# Provision in Pending FY ’11 Defense Authorization Bill Could Spur Federal Government Insourcing Above and Beyond Recent Obama Administrative Insourcing Guidance

By Steve Amitay July 29, 2010

For the past several months, the government contracting community has been focused on the OMB draft policy guidance released in March that seeks to clarify for federal agencies when outsourcing of services is, and is not, appropriate pursuant to recent laws passed by Congress. The guidance, which is expected to be finalized in the fall, creates a single definition for “inherently governmental” (which specifically excludes “building security”) and establishes criteria to be used by agencies to identify other functions and positions that should only be performed by federal employees. Hundreds of interested parties, including NASCO, submitted comments by the June deadline. OMB specifically asked for comments on how “security” related functions should be classified, and this issue has garnered much governmental and media attention.

The contracting community raised various concerns with the OMB guidance (lacks clarity, not enough specificity and required agency consideration in determining which functions should not be outsourced, lacks an agency requirement for cost-comparisons before insourcing, etc. ) However, given the Administration’s political disposition against outsourcing and contractors, overall the proposed OMB policy was considered rational. When the guidance was published, the Professional Services Council (PSC), a leading government service contractor association, noted that the *”The proposed policy is balanced, founded in sound management strategy rather than ideology, and …offers meaningful and relevant guidance to agencies in making the determination of what work, other than ‘inherently governmental functions,’ is best performed by federal employees and what is appropriate for contract performance.”*

In stark contrast, in May, with little notice and no Committee consideration, an amendment, by Rep. John Sarbanes (D-MD) was added on the House floor to House FY ’11 Defense Authorization bill (H.R. 5136), that will require federal agencies to “devise and implement guidelines and procedures” for insourcing and to ensure that ”special consideration” is given to insourcing certain types of functions. Hailed by the AFGE after its passage, if enacted, which is very likely, this new required insourcing policy for agencies will go well above and beyond the insourcing guidance to agencies contained in the March 2010 OMB draft guidance. Using the above quoted Professional Services Council as a barometer of the contractor industry concern, here is what the PSC said about the Sarbanes provision. *“The provision creates a preference to use federal employees and lacks a holistic, well-designed sourcing strategy…this sends a nonstrategic and unhelpful message to the community …and, it’s a terribly imbalanced*

*amendment. There seems to be no recognition of the management challenges agencies face and how they should be approaching this."*

The provision (Section 850 of the bill) requires that agencies "shall devise and implement guidelines and procedures to ensure that consideration is given to using, on a regular basis, Federal employees to perform new functions and functions that are performed by contractors and could be performed by Federal employees." Decried as "institutionalizing insourcing" the provision goes on and specifically mandates that "special consideration" must be given to using federal employees for any function that has been performed by contractor in the following four categories; (1) "has been performed by Federal employees at any time during the previous 10 years"; (2) "is a function closely associated with the performance of an inherently governmental function"; (3) "has been performed pursuant to a contract awarded on a non-competitive basis"; and (4) "has been performed poorly, as determined by a contracting officer during the 5-year period preceding the date of such determination, because of excessive costs or inferior quality."