

# **The Administrative Dispute Resolution Act of 1996**

## **Pub. Law 104-320**

(amending Pub. Law 101-552 and Pub. Law 102-354)

### **Sec. 1. Short Title**

This Act may be cited as the "Administrative Dispute Resolution Act of 1996."

### **Sec. 2. Findings**

The Congress finds that--

- (1) administrative procedure, as embodied in chapter 5 of title 5, United States Code, and other statutes, is intended to offer a prompt, expert, and inexpensive means of resolving disputes as an alternative to litigation in the Federal courts;
- (2) administrative proceedings have become increasingly formal, costly, and lengthy resulting in unnecessary expenditures of time and in a decreased likelihood of achieving consensual resolution of disputes;
- (3) alternative means of dispute resolution have been used in the private sector for many years and, in appropriate circumstances, have yielded decisions that are faster, less expensive, and less contentious;
- (4) such alternative means can lead to more creative, efficient, and sensible outcomes;
- (5) such alternative means may be used advantageously in a wide variety of administrative programs;
- (6) explicit authorization of the use of well-tested dispute resolution techniques will eliminate ambiguity of agency authority under existing law;
- (7) Federal agencies may not only receive the benefit of techniques that were developed in the private sector, but may also take the lead in the further development and refinement of such techniques; and
- (8) the availability of a wide range of dispute resolution procedures, and an increased understanding of the most effective use of such procedures, will enhance the operation of the Government and better serve the public.

### **Sec. 3. Promotion of Alternative Means of Dispute Resolution**

(a) Promulgation of Agency Policy.--Each agency shall adopt a policy that addresses the use of alternative means of dispute resolution and case management. In developing such a policy, each agency shall--

- (1) consult with the agency designated by, or the interagency committee designated or established by, the President under section 573 of title 5, United States Code, to facilitate and encourage agency use of alternative dispute resolution under subchapter IV of chapter 5 of such title; and
- (2) examine alternative means of resolving disputes in connection with--
  - (A) formal and informal adjudications;
  - (B) rulemakings;
  - (C) enforcement actions;

- (D) issuing and revoking licenses or permits;
- (E) contract administration;
- (F) litigation brought by or against the agency; and
- (G) other agency actions.

(b) **Dispute Resolution Specialists.**--The head of each agency shall designate a senior official to be the dispute resolution specialist of the agency. Such official shall be responsible for the implementation of--

- (1) the provisions of this Act and the amendments made by this Act; and
- (2) the agency policy developed under subsection (a)

(c) **Training.**--Each agency shall provide for training on a regular basis for the dispute resolution specialist of the agency and other employees involved in implementing the policy of the agency developed under subsection (a). Such training should encompass the theory and practice of negotiation, mediation, arbitration, or related techniques. The dispute resolution specialist shall periodically recommend to the agency head agency employees who would benefit from similar training.

(d) **Procedures for Grants and Contracts.**

(1) Each agency shall review each of its standard agreements for contracts, grants, and other assistance and shall determine whether to amend any such standard agreements to authorize and encourage the use of alternative means of dispute resolution.

(2) (A) Within 1 year after the date of the enactment of this Act [Nov. 15, 1990], the Federal Acquisition Regulation shall be amended, as necessary, to carry out this Act and the amendments made by this Act.

(B) For purposes of this section, the term 'Federal Acquisition Regulation' means the single system of Government-wide procurement regulation referred to in section 6(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(a)).

#### **Sec. 4. Administrative Procedures.**

(a) **Administrative Hearings.**--Section 556(c) of title 5, United States Code, is amended--

(1) in paragraph (6) by inserting before the semicolon at the end thereof the following: "or by the use of alternative means of dispute resolution as provided in subchapter IV of this chapter"; and

(2) by redesignating paragraphs (7) through (9) as paragraphs (9) through (11), respectively, and inserting after paragraph (6) the following new paragraphs:

"(7) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods;

"(8) require the attendance at any conference held pursuant to paragraph (6) of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;"

(b) **Alternative Means of Dispute Resolution.**--Chapter 5 of title 5, United States Code, is amended by adding at the end the following new subchapter:

