

## FEDERAL GOVERNMENT CONTRACTING

Legislative Purpose	Bill Status	Outlook
<p><b>ACQUISITION REFORM</b></p> <p>(H.R. 1362, S. 606, S. 680) Members of Congress continue to see federal contracting as an area in need of change and one vulnerable to waste, fraud, and abuse. Accordingly, in the first three months of the new Congress, three comprehensive acquisition reform bills were introduced, each with somewhat different provisions but all with titles that include some variation on "Accountability in Contracting."</p> <p>H.R. 1362 contains provisions to restrict the use of sole-source and cost-</p>	<p><b>House:</b> H.R. 1362, sponsored by Rep. Waxman (D-Calif.), was passed by the House March 15 on a 347-73 vote. Certain provisions of the bill also were included in the FY 2007 emergency supplemental (H.R. 1591) passed by the House March 23.</p> <p><b>Senate:</b> While the prospects for action on S. 606, offered by Sen. Dorgan (D-N.D.), are uncertain, because S. 680 is sponsored by Sens. Collins (R-Maine) and Lieberman (I-Conn.), respectively the</p>	<p><b>Congress:</b> Staff aides from both sides of the aisle and both the House and the Senate say that passage of acquisition reform legislation during this session is likely, but they are unwilling yet to predict its form or content. In recent years, significant acquisition reform provisions have been included in the defense authorization legislation during full committee markup, which remains a possibility this year. Because portions of H.R. 1362 are included in the supplemental passed by the House, these provisions will be before House and</p>

reimbursement contracts, limit the length of noncompetitive contracts and require public disclosure of justification for noncompetitive awards, require agencies to disclose to Congress questioned contract costs, and tighten post-government employment restrictions on acquisition officials. Both Senate bills would require multiple awards of task and delivery order contracts valued at more than \$100 million and competition for all orders worth more than specified amounts—\$1 million in S. 606 and \$100,000 in S. 680. S. 606 also would revive a controversial Clinton-era policy making eligibility for federal contracts contingent on an offeror's record of compliance with labor, environmental, tax, and other laws unrelated to federal contracting; further, it would prohibit the outsourcing of contract oversight and related activities. S. 680 also would provide for protests to the Government Accountability Office in connection with the issuance of any task or delivery order worth more than \$5 million.

ranking member and chairman of the Senate Homeland Security and Governmental Affairs Committee, markup by that committee is expected. The Senate version of the FY 2007 emergency supplemental, passed March 29, did not include the acquisition reform provisions from the House bill, but added provisions requiring the debarment of contractors for hiring illegal immigrants.

Senate conferees charged with ironing out the differences on that must-pass measure. **Administration:** The administration opposes both H.R. 1362 and both the House and Senate versions of the emergency supplemental bill. With respect to the acquisition reform provisions, the Office of Management and Budget has objected that the bill imposes burdensome requirements that overlap with more efficient administrative efforts to strengthen competition and reduce fraud. It also maintains that the provisions will limit the government's ability to recruit and retain experienced acquisition officials.

