

March 15, 2007

H.R. 1362 – The Accountability in Contracting Act

Floor Situation

H.R. 1362 is being considered on the floor under a structured rule which provides 80 minutes of general debate, one hour equally divided and controlled by the Chairman and Ranking Member of the Committee on Oversight and Government Reform and 20 minutes equally divided and controlled by the Chairman and Ranking Member of the Committee on Armed Services.

The Rule:

- Provides that in lieu of the amendments recommended by the Committees on Oversight and Government Reform and Armed Services now printed in the bill, the amendment in the nature of a substitute printed in Part A of the Rules Committee report accompanying the resolution shall be considered as an original bill for the purpose of amendment and shall be considered as read.
- Waives all points of order against the amendment in the nature of a substitute except for clauses 9 (earmarks) and 10 (PAYGO) of Rule XXI.
- Two amendments were made in order, see details below under heading: “Amendments made in order pursuant to the rule.”
- Waives all points of order against the amendments printed in the report except for clauses 9 (earmarks) and 10 (PAYGO) of Rule XXI.
- Provides one motion to recommit with or without instructions.

The amendment in the nature of a substitute is identical to the text, as amended, of H.R. 1362 ordered reported by the Committee on Armed Services on March 13, 2007, with the following additions:

- Adds a provision to Sec. 102 to clarify that statutory preferences for contracts to disadvantaged minority contractors and service disabled veterans, and in HUBZones, will not be covered in the plan to reduce sole-source contracts.

- Adds senior level personnel who participate personally and substantially in a decision to award a contract to the current revolving door restrictions for acquisition personnel.
- Prevents such senior level personnel who enter government service from the private sector from administering a contract awarded to their former employer.

This legislation was introduced by Representative Henry Waxman (D-CA) on March 6, 2007, and was ordered reported as amended, by voice vote, in the House Committee on Oversight and Government Reform on March 8, 2007, and was ordered reported as further amended, by the Yeas and Nays: 53 – 0, by the House Armed Services Committee on March 13, 2007.

H.R. 1362 is expected to be considered on March 15, 2007.

Summary

H.R. 1362 limits the contract period to a maximum of 1 year* for any contract awarded on the basis of “urgent and compelling” needs (which are usually not awarded through a competitive process). This legislation requires these non-competitive contracts to be limited to the minimum time required to meet the urgent and compelling needs or to enter into a new contract on a competitive basis.

**Note: The 1 year limitation on urgent and compelling contracts can be exceeded if the executive agency head determines that “the Government would be seriously injured by the limitation of the contract period.” In the case of the Department of Defense in addition to the head of the executive agency, the following officials are granted authority to determine the need for extension of the 1 year contract limitation: the Secretary of the military department, the head of the Defense Agency, and the Undersecretary of Defense for Acquisition, Technology, and Logistics.*

H.R. 1362 requires each executive agency to develop and implement 2 sets of plans, with measurable goals: (1) to minimize “to the maximum extent practicable” the use of non-competitive contracts awarded for any reason, and (2) to maximize “to the fullest extent practicable,” the use of fixed-price type procurement contracts and to submit the plans to the Comptroller General for review within 1 year of the enactment of this bill. The Comptroller is then instructed to review the plans and submit a report to Congress within 18 months of enactment of the bill.

Exceptions:

- The requirement to develop and implement plans only applies to agencies that awarded contracts of \$1 billion or more in the year prior to the report being filed.
- Certain non-competitive contracts entered into under provisions of the Small Business Act (15 U.S.C. 637, 657) that pertain to minority contractors, service

disabled veterans, and contracts located in HUBZones are exempt from inclusion in plans to minimize the use of non-competitive contracts.

H.R. 1362 requires non-competitive contract justifications and approval papers to be made publicly available on an agency's website and through the Federal Procurement Data System within 14 days after a contract is awarded.

Exceptions:

- The justification papers for contracts that are awarded on the basis of "urgent and compelling need" must be posted online within 30 days after a contract is awarded.

