

1      **SEC. \_\_\_\_\_. TASK AND DELIVERY ORDER PROTEST DOLLAR THRESHOLD.**

2              Section 4106 of title 41, United States Code, is amended in subsection (f) by striking  
3        “\$10,000,000” and inserting “\$25,000,000”.

### **Section-by-Section Analysis**

This proposal would standardize the threshold for filing protests with the Government Accountability Office (GAO) in connection with the issuance, or proposed issuance, of task and delivery orders under multiple award task or delivery order contracts, irrespective of whether the contract or order was awarded by the Department of Defense (DoD) or a civilian agency. This action would help to simplify the acquisition process and avoid unnecessary complexity and litigation.

For almost 15 years after Congress formally codified multiple award task and delivery order contracts, protests of orders awarded under these contracts were limited to those arguing that the order increases the scope, period, or maximum value of the underlying contract. In 2008, Congress expanded the ability to file protests when it authorized the GAO to hear protests challenging task and delivery order solicitations and awards with an anticipated value of \$10 million or more. Following a brief lapse in the authority at the beginning of FY 2017, Congress restored the expanded the ability for prospective contractors to challenge civilian agency task and delivery orders valued at \$10 million. See Public Law 114-260; H.Rept. 114-779. However, less than two weeks later, Congress passed the National Defense Authorization Act for FY 2017 (P.L. 114-328), which included a provision raising the threshold to \$25 million for protesting task and delivery orders awarded by DoD, the National Aeronautics and Space Administration, and the Coast Guard. See section 835.

Unnecessary complexity and uncertainty results when different agencies are subject to inconsistent thresholds for application of GAO’s protest mechanism. DoD and civilian agencies use many of the same government-wide contract vehicles, such as GSA’s Alliant and OASIS government-wide acquisition contracts, and DoD often obtains contracting support from civilian agencies. As a result, unnecessary litigation is arising to sort out which, if any, orders are protestable at values between the two thresholds when orders are placed by DoD, NASA, or the Coast Guard on vehicles awarded by other agencies, either directly or by another agency on their behalf. Standardizing the threshold at \$25 million would avoid this unnecessary complexity, provide offerors with continued ability to avail themselves of the broadened protest authority for the most significant orders, and extend to civilian agencies the same modest protest reform that Congress provided to Defense, NASA, and the Coast Guard in the NDAA for FY 2017.

**Budget Implications:** There would be no budgetary impact for civilian agencies as a result of this legislative change because the proposal only addresses the protest threshold it would not increase the overall budget requirements of any Federal agency.

**Changes to Existing Law:** The proposal would amend section 4106(f) of title 41, United States Code, as follows:

## § 4106. ORDERS

\* \* \* \*

### (f) Protests.—

(1) Protest not authorized.—A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for—

- (A) a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued; or
- (B) a protest of an order valued in excess of ~~\$10,000,000~~ **\$25,000,000**.