<p><b>IRAQ AND SECURITY CONTRACTING</b></p>	<p>(H.R. 369, H.R. 400, H.R. 528, H.R. 897, S. 119, S. 674) The use of contractors in U.S. military activities in Iraq and Afghanistan has engendered congressional concerns as to the difficulty of obtaining information on such contractors, Defense Department strategy and policy with regard to their use, and the potential for waste, fraud, and abuse under these contracts. H.R. 369 would expand the Military Extraterritorial Jurisdiction Act to hold private security contractors accountable for abusive conduct while operating in war zones. H.R. 400 would criminalize war profiteering; it is a companion to S. 119. H.R. 528 would require audit review of all Iraq reconstruction or troop support contracts involving companies or individuals indicted for or convicted of fraud. H.R. 897 would require DOD and certain other agencies to report to Congress specified information regarding their Iraq/Afghanistan contracts, including number of contractor personnel, number of contractor personnel killed or wounded, and policies and procedures</p>		<p><b>House:</b> H.R. 369, offered by Rep. Price (D-N.C.) Jan. 10, has been referred to the Armed Services and Judiciary committees. H.R. 400, introduced by Rep. Abercrombie (D-Hawaii) Jan. 11, was referred to the Judiciary Committee. H.R. 528, introduced by Rep. Lynch (D-Mass.) Jan. 17, has been referred to the House Oversight and Government Reform Committee, which is chaired by Rep. Waxman, a vocal critic of contracting abuse in Iraq. H.R. 897, sponsored by Rep. Schakowsky (D-Ill.), was introduced Feb. 7 and referred to the Armed Services and Foreign Affairs committees. <b>Senate:</b> S. 119 was introduced Jan. 4 by Sen. Leahy (D-Vt.); it is on the markup schedule of the Judiciary Committee, which Leahy chairs. S. 674 was introduced Feb. 16 by Sen. Obama (D-Ill.) and referred to the Armed Services Committee.</p>		<p><b>Congress:</b> The public visibility of issues relating to the use of contractors in Iraq and Afghanistan—issues ranging from personnel safety to contractor fraud—and Democrats' vocal concerns in the area suggest to some observers that action in this area is likely, but specifics remain speculative at this point. Again, regardless of the fate of the freestanding bills, some of their provisions could be added to the defense authorization measure as has occurred in previous years. <b>Administration:</b> The administration has not yet taken a formal position on any of these measures, but a Justice Department official testifying at a Senate Judiciary Committee hearing on contracting fraud and abuse in Iraq said the administration has some technical concerns regarding the Leahy war profiteering bill and its possible “unintended consequences” for “time-tested fraud statutes.”</p>
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<p>for ensuring contractor adherence to U.S. and host country laws.  S. 119 would criminalize war profiteering.  S. 674 is broadly focused, with provisions that would require: expanded reporting by private security contractors (PSCs) and contracting agencies, the establishment by DOD of rules of engagement for PSC personnel in contingency operations and a mechanism for coordinating PSCs, and DOD submission to Congress of a report on its strategy for using contractors and subcontractors in Iraq and Afghanistan.</p>		
<p><b>DHS CONTRACTING</b>  <b>(H.R. 1684, S. 889)</b> As oversight entities report mounting costs in key DHS acquisition programs, including the Coast Guard's Deepwater program and the Secure Border Initiative, Congress is addressing the issues in legislation. H.R. 1684, the FY 2008 DHS authorization measure, includes provisions from the bipartisan DHS Procurement Improvement Act (H.R. 803) that would require consideration of contractor past performance and address potential contractor conflicts of interest. It also includes provisions from another bill (H.R. 599) intended to improve processes</p>	<p><b>House:</b> The FY 2008 DHS authorization bill was introduced by Rep. Thompson (D-Miss.) March 26 and unanimously approved by the Homeland Security Committee March 28.  <b>Senate:</b> S. 899 was introduced March 15 by Sen. Kerry (D-Mass.) and referred to the Commerce, Science, and Transportation Committee.</p>	<p><b>House:</b> The House will act on the authorization bill after it returns from its April break. Also, the FY 2007 emergency supplemental bill passed by the House includes provisions requiring technical review of all major Coast Guard procurement contracts and subcontracts and precluding obligation of Deepwater appropriations until Congress receives and approves a plan for expenditure of Deepwater funds that addresses such issues as life-cycle costs, competition, use of indefinite delivery/indefinite quantity contracts, and training of Coast Guard project managers and procurement</p>

<p>for obtaining liability protections under the SAFETY Act. S. 889 would prevent the Coast Guard from renewing its current contract for the Deepwater program.</p>		<p>personnel. <b>Senate:</b> Sens. Cantwell (D-Wash.) and Snowe (R-Maine), the chair and ranking member of the Commerce, Science, and Transportation Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard, have called on the Coast Guard to work with Congress on revising the \$24 billion Deepwater fleet modernization and recapitalization contract. A subcommittee hearing on the issue scheduled for March 15 was postponed.</p>
<p><b>COMPETITIVE SOURCING</b> <b>(H.R. 1538, S. 1044)</b> Reacting to reports of poor outpatient care and dilapidated facilities at Walter Reed Army Medical Center, both bills include provisions that would ban competitive sourcing studies at DOD medical facilities. The House bill would impose a one-year moratorium; the Senate bill is open-ended.</p>	<p><b>House:</b> H.R. 1438, the Wounded Warrior Assistance Act sponsored by Rep. Skelton (D-Mo.), was passed by the House March 28. It was sent to the Senate and referred to the Armed Services Committee. <b>Senate:</b> S. 1044 was introduced by Sen. Biden (D-Del.) March 28 and referred to the Armed Services Committee.</p>	<p><b>Congress:</b> As the competitive sourcing and contracting out to the private sector of federal government functions remains controversial, particularly among Democrats, it is likely that other competitive sourcing restrictions will be offered. In previous years, restrictions have been included in appropriations measures passed by Congress. <b>Administration:</b> OMB March 27 issued a statement criticizing H.R. 1538 for its “objectionable provision” imposing a “broad moratorium on the initiation of new public-private competitions involving any function at any military medical facility.” The administration maintains that DOD should “retain the full range of management tools to</p>

		improve services at military medical facilities.”
<p><b>TAXATION</b></p> <p><b>(H.R. 1023, S. 777)</b> Contractors are watching closely the progress of these bills to repeal a provision in the Tax Increase Prevention and Reconciliation Act of 2005 requiring government entities to withhold 3 percent of all payments to contractors and vendors beginning Jan. 1, 2011.</p>	<p><b>House:</b> H.R. 1023 was introduced Feb. 13 by Rep. Meek (D-Fla.) and referred to the Ways and Means Committee.</p> <p><b>Senate:</b> S. 777 was introduced March 6 by Sen. Craig (R-Idaho), who last year introduced a similar repeal measure. The bill was referred to the Finance Committee.</p>	<p><b>House:</b> The House bill has bipartisan support.</p> <p><b>Senate:</b> There is disagreement among key Senate Republicans about the merits of the withholding requirement. Last year, Sen. Grassley (R-Iowa), then chairman and now ranking member of the Senate Finance Committee, defended the withhold provision as a means of addressing contractor tax delinquency.</p>