THE BEST SERVICES AT THE LOWEST PRICE: MOVING BEYOND A BLACK AND WHITE DISCUSSION OF OUTSOURCING

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SUBCOMMITTEE ON TECHNOLOGY AND PROCUREMENT POLICY

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COMMITTEE ON GOVERNMENT REFORM

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CONTENTS

Page

Hearing held on June 28, 2001 1

Statement of:

Gutierrez, Hon. Luis V., a Representative in Congress from the State of Illinois 32

Harnage, Bobby, national president, American Federation of Government Employees; Colleen Kelley, national president, National Treasury Employees Union; Patricia Armstrong, member, Federal Managers Association; Paul Lombardi, president and chief executive officer, Dyncorp, Professional Services Council; Timothy Psomas, president, Psomas, American Consulting Engineers Council; and Colonel Aaron Floyd (ret.), president AFB Enterprises, Inc., retired Military Officers Association 112

Holman, Barry, Director, Defense Capabilities and Management, U.S. General Accounting Office; Angela Styles, Director, Office of Federal Procurement Policy, Office of Management and Budget; and Ray Dubois, Under Secretary of Defense for Installations and Environment, U.S. Department of Defense 50

Sessions, Hon. Pete, a Representative in Congress from the State of Texas 5

Wynn, Hon. Albert, a Representative in Congress from the State of Maryland 13

Letters, statements, etc., submitted for the record by:

Armstrong, Patricia, member, Federal Managers Association, prepared statement of 182

Davis, Hon. Thomas M., a Representative in Congress from the State of Virginia, prepared statement of 2

Dubois, Ray, Under Secretary of Defense for Installations and Environment, U.S. Department of Defense, prepared statement of 85

Floyd, Colonel Aaron, (ret.), president AFB Enterprises, Inc., retired Military Officers Association, prepared statement of 219

Gutierrez, Hon. Luis V., a Representative in Congress from the State of Illinois, prepared statement of 35

Harnage, Bobby, national president, American Federation of Government Employees, prepared statement of 115

Holman, Barry, Director, Defense Capabilities and Management, U.S. General Accounting Office, prepared statement of 53

Kelley, Colleen, national president, National Treasury Employees Union, prepared statement of 174

Lombardi, Paul, president and chief executive officer, Dyncorp, Professional Services Council, prepared statement of 196

Psomas, Timothy, president, Psomas, American Consulting Engineers Council, prepared statement of 212

Sessions, Hon. Pete, a Representative in Congress from the State of Texas, prepared statement of 9

Styles, Angela, Director, Office of Federal Procurement Policy, Office of Management and Budget, prepared statement of 77

Turner, Hon. Jim, a Representative in Congress from the State of Texas, prepared statement of 43

Waxman, Hon. Henry A., a Representative in Congress from the State of California, prepared statement of 48

Wynn, Hon. Albert, a Representative in Congress from the State of Maryland, prepared statement of 16

THE BEST SERVICES AT THE LOWEST PRICE: MOVING BEYOND A BLACK AND WHITE DISCUSSION OF OUTSOURCING

THURSDAY, JUNE 28, 2001

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TECHNOLOGY AND PROCUREMENT POLICY,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:15 p.m., in room 2154, Rayburn House Office Building, Hon. Thomas M. Davis (chairman of the subcommittee) presiding.

Present: Representatives Tom Davis of Virginia, Jo Ann Davis of Virginia, Horn, Turner, Kanjorski, Mink, Waxman, Cummings and Kucinich.

Staff present: Melissa Wojciak, staff director; Amy Heerink, chief counsel; George Rogers, counsel; Victoria Proctor, professional staff member; Jack Hession, communications director; James DeChene, clerk; Phil Barnett, minority chief counsel; Michelle Ash, minority counsel; Mark Stephenson, minority professional staff member; and Jean Gosa, minority assistant clerk.

Mr. TOM DAVIS OF VIRGINIA. If there is no objection, I'm going to move ahead with our first panel and then we will give opening statements, because I know some of you have other things to do, and we appreciate you being here.

Let me start with Mr. Sessions, and then Mr. Wynn, we'll go to you. You have a major piece of legislation you sponsored, and then we'll move to you, Mr. Gutierrez, and thank you for being with us.

[The prepared statement of Hon. Thomas M. Davis follows:]

OPENING STATEMENT OF CHAIRMAN TOM DAVIS

SUBCOMMITTEE ON TECHNOLOGY AND PROCUREMENT POLICY OVERSIGHT HEARING

THE BEST SERVICES AT THE LOWEST PRICE: MOVING BEYOND A BLACK-AND-WHITE DISCUSSION OF OUTSOURCING

JUNE 28, 2001

Good afternoon. I'd like to welcome everyone to today's oversight hearing about outsourcing in the federal government. In light of the recent creation of the General Accounting Office (GAO) Commercial Activities Panel, I decided to call this hearing to review whether or not outsourcing is an effective means to enhance cost savings and efficient delivery of services, while ensuring the equitable treatment of federal employees. We will also take a look at federal agencies' implementation of the Federal Activities Inventory Reform Act (FAIR).

Over the years, the executive branch has emphasized spending reductions and focused on maximizing efficiency in the federal government. The introduction of competition into the procurement process has played a decisive role in creating the incentives necessary to achieve cost-savings and improve efficiency. The executive branch has encouraged outsourcing by federal agencies as a way to purchase commercially available goods and services from the private sector instead of competing against its citizens.

In 1966, the Office of Management and Budget (OMB) formalized this policy in Circular A-76. The subsequent supplemental handbook explains the procedures for conducting cost comparison studies through managed competitions to determine whether an agency's commercial activities should be performed in-house by federal employees, by another federal agency through an inter-service support agreement, or by contractors.

GAO has reported that the policy results in cost-savings in the Department of Defense

(DOD). However, most other federal agencies choose not to implement A-76 studies. Have these agencies found alternatives to A-76? Are they still realizing cost-savings while improving their delivery of services? It is understandable that many agencies may shy away from using the A-76 process; it is lengthy, complex, and burdensome. And participants in the federal workforce, as well as the private sector, have raised valid concerns which we will hear more about later.

As we review the process today, I think we need to keep in mind the federal government's responsibility to the taxpayers. The government should strive to provide taxpayers with the best quality services at the lowest price. So, the first question I pose to the our witnesses today is should lowest price continue to be the deciding factor for job competitions, or is there any benefit to using best value as the benchmark?

I have several other concerns that I hope the witnesses can also address:

First, federal employees are at a disadvantage during A-76 cost comparison studies because they are not adequately trained to write Performance Work Statements. Additionally, if the contract is awarded to the private sector, the federal employees are seldom trained to write contracts and effectively manage them in order to protect the taxpayers' interests.

Second, the lengthy A-76 process creates uncertainty among the federal employees whose jobs are being competed. Frequently, it can have such a demoralizing effect that our best-skilled and dedicated employees look elsewhere for work. Since the federal government workforce is dwindling rapidly and nearly 50% of federal employees are eligible to retire by 2005, it is imperative that the government establish initiatives to prevent the unnecessary loss of federal workers.

And third, there is a perception among some contractors that costs, such as overhead, are calculated differently in the private sector from the federal government, and therefore, not enough accurate cost information is available to ensure fair cost comparisons. And, after a contract has been awarded, there is some concern that the government accounting system is not advanced enough to accurately track cost-savings.

The A-76 process is broken. But, what can be done to fix it? To help in this regard, section 832 of the Floyd D. Spence National Defense Authorization Act for 2001 mandates GAO convene a panel of experts to study the policies and procedures governing the transfer of the federal government's commercial activities from its employees to contractors. The panel will report to Congress in May 2002 with recommendations for improvements. I look forward to the panel's report.

Now, I would just like to reiterate that the government's job is to provide taxpayers with the best value for their money. It is neither our responsibility to protect jobs, nor to outsource them.

In addition to our examination of outsourcing, I think we should reevaluate civil service rules and employee compensation as part of the larger human resources crisis facing the federal government today.

My colleague, Representative Albert Wynn, introduced H.R. 721, the Truthfulness, Responsibility, and Accountability in Contracting Act, which would place a moratorium on new contracting and prohibit federal agencies from exercising options, extensions, and renewals of current contracts. It affects all contracting at every level of government, and there is no termination date for this bill. The TRAC Act is one proposed solution. It is a result of the frustrations felt by public sector employees in a process that, in my opinion, needs substantial revamping.

But, an adversarial approach to federal government outsourcing raises other concerns about the continuity of services delivery to taxpayers. Let's focus our attention on *constructive* reforms to improve the government's performance of its core functions. How can it provide the greatest efficiency and highest quality services at the best value to taxpayers? We need to examine these issues in the context of the federal government's human capital management crisis, and determine what initiatives and reforms must be implemented to recruit and retain well-qualified employees.

And finally, while the FAIR Act does not require that agencies outsource commercial functions, it is a potentially powerful strategic tool to help agencies identify possible opportunities for outsourcing and/or management reform. But, I am alarmed by the OMB's recent directive that in fiscal year 2002, agencies are required to outsource 5% of federal jobs designated as "not-inherently governmental" and listed on the agencies' inventories under the FAIR Act. And just last week, OMB added a directive requiring 10% of these jobs be outsourced in fiscal year 2003. No justification for these percentages has been offered to date. I remain unconvinced that *arbitrarily* assigning federal agencies target figures is the best means to ensure cost-savings in the government. I expect OMB will clarify this directive today.

Mr. TOM DAVIS OF VIRGINIA. Pete, go ahead.

STATEMENT OF HON. PETE SESSIONS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. SESSIONS. Thank you, Mr. Chairman and members of this subcommittee. It's good to be back with you. Ms. Davis, it is good to see you here also.

Mr. Chairman, thank you so very much for the opportunity to appear before this subcommittee this afternoon. I commend each of you for taking time to meet with this group of people, including this panel that are here today on such an important issue, and we look forward to your deliberations and the outcome on this issue.

First, I want to say that I was one of those who is the sponsor of the FAIR Act, because the American people deserve to know that their hard earned tax dollars are being spent as effectively and wisely as possible. The FAIR Act was therefore the first step in a process of defining just what is government work, and also what might be considered competitive. Among what things those activities might logically be reviewed for alternate delivery strategies also. It was, and I believe remains an important first step for this government, like any other institution, public or private, simply cannot be expected to engage in such fundamental self-analysis and challenge on its own.

In the private sector, such exercises are routine and driven by the competitive nature of the marketplace. Those same market forces are too absent from the government environment, and thus the FAIR Act is a tool to help us move forward and make progress, and I applaud this administration for its unyielding commitment to ensuring that the results of the FAIR Act inventories do not sit on the shelf, but rather capitalize on to help ensure that the taxpayers of our Nation, in fact, are getting the best value for their hard-earned tax dollars.

Mr. Chairman, I think competition is a good thing and a healthy thing. It drives innovation and performance. It drives efficiency and, in a high performing organization, it also drives employee satisfaction and morale. I also believe in the tenets of the government's longstanding policy of relying whenever possible on the competitive private sector for the provision of goods and services. That policy is built on straightforward logic that is every bit as relevant today as it was more than 50 years ago.

The private sector, not the government, is the engine that drives our economy. The creation and expansion of private sector employment, investment and profit is what makes this engine run. Therefore, where the government is performing work that a competitive private sector could perform, why wouldn't you want to allow competition to exist? Why wouldn't we want to seek and embrace the technology and innovations of the private sector? The results work to everyone's benefit. The government improves its efficiency and quality of service, the taxpayer gets assurance that their tax dollars are being wisely managed, and our economy grows. Quite frankly, I see no downside to that equation.

This is not to say that everything done by the government that is not strictly defined as inherently governmental must simply be outsourced. In some cases, some form of competition between the

existing work force and the private sector bidders does make sense, but in others, such competition are neither beneficial nor possible. Moreover, while I fully agree that the extraordinary men and women in our government and the work force, that they deserve to be treated with respect and fairness in recognition for the work that they do for this country, I do not agree that such treatment must be automatically extended to arbitrarily protecting Federal jobs.

After all, when the functions are outsourced, the evidence is clear that few employees end up without a job and the government accounting office and Rand Corp. and others have made it clear that there is no evidence that they end up sharply reducing wages and benefits. Indeed, we have had testimony in this subcommittee that the opposite can happen.

So I see outsourcing as a tool, one that the private sector uses every day and that we have responsibility to utilize. We have no right to arbitrarily perform work in the government if that work is neither inherently governmental nor of the kind that must absolutely be performed by the organic work force. And we have a responsibility as stewards of the public trust to aggressively utilize competition to ensure that we're fulfilling faithfully our roles.

Mr. Chairman, I must admit that I am sometimes amazed at this debate and the rhetoric associated with it. After all, this is not an academic exercise. It is a policy discussion that has the benefit of years of experience and data in support. That data and experience are eminently clear. First, competition saves money. Although you don't need a study to know it, it is the foundation of our whole economic system.

Second, the government is in an ever-growing danger of falling further and further behind the private sector in the use and application of innovative processes and technology.

Third, as the Federal work force grays and large percentages approach retirement, this is a movement in history where we can more aggressively than ever look at alternate sourcing strategies and change the very culture of government.

Some would argue that we don't really know what outsourcing saves the government, that there is somehow question of accountability here, but such a suggestion ignores the facts. Fact one is that we do know at the local activity level exactly what is being spent on outsource services. Payments are subject to a wide range of audits, validation and even more.

Unfortunately, the same cannot be said for our own internal government operations. How many agencies have been able to comply with the Chief Financial Officers Act? How many elements within the government have true activity based costing that enables full visibility into all costs? The answer to both questions is few. As the Senate Governmental Affairs Committee pointed out in a recent audit, and as GAO and others have repeatedly reminded us, we have a serious management problem in the government. It inhibits our ability as the representatives of the American taxpayer to account for ways in which tax dollars are spent. The problem with accountability lies not with our contract work, rather with our own internal operations.

With all due respect to my colleague and my friend from Maryland, Mrs. Morella—excuse me, yes, Mrs. Morella, who is a friend of mine, that's why I am so opposed to H.R. 721, and I am sorry that she is not here today, but I am sure she will get the message.

Mr. TOM DAVIS OF VIRGINIA. Mr. Wynn's a friend of yours, isn't he?

Mr. SESSIONS. And Mr. Wynn is also.

Mr. TOM DAVIS OF VIRGINIA. Just want to get that on the record.

Mr. SESSIONS. Mr. Wynn is a friend of mine. The so called TRAC Act, it completely ignores the tremendous problems associated with internal accountability and assumes problems with accountability in our contracted work that simply do not exist. In addition, the bill creates onerous requirements that would make any further outsourcing extremely difficult. It would do so by subjecting every single contract, modification, task order or option to a public-private competition, regardless of whether the government needs to perform the work involved or whether the work force exists or whether it even needs to be hired to do so.

The TRAC Act is a solution without a problem. It flies in the face of all the acquisition reform that we have made over the last 6 to 8 years and would limit Federal agency managers flexibility as they try to carry out their mission. The bottom line is that the bill amounts to a complete moratorium on all contracting efforts. If we really want accountability, I would suggest that the best way to achieve it would be to subject every commercial activity in the government to the same kinds of competitive pressures, accounting demands and performance requirements that are contracted work subjected to. That would do a lot more good for the American taxpayer than the current bill that we are discussing today.

The government is not a business, nor can it be run exactly as one would run a business, but we can learn from the commercial sector. We can and should aggressively compete, and where appropriate, directly outsource commercial activities performed by the government so that our work force can focus on its true core competencies. We can and we should outsource and include competition as a tool that we cannot only use to enable improved performance, but we can also reduce costs and access to innovation, but also as tools through which the government appropriately supports and assists the further growth and strength of our national economy.

Mr. Chairman, I will end by saying this, that the FAIR Act was a bill that we discussed across this committee and in this Congress and it was debated in negotiation with the former Clinton administration. It was one that was worked hard for a compromise and one that was hewn for success, and I believe that this new bill that we are talking about today would not only take that carefully crafted opportunity that we had and would do away with it, but it would lead this body to believing that what we need to do is invest more and more money in government without seeing the outcomes that would be based from our tax dollars.

Thank you so much for allowing me the time.

Mr. TOM DAVIS OF VIRGINIA. Mr. Sessions, thank you. I understand you may have to leave, and feel free to leave if we don't get there for questions.

Mr. SESSIONS. Thank you so very much.

[The prepared statement of Hon. Pete Sessions follows:]

Statement of the Honorable Pete Sessions (TX-5)
House Government Reform Technology and Procurement Policy Subcommittee
The Honorable Tom Davis, Chairman
June 28, 2001

Mr. Chairman, thank you very much for the opportunity to appear before your committee this afternoon. I commend you for taking the time to delve into such an important issue and look forward to the outcome of your deliberations.

~~I will be brief and to the point~~.

First, I was one of those who sponsored the FAIR Act because the American people deserve to know that their hard-earned tax dollars are being spent as efficiently and wisely as possible. The FAIR Act was, therefore, the first step in a process of defining just what it is that government is doing, and what among those activities might logically be reviewed for alternative delivery strategies.

It was and I believe remains an important first step because the government, like any other institution public or private, simply cannot be expected to engage in such fundamental self-analysis and challenge on its own. In the private sector such exercises are routine and driven by the competitive nature of the marketplace. Those same market forces are too absent from the government environment, and thus the FAIR Act is a tool to help move that process forward.

And I applaud the Administration for its unyielding commitment to ensuring that the results of the FAIR Act inventories do not sit on a shelf but are, rather, capitalized on to help ensure that the taxpayers of our nation are in fact getting the best value for their hard earned tax dollars.

You see, Mr. Chairman, I think competition is a good thing, a healthy thing. It drives innovation and performance, it drives efficiency, and, in a high performing organization, it also drives employee satisfaction and morale. I also believe in the tenets of the government's longstanding policy of relying, wherever possible, on the competitive private sector for the provision of goods and services. That policy is built on straightforward logic that is every bit as relevant today as it was more than 50 years ago.

The private sector, not the government, is the engine that drives our economy. The creation and expansion of private sector employment, investment and profit is what makes that engine run. Therefore, where the government is performing work that a competitive private sector could perform, why wouldn't you want to allow competition to exist? Why wouldn't you want to seek and embrace the technology and innovations of the private sector? The results work to everyone's benefit. The government improves its efficiency and quality of service; the taxpayer gets assurance that their tax dollars are being wisely managed; and our economy grows. I see no downside in that equation. None whatsoever.

This is not to say that everything done by the government that is not strictly defined as inherently governmental must simply be outsourced. In some cases, some form of competition between the existing workforce and the private sector bidders might make sense. But in others, such competitions are neither beneficial nor possible. Moreover, while I fully agree that the extraordinary men and women in our government workforce deserve to be treated with respect and fairness, in recognition of what they do for our nation, I do not agree that such treatment must automatically extend to arbitrarily protecting federal jobs.

After all, even when functions are outsourced, the evidence is clear that few employees end up without a job; and the General Accounting Office, Rand Corproration and others have also made clear that there is also no evidence that they end up with sharply reduced wages and benefits. Indeed, just the opposite can happen.

So I see outsourcing as a tool, one the private sector uses every day, that we have a responsibility to utilize. We have no right to arbitrarily perform work in government if that work is neither inherently governmental nor of the kind that must absolutely be performed by the organic workforce. And we have a responsibility, as stewards of the public's trust, to aggressively utilize competition to ensure that we are fulfilling faithfully our roles.

Mr. Chairman, I must admit I am also sometimes amazed at this debate and the rhetoric associated with it. After all, this is not an academic exercise; it is a policy discussion that has the benefit of years of experience and data in support. That data and experience are eminently clear: first, competition saves money...although you don't need a study to know that; it is the foundation of our whole economic system.

Second, the government is in ever-growing danger of falling further and further behind the private sector in the use and application of innovative processes and technologies, not to mention investments in people. Third, as the federal workforce grays and large percentages approach retirement, this is a moment in history when we can more aggressively than ever look at alternative sourcing strategies and change the very culture of government.

Some would argue that we don't really know what outsourcing saves the government, that there is somehow a question of accountability here. But such a suggestion ignores the facts. Fact one is that we do know, at the local activity level, exactly what is being spent on outsourced services. Payments are subject to a wide range of audit requirements, validations and more.

Unfortunately, the same cannot be said for our own internal government operations. How many agencies have been able to comply with the Chief Financial Officers Act? How many elements within government have true, activity-based costing, that enables full visibility into all costs? The answer to both questions is very few. As the Senate Government Affairs Committee pointed out in a recent report, and as GAO and others have repeatedly reminded us, we have a serious management problem in government. It inhibits our ability, as the representatives of the American taxpayer, to account for the ways in which tax dollars are spent. The problem with accountability, Mr. Chairman, lies not with our contracted work; rather, it lies with our internal operations.

With all due respect to my colleague and friend from Maryland, that is why I am so opposed to H.R. 721, the so-called "TRAC Act". It completely ignores the tremendous problems associated with internal accountability and assumes problems with accountability in our contracted work that simply do not exist. In addition, the bill creates onerous requirements that would make any further outsourcing extremely difficult. It would do so by subjecting every single contract, modification, task order or option to a public-private competition, regardless of whether the government needs to perform the work involved or whether the workforce exists, or could even be hired to do so.

The TRAC Act is a solution without a problem. It flies in the face of all of the acquisition reform over the last 6-8 years and would limit federal agency managers' flexibility as they try to carry out their missions. The bottom line is that this bill amounts to a complete moratorium on all contracting efforts. If we really want accountability, I would suggest that the best way to achieve it would be to subject every commercial activity in government to the same kinds of competitive

pressures, accounting demands, and performance requirements that our contracted work is subjected to. That would do a lot more good for the American taxpayer than the bill as currently constructed.

Mr. Chairman, the government is not a business nor can it be run exactly as one would run a business. But we can learn much from the commercial sector. We can and we should aggressively compete, and where appropriate, directly outsource commercial activities performed by the government so that our workforce can focus on its true core competencies. We can and we should see outsourcing and competition as tools that not only enable improved performance, reduced costs, and access to innovation, but also as tools through which the government appropriately supports and assists the further growth and strength of our national economy.

Once again Mr. Chairman, my thanks for your invitation to join you this morning. I thank you as well for your leadership on this important issue and look forward to working with you and the other members of the committee.

Mr. TOM DAVIS OF VIRGINIA. Now, I'm going to call on your friend, Mr. Wynn, to speak. Our welcome and thanks for being here, and thank you for your interest in this subject.

STATEMENT OF HON. ALBERT WYNN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. WYNN. Thank you very much, Mr. Chairman. I am not always on this side of the table. But I am very delighted to be here. I thank you for the opportunity to testify as well as to be before our ranking member and my Democratic colleagues today.

I also want to take this opportunity to thank the Federal employees who are here because all too often we talk about Federal employees, you don't get to see them enough. So they're here today, here and in the hallway and they have a very great interest in this issue because they are providing the services that run our government, and in my opinion they're doing a very good job.

We're here today to talk about privatization, outsourcing, or more plainly, moving services previously performed by government employees out to the private sector to for-profit companies. I'm very pleased to discuss how we can assure that the American taxpayer receives the best value in the provision of these government services. One approach to assuring this best value is embodied in Truthfulness, Responsibility and Accountability and Contracting Act, H.R. 721, commonly known as the TRAC Act, which I have introduced and which, to date, enjoys a bipartisan support of more than 185 of our colleagues.

As my good friend, Mr. Sessions, indicated, in almost every endeavor of human commerce, competition yields the best quality and the best value and that's essence of the TRAC Act to ensure there's a fair competition between hardworking in-house Federal employees and private contractors to determine who can really perform and provide the best value to the American public, both quantitatively in terms of dollars and qualitatively in terms of the service provided.

In recent years there seems to be a notion that has gained momentum that outsourcing is the most cost efficient approach providing government services. Unfortunately, to date there's been no empirical evidence to prove this, either the quantitatively or qualitatively, and thus I really question the underlying assumption.

Supporters of contracting out, as you heard, claim that it saves money for the taxpayers. Well, where is the evidence? GAO has yet to provide concrete evidence that such savings exists, and after several years and billions of dollars of outsourcing, GAO cannot say that taxpayers are well served. Even my Republican colleagues noted in the fiscal year 2000 defense appropriations bill, there is no clear evidence that current DOD outsourcing and privatization efforts are reducing the cost of support functions within DOD, with high cost contractors simply replacing government employees. In addition, the current privatization efforts appears to have created serious oversight problems for DOD, especially in those cases where DOD has contracted for financial management and other routine administrative functions.

In the absence of accountability and congressional oversight, the problem caused by indiscriminate contracting out and privatization

will grow worse in both DOD and other agencies. The TRAC Act basically prohibits any Federal agency from making a decision to privatize, outsource, contract out or contract for the performance of a function currently performed by such agency unless five requirements are met. I submit these are very reasonable and prudent requirements.

Prior to contracting out, agencies would have to meet the following five objectives. First, many of the safeguards against indiscriminate contracting out such as effective contract administration to reduce waste, fraud and abuse statutes prohibiting the management of Federal employees by arbitrary personnel ceilings, as well as provision of the Federal Workforce Restructuring Act to prohibit replacing displaced Federal employees with contract employees have not been followed. Commitments to Federal employees to make contracting out and privatization more equitable have not been kept.

The TRAC Act would temporarily suspend new contracts until these oversights have been corrected and we have in place a procedure which effectively reviews this issue. This will give agencies an incentive to correct these longstanding problems. There would be exceptions for national security, patient care, blind and handicap contract and situations involving economic harm. So the suggestion that somehow the TRAC Act would grind government to a halt is simply not true.

Second, the TRAC Act would require the establishment of systems to monitor the cost efficiency and savings of this outsourcing. Currently agencies do not monitor the cost or the efficiency of billions of dollars in contracting out and privatization. There's no oversight of contracts after they have been awarded to compare past costs with current costs, which is to say that the contract goes out and there's an assumption that this is the most efficient way to do business, but yet there is no monitoring to see if there is actual savings.

The third requirement of the bill, it will allow agencies to hire additional Federal employees when they can do the work more economically and efficiently than private contractors. There are instances when if an agency had been allowed to hire three or four more additional personnel, they could have done the work more cheaply than the outside contractor.

The fourth provision of the act requires that Federal employees and private contractors have the same level of public-private competition, and here we get back to that notion. Public-private competition should work both ways. Contractors compete for Federal Government jobs. Federal employees ought to be able to compete for their own jobs.

Right now there are twice as many contract employees working on the Federal payroll as Federal employees, and they perform this work without any competition. So for those who believe we need more competition, I suggest the TRAC Act provides it.

Fifth, the TRAC Act requires Office of Personnel Management and Department of Labor to compare the wages and benefits of Federal employees and their contractor counterparts. The point here is it is not good policy to contract out simply to avoid paying health benefits, and we ought to analyze this issue to compare

whether or not we're handing government work to contractors who simply are able to low ball because they don't offer reasonable benefits.

I believe the TRAC Act addresses the major concerns that we in government have about quality and taxpayer value without interfering with the operation of government. As I indicated, the suspension of contracts is prospective only, only affecting new contracts. Any existing contract would not be interrupted. The suspension is only temporary until the requirements of reasonable oversight are put in place and at that point the agency may proceed. There has to be a competition, a simple competition analyzing whether we can do a better job in government or outside of government.

Now, one of the criticisms that you will hear is that the A–76 circular, which is a vehicle for this competition, is too burdensome and that may be, but then what we ought to do is focus on streamlining the A–76 procedure rather than eliminating the competition between Federal employees and private sector employees. We have a responsibility to the taxpayers to ensure that they get best value, and the only way we can do this is through a real competitive analysis of what Federal Government employees can provide in terms of quality and cost with that which is provided on the outside by the private sector.

I believe that the TRAC Act is a reasonable approach to solving this problem. I believe it shows respect for the efforts that have already been made by very loyal and committed Federal employees, and I hope that this committee, in analyzing this bill, other pieces of legislation, as well as the GAO study that is currently underway, would keep in mind that we do need a fair competition and we do need significant oversight of the contracting out that's occurring, and that ultimately, our responsibility is not to the notion of outsourcing or the philosophy of outsourcing, but to assuring best value for the taxpayer.

Thank you for your time, Mr. Chairman.

Mr. TOM DAVIS OF VIRGINIA. Mr. Wynn, thank you very much for your interest in this subject.

[The prepared statement of Hon. Albert Wynn follows:]

STATEMENT BY

THE HONORABLE ALBERT R. WYNN
U.S. REPRESENTATIVE
4TH DISTRICT, MARYLAND

BEFORE THE

HOUSE COMMITTEE ON GOVERNMENT REFORM
TECHNOLOGY AND PROCUREMENT POLICY
SUBCOMMITTEE

H.R. 721
THE TRUTHFULNESS, RESPONSIBILITY AND ACCOUNTABILITY IN CONTRACTING ACT

JUNE 28, 2001

Mr. Chairman and members of the subcommittee, thank you for the invitation and opportunity to testify before you this afternoon concerning federal government outsourcing . . . privatization . . . contracting out . . . or more plainly, moving services previously performed by government employees to private sector for profit companies.

I am pleased to discuss how we can assure that the American taxpayer receives the best value in the provision of government services. One approach to this issue is embodied in the Truthfulness, Responsibility, and Accountability in Contracting Act, H.R. 721, The TRAC Act, which I have introduced, and which to date enjoys the bipartisan support of more than 185 of our colleagues.

In almost every area of human endeavor and commerce, competition yields the best quality and the best value. This is the essence of the TRAC Act — to ensure that there is fair competition between in-house federal employees and private contractors, to determine who can provide the best value to the American public both quantitatively and qualitatively.

In recent years, the notion that outsourcing is the most cost efficient approach to providing government services has gained considerable momentum. Unfortunately, to date, there has been no empirical evidence to prove this, either quantitatively or qualitatively. Thus, I have for some time questioned the assumption underlying wholesale outsourcing.

Supporters of contracting out claim that outsourcing generates savings for taxpayers. The GAO takes a different view. Congressional auditors noted, ***"While our work has shown that savings are being realized from individual A-76 studies, overall program costs to date are still exceeding realized savings. The President's Fiscal Year 2001 budget submission reports that during fiscal years 1998 and 1999, the overall costs of the A-76 program have exceeded the expected savings."*** (GAO Report, August 8, 2000: DoD Competitive Sourcing: Some Progress, but Continuing Challenges Remain in Meeting Program Goals) Thus, even after several years and billions of dollars in out-sourcing, the GAO cannot say that taxpayers have been well served. I would suggest that this shows: 1) We should be careful about setting large and arbitrary goals for A-76 reviews. 2) Any savings come from competitions, not conversion, so allow federal employees to compete, as required by the TRAC Act. 3) Let's use the public-private competition system for new work and renewable contractor work, as required by the TRAC Act.

