

Chairman Waxman's Contractor Oversight Legislation Passes the House

In a clear sign of the new Democratic Congressional Majority's vocal displeasure with Federal Government contracting abuses (both alleged and confirmed), the House of Representatives passed H.R. 1392, "Accountability in Contracting Act" with unprecedented speed. House Government Oversight and Reform Committee Chairman Henry Waxman (D-CA) introduced the legislation on March 13, and ten days later the bill passed the House by a bi-partisan vote of 347-73. Though the bill moved through the House as lightning speed, it was modified so that industry could consider it arguably more tolerable. As an example of a "concession" to industry, although not substantive, the House Armed Services committee repealed all language calling sole source and cost-type contracts "abuse prone."

The Act limits sole source contracts with a value of \$1,000,000 or more and awarded for "unusual and compelling" circumstances to a period of one year. Unless the head of the agency determined that exceptional circumstances applied, the agency would need to award a follow-on contract, based on full and open competition, within that one year window. Agencies would also be required to develop and implement a plan to limit the number of sole source contracts. (Exempt from this plan to limit sole source contracts are contracts to disadvantaged minorities, service disabled veterans and HUBZones.) Agencies are also required to develop and implement plans to maximize the use of fixed-price contracts. Such plans would contain measurable goals and would undergo General Accountability Office audit and review. Further, agencies would be required to publish on its website, within 14 days of award, all documents justification and approval related documents.

Under the theme of "increasing contractor oversight," agencies would be required to file quarterly reports to Congress listing of all final audits that question over \$1,000,000 in contractor costs, as well as audits that question significant or substantial deficiencies. Agencies would also be required to submit full and unredacted copies of audits to House Committees within 14 days of a request. To promote "integrity in contracting," the Act would prohibit former contractor employees from personal and substantial participation in the award of a contract back to the employee's previous employer.

The Act will now be sent to the Senate, where it will be considered by the Senate Homeland Security and Government Affairs, and the Senate Armed Services Committees. The Senate is already considering S. 680, the "Accountability in Government Contracting Act of 2007," introduced by the Homeland Security and Government Affairs Committee's Ranking Member, Sen. Susan Collins (R-ME), S. 606, the "Honest Leadership and Accountability in Contracting Act of 2007," introduced by Sen. Byron Dorgan (D-ND) and S. 199, the "War Profiteering Prevention Act of 2007," introduced by Chairman of Senate Judiciary, Senator Patrick Leahy (D-VT). Ultimate power in the Senate to enact these Senate bills, or the Waxman bill, or any portion thereof, rests with Senate Armed Services Committee Chairman Carl Levin (D-MI), given that these legislative items will likely be subsumed under the annual National Defense Authorization Act, over which Sen. Levin's committee has jurisdiction. All three Senators (Levin, Dorgan and Collins) share similar perspectives and concerns over the size of task or delivery order contracts, contractors performing tasks closely associated with inherently governmental functions, and potential conflicts of interest for systems integrators.

These latest actions by Congress demonstrate the potentially hostile environment facing government contractors, as well as the likelihood of significant procurement policy changes being enacted in the very near future. In our view, portions of S.199, as well as both S. 680 and S. 606, have a realistic

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chance of becoming law. We will provide a summary of these bills in future alerts as they progress through the legislative process.

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