

SA 1516. Mr. CASEY (for himself, Mr. *Brown*, Mr. *Schumer*, Mrs. *Gillibrand*, Ms. *Mikulski*, and Mrs. *Murray*) submitted an amendment intended to be proposed by him to the bill S. 1390, to authorize appropriations for fiscal year 2010 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

On page 77, strike lines 1 through 26 and insert the following:

SEC. 323. TEMPORARY SUSPENSION OF AUTHORITY FOR PUBLIC-PRIVATE COMPETITIONS.

(a) *Temporary Suspension.*--No study or competition regarding the conversion to performance by a contractor of any Department of Defense function may be begun or announced pursuant to section 2461 of title 10, United States Code, Office of Management and Budget Circular A-76, or any other authority until September 30, 2010, or the date on which the Secretary of Defense submits to the congressional defense committees the certification described in subsection (b), whichever is later.

(b) *Certification Requirement.*--The certification described in this subsection is a certification that--

(1) the Secretary of Defense has completed and submitted to Congress a complete inventory of contracts for services for or on behalf of the Department of Defense in compliance with the requirements of subsection (c) of section 2330a of title 10, United States Code; and

(2) the Secretary of each military department and the head of each Defense Agency responsible for activities in the inventory is in compliance with the review and planning requirements of subsection (e) of such section.

SEC. 323A. PUBLIC-PRIVATE COMPETITION REQUIRED BEFORE CONVERSION OF ANY DEPARTMENT OF DEFENSE FUNCTION PERFORMED BY CIVILIAN EMPLOYEES TO CONTRACTOR PERFORMANCE.

(a) *Requirement.*--Section 2461(a)(1) of title 10, United States Code, is amended--

(1) by striking ``A function" and inserting ``No function";

(2) by striking ``10 or more"; and

(3) by striking ``may not be converted" and inserting ``may be converted".

(b) *Effective Date.*--The amendments made by subsection (a) shall apply with respect to a function for which a public-private competition is commenced on or after the date of the enactment of this Act.

SEC. 323B. TIME LIMITATION ON DURATION OF PUBLIC-PRIVATE COMPETITIONS.

(a) *Time Limitation.*--Section 2461(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(5)(A) The duration of a public-private competition conducted pursuant to Office of Management and Budget Circular A-76 or any other provision of law for any function of the Department of Defense performed by Department of Defense civilian employees may not exceed a period of 720 days, commencing on the date on which the preliminary planning for the public-private competition begins through the date on which a performance decision is rendered with respect to the function.

“(B) The time period specified in subparagraph (A) for a public-private competition does not include any day during which the public-private competition is delayed by reason of a protest before the Government Accountability Office or the United States Court of Federal Claims unless the Secretary of Defense determines that the delay is caused by issues being raised during the appellate process that were not previously raised during the competition.

“(C) In this paragraph, the term ‘preliminary planning’ with respect to a public-private competition means any action taken to carry out any of the following activities:

“(i) Determining the scope of the competition.

“(ii) Conducting research to determine the appropriate grouping of functions for the competition.

“(iii) Assessing the availability of workload data, quantifiable outputs of functions,

and agency or industry performance standards applicable to the competition.

“(iv) Determining the baseline cost of any function for which the competition is conducted.”.

(b) *Effective Date.*--Paragraph (5) of section 2461(a) of title 10, United States Code, as added by subsection (a), shall apply with respect to a public-private competition covered by such section that is being conducted on or after the date of the enactment of this Act.

SEC. 323C. TERMINATION OF CERTAIN PUBLIC-PRIVATE COMPETITIONS FOR CONVERSION OF DEPARTMENT OF DEFENSE FUNCTIONS TO PERFORMANCE BY A CONTRACTOR.

(a) *Temporary Suspension of Pending Studies.*--The Secretary of Defense shall halt all pending public-private competitions being conducted pursuant to section 2461 of title 10, United States Code, or Office of Management and Budget Circular A-76 that had not resulted in conversion to performance to a contractor as of March 26, 2009, until such time as the Secretary may review such competitions.

(b) *Review and Approval Process.*--

(1) **REVIEW REQUIRED.**--Before recommencing any pending study for a public-private competition halted under subsection (a), the Secretary of Defense shall review all the studies halted by reason of that subsection and take the following actions with respect to each such study:

(A) Describe the methodology and data sources along with outside resources to gather and analyze information necessary to estimate cost savings.

(B) Certify that the estimated savings are still achievable.

(C) Document the rationale for rejecting an individual command's request to cancel, defer, or reduce the scope of a decision to conduct the study.

(D) Consider alternatives to the study that would provide savings and improve performance such as internal reorganizations.

