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Rep. Moran Wants DOD to Buy More Through GSA

Rep. Jim Moran (D-VA) plans to include in the fiscal 2008 defense appropriations bill language that would encourage the Defense Department to rely more on the General Services Administration for procuring goods and services, he told a group that represents GSA schedule contractors June 21.

The provision promoting use of GSA contractors is intended as a short-term solution to problems resulting from a simultaneous decline in the size of the acquisition workforce and increase in the number of contracts awarded by the government, Moran told the Coalition for Government Procurement at its annual meeting in Arlington, Va.

The "immediate fix" is to "look to GSA" to a greater extent to fill the gaps in a "grossly inadequate" acquisition workforce, Moran said. The Office of Federal Procurement Policy is focusing on strengthening the acquisition workforce and improving interagency contracting, OFPP Deputy Administrator Robert Burton told the group. As part of a comprehensive workforce planning effort aimed at civilian agencies, OFPP recently initiated a survey of government contracting professionals to identify skills gaps and training needs, he said.

Burton also said guidance will be issued this summer to address the proper roles of agencies participating in interagency contracts. The guidance has been in the works for a number of years, he added. The GSA contractor group also heard from GSA's Michael Sade on initiatives underway at the agency's newly restructured Federal Acquisition Service. Streamlining the modification process for schedule contracts is at the top of the list, he said.

Moran held out hope that encouraging DOD and other federal agencies to do more business with GSA will help address what he said has been a 50 percent drop in the number of federal acquisition employees. "Even worse than the numbers lost" in recent years is the departure of "some of the best" federal employees working in the acquisition field, particularly in defense acquisition, he said. Moran, who is a member of the House Defense Appropriations Subcommittee, said this trend needs to be reversed by providing incentives, such as encouraging the return of retirees, and eliminating disincentives, such as the restriction barring certain federal employees from working for contractors for two years after leaving their government jobs.

Moran did not address the complexities of recent history regarding use of GSA contracts by DOD, which already accounts for \$30 billion of GSA's approximately \$66 billion in annual business volume. Although DOD is GSA's largest customer, until recently there has been no clear GSA policy on rules that apply to acquisitions involving DOD, such as those using interagency agreements. Concern regarding improper use of some interagency contracts in Iraq, for example, led DOD and GSA to launch the "Get it Right" initiative in 2004, but problems with purchases made by the department through GSA persisted. Subsequent changes in DOD policy regarding the use of non-DOD contract vehicles for procurements of supplies and services above the simplified acquisition threshold--including institution of quality control steps to follow when buying through GSA schedules--resulted in a decline in sales through GSA's multiple award schedules and governmentwide acquisition contract programs.

Shortly after taking the job as GSA administrator in June 2006, Lurita Doan made it a priority to convince DOD to rely more, not less, on GSA for certain purchases. This resulted in a memorandum of agreement, signed last December, clarifying the rules that apply to acquisitions involving DOD.

Moran suggested that the House appropriations bill also is likely to reflect concerns over increased use of sole-source contracts, which he said have jumped 115 percent since 2000. There "are too many contracts" that have been awarded not because of the contractor's qualifications, but because of its political contacts, Moran said. Restricting spending for large programs relying on sole-source contracts is one way appropriators can "clamp down" on failure to use the competitive bidding process, he said.

With respect to contracting out federal agency functions under the Office of Management and Budget Circular A-76 public-private competition process, Moran said that "for the most part A-76 is dead in terms of what was envisioned five or six years ago." While refusing to come down either for or against competitive sourcing, Moran, whose constituents in northern Virginia include large numbers of both government and contractor employees, said that a line must be drawn to more clearly delineate government functions that can be appropriately contracted out for private sector performance.

For instance, private contractors have no business reviewing the competitive bids of other contractors, he said. Nor should they perform tax-related jobs that give them access to the personal information filed with the Internal Revenue Service.

Another top priority for OFPP is increasing use of competition for government contracts. While competition has remained steady over the last decade, with 64 percent of dollars competed, Burton said, "we can always use more." He pointed out that the value of contracts is increasing, while the "number of contracts is actually down." Task orders issued under contracts, on the other hand, "have gone up dramatically." OFPP recently urged federal agencies to maximize the use of competition, particularly when placing task and delivery orders valued at more than \$1 million. It also is pushing for better management of task orders, Burton said.

