

New Congress Means Renewed Focus on Spending, Insourcing and Oversight

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The 2010 mid-term elections are done and the dust is beginning to settle. But for how long? The House is now controlled by Republicans and Democrats retained the majority in the Senate, but each has new players in the mix. Although there's not much action yet - incoming members of Congress are trolling for office and parking spaces and the existing Congress is preparing for it lame duck session - the picture for federal contractors is slowly coming into focus. It all comes down to three things: insourcing, oversight, and spending.

Last week I attended an interesting session conducted by the law firm Venable, LLC, home to former Deputy Administrator of the Office of Federal Procurement Policy (OFPP), Robert Burton. Three other attorneys gave a useful look into the impact of the election on the structure and focus of several committees, but as a hunter for all things related to federal contracting, I was there to validate some of my thoughts about the impact with Mr. Burton as well as get his insights into other areas of focus. He delivered predictions for the new Congress, which I'm delighted to say concur with INPUT's initial thoughts (and he introduced a couple of new insights for consideration):

- **#1: Expect Republicans to revisit the ban on public-private competition (A-76).** If you recall, the FY2009 Omnibus bill placed a moratorium on public-private competitions due to criticism around the costs and length of time to conduct competitions, the methods and information agencies were using to calculate long-term, and the age-old question about inherently governmental functions. There is already an anti-contractor sentiment in the air (even with the realizations that insourcing may not yield the intended cost-savings), so I would not be surprised if this issue is revisited as the government tries to rebalance the employee/contractor workforce.

#2: More focus on small business. Burton believes that we'll see more hearings about the impact of the Obama administration's procurement rules on small business (including insourcing). This seems highly likely considering the administration's conviction that the key to saving our economy is small business. They need fair opportunity to win work that will result in jobs, which in turn reduces unemployment and increases tax revenues. The tone so far has been around parity - not just in producing fairness in competition between large businesses and small businesses, but also within the small business community in terms of the special status programs, such as women-owned businesses and Alaska Native Corporations.

#3: Legislation vs. regulation maneuvering. This in particular will be very interesting to watch. The Obama administration has spent a good deal of time on several pieces of legislation to the chagrin of many Republicans. However, we've also seen a good deal of regulation directing significant changes to how agencies operate. With the mood emerging from the new Congress, it makes perfect sense for the administration to pull back on legislation, which obviously is MUCH harder to accomplish, and focus more on the regulatory side which provides a much easier avenue for setting priorities and circumvents the need for Congressional interaction. However, Rep. Darrell Issa, the Ranking Member of the House Oversight and Government Reform Committee, will likely present a major roadblock to this approach by using legislative reform to address regulatory reform. In September, he released a report entitled, "A Constitutional Obligation: Congressional Oversight of the Executive Branch," which sets the tone for the future stating that "today, at a time of unprecedented expenditures and growth in the federal workforce and its presence in Americans' lives, with all the potential for fraud, waste, and abuse such growth carries with it, the Democratic-controlled Congress has consciously abdicated (the report's emphasis, not mine) its Constitutional responsibility to provide oversight of the Executive Branch."

While many would argue against the growth of the federal workforce (it's actually remained pretty flat for the past decade, especially compared to spending), and lack of oversight (leadership over at DoD and DHS in particular would probably laugh out loud considering the number of Congressional reports they produce) in the statement, it sets a clear path for where this committee may go in the 112th Congress. I read this as establishing roadblocks wherever the administration goes on whatever avenue it chooses. However, Burton warns that some procurement policy reform could be tempered in the short term - he expects OFPP to be busier preparing testimony for the new Congress than with rewriting actual policy.

#4: Focus on reduced spending. This is almost a no brainer considering all of the rhetoric we heard leading up to the elections, but it bears noting that Burton agreed that there are some areas that WILL see growth, including IT (including Health IT and cybersecurity) and battling waste, fraud and abuse. He expects Issa to conduct more hearings about the latter. It seems that the momentum behind cutting costs is rapid, but as Stan Soloway, President of the Professional Service Council stated at our recent FedFocus event, the question is whether the government will use a scalpel or a hatchet. But there are even bigger questions in my mind, like where the scalpel or hatchet will be used and who will make the decisions about where and how to cut (Congress, the administration, agency leadership? Likely all three.)

#5: Revisiting specific contracting initiatives. I've rolled a couple of things into this area for the sake of simplicity. There are two legislative and regulatory issues that impact federal contractors that, according to Burton, will receive new attention (one possibly in the near-term and the other further out):

- 3% Withholding Tax on Federal Contracts - Section 511 of the [Tax Increase Prevention and Reconciliation Act \(TIPRA\) of 2005](#) (signed in May 2006), will require federal, state, and local governments to withhold 3% of the total contract from all payments for goods and services to guard against possible business tax evasion. It's set to go into effect in January 2012. This is intended to be similar to individual's withholding tax in which the IRS takes a percentage throughout the year to use as a credit against your total tax burden. Only this would be for each new contract over \$10,000.

Burton is of the mind that this will likely be eliminated or delayed. One reason could be the impact on small business. He suggests talking with the freshmen coming into Congress about the small business implications; several of them are small business owners themselves and may be more receptive to a discussion. However, in a time of fiscal anxiety, this revenue-generating plan may still have legs.

- High-road Contracting - Earlier this year there was a hailstorm of talk around a plan that the administration is considering to require agencies to consider a company's labor, employment and compliance reports, as well as compliance with tax and consumer protection laws when evaluating bids. It's clearly not a priority, but the administration's focus on acquisition regulations seems to be keeping it alive. Some Republicans have already expressed their concern - in September 2010, 29 GOP Senators wrote a letter to SBA Administrator Karen G. Mills about the proposed rule. It's controversial, but most likely not dead.

The remainder of this year will be taken up by jockeying for leadership positions (such as Nancy Pelosi's unexpected and not so welcome bid for Minority Leader as well as committee positions) and a lame duck session that will likely focus on passing an FY2011 budget and deciding whether to extend the Bush administration's tax cuts. Next year will clearly be when we begin to see the real fallout from the elections.

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