

Legal Issues Face Insourcing Efforts

Published: May 23, 2011

The Obama administration's efforts at insourcing jobs--bringing them in-house from contractor performance--face potential legal challenges on several fronts, the Congressional Research Service has said, complicating an already complex and controversial area involving the proper mix of performing government work.

Recent insourcing initiatives raise several legal questions, including whether agencies complied with their own guidelines when insourcing particular functions, CRS said. That could leave them vulnerable to challenges under the Administrative Procedure Act (APA), which allows challenges to agency actions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law."

In addition, "the terms of certain requirements contracts could potentially require agencies to delay insourcing so as to allow current contracts to expire, or face the prospect of liability for constructive termination for convenience," CRS said. "Similarly, limitations on direct hires under civil service law could prevent agencies from hiring, on the spot, the person currently performing a function under a contract, although no provisions of federal law appear to prevent the government from hiring the employees of its contractors.

"Federal ethics and conflict of interest laws and regulations could also result in certain narrow limitations on the official duties or conduct of former contractor employees in matters in which that employee may have a continuing or current personal financial interest, or which involve a former employer of that individual as a direct party to a governmental transaction or other such matter," it said.

Insourcing efforts remain underway at a number of agencies, including DHS, although DoD--which has done the majority of contracting out over the years and thus has the largest potential number of potential in-house conversions--has scaled back its program.