As the Republican majority wrote in the FY 2000 Defense Appropriations bill (H.R. 2561), ***"There is no clear evidence that the current DoD outsourcing and privatization effort is***

reducing the cost of support functions within DoD with high-cost contractors simply replacing government employees. In addition, the current privatization effort appears to have created serious oversight problems for DoD, especially in those cases where DoD has contracted for financial management and other routine administrative functions." In the absence of accountability and congressional oversight, the problems caused by the indiscriminate contracting out and privatization will grow worse, in DoD and other agencies.

The Truthfulness, Responsibility, and Accountability in Contracting Act prohibits any Federal agency from making a decision to privatize, out source, contract out, or contract for the performance of a function currently performed by such agency, or to conduct a study to convert a function from Federal to contractor performance for new contractual services unless the five requirements of this bill are met.

Prior to contracting out agencies would have to meet the following requirements set forth in this legislation:

- First, many of the safeguards against indiscriminate contracting out; such as effective contract administration to reduce waste, fraud and abuse; statutes prohibiting the management of federal employees by arbitrary personnel ceilings; as well as, provisions in the Federal Workforce Restructuring Act that prohibit replacing displaced federal employees with contract employees, have not been followed. Commitments to federal employees to make the contracting out and privatization process more equitable have not been kept. **The TRAC Act** would temporarily suspend new service contracts **until** these oversights have been established and enforced. This will give agencies an incentive to correct these longstanding problems. The only exceptions would cover national security, patient care, blind and handicapped contracts, and situations involving economic harm.

- Second, **The TRAC Act** would require the establishment of systems to monitor the costs, efficiency and savings of these actions. Currently, agencies do not closely monitor the cost efficiency of the billions of dollars in contracting out and privatization. There is no oversight of contracts after they have been awarded to compare past costs with current ones.

- Third, **The TRAC Act**will allow agencies to hire additional federal employees when they can do the work more economically and efficiently than private contractors. Currently, agencies are contracting out work that could be performed more economically and

efficiently in-house if agencies were allowed to hire additional federal employees.

- Forth, **The TRAC Act** will subject federal employees and private contractors to the same level of public-private competition. Public-private competition should work both ways. Currently, contractors can compete for jobs performed by federal employees, but in far too many cases federal employees can not compete for their own jobs. There are twice as many contract employees as federal employees, and they acquire and continue to perform the vast majority of their work without any public-private competition.

- Fifth, **The TRAC Act** will require the Office of Personnel Management and the Department of Labor to compare the wages and benefits of federal employees and their contractor counterparts. Contracting out and privatization are used in the private sector to undercut employees wages and benefits and to avoid unionization.

The TRAC Act authorizes any agency to apply to the Director of the Office of Management and Budget for a waiver of these requirements with respect to a particular function, when: (1) necessary for the preservation of national security; (2) critical for the provision of patient care; or (3) necessary to prevent extraordinary economic harm. It requires waiver requests to be published in the Federal Register. TRAC, lastly provides additional exceptions for functions with respect to which a labor organization is accorded exclusive recognition.

Let me address an issue that has drawn a great deal of concern. The provision of the legislation calling for temporary suspension of new contracting activities until such time as a agency or contractor comes into compliance with the requirements of the bill. Some have claimed that a temporary suspension would shut down the government, threaten national security, throw into chaos all existing contracting for government services. Nothing could be further from the truth.

The suspension is temporary. It is intended to last only as long as it takes for agencies to establish systems to track costs and savings from contracting out; prevent work from being contracted out without public-private competition; allow agencies to hire additional employees if work can be performed more efficiently in-house; and ensure that work can be contracted in, as well as contracted out.

As a temporary measure, this provision basically gives the agencies an incentive to meet these requirements as soon as possible. Moreover, the standards for compliance give Congress

maximum flexibility. This Congress could lift the suspension, based on a good faith effort to put oversight mechanisms in place.

The temporary suspension does not interfere with existing contractual arrangements. It only applies to new contracts, work that is not currently performed by contractors.

If enacted, the Truthfulness, Responsibility, and Accountability in Contracting Act would not go into effect until 180 days after it was signed into law. This would give agencies, contractors, and all other interested parties ample time to come into compliance with its requirements.

Mr. Chairman, that is a simple overview of the TRAC Act. Let me be very clear, this is not anti-contracting legislation. On the contrary, the TRAC Act is pro-taxpayer, because it will provide accountability and oversight of federal spending. It is pro-federal employee, because our many dedicated and skilled federal employees will finally be allowed to compete to protect their jobs. If this out sourcing, privatization, contracting out process is transparent and truthful; if all the players in the process are publicly identified, held responsible and accountable for their actions or inactions; and the playing field is fair and level for all parties concerned, the American taxpayer will benefit from the delivery of effective, high quality, cost efficient governmental services.

The effectiveness of the OMB Circular A-76 policy has been the subject of rising debate. The A-76 policy states that, whenever possible, and to achieve greater efficiency and productivity, the federal government should conduct cost comparison studies to determine who can best perform the work. Under the OMB Circular A-76 policy, a managed competition is the vehicle to conduct cost comparison studies. Competitions are held between public agencies and the private commercial sectors. The three types of managed competitions under the policy are (1) public-public, (2) public-private, and (3) private-private. In accordance with the provisions of the Circular, the federal government will not start, or maintain, a commercial product or service that the private sector can provide more economically.

Some proponents view the policy as a catalyst for competition in the marketplace, and as a vehicle to increase efficiencies, lower costs and encourage technological advances.

Opponents of A-76, on the other hand, view it and the passage of FAIR as efforts to dismantle what has been traditionally viewed as the "proper role of government." They challenge

the notion that outsourcing will ultimately save money, by arguing that projections of cost savings have been overly optimistic. Others assert that in addition to resulting in the loss of thousands of federal jobs, FAIR may create new constituencies that could generate new pressures for federal outsourcing and privatization.

The problem is, there is general agreement on both sides that the OMB Circular A-76 process takes too long to complete. Managed competitions have ranged from 18 months, for smaller, single-function agency activities, to more than four years, for multi-functioned agency activities. GAO reports that multi-function studies conducted since 1991 have taken about 30 months, on average. As a result many, if not most, agencies fail to implement A-76. Both sides concede that managed competitions could result in the loss of jobs and benefits for tens of thousands of federal government employees; they believe that some organic, technical capability should be retained within the federal government, to support unique requirements (for example, some computerized engineering or nuclear propulsion capability), although exactly how much (or how many employees) is unclear. Evidence has shown that when government employees are reorganized into Most Efficient Organizations (MEO), often they can operate more efficiently and cost-effectively than commercial contractors.

Mr. Chairman, I bring these facts to your attention because the requirements of the TRAC Act are not the problem. The problem appears to be the A-76 policy that was established to make the contracting process fair and open. That's what is not working. The establishment of the Commercial Activities Panel is evidence of that fact. That panel is having difficulty accessing the problem because they can't answer simple questions such as, "How many contractors are working on Federal contracts?, or "How many agencies are actually using A-76?", or "What agencies are using public-private competitions in awarding contracts?', and "What percentage of Federal contracts are being exposed to public-private competition?"

TRAC simple adds safeguards that are currently missing from the process. The pressing need, is for the A-76 policy to be streamlined, made easier for agencies to implement in their procurement and contracting regiments, and monitored for compliance.

STATEMENT OF

THE NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES
(NAGE)

TO THE

HOUSE COMMITTEE ON GOVERNMENT REFORM
TECHNOLOGY AND PROCUREMENT POLICY
SUBCOMMITTEE

JUNE 28, 2001

Mr. Chairman and Members of the Committee:

The National Association of Government Employees (NAGE) is an affiliate of the Service Employees International Union (SEIU) and represents 150,000 of the most hardworking and dedicated public sector employees nationwide. I would like to thank you for the opportunity to submit this written testimony for the record to address the Committee on the issue of outsourcing government functions.

It should not surprise anyone on this committee that our organization has long opposed wasteful, costly, and inappropriate contracting out of government functions. NAGE once again reiterates that the explosion in contracting out of services has cost the American taxpayer millions of dollars, diminished government's expertise in key areas, and reduced its ability to address the problems of the future.

The contracting out of services is frequently a mask for a reduction in the level of services, which often may not be accomplished legislatively. Contractors are able to present agencies with seductive packages of cost reductions by reducing the level of services. Inadequate investigations of the statements of work by the agencies allow the contractors to achieve this result. In the interwoven environment of a federal facility, any reduction in support or related services will have a domino effect on the agency's capacity to perform.

Federal agencies saw a 24 percent increase in the contracting out of services in the 1990's. In 1994 the Office of Management and Budget (OMB) reported that $115 billion was spent annually on outsourcing. Today, service contracting accounts for 43 percent of federal contract expenditures, and it is the single largest and fastest growing area of

government procurement. Contracting out has become commonplace in the public sector, even in many instances when the work contracted out is already being done by federal employees. It is not rare to see a job contracted out to private employees only to then have them turn around and re-hire the same federal workers that were originally in that position. These instances totally defeat the purpose of service contracting, which is to complete the task in the most efficient and cost-effective mode possible benefiting not only those in need of the task, but the taxpayers as well. The current situation, however, is not the most conducive for these outcomes, and the TRAC Act can change that.

As you know, the TRAC Act aims to create a level playing field for both federal employees and the private contractors who are eligible for the same work. Contracting out has become commonplace, and in most instances the immediate response of employers to pending contracts, it is not supposed to be this way however. OMB Circular A-76 calls for public-private competition before any contracting out is to take place. This is to give the competitors an equal chance to place their best bids against each other, and it allows the employer to make a choice based on who can offer the most efficient, cost-effective work. In all reality though, less than one percent of contracts are submitted to public-private competition, giving private contractors an almost monopoly-like control of service contracting. That is hundreds-of-billions of dollars that goes almost uncontested to private contractors, and the loss of countless of government jobs. Public-private competition is a common sense approach to this matter. It is absurd to allow such a lopsided distribution of jobs to persist, especially when 60 percent of the of the actual one percent of contracts submitted to competition are won by the employees.

One may argue that this way the size of the federal workforce is minimized. By the Federal Workforce Restructuring Act of 1994, the federal workforce was required to be reduced by 275,000 employees, where in all actuality, it has been reduced by more than 400,000 over the last seven years, exceeding the 1994 mandate. The arbitrary personnel ceiling that is being enforced is unwarranted. At the same time it is wasteful because it is forcing agencies to contract out jobs that could be done more efficiently in-house, costing taxpayers unnecessary money. Even when competition does occur, private contractors keep up their practice of false bidding where costs have a way of increasing over the course of the contract and federal employees that lost out on the contract are re-hired as is the case at Warner Robins, Georgia. EG&G Logistics won the bid for performing operations of the Defense Distribution Depot, and once they officially took control of the operations, they requested Warner Robins provide support to perform some of the duties EG&G had bid on. This totally defeats the purpose of contracting out especially if the argument used is that it is in an effort to minimize the federal workforce.

Another problem that arises from this is the fact that OMB Circular A-76 and the Federal Activities Inventory Reform (FAIR) Act of 1998 maintains that certain functions are recognized as inherently governmental in nature and should be retained in-house. The debate over which functions are considered inherently governmental is one that raises many problems, one being that of national security, since so many military bases and DOD facilities are subjected to privatization. There is no objection to contracting out jobs that are not mission-critical, but this frequently does occur. The Code T. 800 Ocean Terminal Operations for the Receipt, Segregation, Storage, and Issue of weapons at the

Naval Weapons Station in Charleston, SC had to privatize its weapons-handling functions. In a meager effort for anticipated savings, which in many cases as stated, are never realized, the naval base was forced to compromise safety and security in connection with the direct combat support of weapons loading, an act that contradicts several guidelines regarding the privatization of direct combat support activities. Therefore, not only is national security jeopardized, but the act should not have taken place to begin with. So instead of the "savings" hoped for, further costs will be incurred at the taxpayers' expense to appeal and hopefully remedy the situation.

One of the main concerns of the TRAC Act is the taxpayer. The legislation requires agencies to track the costs of contracting out to ensure the interests of the taxpayers are well served. As of now, agencies assume the savings that contractors claim are actually realized, but without a complete database it is extremely difficult to calculate and verify the savings and overall effectiveness of outsourcing. Even after many years and several billion dollars, the General Accounting Office (GAO) cannot prove that the taxpayers best interests have been fulfilled. The TRAC Act puts a temporary suspension on contracts, withholding those acquired prior to the bill's enactment, to give agencies the necessary time to establish these systems. The suspension is very flexible and gives agencies the means and incentive to correct this problem quickly and efficiently. With systems in place, agencies will be able to accurately and specifically determine costs and savings involved with contracting out. Averages and authorizations are used to calculate costs rather than actual numbers, and with a comprehensive database accessible, hard figures will finally be available, encouraging contractors to put their best work forth or

else the work will be brought back in-house when federal employees can do the job more efficiently. Either way, the taxpayers benefit and the agencies know they are making the right decisions regarding their employees.

The passing of the TRAC Act is necessary. After years of downsizing, the GAO has observed and reported a serious disparity in the government-wide civilian acquisition workforce. With the increase of eligible retirees, 27 percent by 2005, compounded with the rise and frequency of contracting out, the federal workforce will be lacking the skilled and knowledgeable employees necessary. Especially in the situations when once contracted out, the work is usually never returned to civil servants, even when the contractors perform inadequately. We owe it to the devoted employees of the federal sector to give them a fair chance at competing to protect their jobs. It makes no sense to continue in the fashion as we are. Money is being wasted, jobs are needlessly being lost, and the best work is not always getting completed, and the TRAC Act is the legislation that aims to remedy this situation.

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FOR IMMEDIATE RELEASE

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H.R.721 SHINES THE LIGHTS ON THE "SHADOW GOVERNMENT"

IFPTE Urges Passage of the TRAC Act

Contractors working for the federal government have established a "shadow government" unbeknownst to most of the American public. For several years, legislators and unions have fought to expose the numbers behind this shadow government. To no avail, contractors have continued to increase in size, creating their own monopoly within the confines of the federal government, while federal employees' jobs have simultaneously been downsized, right-sized, RIF'd, outsourced and privatized.

For the past several years, the International Federation of Professional and Technical Engineers (IFPTE) has supported legislation geared towards equalizing the playing field for federal employees and contractors. This year, IFPTE urges congressional support for H.R.721, the Truthfulness, Responsibility and Accountability in Contracting Act (TRAC Act).

Assertions by unions and federal employee groups about this shadow government's lack of accountability are finally coming to fruition. For years, we have been told that contracting out would not only save the federal government billions of dollars, but contractors could perform government functions not 'inherently governmental' more efficiently than the federal workforce. However, the Government Accounting Office (GAO) tells us "...we cannot convincingly prove nor disprove that the results of federal agencies' contracting out decisions have been beneficial and/or cost-effective."

If H.R. 721 were made law, it would impose the following five requirements on federal agencies:

- Temporarily suspend new service contracts until longstanding problems with contracting out are addressed, i.e. arbitrary personnel ceilings against federal employees, replacing displaced federal employees with contract employees and reducing waste, fraud and abuse by contractors.
- Require the establishment of systems to monitor the costs, efficiency and savings of contracting out and privatization.
- Allow agencies to hire federal employees when they can do the work more economically and efficiently than private contractors.
- Subject federal employees and private contractors to the same level of public-private competition. (Currently, only work performed by federal employees is subjected to competition and scrutiny).
- Require the Office of Personnel Management (OPM) and the Department of Labor (DoL) to compare the wages and benefits of federal employees and their contractor counterparts.

In March, a report prepared as part of the National Defense Authorization Act revealed that DoD's contract employees have outpaced its federal workers, 734,000 per year vs. 700,000 per year respectively. Additionally, GAO reported that DoD uses public-private competition (through OMB's Circular A-76 process) the most often of all federal agencies. However, only two percent (2%) of DoD's contracts are achieved through public-private competitions. There are no definitive numbers regarding the other ninety-eight percent (98%) of DoD's contracts, only that Defense contracts out more jobs than any other federal agency. By contrast, sixty percent (60%) of all government-wide public-private competitions are won by federal employees.

Even though federal employees have and continue to prove their dominance over this shadow government, contractors continue to flourish at taxpayers' expense.

An IFPTE Local at Portsmouth Naval Shipyard in Portsmouth, NH has been plagued with a shortage of engineers and an overabundance of contractors. In 1994, 150 engineers and technicians were given pink slips due to a reduction-in-force (RIF). After battling to regain/retain their work, the Local now grapples to keep up with an overage of work. Contractors as well as two other naval shipyards--Puget Sound in Bremerton, WA and Norfolk in Portsmouth, VA--are relied upon to help alleviate some of the overage. The Local currently faces the task of training 50 engineers a year in an attempt to handle their own workload and not contract out the work. The early shortage of engineers and technicians helped to proliferate the growth of the contractors. Instead of replacing employees displaced by the RIF, contract employees were given the work. Additionally, the Local and shipyard also face the threatening 'human capital crisis' as several career employees opt to retire in the next five to ten years.

IFPTE members at NASA centers across the nation have been confronted with the issue of contracting out for several years. Excessive downsizing and severe budget cuts have beset this agency (see attached statement from the NASA Headquarters Professional Association (NHPA)/IFPTE Local 9).

In short, H.R.721 provides the necessary accountability and oversight of federal spending within the shadow government of contractors. However, contractors say the legislation is pro-federal employee; they're right but IFPTE would take it a step further. This legislation is not only pro-federal employee but it is pro-taxpayer.

It's time that the American public receives comprehensive answers about how our tax dollars are being spent. It's time that our dedicated and skilled federal employees finally be allowed to compete in a spirit a fairness to protect their jobs.

TRAC ACT STATEMENT OF NHPA/IFPTE LOCAL 9

NASA Headquarters Professional Association (NHPA)/IFPTE Local 9 supports IFPTE in its commitment to the passage of H.R. 721 and to the principles embodied in the legislation. As a result of years of downsizing, NASA has recognized the need to strengthen the workforce in critical areas and has renewed its focus on the restructure and revitalization of its workforce across the Agency. Plans to accomplish this involve an effective use of talent both within and outside of the Agency so that work and mission may be achieved through a combination of permanent civil servants, time-limited civil service appointees and others including individuals from the academic world.

Understanding the impact these previous years have had on the current workforce at Headquarters, NHPA/IFPTE Local 9 will work with other NASA IFPTE Locals and will encourage and assist management to promote, attract and retain additional personnel hires to ensure a world-class

workforce with the necessary skills and competencies consistent with the Agency's human capital investment goals, while recognizing the contributions and value of the current workforce.

Mr. TOM DAVIS OF VIRGINIA. Mr. Gutierrez, thank you for being with us.

STATEMENT OF HON. LUIS V. GUTIERREZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. GUTIERREZ. Good afternoon, Chairman Davis, Ranking Member Turner, and members of the subcommittee. I want to thank you for the opportunity to testify today. I have come to talk to you about a bill I introduced in March, H.R. 917, the Federal Living Wage Responsibility Act of 2001.

The bill has a simple premise: Employees who work full time should be paid a wage that assures that they will not live in poverty. This legislation mandates a livable wage for all employees under Federal contracts and subcontracts. 78 representatives currently cosponsor this important legislation.

It is important to note that the Federal Government does not collect data on Federal contract workers. The only data available concerning the number of workers earning less than $8.50 an hour comes from the General Services Administration. With the implementation of the TRAC Act, we would be able to acquire these necessary data since the TRAC Act mandates the Secretary of Labor to conduct a study on the wage and benefit levels of contractor employees.

However, GSA data and other data is startling and demonstrates the importance of quick Federal action. A recent study by the Economic Policy Institute finds that an estimated 162,000 Federal contract workers earn less than $8.50 an hour. Their income does not reach the poverty threshold of $17,650 per year for a family of four. These workers represent 11 percent of the total 1.4 million Federal contract workers in the United States.

According to the Office of Personnel Management, a total of 4,974 full-time Federal employees earn a salary below the poverty level for a family of four, as dictated by Health and Human Services. The majority of these low-wage contracts and subcontracts are concentrated in the defense industry, 62 percent, and most of them are large business, 59 percent. Private sector workers earning less than a living wage are mostly female, adult, full-time workers, and they are disproportionately minorities.

My bill addresses these inequities. It mandates that the Federal Government and any employer under a Federal contract or subcontract of an amount exceeding $10,000, or a subcontract under that contract to pay each of their respective workers an hourly wage or salary equivalent sufficient for a worker to earn while working 40 hours a week on a full-time basis the amount that the Federal Government dictates is above the poverty level for family of four as determined by the Department of Health and Human Services.

The bill also requires an additional amount, determined by the Secretary of Labor, based on the locality in which a worker resides sufficient to cover the costs to such a worker to obtain any fringe benefits not provided by the worker's employer. Fringe benefits include medical, hospital care or contributions to health care insurance plans, contributions to retirement, life insurance, disability, vacation and holiday pay. Although Congress passed laws such as

Davis Bacon Act and the Service Contract Act to help ensure that employees of the Federal contractors earn a decent wage, thousands of Federal workers and federally contracted workers still do not earn enough to support themselves or their family according to our own Federal Government and the standards set forth by Health and Human Services.

This legislation will allow hardworking Americans to earn quality wages and to increase their savings for such essential needs as their retirement and their children's education. The Federal Government must take responsibility, workable steps to reward working Americans and to help keep them out of poverty. This bill represents a practical step toward that goal.

In 1999, only 32 percent of Federal contract workers were covered by some sort of law requiring that they be paid at least a prevailing wage, which is usually defined as the median wage of each occupation and industry. But even this minority of covered workers are not guaranteed a living wage under current laws. For example, the Department of Labor has set its minimum pay rate at a level below $8.50 an hour for workers covered under the Service Contract Act in 201 job classifications.

Health and Human Services says you have to earn $17,700 for a family of four to live above poverty, and our government then in another Department says we are going to pay you less than that.

I believe it's vital for the Federal Government at a time of record surpluses to send all of its full-time employees home with a paycheck that allows them to lift their families out of poverty.

Mr. Chairman, it should be noted that 65 cities and counties nationwide have already passed laws that require companies doing business with tax dollars to pay a living wage to employees. There are an additional 75 cities considering enacting living wage laws. This legislation also has gained backing from profamily worker advocates around the country, groups like ACORN and the National Campaign for Jobs and Income Support in Chicago, New York, Boston and dozens of other cities have rallied in support.

I share a deep concern for many workers who, although employed full-time, are unable to support themselves and their families in a dignified manner. Today the working poor are the largest growing sector of the economy. They fulfil many of the basic needs of our community, but their efforts are not rewarded with wages sufficient to care for a family's basic need.

This bill is in keeping with the President's initiative to raise the pay and benefits of enlisted military personnel. Civilians employed by the Department of Defense are among the government employees most likely to earn subpoverty level wages while two-thirds of contractors paying poverty level wages are in the defense industry. The defense of our Nation is a combined effort involving military personnel and their civilian peers. President Bush's effort to increase the pay of uniformed personnel would be well complemented by an effort to ensure that no individual involving keeping the Nation secure is vulnerable to the difficulty and risks of poverty.

Mr. Chairman, more than 50 years ago the General Assembly of the United Nations adopted the Universal Declaration of Human Rights. Article 23 of that document states, "everyone who works has the right to just and favorable remuneration, ensuring for one's

self and one's family an existence worthy of human dignity." However, this is an impossibility for countless families nationwide in the 21st century America. The Federal Government goes to great lengths to monitor the poverty level and with good reason, but the government should also determine whether it is allowing its own workers to meet that standard.

Mr. Chairman, the basic purpose of the legislation is simple. We should not pay Federal employees that work for us or contractors that work for us to a family of four less than what our own Health and Human Services Department dictate is poverty, and if we do that Mr. Chairman, here's what we're doing, they're collecting Medicaid, they're collecting food stamps, they're section 8 subsidies on their rental. All we're doing is subsidizing the very contractors by allowing them to pay, because then these employees obviously are allowed, under our welfare standards, to apply for other—it's terrible to work for the Federal Government on the one hand, full-time 40 hours a week, and on the other hand, get a check from another part of the government because the Federal Government hasn't ensured that you made a living wage.

Thank you very much, Mr. Chairman.

Mr. TOM DAVIS OF VIRGINIA. Mr. Gutierrez, thank you very much for that testimony.

[The prepared statement of Hon. Luis V. Gutierrez follows:]

TESTIMONY OF

CONGRESSMAN LUIS V. GUTIERREZ

Before the

COMMITTEE ON GOVERNMENT REFORM

SUBCOMMITTEE ON TECHNOLOGY AND PROCUREMENT POLICY

U.S. HOUSE OF REPRESENTATIVES

June 28, 2001

Good afternoon Chairman Davis, Ranking Member Turner and members of this subcommittee. I want to thank you for the opportunity to testify at this hearing today.

I have come to talk to you about H.R. 917, the Federal Living Wage Responsibility Act of 2001.

This bill has a simple premise: Employees who work full-time should be paid a wage that assures they will not live in poverty.

This legislation mandates a livable wage for all employees under Federal contracts and subcontracts. Seventy-eight representatives currently cosponsor this important legislation.

It is important to note that the federal government does not collect data on federal contract workers, the only data available concerning the number of workers earning less than $8.50 an hour comes from the General Services Administration. With the implementation of the TRAC Act we would be able to acquire these necessary data since the TRAC Act mandates the Secretary of Labor to conduct a study on the wage and benefit levels of contractor employees. However, the GSA data -- and other data -- is startling and demonstrates the importance of quick federal action.

A recent study by the Economic Policy Institute finds that an estimated 162,000 federal contract workers earn less than $8.50 an hour. Their incomes do not reach the poverty threshold of $17, 650 per year for a family of four. These workers represent 11 percent of the total 1.4 million federal contract workers in the United States.

According to the Office of Personnel Management a total of 4, 974 full-time federal employees earn a salary below the poverty level for a family of four.

The majority of these low-wage contracts and subcontracts are concentrated in the defense industry (62 percent) and most of them are large businesses (59 percent). Private sector workers earning less than a living wage are mostly female, adult, full-time workers and they are disproportionally minorities.

My bill addresses these inequities. It mandates that the Federal government and any employer under a Federal contract or subcontract for an amount exceeding $10,000 (or a subcontract under such a contract) to pay to each of their respective workers an hourly wage (or salary equivalent) sufficient for a worker to earn, while working 40 hours a week on a full-time basis, the amount of the Federal poverty level for a family of four as determined by the Department of Health and Human Services.

The bill also requires an additional amount, determined by the Secretary of Labor based on the locality in which a worker resides, sufficient to cover the costs to such worker to obtain any fringe benefits not provided by the worker's employer. Fringe benefits include medical or hospital care or contributions to a health insurance plan, contributions to a retirement plan, life insurance, disability insurance and vacation and holiday pay.

Although Congress passed laws such as the Davis Bacon Act and the Service Contract Act to help ensure that employees of Federal contractors earn a decent wage, thousands of federal workers and federally contracted workers still do not earn enough to support themselves or their families.

This legislation will allow hard-working Americans to earn quality wages and to increase their savings for such essential needs as their retirement and their children's education. The Federal government must take responsible, workable steps to reward working Americans and to help keep them out of poverty. This bill represents a practical step toward that goal.

In 1999, only 32 percent of federal contract workers were covered by some sort of law requiring that they be paid at least a prevailing wage, which is usually defined as the median wage for each occupation and industry. But even this minority of covered workers are not guaranteed a living wage under current laws. For example, the Department of Labor has set its minimum pay rate at a level below $8.50 an hour for the workers covered by the Service Contract Act in 201 job classifications.

I believe it is vital for the federal government, at a time of record surpluses, to send all of its full-time workers home with a paycheck that allows them to lift their families out of poverty.

Mr. Chairman, it should be noted that 65 cities and counties nationwide have already passed laws that require companies doing business with tax dollars to pay a living wage to employees. There are an additional 75 cities considering enacting living wage laws. This legislation has also gained backing from pro-family and workers' advocates around the country. Groups like ACORN and the National Campaign for Jobs and Income Support in Chicago, New York, Boston and dozens of other cities have rallied in support of this legislation.

I share a deep concern for the many workers who, although employed full-time, are unable to support themselves and their families in a dignified manner. Today, the working poor are the largest growing sector of the economy. They fulfill many of the basic needs of the community, but their efforts are not rewarded with wages sufficient to care for a family's basic needs.

This bill is in keeping with the President's initiative to raise the pay and benefits of enlisted military personnel. Civilians employed by the Defense Department are among the government employees most likely to earn sub-poverty level wage, while two-thirds of contractors paying poverty-level wages are in the defense industry.

The defense of our nation is a combined effort, involving military personnel and their civilian peers. President Bush's effort to increase the pay of uniformed personnel would be well complemented by an effort to ensure that no individual involved in keeping the nation secure is vulnerable to the difficulty and risks of poverty.

Mr. Chairman, more than 50 years ago, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights. Article 23 of that document states that "everyone who works has the right to just and favorable remuneration, ensuring for oneself and one's family an

existence worthy of human dignity." However, this is an impossibility for countless families nationwide in 21st century America.

The federal government goes to great lengths to monitor the poverty level and with good reason. But the government should also determine whether it is allowing its own workers to meet that standard.

Mr. Chairman, I urge serious consideration of H.R. 917 in this subcommittee.

Thank you again for this opportunity.

Mr. TOM DAVIS OF VIRGINIA. Mr. Wynn, thank you. Do we have any questions? I know we have two other panels. I think—Mr. Wynn, sure.

Mr. WYNN. Mr. Chairman, with your indulgence I'd like to add two statements to my testimony if that could be submitted.

Mr. TOM DAVIS OF VIRGINIA. We'd be happy to enter that into the record, and we appreciate both of your interests in this and Mr. Sessions, too, who's left. I know y'all have very strong feelings about this. You have put forward legislation and we appreciate the opportunity to hear from you today.

Before I call our first panel, I think I'm going to go now to opening statements from Members so that Members will have an opportunity to put in statements, and I will start as the chairman of the subcommittee and welcome everybody to today's oversight hearing about outsourcing in the Federal Government.