OFPP's *Emergency Acquisitions Guide* is available at:

http://www.whitehouse.gov/omb/procurement/guides/emergency_acquisitions_guide.pdf. The

OFPP memo on strategic sourcing progress is available at:

http://www.whitehouse.gov/omb/procurement/strat_sourc/fssi_progress_052207.pdf.

GAO Upholds Direct Award of 8(a) Contract Following Agency-Level Protest by Competitor

The Defense Logistics Agency did not act improperly or violate small business regulations when, after terminating a competitive award following an agency-level protest, it gave the same awardee a noncompetitive contract under the Small Business Administration's Section 8(a) business development program, the Government Accountability Office decided May 31 (*Basic Concepts Inc.*, GAO, B-299545, 5/31/07).

Accordingly, GAO denied the protest by small business Basic Concepts Inc., which argued that DLA, after terminating the original award to Bowhead Manufacturing Co., should have conducted a new competition to obtain certain urgently needed hazardous material spill containment berms. GAO also noted that there is an ongoing procurement, issued as a small business set-aside, seeking a long-term supplier for the berms, and that both Basic and Bowhead are eligible to compete in that procurement.

DLA terminated the original award to Bowhead after Basic, in its agency-level protest, pointed out that the manufacturer's part number listed in the solicitation for Bowhead's approved product was incorrect. DLA advised both offerors that it was canceling the award, would correct the item number to identify Bowhead's item as an acceptable item, and resolicit the requirement. The letter also advised that the needed items were in short supply, and that DLA would "likely again utilize urgent and compelling procedures" to fulfill its immediate requirements.

Bowhead then contacted DLA's small business office to advise that it qualified as an 8(a) firm and was approved to supply the needed items. Subsequently, DLA solicited Bowhead directly using an 8(a) set-aside and simplified acquisition procedures. In an unsuccessful agency protest and then again at GAO, Basic argued that it was unfairly excluded from the procurement.

GAO disagreed, finding "nothing improper or unreasonable about the agency's actions," and no support for Basic's allegation that DLA acted in bad faith to exclude it from the award. Section 8(a) of the Small Business Act provides SBA and contracting agencies broad discretion in selecting procurements for the 8(a) program, which encourages contracting with "socially and economically disadvantaged small business concerns." In this case, SBA advised GAO that DLA "properly utilized its streamlined procedures for 8(a) awards for acquisitions valued at or below the simplified acquisition threshold."

SBA also said that where, as here, it has delegated its contract execution function to a procuring agency, offer and acceptance of acquisitions valued at or below the simplified acquisition threshold is not required. Further, SBA explained that while its regulations prohibit its acceptance of any procurement for award as an 8(a) contract if doing so would have an adverse impact on incumbent small businesses performing outside the 8(a) program, the adverse impact concept does not apply to simplified acquisition procedures.

Based on its review of the record in the earlier agency-level protest and SBA's view that DLA's approach violated no small business regulations, GAO upheld the award.

CIA Director Announces Efforts to Reach Proper Government Employee/Contractor Mix

The Central Intelligence Agency expects to reduce the number of contractors supporting the agency by 10 percent and develop a management strategy that incorporates efficiencies in contracting for services, according to a statement released by the agency.

The changes reflect recommendations made by a study group that was tasked to review the CIA's use of contractors. "[T]he study identified agency jobs that must or should be filled primarily by staff officers and those that could be done by staff or contractors," CIA Director Michael Hayden said in a May 30 statement to agency employees.

The study made clear that the CIA relies on the skills and expertise its contractors provide in support of the agency's mission, Hayden said. However, he added that the agency has not efficiently managed its contractor workforce, which grew as a result of government hiring freezes put in effect during the 1990s and the agency's increased pace of operations following the Sept. 11, 2001, terrorist attacks.

The CIA human resources office has been directed to complete the study group's work on what CIA positions "must or should" be filled by agency personnel, Hayden said, and to report back within 30 days. "Having examined the data we have right now, I believe CIA can reduce its number of contractors by 10 percent before the end of FY 2008 and still accomplish our national security mission," Hayden said.

Also, the CIA chief financial officer is to work with agency directorates in order to combine their contract support and infrastructure requirements, and CIA's directorate of support will be given "exclusive authority" over contracting for services, he added. The CFO also will make CIA contracting process "more rigorous" by transitioning certain contracts to a performance-based model, and conducting in-depth contract performance and management reviews. Hayden said the agency also will overhaul its training and certification program for contracting officer technical representatives, in an effort "to ensure that certification levels are tied more closely to the scope, risk, and technical complexity of the contract."

