

MEMORANDUM

TO: ABA Public Contract Law Section Council

FROM: John Clerici
Cathy Garman
Co-Chairs, Legislative Committee

DATE: February 4, 2005

RE: Report for the Midyear Council Meeting
Legislative Coordinating Committee

I. COMMITTEE ACTION

During the closing months of the 108th Congressional session, the Committee heard from Hill staff, including Peter Levine, minority counsel for the Senate Armed Services Committee and John Brosnan of the Government Reform Committee. No meeting was held in December because of the congressional recess; and no meeting was held in January, since the regularly scheduled meeting fell on Inauguration Day. The Committee's next meeting will be held in mid-February; Mary Ellen Fraser and Jeff Green of the House Armed Services Committee are the invited speakers. We anticipate speakers from the key oversight committees, particularly given the expected increased activity caused by recent procurement integrity issues.

II. LEGISLATIVE ITEMS

Congress adjourned in Mid-October until after the elections, returning for a "lame duck" session in Mid-November to adopt the FY05 Omnibus Appropriations bill.

- FY05 Defense Authorization Act. The House and Senate adopted the conference report in Mid-October (P.L. 108-767). Highlights of acquisition policy issues include:
 - Section 802, Internal controls for Department of Defense purchases through GSA Client Support Centers
 - Section 804, Contractor performance of acquisition functions closely associated with inherently governmental functions
 - Section 807, Authority to adjust acquisition related dollar thresholds for inflation
 - Section 811 Rapid acquisition authority to respond to combat emergencies
 - Section 813, Limitation on task and delivery order contracts
 - Section 817, Extension of authority for use of simplified acquisition procedures
 - Section 818, Submission of cost or pricing data on noncommercial modifications of commercial items
 - Section 822. Increased Threshold under special emergency procurement authority.
 - Section 841, Extension of Mentor-Protégé program
 - Section 842, Mentor Protégé Pilot Program Expansion
 - Section 843, Extension of test program for negotiation of comprehensive small business subcontracting plans
 - Section 851, Review and demonstration project relating to contractor employees

Section 852, Inapplicability of certain fiscal laws to settlements under special temporary contract closeout authority

Section 854, Limitation regarding service charges imposed for defense procurements made through contracts for other agencies

Section 1061, Use of national driver register for personnel security investigations and determinations

Section 1205, Guidance and report required on contractors supporting deployed forces in Iraq

Section 1206, Report on contractor security in Iraq

- Intelligence Reform bill. On December 17, 2004, President Bush signed into law the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458). The Act was in response to the recommendations made by the September 11th Commission to overhaul the way the Federal government collects and uses intelligence information. The final bill included 41 recommendations that were made by the Commission to improve the nation's intelligence-gathering apparatus and homeland security.
- Workforce Issues. President Bush signed into law an act that would provide the Federal government greater flexibility to attract, hire and retain skilled Federal workers. The Federal Workforce Flexibility Act (P.L. 108-411) provides enhanced recruitment, relocation, and retention bonus authority as well as critical pay authority for skilled workers; the ability to offer training; and enhancements for annual leave.
- Competitive Sourcing. This issue continues to be controversial and provisions further limiting the use of competitive sourcing likely will be again to the annual Appropriations bills. Specific actions in 2004 included:
 - FY05 National Defense Authorization Act contained three provisions related to competitive sourcing:
 - Section 326. Bid protests by federal employees in actions under office of management and budget circular a-76
 - Section 327. Limitations on conversion of work performed by department of defense civilian employees to contractor performance.
 - Section 328. Competitive sourcing reporting requirement
 - The Transportation-Treasury bill was one of 11 appropriations bills combined into the FY05 Omnibus Appropriations bill, and approved during the "lame duck" session of Congress in November. Language, inserted in the House and Senate versions of the FY05 Transportation-Treasury appropriations bill, prohibiting the implementation of the May 2003 Revised Circular A-76 was not included in the final Omnibus bill.
 - In a letter to the Office of Management and Budget (OMB), the Department of Defense (DOD) requested the repeal of a legislative provision in the FY 2005 Defense Appropriations Act that prohibits a private sector contractor, in a public-private competition, from being given a cost advantage if that contractor does not offer similar health benefits as those provided to Federal sector employees.
 - Representative Chris Van Hollen (D-MD) introduced the "Disabled Federal Employees Protection Act" (H.R. 5276). This bill would require that in any situation where jobs are contracted out, a Federal employee who is disabled shall not lose his/her job, if that individual was hired under a program designed for individuals with disabilities. Van Hollen is expected to re-introduce this bill during the 109th session of Congress.
 - On October 22, 2004, the President signed into law the American Jobs Creation Act of 2004 (P.L. 108-357). Section 881 of that law will allow the Treasury Secretary to outsource tax collection for the Internal Revenue Service (IRS), and allow contractors to

keep up to 25% of the amounts that they collect. Taxpayers, however, will be credited with paying the full amount regardless of what the collection fees are.

III. Personnel Items

- The Senate gave final approval to the nomination of David Safavian to head up the Office of Federal Procurement Policy (OFPP). This action occurred during the lame duck session following the presidential election.
- The Office of Management and Budget finally established the Services Acquisition Advisory Panel, mandated by the 2003 Services Acquisition Reform Act.
- Because of term limits for serving as committee chairs, both the House and Senate Appropriations Committees will have a new chair in the 109th Congress. Representative Jerry Lewis (R-CA) replaces Representative Bill Young (R-FL) as chairman of the House Appropriations Committee. Senator Thad Cochran (R-MS) will chair the Senate Appropriations Committee, taking over from Senator Ted Stevens (R-AK) who will take the reins of the Defense Subcommittee.
- Upon returning for the start of the 109th Congress, the House Republicans Conference approved a proposal to make the House Select Committee on Homeland Security a permanent standing committee, to be chaired by the current chairman, Representative Chris Cox (R-CA). This change is part of congressional action to implement the top recommendations of the 9/11 Commission. The Senate has not established a separate homeland security committee. Instead, during a reorganization in mid-October 2004, the Senate voted to change the name of the Governmental Affairs Committee, to the Committee on Homeland Security and Governmental Affairs to reflect that committee's broader jurisdiction. Senator Susan Collins (R-Maine) remains the chair.

IV. GAO REPORTS

- Homeland Security: Further Action Needed to Promote Successful Use of Special DHS Acquisition Authority. GAO-05-136, December 15
- Defense Transformation: Clear Leadership, Accountability, and Management Tools Are Needed to Enhance DOD's Efforts to Transform Military Capabilities. GAO-05-70, December 17
- Defense Inventory: DOD and Prime Contractors Adhered to Requirements in Selected Contracts for Overseeing Spare Parts Quality. GAO-05-73, December 20
- U.S. Government Accountability Office: Performance and Accountability Highlights, Fiscal Year 2004. GAO-05-63SP, January 2005.
- High-Risk Series: An Update. GAO-05-207, January 2005
- Vocational Rehabilitation Services: More VA and DOD Collaboration Needed to Expedite Services for Seriously Injured Servicemembers. GAO-05-167, January 14.
- U.S.-China Trade: Summary of 2003 World Trade Organization Transitional Review Mechanism for China. GAO-05-209R, January 25.

- Telemarketing: Implementation of the National Do-Not-Call Registry. GAO-05-113, January 28
- Technology Development: New DOD Space Science and Technology Strategy Provides Basis for Optimizing Investments, but Future Versions Need to Be More Robust. GAO-05-155, January 28.

V. Next Meeting

The Legislative Committee meets for a breakfast meeting on the third Thursday of each month at the law offices of McKenna Long and Aldridge. .