

Dispute Brews Over Changes To Commercial Acquisition Process

By ZACHARY FRYER-BIGGS

The U.S. Defense Department's legislative proposal that would eliminate "of a type" commercial acquisition is needed as contractors are refusing to provide information on costs and using the existing law as a "shield," a senior defense official said.

The current law allows contractors to avoid revealing details on cost if an item is deemed commercial, meaning it presumably already has a market value.

Responding to vocal concerns by contractors about the potential impact of the legislation on the streamlined commercial acquisition process, Shay Assad, the Pentagon's director of pricing, said DoD is looking to address complaints by acquisition officers that contractors are refusing to provide data, making an assessment of potential deals impossible.

"We're asking for this because we know it's being abused," Assad told Defense News. "The law enables contractors — and they have — to basically use it as a shield."

Sent to Congress as part of a batch of legislative proposals at the end of March, the proposal, which would affect acquisition at all federal agencies, is being discussed by Senate aides for potential inclusion in the upcoming defense authorization bill, sources said.

The proposed legislation would eliminate the Federal Acquisition Regulation language that permits items and services, regardless of whether they have ever been sold previously, to be considered "commercial." The

current regulation also allows items and services similar but not identical to those commercially available to be considered commercial.

The new law would push some items toward the typical defense acquisition process that involves more cost scrutiny, and help acquisition officers get the information they need about these kinds of items, Assad said.

"This is a very frustrating environment, because what ends up happening is that our folks are asking for information and the reality is that a number of the contractors that they're dealing with are basically saying, 'Well, this is a commercial item. I don't have to give you the information.'"

Assad said commercial companies have been cooperative, providing data on request, but that traditional defense companies have been resistant.

"It's really the traditional noncommercial company, the traditional defense contractor or some of the contractors underneath them, who don't have the pricing data to support it," he said. "If you cannot provide legitimate pricing information to substantiate your price, then don't claim that you have a commercial item, and that's what this is about. How can you claim that something is commercial if you've never sold it?"

Alan Chvotkin, executive vice president of the Professional Services Council, an industry association that has been working to stop DoD's proposal, said that while companies aren't required to provide the information, acquisition officers should use their position as a customer to en-

courage companies to voluntarily disclose cost details.

"The vendor can say no, but so can the contract officer," he said. "The officer can say, 'well, all right, if I can't make the determination that the price is fair and reasonable based on the data that you've given me, I'm not going to buy it.'"

Chvotkin said greater training of acquisition officers could combat the problem without a legislative change that would have substantial consequences.

"I don't accept that the fact that contracting officers aren't asking for the data means that we've got to change the definition," he said. "The department is underestimating the impact that language like that and definitional changes would have on the marketplace."

In particular, Chvotkin said the change could deter commercial companies from seeking defense business, as commercial acquisition is a much simpler contracting process. Items that would no longer be considered commercial would have to go through the traditional defense procurement procedure, keeping critical technology out of the hands of the war fighter, he said.

The interest in underlying cost is likely indicative of an interest in contractor margins, said Jim Hasik of Hasik Analytic.

"This sounds like a complaint about contractors' profits, because if we're looking for information on their underlying costs, they want to get at that so that they can claim that they're taking too big a profit margin," he said. "Is there another reason?"

Assad said the proposal was not motivated by any desire to cut margins.

"This is all about how do we make sure that we're paying a fair and reasonable price," he said. "It's that simple. There's nothing beyond it."

But beyond the issue of cost, the legislative proposal would eliminate a judgment call about what is commercial and what is a fair price, an indication of a lack of confidence in contracting personnel, said Steve Grundman, Lund Fellow at the Atlantic Council and founder of Grundman Advisory.

"It requires a contracting officer to exercise some judgment," he said. "If you don't have confidence that you have decision-makers in the acquisition system who can make the decision, then you fall back on a rule, take the 'of-a-type' out, no discretion allowed."

A legislative solution has been considered before, but given the current budget debate, the idea is getting greater support as a means of saving defense funds.

Assad said the vocal response against the proposal doesn't make sense to him.

