



Senate Clamps Down on Contractors in Sensitive Jobs

By Matthew Weigelt Nov 14, 2011

The Obama administration opposes a provision in a Senate appropriations bill that would stop contractors from carrying out work that is “closely associated with inherently governmental functions.”

White House officials said agencies should let contractors do the work, if the outsourcing is reasonable given the circumstances. But there should be no opportunity for the private-sector employee to influence the most sensitive of government decisions, in the White House's view.

“Agencies should not be expected to stop using contractors to perform these functions, as long as the agency is giving adequate management attention to ensure contractors are not impinging on the agency’s inherently governmental responsibilities,” officials wrote a statement of administration policy regarding a fiscal 2012 consolidated appropriations bill (H.R. 2354).

The specific provision is in the Senate's fiscal 2012 Financial Services and General Government Appropriations Act (S. 1573). The bill now is a part of the consolidated legislation. The Senate has started its debate on the legislation.

In its legislation though, the Senate has taken a different view of contractors and those jobs closely associated with work only for federal employees.

The provision requires that “contracts exclude, to the maximum extent practicable, functions that are closely associated with inherently governmental functions.”

The provision would replace language that tells officials to give “special management attention” to these types of jobs.

In contrast, the administration says that strong management is a key to setting clear boundaries. If an agency has a contractor perform a closely associated job function, agency officials must assign “a sufficient number of qualified government employees, with expertise” to administer or even do the work themselves. Those qualified government workers would be giving that special management attention, according to a policy letter issued by the Office of Federal Procurement Policy.

In the letter, administration procurement policy officials have laid out more requirements to further block contractors from possibly overstepping the bounds.

Inherently governmental functions are the most sensitive types of work. They include, for example, making business decisions for an agency or developing federal policies.

Jobs closely associated with the sensitive duties are, for example, preparing a budget and providing support for developing policies, including drafting documents and conducting analyses.

The law already requires agencies to minimize their use of contractors do to these types of jobs.

The letter is an in-depth update of inherently governmental functions, as well as work closely associated with those jobs and also "critical functions." A critical function is important for agency to meet its mission, although a contractor can do the work. OFPP's letter defines each of these terms and gives agencies clarity in addressing those issues surrounding them.

The administration also opposes another line from the provision. The bill would require agencies to collect "cost data" from contractors to gather information on how much the government relies on contractors.

The law already requires agencies to submit annual inventories of their use of contractors, including the number of the contractor and subcontractor employees and where they work. In the reports, agencies have to compare their contractors to federal employees, through director labor hours. The Senate's proposal would require agencies to gather more data from companies to make these determinations.

The Obama administration said it would be too burdensome on contracting companies with no more benefit than what is already required of them.

The Senate has yet to pass the bill, which is a conglomeration of several appropriations bills. The House passed its appropriations bills earlier in the year.