In light of the recent creation of the General Accounting Office's commercial activities panel, I decided to call this hearing to review whether or not outsourcing is an effective means to enhance cost savings and efficient delivery of services while ensuring the equitable treatment of Federal employees. We will also take a look at Federal agencies implementation of the Federal Activities Inventory Reform Act [FAIR] Act.

Over the years, the executive branch has emphasized spending reductions and focused on maximizing efficiencies in the Federal Government. The introduction of competition in the procurement process has played a decisive role in creating the incentives necessary to achieve cost savings and improving efficiency. The executive branch has encouraged outsourcing by Federal agencies as a way to purchase commercially available goods and services from the private sector instead of competing against its citizens.

In 1966, OMB formalized this policy in circular A–76. The subsequent supplemental handbook explains the procedures for conducting cost comparison studies through managed competitions to determine whether an agency's commercial activities should be performed in-house by Federal employees, by another Federal agency through an interservice support agreement or by contractors. GAO has reported that the policy results in cost savings in the Defense Department. However, most other Federal agencies choose not to implement A–76 studies. Have these agencies found alternatives to A–76? Are they still realizing cost savings while improving their delivery of services? It's understandable that some agencies may shy away from using the A–76 process. It is lengthy, it's complex, it's burdensome and participants in the Federal work force as well as the private sector have raised valid concerns which we will hear more about later today.

As we review the process today I think we need to keep in mind the Federal Government's responsibility to the taxpayers. The government should strive to provide taxpayers with the best quality services at the lowest price. So the first question I pose to our witnesses today is should the lowest price continue to be the deciding factor for job competitions? Is there any benefit for using best value as the benchmark?

I have several other concerns that I hope witnesses will try to address. First, Federal employees are disadvantaged during A–76

cost comparison studies because they are not adequately trained to write performance work statements. Additionally, if the contract is awarded to the private sector the Federal employees are seldom trained to write contracts and effectively manage them to protect taxpayer interest.

Second, the lengthy A–76 process creates uncertainty among Federal employees whose jobs are being competed. Frequently you can have such a demoralizing effect that our best skilled and dedicated employees look elsewhere for the work. Since the Federal Government work force is dwindling rapidly and nearly 50 percent of Federal employees are eligible to retire over the next 5 years it's imperative that the government establish initiatives to prevent the unnecessary loss of Federal workers.

And third, there's a perception among some contractors that costs such as overhead are calculated differently in the private sector from the Federal Government, and therefore, not enough accurate cost information is available to ensure fair cost comparisons, and after a contract has been awarded, there are some concerns that the government accounting system is not advanced enough to accurately track cost savings.

The A–76 process, in my opinion, is broken, but what can be done to fix it? To help in this regard, section 832 of the Floyd D. Spence National Defense Authorization Act for 2001 mandates GAO convene a panel of experts to study the policies and procedures governing the transfer of the Federal Government's commercial activities from its employees to contractors. The panel will report to Congress next May with recommendations for improvements, and I look forward to the panel's report.

Now I'd like to reiterate that the government's job is to provide taxpayers with the best value for their money. It's neither our responsibility to protect jobs nor is it our responsibility to outsource jobs. In addition to our examination of outsourcing, I think we should reevaluate Civil Service rules and employee compensation as part of the larger human resources crisis facing the Federal Government today.

My colleague, Representative Wynn, introduced the TRAC Act, which would place a moratorium on new contracting and prohibit Federal agencies from exercising options, extensions and renewals of current contracts. It affects all contracting at every level of government, and there's no termination date for the bill. The TRAC Act is one proposed solution. It's the result of the frustrations felt by public sector employees in a process that, in my opinion, needs revamping.

But an adversarial approach to Federal Government outsourcing raises other concerns about the continuity of service delivery to taxpayers. Let's focus our attention on constructive reforms to improve the government's performance of its core functions. How can it provide the greatest efficiency and highest quality of services at the best value to taxpayers? We need to examine these issues in the context of the Federal Government's human capital management crisis and determine what initiatives and reforms must be implemented to recruit and retain well-qualified employees.

And finally, while the FAIR Act does not require that agencies outsource commercial functions, it's a potentially powerful strategic

tool to help agencies identify possible opportunities for outsourcing and/or management reform. But I am alarmed by the OMB's recent directive that in the fiscal year 2002 agencies are required to outsource 5 percent of Federal jobs designated as not inherently governmental and listed on the agency's inventories under the FAIR Act. And just last week, OMB added a directive requiring 10 percent of these jobs be outsourced in fiscal year 2003. No justification for these percentages has been offered to date. I remain unconvinced that arbitrarily assigning Federal agencies target figures is the best means to ensure cost savings in the government. I expect OMB will clarify this directive today.

I thank you and I would now recognize my ranking member Mr. Turner, for any statement he'd like to make.

Mr. TURNER. Thank you, Mr. Chairman. I appreciate very much the fact that you have held this hearing today on contracting out by the Federal Government, and I think this is, perhaps, the best attended subcommittee hearing that we have had in my memory with a long line of our loyal Federal employees out in the hall unable to get into the hearing room, but we do appreciate the interest that has been expressed by all of you, and I want to join in expressing my appreciation to all of our participants today and to our Federal employees who do such a fine job, taking care of the business of the public in their roles in the respective agencies.

I understand today we may have people from all over the United States. I know the American Federation of Government Employees tell me that they have people here from California and New York and Maine and Florida today. So we are certainly glad to have all of you here.

Our purpose, of course, is to conduct a hearing to try to ensure that the taxpayers receive the very best services at the lowest cost. That sounds like a simple goal to try to achieve, and yet it is fraught with complexity and in ensuring fair treatment for our Federal employees must certainly be a priority in this process. This subcommittee will explore why Federal agencies implement so few public private competitions under the circular A–76, and also examine what alternatives we may pursue to ensure efficiency in cost savings.

Contracting out of commercial services has become an increasingly important and controversial teacher of Federal procurement in recent years, and the Bush administration has indicated that it will promote greater outsourcing by the Federal Government. It is in light of that that it is particularly timely that this hearing be held.

I want to thank the chairman for giving Mr. Wynn the opportunity to use this hearing to lay out his bill, the TRAC Act. He has done an exceedingly large amount of work over the years with regard to these issues, and he represents, of course as you do, Mr. Chairman, a large number of Federal employees. His legislation raises many of the issues that we as a committee need to be addressing.

Circular A–76 contains the Federal policy that governs how contracting out decisions are made in the Federal Government. The objective of that program has been to achieve efficiencies by encouraging competition between the private sector and Federal em-

ployees for commercial activities. No one seems to be particularly happy with the way A–76 works in practice, no matter which side you sit on. That is why I think it's important that the Congress authorize the study contained in the Defense Authorization Act of last year in which the GAO is directed to examine the A–76 procedure and to report its findings to Congress no later than May 1, 2002.

I was particularly pleased to see the GAO taking this responsibility very seriously as I think particularly indicated by the fact that the head of the agency, General Walker, chose to chair the panel himself. I think this hearing today will be very productive, and I think that if we all approach it with the right objective in mind, that is, trying to provide the best services for our Federal employees at the best price possible, we will make significant process.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Jim Turner follows:]

Statement of the Honorable Jim Turner
Oversight Hearing: "The Best Services at the Lowest Price: Moving Beyond a Black-and-White Discussion of Outsourcing"
Subcommittee on Technology and Procurement Policy

June 28, 2001

Thank you Mr. Chairman for holding this hearing on outsourcing by the federal government -- to examine whether or not outsourcing can help us save money for delivering services. Ensuring fair treatment for federal employees must also be a priority if and when the decision is made to contract out particular services. The Subcommittee also plans to explore why federal agencies implement so few public-private competitions under Office of Management and Budget (OMB) Circular A-76, and what alternatives have been identified to ensure efficiency and cost-savings.

Contracting out of commercial services has become an increasingly important, and controversial, feature of federal procurement in recent years, and the Bush Administration has indicated that it will promote greater outsourcing by the federal government. It has set specific targets for agencies, directing them to compete a minimum of 5% of the positions listed on the inventories of commercial activities required by the FAIR Act. That could mean over 40,000 jobs per year contracted out.

OMB Circular A-76 contains the federal policy that governs how contracting out decisions are made in the government. The objective of the A-76 program has been to achieve efficiencies by encouraging competition between the private sector and federal employees for commercial activities. No one seems to

be particularly happy with how A-76 works in practice, which is why Congress authorized a systematic study of it in last year's Defense Authorization Act. GAO was directed to examine Circular A-76 and report its findings to Congress no later than May 1, 2002. I am glad GAO is taking this responsibility very seriously and that Comptroller General Walker has chosen to chair the panel himself.

Another topic we will be discussing today is H.R. 721, the Truth, Responsibility, and Accountability in Contracting (TRAC) Act, introduced by Rep. Wynn (D-MD). While I am not a cosponsor of this legislation, there are parts of it which I support – particularly those which call for agencies to keep track of the costs and savings of outsourcing. The principle which should guide us in discussions about outsourcing is what will ensure that taxpayer dollars are spent most effectively and efficiently. We can only address that issue if we know with some certainty the costs and savings associated with contracting out.

I look forward to hearing the testimony of our witnesses today. Thank you Mr. Chairman.

Mr. TOM DAVIS OF VIRGINIA. Thank you very much.

Ms. Davis.

Ms. JO ANN DAVIS OF VIRGINIA. Thank you, Mr. Chairman. I'd just like to say thank you for holding this hearing and I'm anxious to hear from the witnesses to learn more about it. I have heard a lot about the A–76 program in my own home district, and I'd like to know where we're going on it. So thank you very much.

Mr. TOM DAVIS OF VIRGINIA. Thank you very much.

Mr. Waxman. Mr. Kanjorski.

Mr. KANJORSKI. Thank you very much, Mr. Chairman, and I congratulate you for holding the hearing. I just hope that Mr. Turner recognizes that we also have people from Pennsylvania here as one of the States.

Mr. TOM DAVIS OF VIRGINIA. Let the record be so reflective.

Mr. KANJORSKI. Mr. Chairman, I have been very familiar with A–76 over the last 14 years, and at one time in the past served as chairman of the subcommittee, the jurisdiction of those factors. I am disturbed in the beginning of the 21st century, I have heard the testimony of my two colleagues from Maryland and from Illinois, when they indicate that we actually have Federal employees that are being paid below the poverty level working for the U.S. Government, and I think it is important that we set an example, not only that they should get a fair wage but also that we don't allow ourselves to go to the least common denominator, and to a large extent contracting out is, as I have observed it over the last decade or better, we are missing the fundamental points of what government work is all about in terms of looking at quality for the best price. But we also tend to drive those jobs that are at the lower income scales out into the private sector and the private contractor generally gets the benefit by not providing the basic service that all of us believe workers should have, that is, medical and health care, pension programs and a minimum earning wage for a family.

I had the occasion to see firsthand some of this work, and I just make two more observations. One, as Mr. Sessions says, we should do this because we can save money at practically any expense. Well, I made two visits to two military installations more than 12 years ago, one in Utah and one in Alaska. In Utah, the private contractor came on the base and within several months of running the security operation on the base, 21 missiles were missing and never found. I don't know how you account for that lack of security when you have private workers coming and going and opening up these bases.

In Kodiak, AK, they actually contracted out the entire base operation, and the contractor failed to perform, and after 1 year, the base itself was in jeopardy of operating and that is the main headquarters for the Coast Guard of the United States.

So, in many regards, I have seen contracting out turn into an absolute disaster. I think the bill that Mr. Wynn has introduced, the TRAC bill, represents the best thinking to get the best job done for the American worker and the American taxpayer, and I urge the sunlight to shine on this problem so that we don't dumb ourselves down to the least common denominator.

Thank you, Mr. Chairman.

Mr. TOM DAVIS OF VIRGINIA. Thank you.

Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman. I want to thank you for holding this hearing. As you know, I joined 22 of our colleagues on this committee requesting that Truthfulness, Responsibility and Accountability in Contracting Act [TRAC] Act, be the focus of the hearing. Although today's hearing covers all the issues of outsourcing, I'm pleased that we'll have the opportunity to review the TRAC Act. The TRAC Act now has over 180 cosponsors and deserves our serious attention.

Since 1955 the executive branch has promoted outsourcing by Federal agencies as a means to purchase commercially available goods and services from the private sector. In 1966 the Office of Management and Budget issued circular A–76, which established how contracting out decisions should be made in the government. Most recently, the Bush administration moved to promote increased outsourcing by the Federal Government. Advocates of outsourcing believe this action will enhance the cost savings and efficient delivery of services.

Well, in my view, the key to cost savings and efficiency is competition between the private sector and Federal employees for commercial activities, not automatic outsourcing. I'm amazed how often the assumption is that outsourcing is always better and is automatically accepted as fact. The real fact of the matter is that Federal employees all across our country do superb work and often at a fraction of the price contractors would charge. The Federal work force is an invaluable resource that is often taken for granted and, even worse, sometimes deliberately denigrated. That makes no sense and it absolutely makes no sense to insist on outsourcing when work can be done more efficiently and better by Federal workers.

Unfortunately, the Federal Government has often avoided competition, avoided competition by directly converting work to the private sector or by labelling work as new so that competition becomes impossible.

Every Member of Congress should support government efficiency and saving taxpayer dollars, but in order to determine whether taxpayers are receiving savings, true cost comparisons must be performed.

In addition, agencies should be required to keep records of the costs and savings associated with both contracting out and contracting in. That's why I support the TRAC Act, which requires agencies to track the costs and savings of contracting out and to conduct public-private competitions. Moreover, the TRAC Act abolishes the use of arbitrary personnel ceilings and would also require agencies to subject work performed by contractors to the same level of public-private competition as work performed by Federal employees.

Mr. Chairman, outsourcing exists because of the theory that it saves money and improves efficiency. Unfortunately, for too long, we have failed to apply any accountability to whether or how often

that theory really works. I want to work with you to make sure we have solid data for cost comparisons and then we should apply that data in a fair and unbiased way to outsourcing decisions.

Thank you very much.

[The prepared statement of Hon. Henry A. Waxman follows:]

STATEMENT OF HENRY A. WAXMAN
SUBCOMMITTEE ON TECHNOLOGY AND PROCUREMENT POLICY
"THE BEST SERVICES AT THE LOWEST PRICE: MOVING BEYOND A BLACK-AND-WHITE DISCUSSION OF OUTSOURCING"
JUNE 28, 2001

Mr. Chairman, I want to begin by thanking you for holding this important hearing. As you may know, I joined 22 of our colleagues on the full Committee on Government Reform in sending a letter requesting the Truthfulness, Responsibility, and Accountability in Contracting (TRAC) Act be the focus of a hearing. Although today's hearing covers all the issues of outsourcing, I am pleased that we will have the opportunity to review the TRAC Act. The TRAC Act now has over 180 cosponsors, and deserves our serious attention.

Since 1955, the executive branch has promoted outsourcing by federal agencies as a means to purchase commercially available goods and services from the private sector. In 1966, the Office of Management and Budget issued Circular A-76, which established how contracting out decisions should be made in the government. Most recently, the Bush administration moved to promote increased outsourcing by the federal government. Advocates of outsourcing believe this action will enhance cost savings and efficient delivery of services.

In my view, the key to cost savings and efficiency is competition between the private sector and federal employees for commercial activities, not automatic outsourcing. This may not sound like a radical notion, but I am amazed at how often the assumption that outsourcing is always better, is automatically accepted as fact.

The fact really is that federal employees, all across our county, do superb work and often at a fraction of the price contractors would charge. The federal workforce is an invaluable resource that is often taken for granted and even worse, sometimes deliberately denigrated. That makes no sense, and it absolutely makes no sense to insist on outsourcing when work can be done more efficiently and better by federal workers.

Unfortunately, the federal government has often avoided competition by directly converting work to the private sector, or by labeling work as "new" so that competition becomes impossible.

Every member of Congress should support government efficiency and saving taxpayer dollars. But, in order to determine whether taxpayers are receiving savings, true cost comparisons must be performed. In addition, agencies should be required to keep records of the costs and savings associated with both contracting out and contracting in.

That is why I support the TRAC Act, which requires agencies to track the costs and savings of contracting out and to conduct public-private competitions. Moreover, the TRAC Act abolishes the use of arbitrary personnel ceilings and would also require agencies to subject work performed by contractors to the same level of public-private competition as work performed by federal employees.

Mr. Chairman, outsourcing exists because of the theory that it saves money and improves efficiency. Unfortunately for too long, we have failed to apply any accountability to whether or how often that theory works. I want to work with you to make sure we have solid data for cost comparisons, and then we should apply that data in a fair and unbiased way to outsourcing decisions. Thank you.

Mr. TOM DAVIS OF VIRGINIA. Thank you Mr. Waxman. Mrs. Mink, any opening statement?

Mrs. MINK. No.

Mr. TOM DAVIS OF VIRGINIA. I'm not sure if we have anyone from Hawaii here today.

Mrs. MINK. May I ask, Mr. Chairman, if there is anyone here in the audience from Hawaii?

Mr. TOM DAVIS OF VIRGINIA. There you go.

Mrs. MINK. Aloha.

Mr. TOM DAVIS OF VIRGINIA. All I can say is that's dedication.

We are going to call our second panel of witnesses at this point. We have Barry Holman, from the U.S. General Accounting Office. We have Angela Styles who is the Director of the Office of Federal Procurement Policy, Office of Management and Budget. And we have Ray DuBois who is the U.S. Department of Defense Under Secretary of defense for installations and environment.

I would just say, as you know, it is the policy of this committee that all witnesses be sworn before you testify and if you'd rise with me and raise your right hands. And Ms. Styles, I understand this is your first day back from maternity leave?

Ms. STYLES. Yes, it is.

Mr. TOM DAVIS OF VIRGINIA. Thank you very much for being here.

[Witnesses sworn.]

Mr. TOM DAVIS OF VIRGINIA. Please be seated. Just for efficient time for questions, we have your testimony in the record. All of it will be entered into the record. We'd like you to keep your submissions to 5 minutes. There's a light in front. You will have green for the first 4 minutes. It will be yellow for your 4th minute and at the end of 5 minutes the red light will go on, if you could proceed to summarize at that point. I'll give you a few seconds. If you don't, I'll tap the gavel and ask you to summarize at that point. So Mr. Holman, we'll start with you and thank you for being here.

STATEMENTS OF BARRY HOLMAN, DIRECTOR, DEFENSE CAPABILITIES AND MANAGEMENT, U.S. GENERAL ACCOUNTING OFFICE; ANGELA STYLES, DIRECTOR, OFFICE OF FEDERAL PROCUREMENT POLICY, OFFICE OF MANAGEMENT AND BUDGET; AND RAY DUBOIS, UNDER SECRETARY OF DEFENSE FOR INSTALLATIONS AND ENVIRONMENT, U.S. DEPARTMENT OF DEFENSE

Mr. HOLMAN. Mr. Chairman, I'm pleased to be here today to present our observations on DOD's use of OMB circular A–76 to conduct cost comparison studies to determine whether commercial activities should be performed by the government or by the private sector. DOD refers to A–76 cost comparison studies as competitive sourcing.

My comments today are based on work that we have carried out in recent years monitoring DOD's progress in implementing its A–76 program with the goal of saving money that may be applied to other priority needs. My testimony focuses on the evolution of the A–76 program in DOD and addresses the question of whether savings are being realized, identifies some key issues we've identified that may be useful to other agencies as they think about using the

A–76 process, and I'll provide a few comments on the work of the commercial activities panel which you've already referred to.

First, let me say that DOD has been a leader among Federal agencies in the use of the A–76 process in recent years, and at one point planned to study over 229,000 positions under that process. However, the number of positions planned for study, the timeframes for launching and completing those studies, has changed over time as the program has evolved. DOD now plans to study 160,000 positions under A–76, still a rather ambitious goal.

At the same time, the Department has now augmented its A–76 program for what it terms strategic sourcing, a broader array of reinvention and reengineering options that may not necessarily involve A–76 competitions, at least in the short term. Strategic sourcing may encompass consolidation, restructuring, reengineering activities, privatization, joint ventures for the private sector or the termination of obsolete services. Strategic sourcing can involve functions or activities regardless of whether they're considered inherently governmental, military essential or commercial. I should add also that these actions are recognized in the introduction to the A–76 handbook as being part of a body of options in addition to A–76 that agencies must consider as they contemplate reinventing government operations.

The broader emphasis on strategic sourcing today is intended to help DOD realize the sizable savings goals that it established under its program. DOD has already reprogrammed over $11 billion in anticipated savings from A–76 and strategic sourcing into its modernization account.

The second point I would make is that one of the greatest topics of interest to observers of the A–76 process is whether savings are being realized. My answer to that question is yes, and that savings have resulted primarily by reducing the number of positions needed to perform activities being studied. This is true regardless of whether the government or the private sector wins the competitions.

At the same time, I must add that a variety of factors make it difficult to measure the precise amount of net savings from A–76. Moreover savings may be limited in the short term because the up front investment costs associated with conducting and implementing results of these studies. Further reported savings from A–76 studies will continue to have some element of uncertainty and imprecision and will be difficult to track in the outyears because workload requirements change, affect program costs, a baseline from which savings are calculated. However, considering that DOD has already reduced its operating budget on the outyears on the assumption of these savings, it's crucial that its estimates be as accurate as possible.

Third, there are issues which we have raised concerning DOD's A–76 program that may serve as a useful lesson for other agencies that use the A–76 process. They include the finding that studies have generally taken longer than initially expected and have generally required greater resources than initially projected. Finding and selecting functions to compete can be difficult, notwithstanding the existence of the FAIR Act inventories, and making premature budget cuts on the assumption of projected savings can be risky.

These issues should not detract from a need to explore options for achieving savings but should serve as indicators of things to watch for in planning and conducting such studies.

Finally, increased emphasis on A–76 has served to underscore concerns expressed by both government employees and industry about the A–76 process. Federal managers and others have been concerned about organizational turbulence that typically follows the announcement of A–76 studies. Government workers have been concerned about the impact of competition on their jobs, their opportunity for input to the competitive process and the lack of parity with industry offers to appeal A–76 decisions. The industry representatives have complained about the fairness of the process and the lack of a level playing field between the government and the private sector. Everyone has been concerned about the time required to complete the studies.

Amid these concerns over the process as you have already indicated, the Congress enacted section 832 of this year's National Defense Authorization Act. The legislation required the Comptroller General to convene a panel of experts to study the policies and procedures governing the transfer of commercial activities from government personnel to Federal contractors. The panel, which includes the Comptroller General as the Chair, includes senior officials from DOD, private industry, Federal labor organizations and OMB.

Among the issues the panel will be reviewing are the A–76 process and implementation of the FAIR Act. The panel had its first meeting on May 8th of this year, its first public hearing on June 11. At the first hearing, over 40 individuals representing many perspectives presented their views. The panel currently plans to hold two additional hearings, one on August 8th in Indianapolis, IN, and the other on August 15 in San Antonio, TX. The panel is required to report its findings and recommendations to the Congress by May of next year.

Mr. Chairman, Members, this concludes my summary, and I'd be please to answer any questions you might have.

Mr. TOM DAVIS OF VIRGINIA. Thank you very much and we'll be back with you for questions.

[The prepared statement of Mr. Holman follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Technology and Procurement Policy
Committee on Government Reform
House of Representatives

For Release on Delivery
2:00 p.m. EDT
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DOD COMPETITIVE SOURCING

A-76 Program Has Been Augmented by Broader Reinvention Options

Statement of Barry W. Holman, Director
Defense Capabilities and Management

GAO-01-907T

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to present our observations of how the Department of Defense (DOD) uses the Office of Management and Budget's (OMB) Circular A-76, which establishes federal policy for the performance of recurring commercial activities. OMB issued the circular in 1966 and supplemented it in 1979 with a handbook of procedures for conducting cost comparison studies to determine whether commercial activities should be performed by the government or by the private sector. DOD refers to A-76 cost comparison studies as competitive sourcing. OMB updated the handbook in 1983, 1996, and 1999.

My comments today are based on work we have carried out in recent years tracking DOD's progress in implementing the A-76 program with the goal of saving billions of dollars that could be applied to other priority needs (see list of related products at the end of this statement). In response to the questions you asked us to address, my testimony will (1) review the evolution of the A-76 program in DOD up to the present; (2) address the extent to which savings are being realized through the A-76 process; (3) identify some key issues we have raised about DOD's A-76 program as useful lessons for other agencies; and (4) provide an update of the commercial activities study panel chaired by Comptroller General David Walker under Section 832 of the National Defense Authorization Act for Fiscal Year 2001.

SUMMARY

DOD has been the leader among federal agencies in the use of the A-76 process in recent years and at one point planned to study over 200,000 positions using the process over several years. However, the number of positions planned for study has changed over time and the Department recently augmented its A-76 program with what it terms strategic sourcing—a broader array of reinvention and reengineering options that may not necessarily involve A-76 competitions. DOD has already reprogrammed over

$11 billion in anticipated savings from A-76 and strategic sourcing into its modernization accounts.

DOD has achieved savings through the A-76 process primarily by reducing the number of in-house positions. Yet we have repeatedly found that it is extremely difficult to measure the precise amount of savings because available data have been limited and inconsistent. Although DOD has begun efforts to improve the estimated and actual costs of activities under study, its savings estimates have not taken fully into account up-front costs, which must be offset before net savings begin to accrue. Considering that DOD has already reduced operating budgets on the assumption of these savings, it is crucial that its estimates be as accurate as possible.

Issues we have raised concerning DOD's A-76 program that may be useful lessons learned for other agencies that use the A-76 process include the following: (1) studies have generally taken longer than initially expected; (2) studies have generally required higher costs and resources than initially projected; (3) finding and selecting functions to compete can be difficult; and (4) making premature budget cuts on the assumption of projected savings can be risky.

Both government groups and the private sector have expressed concerns about the fairness, adequacy, costs, and timelines of the A-76 process. As required by the Congress, a panel of government and private sector experts was created earlier this year to study the policies and procedures governing the transfer of commercial activities from government personnel to contractors, including the A-76 process, and to report its findings and recommendations by May 2002.

BACKGROUND

Under A-76, commercial activities may be converted to or from contractor performance either by direct conversion or by cost comparison. Under direct conversion, specific conditions allow commercial activities to be moved from government or contract

performance without a cost comparison study (for example, for activities involving 10 or fewer civilians).[1] Generally, however, commercial functions are to be converted to or from contract performance by cost comparison, whereby the estimated cost of government performance of a commercial activity is compared to the cost of contractor performance in accordance with the principles and procedures set forth in Circular A-76 and the supplemental handbook. As part of this process, the government identifies the work to be performed (described in the performance work statement), prepares an in-house cost estimate based on its most efficient organization, and compares it with the winning offer from the private sector.

According to A-76 guidance, an activity currently performed in-house is converted to performance by the private sector if the private offer is either 10 percent lower than the direct personnel costs of the in-house cost estimate or is $10 million less (over the performance period) than the in-house cost estimate. OMB established this minimum cost differential to ensure that the government would not convert performance for marginal savings.

The handbook also provides an administrative appeals process. An eligible appellant[2] must submit an appeal to the agency in writing within 20 days of the date that all supporting documentation is made publicly available. Appeals are supposed to be adjudicated within 30 days after they are received. Private sector offerors who believe that the agency has not complied with applicable procedures have additional avenues of appeal. They may file a bid protest with the General Accounting Office or file an action in a court of competent jurisdiction.[3]

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[1] For functions performed by DOD employees, a number of additional requirements, reports and certifications are addressed in Chapter 146 of title 10 U.S. Code and in recurring provisions in DOD's annual appropriation acts.

[2] An eligible appellant is defined as: (a) federal employees (or their representatives) and existing federal contractors affected by a tentative decision to waive a cost comparison; (b) federal employees (or their representatives) and contractors who have submitted formal bids or offers who would be affected by a tentative decision; or (c) agencies that have submitted formal offers to compete for the right to provide services through an inter-service support agreement.

[3] Federal employees do not have standing to file a protest with GAO and have generally been denied standing to sue in court.

Circular A-76 requires agencies to maintain annual inventories of commercial activities performed in house. A similar requirement was included in the 1998 Federal Activities Inventory Reform (FAIR) Act, which directs agencies to develop annual inventories of their positions that are not inherently governmental.[4] The fiscal year 2000 inventory identified approximately 850,000 full-time equivalent commercial-type positions, of which approximately 450,000 were in DOD.[5]

OMB has recently indicated that it intends to expand its emphasis on A-76 governmentwide. In a March 9, 2001, memorandum to the heads and acting heads of departments and agencies, the OMB Deputy Director directed agencies to take action in fiscal year 2002 to directly convert or complete public/private competitions of not less than 5 percent of the full-time equivalent positions listed in their FAIR Act inventories.

In 1999, DOD began to augment its A-76 program with what it terms strategic sourcing.[6] Strategic sourcing may encompass consolidation, restructuring or reengineering activities, privatization, joint ventures with the private sector, or the termination of obsolete services. Strategic sourcing can involve functions or activities regardless of whether they are considered inherently governmental, military essential, or commercial. I should add that these actions are recognized in the introduction to the A-76 handbook as being part of a larger body of options, in addition to A-76, that agencies must consider as they contemplate reinventing government operations.

Strategic sourcing initially does not involve A-76 competitions between the public and the private sector, and the Office of the Secretary of Defense and service officials have stressed that strategic sourcing may provide smarter decisions because it determines

[4] Section 5 of P.L. 105-270, codified at 31 U.S.C. 501 note (1998) defines an inherently governmental function as a "function that is so intimately related to the public interest as to require performance by Federal Government employees."

[5] Guidance implementing the FAIR Act permitted agencies to exempt many commercial activities from competitive sourcing consideration on the basis of legislative restrictions, national security considerations, and other factors. Accordingly, DOD's fiscal year 2000 inventory of positions it considers to be potentially subject to competitions was reduced to approximately 260,000.

[6] While strategic sourcing includes A-76 studies, the Department has commonly used the term to refer to all reinvention efforts other than A-76. For purposes of this testimony, our reference to strategic sourcing will not include A-76 studies.

whether an activity should be performed before deciding who should perform it. However, these officials also emphasized that strategic sourcing is not intended to take the place of A-76 studies and that positions examined under the broader umbrella of strategic sourcing may be subsequently considered for study under A-76.