"Subchapter IV Alternative Means of Dispute Resolution in the Administrative Process

- §571. Definitions.
- §572. General authority.
- §573. Neutrals.
- §574. Confidentiality.
- §575. Authorization of arbitration.
- §576. Enforcement of arbitration agreements.
- §577. Arbitrators.
- §578. Authority of the arbitrator.
- §579. Arbitration proceedings.
- §580. Arbitration awards.
- §581. Judicial review.
- §582. Compilation of Information (Repealed).
- §583. Support services.
- §584. Authorization of appropriations (New).”

#### **§571. Definitions**

For the purposes of this subchapter, the term--

- (1) "agency" has the same meaning as in section 551(1) of this title;
- (2) "administrative program" includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter;
- (3) "alternative means of dispute resolution" means any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact finding, minitrials, arbitration, and use of ombuds, or any combination thereof;
- (4) "award" means any decision by an arbitrator resolving the issues in controversy;
- (5) "dispute resolution communication" means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or nonparty participant; except that a written agreement to enter into a dispute resolution proceeding, or final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;
- (6) "dispute resolution proceeding" means any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate;
- (7) "in confidence" means, with respect to information, that the information is provided--
  - (A) with the expressed intent of the source that it not be disclosed; or
  - (B) under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed;
- (8) "issue in controversy" means an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement--

- (A) between an agency and persons who would be substantially affected by the decision; or
- (B) between persons who would be substantially affected by the decision;
- (9) "neutral" means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;
- (10) "party" means--
  - (A) for a proceeding with named parties, the same as in section 551(3) of this title; and
  - (B) for a proceeding without named parties, a person who will be significantly affected by the decision in the proceeding and who participates in the proceeding;
- (11) "person" has the same meaning as in section 551(2) of this title; and
- (12) "roster" means a list of persons qualified to provide services as neutrals.

### **§572. General authority**

- (a) An agency may use a dispute resolution proceeding for the resolution of an issue in controversy that relates to an administrative program, if the parties agree to such proceeding.
- (b) An agency shall consider not using a dispute resolution proceeding if--
  - (1) a definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;
  - (2) the matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;
  - (3) maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;
  - (4) the matter significantly affects persons or organizations who are not parties to the proceeding;
  - (5) a full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and
  - (6) the agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement.
- (c) Alternative means of dispute resolution authorized under this subchapter are voluntary procedures which supplement rather than limit other available agency dispute resolution techniques.

### **§573. Neutrals**

- (a) A neutral may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties to a dispute resolution proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve.
- (b) A neutral who serves as a conciliator, facilitator, or mediator serves at the will of the parties.
- (c) The President shall designate an agency or designate or establish an interagency committee to facilitate and encourage agency use of dispute resolution under this subchapter. Such agency or interagency committee, in consultation with other appropriate Federal agencies and

professional organizations experienced in matters concerning dispute resolution, shall--

- (1) encourage and facilitate agency use of alternative means of dispute resolution; and
- (2) develop procedures that permit agencies to obtain the services of neutrals on an expedited basis.

(d) An agency may use the services of one or more employees of other agencies to serve as neutrals in dispute resolution proceedings. The agencies may enter into an interagency agreement that provides for the reimbursement by the user agency or the parties of the full or partial cost of the services of such an employee.

(e) Any agency may enter into a contract with any person for services as a neutral, or for training in connection with alternative means of dispute resolution. The parties in a dispute resolution proceeding shall agree on compensation for the neutral that is fair and reasonable to the Government.