(E) Include any other relevant information to justify recommencement of the study.

(2) **TERMINATION OF CERTAIN STUDIES.**--The Secretary of Defense shall terminate any study for a public-private competition that was or has been conducted for longer than 30 months (beginning with preliminary planning and ending with a performance decision, excluding time expended because of a bid protest, but not additional time required to conduct the study subsequent to a bid protest), consistent with section 8023 of the Department of Defense Appropriations Act, 2009 (division C of Public Law 110-329; 122 Stat. 3626).

(c) *Congressional Notification.*--The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report describing the actions taken by the Secretary under paragraphs (1) and (2) of subsection (b).

(d) *Comptroller General Review.*--Not later than 45 days after the Secretary of Defense submits the report required under subsection (c), the Comptroller General of the United States shall submit to the Committees on Armed Services of the

Senate and the House of Representatives a report on whether the review and approval process conducted by the Department of Defense is in compliance with subsection (b) and whether it includes consideration of all costs and savings associated with preparing for and carrying out a pending study as well as all costs that would be associated with converting functions to performance by a contractor and transitioning the Federal employee workforce.

(e) *Recommencing a Study.*--The Secretary of Defense may not recommence a study halted pursuant to subsection (a) until 30 days after the Comptroller General has submitted to the Committees on Armed Services of the Senate and the House of Representatives the report required under subsection (d).

SEC. 323D. REQUIREMENT FOR DEBRIEFINGS RELATED TO CONVERSION OF FUNCTIONS FROM PERFORMANCE BY FEDERAL EMPLOYEES TO PERFORMANCE BY A CONTRACTOR.

The Administrator for Federal Procurement Policy shall revise the Federal Acquisition Regulation to allow for pre-award and post-award debriefings of Federal employee representatives in the case of a conversion of any function from performance by Federal employees to performance by a contractor.

SEC. 323E. AMENDMENTS TO BID PROTEST PROCEDURES BY FEDERAL EMPLOYEES AND AGENCY OFFICIALS IN CONVERSIONS OF FUNCTIONS FROM PERFORMANCE BY FEDERAL EMPLOYEES TO PERFORMANCE BY A CONTRACTOR.

(a) *Protest Jurisdiction of the Comptroller General.*--Section 3551(1) of title 31, United States Code, is amended by adding at the end the following new subparagraph:

``(E) Conversion of a function or part thereof that is being performed by Federal employees to private sector performance.".

(b) *Eligibility to Protest Public-Private Competitions.*--Clause (i) of paragraph (2)(B) of section 3551 of title 31, United States Code, is amended to read as follows:

``(i) any official who is responsible for submitting the agency tender in such competition; and" .

(c) *Prejudice to Federal Employees.*--

(1) **IN GENERAL.**--Section 3557 of title 31, United States Code, is amended--

(A) by inserting ``(a) *Expedited Action.*--" before ``For any protest"; and

(B) by adding at the end the following new subsection:

`` (b) *Injury to Federal Employees.*--In the case of a protest filed by an interested party described in subparagraph (B) of section 3551(2) of this title, a showing that a Federal employee has been displaced from performing a function or part thereof, or will be displaced as a direct result of the action protested, and that function is being performed by the private sector, or will be performed by the private sector as a direct result of the action protested, is sufficient evidence that a conversion has occurred resulting in concrete injury and prejudice to the Federal employee as a consequence of agency action."

(2) **CONFORMING AND CLERICAL AMENDMENTS.**--

(A) The heading of section 3557 of such title is amended to read as follows: `` §3557. Protests of public-private competitions".

(B) The item relating to section 3557 in the table of sections at the beginning of chapter 35 of such title is amended to read as follows:

`` 3557. Protests of public-private competitions."

(d) *Decisions on Protests.*--Section 3554(b) of title 31, United States Code, is amended--

(1) by redesignating subparagraphs (F) and (G) as subparagraphs (G) and (H), respectively;

(2) by inserting after subparagraph (E) the following new subparagraph (F):

`` (F) cancel the solicitation issued pursuant to the public-private competition conducted under Office of Management and Budget Circular A-76 or any successor policy;"; and

(3) in subparagraph (G), as redesignated by paragraph (1), by striking `` , and (E)" and inserting `` , (E), and (G)".

(e) *Applicability.*--The amendments made by this section shall apply--

(1) to any protest or civil action that relates to a public-private competition conducted after the date of the enactment of this Act under Office of Management and Budget Circular A-76, or any successor circular; or

(2) to a decision made after the date of the enactment of this Act to convert a function or part thereof performed by Federal employees to private sector performance without a competition under Office of Management and Budget Circular A-76.