DOD'S A-76 PROGRAM HAS EVOLVED OVER TIME

DOD has been the leader among federal agencies in emphasizing A-76 studies. DOD's use of A-76 waned from the late 1980s to the mid-1990s, then grew substantially in 1995 before falling again from 1999 to the present. DOD is currently emphasizing a combination of A-76 and strategic sourcing.

Available information indicates that A-76 studies in civilian agencies have been minimal, compared with those carried out in DOD. Unfortunately, no central database exists to provide information on the actual number of studies undertaken. From the late 1970s through the mid-1990s, DOD activities studied approximately 90,000 positions under A-76. However, program controversy and administrative and legislative constraints caused a drop in program emphasis from the late 1980s through 1995.

In August 1995, the Deputy Secretary of Defense gave renewed emphasis to the A-76 program when he directed the services to make outsourcing of support activities a priority in an effort to reduce operating costs and free up funds to meet other priority needs. The effort was subsequently incorporated as a major initiative under the then-Secretary's Defense Reform Initiative, and the program became known as competitive sourcing—in recognition of the fact that either the public or the private sector could win competitions.

The number of positions planned for study and the timeframes for accomplishing those studies have changed over time in response to difficulties in identifying activities to be studied. In 1997, DOD's plans called for about 171,000 positions to be studied by the end of fiscal year 2003. In February 1999, we reported that DOD had increased this number to

229,000 but then found it reduced the number of positions to be studied in the initial years of the program. In August 2000, DOD decreased the total number of positions to be studied under A-76 to about 203,000, added about 42,000 Navy positions for consideration under strategic sourcing, and extended the program to fiscal year 2005. The introduction of strategic sourcing came about as the Navy—which was having difficulty identifying sufficient numbers of positions for study—sought and obtained approval to use this broader approach to help meet its A-76 study goals. In March 2001, DOD officials announced that they had again reduced the number of positions to be studied under A-76 to about 160,000 but increased the number of strategic sourcing positions to 120,000. DOD's latest targets include strategic sourcing study goals for each of the military services. Tables 1 and 2 show the number of positions Defense components planned to study under A-76 and strategic sourcing as of March 2001.

Table 1: Positions to Be Studied Under A-76 Process

Component	Positions announced fiscal years 1997-2000	Positions planned for Fiscal years 2001-2007	Total
Army	37,871	20,916	**58,787**
Navy	32,573	9,366	**41,939**
Air Force	24,306	5,206	**29,512**
Marine Corps	4,625	0	**4,625**
Defense agencies	11,533	13,187	**24,720**
Total	**110,908**	**48,675**	**159,583**

Source: DOD data.

Table 2: Positions to Be Studied Under Strategic Sourcing

Component	Positions projected for fiscal year s 1997-2000	Positions planned for fiscal years 2001-2007	Total
Army	8,444	9,163	17,607
Navy	41,733	5,652	47,385
Air Force	38,964	2,134	41,098
Marine Corps	8,864	5,079	13,943
Defense agencies	0	0	0
Total	**98,005**	**22,028**	**120,033**

Source: DOD data.

DOD's data shown above show fewer positions planned to be studied under both A-76 and strategic sourcing in the out-years compared to those projected before 2001. To what extent these numbers will change on the basis of recent program direction from OMB for an expanded A-76 program emphasis is yet to be determined.

As these numbers changed, so did savings targets. In 1999, for example, DOD projected that its A-76 program would produce $6 billion in cumulative savings from fiscal year 1997 to 2003 and $2.3 billion in net savings each year thereafter. In 2000, DOD projected savings of about $9.2 billion in 1997-2005, with recurring annual net savings of almost $2.8 billion thereafter. Additional savings were to come from strategic sourcing which was expected to produce nearly $2.5 billion in cumulative savings by 2005 and recurring annual savings of $0.7 billion thereafter. Together, A-76 and strategic sourcing are expected to produce estimated cumulative savings of almost $11.7 billion, with about $3.5 billion in recurring annual net savings. More recent savings estimates have not yet been made available.

Most importantly, these projected savings have become more than ambitious goals: when it developed its fiscal year 2000 budget, DOD reprogrammed about $11.2 billion of these

anticipated savings into its modernization accounts, spread over future years' planning period.

SAVINGS ARE BEING REALIZED, BUT PRECISION OF SAVINGS ESTIMATES IS LIMITED

Our work has consistently shown that while savings are being achieved by DOD's A-76 program, it is difficult to determine precisely the magnitude of savings. Furthermore, savings may be limited in the short term because up-front investment costs associated with conducting and implementing the studies must be absorbed before long-term savings begin to accrue. Several of our reports in recent years have highlighted these issues.

We reported in March 2001 that A-76 competitions had reduced estimated costs of Defense activities primarily by reducing the number of positions needed to perform those activities under study.[7] This is true regardless of whether the government's in-house organization or the private sector wins the competition. Both government and private sector officials with experience in such studies have stated that, in order to be successful in an A-76 competition, they must seek to reduce the number of positions required to perform the function being studied.[8] Related actions may include restructuring and reclassifying positions and using multiskill and multirole employees to complete required tasks.

In December 2000 we reported on compliance with a congressional requirement[9] that DOD report specific information of all instances since 1995 in which DOD missions or functions were reviewed under OMB Circular A-76.[10] For the 286 studies for which it had complete information, the Department's July 2000 report to the Congress largely

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[7] *DOD Competitive Sourcing: Effects of A-76 Studies on Federal Employees' Employment, Pay, and Benefits Vary* (GAO-01-388, Mar. 16, 2001).

[8] We completed a more recent analysis of 22 cases in which the government's most efficient organization won the A-76 competitions and found that the in-house organizations had reduced authorized personnel levels an average of 46 percent—between 13 and 69 percent. The actual number of personnel performing a function tends to be less, so these figures may overstate the savings.

[9] DOD Appropriations Act, fiscal year 2000, P.L. 106-79, section 8109.

[10] *DOD Competitive Sourcing: Results of A-76 Studies Over the Past 5 Years* (GAO-01-20, Dec. 7, 2000.)

complied with the reporting requirement. We noted that DOD had reported cost reductions of about 39 percent, yielding an estimated $290 million savings in fiscal year 1999. We also agreed that individual A-76 studies were producing savings but stressed that savings are difficult to quantify precisely for a number of reasons:

- Because of initial lack of DOD guidance on calculating costs, baseline costs were sometimes calculated on the basis of average salaries and authorized personnel levels rather than on actual numbers.
- DOD's savings estimates did not take into consideration the costs of conducting the studies and implementing the results, which of course must be offset before net savings begin to accrue.
- There were significant limitations in the database DOD used to calculate savings.
- Savings become more difficult to assess over time as workload requirements change, affecting program costs and the baseline from which savings were initially calculated.

Our August 2000 report assessed the extent to which there were cost savings from nine A-76 studies conducted by DOD activities.[11] The data showed that DOD realized savings from seven of the cases, but less than the $290 million that Defense components had initially projected. Each of the cases presented unique circumstances that limited our ability to precisely calculate savings—some suggested lower savings. Others suggested higher savings than initially identified. In two cases, DOD components had included cost reductions unrelated to the A-76 studies as part of their projected savings. Additionally, baseline cost estimates used to project savings were usually calculated using an average cost of salary and benefits for the number of authorized positions, rather than the actual costs of the positions. The latter calculation would have been more precise. In four of the nine cases, actual personnel levels were less than authorized. While most baseline cost estimates were based largely on personnel costs, up to 15 percent of the costs associated with the government's most efficient organizations' plans or the contractors' offers were not personnel costs. Because these types of costs were not included in the baseline, a comparison of the baseline with the government's most efficient organization or

contractor costs may have resulted in understating cost savings. On the other hand, savings estimates did not reflect study and implementation costs, which reduced savings in the short term.

DOD has begun efforts to revise its information systems to better track the estimated and actual costs of activities studied but not to revise previous savings estimates. DOD is also emphasizing the development of standardized baseline cost data to determine initial savings estimates. In practice, however, many of the cost elements that are used in A-76 studies will continue to be estimated because DOD lacks a cost accounting system to measure actual costs. Further, reported savings from A-76 studies will continue to have some element of uncertainty and imprecision and will be difficult to track in the out-years because workload requirements change, affecting program costs and the baseline from which savings are calculated. Given that the Department has reduced operating budgets on the basis of projected savings from A-76 studies, it is important that it have as much and as accurate information as possible on savings, including information on adjustments for up-front investment costs and other changes that may occur over time.

SOME ISSUES WE HAVE RAISED ABOUT DOD'S A-76 PROGRAM

In monitoring DOD's progress in implementing the A-76 program, we have reported on a number of issues that should be considered when expanding emphasis on the A-76 process, either in DOD or at other government agencies. These issues include (1) the time required to complete studies, (2) the costs and other resources needed to conduct and implement studies, (3) the difficulties involved in selecting functions to compete, and (4) the timing of budget reductions in anticipation of projected savings. This last issue is a fundamental issue that is directly affected by the first three.

[11] *DOD Competitive Sourcing: Savings Are Occurring, but Actions Are Needed to Improve Accuracy of Savings Estimates* (GAO/NSIAD-00-107, Aug. 8, 2000).

Studies Have Taken Longer to Complete Than Expected

Individual A-76 studies have taken longer than initially projected. In launching its A-76 program, someDOD components made overly optimistic assumptions about the amount of time needed to complete the competitions. For example, the Army projected that it would take 13-21 months to complete studies, depending on their size. The Navy initially projected completing its studies in 12 months. The numbers were subsequently adjusted upward, and the most recent available data indicate that studies take about 24 months for single-function and 27 months for multifunction studies.

Costs and Resources to Conduct and Implement Studies Were Underestimated

Once DOD components found that the studies were taking longer than initially projected, they realized that a greater investment of resources would be needed than originally planned to conduct the studies. In August 2000, we reported that DOD has increased its study cost estimates considerably since the previous year and had given greater recognition to the costs of implementing the results of A-76 studies. But we expressed concern that the Department was, in some instances, still likely underestimating those costs.[12]

The 2001 President's Budget showed a wide range of projected study costs, from about $1,300 per position studied in the Army to about $3,700 in the Navy. The Army, the Navy and the Air Force provide their subcomponents $2,000 per position studied. Yet various officials believe these figures underestimate the costs of performing the studies. Officials at one Army major command estimated that their study costs would be at least $7,000 per position. One Navy command estimated its costs at between $8,500 and $9,500 per position. And our own assessment of a sample of completed A-76 studies within the

[12] *DOD Competitive Sourcing: Some Progress, but Continuing Challenges Remain in Meeting Program Goals (GAO/NSIAD-00-106, Aug. 8, 2000).*

Army, the Navy, the Air Force, and Defense agencies showed that study costs ranged from an average of $364 to $9,000 per position.[13]

In addition to study costs, significant costs can be incurred in implementing the results of the competitions. Transition costs include the separation costs for civilian Defense employees who lose their jobs as a result of competitions won by the private sector or when in-house organizations require a smaller civilian workforce. Such separation costs include the costs of voluntary early retirement, voluntary separation incentives, and involuntary separations through reduction-in-force procedures. The President's Budget for Fiscal Year 2001 included for the first time all Defense components' estimated costs of implementing A-76 competitions and showed a total of about $1 billion in transition costs resulting from A-76 studies for fiscal years 1997-2005.

Selecting and Grouping Functions to Compete Can Be Difficult

Selecting and grouping functions and positions to compete can be difficult. Because most services faced growing difficulties in or resistance to finding enough study candidates to meet their A-76 study goals, DOD approved strategic sourcing as a way to complement its A-76 program. The Navy, for instance, had planned to announce 15,000 positions for study under A-76 in fiscal year 1998 but announced only 8,980 (about 60 percent). The following year it planned to announce 20,000 positions but announced 10,807 (about 54 percent).

Although DOD's FAIR Act inventory in 2000 identified commercial functions involving about 450,000 civilian positions, including about 260,000 associated with functions considered potentially eligible for competition, DOD does not expect to study all these functions. It remains to be seen to what extent the Department will significantly increase the number of functions it studies under A-76 in the near future. Department officials told us that the process identified few new functions and associated positions that could be studied under A-76 and that the increases in positions identified did not

[13] *DOD Competitive Sourcing (GAO/NSIAD-00-107, Aug. 8, 2000).*

automatically translate into potentially large numbers of additional studies. The number of positions that will actually be studied for possible competition may be limited by a number of factors, including the following:

- Some activities are widely dispersed geographically. Having positions associated with commercial activities that are scattered over many locations may prevent some of them from being grouped for competition.

- Some work categorized as commercial may not be separated from inherently governmental or exempted work. In some cases, commercial activities classified as subject to competition are in activities that also contain work that is inherently governmental or exempt from competition, and the commercial workload may not always be separable from the workload performed by the exempted positions.

- Resources to conduct A-76 studies are limited. Officials of several military service commands have told us that they already have aggressive competition programs under way and that they lack sufficient resources and staff to conduct more competition studies in the near future.

Even before it developed its FAIR Act inventory, DOD had already established goals for positions that the services and Defense agencies should study and the savings to be achieved. For the most part, the services and Defense agencies delegated to their components responsibility for determining which functions to study. DOD then fell behind in its initial timetable for initiating and completing A-76 studies. Service officials told us that they had already identified as many competition opportunities as they could to meet savings goals under the A-76 program, and they believed that their capacity to conduct studies beyond those already underway or planned over the next few years was limited.

Concern About Premature Budget Reductions Based on Anticipated Savings

Difficulties encountered in identifying A-76 study candidates, and in launching and completing the studies in the timeframes initially projected, along with greater than expected costs associated with completing the studies have led to concerns among various service officials about their ability to meet previously established savings targets. Some Defense officials have also voiced uncertainties over cost estimates and savings associated with strategic sourcing and the lack of a rigorous basis for projecting savings from this effort.[14]

Data included in the President's fiscal year 2001 budget submission indicated that the Navy estimated that study costs and savings generated by strategic sourcing efforts would be virtually the same as those generated by A-76 studies for each position studied. Office of the Secretary of Defense officials have noted there is wide variation in the types of initiatives that make up strategic sourcing and, consequently, that there can be wide variation in the resultant savings. These uncertainties led us to previously recommend that DOD periodically determine whether savings are being realized in line with the reductions in operating accounts that are based on projected savings.

COMMERCIAL ACTIVITIES PANEL CONVENED TO STUDY POLICIES AND PROCEDURES

Increasing emphasis on A-76 has served to underscore concerns expressed by both government employees and industry about the process. Federal managers and others have been concerned about organizational turbulence that typically follows the announcement of A-76 studies. Government workers have been concerned about the impact of competition on their jobs, their opportunity for input into the competitive process, and the lack of parity with industry offerors to appeal A-76 decisions. Industry

[14] *DOD Competitive Sourcing* (GAO/NSIAD-00-106, Aug. 8, 2000.)

representatives have complained about the fairness of the process and the lack of a "level playing field" between the government and the private sector in accounting for costs. It appears that everyone involved is concerned about the time required to complete the studies.

Amid these concerns over the A-76 process, the Congress enacted section 832 of the National Defense Authorization Act for Fiscal Year 2001. The legislation required the Comptroller General to convene a panel of experts to study the policies and procedures governing the transfer of commercial activities for the federal government from government personnel to a federal contractor. The Panel, which Comptroller General David Walker has elected to chair, includes senior officials from DOD, private industry, federal labor organizations, and OMB. Among other issues, the Panel will be reviewing the A-76 process and implementation of the FAIR act.

The Panel had its first meeting on May 8, 2001, and its first public hearing on June 11. At the hearing, over 40 individuals representing a wide spectrum of perspectives presented their views. The Panel currently plans to hold two additional hearings, on August 8 in Indianapolis, Indiana, and on August 15 in San Antonio, Texas. The hearing in San Antonio will specifically address OMB Circular A-76, focusing on what works and what does not in the use of that process. The hearing in Indianapolis will explore various alternatives to the use of A-76 in making sourcing decisions at the federal, state, and local level. The Panel is required to report its findings and recommendations to the Congress by May 1, 2002.

This concludes my statement. I would be pleased to answer any questions you or other members of the Subcommittee may have at this time.

Contacts and Acknowledgment

For further contacts regarding this statement, please contact Barry W. Holman at (202) 512-8412 or Marilyn Wasleski at (202) 512-8436. Individuals making key contributions to this statement include Debra McKinney, Stefano Petrucci, Thaddeus Rytel, Nancy Lively, Bill Woods, John Brosnan, and Stephanie May.

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A-76 Related GAO Products

DOD Competitive Sourcing: Effects of A-76 Studies on Federal Employees' Employment, Pay, and Benefits Vary (GAO-01-388, Mar. 16, 2001)

DOD Competitive Sourcing: Results of A-76 Studies Over the Past 5 Years (GAO-01-20, Dec. 7, 2000).

DOD Competitive Sourcing: More Consistency Needed in Identifying Commercial Activities (GAO/NSIAD-00-198, Aug. 11, 2000).

DOD Competitive Sourcing: Savings Are Occurring, but Actions Are Needed to Improve Accuracy of Savings Estimates (GAO/NSIAD-00-107, Aug. 8, 2000).

DOD Competitive Sourcing: Some Progress, but Continuing Challenges Remain in Meeting Program Goals (GAO/NSIAD-00-106, Aug. 8, 2000).

Competitive Contracting: The Understandability of FAIR Act Inventories Was Limited (GAO/GGD-00-68, Apr. 14, 2000).

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Defense Infrastructure: Challenges Facing DOD in Implementing Defense Reform Initiatives (GAO/T-NSIAD-98-115, Mar. 18, 1998).

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Base Operations: DOD's Use of Single Contracts for Multiple Support Services (GAO/NSIAD-98-82, Feb. 27, 1998).

Defense Outsourcing: Better Data Needed to Support Overhead Rates for A-76 Studies (GAO/NSIAD-98-62, Feb. 27, 1998).

Outsourcing DOD Logistics: Savings Achievable But Defense Science Board's Projections Are Overstated (GAO/NSIAD-98-48, Dec. 8, 1997).

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Mr. TOM DAVIS OF VIRGINIA. Ms. Styles, welcome. Thank you for coming.

Ms. STYLES. Thank you. Mr. Chairman and members of the subcommittee, I'm pleased to be here today to discuss the administration's competitive sourcing initiative and the proposed Truthfulness, Responsibility and Accountability in Contracting Act [TRAC] Act.

There are two points I want to clearly communicate today. First is the administration's commitment to competition. Second is the administration's strong opposition to the TRAC Act. Competition is fundamental to our economy and to our system of procurement. It drives better value, innovation, performance and importantly significant cost savings. A major element of our commitment to competition is the administration's competitive sourcing initiative. The President has committed to opening one half of the Federal commercial workload listed on the FAIR Act inventories to competition.

Implementing this initiative, OMB has taken several steps. First, budget was linked to performance planning through the President's budget blueprint and through a February 14, 2001 memorandum from Mitch Daniels, the Director of OMB to the departments and agencies.

Second, this guidance was followed by a March 9, 2001 memorandum from Shawn O'Keefe, the Deputy Director of OMB to the departments and agencies. The memorandum requested agencies to develop performance plans to implement the A–76 competitive sourcing initiative. For fiscal year 2002, this memo requested that the agencies complete competitions or directly convert not less than 5 percent of the commercial workload listed on the agency's FAIR Act inventories.

To assist the agencies in meeting this competitive sourcing goal, OMB has undertaken a three-part initiative. First, OMB is invigorating the use of circular A–76 by introducing positive monetary incentives. Agencies get to retain the savings that are achieved through A–76 public private competitions.

Second, OMB will make one or two immediate amendments to the circular to expand and improve the process. Importantly, tomorrow a proposed change to A–76 will be published in the Federal Register for notice and comment. This proposal, if promulgated, would remove the current grandfather provision in A–76 that exempts inner service support agreements from competition. Agencies have long provided commercial support services to other agencies on a reimbursable basis. This includes a wide variety of commercial support services from paycheck services and ADP to facilities operation and maintenance.

The example that I often use is OMB paychecks. Myself and all other OMB employees receive their paychecks from DFAS, the Defense Finance and Accounting Service within the Department of Defense. In other words, the provision of paychecks to OMB employees, a clearly commercial service, is provided to OMB by the Department of Defense on a reimbursable basis. OMB, or the Executive Office of the President, pays DFAS for providing these paychecks. The concern is that A–76 exempts this clearly commercial service, the provision of paychecks, from competition with the private sector. Could these services be provided less expensively or

more efficiently by the private sector? We don't know, because these services don't have to be competed right now. The proposed change would require competition of these commercial services provided on an interagency basis every 3 to 5 years.

The third part of OMB's initiative is the establishment of an A–76 streamlining working group. They will be working with the GAO commercial activity panel and taking a hard look at how we can improve the A–76 process. As many of you know, the A–76 process has become difficult to implement. The process takes too long, it has generated significant distrust and several GAO reports have found weaknesses in the current structure and application. What was designed to provide reasonable estimates of costs on a level playing field has become so rigid that the process itself is an impediment to competition.

In the long term, OMB anticipates vastly simplifying this cumbersome process by replacing the complex and artificial A–76 cost requirements with a budgeted measure of full agency costs. With full cost budgeting the agency's budget cost will substitute for the complex A–76 cost comparison requirements. The difficulties in implementation of A–76 and our plans to make long-term changes do not, however, reflect on our commitment to use the current circular to achieve our competitive sourcing goals. The circular provides an effective and established policy framework that has resulted in significant performance improvement and substantial economic savings. We are committed to public-private competition, and we are committed to using the current A–76 circular to meet the fiscal year 2002 competitive sourcing goals.

I want to make very clear, however, that in supporting public-private competition, we support the provision of government service by those best able to do so, be that the private sector or the government itself. This is not an outsourcing initiative. We are subjecting government functions to competition. What is the most important is the cost, quality and availability of this service, not who provides it. An often forgotten fact in this discussion is that more than 50 percent of the time the in-house organization wins the public-private competition. The simple fact that the commercial function undergoes competition creates cost savings, innovation and improved performance.

The second but related issue that I want to address is the administration's strong opposition to the TRAC Act. Freezing all currently contracted activities to determine if they could be performed more effectively by the private sector would put at risk the Federal Government's ability to acquire needed support services in both the short and the long term. This legislation would seriously affect several primary functions of government, including the public health and welfare, constituting a threat to national security.

Mr. TOM DAVIS OF VIRGINIA. Ms. Styles, I've given you a little bit of time. Could you sum up?

Ms. STYLES. I'm almost done.

Mr. TOM DAVIS OF VIRGINIA. OK.

Ms. STYLES. Even Medicare would not be able to issue payments since this function is performed by contract. We estimate the TRAC Act would affect over 230,000 contract actions, a simply untenable

outcome.

Mr. Chairman that concludes my statement and I'll be glad to answer questions.

Mr. TOM DAVIS OF VIRGINIA. Thank you very much.

[The prepared statement of Ms. Styles follows:]

STATEMENT
OF
ANGELA B. STYLES
ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
HOUSE SUBCOMMITTEE ON TECHNOLOGY
AND PROCUREMENT POLICY

June 28, 2001

INTRODUCTION

Mr. Chairman and Members of the Subcommittee, I am pleased to be here to discuss with you the Administration's Competitive Sourcing Initiative, the Office of Management and Budget's (OMB) Circular A-76, the congressionally mandated Commercial Activities Panel being coordinated by the General Accounting Office, the implementation of the Federal Activities Inventory Reform (FAIR) Act and the proposed Truthfulness, Responsibility, and Accountability in Contracting (TRAC) Act (H.R. 721).

THE ADMINISTRATION'S COMPETITIVE SOURCING INITIATIVE

If there is one point to communicate today, it is this Administration's commitment to public-private competition, or what we commonly refer to as the Competitive Sourcing Initiative. Without regard to whether the public or private sector wins a competition, when a commercial function performed by the public sector undergoes competition, that competition results in significant economic savings to the taxpayer. Indeed, experience demonstrates that the use of public-private competition consistently reduces the cost of public performance by more than 30 percent.

But the dynamics of competition ensure more than just a reduction in cost. Competition results in better value and improves performance by bringing viable, responsive, innovative and cost-effective competitors (public and private) to the table. We believe that the Competitive Sourcing Initiative will continue to result in significant performance improvements. In the past, service improvements have occurred both when the competition has resulted in outsourcing and when the work has been retained in-house. Whether we are looking to reduce costs, improve performance, improve accountability, or increase efficiency, competitive sourcing has been a key program element.

To expand upon these benefits, the President committed to opening one-half of the federal commercial workload listed on the FAIR Act inventories to competition. Implementing this initiative,

several steps have already been taken. First, budget was linked to performance planning through the President's Budget Blueprint and through the Director's February 14, 2001 memorandum. This guidance was followed by OMB Deputy Director O'Keefe's memorandum to agencies dated March 9, 2001, which requested agencies to develop performance plans to implement their A-76 competitive sourcing program, including resource and training requirements. For FY 2002, agencies are requested to complete competitions involving not less than 5 percent of their commercial workload, as listed on the FAIR Act inventories. In addition, OMB has requested *Federal Register* agency and public comments regarding the possible extension of competition to existing Inter-Service Support Agreements (ISSAs). Agencies have long provided commercial support services to other agencies and departments on a reimbursable basis, through ISSAs, without the benefit of competition.

To assist agencies in meeting the Administration's competitive sourcing goals, OMB has undertaken a three-part initiative. First, the plan invigorates the use of OMB Circular A-76 by introducing positive monetary incentives. Agencies may retain the savings achieved through A-76 public-private competitions. Second, OMB will make amendments to the current A-76 Circular to expand and improve the process. And third, OMB will move forward with an A-76 streamlining working group that will be working with the congressionally mandated Commercial Activities Panel, authorized by Section 832 of the FY 2001 Defense Authorization Act, and administered by the General Accounting Office.

Further, OMB has been actively working to ensure the tools and other resources are in place to conduct these competitions government-wide. Because the Department of Defense (DoD) has extensive recent experience with OMB Circular A-76, OMB is working to ensure that DoD's experiences, both positive and negative, can be utilized by the civilian agencies. For example, DoD recently issued an on-line OMB Circular A-76 Cost Comparison Handbook. This document addresses, in detail, questions that have been raised with regard to the implementation of Circular A-76 and the 1996 Revised Supplemental Handbook. DoD also has made available a Revised "A-76 Compare Program," which provides automated costing of the in-house offer and the conduct of the cost comparison itself.

In the short-term, OMB's A-76 competitive sourcing program will be a key component in the Administration's efforts to improve performance, expand efficiency, improve accountability and generate savings. The Circular provides an established policy framework to determine if and when a commercial activity should be converted to or from in-house, contract or ISSA performance. The Circular also provides detailed guidance for the calculation of the in-house offer for comparison with the private sector, recognizing that federal accounting and budget procedures do not now enable a direct comparison of private sector costs with those of federal agencies. Special rules are required to ensure a level playing field and to ensure that the interests of all the parties are protected. This process has resulted in significant performance improvements and in significant economic savings and, while the magnitude of these savings has been challenged, we are not aware of any study that has disputed their existence.

OMB, however, is not blind to the fact that in many respects the A-76 process has become difficult to implement. It no longer satisfies the agencies or those who represent the interested parties, public or private. Rather than encourage competition, A-76 is often perceived as an impediment to the evaluation of public and private alternatives. The process takes too long -- in some cases 3-4 years to define what federal employees are doing. The process is not trusted and numerous GAO reports have found weaknesses in the current structure and its application. Solicitations have not been adhered to by the government, source selection panels have been challenged and best value evaluations have been found wanting. Because agencies must collect and realign cost data that has no relationship to ongoing agency operational costs or budgets, a program that was intended to be a transparent cost comparison process is no longer viewed in those terms. What was designed to provide reasonable estimates of cost on a level playing field has, in many respects, become so rigid in an effort to extract exactness that the process itself has become a costly barrier to competition. Even when significant opportunities exist for performance improvements and savings, encouraging agencies to undertake a one-time public-private cost comparison has been difficult at best.

In the long-term, OMB anticipates vastly simplifying this cumbersome process by replacing the complex and artificial A-76 cost requirements with a budgeted measure of full agency costs. We have taken several steps to implement needed changes. The President outlined in the FY 2002 Budget Blueprint a comprehensive management agenda designed to achieve performance oriented and measurable government. This agenda builds on existing laws such as the Government Performance and Results Act (GPRA), the Government Management Reform Act (GMRA) and the Federal Activities Inventory Reform Act (FAIR) and seeks to integrate performance and accountability with the allocation of budgetary resources.

The Director has determined that OMB should pursue administrative and legislative actions designed to fully integrate performance measurement and budgeting to include:
(1) identifying high quality outcome measures, accurately monitoring the performance of programs, and integrating this presentation with associated cost; (2) implementing changes to create a market based government, of which this initiative is a part - to open the government's activities to more competition, and to require agencies to budget for costs in a way that will simplify cost comparisons for A-76 competition, and; (3) fully integrating financial (finance, budget, and cost), program, and oversight information processes. With full cost budgeting, the agency's budget costs will substitute for the complex A-76 cost comparison requirements, on a routine basis.

We do not believe that public-private competitions should be one-time events nor should they be conducted only when the function is being performed in-house. To ensure that the taxpayer continues to receive the best deal and the best value, we need to periodically reexamine our decisions to outsource, to retain functions in-house or to use cross-servicing agreements. At the government's discretion, competition should be used on a recurring basis to review the situation and to determine who can best provide required services.

We are, however, opposed to unfair competition and to competition requirements that place unnecessary burdens on the agencies. During the last decade, Congress carefully built a legislative path to strengthen the framework for financial management and performance measurement. The President has called for the government to be accountable, so citizens can judge our performance. As responsible stewards, we must do more to show how funding levels relate to performance levels and how daily business decisions to perform work with federal or non-federal employees bears on that performance. Better linkage between budgetary requirements, costs and performance will be an every-day priority of this Administration. Department and agency heads have been directed that FY 2002 performance plans, include performance goals for Presidential initiatives and for government-wide and agency-specific reform proposals.

COMPETITION BEGINS WITH THE FAIR ACT

The "Federal Activities Inventory Reform Act of 1998," Public Law 105-270 (the FAIR Act), requires federal agencies to prepare and submit to OMB, by June 30 of each year, inventories of the commercial activities performed by federal employees. OMB is required to review each agency's inventory and consult with the agency regarding content. Upon completion of this review and consultation, the agency head must transmit a copy of the inventory to the Congress and make the inventory publicly available. The FAIR Act then establishes a two-step administrative challenge and appeals process under which an interested party may challenge the omission or the inclusion of a particular activity on the inventory. After requesting public comment, OMB issued government-wide guidance for implementing the Act on June 24, 1999 (64 Fed. Reg. 33927). Relying on this guidance, agencies developed and issued FAIR Act inventories for 1999, and responded to the first round of challenges and appeals.