**Note: This legislation does not require information to be made public which is proprietary, business sensitive or classified data.*

H.R. 1362 requires each agency to submit a quarterly report to Congress detailing any completed audits that have revealed contractor costs in excess of \$10 million, which are identified as "unjustified, unsupported, questioned, or unreasonable," as well as any identified "material deficiencies in the performance of any contractor." Upon receipt of such a report, a Chairman or Ranking Member can request a full and unredacted copy of any audit listed within 14 days.

**Note: Unredacted audits are those which contain information exempt from public disclosure, such as proprietary, business sensitive or classified data.*

H.R. 1362 requires the Administrator for Federal Procurement Policy to conduct a study of the "composition, scope, and functions of the Government-wide acquisition workforce" wherein the Administrator will develop both: (1) a method to measure the size of, and (2) a definition of the acquisition workforce. The Administrator is required to submit a report to Congress with findings and recommendations within one year of the enactment of this bill.

H.R. 1362 revokes the sunset of the interagency acquisition workforce training fund, which was set to expire on November 24, 2008. The training fund serves to pay for training in business and management practices. that is offered to federal agency employees that are involved in acquisition or procurement of goods and services.

Current law prevents certain federal employees that were directly involved in contracting decisions from accepting positions as an employee, officer, director, or consultant for that contract recipient company for a period of one year after the contracting decisions took place.

H.R. 1362 retains the post-employment restriction at one year but expands the restricted positions to include both lawyer and lobbyist.

H.R. 1362 prohibits federal employees from accepting positions at unrelated affiliates or divisions of companies who were contract recipients, unless the employees receive a waiver from their ethics officer, who must “determine” public confidence will not be damaged.

H.R. 1362 requires federal employees to notify their supervisors if a relative is offered a job by a prospective contract recipient.

H.R. 1362 prohibits federal employees that are former employees of a private contractor from being personally and substantially involved in awarding contracts to that former employer for a period of one year after their last day of employment with the contractor. This legislation also prohibits “senior” personnel from being involved in the administration of a contract with a former employer for one year after their last day of employment.

**Note: Federal employees that are former employees of a private contractor can be involved in awarding contracts to that former employer or administration of a contract if the employee receives a waiver from the agency’s designated ethics officer.*

H.R. 1362 requires that relatives of federal officials that receive job offers from private contractors file the same disclosure reports that federal officials are required to file.

Amendments made in order pursuant to the rule

Matheson (D-UT), #8 This amendment would provide Congress with prior notice of any sole source contract expected to be awarded to a foreign-owned company that is based in or has majority operations in a country known to sponsor terrorist activity, with the intent of allowing Congress to review and comment on the proposed contract.

Castle (R-DE), #3 (REVISED) This amendment would require the Office of Government Ethics to submit recommendations on requiring government contractors and federally funded research and development centers that advise the government to comply with personal financial interest restrictions.

Views

On March 14, 2007 the Bush Administration issued a Statement of Administration Policy (SAP) strongly opposing H.R. 1362 because the legislation would “impose a new statutory ban on how the government uses acquisition personnel and would restrict the Executive Branch’s ability to determine the appropriate funding for the acquisition workforce functions.”

**Note: The March 14, 2007 SAP states opposition to some provisions that were removed and/or changed during the March 13, 2007 mark-up in the Armed Services Committee and the amendment in the nature of a substitute that was reported by the Rules Committee on March 14, 2007.*

For more information, the complete text of the SAP on H.R. 1362 was circulated by the GOP Conference on March 14, 2007.

Cost

The Congressional Budget Office (CBO) estimate issued on March 14, 2007 stated that CBO has no basis for estimating the net impact on the budget of the following provisions:

- Federal agencies limiting the length of noncompetitive contracts
- Federal agencies limiting the use of sole-source contracts and maximize the use of fixed-price contracts, when possible

Additionally, CBO estimated that the provision of H.R. 1362 requiring federal agencies to report to Congress on overcharges by contractors on the use of noncompetitive contracts, as well as the review and report required of the GAO on the use of federal contracts would increase federal administrative costs by less than \$10 million a year.

For more information the complete text of the CBO's cost estimate of H.R. 1362 can be found at the link below:

<http://www.cbo.gov/ftpdocs/78xx/doc7872/hr1362.pdf>

Staff Contact

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