



Contractors Oppose Defense Bill's No-Bid Research Provision

By **Dietrich Knauth**

Law360, New York (April 13, 2012, 4:26 PM ET) -- A contractor group on Thursday urged lawmakers to reject a legislative proposal that would grant the U.S. Department of Defense the ability to award no-bid, multiyear contracts to federally funded research and development centers, saying the DOD request would unnecessarily limit competition.

The House Armed Services Committee introduced the proposal March 29 in a fledgling draft of the 2013 National Defense Authorization Act, H.R. 4310, at the request of the DOD. But the provision at issue, Section 802, is at odds with federal efforts to cut contract costs and improve oversight, according to the Professional Services Council.

"In an era when defense budgets are constrained, and with the possibility of sequestration looming, it simply isn't prudent to award contracts without meaningful competition, without appropriate transparency into costs or price, and without inspecting the justification for such awards," PSC President and CEO Stan Soloway said.

In a letter to committee chairman Buck McKeon, R-Calif., and ranking member Adam Smith, D-Wash., PSC said it "has significant concerns with the growth of the work assigned to FFRDCs that can be performed by the private sector."

PSC also said the new authority to contract with FFRDCs failed to address a long-standing congressional requirement that multiyear contracts "demonstrate significant savings over another period of performance."

The proposal also appears to run counter to President Barack Obama's 2009 policy to reform government contracting by ending "unnecessary no-bid and cost plus contracts" and strengthening "oversight to maximize transparency and accountability," PSC said.

FFRDCs are funded as long-term research partners of government agencies, and their long-term agreements are designed to increase the researchers' objectivity and independence.

Because of those long-term agreements, government agencies already have incentive to turn to their FFRDC partners rather than seeking competition from other contractors, according to Angela Styles, head of Crowell & Moring LLP's government contracts practice.

"They already are anti-competitive, so for them to have a different set of rules is bizarre," Styles said.

Private contractors can now perform many of functions that only FFRDCs could perform when they were established during World War II, such as advanced military systems engineering, Soloway said. Rather than continue to privilege FFRDCs, the government should look to take advantage of the private sector's growing skills, he said.

“It is time for real competition versus a sole-source purchase of services based on their protected relationship,” Soloway said.

The conflicts of interest concerns that helped drive the DOD toward FFRDCs have also been mitigated by the 2009 Weapon Systems Acquisition Reform Act, according to PSC's letter. WSARA, which bans contractors from performing support services functions and being a program provider for weapons systems, led many defense industry prime contractors to divest themselves of businesses divisions that could have created in a potential organizational conflict of interest, according to PSC's letter.

--Editing by Lindsay Naylor.

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