#### **§574. Confidentiality**

(a) Except as provided in subsections (d) and (e), a neutral in a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the neutral, unless--

- (1) all parties to the dispute resolution proceeding and the neutral consent in writing, and, if the dispute resolution communication was provided by a nonparty participant, that participant also consents in writing;
- (2) the dispute resolution communication has already been made public;
- (3) the dispute resolution communication is required by statute to be made public, but a neutral should make such communication public only if no other person is reasonably available to disclose the communication; or
- (4) a court determines that such testimony or disclosure is necessary to--
  - (A) prevent a manifest injustice;
  - (B) help establish a violation of law; or
  - (C) prevent harm to the public health or safety,

of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential;

(b) A party to a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication, unless--

- (1) the communication was prepared by the party seeking disclosure;
- (2) all parties to the dispute resolution proceeding consent in writing;
- (3) the dispute resolution communication has already been made public;
- (4) the dispute resolution communication is required by statute to be made public;
- (5) a court determines that such testimony or disclosure is necessary to--
  - (A) prevent a manifest injustice;
  - (B) help establish a violation of law; or
  - (C) prevent harm to the public health and safety,

of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential;

(6) the dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding or to the enforcement of such an agreement or award; or

(7) except for dispute resolution communications generated by the neutral, the dispute resolution communication was provided to or was available to all parties to the dispute resolution proceeding.

(c) Any dispute resolution communication that is disclosed in violation of subsection (a) or (b), shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.

(d) (1) The parties may agree to alternative confidential procedures for disclosures by a neutral. Upon such agreement the parties shall inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of subsection (a) that will govern the confidentiality of the dispute resolution proceeding. If the parties do not so inform the neutral, subsection (a) shall apply.

(2) To qualify for the exemption established under subsection (j), an alternative confidential procedure under this subsection may not provide for less disclosure than the confidential procedures otherwise provided under this section.

(e) If a demand for disclosure, by way of discovery request or other legal process, is made upon a neutral regarding a dispute resolution communication, the neutral shall make reasonable efforts to notify the parties and any affected nonparty participants of the demand. Any party or affected nonparty participant who receives such notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information shall have waived any objection to such disclosure.

(f) Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

(g) Subsections (a) and (b) shall have no effect on the information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

(h) Subsections (a) and (b) shall not prevent the gathering of information for research or educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the parties and the specific issues in controversy are not identifiable.

(i) Subsections (a) and (b) shall not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a party to or participant in such proceeding, so long as such dispute resolution communication is disclosed only to the extent necessary to resolve such dispute.

(j) A dispute resolution communication which is between a neutral and a party and which may not be disclosed under this section shall also be exempt from disclosure under section 552(b)(3).

#### **§575. Authorization of arbitration**

(a) (1) Arbitration may be used as an alternative means of dispute resolution whenever all parties consent. Consent may be obtained either before or after an issue in controversy has arisen. A party may agree to--

- (A) submit only certain issues in controversy to arbitration; or
- (B) arbitration on the condition that the award must be within a range of possible outcomes.
- (2) The arbitration agreement that sets forth the subject matter submitted to the arbitrator shall be in writing. Each such arbitration agreement shall specify a maximum award that may be issued by the arbitrator and may specify other conditions limiting the range of possible outcomes.
- (3) An agency may not require any person to consent to arbitration as a condition of entering into a contract or obtaining a benefit.
- (b) An officer or employee of an agency shall not offer to use arbitration for the resolution of issues in controversy unless such officer or employee--
  - (1) would otherwise have authority to enter into a settlement concerning the matter; or
  - (2) is otherwise specifically authorized by the agency to consent to the use of arbitration.
- (c) Prior to using binding arbitration under this subchapter, the head of an agency, in consultation with the Attorney General and after taking into account the factors in section 572(b), shall issue guidance on the appropriate use of binding arbitration and when an officer or employee of the agency has authority to settle an issue in controversy through binding arbitration.

#### **§576. Enforcement of arbitration agreements**

An agreement to arbitrate a matter to which this subchapter applies is enforceable pursuant to section 4 of title 9, and no action brought to enforce such an agreement shall be dismissed nor shall relief therein be denied on the grounds that it is against the United States or that the United States is an indispensable party.

#### **§577. Arbitrators**

- (a) The parties to an arbitration proceeding shall be entitled to participate in the selection of the arbitrator
- (b) The arbitrator shall be a neutral who meets the criteria of section 573 of this title.