OMB and the agencies learned a number of lessons from the 1999 experience. We also received recommendations from agencies and interested members of the public on how the FAIR Act process could be improved. As a result, OMB developed revised FAIR Act guidance applicable to June 2000 submissions. For example, OMB directed agencies to use a standard format to make the inventories within and across different agencies easier to understand and compare. OMB also expanded the number of function codes that the agencies could use to describe commercial activities. Reflecting comments received from the agencies and from industry, the expanded codes more accurately capture the commercial activities being performed by the agencies with the aim of increasing agency and public understanding. Other OMB initiatives for the 2000 FAIR Act process included using the Internet to make the agencies' inventories more easily accessible to the public. Finally, OMB directed each agency to include a summary of the agency's review process, referred to as the "Management Report."

For the 2001 FAIR Act inventories, agencies have been requested to submit inventories in the formats and in accordance with the guidance issued for the 2000 FAIR Act submissions. In addition, agencies were requested to submit a separate report that lists the agency's civilian inherently

governmental positions. This report will be used as a part of OMB's statutory review and consultation process, but it will not be released as a part of the FAIR Act inventory, nor will it be subject to the FAIR Act's administrative challenge and appeal process.

Certainly, the most contentious issue surrounding the development of the FAIR Act inventory is the decision as to what is or is not inherently governmental, by agency, location and function. OMB has requested that the agencies supply a list of inherently governmental positions to meet OMB's statutory review and consultation obligations. Therefore, OMB considers the request a part of our commitment to improve the quality of the inventories under the Act.

TRUTHFULNESS, RESPONSIBILITY AND ACCOUNTABILITY IN CONTRACTING ACT (TRAC) (H.R. 721)

The Administration supports competition, public accountability, the efficient delivery of services, and the development of reasonable cost savings estimates. There is no aspect of the proposed TRAC Act that would contribute to competition, efficiency or accountability. Indeed, the proposed legislation would put at risk the Federal government's ability to acquire needed support services in both the short and long term. The Administration is strongly opposed to its enactment.

The proposed TRAC Act relies on several false premises:

1. TRAC would find there has been a major increase in service contracting (relying on private contractors to provide services to the Federal Government) since 1993. While service contracting does appear to be rising in absolute terms, a comparison of data after adjustment for inflation shows that the amount of service contracting has remained relatively stable since 1993.

2. TRAC would find there are no reliable and comprehensive reporting systems in place to determine whether service contracting has achieved measurable cost savings or improved services for taxpayers. The General Accounting Office, the Center for Naval Analysis and others have consistently found that A-76 cost comparisons generate between 20 and 35 percent savings even when the functions are retained in-house. There is no argument regarding the existence of these savings, only their magnitude over the long term.

3. TRAC would find federal employees are being replaced by contractor employees without even knowing with certainty if the result is reduced costs or improved services. This statement is simply not true. Conversions that occur without a cost comparison must be justified by the contracting officer and must result in reasonable contract prices or a significant quality improvement or both.

In an effort to correct these and other misleading premises, TRAC would freeze all currently contracted activities to determine if they could be performed more cost effectively by the public sector, and would require an entirely new set of financial and other reporting systems that would not contribute to the government's ability to administer contracts, improve performance or enhance accountability. By suspending all facilities and operations contracts including, for example, all federal scientific and criminal lab contracts, many of the primary functions of government would be seriously affected - constituting a serious threat to our national defense. Even Medicare would not be able to issue payments since this is performed by contract. TRAC also would require public-private competitions for all future contracts, including the exercise of all options, extensions, and renewals by any contracting officer. We estimate that TRAC would affect over 230,000 contract actions involving contracts over $25,000 totaling $100.3 billion in 2000 -- an untenable outcome.

CONCLUSION

As a group, federal employees are some of the nation's most highly trained and dedicated employees. OMB recognizes that, in many respects, we are fundamentally reorganizing the way they and the Federal Government conduct business. Working with the Congress, we seek to develop comprehensive performance and cost data that will lead federal agencies to reconsider how they accomplish their missions - to get the best bang for the buck. Circular A-76 has room for improvement, but, for now, it will remain a key component of our effort to increase performance and realize savings. There is no question that savings are being generated by A-76 competitions. This initiative, however, does not ignore the challenges of the A-76 process: the competitions take too long, are administratively burdensome and are viewed with suspicion. Fundamental changes will be made to our budget systems and to the A-76 process to better reflect the true costs to taxpayers.

Competition has made the American economy the envy of the world. We support the provision of government services by those best able to do so, whether in the private sector or within the government.

Mr. Chairman, that concludes my prepared statement. I would be pleased to respond to any questions that you might have.

Mr. TOM DAVIS OF VIRGINIA. Mr. DuBois.

Mr. DUBOIS. Mr. Chairman, thank you very much for allowing me to represent the Secretary of Defense in front of this important subcommittee and to address this important issue. I have submitted a written statement as you know, but I would like to bear particular attention to certain issues that the Secretary asked me to bring up this afternoon.

A–76 competitions, as we all know, attract a lot of attention. They generate vital savings results, but they need to be put into perspective. Service contracting performed as a result of A–76 competitions is estimated to comprise less than 2 percent of all defense service contracting. While our competitive sourcing program may be small in the greater scheme of things, it has generated some gratifying results.

Between fiscal 1995 and 2000, we've completed over 550 A–76 initiatives that have affected over 25,000 government employees. As Ms. Styles said, more than half of those A–76 competitions, specifically 57 percent in the DOD, were won by the government's most efficient organization. The remainder of the competitions, 43 percent, were won by the private sector. Savings are achieved regardless of whether the work stays in-house or moves to the private sector. We saw a reduction of 12,000 government positions involved in the activities studied, but relatively few personnel, about 10 percent suffered involuntary separation actions. 1,311 were removed from the Federal work force through a RIF. We have found that in these A–76 initiatives between 1995 and 2000 that we have averaged 34 percent in savings.

Now, I know that both Congressman Wynn and Congressman Waxman referred to the fact that there were no empirical evidence to date underlying these savings. In fact, I believe Congressman Wynn also made the comment that GAO has not yet provided concrete evidence of those savings. Now, I will defer obviously to my colleague to my right from GAO, but we believe that both GAO and the Rand Corp. and the Center for Naval Analysis examined these savings and their results, their analysis unanimously support the fact that realistic savings have been achieved.

In the past year, we specifically asked again that the issue of long-term savings be examined and again, the CNA, Center for Naval Analysis, confirmed the savings garnered are persistent.

Now, there are a number of issues today that we need to talk about to include bill 721, the TRAC Act. We believe in the Department of Defense that because the reality of those savings is so strong, that any form of temporary suspension of competitive sourcing activities would, as a practical matter, create an expensive, destructive and unprogrammed cost as anticipated savings would not be realized. While there are legitimate concerns surrounding this program, we believe it would be a real mistake to stop it in its tracks until all questions are answered.

Now, A–76 cost comparison studies are subject to intense scrutiny by both internal and external parties. It is certainly frustrating that problem situations get a disproportionate share of attention, but I know that you are well familiar with that phenomenon in the various issues that we all struggle with. We identify systemic problems. We have been proactive in identifying required

changes to procedures, and while the process is far from perfect and we continue to seek improvement, we conversely do not want to overreact to anomalous errors made by well-intentioned, hard-working employees.

It is again important to recognize that among these hundreds of decisions during fiscal year 1995 to 2000, only six tentative cost comparison decisions were reversed through appeal or protest. Sixty-nine percent of all decisions resulted in no appeal, and 88 percent of all decisions resulted in no protest at all. Unfortunately, the problem cases tend to overshadow the many decisions that reflect a solid program.

The Secretary of Defense this morning testified before the House Armed Services Committee, and this afternoon as we speak, is testifying in front of the Senate Armed Services Committee. In his testimony, he refers to the obligation that we, the Department of Defense, the entire Federal Government, have to taxpayers to spend their money wisely as reflected also in your comments, Mr. Chairman.

The Department of Defense needs greater freedom to manage so we can save the taxpayers money in as many areas as we can. The Secretary this morning and this afternoon addressed the issue that he is going to submit to the Congress for their consideration, that is to say, rationalization and restructuring of the DOD infrastructure. Ms. Styles, I believe, referred to increasing threshholds in the Davis Bacon Act.

But we also must address the issue of more aggressive contracting out, both in terms of housing and in terms of other services that are not military core competencies and that can be more efficiently performed in the private sector.

I just want to make one final remark if I might, Mr. Chairman. Yesterday I testified before the Military Construction Subcommittee of the House Appropriations Committee. I was reminded by Chairman Dave Hobson that I had returned to government after 24 years. Both Secretary Rumsfeld and I left the Federal Government, left the Department of Defense in 1977. We went into the private sector. My first 10 years from 1977 to 1987 were spent focused on productivity improvements both in terms of process, systemic and human. I have never been involved with an organization, either as an consultant or as an employee or an executive in the private or the public sector that could not by better management, by better systems, including information systems, operate at least 5 percent, if not more, more efficiently if given the freedom to do so.

Now in the Department of Defense, one last comment, if I might, 5 percent of the DOD budget is over $15 billion. Those savings could go a long way to satisfying many of the unfunded requirements that exist.

Thank you, Mr. Chairman, and I look forward to your questions.

[The prepared statement of Mr. DuBois follows:]

HOLD UNTIL RELEASED
BY THE COMMITTEE

STATEMENT OF

RAYMOND F. DUBOIS, JR.
DEPUTY UNDER SECRETARY OF DEFENSE
(INSTALLATIONS AND ENVIRONMENT)

BEFORE THE
HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON
TECHNOLOGY AND PROCUREMENT POLICY

June 28, 2001

Chairman Davis and distinguished members of the committee, I am pleased to have this opportunity to appear before you today to discuss the status of the Department of Defense's Competitive Sourcing Program, that is, our program to perform competitions in accordance with OMB Circular A-76. The Competitive Sourcing program is being used in conjunction with a number of other initiatives to better manage Defense resources. This is my first time talking to you on this topic and I thank you for the opportunity.

The Department must continue to do business better, faster and cheaper in order to maintain our focus and preserve our military strength and advantage. This means we must focus upon what we do best, and recognize when others may support us more cost effectively. Yet "effectiveness" means much more than lowest price. The Department must not and will not lose sight of other goals that are crucial to the performance of our missions, such as force protection, control of mission essential goods and services, and protection of quality of life for our most valuable asset – our soldiers.

We are fortunate to be supported by a robust private sector marketplace that allows us the flexibility to investigate ways to do business better, faster and cheaper through the competitive process. Fair competition, which is the foundation of our Competitive Sourcing Program, allows us to seek and obtain quality services in the most cost efficient manner in at least four important ways.

First, it provides an incentive for our in-house activities to streamline and re-engineer their operations and reduce their operating costs to become more competitive with private suppliers.

Second, it provides private sector companies an opportunity to compete with one another, and with our in-house operations, to not only lower costs but to demonstrate and apply to the Department, the innovations necessary to be successful in the commercial world.

Third, it assists the Department in discovering the best business practices available in either the public or private sectors, and applying these techniques quickly to maintain our competitive military edge.

Finally, because the competitive process is an ongoing one, we expect to maintain cost-effectiveness and continually benefit from process improvements developed not only for DoD, but for the commercial world as well.

In order for an activity to be considered for A-76 competition, such activity must not be inherently governmental and the private sector must have the capability to perform the activity in the commercial marketplace. In determining whether to outsource an activity, the private sector must be able to perform the activity in a more efficient and cost-effective manner for the government and therefore the U.S. taxpayer.

A-76 competitions attract a lot of attention and generate vital savings results. But they should be put into perspective. Service contracting performed as a result of A-76 competitions is estimated to comprise less than 2% of all Defense service contracting. You gained the benefit of insight on the larger program last month when, on May 22nd, the Principal Deputy Under Secretary of Defense (Acquisition, Technology and Logistics) testified at your hearing on Service Acquisition in the Federal Government.

While our Competitive Sourcing Program may be small in the greater scheme of all service contracting, it has generated some gratifying results. During the Fiscal Years 1995 through 2000 we completed over 550 A-76 initiatives that affected over 25,000 government employees. We have found that in these A-76 initiatives completed from 1995 to 2000 we have averaged 34% savings. I assure you we have had several examinations of the topic from a variety of independent sources and they unanimously support the fact that real savings are being achieved. In the past year we specifically asked that the issue of long-term savings be examined, and it was confirmed that the savings garnered are persistent.

Our confidence in the reality of those savings is so strong that projected savings were already moved from commands and reprogrammed to support higher priority requirements. This is part of the reason I am very concerned about proposed legislation, House of Representatives Bill 721, the 'Truthfulness, Responsibility, and Accountability in Contracting Act'. Any form of temporary suspension of competitive sourcing activities would create an expensive, destructive, and unprogrammed cost, as anticipated savings would not be realized. While there are legitimate concerns surrounding this program, it would be a real mistake to stop it in its tracks until all questions are answered.

A-76 cost comparison studies are subject to intense scrutiny by both internal and external parties. It is frustrating that problem situations get a disproportionate share of attention – but I know you are all well familiar with that phenomenon in every issue with which you struggle. Certainly in a program of this size, mistakes are made. Procedures have evolved and been refined over time. Just over a year ago we developed a set of interim guidance documents that are part of our progress towards significant policy updates. We have a set of hand-books out in draft now which will help clarify the process for the folks out on the ground conducting these studies.

As we identify systemic problems, we have been proactive in identifying required changes to procedures. While the process is far from perfect and we continue to seek improvement, we, conversely, do not want to overreact to anomalous errors made by well-intentioned, hard working employees. It is important to recognize that among these hundreds of decisions, during Fiscal Year 1995 to 2000 only 6 tentative cost comparison decisions were reversed through appeal or protest. 69% of all decisions resulted in no appeal; 88% of all decisions resulted in no protest. Unfortunately the problem cases tend to over-shadow the many decisions that reflect a solid program.

I know you will also be gratified to know that 79% of all contracts awarded via A-76 competitions are awarded to small business concerns. This is a good Government program that benefits the Government, the private sector and the taxpayer.

I know you are concerned about the welfare of our government workforce. I assure you that you can be no more concerned than we. We could not meet our mission to protect and defend the United States without the exceptional efforts of this capable force. There is no question that they can perform the activities we study. However, we have the responsibility of performing the best stewardship of the taxpayer dollars that Congress allocates to Defense. That is a fundamental purpose of performing cost comparison studies under A-76 procedures. Still, it is true that the savings generated are largely produced by using better business practices to accomplish the same work with fewer people, and your concern for these displaced workers is legitimate.

Recall that I cited that completed competitions affected 25,000 employees. Well, first of all, more than half of the A-76 competitions, that is, 57%, were won by the Government's Most Efficient Organization (MEO). The remainder of the competitions, 43%, were won by the private sector. Savings are achieved regardless of whether the work stays in house or moves to the private sector. We saw a reduction of 12,000 government positions involved in the activities studied. But relatively few personnel, about 10%, suffered involuntary separation actions. 1,311 were removed from the Federal workforce through a reduction in force. The great majority of personnel were placed in other vacant Government positions or opted for a separation package or retirement. Note that some people actually benefited through requesting retirement and then beginning to work for the winning contractor.

While there may be some Government employees who are negatively affected by the outcome of a competition, it would not be in the best interest of the Department to continue to perform activities less efficiently than possible. It is competition that provides for identification of inefficiencies and that drives operational improvements regardless of which workforce is selected.

It is true that A-76 studies take an average of two years to complete. This includes all the normal procurement requirements of drafting a performance work statement, issuing a solicitation, evaluating proposals and selecting a private sector offeror to compete against the Government's MEO. There are then additional steps required as part of the A-76 process to ensure that there is a level playing field before the cost comparison is conducted. The entire process is frustrating for all concerned: the Government employees who are in limbo as to whether their jobs will exist, the contractors who have tied-up considerable bid and proposal investments, and the Government activity that is managing the process while simultaneously performing an on-going mission. This process is complex and lengthy and I do hope that improvements may emerge through the on-going Commercial Activities Panel that the Comptroller General is chairing, and in which we are participating. We must be careful that the process remain fair to all interested parties, and that, unfortunately, is difficult to do without taking careful and time-consuming steps.

I do want to point out that it would be foolhardy to think that opportunities for improved efficiency are limited to commercial activities. In fact, we realized that we needed to examine entire organizations, including the inherently governmental part, to optimize efficiency. In the past couple of years, we have broadened the focus of our efforts beyond those that are commercial in nature and appropriate for competition through A-76 procedures. We realized that was an artificial limitation in what we view to be a good government program. We now refer to our program as the Competitive and Strategic Sourcing Program. The Strategic Sourcing Program captures efforts to maximize effectiveness and efficiency, and has provided an approach for DoD Components to use to exceed their competitive sourcing goals. It provides a broader approach than the traditional OMB Circular A-76 processes by extending the opportunities to achieve efficiencies to areas that are exempt from the A-76 competitive processes. This program should not be interpreted as avoidance or replacement of A-76 and its focus upon fair competitions to achieve both cost efficiency and the infusion of best business practices. A-76 competition is, and will continue to be, a dominant factor in the Department's plan to do our business more effectively and efficiently.

The value of the strategic sourcing approach is that an assessment of every function in an organization can be made--regardless of whether the function or activity is commercial, commercial exempt from competition, or inherently governmental. This approach cuts across all functions and organizations, permitting Components to take a complete look at how they do business and to achieve proactively savings in all their functions and activities rather than to focus only on commercial activities. This allows Components to consider a wide range of options, including: elimination of obsolete practices; consolidation of functions or activities; reengineering and restructuring of organizations, functions, or activities; and privatization of functions or activities. These options are in addition to continued and extensive application of the A-76 competitive process.

Many organizations contain a mix of functions or activities that are commercial, commercial but exempt from competition, and inherently governmental. By realigning manpower or workload, functions or activities could be eliminated or restructured for competition. For those functions or activities that are inherently governmental or commercial exempt from competition, strategic sourcing provides an alternate approach to optimize performance and savings. Strategic sourcing could also eliminate the fencing of whole functions or activities from competition, thereby leading to better segregation of these functions or activities in order to maximize competition. It could also result in a redesignation of a function or activity from the inherently governmental or exempt category to a commercial activity that is available for competition. This Program is not intended to, nor should Components integrate, inherently governmental functions and exempt functions with commercial activities during strategic sourcing for the purpose of fencing them from competition. Additionally, strategic sourcing of commercial activities does not preclude the competition requirement for commercial activities.

The Defense Department's surge in A-76 competitions was originally generated by the 1997 Quadrennial Defense Review and the Defense Reform Initiative (DRI) Report

which set a DoD goal of competing 150,000 positions by FY03. We have initiated competition studies on 111,000 through the end of FY00. In light of the Office of Management and Budget March 9, 2001 memo identifying goals for expanded A-76 competitions, I expect future projected numbers to rise as Secretary Rumsfeld completes his review and sets future goals.

While I can-not get into specifics on current savings estimates, as the underlying details of the Department's input to the Fiscal Year 2002 President's Budget has not been completed, I can assure you that we continue to anticipate aggregate savings at least as great as previously identified. Further, I am gratified that numerous studies, three this past year alone by RAND, CNA and GAO, confirm that the program generates real and sustained savings.

I am proud of the progress we have made in improving a difficult process. In just the past year, we've met several significant milestones. Last year we issued DoD Interim Guidance on seven topics to improve understanding and consistency in implementing the program. In October, we activated the Share A76! Web site to facilitate access to information. In March, we implemented a new software program, winCOMPARE, that facilitates the costing of the in-house cost estimate to automate this aspect of the comparison process, which is used in conjunction with the DoD A-76 Costing Manual. In addition, we are actively working on the development of a DoD A-76 Cost Comparison Handbook series that consists of eight handbooks to help the field execute A-76 Cost Comparisons. And of course, we are actively participating in the Commercial Activities Panel chaired by the Comptroller General.

As important as we consider this program, we are struggling with its future direction. We want to establish targets for out-year A-76 studies that rely upon solid inventory data that can not be easily manipulated and strategic decisions about DoD business practices. With these ideas in mind, the number of positions studied can only be understood in the context of the greater population of employees. The Department collects

this data in order to report inventory information annually, as required by the Federal Activities Inventory Reform (FAIR) Act of 1998.

The Competitive and Strategic Sourcing Program provides a major contribution to our performance excellence and modernization goals. The Competitive Sourcing program is being used in conjunction with a number of other initiatives to better manage Defense resources and the Department will continue to pursue an aggressive Competitive Sourcing Program. We are working to leverage hard won lessons to continue to improve the process and will strive for new opportunities to improve the Department through competitive and strategic sourcing.

I stand ready to answer any questions you may have.

Mr. TOM DAVIS OF VIRGINIA. Thank you very much. Let me start the questioning for 5 minutes. Ms. Styles, in your testimony, you discussed OMB's recent directive that agencies compete 5 percent of Federal jobs designated as not inherently governmental and listed on the agency's inventories under the FAIR Act, and then OMB, as I understand, has just added a directive requiring 10 percent of these jobs be outsourced in fiscal year 2003. What analysis is going in to directing a percentage—isn't that prejudging the situation and are we becoming subject to quotas here that we have to meet in prejudging—that gives me some concern.

Ms. STYLES. I think we need to clarify what may be a fundamental misunderstanding is that we are asking agencies to compete a percentage of their FAIR Act inventories. We are not asking them to outsource a percentage of their FAIR Act inventories. When these jobs are competed through the A–76 process or these functions are competed through the A–76 process, more than 50 percent of them are won in-house. So it's not a question—it is simply a measure of competition, not a measure of outsourcing the number of jobs that will be going to the private sector.

Mr. TOM DAVIS OF VIRGINIA. Because I think we can agree—I hope we can agree that the bottom line is savings to the government and to the taxpayer.

Ms. STYLES. Absolutely.

Mr. TOM DAVIS OF VIRGINIA. And that's what ought to drive this. I think we're going to hear testimony later, we've heard some earlier, how do you best determine that? There are clearly some consequences and some concerns right now about the way it's being measured. You have up front costs with your A–76 that have to be absorbed, and I haven't heard anybody say A–76 is the greatest thing going, and you all are relying a lot on the A–76 not exclusively, but a lot for that to try to meet your goals.

Ms. STYLES. Absolutely, and I'd like to add, it's not just cost savings. We're seeing improved management, improved performance. We're seeing innovation. All of these things are just as important as the cost savings.

Mr. TOM DAVIS OF VIRGINIA. OK. All right. Thank you. Is OMB providing agencies with detailed guidance to help them implement this policy and choose the positions to compete?

Ms. STYLES. No. It's going to vary on agency-by-agency basis on the number of not inherently governmental positions they have, their missions and goals. So we're letting the agency decide what is best to meet 5 percent competitive sourcing goal.

Mr. TOM DAVIS OF VIRGINIA. OK. One of the interesting things in your testimony, you state that part of the administration's policy will include allowing agencies to retain the savings they achieve through the A–76 process. Do you have limitations on how the agency uses that money? I mention that because when I was the head of the county government in Fairfax, we would go to our agency heads in tough budget times and ask them for cuts, and when we allowed them to keep it and then gave them discretion as to how to use it, all of a sudden the savings were forthcoming.

So I'm intrigued by allowing them to do that. We find a great reluctance on the part of agencies or subagencies to cut their budgets just to pay for somebody that overran their budget somewhere else.

I assume that's the philosophy that you're doing that. I guess my questions are No. 1, how will agencies be permitted to use the money, could it be used as a work force retention tool to give bonuses to employees for their cost savings accomplishments? And also, if an agency receives the cost savings, will it affect their budget for the following year?

Ms. STYLES. Right. In the past, there have been some negative monetary incentives that have been implemented to try and get agencies to use the A–76 process. We've decided that positive monetary incentives are the best way to achieve these goals and we are letting the agencies decide how to use the savings that they will be achieving and how to best invigorate the employees.

Mr. TOM DAVIS OF VIRGINIA. Is there any prohibition on using that, for example, for bonuses?

Ms. STYLES. There is no prohibition on it.

Mr. TOM DAVIS OF VIRGINIA. OK. I think that's important. One of the fundamental problems we have in government right now, and one of the things I see with so much of this outsourcing going, is it's hard to keep in-house capabilities sometimes given the different pay differentials between, and particularly in IT areas but in some others, between what you can make on the outside and what you make inside, and if we don't reform, how we are compensating people within government, that outsourcing is inevitable no matter what your past because you have to get the job done and you're not being able to get and reward and train people that are in government to do the job now. How do you see that? And I'll also ask the other panelists if they'd like to comment on that, particularly you, Mr. DuBois. Is that a problem at Defense?

Mr. DUBOIS. I think that the issues of how many we've got to address will always provide a certain amount of problems for us.

Mr. TOM DAVIS OF VIRGINIA. Say that again.

Mr. DUBOIS. I'm sorry, repeat your question so I better understand it.

Mr. TOM DAVIS OF VIRGINIA. I'm saying in-house training, retraining people, recruiting, retaining good people in-house is increasingly difficult in some of these areas, given the compensation methodologies that you have available to you and what competition offers on the outside. Outsourcing is inevitable under that panel unless you substantially alter the compensation package within agencies. Do you think that's an accurate statement?

Mr. DUBOIS. That's right, and of course on the military side we have a bonus structure that can somehow address those issues. We also have a bonus structure with respect to SCS employees, although we are constrained to the extent we don't have the same flexibility as the private sector does. When it feels or when it believes it needs to, a company needs to attract computer programmers in a particular language, it can immediately adjust the opening salary or the attractiveness of that salary to do so. We can't do that in the government.

Mr. TOM DAVIS OF VIRGINIA. Thank you. My time's up.

Mr. Turner.

Mr. TURNER. Mr. Holman, I want to ask you, based on your experience to address one of the, what I think is one of the more difficult issues we face. We know the administration has suggested

these percentages that we need to look at in terms of outsourcing, and Ms. Styles has said well, the intent is to be sure there's competition, it's not an automatic, and yet when this proposal was initially laid out by the administration, I believe it was the Deputy Director of Management, Mr. O'Keefe, when he was asked the question about how this would all be carried out and whether or not to reach these numbers, the agencies would just have to go to direct conversion rather than competition, and his response, as I recall from reading that interchange was, he said well, let's talk. So that left a lot of the Federal employees groups very uncertain about how this is all going to work, and obviously if you're going to be pushed toward some magic number, it will be a lot easier just to go to that conversion, and I understand there are some difficulties, there's some time constraints involved in doing a true public-private competition.

The numbers that I have indicated that only about 1 percent of the service contracts undertaken by DOD were undertaken with public-private competition. In the civilian agencies as a whole, that number is about one-tenth of 1 percent, and at the heart of this seems to be that we're trying to achieve a fair competition, and in many instances, the Federal employees can submit a proposal that would be superior to a private contractor and yet the way this process seems to be working, we really don't see that happening very often. Why is it that we have such low percentages of true public-private competition in outsourcing?

Mr. HOLMAN. That's one of those questions that I wish that there were more data available that would help us to get a handle on that issue. I mean, you're absolutely right. The data we've seen suggests between 1 and 2 percent of contracts that are awarded; service contracts are done under A–76. As we've seen data that looks at where are the increases in service contracting that's occurring, we see it's occurring for information technology; or we see it's occurring for studies and so forth. I can't give you a precise answer as to why we don't see more in that area, other than perhaps it's for work that's not already being done in house. It's additional work that's required, new work or so forth.

But in terms of your earlier question, in terms of the direct conversion, one of the things we're still looking forward to see is to see what the impact of OMB's new directive in terms of DOD's ongoing program. I mean, DOD is the only agency that's got an extremely robust A–76 program already. So we're looking ourselves to see how OMB's new direction would impact that program, whether it would add to it to the existing plans for competitive sourcing studies.

Certainly, DOD has done its share of direct conversions, and those are authorized. When you have fewer than 10 employees that are affected by the action, you can do that. Or if you are converting military positions. So a good share of DOD's actions under A–76 have been direct conversions. How many of them will be in the future, I'm not sure. But it does have a fairly robust program of public-private competitions.

Mr. TURNER. Well, obviously you've done 10 times better than the rest of the Federal agencies. But it does seem it's going to require a commitment, Ms. Stiles, from the administration to insure

that there's a vigorous effort made to have a true competition. I also have some concerns about a problem that I always have suspicioned exists, that once we out source, then it also becomes sort of an out-of-sight and out-of-mind decision.

You know, it's often easy to criticize the Federal Government for not being aggressive about promoting competition and continuing to maintain a large Federal work force. And yet the other side of the coin can also be true, once out sourced, if it becomes an out-of-sight, out-of-mind decision, then that activity becomes a captive to the private contractor; and when, in fact, upon renewal of the contract, often times the price continues to rise at a rate that it would not or should not were there again, true competition.

And I'm interested in the DOD's experience, the degree to which you conduct, if at all, postcontract reviews of outsource activities to assess whether or not there are cost savings that are achieved over time. As you know, the GAO reported, as well as the administration recently, that there's been very little savings as a total in terms of the cumulative activities of outsourcing, very little savings, if any, even though there were examples of savings in certain activities. But overall it seems the A–76 program has not resulted in significant savings, if any at all, based on the administration's reports, as well as the GAO reports. So what do we do to insure there is an accurate and adequate postcontract review, see if there's really savings there?

Mr. HOLMAN. Well, Mr. Turner, we in GAO we've looked at a number of case studies of A–76 competitions. We've tried to address that issue; and certainly one of the things we see, that it becomes difficult to track what happens to these examinations—results of these actions over time, if contracting action is the result of an A-76 competition. You certainly can tell it at the point of the competition because you have the comparison between the public and the private sector. As that contracting action ages, you have changes in the work requirements; new work may be added. And we'd look to see what extent there may have been limitations to how the original performance work statement was written that would cause changes to occur. You have changes in the mandated wage rates under the service-contracting act. Those things happen over time.

