



## Bills Would Limit Work Contractors Can Pursue

Restrictions cover both government-only work and jobs 'closely associated' with that work

By Matthew Weigelt      Aug 13, 2010

Congress may go a step beyond excluding contractors from doing government-only work to include work closely associated with those jobs, according to two fiscal 2011 appropriations bills.

The Senate Appropriations Committee wants work that is closely associated with an inherently governmental function to be done by a federal employee, according to its version of the fiscal 2011 Financial Services and General Government Appropriations Act (S. 3677).

An inherently governmental function is a job "that is so intimately related to the public interest as to require performance by federal government employees," according to one definition.

Already, agency officials are required to regularly report their inventory of service contracts. But the committee now wants agency executives to show that they tried as much as possible to keep the private sector from contracts that are considered "closely associated with inherently governmental functions," according to the appropriations bill.

The appropriations committee approved the spending bill July 29. The full Senate must still vote on it.

The House has a similar provision in its version of the same appropriations bill that it passed July 16. Agency executives must ensure that "to the maximum extent practicable, the activities on the [inventory] list do not include any functions closely associated with inherently governmental functions," according to the fiscal 2011 Financial Services and General Government Appropriations Act (H.R. 3170).

As it stands now, agency heads only must ensure that "the agency is giving special management attention to functions that are closely associated with inherently governmental functions."

Under proposed guidance regarding inherently governmental functions and related tasks, a job closely associated with an inherently government function may include pre-establishing in a contract the specified range of acceptable decisions, assigning a sufficient number of federal employees with appropriate expertise to administer a job, and taking steps to minimize conflicts of interest.

The draft guidance would have agency managers paying greater attention to contractors who are performing those jobs to ensure that their duties do not expand into the realm of inherently governmental functions.

Obama administration procurement officials have said the government relies too much on the private sector to carry out its work, and contractors have come to close to those jobs only federal employees can do, such as signing a contract.

But with these provisions in the House and Senate bills, one trade organization today said the language would have agency officials making insourcing decisions on work that is not explicitly prohibited by law.

The Professional Services Council sent a letter to the Senate Appropriations Committee that urged the panel to revise its bill and instead have agencies conduct accurate, complete comparisons of public and

private sector's costs to do the work. The council also recommended agencies assess how insourcing the work might affect small businesses, jobs and local governments' revenue, according to the letter.

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