



PROFESSIONAL SERVICES COUNCIL

The Unified Voice of the Government Services Industry

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July 20, 2009

Senator Richard Durbin
Chairman
Subcommittee on Financial Services
& General Government
U.S. Senate
SD-184
Washington, DC 20510-6025

Senator Susan Collins
Ranking Member
Subcommittee on Financial Services
& General Government
U.S. Senate
SD-142
Washington, DC 20510-2065

Dear Chairman Durbin and Ranking Member Collins:

On behalf of the Professional Services Council (PSC), I am writing to express our opposition to portions of Section 735 of the FY 2010 Financial Services Appropriations Act as adopted by your subcommittee. The Professional Services Council is the leading national trade association of the government professional and technical services industry.

Section 735 requires each federal department and agency (except DoD) to annually submit to the Office of Management and Budget (OMB) an inventory of the activities performed by contractors on behalf of the department or agency. Section 735 also requires each head of the department or agency responsible to review the contracts and activities in the inventory to ensure that:

- Each personal services contract has been entered into, and is being performed, in accordance with applicable statutory and regulatory requirements;
- Activities do not include inherently governmental functions; and
- To the maximum extent practicable, activities do not include any functions closely associated with inherently governmental functions.¹

PSC has significant concerns with Section 735. First, we question the value to decision makers of a report that inventories these types of contracts. Second, the language requires information that does not appear relevant in certain instances. For example, the number of full time employees could be irrelevant to an activity's performance. Third, the process available to the department or agency heads for treating contracted efforts that have been identified in the inventory is much too rigid and overlooks the reality of the diverse contract support efforts required by the civilian agencies to carry out their missions.

In addition, Section 321 of the FY 2009 National Defense Authorization Act (NDAA)² requires the Administrator of the Office of Federal Procurement Policy (OFPP) to

¹ FY 2010 Financial Services Appropriations Act, Section 735(e)(2)(C)

² Public Law 110-417

establish a single consistent definition of "inherently governmental function" by September 30, 2009 that could be applied across Federal agencies, and to create guidelines that individual agencies will use to identify positions exercising inherently governmental functions, as well as critical positions that, while not exercising inherently governmental functions, should be restricted to performance by government employees to ensure effective and sustained control of agency missions and operations. PSC supported passage of Section 321 and believes that Congress should refrain from passing additional legislation regarding "inherently governmental functions" and "closely associated with inherently governmental functions" until OFPP has issued its guidance and it has been given time to take effect.

Thank you for your attention to this important matter. If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Stan Soloway". The signature is stylized with a large, looped initial "S" and a cursive "Soloway" following it.

Stan Soloway

Cc: Appropriations Committee Chairman Daniel Inouye
Appropriations Committee Ranking Member Thad Cochran