquisitions under section 1535 of title 31, United States Code (commonly referred to as the ‘‘Economy Act’’), Federal Supply Schedules above $500,000, and Government wide acquisition contracts.

(4) The term ‘‘multi-agency contract’’ means a task or delivery order contract established for use by more than one executive agency to obtain supplies and services, consistent with section 1535 of title 31, United States Code (commonly referred to as the ‘‘Economy Act’’).