

Procurement Priorities To Shift Under GOP Control

By **Jocelyn Allison**

Law360, New York (November 03, 2010) -- While Republican gains in Tuesday's midterm elections aren't likely to lead to major changes in the government's procurement policy, contractors could see priority shifts in Congress lead to greater scrutiny of defense cutbacks and in-sourcing, attorneys say.

With the Democrats' loss of control of the U.S. House of Representatives, contractors could see efforts to roll back some of President Barack Obama's initiatives in the government contracting arena over the past two years, including in-sourcing.

Opponents of in-sourcing are likely to get hearings in the House and possibly introduce legislation to reduce the scope of the in-sourcing effort and lift the ban on public-private competitions, Venable LLP partner Rob Burton said.

"Some small businesses have gone out of business, they have lost their contracts and employees to the federal government, and I believe this issue will get more attention and more public exposure with the new Congress," Burton said.

With Republicans intent on reducing the size of the federal government, cuts to the federal workforce are likely, which means there may be more opportunities down the road for contractors to fill the gaps, said Ken Weckstein of Brown Rudnick LLP.

"For government contractors, there probably won't be noticeable change, but in a year or two there actually may be some more opportunities as the federal government itself is cut back and work still needs to be done," said Weckstein, leader of the firm's government contracts practice.

In the defense arena, current efforts at acquisition reform are likely to continue, though the ousting of House Armed Services Committee chairman Ike Skelton and member Gene Taylor, both Democrats, could affect spending decisions, attorneys say.

Several major programs have been canceled or cut back under the Obama administration, including the U.S. Navy's CG(X), or next generation cruiser; the EPX, an intelligence-gathering aircraft; the F-22; and third-generation infrared surveillance, or 3GIRS.

"While it is too early to predict whether these or other programs may be reinstated, changes in House Armed Services Committee control and membership ... may affect the allocation of defense spending among major programs," said Richard Clifford, chair of Perkins Coie LLP's government contracts practice.

Recent efforts to drive efficiency at the U.S. Department of Defense, including achieving \$100 billion in overhead savings, jibe with Republican priorities to control spending, but they might have different ideas about where to cut the fat, attorneys say.

"Nobody is opposed to becoming more efficient," Weckstein said. "Where the rubber meets the road is where the efficiency is going to knock out a contract of someone in a district represented by a senator or congressman who doesn't want it knocked out, and that person makes a stink and it may not happen."

Many Republicans have stated that cuts to defense and veteran programs are off-limits, which will make it especially difficult for lawmakers to cut procurement dollars in 2011 given how much is spent in those areas, Foley & Lardner LLP attorneys George Ash and Sean Sabin said.

Plus, the Democrats still will control the Senate and the executive branch, and they will be unlikely to agree to the type of significant spending cuts that some Republicans have proposed, according to Ash and Sabin.

"Gridlock is the most likely result of the election and gridlock generally means no new programs get implemented and no current programs get cut," they said.

While it's unlikely there will be a major rollback of Obama's procurement initiatives, the push for increased regulation and compliance requirements for government contractors isn't likely to continue, attorneys say.

Measures that contractors view as overly intrusive, such as Congress making the Federal Awardee Performance and Integrity Information System public this year, aren't likely to get support moving forward, Richard Rector of DLA Piper said.

"I think there is a chance that some of the changes that we've seen in procurement law over the last few years, which have focused on transparency and increased visibility, I think maybe that will slow down a little bit," said Rector, chair of the firm's government contracts practice.

The Office of Federal Contract Compliance Programs, which has made an aggressive enforcement push under the Obama administration, might also be forced to slow down its efforts in light of budget constraints, Ogletree Deakins Nash Smoak & Stewart PC shareholder Scott Kelly said.

"Before you had OFCCP pursuing a number of new initiatives," Kelly said. "I think what they're going to have to do now is pick and choose and advance one initiative at a time," but the change won't "take the wind out of their sails," he said.

Despite the differing priorities of Republicans and Democrats, John Jensen of Pillsbury Winthrop Shaw Pittman LLP said he doubted a Republican-led House would have a substantially different approach to procurement policy than a Democratic one.

"Federal procurement policy, while the pendulum shifts over time, it's not one that I think necessarily changes course based on a change in the control of Congress," said Jensen, head of the firm's government contracts practice.

"There's constantly the drumbeat for procurement reform," he said. "The fact that the Republicans now have control of the House I don't think is going to alter that drumbeat."