

The Senate amendment contained a provision (sec. 362) that would extend for two years the authority granted in section 332 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314) to hire contract security guards on a temporary basis to fill positions that would otherwise be filled by members of the Armed Forces.

The House bill contained no similar provision.

The House recedes with an amendment that would require the Secretary of Defense to submit a report on the use of this authority no later than December 1, 2005.

Pilot program for purchase of certain municipal services for Army installation (sec. 325)

The Senate amendment contained a provision (sec. 363) that would authorize a pilot program under which the secretary of a military department could provide for the purchase of local governmental services at a Department of Defense installation from the local government responsible for serving the area.

The House bill contained no similar provision.

The House recedes with an amendment that would limit the pilot program to two Department of Army installations located in the United States.

Bid protests by federal employees in actions under Office of Management and Budget Circular A-76 (sec. 326)

The House bill contained a provision (sec. 325) that would express the sense of Congress that Department of Defense civilian employees (or their representatives) and contractors (or their representatives) should receive comparable treatment regarding legal standing to challenge the way in which a public-private competition has been conducted before the Government Accountability Office (GAO) or in the U.S. Court of Federal Claims.

The Senate amendment contained a provision (sec. 1107) that would provide such legal standing, in GAO bid protests only, to both: (1) the official who submits an agency tender in a public-private competition (the Agency Tender Official (ATO)); and (2) a person representing a majority of the employees of the federal agency who are engaged in the performance of the activity or function that is subject to the competition. The Senate amendment also authorized the ATO or a person representing a majority of the employees to intervene in protests filed in the U.S. Court of Federal Claims.

The House recedes with an amendment providing the ATO legal standing in GAO bid protests of public-private competitions for functions performed by more than 65 full-time federal employees.

Under the conference agreement, the ATO would be required to file a protest at the request of a majority of the employees of

the federal agency who are engaged in the performance of the activity or function that is subject to the competition unless the ATO determines that there is no reasonable basis for the protest. A determination by the ATO would not be subject to judicial or administrative appeal, but would be reported to the congressional defense committees. A person representing a majority of the employees would not have standing to file a protest, but would have the right to intervene in a protest filed by an interested party, including the ATO. The conference agreement would not address protests that are filed in the United States Court of Federal Claims.

Limitations on conversion of work performed by Department of Defense civilian employees to contractor performance (sec. 327)

The House bill contained a provision (sec. 323) that would: (1) codify the prohibition on converting an activity or function to private sector performance unless the conversion would result in savings of at least 10 percent or \$10.0 million; (2) prohibit the Department from breaking up a function to avoid applicable thresholds for conducting a public competition; (3) ensure that a public competitor is not disadvantaged by the offer of a private competitor to reduce costs by reducing health care benefits for its employees; and (4) require the Department to conduct a competition, including an agency tender, a most efficient organization plan, and a formal cost comparison for any function performed by 10 or more civilian employees.

The Senate amendment contained a similar provision (sec. 851).

The Senate recedes with an amendment that would: (1) codify the prohibition on converting an activity or function to private sector performance unless the conversion would result in savings of at least 10 percent or \$10.0 million when conducting a public-private competition under OMB circular A-76 dated May 29, 2003; and (2) prohibit the Department of Defense from breaking up a function to avoid applicable thresholds for conducting a public-private competition under A-76 Circular A-76, May 29, 2003.

The conferees agree to exclude the pilot program for best-value source selection authorized by section 336 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 103-136) from the requirement to apply a price differential of 10 percent or \$10.0 million. The conferees expect the Secretary of Defense to utilize the price differential in the cost or price component of an evaluation under the pilot program, but understand that cost or price alone is not determinative in a best value competition.

The conferees note that the Department of Defense Appropriations Act for Fiscal Year 2005 (Public Law 108-257) includes a provision that would require the Department to ensure, in fiscal year 2005, that a public competitor is not

disadvantaged by the offer of a private competitor to reduce costs by reducing health care benefits for its employees and that the Department must conduct a competition, including an agency tender, a most efficient organization plan, and a formal cost comparison for any function performed by 10 or more civilian employees.

The conferees direct the Comptroller General to review the implementation and impact of the Appropriations provision with regard to health care costs and competition of small agency functions. The Comptroller General's review should also address the full range of benefits provided by public and private sector employers, the manner in which these benefits are considered in a public-private competition, the impact of any benefit changes on employees who transition to private sector employment as a result of a public-private competition, and steps that could be taken to ameliorate any adverse impact of such a transition.

The conferees direct the Comptroller General to provide a preliminary report on this review to the congressional defense committees by no later than May 1, 2005, and a final report by no later than three months after the end of fiscal year 2005.

Competitive sourcing reporting requirement (sec. 328)

The House bill contained a provision (sec. 326) that would require the Inspector General of the Department of Defense to submit to Congress a report addressing whether the Department has implemented a comprehensive and reliable system to track and assess the results of public-private competitions. The House provision would establish a number of specific elements to be addressed in the tracking system.

The Senate amendment contained a compatible provision (sec. 853). The Senate provision would not establish the specific reporting elements to be addressed in the tracking system.

The House recedes.

The conferees note that section 354 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398) and section 385 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85) required the Department to maintain a system for tracking the results of public-private competitions and established the specific elements to be addressed in the tracking system.

Subtitle D-Information Technology

Preparation of Department of Defense plan for transition to Internet Protocol version 6 (sec. 331)

The House bill contained a provision (sec. 331) that would require the Secretary of Defense to prepare a transition plan to