

Ban on A-76 Competitions for Outsourcing Extended in Omnibus Bill

By Charles S. Clark December 22, 2011

The consolidated spending bill that President Obama is expected to sign Friday includes language extending a three-year-old ban on A-76 studies, or agency competitions for pending work that pits federal employees against contractors.

Congress early in the Obama administration reversed a 2003 George W. Bush administration effort to outsource more agency work to contractors, prohibiting competitions run under rules from Office of Management and Budget Circular A-76.

The final version of the fiscal 2012 Financial Services Appropriations bill passed this month by Congress includes language sought by Sen. Barbara Mikulski, D-Md., that continues a prohibition on A-76 studies "to level the playing field," she said in a statement.

The bill reads: "None of the funds appropriated or otherwise made available by this or any other act may be used to begin or announce a study or public-private competition regarding the conversion to contractor performance of any function performed by federal employees pursuant to Office of Management and Budget Circular A-76 or any other administrative regulation, directive or policy."

Mikulski said, "I'm proud of the work that we've done for our federal employees, but the job isn't over. Continuing efforts to prevent outsourcing and contracting out is important both for American taxpayers and our federal employees."

Mikulski for years has attacked such competitions for being biased against federal employees and damaging to morale. Previously, she sought to require contractors to demonstrate a savings of at least 10 percent or \$10 million when compared with the cost of doing work with federal employees.

This year she introduced a broader set of changes in the form of the Correction of Long-standing Errors in Agencies Unsustainable Procurements (CLEAN UP) Act, which would reinforce insourcing by "reforming the discredited OMB Circular A-76 privatization process by ensuring all costs of conducting studies are considered," she said.

Congress' move to extend the ban on studies, while not a surprise, is "not in the taxpayers' best interest," said Rob Burton, an administrator at OMB's Office of Federal Procurement Policy during the Bush era who is now advocating for small business clients as a partner at Venable LLP. "This goes hand in hand with the Obama administration's insourcing initiative by prohibiting agencies from engaging in robust public-private competition," he said. "A-76 is based on competition and transparency, and in the last couple of years we have moved into an era when we make these decisions on what is cost-effective with no competition or transparency."

Burton added that he and a small business client are awaiting a long-delayed response to a Freedom of Information Act request about an insourcing decision. "It's very frustrating," he said. "The company could go out of business."

Roger Jordan, vice president for government relations at the Professional Services Council, a contractors trade group, said he was encouraged by passage in the House (though not the Senate) of several amendments that would have lifted the ban on A-76 competitions and eased the Defense Department's ability to resume such studies.

"We view A-76 as a tool in the toolbox," he said, "and in this age of budget constraints, it is important that agencies have all the tools available to drive efficiencies and costs savings."

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