"Right now, there's a little bit of hysteria going on," he said. "Some folks out there are saying the world is going to come to an end if we eliminate of-a-type, and I don't get it."

Assad said the effort boils down to maximum taxpayer dollars.

"What we're trying to get at is a reasonable and responsible discussion about why we should pay what we're paying." □

Email: zbiggs@defensenews.com.

ISRAEL-U.S.

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tilla of light between the positions of Republicans and Democrats on the issue of the security of Israel," said Sen. Johnny Isakson, R-Ga. "I am proud to join my colleagues on both sides of the aisle, in both chambers, in reaffirming the U.S. commitment to Israel through this critically important legislation."

The bill was introduced by Sen. Barbara Boxer, D-Calif.

In addition to extending U.S. government-backed loan guarantees to Israel through 2015, both bills urge expanded technology sharing and joint military exercises.

Specifically, lawmakers call for the U.S. to:

- Expand already-close intelligence cooperation, including satellite intelligence.

- Provide through possible lease arrangements new weaponry, including air refueling tankers, missile defense capabilities and "specialized munitions."

- Improve the process for Israel's purchase of F-35 Joint Strike Fighters to allow for greater cost efficiencies and "on-time delivery."

- Expand joint military exercises to address emerging com-

mon threats.

- Offer the Israel Air Force additional training opportunities in the U.S. to compensate for Israel's limited air space.

- Encourage an expanded role for Israel within NATO, "including enhanced presence at NATO headquarters and exercises."

- Make surplus defense gear and services available to Israel, particularly those resulting from the U.S. pullout from Iraq.

- Strengthen efforts to prevent weapon smuggling into Gaza and threats infiltrating from the Sinai peninsula.

- Allocate additional weaponry and munitions and extend the time allocated for U.S. war reserves stockpiled in Israel.

- Expand bilateral cooperation in homeland security, counterterrorism, maritime security, energy, cybersecurity and related areas.

- Take action to integrate Israel into the U.S. defense network for the eastern Mediterranean.

Finally, the bill passed by the House authorizes Israel's expanded use of grant military aid to be applied more broadly for commercial rather than foreign military sales.

The enhancements come in addition to more than \$3 billion in an-

nual U.S. grant military aid to Israel and a separate bill pending in both houses of Congress for another \$680 million in multiyear funding for Israel's Iron Dome rocket defense system.

Under an agreement signed May 17 by U.S. Defense Secretary Leon Panetta and Israeli Defense Minister Ehud Barak, Israel will receive \$70 million of the planned Iron Dome funding bonus by the end of October.

"Security for Israel and defense of the Jewish homeland is not a partisan political issue; it's an American imperative," said Rep. Howard Berman, D-Calif., lead sponsor of the Iron Dome Support Act.

Right to Self-Defense

Different versions of the security cooperation bill reaffirm U.S. government policy to "support Israel's inherent right to self-defense" and to veto "any one-sided anti-Israel resolutions" in the U.N. Security Council.

The bills also reiterate U.S. policy obligations to "assist Israel with its ongoing efforts to forge a peaceful, negotiated settlement of the Israeli-Palestinian conflict" and to "encourage Israel's neighbors to recognize Israel's right to exist as



U.S. DEFENSE DEPARTMENT

More To Give: Among other things, U.S. lawmakers want the U.S. to improve the process for Israel's purchase of F-35 Joint Strike Fighter aircraft.

a Jewish state."

Neither bill mentions long-standing U.S. policy objections to Israel's expanding settlement of disputed territory in the West Bank and East Jerusalem, which many in the region and beyond view as a key obstacle to normalized ties to the Jewish state.

Invoking nearly identical language, House and Senate lawmakers underscored Washington's commitment to Israel's so-called qualitative military edge in light of new and escalating threats. Both

versions urge the administration to provide "the military capabilities necessary" to deter and defend against any threats, including increased development and production of joint missile defense systems.

Within 180 days of its enactment into law, the act directs U.S. President Barack Obama to report on specific steps his administration is taking to preserve Israel's qualitative military edge. □

Email: bopallrome@defensenews.com.