It sort of gives you a distorted picture or an inability to make a direct comparison to where things were at the original point of competition. But to the extent we've been able to do some case studies within 1 or 2, 3 years of competitions, we've seen that those savings are still there. We've seen some of the things I've talked about in terms of wage-rate changes. We've seen changes in performance work statements. We've seen limitations and how the original savings were calculated; limitations in the baseline, to use to compare savings. But when we take all those things into consideration, based on the case studies we've been able to do, the majority of them, we found savings continue. I think over time the issue becomes one of if you want to assure continued savings, it becomes an issue of recompetitions after so many years, again, to—I think the issue is competition as the driver to force, encourage the savings. I think that is probably the answer.

Mr. DUBOIS. Mr. Turner, may I add a comment?

Mr. TURNER. Yes, Mr. Secretary.

Mr. DUBOIS. As I indicated in my opening statement, the Center for Naval Analysis has done and continues to study these issues. In fact, they examined in detail 16 cost-comparison studies, and the study found that real savings were generated, were persistent, and that in more than 80 percent of the cases, performance levels were sustained or improved as reflected in satisfaction levels of users and observers of performance. There are two in particular that I think are worthy of note: one in your home State of Texas, Goodfellow Air Force base, where in the MOU the Government in-house officer was the winning offer. Back in October 1994, there were 311 total government positions in competition. And this was for base operating support, things such as facility maintenance and repair, motor vehicle operations, supply operations, base telephone, switchboard, etc. The in-house offer which won reduced from 311 the number of government positions to 176 civilians. A 37 percent expected savings was predicted, $22 million. The observed savings was also achieved at that level, and the effective savings, that is, to say the difference between the baseline costs and the real costs to providing the same set of functions as defined in the performance work statement was $27 million.

There was one other issue, one other specific that I thought was worth mentioning, wherein the private sector won, Peterson Air Force base in Colorado. The functions competed were vehicle operations and maintenance. The original number of government positions in competition were 99. The private sector bid won, resulting in 73 positions, a $7.3 million expected savings; in terms of observed savings, slightly less, $6.6 million. In both cases, the performance level results were satisfied or very satisfied by the user.

There were a couple of other points that you made that perhaps I could clear up just a bit. And one is that A-76 procedures only apply to work currently done in house. My comment that 2 percent, only 2 percent of the services outsourced were done under the A-76. It doesn't include new work or, as an example, the Navy-Marine Corps intranet procurement. It's essentially a service contract, but it's also $13 billion, the largest in the history of the Department, and was not done under A-76. The issue about competition or the sustainment of a competitive environment and atmosphere, of course, the contract is not forever. It is not in perpetuity. Most contracts are recompeted every 5 years, and every contract is reviewed every year. And some contracts have been discontinued, as was mentioned earlier today. Thank you.

Ms. STILES. Mr. Turner, if I could make a statement there. I'd like to clarify A-76, the circular itself, does apply to new work. In-house organizations can submit a bid for new work under the circular. And I'd also like to say that for our fiscal year 2002 goals, only direct conversion, under 10 people applies. And only A-76 private—public-private competitions apply. So those are the only two things that the agency can use to meet our goals.

Mr. TURNER. Thank you. Thank you, Mr. Chairman.

Mr. TOM DAVIS OF VIRGINIA. Thank you. Ms. Davis.

Mrs. JO ANN DAVIS OF VIRGINIA. Thank you, Mr. Chairman; and thank you all for being here to testify today. Mr. Holman, one of the most important elements of the competitive outsourcing is the

ability of the Government to access the latest in technologies provided by our private industries. It's especially true with our Armed Forces. Do you believe that, if implemented, the TRAC Act will hinder the military as it moves into the 21st century?

Mr. HOLMAN. Ms. Davis, that's—I like that question. It's a tough one to answer, but I like it. I'm in sympathy with much of what's being tried to be accomplished with the TRAC bill in terms of trying to get more information. Certainly, there's a frustration there at times of not being able to know more of what's taking place. One of the issues as I look at the TRAC bill is just that one, what would happen in the area, say, of information technology if the TRAC bill is intended to cover all contracting actions and, as I indicated just a few minutes ago, we see so much of the contracting actions taking place today, a large increase related to information technology. We know there's difficulty in attracting and retaining personnel with that capability. So it does raise a question of how it would affect that area.

Mrs. JO ANN DAVIS OF VIRGINIA. Thank you, Mr. Holman. You'll find that the Armed Forces, or Armed Services, is very important to me for my district. And in the same light, you know, we just had a problem with one of our small bases where the A-76 study was being conducted; and I had a lot of constituents, quite a few actually, who only had a year left until they retired. So you know, it's a double-edged sword for me. I don't want to see, you know, my constituents lose their jobs; but yet our national security interest is of utmost importance for me.

Which brings me to a question for you, Mr. DuBois. The TRAC bill, according to Mr. Wynn's testimony, would make exceptions in the case of the national security interest. Who would determine the national security interest? Under the TRAC act, could the DOD remove itself or would the GAO make that decision? Do you know?

Mr. DUBOIS. I'm not sure, Ms. Davis. I'll have to look into that and report back to you.

Mrs. JO ANN DAVIS OF VIRGINIA. If you could let me know that, I would really appreciate it.

Ms. STILES. I believe it would be OMB that makes the determination.

Mrs. JO ANN DAVIS OF VIRGINIA. OK. Thank you very much, Mr. Chairman.

Mr. TOM DAVIS OF VIRGINIA. Thank you very much. Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman. Ms. Stiles, as you know, a panel of experts chaired by GAO Controller General David Walker has been established to examine the OMB circular A-76, and they're due to report to Congress on reforms next year. We've heard those in support of the TRAC action we should wait until next year before pushing for its passage so that we may have the benefit of the panel's report. On the other hand, the Bush administration certainly didn't take this approach.

As you mentioned in your testimony, in a March 9 memorandum, OMB's Deputy Secretary Sean O'Keefe expressed the President's commitment to review at least one-half of the Federal positions listed on the FAIR Act inventory of commercial functions for possible contracting out. That translates to a cut in the Federal work

force of as many as 425,000 people. Reducing the Federal work force by 425,000 jobs certainly appears to be a broad change. I'm curious to know why the Bush administration didn't wait for the panel's report before choosing to aggressively promote contracting out.

And before I ask you to comment on that, I want to point out that from the beginning of its tenure, the Bush administration has taken a series of antiworker actions. First, President Bush issued a number of Executive orders, including one that eliminated the National Partnership Counsel, which was created to improve labor management relations throughout the Federal Government. Second, the administration repealed their ergonomics rule and is working to permanently delay implementation of the contractor-responsibility rule. Now the Bush administration is pushing for more outsourcing. You've suggested you're just opening the work to competition, not automatically outsourcing; yet the March 9 memorandum states that direct conversion is possible as an alternative to public-private competition.

The Bush administration, in my view, should rescind this latest policy of aggressive outsourcing and follow its own rhetoric. It should wait until it has heard from the panel of experts about how the Federal Government can improve, but certainly not abolish the private-public competition process.

What's your response?

Ms. STILES. Direct conversions are part of the A-76 circular, and only direct conversions of less than 10 employees will apply. So if you look at the competitive-sourcing goal, it's a competitive sourcing initiative. Competition is the key. It is not outsourcing. The only two items that will apply are direct conversions of less than 10 people, this is for fiscal year 2002, and A-76 public-private competitions.

Mr. WAXMAN. There's been repeated talk and pressure to reduce the Federal work force; and those who call for a reduction in the Federal Government, they said the Government will get smaller if we have a smaller work force and taxpayers save money. But the facts show that shrinking the Federal work-force does not shrink the Federal Government because contractors are hired in place of the Federal workers. Paul Light of the Brookings Institution estimates a contractor work force is 5.6 million people strong and the Federal work force is less than a third of that, at about 1.8 million people. He further explains that except for DOD and DOE reductions due to the end of the cold war, the size of the contractor work force is increasing rapidly, and the trend is to continue expansion.

With a contractor work force more than triple that the size of the Federal Government, I find it troubling that some suggest we're decreasing the size of government. Now President Bush wants to reduce the Federal work force by as many as 425,000 more people. Do you have any guarantees that this further reduction will result in a smaller Federal Government and save taxpayers dollars?

And before you answer that question, I want to add that I think we're heading in the wrong direction. The existence of 5.6 million contractors is stunning. Sometimes agencies have to hire contractors to be the overseers of other contractors. OMB should be reviewing its policies to decrease its reliance on contractors. Also

OMB should ensure that Federal workers are available as contract managers. In addition, OMB should be measuring the Federal Government's performance by quality, not by reductions in quantity. And even if the goal is to reduce the Federal work force, which I think is a misguided goal, we cannot suggest that we have made such a reduction if we've added contractors to replace Federal employees.

What do you have to say to that?

Ms. STILES. I'm sorry. What is the question?

Mr. WAXMAN. Well, my question is, how do you respond to the comment by Mr. Light at Brookings that we're not reducing government? And then do we have any guarantees that this further reduction in the work force will result in a smaller Federal Government and save taxpayers dollars?

Ms. STILES. The A-76 Competitive Sourcing Initiative is part of a much larger goal of the administration to link budget to performance. This isn't an outsourcing initiative. We want to be able to reflect the true cost of contracting to the taxpayer. What A-76 does is when you have the public-private competition, you get to see what the true cost is, which you don't get to see in the current budget process. So it's part of a much larger initiative that we're looking at right here. I think several people from OMB have spoken earlier this week on our move for full cost budgeting.

Mr. WAXMAN. Well, let me ask you to respond to that first question I asked you and that's, why isn't the Bush administration waiting for the GAO report on this whole subject before moving aggressively in the area of reducing the work force of the Federal Government?

Ms. STILES. We're not aggressively moving to reduce the work force. We're moving for competition for the goals of savings, innovation and improved performance, as well as improved management.

Mr. WAXMAN. I know, but GAO will tell us whether we're really get savings and efficiency and all of those good goals. We ought to find out their evaluation of what we've done to this point first.

Ms. STILES. We are actively participating in the GAO review panel, but we're not going to wait for the benefits of competition.

Mr. WAXMAN. Well, my time is up. I think you're not waiting until you get the benefits of the information that I think would give you a better basis for making a decision as to what direction to pursue. Thank you, Mr. Chairman.

Mr. TOM DAVIS OF VIRGINIA. Just to go on with what Mr. Waxman was saying, if I could continue. One of the major concerns—and I think I expressed this in my early concerns—I think I was allayed with what you said, but let me make sure I understand. Cutting Federal employees doesn't mean you save a nickel. You agree with that. Correct?

Ms. STILES. Absolutely.

Mr. TOM DAVIS OF VIRGINIA. I mean, the real question we ought to ask is not how many Federal employees you have or don't have, but how much money are we saving the taxpayers. And I think I've heard at least from this panel a unanimous agreement that just by competing out, even if it's kept in-house, it gets more efficient by having to go through the competition. Is that, at least on this panel, is that how it's felt?

Ms. STILES. Absolutely.

Mr. TOM DAVIS OF VIRGINIA. But ultimately I think the previous administration set some arbitrary numbers. We had some problems in our district where a number of people were going to be cut from the Federal work force as if this somehow accomplished something good. And at the end of the day, we've got to ask did you save any money by it. And it's something this subcommittee's got to watch because we're interested in savings, absolutely. But I am not sure that you can always equate getting rid of Federal positions as savings.

And you have to make that case, and I think how we measure that is, as I read the study from GAO, we're not always accurate in terms of how we determine that. We need to look for better ways to do that. Certainly, from the Federal employee community, there's a concern that some of these go out; and you track it 3, 4 years later as the work orders change, it's very difficult to measure if you've got real savings or not. And I think you can understand that.

Ms. STILES. I think a large part of the problem was, as I was trying to describe, is that we don't have full cost budgeting right now. A program manager in the Federal Government can't make a rational decision based on the true cost to the taxpayer because of the current budget process, and we are trying to change that. We are trying to reflect the true cost so they will know and be able to make a rational decision on what should be performed, and by whom.

Mr. TOM DAVIS OF VIRGINIA. OK. The FAIR Act by publishing yearly inventories of commercial functions by positions has made commercial activities within the Federal Government transparent. What efforts does OMB plan to provide the same transparency with the contractor work force? Do you understand what I'm saying?

Ms. STILES. No. Can you repeat that?

Mr. TOM DAVIS OF VIRGINIA. Yeah. We publish yearly inventories of commercial functions by positions within the Federal Government. OK? And you do that under the FAIR Act. On stuff that's already outsourced, are we reviewing that to make sure that this meets the same criteria in looking at bringing some of that inhouse or not?

Ms. STILES. There has been initiative within the Army, which——

Mr. TOM DAVIS OF VIRGINIA. All right. Maybe Mr. Dubois, are you familiar with that?

Ms. STILES. But I can also say——

Mr. DUBOIS. I'm not familiar with the specifics of the Army.

Mr. TOM DAVIS OF VIRGINIA. Well, could you look at that and get back with us.

Mr. DUBOIS. I certainly will.

Mr. TOM DAVIS OF VIRGINIA. I think everybody needs to understand all the rules. This is very complicated. I've been doing it for years, and there's still things I don't understand.

Ms. STILES. I mean, as a general proposition, we know the service dollars that are being contracted. I think the cost of determining the contract employees far out weights the benefits of knowing that number. I mean, the cost to determine that is rather substan-

tial, and ultimately it comes back to the taxpayer because contractors, if they're going to have to tell us those numbers, are simply going to charge us more for the goods and services they're providing.

Mr. TOM DAVIS OF VIRGINIA. Let me ask you this: in recent years there's been a significant emphasis on reducing the size of government. To what extent are FTE ceilings, full-time equivalent employee ceilings, on the Federal Government or civilian work force, either implicitly or explicitly forcing agencies to contract for services? Have you seen any of that?

Ms. STILES. No, and that is not certainly any part of our initiative.

Mr. TOM DAVIS OF VIRGINIA. It's not in here. It has been, though. It was previous to this that there were FTE goals that were sent out, both by Congress and the administration.

Ms. STILES. We do not believe the agency—Department should be managing based on FTE ceilings.

Mr. TOM DAVIS OF VIRGINIA. OK. Mr. Holman, you agree with that?

Mr. HOLMAN. I think in the past we've seen concerns on the part of government workers the perception that there were artificial ceilings that were forcing work to go out of house. It's one of those things that's difficult to gauge. But to the extent there are, you know, arbitrary ceilings or artificial cuts mandated in the Federal work force that aren't necessarily tied to specific reductions in work, I think it fosters that perception.

Mr. DUBOIS. Mr. Chairman, if I might, both in the public and in the private sector, I've seen these so-called head-count exercises. In fact, as a practical matter, the Congress requires the Department of Defense to submit every year a management report on how many folks are in their so-called headquarter units and components beginning with, obviously, the Office of the Secretary of Defense. My view, and I think the view of the Secretary, is that to utilize only that metric—the metric of head-count and not the metric of how much we're spending to get what level of service doesn't make much sense.

Mr. TOM DAVIS OF VIRGINIA. Last question for the GAO here. Could you report to the subcommittee, not today, all of the reporting and the auditing requirements that contractors have to comply with today when they're contracting with the Department of Defense. That would be helpful for us. And if you could then say also with the civilian agencies and just look at what we are asking them to do in terms of getting information back to us on these, that would be helpful to us. As you know, we end up getting charged for this.

Mr. HOLMAN. Dealing with the A-76 process?

Mr. TOM DAVIS OF VIRGINIA. Contract-wide.

Mr. HOLMAN. OK. We can work with you on that.

Mr. TOM DAVIS OF VIRGINIA. And in general there are going to be obviously specific contracts where you're asking for other items and stuff. But we'd like to understand what burden we're putting on contractors in terms of reporting back; what information we're getting; is it the right information; should we be getting additional

information, or is there some information here that's maybe not useful.

Mr. HOLMAN. OK. Yes, sir.

Mr. TOM DAVIS OF VIRGINIA. I thank you. I'm sorry. Mr. Kanjorski.

Mr. KANJORSKI. Thank you very much, Mr. Chairman. The testimony I've heard so far sort of concentrates on cost and quantity, the cost to the Government and the quantity of employees, or the private sector contractor employees. I'm more interested, have you done any followup, Mr. Holman, on the effect of quality? Let me give you an example. If we wanted to save in congressional offices, we'd just adopt a policy that we fire an entire staff every 2 years and rehire them, because they'd never have to be paid an incrementally higher amount. But then we'd be trading off some experience and some quality that we assume employees gain over a number of years of performing a certain task. Are you examining the loss of quality in the Federal work force that occurs by this shifting to the private sector?

Mr. HOLMAN. Well, Mr. Kanjorski, we've done some case studies ostensibly to try to get information on what happens to costs. We've also been sensitive to that issue of quality of service being provided; and certainly, you know, we've seen cases here or there where there have been contractor problems, contractor default. But they've been the minority of cases that we've looked at. I mean, one of the benefits of the A-76 process is that agencies are required to put in place a management plan to oversee these contracts. And again—and it's been a limited number we've been able to look at; but where we looked at them, the quality has pretty much been there.

Mr. KANJORSKI. OK. Well, I'm curious. I could give you a suggestion to the Defense Department. A number of years ago, I went through your educational program and it's probably 9,000 teachers in the Defense Department. Many of them have 20, 30 years of experience. They're exceptional. You could fire them all and hire recent college graduates and save an enormous amount of money, probably 50 percent. Now, I don't know what the tradeoff is there.

But let me talk about something that does disturb me and that is recently we sent helicopters to Kosovo, and I think they were on the ground for at least 60 or 90 days and never took off. And as I understand, the reason is that they were not maintained and ready for combat service, because all of the maintenance and service for most type of facilities and most aircraft in the Defense Department are provided by contractor employees not government employees. Now, I was astounded to find out that we're sending combat forces into combat zones, and we have to bring contract employees to service them. I can't believe that's a moving Army. And if you can justify that in the name of savings, I've got a good deal. China Inc. has offered to maintain the entire Air Force of the United States at a much cheaper price. They'll even build the planes for you cheaper. But is that where we want to go?

Mr. DUBOIS. No, I don't think that's where we want to go, Congressman. I would suggest that particular situation, which is in another component other than mine, the helicopters and the maintenance contracts——

Mr. KANJORSKI. Well, is that correct or not?

Mr. DUBOIS [continuing]. Were not the Department of Defense. They were another agency.

Mr. KANJORSKI. They were what?

Mr. DUBOIS. They were not Department of Defense contracts, as far as I understand. They were another agency's contracts.

Mr. KANJORSKI. They weren't the Air Force?

Mr. DUBOIS. Not to my knowledge.

Mr. KANJORSKI. Do we have a helicopter service or something?

Mr. DUBOIS. No. You might address your question to the Drug Enforcement Agency.

Mr. KANJORSKI. I'm sorry.

Mr. DUBOIS. You might address your question to the Drug Enforcement Agency as opposed to——

Mr. KANJORSKI. In Kosovo it was the Drug Enforcement Agency?

Mr. DUBOIS. No. I'm sorry. I thought you were talking about South America.

Mr. KANJORSKI. No, I was talking about Kosovo. We put in 90 Black helicopters, or whatever they call them.

Mr. DUBOIS. Blackhawks.

Mr. KANJORSKI. None of them flew in combat because they were not ready for combat and because we did not have the maintenance force in place to service them. That's what my understanding was.

Mr. DUBOIS. I think it's a legitimate question. I'll get you an answer on that. It's an area outside my component.

Mr. KANJORSKI. OK. Am I correct that all these military bases across the country, the military does not provide the maintenance work force; but, in fact, those are all private contracts out there?

Mr. DUBOIS. To my knowledge that is not correct, sir.

Mr. KANJORSKI. OK. Do you know what number is privately contracted out?

Mr. DUBOIS. No, I don't. I'll get that answer for you.

Mr. KANJORSKI. OK. I would suggest there is a military base outside of Boston, MA, that has 1,500 aircraft maintenance people. They're all private contractors. They're not government employees. Now, I haven't checked the others; but I'd like you to look into that because I think it goes right down to the level of what I'm talking about, quality, and providing the needed operation. I've got a facility in my district that's a depot and it's an electronic depot. And now they're allowing contractors to provide throwaway items that do not meet military specifications. And a lot of this equipment's going to get into the field and not work. And what are we going to do about this? We have billions of dollars and a strong Army to move; but all because of this cost, and I don't not want to save costs.

But carried to its ultimate result, we should hire the Chinese Army. It'd be a lot cheaper in defense. And I'm afraid in government we're getting carried away. Ms. Stiles, I'm not picking on you. But a couple of years ago, one of the administrations wanted to replace the IRS accounting with private contracting firms. And it makes eminent sense. You could make a great argument about it. But I can tell you, I'm one of the taxpayers that doesn't want a private contractor person knowing what my income tax statement is. And there's confidential information in government all the time

that is given to government because they can lose their jobs; they can be prosecuted. They have to perform a standard to keep their job. But you're looking at it from a dollar sense. Your paycheck, you know, do you want a private contractor to provide that paycheck and know everything about you? It's up to you. I don't particularly think that's always the best quality of service.

Mr. TOM DAVIS OF VIRGINIA. Thank you. The gentleman's time has expired.

Ms. STILES. If I can address that?

Mr. TOM DAVIS OF VIRGINIA. Sure.

Ms. STILES. I think even if there were not any cost savings associated with our competitive sourcing initiative, there is so much improvement in management and performance and innovation it would probably be worthwhile if there weren't the savings there.

Mr. KANJORSKI. Why don't you start on the management side, as Mr. Waxman said, and wait for the review board to come back before we start putting in these new Executive orders and change the system?

Ms. STILES. We don't have any new Executive orders, and we were working with the GAO review panel; and we intend to continue to do so.

Mr. TOM DAVIS OF VIRGINIA. The gentleman's time has expired. Ms. Davis.

Mrs. JO ANN DAVIS OF VIRGINIA. Yes, I just have one quick question, Mr. Chairman. Ms. Stiles, you stated when I asked the question earlier on the TRAC legislation that OMB will determine the national security interest. Currently with the outsourcing, who determines whether something is national security interest when they hire, you know, when they outsource it?

Ms. STILES. If it's an inherent governmental function, it is not subject to A-76.

Mrs. JO ANN DAVIS OF VIRGINIA. Would maintenance of aircraft be considered national security interest?

Ms. STILES. I'm assuming the determination is probably made by the Department of Defense.

Mr. DUBOIS. Right. And certain aircraft are maintained by the original equipment manufacturer. Other aircraft are maintained in our depot systems, and that is determined by the service chief in each individual service.

Mrs. JO ANN DAVIS OF VIRGINIA. Thank you, Mr. Chairman.

Mr. TOM DAVIS OF VIRGINIA. Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. Ms. Stiles, and all of you, I thank you for being here. And Ms. Stiles, I want to pick up where you left off question before last. You said even if there wasn't cost savings—could you repeat that for me?

Ms. STILES. This initiative would be worthwhile even if there weren't savings associated with it because what we see through public-private competitions is significantly improved management, be that on the private sector side or in in-house organizations. We see innovations, and the benefits are significant. It's not just cost savings.

Mr. CUMMINGS. And I'm sure that you could refer us to the reports that you're talking about so we have a basis for what you just said?

Ms. STILES. Well, I think Mr. Holman, a few minutes ago, was talking about the quality; and I think they have said that the quality is good. But I would certainly submit for the record.

Mr. CUMMINGS. Yeah, I'd like to know what you base your opinion on. OK?

Ms. STILES. OK.

Mr. CUMMINGS. One of the things I guess that has always concerned me—and as I walked up the hall to see all the people in the hallway and I have a lot of Federal employees in my district, it seems like so often what happens is Federal employees get a bad rap. And I think that—and these are hard-working Americans who give so much to their country. They are the glue to keep our country together. And sometimes I really begin to wonder about whether we are true to them as they are to us.

And then I look at a situation where just yesterday it was reported by the General Accounting Office that there were some health care contractors who were taking seminars given by consultants on how to take advantage of Medicare and Medicaid through questionable billing techniques. And then a matter that I'm very close to since I'm the ranking member on our Criminal Justice Subcommittee, Ogilvie and Mather, who was contracted by the Federal Government to produce some—we contracted with them, this advertising agency, to do some work for us with regard to our antidrug messages. And they have been referred to the Justice Department by this administration.

Can you tell me what guidance your office has given agencies to insure that the proper contract—the managers are in place to avoid this kind of abuse? Because we should be just as upset about people, private contractors who allegedly, in this case, abuse the system, misuse our tax dollars that we've worked hard to give to the Government. We should be just as concerned about them as we are about the things that you're talking about today. And since these are folks—and we spent millions, millions upon millions of dollars for an ad agency to put out ads to help our children, to save their lives, to keep them off of drugs. And now we've got a referral by the Bush administration to the Justice Department. So help me with that.

Ms. STILES. I think there are always going to be problems, but hopefully they're ones that we can solve through our current Federal acquisition system. I think your first reference was to the Medicare contractor; is that correct?

Mr. CUMMINGS. Yes.

Ms. STILES. Medicare contracts are not governed by the same rules that other contracts are governed by the Federal acquisition regulation. Hopefully, though, those regulations do work. And the system does work most of the time. And to the extent it doesn't, I think we need to try and fix it.

Mr. CUMMINGS. I mean, are you doing anything to—again, my question was, what guidance are you giving OMB as to how to deal with these agencies to ensure that these kinds of things don't happen?

Ms. STILES. Well, I mean, we have a whole set of regulations that we work with all of the civilian agencies to implement to make sure that we have a procurement system that works. And the en-

tire Federal acquisition regulation is there to ensure that we provide—that the contracts that we have are good contracts and run efficiently and effectively and that we avoid these problems. But I think they are going to happen sometimes.

Mr. CUMMINGS. Now, going back to my first statement, when you've got people who have worked hard for the Government for many years, who have tennis shoes to buy this September, who have to feed their families, and who have done a good job over and over again, I mean, I'm just wondering what's the Bush administration's feeling about them, like the people who are sitting behind you, all of whom represent families——

Ms. STILES. Absolutely. I don't think——

Mr. CUMMINGS [continuing]. Just like you do.

Ms. STILES. Actually, I don't think our feelings are any different than yours.

Mr. CUMMINGS. I'm sorry. I didn't hear you.

Ms. STILES. We fully support the Federal work force. My experience has been with the acquisition work force before coming to this job, and it's been an excellent experience. We have good workers out there.

Mr. TOM DAVIS OF VIRGINIA. OK. Thank you very much. The gentleman's time has expired. Mr. Kucinich.

Mr. KUCINICH. Thank you very much, Mr. Chair. I want to thank the Chair for his indulgence in allowing me to ask a few questions, and I want to thank the panelists for their participation. Mr. Chairman, I just want to start out by explaining that I have a situation back in my home district in Cleveland, OH, where the Defense Financial and Accounting Service [DFAS], employs about 450 people in Cleveland who perform retiree and annuitant pay functions for the military. This operation was recently contracted out through an A-76 review to a company called ACS Government Solutions Group. And apparently, this firm has said that it's going to provide savings to the Government over the next 10 years. So this conclusion is certainly subject to close consideration.

I would like to ask a question to Ms. Stiles. Do agencies monitor the type of wage-and-benefits package contractors offer their employees once work is outsourced?

Ms. STILES. As a general proposition, no. There has been an initiative——

Mr. KUCINICH. Could you speak closer to the mic?

Ms. STILES. Certainly. As a general proposition, there has been a general initiative——

Mr. KUCINICH. There has been an initiative?

Ms. STILES. Yeah, to take a look at the contractor work force. So we're going to have to get back to you.

Mr. KUCINICH. So what's your answer, that you really haven't monitored it, but you're going to?

Ms. STILES. No. There's been an initiative that was recently suspended within the Army to take a look at the contractor work force, the number of contractor employees that are working, as well as some more of the specifics. I mean, there was an initiative to collect some of the data, but aside from that, no.

Mr. KUCINICH. So I'll just go over the question again because this question is phrased, as you know, quite deliberately; and I just

want to make sure I have your right response. Do agencies monitor the type of wage-and-benefits packages contractors offer their employees once the work is outsourced?

Ms. STILES. As a general proposition, no.

Mr. KUCINICH. No. OK. Isn't it possible that companies like ACS Government Solutions out-bid Federal workers by providing less compensation to employees over the life of the contract?

Ms. STILES. I believe that's possible, yes.

Mr. KUCINICH. OK. The Economic Policy Institute reports that more than 1 in 10 Federal workers earn less than a living wage. Now, isn't it possible that contractors realize savings by fighting unionization and otherwise violating the spirit of labor laws?

Ms. STILES. I'm sure that they are paying the wage based on the competitive pressures that they face.

Mr. KUCINICH. OK. And do you think this puts the Government in this difficult position of being in the business of saving money on the backs of workers who are also U.S. taxpayers, who are loyal, who are well trained, who are honest and who are, you know, being supervised under government laws and regulations. I mean, does that—how do you respond to that?

Ms. STILES. I think the dynamic of competition benefits everyone, particularly when we're looking at this A-76 initiative. We're looking at cost-savings improved-performance innovation. It's a benefit to everyone involved.

Mr. KUCINICH. OK. Thank you. Do any of the agencies monitor how contractors treat their employees once they receive work?

Ms. STILES. No, not that I know of.

Mr. KUCINICH. And Mr. Holman, has GAO conducted any such study?

Mr. HOLMAN. Congressman, we've done some work to try to evaluate what happens to the pay and benefits of Federal employees that are affected by A-76 studies. It's more on a case-study approach. And I have to say that as a result of it we have to say we can't draw universal conclusions what happens, because it varies with so many factors. A lot of it has to do with the locality where the action takes place, the technical nature of the work. A lot of it has to do with the age of the Federal employees.

Mr. KUCINICH. Well, I'd like to—I can appreciate there are variables. Now, according to the numbers I have from the DOD, of the 286 A-76 reviews it conducted over the last 5 years, only 8 of them were on work performed by contractors. Would GAO be receptive to a request from, perhaps, the ranking member, with his indulgence or from any member of the Government Reform Committee to do such a study which deals with the type of wage-and-benefit packages that are offered employees once they're outsourced and also to look at some of these issues that are raised here with respect to how contractors treat their employees once they receive work?

Mr. HOLMAN. We're certainly receptive to doing more work in that area as needed. But let me say that, you know, we have looked at that issue and we've seen instances where employees, as a result of the contracting action, the work is outsourced they may make less. They may make more. One of the difficulties, again, is with the age of the Federal work force, so many nearing retirement

age. When a contract, an A-76 action, happens, an award goes to the private sector, the contractor is anxious to have those workers. That's how they're going to build their work force, a skilled work force, if they can.