In an effort to prevent the agency from becoming what he called a "farm team for contractors," Hayden said that all requests for proposals and contracts awarded after June 1 "will bar contracting firms from bidding back within 18 months former CIA employees who resigned before retirement eligibility." In fact, for those occupations in which the CIA needs more staff, the agency will encourage contractors to accept government positions, and will "expedite the process for moving from a [contractor] green badge to [staff] blue badge," Hayden said.

Federal Service Contracting Trends Raise Important Policy Issues, CSIS Report Says

The government's continuing and increasing reliance on professional and support services contractors has in the past year spurred "growing awareness" of the federal contract services industry and the significant policy issues emerging as that industry develops, according to a Center for Strategic and International Studies report released June 6.

The CSIS Defense Industrial Initiatives Group, in a Washington, D.C., event marking its second annual report on trends driving the government professional services contracting industry, said the federal government awarded \$204 billion on professional services contracts in 2005, based on the latest set of complete data from the Federal Procurement Data System (FPDS). According to preliminary 2006 FPDS data, CSIS projects that the government market for professional services will reach \$211 billion, the report says.

Pierre Chao, project director for the CSIS report, identified several service contracting policy issues emerging from the report findings. They include:

- Possible limits on government's contracting out of services;
- The benefits of professional services competition to the government; and
- The possible need for "a fundamentally different set of regulations for professional services contracting."

According to the CSIS report:

- The Defense Department remained the largest government consumer of professional services, accounting for 60 percent of total contract actions by value in 2005.
- The largest segment of the federal professional services industry is professional, administrative, and management services, which accounted for \$58 billion worth of contracts in 2005.
- The trend of increased government use of multiple-award and federal schedule contract vehicles and simplified acquisition procedures decelerated in 2005.
- Modifications to existing contracts were the contracting mechanism that increased the most in 2005 spending.
- With the number of contract actions growing faster than the value of contracts awarded, the average value of contract actions decreased from \$385,000 in 1995 to \$290,000 in 2005.

"The declining contract action values imply that firms must compete harder just to sustain level revenues," CSIS pointed out. CSIS also reported that between 2001 and 2005 the total number of professional services contracting firms increased by 115 percent, to 96,000 firms. Most of this growth has come from the entry of firms undertaking contracts under \$25,000, it said.

Over the past decade, the industry has become more integrated, as the defense-hardware/defense-platform prime contractors have made significant acquisitions in the professional services market, the report said. Meanwhile, medium size contractors "have suffered an erosion of their relative share" of the government services contract market, compared to both smaller and larger contractors. This and other trend information contained in the almost 100-page report "raises important policy issues regarding the management of the professional services industry base," CSIS said.

GAO Upholds SBA Finding That 8(a) Buy Did Not Require Adverse Impact Analysis

The Small Business Administration reasonably determined that it did not have to perform an adverse impact analysis before accepting an Air Force requirement into the 8(a) business development program, even though the requirement previously has been performed by a non-8(a) small business as part of a larger contract, the Government Accountability Office decided May 9 (*Rothe Computer Solutions, LLC d/b/a Rohmann Joint Venture*, GAO, B-299452, 5/9/07).

Because the requirement for visual information services represented more than a 25 percent reduction in value relative to the value of the current information services management contract, SBA deemed it to be a new requirement. Under SBA regulations, new requirements are exempt from the mandate that, before accepting a requirement into the 8(a) program, SBA must consider whether doing so will have an adverse impact on a non-8(a) small business.

GAO rejected the contention by current contractor Rothe Computer Solutions that, in considering whether the 8(a) requirement changes the value of the current contract by more than 25 percent, SBA should have compared the value of the visual information services being sought in the new solicitation to the value of the same services under the current contract, rather than to the total value of the current contract. Rothe asserted that the value of the visual information services under the 8(a) solicitation is virtually the same as the value of those services under its current contract.

GAO disagreed. "We think that, in determining whether there has been a price change of at least 25 percent, the SBA has reasonably interpreted its own regulation as providing for comparison of the value of the requirement to be solicited with the overall value of the existing contract encompassing that requirement," it said. Since it is undisputed that the value of the work called for under the new requirement represents a reduction in value of more than 25 percent from the value of the existing contract held by Rothe, SBA and the Air Force properly concluded that no adverse impact analysis was required here, GAO said.