#### **§578. Authority of the arbitrator**

An arbitrator to whom a dispute is referred under this subchapter may-

- (1) regulate the course of and conduct arbitral hearings;
- (2) administer oaths and affirmations;
- (3) compel the attendance of witnesses and production of evidence at the hearing under the provisions of section 7 of title 9 only to the extent the agency involved is otherwise authorized by law to do so; and
- (4) make awards.

#### **§579. Arbitration proceedings**

- (a) The arbitrator shall set a time and place for the hearing on the dispute and shall notify the parties not less than 5 days before the hearing.
- (b) Any party wishing a record of the hearing shall--
  - (1) be responsible for the preparation of such record other parties and the arbitrator of the preparation of such record;

- (2) notify the other parties and the arbitrator of the preparation of such record;
  - (3) furnish copies to all identified parties and the arbitrator; and
  - (4) pay all costs for such record, unless the parties agree otherwise or the arbitrator determines that the costs should be apportioned.
- (c) (1) The parties to the arbitration are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.
- (2) The arbitrator may, with the consent of the parties, conduct all or part of the hearing by telephone, television, computer, or other electronic means, if each party has an opportunity to participate.
  - (3) The hearing shall be conducted expeditiously and in an informal manner.
  - (4) The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence may be excluded by the arbitrator.
  - (5) The arbitrator shall interpret and apply relevant statutory and regulatory requirements, legal precedents, and policy directives.
- (d) No interested person shall make or knowingly cause to be made to the arbitrator an unauthorized ex parte communication relevant to the merits of the proceeding, unless the parties agree otherwise. If a communication is made in violation of this subsection, the arbitrator shall ensure that a memorandum of the communication is prepared and made a part of the record, and that an opportunity for rebuttal is allowed. Upon receipt of a communication made in violation of this subsection, the arbitrator may, to the extent consistent with the interests of justice and the policies underlying this subchapter, require the offending party to show cause why the claim of such party should not be resolved against such party as a result of the improper conduct.
- (e) The arbitrator shall make the award within 30 days after the close of the hearing, or the date of the filing of any briefs authorized by the arbitrator, whichever date is later, unless--
- (1) the parties agree to some other time limit; or
  - (2) the agency provides by rule for some other time limit.

#### **§580. Arbitration awards**

- (a) (1) Unless the agency provides otherwise by rule, the award in an arbitration proceeding under this subchapter shall include a brief, informal discussion of the factual and legal basis for the award, but formal findings of fact or conclusions of law shall not be required.
  - (2) The prevailing parties shall file the award with all relevant agencies, along with proof of service on all parties.
- (b) The award in an arbitration proceeding shall become final 30 days after it is served on all parties. Any agency that is a party to the proceeding may extend this 30-day period for an additional 30-day period by serving a notice of such extension on all other parties before the end of the first 30-day period.
- (c) A final award is binding on the parties to the arbitration proceeding, and may be enforced pursuant to sections 9 through 13 of title 9. No action brought to enforce such an award shall be dismissed nor shall relief therein be denied on the grounds that it is against the United States or that the United States is an indispensable party.
- (d) An award entered under this subchapter in an arbitration proceeding may not serve as an estoppel in any other proceeding for any issue that was resolved in the proceeding. Such an award also may not be used as precedent or otherwise be considered in any factually unrelated



proceeding, whether conducted under this subchapter, by an agency, or in a court, or in any other arbitration proceeding.

#### **§581. Judicial Review**

(a) Notwithstanding any other provision of law, any person adversely affected or aggrieved by an award made in an arbitration proceeding conducted under this subchapter may bring an action for review of such award only pursuant to the provisions of sections 9 through 13 of title 9.

(b) A decision by an agency to use or not to use a dispute resolution proceeding under this subchapter shall be committed to the discretion of the agency and shall not be subject to judicial review, except that arbitration shall be subject to judicial review under section 10(b) of title 9.

#### **§582. Compilation of Information (Repealed)**

#### **§583. Support Services**

For the purposes of this subchapter, an agency may use (with or without reimbursement) the services and facilities of other Federal agencies, State, local, and tribal governments, public and private organizations and agencies, and individuals, with the consent of such agencies, organizations, and individuals. An agency may accept voluntary and uncompensated services for purposes of this subchapter without regard to the provisions of section 1342 of title 31.

