



In-sourcing, Say Hello to Political Reality

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There always seems to be a tug of war between how much work should be performed by government employees and how much work should be performed by contractors. It's no surprise that unions that represent government employees want more work performed by government employees and trade associations that represent private contractors want more work performed by their member companies. And there is no clear dividing line. Contracts cannot be used to perform inherently governmental functions, such as commanding military forces or conducting foreign relations. See Federal Acquisition Regulation ("FAR") 7.503 and Defense FAR Supplement 207.503. But after the purely inherently governmental functions, the line gets fuzzy. There are many activities that are listed as possibly bleeding over in to the inherently government category, such as providing inspection services. And then there is the rest--work that government employees and contractors consider fair game. That could include almost anything. And get ready to be shocked: The government employee unions want that work "in-sourced". Contractors want the work "out-sourced".

In the battle between in-sourcing and out-sourcing, the camp that can point to cost savings can claim high ground. Previously, the Obama administration had climbed on board the cost-savings band-wagon to support in-sourcing. In April of 2009, Defense Secretary Gates announced Department of Defense ("DOD") plans "to hire as many as 13,000 new civil servants in FY10 to replace contractors and up to 30,000 new civil servants in place of contractors over the next five years." That lasted until (Surprise!) we found out we had a budget deficit. And in August of 2010, Secretary Gates did an about face and questioned whether in-sourcing to save money really works: "As we were reducing contractors, we weren't seeing the savings we had hoped from in sourcing."

The latest shoe dropped on February 3, 2011, when Army Secretary John McHugh released a policy directive that effectively stops all Army in-sourcing initiatives in their tracks. Secretary McHugh has it just about right when he says that the Army "must approach the in-sourcing of functions currently performed by contract in a well-reasoned, analytically based and systemic manner, consistent with law and prevailing Presidential and Department of Defense guidance." Really? We're pretty sure that always has been government policy. Here's the real deal: Tell us what work the Government needs to get done. In almost all cases, we can make a case for performance by government employees or performance by contractors. But someone has to choose the winners and losers. Contractors won under Bush II. Government unions started out winning when the Obama Administration came to town. Now, it looks like the pendulum is starting to swing back to contractors.