Because SBA is responsible for promulgating the applicable regulations, GAO said it will defer to SBA's interpretation of those regulations so long as that interpretation is reasonable. Section 8(a) of the Small Business Act authorizes SBA to contract with other government agencies and to arrange for the performance of those contracts via subcontracts awarded to socially and economically disadvantaged small businesses, GAO explained. The act gives SBA "broad discretion" to select procurements for the 8(a) program.

Under SBA regulations, SBA may not accept any procurement for award as an 8(a) contract if doing so would have an adverse impact on an individual small business or a group of small businesses in a specific geographical area. SBA presumes adverse impact where the small business concern has performed the specific requirement for at least 24 months; the small business is performing the requirement at the time it is offered to the 8(a) program; and the dollar value of the requirement that the small business is or was performing is 25 percent or more of its most recent gross annual sales.

However, the regulations further provide that the concept of adverse impact does not apply to new requirements, except when a new requirement is created through a consolidation of existing requirements. They also say that the modification of an existing requirement will be considered a new requirement "where the magnitude of change is significant enough to cause a price adjustment of at least 25 percent." Rothe has performed the information management services contract for the Air Force since 2002. With the contract due to expire in July 2007, the Air Force decided to reprocure the services. It also decided that, as a consequence of an internal reorganization, the visual information services should be procured separately.

After conducting market research, the Air Force determined that the services should be offered to 8(a) firms. In offering the requirement to the SBA, the Air Force said that since the new contract's value would be less than the current contract value [the specific amount of the difference is omitted from the redacted opinion], it therefore would constitute a new requirement.

Jefferson Indictment Grist for GOP

Rep. William J. Jefferson was indicted on corruption charges Monday, providing new ammunition for Republican taunts that Democrats backtracked on promises to run an ethical Congress.

In a 16-count indictment, a federal grand jury alleged that the nine-term Louisiana Democrat accepted bribes in exchange for his help in putting together a series of deals involving infrastructure projects in Africa. Not only is Jefferson charged with accepting bribes, he also is accused of offering a bribe to a Nigerian official.

Jefferson lawyer Robert Trout said, "Congressman Jefferson is innocent. He plans to fight this indictment and clear his name." It was the latest chapter in an extensive criminal and institutional drama that led to an extraordinary showdown over a weekend FBI raid last year on Jefferson's office in the Rayburn House Office Building. For now, the focus is on the House itself and how Jefferson will be treated by his colleagues.

House Minority Leader John A. Boehner (R-OH) said that he would offer a privileged resolution Tuesday to try to force the ethics committee to report to the House within 30 days on whether Jefferson should be expelled. The House Committee on Standards of Official Conduct, as the panel is formally called, has traditionally deferred to the Justice Department in criminal matters.

A House Democratic leadership aide said the Democrats plan to remove Jefferson from the Small Business panel, his lone remaining committee assignment. They also may try to pre-empt Boehner by starting an ethics probe before a floor vote can occur on his resolution, but Republicans said they had not been consulted on a probe, as is customary on the evenly divided panel. House Democrats could allow a vote on Boehner's resolution, try to kill it through a tabling motion or refer it to committee.

When then-Minority Leader Nancy Pelosi (D-CA) offered a resolution directed at Republican associates of lobbyist Jack Abramoff in 2006, Boehner moved to table the demand for an ethics investigation and had the votes to do so, in effect killing it on a vote of 218-198. The late-day wrangling by party leaders in the wake of Jefferson's indictment underscored the high political stakes that accompany congressional ethics cases. Democrats pummeled Republicans over ethical and legal lapses in the last campaign season and vowed to "drain the swamp" of congressional corruption and restore the integrity of the House.

But given that chance, Republicans say, Democrats have shown little evidence that they intend to keep their promise. "The American people will be watching to see if Democrats are serious about their ethics rhetoric or if it is another in the long string of shameless broken promises," said Adam H. Putnam of Florida, chairman of the House Republican Conference.

Democrats acknowledged the gravity of the charges against Jefferson, a party loyalist who had served on the trade-governing Ways and Means Committee before running into legal difficulties. "While Mr. Jefferson, just as any other citizen, must be considered innocent until proven guilty, if these charges are proven true, they constitute an egregious and unacceptable abuse of public trust and power," Pelosi, now the Speaker, said.

If convicted of all the charges against him and given the maximum sentence — a scenario that Justice Department officials acknowledged was highly unlikely — Jefferson could be sentenced to as long as 235 years in prison.

