

Congress is at it Again - Accountability in Government Contracting Act of 2007

The Senate Homeland Security and Government Affairs Committee, under the leadership of Chairman Joseph Lieberman (I-CT) and Senator Susan Collins (R-ME), recently completed action on S. 680, the "Accountability in Government Contracting Act of 2007." The Committee ordered the bill reported shortly before Congress' August recess. We have reviewed a copy of the bill and can report that many of the more onerous provisions contained in the introduced version of the bill have been modified by the Committee, apparently in response to industry concerns. The amended bill, which we summarize below, is not yet publicly available.

This bill responds to abuses (real or perceived) in the Government contracting process. The bill examines and would amend procurement procedures for task and delivery order contracts, sole source contracts based on "unusual and compelling urgencies," cost type contracts, as well as award and incentive fees.

Task and delivery order contracts:

- Mirroring what is already required by the Department of Defense, the amended bill would require all agencies to 'compete' task or delivery order purchases in excess of the simplified acquisition threshold made under multiple award contracts (MACs). Circumstances under which a task or delivery award could be awarded without 'competition' remain, but the agency would have to publish notice of the sole source award and the accompanying justification and approval documents on the agency website and FedBizOpps.
- With respect to protests, the bill would authorize protests for orders in excess of \$5 million. The Office of Management and Budget could increase the threshold to \$25 million if there is a determination that the \$5 million threshold would be unduly burdensome to executive agencies.
- Task or delivery order contracts in excess of \$100 million could not be awarded to a single contractor unless the agency made a written determination that it would be appropriate to do so, notifies Congress within 30 days of the award, and publishes justification material on its website and in FedBizOpps.
- Finally, there would be a prohibition on the use of a tiered evaluation of an offer for a contract or a task under a contract unless the contracting officer determines there are a sufficient number of small businesses available to justify limiting competition.
- Contained in the original S. 680 but ultimately excluded from the reported bill was a requirement for post award briefings for task or delivery orders over \$5 million.

Sole source contracts

- The agency would be required to publish on its website and FedBizOpps justification and

CONTACTS

If you would like more information, please contact any of the McKenna Long & Aldridge attorneys or public policy advisors with whom you regularly work. You may also contact:

Mary Ellen Fraser
202.496.7387

Jim Schweiter
202.496.7511

approval documents when awarding a contract using a procedure other than full and open competition.

- Contracts greater than the simplified acquisition threshold and awarded on a non competitive basis due to "unusual and compelling urgency" would be limited to 270 days. The agency must enter into another contract using competitive procedures unless exceptional circumstances apply. It is worth noting that the original bill had a time limit of 150 days.

Cost reimbursement contracts

- The original bill required agencies to develop a plan to minimize the use of cost-reimbursement contracts. The amended bill removes this requirement in favor of a provision directing the Office of Management and Budget to promulgate regulations outlining the proper use of cost-reimbursement contracts.

Award and incentive fees

- A new provision in the bill (not included in the introduced version) would require new regulations ensuring that new contracts using award fees link such fees to acquisition outcomes, i.e. cost, schedule, and performance.

The Committee will likely formally issue its report on the revised S. 680 when Congress returns from its August recess. The bill would then move to the Senate floor. If passed by the Senate, the bill would then be transmitted to the House of Representatives, where it would be sent for further action to the House Oversight and Government Reform Committee, chaired by Rep. Henry Waxman (D-CA).

About Us

McKenna Long & Aldridge LLP is an international law firm composed of lawyers and public-policy advisors with offices in Albany, Atlanta, Brussels, Denver, Los Angeles, New York, Philadelphia, Sacramento, San Diego, San Francisco, and Washington, D.C. The firm provides business solutions in the areas of corporate law, government contracts, intellectual property and technology, complex litigation, public policy and regulatory affairs, international law, real estate, environmental, energy, and finance.

Subscription Info

If you would like others to receive future mailings of the Government Contracts Advisory, please email their contact information to us at information@mckennalong.com

If you would like to be removed from the Government Contracts Advisory mailing list, please email information@mckennalong.com

*This **Government Contracts Advisory** is for informational purposes only and does not constitute specific legal advice or opinions. Such advice and opinions are provided by the firm only upon engagement with respect to specific factual situations. This message is intended as a transactional message for clients of the firm. If you are not a client of the firm, you have received it for informational purposes only and should not consider it an advertisement or solicitation.