



Contractors Get Insourcing Warning under Defense Bill

By Matthew Weigelt

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As Defense Department officials consider insourcing work, Congress wants them to notify contractors of their decision to bring the work inhouse.

The fiscal 2012 National Defense Authorization Act includes a provision requiring DOD to notify companies before insourcing particular jobs. Congress wants officials to give contractors a "timely notification" of their decision.

One expert said the timely notification is a step forward in informing companies that they are losing their contracts. But the provision's usefulness depends on DOD's interpretation of the provision.

"How 'timely' is defined determines whether this is of any value or not," said Robert Burton, former deputy OFPP administrator and now partner at the Venable law firm.

Having worked with small contracting companies that lose their business because of insourcing, a timely notification may be a six-month heads-up. Still he said the small businesses often struggle to stay afloat after a decision to insource work.

For the best option, Burton said government officials should talk with companies about the effect of insourcing on their future. Officials should then consider it as a factor in their decision.

Also in the bill, the provision would add slightly to the blurry term of "critical function."

A critical function is a duty "necessary to maintain sufficient government expertise and technical capabilities" and "entails operational risk associated with contractor performance."

The Office of Federal Procurement Policy this year defined a critical function as work that's "necessary to the agency being able to effectively perform and maintain control of its mission and operations." Congress also is telling defense officials to give special consideration in taking back these critical functions, as well as acquisition workforce functions and even work that DOD employees have done at some point during the past decade.

Officials would need to test whether to insource certain functions based on guidance in a memo on comparing the estimated costs of civilian, military and contractor support. Officials would also have to decide if insourcing a function would be either 10 percent lower or \$10 million less expensive than the contractor's cost. The choice would not apply to inherently governmental functions, which should only be done by federal employees.

The authorization bill cleared Congress Dec. 15, and now awaits President Barack Obama's signature or his veto.

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