OFPP Moves to Increase Competition, Plans FAR Changes on Task Order Contracts

The Office of Federal Procurement Policy is taking steps to ensure that federal agencies maximize the use of competition in acquisition, particularly when placing task and delivery orders valued at more than \$1 million.

In a May 31 memo to federal agency chief acquisition officers and senior procurement executives, OFPP Administrator Paul Denett said the office plans to "strengthen" competition policies in the Federal Acquisition Regulation, and is asking the FAR Councils to consider:

- Requiring that annual reviews by federal agency competition advocates "specifically address the quality of planning, executing, and managing task and delivery orders over \$1 million," and be provided in writing to chief acquisition officers and senior procurement executives;

- Limiting the length of contracts awarded noncompetitively under urgent and compelling circumstances to the minimum contract period necessary to meet requirements, with a one-year maximum unless a longer period is approved by the head of the contracting activity;
- Providing notice on the FedBizOpps Web site of awards of sole source orders;
- Strengthening competition rules for agency purchases under the General Services Administration's Multiple Award Schedules program to ensure the receipt of three proposals, and for other multiple award contracts to ensure fair notice is being provided to contract holders; and
- Requiring the identification of evaluation factors and significant subfactors for large task and delivery orders that have statements of work, in order to "support meaningful comparison and discrimination between and among competing proposals."

Similar initiatives to increase competition are currently pending in Congress. For example, a provision limiting the duration of sole-source contracts in emergency situations is included in the Accountability in Contracting Act (H.R. 1362) sponsored by Rep. Henry Waxman (D-CA) and passed by the House in March. Competition under task and delivery order contracts is one focus of the contractor accountability measure (S. 680) sponsored by Sens. Susan Collins (R-ME) and Joseph Lieberman (I-CT), which would mandate the use of competition for each task or delivery order over the \$100,000 simplified acquisition threshold.

Data from the Federal Procurement Data System (FPDS) show that agency expenditures through orders under contracts have grown significantly, from approximately 14 percent of total dollars obligated in FY 1990 to about 52 percent of total dollars obligated in FY 2005, Denett noted. A "substantial amount" of these obligations have been made through modifications.

While the federal acquisition workforce "has a number of tools to facilitate the efficient and effective use of competition," Denett said, "agency reviews, reviews by the Government Accountability Office, and audits by the Inspectors General have found that the government frequently misses opportunities to take full advantage of competition when placing orders."

Inadequate planning, insufficient market research, and poor coordination among program and acquisition offices are among the weaknesses he cited in this regard. Such weaknesses result in "ill-defined requirements, lack of head-to-head competition for task-specific solutions and pricing, and the absence of meaningful performance standards to measure results," Denett said.

Accordingly, in addition to proposing FAR changes, OFPP is:

- Requiring agency competition advocates to assess the quality of their agencies' current contracting activities and develop goals to maximize competition by Dec. 15; and
- Developing new standard reports in FPDS on the number of contract actions competed.

Denett said he is seeking to "reinvigorate" the role of agency competition advocates, who, under the OFPP Act, are required to address barriers to competition in agency acquisitions. He directed the advocates to develop plans and goals for maximizing competition and included in an attachment to the memo a number of questions aimed at helping identify agency practices that are conducive to competition.

In the area of acquisition planning, assessments should focus on whether:

- Cross-functional teams, including end-users and acquisition officials, are used to develop project acquisition plans and requirements documents;
- Acquisition plans explain how competition will be sought, promoted, and sustained throughout the course of the acquisition;
- Acquisition plans for large requirements consider the benefits of awarding a new contract versus placing an order under an existing contract;
- The market research techniques outlined in FAR 10.002(b)(2) are being used; and
- Plans address providing opportunities for small businesses and the development of written justifications for contract bundling.

House Panel Approves Spending Bill With Limits on Outsourcing, IRS Contracts

The House Appropriations Subcommittee on Financial Services and General Government June 5 approved a \$21.4 billion fiscal year 2008 multi-agency appropriations bill that federal employee unions say includes restrictions on the Bush administration's competitive sourcing program and the use by the Internal Revenue Service of private debt collection contractors.

According to the American Federation of Government Employees, the outsourcing restrictions on agencies covered by the financial services and general government bill are similar to those approved by the House May 17 in passing its FY 2008 defense authorization bill (H.R. 1585).

