



## Construction Industry Round Table

## Legislative News

A force for positive change in the design / construction industry

### 7/18/2016 – CIRT Urges Congress to Adopt Senate Language on Competition Issue in 2017 NDAA

As a founding member of the Business Coalition for Fair Competition (BCFC), CIRT joined the group to urge Congress to adopt a Senate provision in the final version of the 2017 National Defense Authorization Act (NDAA). The Senate-passed bill (S. 2943) includes Section 806 – repealing the temporary suspension of public-private cost competitions for conversion of Department of Defense functions to be performed by contractors. The House-passed Defense Appropriations Act, (H.R. 5293), not only does not include such language, but *actually* “goes the other way” with Section 10009, prohibiting funds to do public-private cost comparisons under the Office of Management and Budget Circular A-76.

Given that more than 500,000 *civilian* employees at the Department of Defense (DoD) are in positions that are “commercial” in nature, these government job functions duplicate and compete with the private sector, including small businesses. Current law prohibits the DoD from conducting public-private cost comparison competitions to determine whether these activities can be better performed by private sector contractors rather than the government bureaucracy.

Section 806 would repeal this unwise and costly prohibition, thus permitting implementation of the “Yellow Pages Test” – i.e., if an activity is performed by government employees, but private companies that do this work can be found in the Yellow Pages of the phone book, the activity should be subject to a competition to determine if the private sector is better, faster, cheaper. On the other hand, House Section 10009 re-imposes the moratorium and prohibits the “Yellow Pages Test”.

Since the two chambers have passed diametrically opposite views on how to approach public-private costs comparisons (under A-76), this matter will be resolved in a House-Senate Conference Committee on the 2017 NDAA.

If you have an interest in this matter, you can urge support of the Senate position (Section 806) [**see, next page for BCFC Talking Points**], to be included in the final version of the 2017 NDAA that is reported out for final passage by Congress by contacting your member of Congress, or the top four members leading the conference, who are:

Senator John McCain (R-AZ), Chairman, and Senator Jack Reed (D-RI), Ranking Member of the Senate Committee on Armed Services; and Representative Mac Thornberry (R-13th TX), Chairman, and Rep. Adam Smith (D-9th WA), Ranking Member of the House Committee on Armed Services



# Support the Free Enterprise System

*Urge House NDAA Conferees to Accept Senate Section 806*

*Urge Senate Defense Appropriations Conferees to  
Reject House Section 10009*

The Senate-passed National Defense Authorization Act (NDAA), S. 2943, includes section 806 -- repeal of temporary suspension of public-private competitions for conversion of Department of Defense functions to performance by contractors. The House-passed Defense Appropriations Act, H.R. 5293, includes section 10009, prohibiting funds to plan for, begin, continue, complete, process, or approve a public-private competition under the Office of Management and Budget Circular A-76.

More than 500,000 civilian employees of the Department of Defense (DoD) are in positions that are “commercial” in nature. These are government job functions that duplicate and compete with the private sector, including small business. Current law prohibits the DoD from conducting public-private cost comparison competitions to determine whether these activities can be better performed by private sector contractors rather than the government bureaucracy.

Section 806 repeals this unwise and costly law and permits implementation of the “Yellow Pages Test” – if an activity is performed in government, but private companies that do this work can be found in the Yellow Pages of the phone book, the activity should be subject to a competition to determine if the private sector is better, faster, cheaper. Section 10009 re-imposes the moratorium and prohibits the “Yellow Pages Test”.

Section 806 is in the Senate-passed NDAA, but is not in the House bill. Consequently, this matter will be resolved in a House-Senate Conference Committee. Section 10009 is in the House-passed Defense Appropriations bill, but is not in the Senate bill. Consequently, this matter will be resolved in a House-Senate Conference Committee.

Here are the facts:

- Activities subject to public-private competition result in an average savings of 30 percent.
- When the private sector wins, 71 percent of the successful firms are small business.
- According to an SBA study, small businesses have won 65 percent of the total number of competed contracts.

Join [BCFC](http://www.governmentcompetition.org) in a coalition letter to the House-Senate Conferees in support of keeping section 806 in the final National Defense Authorization Act (NDAA) and in support for rejecting section 10009 in the final Defense Appropriations bill. To sign onto the letter, contact John Byrd, Business Coalition for Fair Competition, (703) 787-6665 or email [jbyrd@jmpa.us](mailto:jbyrd@jmpa.us).