



**Legislative Bulletin.....March 15, 2007**

**Contents:**

**H.R. 1362** — Accountability in Contracting Act

**Summary of the Bills Under Consideration Today:**

**Total Number of New Government Programs:** 0

**Total Cost of Discretionary Authorizations:** \$10 million each fiscal year

**Effect on Revenue:** \$0

**Total Change in Mandatory Spending:** \$0

**Total New State & Local Government Mandates:** 0

**Total New Private Sector Mandates:** 0

**Number of Bills Without Committee Reports:** 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 1

**H.R. 1362 — Accountability in Contracting Act (*Waxman, D-CA*)**

**Order of Business:** The bill is scheduled for consideration on Thursday, March 15, 2007, subject to a structured rule ([H.Res. 242](#)). The rule adopts an amendment in the nature of a substitute for the bill, and two amendments, all three of which are summarized below.

**Summary of the Bill as Reported by the Oversight and Government Reform Committee:**

H.R. 1362 would make various changes to the allowable length and characteristics of government contracts, specifically relating to noncompetitive and cost-reimbursement type contracts, and would increase contract oversight. The specific provisions of the bill are as follows:

- Restricts the length of certain federal contracts without competition to a maximum of 240 days, unless this limitation is waived by the agency head due to “exceptional circumstances” (not defined in the bill).
- Requires agencies that spend more than \$1 billion on federal contracts to develop and implement a plan to minimize the use of noncompetitive contracts and cost-reimbursement contracts, and submit the plan (for each) to Congress and the Comptroller

General of the General Services Administration (GSA). GSA is directed to submit an analysis of each plan to Congress within 18 months.

- Requires contract justification and approval documentation be posted on the relevant agency's website and through the Federal Procurement Data System within 14 days of awarding the contract (except documentation that is exempt from public disclosure).
- Requires that a report be submitted to Congress on a quarterly basis containing a list of all contractor costs (in excess of \$1 million) that are unjustified, unsupported, questioned, or unreasonable under any contract, task, or subcontract. This provision also requires agencies to provide un-redacted copies of audit reports within 14 days, upon a request from a chairman or ranking member of certain House and Senate committees.
- Requires the FPP Administrator to conduct a study of the federal acquisition workforce and develop a "comprehensive definition of, and method of measuring, such workforce."
- Repeals the existing sunset provision of the Training Fund (operated by the GSA Administrator), which currently is set to expire on November 24, 2008. The purpose of the Training Fund is to "support the training of the acquisition workforce of the executive agencies other than the Department of Defense."
- Expands the current regulation prohibiting former government officials from accepting compensation from contractors to also include lawyers and lobbyists (in addition to the current prohibition on consultants from accepting compensation from contractors). In other words, the provision would prohibit, for one year after leaving the government, a former government official from working as a lobbyist or lawyer for a company that they awarded a contract to as a government contracting official. The provision also prohibits a federal employee from being substantially involved in awarding a contract to that employee's former (private sector) employer, for a one-year period and subject to a waiver.

**Amendment in the Nature of a Substitute:** The amendment in the nature of a substitute is identical to the text reported by the Oversight and Government Reform Committee, except for the following:

- Strikes the section in the reported version (of the Oversight and Government Reform Committee) that would have required each agency to devote one (1) percent of its procurement budget to hiring and training acquisition workforce personnel, contract planning, administration and oversight. This change significantly decreases the cost of the bill (estimated at \$20 billion over four years with this provision included).
- Adds a provision to section 102 that makes two exceptions to the requirement in the bill that sole-source contracts be reduced: 1) contracts for disadvantaged minority contractors and service disabled veterans (15 U.S.C. 637(a)), and contracts in HUBZones (15 U.S.C. 657a). Thus, these types of contracts will not be subject to the sole-source contract reduction requirements.

Note: HUBZones are specially tailored contracts (run by the Small Business Administration) that are awarded to urban and rural communities in which the contractors must hire employees that live within the HUBZone, with the intent to stimulate local economic development.

- Further expands the restrictions in the underlying bill on acquisition personnel to also include senior level personnel who “personally and substantially” participate in a decision to award a contract.
- Prohibits those senior level personnel who enter government service from the private sector from administering a contract awarded to their former employer.

**Possible Conservative Concerns:** Though conservatives would generally agree that competitive contracting is preferable to sole-source contracting, the highly demanding and technical nature and peculiar needs of government contracts frequently produce only one suitable bidder. Therefore, this legislation may, in certain circumstances, make it more difficult to secure a contractor to complete needed work. The bill would increase current restrictions on sole-source contracting, and would mandate additional administration procedures and reports.

**Amendments:** Below are the summaries of the amendments made in order under the rule.  
Note: Summaries are based on RSC staff’s review of actual amendment text.

**1. Matheson (D-UT).** Requires agencies to notify Congress, 30 days prior to awarding the contract, if a noncompetitive contract is expected to be awarded to a foreign-owned company that is based or has a majority operation in a country known to sponsor terrorist activity, for the express purpose of providing “Congress time to review the proposed contract and provide comments to the department or agency.”

**2. Castle (R-DE).** Requires the Office of Government Ethics to submit a report to Congress containing recommendations on requiring government contractors and federally funded research and development centers that advise the government to comply with personal financial interest restrictions, “such as those that apply to federal employees.”

**Committee Action:** H.R. 1362 was introduced on March 6, 2007, and referred to the Committee on Oversight and Government Reform and the Committee on Armed Services. The Oversight and Government Reform Committee marked-up the bill on March 8 and ordered it reported to the full House by voice vote (House Report [110-47](#), Part I). On March 13, the Armed Services Committee marked up the bill and ordered it reported to the full House by a vote of 53-0.

**Administration Policy:** The Administration strongly opposes passage of H.R. 1362 and released a Statement of Administration Policy (SAP) on March 14, 2007, which included the following statement:

The Administration strongly opposes H.R. 1362, which 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 acquisition workforce functions. Other provisions would impose burdensome statutory requirements that overlap with more efficient administrative efforts to strengthen the use of competition and reduce fraud, waste, and abuse.

**Cost to Taxpayers:** CBO estimates that implementing H.R. 1362 cost less than \$10 million annually. CBO also noted that “certain provisions contained in the bill could increase the costs to administer contracts, but also could result in the use of contractual arrangements that might lower costs to the government. CBO has no basis for estimating the net impact on the budget of those provisions. Such impacts would primarily affect discretionary spending, although small changes in mandatory spending could occur.”

**Cost to Taxpayers:** CBO estimates that H.R. 1362 would authorize appropriations of about \$10 million a year.

**Does the Bill Expand the Size and Scope of the Federal Government?:** As noted above, the bill places additional restrictions and requirements on federal agencies regarding the issuance of certain federal contracts. The bill also places additional limitations on former government employees from receiving compensation from federal contractors for a one-year period after leaving the government.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** The Oversight and Government Reform Committee, in House Report [110-42](#) Part I, cites constitutional authority in Article I, Section 8, Clause 18 (to make all laws necessary and proper to carry out the *foregoing* powers), but fails to cite a foregoing power or another specific enumerated clause.

The Armed Services Committee, in House Report [110-42](#) Part II, cites constitutional authority in Article I, Section 8, but fails to cite a specific clause.

House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

**RSC Staff Contact:** Derek V. Baker; [derek.baker@mail.house.gov](mailto:derek.baker@mail.house.gov); 202-226-8585

---

---

###