That legislation, which focuses on DOD but also features governmentwide provisions, includes the following changes to the public-private competition program under Office of Management and Budget Circular A-76:

- It would exclude health care and retirement costs from the A-76 cost comparison process. Since FY 2005, DOD has been required to discount contractor cost advantages that result from a contractor's contribution to its employees' health care benefits of less than what Congress requires DOD to contribute for health benefits for DOD civilian employees. However, Congress has had to renew this language annually in DOD appropriations bills, and contractors' retirement benefits are not subjected to similar scrutiny.
- It would expand the appeal rights of federal employees when an agency's in-house organization loses an A-76 competition to a contractor. Currently, only the agency tender official who represents the agency's most efficient organization (MEO) may appeal the result of such a competition. The legislation would allow an appeal by the union that represents the majority of affected federal employees, which AFGE says is essential because the MEO representative often is a senior management official.
- It would restrict OMB from requiring federal agencies to meet quotas for A-76 competitions.

House Appropriators Approve \$36B for DHS In FY '08, Mandate Competition in Contracts

The House Appropriations Committee June 5 approved fiscal year 2008 funding levels for the Department of Homeland Security, while including in the bill a requirement for full and open competition in DHS contract awards.

The committee approved by voice vote legislation to provide \$36 billion for DHS in FY 2008, which is \$2 billion above the homeland security funding appropriated by Congress in 2007, and \$2 billion, or 5 percent, above the amount requested by President Bush. The committee defeated by a party-line vote an amendment offered by Rep. Hal Rogers (R-KY) to trim funding by about 5 percent.

Rogers, ranking member of the House Appropriations Subcommittee on Homeland Security, said he agreed with Bush's funding request, and he called for the committee to exercise "fiscal discipline." However, Rep. David Price (D-NC), chairman of the House Appropriations Subcommittee on Homeland Security, defended the funding level, saying it was not the first time appropriators have called for more money than requested by the administration. Overall, Price said the spending bill would provide funding to address "our country's most pressing security vulnerabilities, with a new emphasis on our ports and on rail and transit systems." However, he added that the measure would require specific management reforms related to contracting, procurement, and competition to help ensure that taxpayer dollars are well spent.

The bill would mandate that all contract and grant funds be awarded through "full and open" competitive processes, except when other funding distribution mechanisms are required by statute. Price said this approach creates a level playing field and ensures that there are no congressional or administration earmarks in the bill. "We have all heard about contracts and awards from the Department that were not competed," Price said. The Federal Emergency Management Agency "recently submitted a list of nearly 4,000 contracts that were never competitively bid," he noted.

The bill also would direct that all contracts and grants must comply with the Davis-Bacon Act, which requires federal construction contractors to pay prevailing wages to their workers. The measure would withhold a total of \$1.9 billion from various programs until DHS submits detailed expenditure plans. In addition, it would require outside reviews of several major programs and activities, including studies by the National Academies of Science on the current direction of the department's "BioWatch" program.

Under the bill, air cargo security would be funded at \$73 million, \$18 million more than 2007. The department's Transportation Security Administration would be directed to double the amount of cargo it screens prior to loading onto passenger aircraft. Transit security grants would be funded at \$400 million, \$225 million more than 2007, and port security grants would be funded at \$400 million, \$190 million more than current funding.

REAL ID Act and interoperable communication grants would be funded in total at \$100 million, in contrast to zero funding provided in 2007, according to Price. In response to a data security breach at TSA, announced in May, the bill would withhold funding for certain DHS programs until adequate privacy protections are in place, Price said. Addressing Democrats' concerns over DHS chemical security rules, the bill would prevent the federal government from preempting stricter state and local chemical security laws and regulations.

Similar language was removed from a supplemental spending bill (H.R. 2206) for the war in Iraq. The White House expressed opposition to the chemical security language on May 10, saying it would "significantly delay and weaken" the Department of Homeland Security's ability to implement its chemical facility security program. Industry groups, including the National Association of Manufacturers, pushed for its removal.

Contractor Groups Oppose Proposed Rule On Subcontract Reporting Pilot Under FFATA

The recent proposed rule that would require federal contractors, effective July 1, to report certain subcontract awards to a public online database established under the Federal Funding Accountability and Transparency Act (FFATA) poses serious national security concerns for the United States and competitiveness issues for contractors, and is "excessively burdensome" and unworkable, a group of contractor associations has warned.