#### **§584. Authorization of appropriations**

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subchapter.

#### **Sec. 5. Judicial Review of Arbitration Awards.**

Section 10 of title 9, United States Code, is amended--

(1) by designating subsections (a) through (e) as paragraphs (1) through (5), respectively;

(2) by striking out "In either" and inserting in lieu thereof "(a) in any"; and

(3) by adding at the end thereof the following:

"(b) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5."

#### **Sec. 6. Government Contract Claims.**

(a) Alternative Means of Dispute Resolution.--Section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) is amended by adding at the end the following new subsections:

"(d) Notwithstanding any other provision of this Act, a contractor and a contracting officer may use any alternative means of dispute resolution under subchapter IV of chapter 5 of title 5, United States Code, or other mutually agreeable procedures, for resolving claims. The contractor shall certify the claim when required to do so as provided under subsection (c)(1) or as otherwise required by law. All provisions of subchapter IV of chapter 5 of title 5, United States Code, shall

apply to such alternative means of dispute resolution.”

(b) **Judicial Review of Arbitral Awards.**--Section 8(g) of the Contract Disputes Act of 1978 (41 U.S.C. 607(g)) is amended by adding at the end the following new paragraph:

“(3) An award by an arbitrator under this Act shall be reviewed pursuant to sections 9 through 13 of title 9, United States Code, except that the court may set aside or limit any award that is found to violate limitations imposed by Federal statute.”

#### **Sec. 7. Federal Mediation and Conciliation Service.**

Section 203 of the Labor Management Relations Act, 1947 (29 U.S.C. 173) is amended by adding at the end the following new subsection:

“(f) The Service may make its services available to Federal agencies to aid in the resolution of disputes under the provisions of subchapter IV of chapter 5 of title 5, United States Code. Functions performed by the Service may include assisting parties to disputes related to administrative programs, training persons in skills and procedures employed in alternative means of dispute resolution, and furnishing officers and employees of the Service to act as neutrals. Only officers and employees who are qualified in accordance with section 573 of title 5, United States Code, may be assigned to act as neutrals. The Service shall consult with the agency designated by, or the interagency committee designated or established by, the President under section 573 of title 5, United States Code, in maintaining rosters of neutrals and arbitrators, and to adopt such procedures and rules as are necessary to carry out the services authorized in this subsection.”

**Sec. 8. Government Tort and Other Claims.** (a) **Federal Tort Claims.**--Section 2672 of title 28, United States Code, is amended by adding at the end of the first paragraph the following:

“Notwithstanding the proviso contained in the preceding sentence, any award, compromise, or settlement may be effected without the prior written approval of the Attorney General or his or her designee, to the extent that the Attorney General delegates to the head of the agency the authority to make such award, compromise, or settlement. Such delegations may not exceed the authority delegated by the Attorney General to the United States attorneys to settle claims for money damages against the United States. Each Federal agency may use arbitration, or other alternative means of dispute resolution under the provisions of subchapter IV of chapter 5 of title 5, to settle any tort claim against the United States, to the extent of the agency's authority to award, compromise, or settle such claim without the prior written approval of the Attorney General or his or her designee.”

(b) **Claims of the Government.**--Section 3711(a)(2) of title 31, United States Code, is amended by striking out “\$20,000 (excluding interest)” and inserting in lieu thereof “\$100,000 (excluding interest) or such higher amount as the Attorney General may from time to time prescribe.”

**Sec. 9. Use of Nonattorneys.** (a) **Representation of Parties.**--Each agency, in developing a policy on the use of alternative means of dispute resolution under this Act, shall develop a policy with regard to the representation by persons other than attorneys of parties in alternative dispute resolution proceedings and shall identify any of its administrative programs with numerous claims or disputes before the agency and determine--

(1) the extent to which individuals are represented or assisted by attorneys or by persons who are not attorneys; and

(2) whether the subject areas of the applicable proceedings or the procedures are so complex or specialized that only attorneys may adequately provide such representation or assistance.