Mr. KUCINICH. I know my time's expired.

Mr. TOM DAVIS OF VIRGINIA. It is.

Mr. KUCINICH. I want to thank the Chair, and I just want to say that my concern would be that it's easier to pay younger workers less and get rid of dedicated older workers. I'll send a followup letter to GAO. I want to thank the Chair for his kindness.

Mr. TOM DAVIS OF VIRGINIA. Let me just say from my perspective I think one of the problems is that we have too much oversight of some of these contractors in terms of what they're paying, how much they can pay benefits. In my experience back before I came here, I saw just a lot of overregulation, sometimes from auditors and stuff looking at things that had no bearing at all on what level of service the Government was getting or how much they were paying and trying to tell companies how they had to run their business. So Mr. Kucinich thinks we don't have enough regulation. One of the questions I asked before is maybe we have too much in that area. So we have divergent opinions on that. But you're going to hear that because we have a lot of different opinions up here today. I appreciate your indulgence. Anything anybody wants to add before I dismiss this panel and move on to the next?

Mr. DUBOIS. I think there is one issue that has now been raised both by Mr. Cummings and Mr. Kucinich, and that is a concern that I have about the fabulous quality that we have in the Federal work force today, which is very close over the next 5 years, a large percentage of that Federal work force, that quality work force is eligible for retirement. And one of the ironies here may very well be that the only way to access that quality work force is after they voluntarily retire is contract for them.

Mr. TOM DAVIS OF VIRGINIA. One of the other parties—I think we talked before about some of the incentives we have within the existing Civil Service structure to retain good employees in their early career and given the career path. The current Civil Service system doesn't really allow what we need to do in those areas. But you're right, the next 5 years are a huge test for us; and because of some of the revolving-door arguments that have been put in by preceding Congresses, the only way we can access some of these people is to move them out into the private sector. Mr. Turner has a couple of questions, and then we'll let you go.

Mr. TURNER. Ms. Stiles, you mentioned earlier in your remarks and testimony that there is a new change in the A-76 procedure that will permit interagency servicing agreements to be open to competition and it would be published tomorrow in the Federal Register. Is that an invitation for comment, or is that a directive that this change will occur?

Ms. STILES. Invitation for notice and comment.

Mr. TURNER. And Mr. Holman, from your perspective—obviously we've talked about DFAS, the Defense Finance and Accounting Service—and Mr. Kucinich referred to it having lost a contract to the private sector. That agency, as we mentioned earlier, does a lot of interservice, or interagency servicing, of the checks and those

kind of things for other agencies. Do you happen to know why interagency servicing agreements were exempt initially from A-76?

Mr. HOLMAN. I'm not sure why they were exempted other than perhaps there was probably an interest at a point in time to encourage interservicing as a way to take advantage of capabilities that existed across agencies to achieve efficiencies that way. That would be just speculation on my part, though.

Mr. TURNER. I know you may not have been familiar with the news just announced, but it seems to me that this is going to be a—quite a difficult area to move into. I'm sure DFAS has made a significant investment in equipment and personnel to handle the interagency servicing agreements that it does currently manage; and obviously, we want those kinds of interagency agreements to work as efficiently as possible. But in truth and fact, whatever payments are being made by other agencies for that service is going back into the Treasury as a result of the interagency agreement.

So it seems to create quite a much more difficult area to analyze; and, in fact, if some of our agencies begin to lose interagency contracts, the investments in equipment and personnel and training that have been made may create losses to us that will be difficult to evaluate, as well as we may lose economies of scale that exist perhaps in DFAS that performs those services for a large number of Federal agencies.

So I would be interested if you have any concerns about moving into that area of interagency servicing agreements.

Ms. STILES. Can I clarify the scale that we're looking at here? These are only interagency service support agreements that were entered into prior to 1997, so the universe is smaller than you might think. Ones after that point in time are subject to competition. So this is just removing a grandfathering provision.

Mr. TURNER. And would that affect DFAS?

Ms. STILES. Yes.

Mr. TURNER. OK.

Ms. STILES. To the extent that the agreement was entered into before 1997.

Mr. HOLMAN. Right. Again, I think the driving factor behind the A-76 process is—the forcing action is competition as a way to achieve greater savings, whether the existing government—obviously, the current activity is competing for that, continuing that work. Again, that's why so many of the competitions are won by the in-house organizations. Where they lose—again, many of the contractors are very anxious to try to recruit the former government employees because they do see that as an experienced base of workers.

Sometimes it's difficult to attract those workers, though, because many of them are in that age group of that it's just a few years of retirement and they don't—they're wanting to seek that retirement under the Civil Service Retirement System or the FERS system. So that does make it difficult to track those workers at times. But on the other hand, our work has shown that many workers do retire and many of them do go work for these contractors and can fare rather well. I'm sure you know it's a mixed bag. Again, it's very difficult to draw universal conclusions, but you do see a range of actions that many times are very positive.

Mr. TURNER. Thank you, Mr. Chairman.

Mr. TOM DAVIS OF VIRGINIA. Thank you very much. Let me thank this panel very much. Ms. Stiles, thank you very much for being here, your first day back. I think you did a great job. I hope the administration ought to be proud of what you've done.

Ms. STILES. Thank you.

Mr. TOM DAVIS OF VIRGINIA. We look forward to working with you, and I think you can hear the array of views we have up here in the Congress on these issues that we can synthesize and work with over the next 2 years. So we thank all of you very much.

Mr. TOM DAVIS OF VIRGINIA. Let's take a 2-minute break as we move the next panel up. Anybody who will be on the next panel need to refresh themselves or anything here before we get on because I know you've been sitting here a long time, we'll be happy to accommodate you. All right. It's customary to swear in our witnesses. If you would just rise and raise your right hands.

[Witnesses sworn.]

Mr. TOM DAVIS OF VIRGINIA. We have your full statements, and they will all be made part of the record. What I would ask is try to limit your comments to 5 minutes, and then we'll have plenty of time for some questions and some give and take. I'm sorry it's been so late getting to you, but this is really the heart of the panels right here. We're going to get some different ideas on these issues and go back and forth. And let me just say in advance we really appreciate everybody taking the time to be here.

Mr. Harnage, we'll start with you, and we'll work straight on down. Thank you for being with us.

STATEMENTS OF BOBBY HARNAGE, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES; COLLEEN KELLEY, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION; PATRICIA ARMSTRONG, MEMBER, FEDERAL MANAGERS ASSOCIATION; PAUL LOMBARDI, PRESIDENT AND CHIEF EXECUTIVE OFFICER, DYNCORP, PROFESSIONAL SERVICES COUNCIL; TIMOTHY PSOMAS, PRESIDENT, PSOMAS, AMERICAN CONSULTING ENGINEERS COUNCIL; AND COLONEL AARON FLOYD (RET.), PRESIDENT AFB ENTERPRISES, INC., RETIRED MILITARY OFFICERS ASSOCIATION

Mr. HARNAGE. Mr. Chairman and members of the subcommittee, the AFG represents over 600,000 Federal and D.C. Government employees across the Nation and around the world. And, Mr. Chairman, last year you promised us that we would have a hearing on our TRAC Act, and I want to thank you and let you know I appreciate this opportunity to appear before this committee. My written testimony includes a detailed discussion on the need for prompt passage of the TRAC Act, a comprehensive Federal service contract and reform legislation that has been cosponsored by 185 lawmakers, and it's supported by 103 organizations that represent over 15 million Americans.

Mr. Chairman, it is clear to us that OMB is working hand in hand with contractors to sell off the Government. Over the next 4 years, the jobs of 425,000 Federal employees will be tossed up for grabs, either directly converted to contractor performance without

public-private competition or be subjected to public-private competition. No one knows what the mix will be, but it's fairly obvious the intent of the message.

The failure of agencies to carefully track the more than $100 billion already spent on service contracts is well documented. Nevertheless, OMB is directing agencies to undertake massive increases in service contracting-out without first establishing systems to readily track the cost of this scheme. Although OMB officials say they favor public-private competition, their policies tell the real story. They're encouraging agencies to use direct conversions to fulfill their arbitrary quotas of reviewing under A-76 the jobs of 42,000 Federal employees in fiscal year 2002 and another 85,000 in fiscal year 2003, a process that deprives Federal employees of the opportunity to compete in defense of their jobs.

If the savings are in the competition, as OMB officials contend, and not in contract amount, why eliminate the competition, especially given that we win approximately 60 percent of those petitions? Or is that the reason for direct conversions? OMB officials are also very selective about how they use public-private competitions. Not a single job in the massive service contractor work force will be reviewed for public-private competition or direct conversion over the next 4 years.

And there is no sign that OMB will allow Federal employees opportunities to compete for new work. OMB insists that whether or not Federal employees should be allowed to compete for new work or work currently performed by a contractor is a decision that must be left to agency discretion. However, it does not leave that same discretion to the agencies when it comes to Federal employee work.

Let's look at the facts. For years contractors have acquired almost all of their work without public-private competition. And for years, contractors' work is almost never subject to the scrutiny of the A-76 process. The evidence that its agencies have abused their discretion to not allow Federal employees opportunity to complete is simply undisputable. Federal employees have paid a steep price for these failures, and the interests of every single American who relied on Federal Government services have not been well served either.

That's why AFG is a strong supporter of the TRAC Act because it would require the agencies to establish systems to track the cost of service contracting. And it will ensure that Federal employees have opportunity to compete for our work and new work as well as contracted work to the extent that they compete for ours. By ensuring that agencies can run themselves like businesses, and always at least considering the possibility of in-house performance before giving work to contractors, the Federal Government can improve contract administration and begin recovering from the human capital crisis, the natural results of years of mindless downsizing and indiscriminate service contracting, the self-inflicted crisis we face today.

I also ask the subcommittee to support two additional pieces of legislation, the legislation referred to by Congressman Gutierrez of the Federal Living Wage Act, and I also urge the subcommittee to include in this year's defense authorization bill Representative Charlie Gonzales's bill to establish fairness and equity by providing

standing to DOD employees to contest bad A-76 decisions before the Federal claims court or the General Accounting Office.

As you know, the TRAC Act has won the allegiance of Federal employees across the Nation and around the world because it is our best hope of finally making Federal service contracting fair to Federal employees and accountable to the taxpayers. Today, in this hearing room and out in the hall, we have employees from Maine to Georgia, from Virginia to Wisconsin, from Kentucky to Oregon. They do not want to work for an employer driven by the bottom line. They want to work for their country and provide the best service to the American public.

Although there will be a comparison bill introduced in the very near future, possibly today or tomorrow in the Senate, Mr. Chairman, I look forward to working with you and to move this important piece of legislation. Thank you for this opportunity to appear before the subcommittee, and I'll be glad to answer any of your questions.

Mr. TOM DAVIS OF VIRGINIA. Mr. Harnage, thank you very much for being here.

[The prepared statement of Mr. Harnage follows:]

AFGE

Congressional Testimony

STATEMENT BY

BOBBY L. HARNAGE, SR.

NATIONAL PRESIDENT

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
(AFL-CIO)

BEFORE THE

HOUSE COMMITTEE ON GOVERNMENT REFORM
TECHNOLOGY AND PROCUREMENT POLICY SUBCOMMITTEE

REGARDING

THE NEED FOR PROMPT PASSAGE OF THE TRAC ACT (H.R. 721)

JUNE 28, 2001

American Federation of Government Employees, AFL-CIO
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EXECUTIVE SUMMARY

THE TRUTHFULNESS, RESPONSIBILITY, AND ACCOUNTABILITY IN CONTRACTING (TRAC) ACT (H.R. 721) (182 cosponsors)

1. TRACK COSTS: The TRAC Act would require agencies to track costs and savings from contracting out. Right now, agencies are assuming that promised savings from contractors are actually realized. However, as the General Accounting Office (GAO) has reported, costs have a way of increasing over the course of contracts. GAO has also reported that agencies don't have systems in place to track costs. This information could be used to encourage contractors to do better work or bring work back in-house when it could be performed more efficiently by federal employees. Either way, the taxpayers benefit.

2. REQUIRE PUBLIC-PRIVATE COMPETITION: The TRAC Act would prevent agencies from contracting out new work and work performed by federal employees without public-private competition. The Department of Defense (DoD) recently admitted that less than one percent of its contracts are first subjected to public-private competition, despite the fact that, according to GAO, federal employees win 60% of the competitions actually conducted. Non-DoD agencies conduct virtually no public-private competitions. That is, almost all work is contracted out without public-private competition. And that's either work federal employees are doing or work federal employees could do. Federal employees deserve to compete in defense of their own jobs and compete for work that they can do. Agencies can do more efficiently in-house much of the work that is currently contracted out without public-private competitions, and save money for the taxpayers.

3. ABOLISH ARBITRARY PERSONNEL CEILINGS: The TRAC Act would allow agencies to hire additional federal employees if they could do the work more efficiently in-house. Agencies continue to manage their federal employees by arbitrary personnel ceilings. Even when they have work, and money to pay for that work, they still contract out that work, often at higher costs, because they can't hire the necessary staff. There are already laws prohibiting the management of DoD's workforce by arbitrary personnel ceilings that are routinely ignored. Also, the Federal Workforce Restructuring Act of 1994 that reduced the federal workforce by 275,000—reductions now exceed 400,000—said that displaced federal employees could not be replaced by contractors, but that safeguard was also regularly violated, as senior Clinton Administration officials openly admitted.

4. CONTRACTING IN: The TRAC Act would require agencies to subject work performed by contractors to the same level of public-private competition as work performed by in-house staff. If public-private competition is good for federal employees, then it should be good for contractors, especially since the contractor workforce is estimated to be twice the size of the federal workforce, and contractors

acquired most of their work without public-private competition in the first place. However, agencies compete and convert (give to contractors without public-private competitions) federal employee jobs almost exclusively. From 1995 through 1999, according to GAO, DoD conducted 286 public-private competition reviews. Only 8 of those reviews were for work performed by contractors. Federal employees won 5 out of 8 of those reviews—and each time federal employees won, they saved money for the taxpayers, as even DoD admitted. Taxpayers could save much more if contractors were forced to defend their work to the same extent as federal employees. The one time during the Clinton Administration contractors were told that their contracts might not be automatically renewed, they magically came up with 15-20% savings. Imagine the savings to taxpayers if contractors were actually required to compete!

5. WAGES AND BENEFITS: Contracting out in the private sector and elsewhere in the public sector is used to undercut workers on their wages and benefits. The same thing is likely happening in the federal sector. The TRAC Act would require the Office of Personnel Management and the Department of Labor to conduct a comparison of federal employee and contractor compensation packages to be sure. GAO says they can't get this information without cooperation from the contractors—who won't cough up the necessary data. The Economic Policy Institute recently reported that more than 1 in 10 contractor employees earn less than a living wage ($17,000 annually), the amount necessary to keep a family of four above the poverty line, but said that more research into the human toll from federal service contracting is necessary.

THE BUSH ADMINISTRATION'S AGGRESSIVE PRO-CONTRACTOR AGENDA: Officials at the Office of Management and Budget (OMB) have committed the Bush Administration to converting to contractor performance without public-private competition or subjecting to public-private competition at least 425,000 federal employee jobs over the next four years. As part of that effort, agencies must convert or compete at least 5% of the jobs listed on their Federal Activities Inventory Reform (FAIR) Act inventories during Fiscal Year 2002 and 10% of the jobs in Fiscal Year 2002. That's almost 128,000 federal employee jobs over the next two years alone. OMB is also attempting to pressure agencies to contract out jobs that senior agency managers have always insisted be performed by reliable and experienced federal employees by requiring that agencies publish lists of their inherently governmental jobs.

Please note the thoroughly one-sided nature of this pro-contractor agenda: Not a single contractor job is to be competed or converted. Agencies can fulfill their targets exclusively by direct conversions, i.e., simply giving federal employee jobs away to contractors. Moreover, no effort will be made to learn more about the efficiency and effectiveness of the burgeoning contractor workforce.

INTRODUCTION

Mr. Chairman and members of the subcommittee, on behalf of the 600,000 federal employees across the nation and around the world represented by the American Federation of Government Employees, AFL-CIO, I appreciate this opportunity to impress upon the House Government Reform Subcommittee on Technology and Procurement Policy the importance of quick passage of the Truthfulness, Responsibility, and Accountability in Contracting (TRAC) Act (H.R. 721), legislation which has been cosponsored by 182 House lawmakers, including 20 on the Government Reform Committee.

Despite the legislation's widespread support, both last year and this year, both in the House as well as on the Government Reform Committee, this is the first hearing at which this important legislation will be discussed. Needless to say, this opportunity is long overdue.

Mr. Chairman, we were told last year that this hearing would be devoted to the TRAC Act. As it turned out, the TRAC Act was not even mentioned in the two-page letter sent to witnesses scheduled to speak at this hearing.

At the same time, Mr. Chairman, let me express my appreciation for your consistently strong leadership on many issues of concern to federal employees and their families: pay, health care, retirement, and child care in particular. I understand the conflict you feel on the controversial issue of federal service contracting. However, I think the more you study the TRAC Act the more you will find it addresses the many serious problems and inequities in the federal service contracting process.

Mr. Chairman, we speak and act in the long and looming shadow of the Bush Administration's scheme to throw up for grabs the jobs of at least 425,000 federal employees over the next four years, either through direct conversions to contractor performance (i.e., giving work to contractors without public-private competitions) or public-private competitions. Not since the "spoils system" at its very worst have the American people seen an incoming Administration attempt on such a massive scale to gut the civil service, replacing the working and middle class Americans in the federal workforce with their political supporters in the business community.

As AFL-CIO President John Sweeney pointed out recently to the General Accounting Office's (GAO) Commercial Activities Panel:

> *"After abuses too infamous to ignore, the nation as a matter of law and policy rejected a `spoils system' that allowed new presidents to replace their predecessors' workforces with cronies and political supporters. We adopted, instead, a civil service system to ensure that the American people would always be served by women and*

> *men who chose to devote their lives to public good rather than private gain.*
>
> *"Rank-and-file federal employees provide the continuity, attention to details, and institutional memory necessary to ensure that the American people continue to be the best governed in the world. Because they are not political appointees, these civil servants can do their job of serving the public without fear or favor. And because civil servants are part of the enduring fabric of government, the American people can always count upon them for service, regardless of a President's political affiliation or ideological bent.*
>
> *"The idea that as much as one-fourth of the federal government's executive branch workforce could be outsourced over the next four years raises grave concerns that, under the banner of `efficiency,' the nation could well return to a latter day `spoils system.'"*

Ironically, the much more limited use of OMB Circular A-76, the public-private conversion / competition process, by the Clinton Administration was a loss for taxpayers. In fact, A-76, after all of these years, is still a money-loser. According to GAO's *DoD Competitive Sourcing: Some Progress, but Continuing Challenges Remain in Meeting Program Goals* (NSIAD-00-106) report from last year:

> *"While our work has shown that savings are being realized from individual A-76 studies, overall program costs to date are still exceeding savings. The President's fiscal year 2001 budget submission reports that during fiscal year 1998 and 1999, the overall costs of the A-76 program have exceeded the expected savings."*

Bush Administration officials appear to have learned little from their predecessors' mistakes. Not only are they dramatically expanding the scope of the process, they are extending its reach into every single agency.

FEDERAL LIVING WAGE RESPONSIBILITY ACT (H.R. 917)

Although I will devote the bulk of my statement to H.R. 721, I do want to express AFGE's support for the Federal Living Wage Responsibility Act (H.R. 917), legislation introduced by Representative Luis Gutierrez (D-IL) that has racked up almost 80 cosponsors, including several on the House Government Reform Committee.

This legislation would, as AFL-CIO President John Sweeney described at the hearing held earlier this month by the GAO Panel, "enable hardworking contractor employees to lift themselves and their families out of poverty." Of course, H.R. 917 would ensure that federal agencies also pay their direct employees at least a "living wage," i.e., the amount of money necessary to keep a family of four above the poverty line. Finally, this legislation would boost the benefits of low-income contractor and federal employees.

As the legislation progresses, AFGE will work with the sponsor to perfect the provision that boosts benefits for low-income federal employees to make it compatible with H.R. 1307, Representative Steny Hoyer's bill to increase to 80%, on average, the federal government's contribution towards health insurance premiums for federal employees.

There's a lot of talk about treating more humanely those federal employees victimized by the service contracting process, although such rhetoric is often used to advance proposals intended to make more palatable the direct conversion of jobs to the private sector without any public-private competition. However, if any lawmaker really wants to deal with the human toll of federal service contracting, they should support the prompt passage of the Federal Living Wage Responsibility Act.

LEGAL STANDING FOR FEDERAL EMPLOYEES

As a former contractor lawyer, Mr. Chairman, I am sure you appreciate this obvious inequity: contractors—and only contractors—can take agencies to Federal Claims Court and GAO in the event of arbitrary service contracting decisions. This isn't just another instance of the service contracting process being stacked against federal employees. The failure to afford federal employees legal standing makes the process even more unaccountable. Decision-makers know that they can be held responsible only by contractors. This can't help but bias the process against federal employees, who are left with no recourse.

Over the past year, AFGE has taken five cases to court—providing documented irregularities with the service contracting process totaling tens of millions of dollars—only to be left with rulings that neither AFGE nor federal employees has legal standing.

Fortunately, Representative Charlie Gonzalez (D-TX) has begun the process of righting this historic wrong with the introduction of H.R. 2227, legislation that would give federal employees the same rights as contractors. H.R. 2227 would amend Title 10 U.S.C., to give appeal rights to DoD employees with respect to actions or determinations made under OMB Circular A-76.

Of course, Representative Gonzalez's legislation is just the beginning. Non-DoD employees should have the same rights as DoD employees. Moreover, much service contracting takes place outside of OMB Circular A-76. Federal employees should have legal standing in all service contracting situations in order to defend their rights. Finally, it may well be necessary to provide DoD employees with standing to enforce longstanding prohibitions against the management of DoD's civilian workforce by personnel ceilings. DoD is instead charged with managing its civilian workforce by workloads and budgets, not arbitrary numbers. However, these prohibitions have been broken, again and again. Given the failure of the Congress to prevent the practice of management by personnel ceilings from being perpetrated, that burden may have to be assumed by DoD's civilian employees.

The Government Reform Committee was one of three House committees to which H.R. 2227 was referred. It is imperative, Mr. Chairman, that you use your influence to waive this committee's jurisdiction and ensure that Representative Gonzalez's important legislation is included in this year's defense authorization bill. Moreover, Mr. Chairman, you should ensure that comprehensive, government-wide standing legislation is sent to the House floor for approval on an emergency-basis, alongside the TRAC Act. It is unconscionable that the Bush Administration would throw up for grabs the jobs of at least 425,000 federal

employees, knowing that, as a result of an historical inequity, they have no appeal rights.

GENERAL ACCOUNTING OFFICE'S COMMERCIAL ACTIVITIES PANEL

Over the last several months, we have heard a lot of talk about the GAO's Commercial Activities Panel. Specifically, contractors have told me that I should direct AFGE members to stop lobbying in support of the TRAC Act until the panel has submitted its recommendations to the Congress by May of next year.

I think that message is disingenuous. The Bush Administration is not waiting for the panel's recommendations. Officials at the Office of Management and Budget (OMB) have committed the Bush Administration to converting to contractor performance without public-private competition or subjecting to public-private competition at least 425,000 federal employee jobs over the next four years. As part of that scheme, agencies must convert or compete at least 5% of the jobs (42,500) listed on their Federal Activities Inventory Reform (FAIR) Act inventories during Fiscal Year 2002. During the next year, the quota will be 10% of the jobs (85,000). OMB is also attempting to pressure agencies to contract out jobs that senior agency managers have always insisted be performed by reliable and experienced federal employees by requiring that agencies publish lists of their inherently governmental jobs. This would, of course, constitute a unilateral expansion of the FAIR Act beyond its carefully delineated boundaries—and one that would clearly require the enactment of additional legislation.

Please note the thoroughly one-sided nature of this pro-contractor agenda: Not a single contractor job is to be competed. Agencies can fulfill their targets exclusively by direct conversions, i.e., simply giving federal employee jobs to contractors. Moreover, no effort will be made to learn more about the efficiency and effectiveness of the burgeoning contractor workforce.

OMB is also preparing legislation behind-the-scenes to "require agencies to account for the full costs of their programs" in order to promote more contracting out, according to a May 15 article on the GovExec.com website. Interestingly, the contractors have waged an aggressive campaign over the last several years to weaken and even eliminate the cost accounting standards that agencies use to prevent contractors from passing on unallocable costs to taxpayers through the ever-popular cost-reimbursement and other flexibly priced contracts. Although contractors insist on transparency and disclosure with respect to federal employee costs, they strenuously fight any effort to ensure they comply with the same requirements. As part of its "true costs" legislation, will the Administration ensure even-handedness by defending and strengthening the cost accounting standards necessary to keep contractors honest—or will it instead impose "true costs" only on federal employees and allow contractors to hide their actual costs to taxpayers?

In addition, the Administration, according to the Administrator of the Office of Federal Procurement Policy, in her pre-confirmation submission to the Senate Governmental Affairs Committee, is

> *"considering the cancellation of the existing Interservice Support Agreements Grandfather Clause found at Part 1, Chapter 2, paragraph A.5 of OMB Circular A-76. As currently written, reimbursable agreements that existed before October 1, 1997, can be continued and renewed without competition. Only new reimbursable agreements or expansions are subject to the competition requirements of the Circular. I believe competition for reimbursable work should be expanded to all reimbursable activities."*

The requirement for competition for all interservice support agreements, when one agency performs a service for another service, is, obviously, a significant change of policy. Interestingly, Administration officials have criticized the TRAC Act for requiring public-private competition before new work is given to contractors. OMB Circular A-76 already requires that agencies' new interservice support agreements be subjected to competition. However, OMB, according to the OFPP Administrator, is on the brink of requiring that *all* interservice support agreements, both past and future arrangements, be subject to competition, which goes well beyond the TRAC Act's public-private competition requirement.

Due to the comprehensive nature of the Administration's pro-contractor agenda, it is disingenuous for contractors to demand that federal employees stop lobbying in support of the TRAC Act until the GAO Panel has finished with its deliberations. Given that the Administration and contractors are working hand-in-hand to sell off much of the federal government over the next four years, it would constitute unilateral surrender for federal employees to sit back and wait patiently for the panel's recommendations.

And, Mr. Chairman, I know that you are not waiting for the panel before attempting to move federal service contracting-related legislation. At the subcommittee's May 22 hearing, you revealed your determination to seek quick passage of a Services Acquisition Reform Act that will include, among other things, broadly expansive authority for agencies to enter into controversial share-in-savings contracts. Consequently, AFGE members know that the "wait-for-the-panel" excuse is one that will carry no weight in this subcommittee's deliberations.

As for the panel itself, we appreciate the hard work and attention to detail of Comptroller General David Walker and his staff. At the same time, we note that Mr. Walker, in his selection of the panel's members, was forced to labor under the constraint of the statute that established the panel. That means the twelve-member panel has a solid pro-contractor majority of four Bush Administration

officials, two contractors, and one pro-contractor academic. National Treasury Employees Union (NTEU) National President Colleen Kelley and I represent the interests of federal employees and taxpayers. The three independent panelists are Comptroller General Walker, an academic from American University who served previously as NTEU's National President, and an academic from Harvard University.

AFGE was urging the Congress to require agencies to carefully track the costs of contractors, ensure that federal employees have opportunities to compete for work they are doing as well as for new work, abolish the use of arbitrary in-house personnel ceilings that prevent federal employees from competing for work, ensure that agencies emphasize contracting in to the same extent as contracting out, develop a better understanding of the human toll from service contracting, and provide federal employees with the same legal rights as contractors before the GAO Panel was established because those principles promote the interests of taxpayers and anyone who depends on the federal government for service. Regardless of the recommendations offered by the GAO Panel next year, AFGE will be fighting for those same principles.

THE TRAC ACT (H.R. 721)

H.R. 721 is, quite simply, our best hope of ending the human capital crisis, strengthening the administration of service contracts, and ensuring that the service contracting process is made more accountable to taxpayers and more equitable for federal employees.

The TRAC Act has five common-sense objectives:

TRAC ACT OBJECTIVE #1: Federal agencies would finally be required to track the costs and savings from service contracting as well as the costs and size of their contractors' workforces.

The Problem: Tracking the Costs of Service Contracting

I shall speak a lot about the Department of Defense (DoD) in my testimony. That is because DoD has the most experience with service contracting, spending the majority of service contracting dollars. It is also one of the few agencies that has over the last several years been subjected to more than cursory Congressional oversight of its service contracting because of the bipartisan concern generated over how service contracting has undermined readiness and failed to come even remotely close to achieving the savings goals established by its proponents. Mr. Chairman, your colleague, Representative Curt Weldon (R-PA), the chairman of the House Armed Services Committee on Readiness, referred to DoD service contracting at a March briefing as a "cesspool." However, because of the absence of strong oversight, the severe problems associated with DoD's service contracting are likely far worse in other agencies.

We don't even know how much DoD is spending on service contracting, let alone if those hundreds of billions of taxpayer dollars are being spent wisely. We do know that the cost to taxpayers for service contracting has increased dramatically. Over the last six years, Pentagon officials have systematically replaced federal employees with contractors, often regardless of whether or not it makes any sense. According to the Office of Personnel Management, the DoD civilian workforce fell from 966,000 to 682,000 in 2000. (Chart 1) Service contracting, on the other hand, increased from $39.9 billion in 1992 to $51.8 billion in 1999, according to the Inspector General (IG). (Chart 2) (As discussed below, GAO estimates that the annual bill for taxpayers for DoD service contracts is almost $100 billion.)

It is clear that the emphasis in DoD's service contracting crusade has been giving the jobs of federal employees to contractors, not in making sure that work has been well done.

> *"...DoD managers and contracting personnel were not putting sufficient priority during the 1990's on (service contracting), which*

> *likewise was virtually ignored for the first few years of recent acquisition reform efforts. Consequently, we think the risk of waste in this area is higher than commonly realized...We reviewed 105 Army, Navy, and Air Force contracting actions, valued at $6.7 billion, for a wide range of professional, administrative, and management support services amounting to about 104 million labor hours, or 50,230 staff years. We were startled by the audit results, because we found problems with every one of the 105 actions. In nearly 10 years of managing the audit office of the IG, DoD, I do not ever recall finding problems on every item..."*

Robert J. Lieberman, Assistant Inspector General for Audits, Department of Defense; "Federal Acquisition: Why Are Billions of Dollars Being Wasted?" (testimony before the House Subcommittee on Government Management, Information, and Technology); March 16, 2000.