Not only should the proposed Federal Acquisition Regulation rule to implement the FFATA pilot program on subcontract reporting be "substantially revised," the Council of Defense and Space Industry Associations said, but the executive agencies represented on the FAR Councils--the Defense Department, the General Services Administration, and the National Aeronautics and Space Administration--should seek "appropriate legislative relief in the FFATA from the Congress."

"Implementing the proposed rule will disclose U.S. national defense capabilities with pinpoint accuracy, for those wanting to cause harm to the United States," CODSIA said in comments submitted to the FAR Councils May 21. "At a minimum, we recommend that FFATA data reporting should exclude any item constituting a weapon system or components thereof, and any item subject to the International Traffic in Arms Regulations."

At the same time, for companies having a supply chain that is common to both government and commercial products and services, "the requirement in the proposed rule (and statute) to disclose subcontractor information relative to government work will yield information that can easily be extrapolated to the commercial business, resulting in severe competitive vulnerabilities," CODSIA asserted. Further, the proposed rule would add "significant and excessive burdens" on contractors to develop and maintain a system that can meet the rule's requirements, CODSIA added, in a letter signed by the Aerospace Industries Association, National Defense Industrial Association, Professional Services Council, Electronic Industries Alliance, and Contract Services Association.

In separate comments submitted on the same date, the Information Technology Association of America (ITAA) urged that the pilot program required by FFATA with regard to subcontract reporting should be limited to the collection of information and should not extend to the posting of that information on the public Web site. Posting of the information is not required by FFATA until the final subcontract award reporting program is implemented on or before Jan. 1, 2009, it said.

In addition, the FAR Councils should adopt an exemption process allowing a contractor to request an exemption from disclosing subcontract information where such disclosure would pose a threat to national security, ITAA recommended. Like CODSIA, the IT association also asserted that the proposed rule could compromise companies' confidential and proprietary information. "The long-term effect of such disclosure almost certainly would chill commercial companies from participating in the market for subcontract awards under Federal prime contracts," ITAA said.

FFATA (Pub. L. No. 109-282) requires the Office of Management and Budget to establish and operate a publicly accessible, searchable online database of federal contracts and grants worth more than \$25,000. The act set a Jan. 1, 2008, deadline for prime contract information, and OMB launched an interim database Feb. 15. The act also mandated implementation of a pilot program on subcontract award reporting to begin no later than July 1.

Under the rule proposed March 21 to implement the pilot program, federal contractors awarded contracts valued at more than \$500 million would be required to report their subcontract awards worth more than \$1 million to the interim database. Only contracts awarded and performed in the United States would be covered by the requirement, and the rule would not apply to classified contracts or commercial item contracts awarded under Federal Acquisition Regulations Part 12.

However, in issuing the proposed rule, the rule writers said they anticipate that the final subcontract reporting requirement will apply to prime contracts with values equal to or greater than the simplified acquisition threshold (currently \$100,000), and will require the reporting of subcontracts with values greater than \$25,000, regardless of the award or performance locations of the prime contract or subcontracts. With this in mind, both CODSIA and ITAA addressed the prospect of expanded reporting requirements as well as the pilot program. While both expressed support for FFATA's intent to increase transparency regarding the spending of taxpayer dollars, both warned of serious issues related to subcontract reporting.

Noting that prime contractors do not routinely collect the subcontract award information that would be required for reporting to the OMB database, CODSIA said the rule "would add significant and excessive administrative burdens on contractors to develop, implement, and maintain a system" to satisfy its requirements and those of FFATA.

"Equally important," CODSIA said, is that "the eventual implementation of the rule and the statutory requirements at lower levels in the supply chain will place a significant burden on subcontractors unaccustomed to such requirements and lacking the necessary infrastructure to comply." CODSIA said it believes the \$25,000 threshold anticipated as the final reporting requirement "will prove extremely burdensome and result in the reporting of a tremendous number of transactions."

In its comments, ITAA said that gearing the pilot program toward the collection--rather than the posting--of subcontract award data would allow OMB and the Office of Federal Procurement Policy to devise "an effective system" for the collection of such information before it is made publicly available. In addition, it outlined in detail several other recommendations intended to address concerns related to national security, competitiveness, and administrative burden. ITAA recommended the FAR Councils:

- Adopt an exemption process whereby a contractor could request an exemption from disclosing subcontract information when disclosure would pose a national security threat;
- Clarify that, for indefinite delivery/indefinite quantity and requirements contracts, the thresholds for application of the subcontract reporting requirements apply at the task order level, because the maximum value of such a contract does not reflect actual federal funding;

- Make clear that noncommercial prime contractors are not required to disclose award information concerning commercial item subcontracts;
- Adopt final reporting requirements that apply only to first-tier, noncommercial subcontract awards valued at or above the simplified acquisition threshold that are awarded or performed in the United States; and
- Develop final reporting requirements that reflect the long-standing policy of protecting contractor and subcontractor confidential and proprietary business information.