(b) **Representation and Assistance by Nonattorneys.**--A person who is not an attorney may

provide representation or assistance to any individual in a claim or dispute with an agency, if--

- (1) such claim or dispute concerns an administrative program identified under subsection (a);
- (2) such agency determines that the proceeding or procedure does not necessitate representation or assistance by an attorney under subsection (a)(2); and
- (3) such person meets any requirement of the agency to provide representation or assistance in such a claim or dispute.

(c) Disqualification of Representation or Assistance.--Any agency that adopts regulations under subchapter IV of chapter 5 of title 5, United States Code, to permit representation or assistance by persons who are not attorneys shall review the rules of practice before such agency to--

- (1) ensure that any rules pertaining to disqualification of attorneys from practicing before the agency shall also apply, as appropriate, to other persons who provide representation or assistance; and
- (2) establish effective agency procedures for enforcing such rules of practice and for receiving complaints from affected persons.

#### **Sec. 10. Definitions.**

As used in this Act, the terms 'agency', 'administrative program', and 'alternative means of dispute resolution' have the meanings given such terms in section 571 of title 5, United States Code (enacted as section 581 of title 5, United States Code, by section 4(b) of this Act, and redesignated as section 571 of such title by section 3(b) of the Administrative Procedure Technical Amendments Act of 1991).

#### **Sec. 11. Reauthorization of Negotiated Rulemaking Act of 1990.**

(a) Permanent Reauthorization.- Section 5 of the Negotiated Rulemaking Act of 1990 (Public Law 101-648; 5 U.S.C. 561 note) is repealed.

#### **Sec. 12. Jurisdiction of the United States Court of Federal Claims and the District Courts of the United States: Bid Protests.**

(a) Bid Protests- Section 1491 of title 28, United States Code, is amended--

- (1) by redesignating subsection (b) as subsection (c);
- (2) in subsection (a) by striking out paragraph (3); and
- (3) by inserting after subsection (a), the following new subsection:

“(b)(1) Both the United 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.”.

(b) Effective Date- This section and the amendments made by this section shall take effect on December 31, 1996 and shall apply to all actions filed on or after that date.

(c) Study- No earlier than 2 years after the effective date of this section, the United States General Accounting Office shall undertake a study regarding the concurrent jurisdiction of the district courts of the United States and the Court of Federal Claims over bid protests to determine whether concurrent jurisdiction is necessary. Such a study shall be completed no later than December 31, 1999, and shall specifically consider the effect of any proposed change on the ability of small businesses to challenge violations of Federal procurement law.

(d) Sunset- The jurisdiction of the district courts of the United States over the actions described in section 1491(b)(1) of title 28, United States Code (as amended by subsection (a) of this section) shall terminate on January 1, 2001 unless extended by Congress. The savings provisions in subsection (e) shall apply if the bid protest jurisdiction of the district courts of the United States terminates under this subsection.

(e) Savings Provisions-

(1) Orders- A termination under subsection (d) shall not terminate the effectiveness of orders that have been issued by a court in connection with an action within the jurisdiction of that court on or before December 31, 2000. Such orders shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by a court of competent jurisdiction or by operation of law.

(2) Proceedings and Applications-

(A) a termination under subsection (d) shall not affect the jurisdiction of a court of the United States to continue with any proceeding that is pending before the court on December 31, 2000.

(B) Orders may be issued in any such proceeding, appeals may be taken therefrom, and payments may be made pursuant to such orders, as if such termination had not occurred. An order issued in any such proceeding shall continue in effect until modified, terminated, superseded, set aside, or revoked by a court of competent jurisdiction or by operation of law.

(C) Nothing in this paragraph prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that proceeding could have been discontinued or modified absent such termination.

(f) Nonexclusivity of GAO Remedies- In the event that the bid protest jurisdiction of the district courts of the United States is terminated pursuant to subsection (d), then section 3556 of title 31, United States Code, shall be amended by striking 'a court of the United States or' in the first sentence.