Coburn/Johnson amendment 1509 to S.744: To prevent unnecessary use of no bid contracts to carry out immigration activities.

This amendment would remove two provisions from the bill that would give the government more authority to use expensive sole source contracts.

The authorities to be struck are the following:

1) expansion of authority to award sole source contracts for almost any reason to carry out activities included in the immigration title; and

2) prevention of GAO from carrying out its critical oversight role in reviewing agency decisions to award sole source contracts as part of the bid protest process.

Current law allows agencies to award sole source contracts under specific circumstances, and these circumstances are not difficult to justify.

In addition, current law also allows an agency to override GAO decisions that a contract was awarded wrongly if there is an urgent need to do so.

Competition is one of the most important tools we have to ensure that taxpayers get a fair price under federal contracts.

In 2012, the federal government spent over $500 billion on contracts, which was the lowest amount since 2007.[1]

Of this amount, over $115 billion in 2012 was awarded without competition through no-bid contracts.[2]

This is a huge amount of money, and when it is spent without competition waste and fraud abounds.

This is widely recognized throughout the government, including within OMB, which has called no-bid contracts "high risk."[3]

[1] http://www.whitehouse.gov/blog/2012/12/06/historic-savings-contracting-and-plans-more
[2] http://articles.washingtonpost.com/2013-03-17/business/37795352_1_contracts-federal-procurement-policy-federal-agencies

In OMB guidance released shortly after President Obama became president, he instructed agencies to eliminate high-risk, sole source contracts to the greatest extent possible.[4]

He wrote that these contracts, "create a risk that taxpayer funds will be spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the needs of the Federal Government or the interests of the American taxpayer."[5]

Why, then, would we want to reverse that by authorizing more sole source contracting in this bill?

Section 2108 of this bill would do just that, harming our ability to maximize competition and get the best value.

It goes far beyond current contracting rules to allow agency carrying out immigration activities to award sole source contracts for any reason they see fit.

Current law gives agencies all the authority they need to award sole source contracts.

Federal agencies already have the authority to award sole source contracts under specific circumstances.

These include times when agencies have urgent needs, or when only one vendor can provide a good or service.[6]

The bill would eliminate many of the checks and balances we have fought so hard to create, by easing the rules around immigration-related contracting.

---

[3] http://www.whitehouse.gov/sites/default/files/omb/procurement/reports/cost-reimbursement-contracting-by-executive-agencies-report-to-congress.pdf

[4] http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government

[5] http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government

[6] 41 U.S.C. § 253 (c)

Worse still, the bill eliminates one of the most effective oversight tools in the world of contracting by cutting out the GAO.

In addition to its normal oversight and audit work, GAO performs a vital oversight function by reviewing agency contract award decisions to make sure they follow the rules.

Any company that feels a contract was wrongly awarded can "protest" it to GAO, which reviews all of the facts with an eye toward maintaining healthy competition.

In this way, GAO acts as a referee of sorts, looking out for the taxpayer.

If GAO finds agencies have skirted the rules, they advise agencies to make a change.

Normally, when a protest is filed with GAO, the agency has to wait until the decision is reviewed before beginning work under the contract.

However, current law also allows an agency with an urgent need to override the requirement to wait, and can still begin performance under the contract.[7]

Even after the review is done, an agency is not bound to follow GAO's recommendations, and agencies occasionally disagree.

GAO's role is even more important when looking at agency decisions to award sole source contracts, and the current bill would prevent this oversight from taking place.

Cutting out GAO from reviewing contracts under this bill would harm taxpayers and undermine the goals of reform.

If anything, we should be enhancing GAO's role in this process to increase accountability, not cutting it down.

[7] 31 U.S.C.

The bottom line is that we, along with OMB and executive agencies are trying to get more competition of federal contracts, not less, and we need to keep moving in that direction.

My amendment removes both of these provisions, and ensures that we protect taxpayer dollars by using competition whenever possible, while still allowing for sole source contracts when appropriate under the existing rules.