U.S. Team Heading to UAE This Month To Discuss New Export Control Regulation

A team of experts from the U.S. Commerce Department and other U.S. government agencies will be traveling to the United Arab Emirates later this month to discuss with UAE authorities their plans for implementing and enforcing the country's new export control law.

Christopher A. Padilla, assistant secretary of commerce for export administration, said that the new UAE law--provided recently to the Commerce Department in Arabic--appears to provide a "good basic framework" for controlling exports of sensitive technology. But he said that the United States still has a number of questions that it would like answered. "From our reading of the law," Padilla said, "it's encouraging....But the key is to understand how [it] will be implemented [and] enforced."

Padilla told reporters that the law--the first-ever such statute in the Persian Gulf state of 4.4 million--has been approved by the Federal National Council, which is the UAE parliament, and is awaiting consideration by the Federal Supreme Council, which is composed of the emirs of the UAE's seven emirates. It will have to be signed by UAE President Khalifa bin Zayid al-Nuhayyan for before it takes effect, Padilla said, adding that his office has not been told when that is expected to happen but that it will be one of the questions raised by U.S. officials when they visit the UAE later this month.

U.S. officials, including Padilla, have complained in the past about what they considered to be the UAE's inability or unwillingness to prevent the transshipments of sensitive U.S. technology to countries such as Iran and Syria. Padilla said last December, for instance, that there could be consequences if the Persian Gulf state did not take steps to halt the diversion of U.S. technology "in the near term," noting that an increasing number of militarily sensitive items had been diverted through the ports of Dubai and Abu Dhabi to Syria and Iran.

He said that there has been an "alarming" lack of oversight by the UAE authorities. But in March of this year UAE Economy Minister Sheikha Lubna Al Qasimi said during a visit to Washington, D.C., that the UAE was in the process of enacting a comprehensive export control law, and she denied that the UAE has been a major hub for the illegal re-export of U.S. high-technology products to Iran, Syria, and other countries.

Lubna said that the UAE has already closed 24 companies that were found to be engaged in diversion activities. Franklin M. Lavin, undersecretary of commerce for international trade, subsequently said in a speech to a business group in Abu Dhabi that, with the new law, "the UAE will no longer be the most active port in the world without a comprehensive export control law." "We are committed to working cooperatively with the UAE to establish an effective system," he said, adding that the size and volume of port activities and expanded trade in the UAE carries with it "certain responsibilities," including greater attention to export control issues.

LEGISLATIVE ACTION

Bill Number	Sponsor	Description	Action
H.R. 2206	Obey	To provide emergency supplemental spending for the wars in Iraq and Afghanistan	Signed by President Bush 5/25/07
H.R. 2558	Sullivan	To preserve open competition and federal government neutrality towards the labor relations of federal government contractors on federal and federally-funded construction projects	Introduced in House 6/5/07; referred to Oversight & Government Reform
H.R. 2615	Cummings	To amend Title 10 of the U.S. Code to repeal limitation on DOD authority to issue security clearances for certain persons	Introduced in House 6/6/07; referred to Armed Services
S. 1547	Levin	To authorize fiscal year 2008 appropriations for DOD military activities, military construction, and DOE defense activities, and to prescribe military personnel for fiscal year	Introduced in Senate 6/5/07; placed on calendar
S. 1548	Levin	To authorize appropriations for FY 2008 for DOD military activities, and to prescribe military personnel for fiscal year	Introduced in Senate 6/5/07; placed on calendar
S. 1549	Levin	To authorize appropriations for FY 2008 for military construction	Introduced in Senate 6/5/07; placed on calendar
S. 1550	Levin	To authorize appropriations for FY 2008 for DOE defense activities	Introduced in Senate 6/5/07; placed on calendar
S. 1558	Coleman	To strengthen requirements related to	Introduced in Senate

		security breaches of data involving disclosure of sensitive personal information	6/6/07; referred to Homeland Security and Governmental Affairs
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