One of the principal architects of DoD's massive transfer of work from federal employees to the private sector, Dr. Jacques Gansler, was sheepish when asked during a Senate Readiness Subcommittee hearing last year about the IG's damning report:

> *"...I agree with (the IG about) needing significant improvements in service contracting...(T)his has become a major challenge for us...(W)e have to really significantly improve our service buying...(I)t's probably going to take us a few years...to shift towards really professional service buying."*[1]

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[1] It is time to stop blaming the hard-working men and women in DoD's acquisition workforce for the waste, fraud, and abuse that is intrinsic to service contracting. AFGE has strongly opposed the ruinous cuts in DoD's acquisition workforce that have been jointly imposed by the Pentagon—at the instigation of Dr. Gansler, among others—and the Congress over the last several years. AFGE has warned lawmakers that DoD would lack sufficient in-house staff to keep contractors from perpetrating waste, fraud, and abuse. AFGE has also insisted that the Pentagon is replacing—at higher cost—federal employees in the acquisition workforce with contractors. And according to a 2000 Inspector General report, AFGE's suspicions were completely correct.

The IG told the Senate Armed Services Subcommittee on Readiness last year that DoD has

> *"reduced its acquisition workforce from 460,516 people in September 1991 to 230,556 in September 1999, a reduction of 50 percent. Further cuts are likely and, in fact, one of defense acquisition goals (for FY01) is to achieve another 15 percent reduction in the DoD acquisition related workforce."*

These staffing cuts have come at the same time the acquisition workload has increased significantly. According to the IG, from FY 1990 through FY 1999,

> *"the number of procurement actions increased (emphasis original) about 12 percent, from 13.2 million to 14.8 million. The greatest amount of work for acquisition personnel occurs on contracting actions over $100,000, and the annual number of those actions increased about 28 percent from FY 1990 to FY 1999, from 97,948 to 125,692."*

Among the adverse consequences reported by multiple acquisition organizations:

> insufficient staff to manage requirements efficiently, reduced scrutiny and timeliness in reviewing acquisition actions, increased backlog in closing out completed contracts, and lost opportunities to develop cost savings initiatives.

Ominously, the IG warned that the appalling litany of problems caused by the indiscriminate reductions of the acquisition workforce

> *"appears to be a conservative summary of the overall impact of the problem and, if further downsizing occurs, these staffing management problems and performance shortfalls can only get worse."*

AFGE has warned that precipitous reductions in in-house acquisition personnel were forcing DoD to contract out acquisition work at higher costs. The IG reports that seven different acquisition organizations report "increased program costs resulting from contracting for technical support versus using in-house technical support." As an example, the IG reported that the

> *"lack of in-house engineering staff at an Army acquisition organization caused an increase in customer costs of $20,000 to $50,000 per each work year of support services for weapons programs because of the need to hire contractors to perform the work."*

Considering that DoD essentially stopped hiring acquisition personnel several years ago and that the IG reports 42 percent of the remaining acquisition workforce being lost through attrition by FY 2005, it is imperative that the Congress take steps to actually increase the size of the acquisition workforce. As the IG sagely concluded,

> *"a reasonably sized, well-trained and highly motivated workforce is by far our best safeguard against inefficiency, waste, and fraud."*

Jacques Gansler, Under Secretary for Acquisition & Technology, Department of Defense; "A Hearing on Acquisition Reform" (testimony before the Senate Subcommittee on Readiness); April 26, 2000.

GAO has weighed in as well, both with respect to service contracting undertaken pursuant to OMB Circular A-76 and service contracting generally.

> *"Efforts to improve the accuracy of data on savings from A-76 (public-private competition) studies at the time the studies are completed are warranted, as are efforts to assess savings over time. Both are key to establishing more reliable savings estimates and improving the credibility of the A-76 program amidst continuing questions in Congress and elsewhere."*

General Accounting Office, DoD Competitive Sourcing (NSIAD 01-20), December 2000.

Mr. Chairman, I urge you to lead the opposition to further cuts in the acquisition workforce and work to require DoD to provide the acquisition workforce with more training to administer service contracts.

The IG, in his Senate testimony last year, noted that *none* of the contracting personnel interviewed had received training related specifically to contracts for services, let alone for professional, administrative, and management support services. In fact, the Defense Systems Management College and the Defense Acquisition University didn't even offer courses on service contract administration.

The Subcommittee should also look very carefully at how the "acquisition reform" effort, one of the most oversold public policy fads of our time, has contributed to waste, fraud, and abuse in federal service contracting. Mr. Donald Mancuso, the outgoing DoD Inspector General noted in *Defense Week*, on January 8, 2001,

> *"(D)efense `acquisition' reform programs have not resulted in major cost cuts, and often such changes are pushed through with insufficient regard to the taxpayer and the soldier."*

Mr. Mancuso noted that some acquisition reform proposals "are really nothing more than, `Integrity of the marketplace,' and `Competition will somehow eventually result in the best product at the best price.'"

Mr. Chairman, you were a leader last year in the fight to eliminate an arbitrary education requirement on contractor information technology personnel. I hope that you will become a leader in the effort to repeal the equally arbitrary education requirement that was imposed last year on DoD civilian acquisition personnel.

In an earlier report on A-76, GAO had noted that entries in the Commercial Activities Management Information System (CAMIS), the system that is supposed to be used to monitor contracts undertaken pursuant to the circular,

> *"are not modified and are being used continuously without updating the data to reflect changes in or even termination of contracts. DoD officials have noted that they could not determine from the CAMIS data if savings were actually being realized from A-76 competitions. Our work continues to show important limitations in CAMIS data...During our review, we found that CAMIS did not always record completed competitions and sometimes incorrectly indicated that competitions were completed where they had not yet begun or were still underway. We also identified where savings data recorded for completed competitions were incorrect based on other data provided by the applicable service."*

General Accounting Office, DoD Competitive Sourcing: Results of Recent Competitions (NSIAD-99-44), March 2000.

According to a recent GAO report, DoD has chosen not to keep its commitment to the Congress to improve its system for reporting the costs of contract services.

> *"The Department of Defense (DoD) spends tens of billions annually on contract services—ranging from services for repairing and maintaining equipment; to services for medical care; to advisory and assistance services such as providing management and technical support, performing studies, and providing technical assistance. In fiscal year 1999, DoD reportedly spent $96.5 billion for contract services—more than it spent on supplies and equipment. Nevertheless there have been longstanding concerns regarding the accuracy and reliability of DoD's reporting on the costs related to contract services—particularly that expenditures were being improperly justified and classified and accounting systems used to track expenditures were inadequate...*
>
> *"...DoD has not developed a proposal to revise and improve the accuracy of the reporting of contract service costs. DoD officials told us that various internal options were under consideration; however, these officials did not provide any details on these options. DoD officials stated that the momentum to develop a proposal to improve the reporting of contract services costs had subsided. Without improving this situation, DoD's report on the costs of contract services will still be inaccurate and likely understate what DoD is paying for certain types of services."*

General Accounting Office, CONTRACT MANAGEMENT: No DoD Proposal to Improve Contract Service Costs Reporting (01-295), February 2001.

In that last report, GAO even provided us with some rare comic relief in the "Agency Comments" section:

> *"DoD stated that the title of this report is technically incorrect and recommended that the title be changed to Update to DoD's Efforts on Reporting on Advisory and Assistance Service Costs. We believe that the title, No DoD Proposal to Improve Contract Service Costs Reporting, more accurately reflects DoD actions to address reporting problems."* (Emphasis added)

Even *Armed Forces Journal*, a reliably pro-contractor publication, took aim in its May issue at the failure of the Pentagon's previous leadership to track the costs of contracting, firing one of its feared darts at

> *"former Secretary of Defense William Cohen—for leaving his successor in a lurch. Cohen was a strong supporter of converting civilian-filled government positions to contractor-operated functions. The rationale seemed sound—ostensibly, significant cash savings would be realized by the Defense Department through the more efficient business practices that private contractors would bring to many DoD activities. The trouble was, and still is, DoD is unable to show just how much (if any) money is being saved through the jobs-conversion scheme. Cohen told Congress in 1999 that he would come up with a reporting system to capture the data necessary to quantify the savings. He didn't do it."*

As bad as the Pentagon is at tracking the costs of service contracting, DoD at least has some experience in this regard (although most of it could hardly be called instructive or worthy of emulation). Nevertheless, the Administration is directing non-DoD agencies to undertake massive increases in their service contracting without first establishing systems to reliably and accurately track their outsourcing costs.

To her credit, the new OFPP Administrator admits in her pre-confirmation submission that "agencies do not have a recurring system to adequately track A-76 savings over the long term." That is a stunning admission, given that the Bush Administration intends to use A-76 to convert or compete at least 425,000 jobs over the next four years. However, she also insists that "the federal government should carefully weigh the costs of developing an automated system to precisely measure these savings on a recurring basis, against the benefits of a precise measurement." Surely it is not too much to expect, Mr. Chairman, that agencies should be required to track the billions and billions of dollars spent on service contracting. Clearly, effective contract administration is one of the many additional costs of service contracting. Otherwise, service contracting becomes

all about replacing federal employees with contractors, regardless of the expense.

Solution: The TRAC Act

H.R. 721 would require agencies to keep track of the costs and savings of its service contracting. For each service contract, the following cost information would be tracked and made public: the cost of federal employee performance at the time the work was contracted out, the cost of federal employee performance under a most efficient organization plan, the anticipated cost of contractor performance, the current cost of contractor performance, and the actual savings achieved by the contract.

If imitation is the sincerest form of flattery, then TRAC Act supporters should feel very flattered, indeed. Last year's defense authorization bill included a provision (Section 354) that required DoD to establish a TRAC-like inventory of all work involving 50 or more employees that has been subject to performance review (OMB Circular A-76, strategic sourcing, privatization, or any other analysis to determine whether the performance of work should be changed). For each such activity reviewed, the inventory is 1) tracking the cost of conducting the review; 2) comparing the cost of performance before and after the review; and 3) comparing the anticipated savings with actual savings, if any. Reviewed activities will be tracked for this information for at least five years. Reports from this inventory will be submitted to the Congress annually.

The TRAC Act would establish a similar system for all contracts in all agencies. The OFPP Administrator acknowledges that the federal government contracts out for $130 billion in services annually. Surely, it is not too much to expect that agencies track the actual costs of all that service contracting, especially given the persistent and longstanding problems with waste, fraud, and abuse in service contracting.

Of course, the cost-tracking requirement of the TRAC Act has already won outright flattery from the leader of a major service contracting group. According to the April 2 *Federal Times*, "(Contract Services Association Gary) Engebretson said he agrees with part of (H.R. 721) that calls for more reliable accounting systems to track the cost and savings from outsourcing." Mr. Chairman, the TRAC Act's cost-tracking requirement offers real hope that federal service contractors will finally be held accountable to the taxpayers.

Problem: Tracking the Quality of Service Contracting

Contractors are quick to insist that costs should not be the only criterion by which their work is judged. Although the outcome of any public-private competition process should always ultimately be decided on the basis of cost, there is no question that the quality of contractors' work should be scrutinized, especially given the increased use of performance-based service contracting. Although performance-based service contracting has been around for years—and consistently failed to catch on—it has become the acquisition establishment's magic bullet du jour, the long-sought solution to the waste, fraud, and abuse that is intrinsically part of service contracting. Performance-based service contracting, by emphasizing results at the expense of the process by which satisfactory results can be achieved and assessed, makes it particularly imperative that agencies be prepared to render informed judgments about the quality of their service contractors' work.

Solution: The TRAC Act

The TRAC Act requires agencies to describe for each contract the quality control process used by the agency in connection with monitoring the contracting effort; identify the applicable quality control standards and the frequency of the preparation of quality control reports; and then determine whether the contractor met, exceeded, or failed to achieve quality control standards.

Problem: Tracking the Size of the Service Contractor Workforce.
A former senior OMB official once said when asked about the size of the contractor workforce, *"You can use any number you want. . . But whatever it is...it is a lot of people."* Indeed, it is. Research by Paul Light of the Brookings Institution who is the author the ground-breaking book, The True Size of Government, indicates that the service contractor workforce is approximately 4 million employees. In contrast, there are just over 1.8 million executive branch federal employees. This means the service contractor workforce has grown to at least twice the size of the federal government's in-house staff.

The shadow workforce of contractors has been built up over many, many years. As Light has observed, the shadow workforce reflects in large part

> *"decades of personnel ceilings, hiring limits and unrelenting pressure to do more with less. Under pressure to create a government that looks smaller and delivers at least as much of everything the public wants, federal departments and agencies did what comes naturally. They pushed jobs outward and downward into a vast shadow that is mostly outside the public's consciousness."*

OMB officials have long dismissed the need to document the size of the contractor workforce, both at the micro (i.e., number of workers employed under specific contracts) and macro (i.e., number of contractor workers employed agency-wide and government-wide) levels. "Numbers are not important," they blithely insist. "What really matters is how well the job is done." (Of course, because of the problems discussed above, we can't say how well contractors are actually performing.)

In documents ranging from the federal budget to the OMB Circular A-76 inventory, detailed information is kept on the number of federal employees, at both the micro and macro levels. Clearly, Bush Administration officials, like those who came before them, believe it is very important to maintain meticulous records about the size of the federal government's in-house workforce. However, they have historically professed no interest whatsoever in keeping the same statistics about the contractor workforce.

Reason #1: Why Tracking the Service Contractor Workforce is Important: Equity
The government's ability to easily quantify its in-house workforce has put federal employees at a severe disadvantage vis-a-vis their contractor counterparts. Put bluntly, if the Administration and the Congress know who you are and where you are, they can hurt you.

> a. In the Federal Workforce Restructuring Act of 1994, for example, the President and the Congress arbitrarily slashed the number of civil servants by 275,000—without also cutting by the same

proportion all of the services performed by federal employees. As a result, much work performed by federal employees has simply been contracted out—often at higher costs—because of insufficient in-house staff. This political expediency creates an illusion that plays well in the polls but does nothing to improve the effectiveness of services or make the work of government more accountable to the American people.

b. The use of numbers to "manage" the federal workforce didn't stop there; in fact, the practice has grown even worse. Today, the extensive (and sometimes illegal) use of arbitrary personnel ceilings forces agencies to contract out work, often at higher costs, because they are either forced to fire or forbidden from hiring the staff needed to perform the work in-house.

c. Moreover, as discussed earlier, the Bush Administration has arbitrarily decided to convert or compete the jobs of at least 425,000 federal employees over the next four years. If OMB officials were actually interested in competing certain types of work, they'd just list the services to be placed under scrutiny. However, because OMB's quotas refer to the number of employees to be converted or competed, rather than the services to be reviewed, it is easy to conclude that the Bush Administration's drastically expanded use of OMB Circular A-76 is just another attempt to replace federal employees with contractor employees.

Contrary to the assertions of OMB officials, numbers do count—at least for federal employees. In order to ensure equity, the contractor workforce must be documented in a similar manner.

Reason #2: Why Tracking the Service Contractor Workforce is Important: Minimizing Politics

Of course, the importance of documenting the size of the contractor workforce is not just that it puts contractor employees at the same disadvantage in the budget process as federal employees. Light reminds us that, "More information about the size of the contractor workforce would also influence agencies' contracting out decisions."

For example, the Department of the Army determined after a comprehensive review of its records for fiscal year 1996 that it employed 224,000 contractor employees. Prior to conducting the research that went into the report, the Army had assumed it employed only 47,000 contractor employees. Analysts pointed out that the failure of the Army to

> *"take full credit for (its) level of contracting... could result in driving increased civilian manpower cuts that may compromise*

governmental control and erode critical technical and readiness capability in" important functions."

That is, the more an agency's managers understand just how much work has already been contracted out, the less likely they would be to contract out even more work.

Reason #3: Why Tracking the Service Contractor Workforce is Important: Accountability

Moreover, we cannot talk intelligently about what government does and what it needs to do without an accurate head count of the contractor workforce. As Paul Light concludes,

"It is impossible to have an honest debate about the role of government in society if the measurements only include part of the government. The government also is increasingly reliant on non-federal workers to produce goods and services that used to be delivered in-house. Not only does the shadow workforce create an illusion about the true size of government, it may create an illusion of merit as jobs inside the government are held to strict merit standards while jobs under contract are not. It may also create illusions of capacity and accountability as agencies pretend they know enough to oversee their shadow workforce when, in fact, they no longer have the ability to distinguish good product from bad...

"Expanding the headcount (to include, among others, contractor employees) would force Congress and the President to confront a series of difficult questions. Instead of engaging in an endless effort to keep the civil service looking small, they would have to ask just how many (employees working directly and indirectly for the government) should be kept in-house and at what cost. One can easily argue that the answers would lead to a larger, not smaller, civil service, or at least a civil service very differently configured."

The Department of the Army Leads the Way on Tracking the Service Contractor Workforce

The Department of the Army is to be commended for its development of a reliable, comprehensive and unobtrusive methodology for tracking the costs and size of its contractor workforce. It is unfortunate that some contractors and some of their allies in the acquisition establishment have worked so hard to kill this important initiative. The Army contractor inventory was established on December 26, 2000, after the usual publish-and-comment process. Comments from contractors were muted. According to the rule,

"The lack of adequate and reliable data on the missions supported and functions performed by service contractors, as well as the

> *resources expended by the Department on these contractors on an Army-wide basis, has resulted in uninformed assumptions and decision-making...The capabilities provided by service contractors consume at least one third of the Department's obligation authority; and yet due to lack of reliable data, senior Army planners lack the ability to assess the total manpower capabilities within a function and major Army organization to the extent that the organization and function may rely heavily on contractor support."*

In addition to tracking costs and size, the information collected would be used to determine the extent to which inherently governmental work had been given to contractors and whether readiness is undermined if commercial activities are contracted out to an excessive extent.

The statutory basis for the Army's contractor inventory includes:

> 1. 10 U.S.C. 129a [which requires DoD, in developing annual personnel authorization requests to Congress and in carrying out personnel policies, to consider particularly the advantage of converting from one form of personnel (military, civilian or private contract) to another for the performance of a specified job];
>
> 2. 10 U.S.C. 2461(g) (which requires DoD to annually submit to the Congress a report describing the extent to which commercial and industrial type functions were performed by contractors and include an estimate of the percentages of work by functions that will be performed by contractors and federal employees); and
>
> 3. Section 343 of P.L. 106-65 (FY00 defense authorization bill) (which required of DoD a one-time report on contractors by function, organization, and funding).

DoD has historically not complied with the first two statutes listed above because of inadequate information regarding its contractor workforce, a dereliction that can be corrected by the methodology used by the Army in its inventory.

Absent reliable data on which work is being performed by contractors and how much they cost, DoD is obviously unprepared to adequately comply with the statutory requirements in 10 U.S.C. 129a and 10 U.S.C. 2461(g) to consider shifting work from contractor performance to federal employee performance and to accurately report on which services and to what extent those services are being delivered by contractors.

This inadequate compliance is demonstrated by the sheer lopsidedness of the public-private competition process. For example, of the 286 OMB Circular A-76 reviews conducted by DoD between 1995 and 1999, less than 3% involved work

performed by contractors. With respect to the 2461(g) reports, DoD's estimates as to the size of the contractor workforce have grown from 197,000 in 1996 to 734,000 in 1999, suggesting significant historical problems with compliance. (Chart 5)

The rule establishes basic contractor reporting requirements to identify the number and value of direct and associated indirect labor work year equivalents for contracted services in support of the Army. Generally, data submitted would be current, unless the contractor prefers to provide retrospective data, and be submitted to a secure website contemporaneously with requests for payment, although payment is not contingent upon compliance. Contractors that lack an internal payroll accounting system permitting compliance are exempted from the reporting requirement. To ensure that proprietary data is protected, reporting is required only at the functional level by organization.

The worst case cost estimate for Army's compliance is reportedly $15M annually, which is believed to be small in comparison with the cost of compliance with the extremely labor-intensive FAIR Act. Moreover, it would represent a very reasonably priced investment in more effectively administering DoD's $100B in annual service contracting expenses.

Here are the views of various officials and organizations:

> *"Professional Services Council President Bert Concklin told (Federal Contracts Reports) that the rule, while imposing an additional administrative burden, should not be harmful in light of the fact that it is not coupled with receiving payment."*

March 21, 2000, "Army Rule Requires Service Contractors to Provide Labor Hour Data," Federal Contracts Report

(Note: This organization subsequently changed its views, perhaps when the utility of the inventory in tracking contractor costs and encouraging contracting in became too obvious to ignore.)

> *"Data on the full range of agencies' activities, whether performed by federal personnel or contract, could inform managers and other decision makers about how they are performing their mission and mission support activities, and how they have currently allocated their resources."* (Emphasis added)

September 2000, "Competitive Contracting," General Accounting Office

> *"We are pleased with your...endorsement of the Army methodology for collecting contractor manpower and labor cost information as a pilot for the rest of DoD...(because it) addresses many of our concerns about the absence of an objective way of tracking the costs of contracted activities over time and the size and functional composition of the contractor*

workforce...We would like to be updated every six months on the status of DoD's implementation of the Army pilot. Upon completion of the pilot, we ask that you provide us your plans to implement the program throughout DoD..."

February 28, 2001, letter to the Pentagon from Representatives Curt Weldon (R-PA) and Solomon Ortiz (D-TX), chair and ranking member of the House Readiness Subcommittee

"Only recently has significant attention been drawn to the large number of federal contract employees that ought to be considered along with the direct federal workforce in evaluating the size of government. We commend the recent effort by the Department of the Army to learn more about its contractor workforce, including such matters as how much they get paid and how many hours they work, as this will enhance the understanding of the total workforce supported by federal appropriations."

May 24, 2001, Presidential Transition Memorandum No. 6, National Academy of Public Administration

"(I)t is disingenuous to argue for including military and inherently government civilian employees on the FAIR inventory based on a professed need for a complete picture for purposes of making better decisions, and yet dogmatically resist at the same time getting a complete picture of the contractor workforce...A contractor inventory like that currently being compiled by the Army (should be) maintained and used..."

May 25, 2001, Testimony to the GAO Commercial Activities Panel by the Reserve Officers Association

Solution: The TRAC Act

Meticulous statistics are kept about federal employees, their numbers, their salaries, and their work. Virtually nothing, however, is known about the federal government's estimated four million-strong contractor workforce. The work of federal employees is transparent as a result of the budget process, the appropriations process, the FAIR Act, and the Government Performance and Results Act. Using the Army contractor inventory's methodology will allow agencies to fulfill the TRAC Act's requirement to track their contractor workforces.

TRAC ACT OBJECTIVE #2: Federal employees would be allowed to compete in defense of their own jobs and for new work as well.

Problem: Contrary to the interests of taxpayers and federal employees, almost all work is given to contractors without any public-private competition, even though federal employees win 60% of the competitions actually conducted.

As is common knowledge, Mr. Chairman, almost all work is given to contractors without any public-private competition. DoD, the agency considered to be the champion of public-private competition, nevertheless, almost never uses public-private competition before giving work to contractors. (Please see Chart 3.)

> *"(C)ontracts resulting from a cost comparison performed in accordance with OMB Circular A-76 represent an extremely small portion of the total number of service contracts awarded by the Department during fiscal year 1999 (less than 1 percent). Further, these contracts represent a very small portion of the total dollars awarded by DoD to private sector contractors during fiscal year 1999."*

Jacques Gansler, Under Secretary for Acquisition & Technology, Department of Defense; Senate Report 106-53; December 26, 2000.

At the same time that DoD's civilian workforce has been significantly downsized, service contracting in DoD has increased dramatically.

> *"From FY 1992 through FY 1999, DoD procurement of services increased from $39.9 billion to $51.8 billion annually. The largest subcategory of contracts for services was for professional, administrative, and management support services, valued at $10 billion. Spending in this subcategory increased by 54 percent between 1992 and 1999."*

Robert J. Lieberman, Assistant Inspector General, Department of Defense; "Federal Acquisition: Why Are Billions of Dollars Being Wasted?" (testimony before the House Subcommittee on Government Management, Information, and Technology); March 16, 2000.

That is, DoD has dramatically increased service contracting and, as discussed earlier, reduced its civilian employee workforce—while almost never using public-private competitions.

There is actually even less public-private competition outside of DoD. According to GAO, in the handbook for the Commercial Activities Panel's organizing meeting, "OMB reports that one-tenth of one percent of civilian agency

commercial activities has been competed using OMB Circular A-76." (Chart 6) It is important to keep in mind that non-DoD agencies may contract out for as much as $40 billion worth of services annually.

At the Department of Housing and Urban Development (HUD), for example, despite hundreds of millions of dollars worth of service contracting over the last several years involving work that has historically been performed by federal employees, the A-76 public-private competition process has never been used. HUD managers systematically invoke exceptions that allow contractors to acquire work without any public-private competition. And according to a Department of the Interior (DoI) internal memorandum, "it is DoI's policy to use exemptions to formal A-76 cost comparisons to the maximum extent possible."

Moreover, there is often little competition among contractors for work. The DoD Inspector General reported to the House Government Reform Subcommittee on Government Management last year that in excess of three-fifths of the contracts he and his staff surveyed suffered from "inadequate competition." Regardless of the level of private-private competition, 77% of the surveyed contracts had "inadequate cost estimates" that "clearly left the government vulnerable—and sometimes at the mercy of the contractor to define the cost."

As you know, Mr. Chairman, the relative absence of private-private competition holds true with regard to information technology contracts as well.

> *"Most of the 22 large (information technology goods and services) orders we reviewed were awarded without competing proposals having been received. Agencies made frequent use of statutory exceptions to the fair opportunity requirement. Further, contractors frequently did not submit proposals when provided an opportunity to do so. Only one proposal was received in 16 of the 22 cases—the 16 cases all involved incumbent contractors and represented about $444 million of the total $553 million awarded."*

General Accounting Office, "Contract Management: Few Competing Proposals for Large DoD Information Technology Orders" (GAO/NSIAD-00-56), p. 4.

To her credit, the new Administrator of the Office of Federal Procurement Policy has pointed out the growing problems associated with private-private competition for service contracts.

> *"Because we are spending the public's money, there are some goals that cannot be compromised in the name of efficiency. Since the beginning of the (acquisition) reform movement, over a decade ago, I have not seen a serious examination of the effects of reform on competition, fairness, integrity, or transparency. As a result, I think we are seeing some serious competitive problems surface*

with the proliferation of government-wide contracting vehicles and service contracting."

Angela Styles, then the Nominee to be Administrator of the Office of Federal Procurement Policy, Hearing of the Senate Governmental Affairs Committee; May 17, 2001; p. 2.

The Efficiency of Ensuring that Federal Employees Have a Right to Compete Before Their Work or New Work is Given to Contractors

Federal agencies need not be at the mercy of sole-source contractors, however. If GAO reports that savings are possible from individual A-76 competitions, and if OMB insists that savings are generated through A-76 competitions generally whether the work stays in-house or is contracted out, and if federal employees win 60% of the public-private competitions actually conducted, then federal employees should be competing for more work, both for their own as well as for new work.

If agencies were being run in the interests of taxpayers and the people who depend on the federal government for services, managers would be actively considering in-house performance of work. Would a firm in the private sector—a big defense contractor, let's say—automatically contract out almost all new work, as DoD does now? Of course not.

It's a homely metaphor but today, in the federal services marketplace, there are two shops, a civilian employee shop and a contractor shop. However, agencies never use the civilian employee shop—no matter how much more effective we are, no matter how much more efficient we are, and no matter how much more reliable we are.

The Equity of Ensuring that Federal Employees Have a Right to Compete Before Their Work or New Work is Given to Contractors

Of course, ensuring that federal employees have a right to compete for work is not just a matter of efficiency; it's a matter of equity as well. The obvious inequity raised by the failure to accord federal employees a right to compete has probably never been more apparent than this year for lawmakers in the Washington, DC, metropolitan area.

As a result of a loophole in the defense appropriations bill, the National Imagery and Mapping Agency (NIMA) is poised to give 600 jobs away to a contractor just because the firm happens to be at least 51% Native American owned. Although the work is almost entirely performed at NIMA facilities in Bethesda, MD, and St. Louis, MO, a significant minority of the East Coast federal workers live in Northern Virginia. Moreover, some of the affected NIMA employees actually work in Reston, VA.

This is the third time that DoD has used this loophole in the last two years, to the best of AFGE's knowledge. What lawmakers need to know is that at any time, at any place, for any line of work, DoD can take jobs away from civilian employees

in their districts and give them to any contractor that claims to be majority-owned by Native Americans. AFGE, which is as diverse as the federal workforce it represents, bears no animus towards Native Americans. In fact, AFGE supports the use of small business set-aside contracts that benefit, among others, Native Americans. However, the Native American direct conversion process is fundamentally different, a public policy scandal that is as bad for federal employees as it is for taxpayers.

Thanks to the leadership of Representative Richard Gephardt (D-MO) and Senator Jean Carnahan (D-MO), NIMA's pork-barrel, sole-source, sweetheart contract is receiving the notoriety it deserves. We appreciate that several Washington, DC, area lawmakers, including Representatives Connie Morella (R-MD) and Jim Moran (D-VA), signed a letter of opposition to the direct conversion of the NIMA jobs and urged agency officials to allow the 600 federal employees threatened to compete in defense of their jobs.

Given your position as chair of the House Government Reform subcommittee that has jurisdiction over government-wide service contracting issues and your traditionally strong support for federal employees and their families, we were disappointed that you were unable to sign that letter.

Let's turn our attention to direct conversions on a much grander scale: OMB's scheme to review at least 425,000 jobs over the next four years for conversions (giving work to contractors without public-private competition) and competitions. In FY02, every single agency is required to convert or compete 5% of the federal employee jobs on their FAIR Act inventories. For the entire government, that works out to 42,500 jobs in FY02 alone. In FY03, that quota is hiked to 10%--that's another 85,000 jobs.

Because agencies have little experience with OMB Circular A-76, having long grown accustomed to simply giving work to contractors with no public-private competition, and because contractors, many of whom have become completely dependent on government contracts because of a failure to compete successfully in the private sector, want work now, not later, there is fear that agencies will fulfill their quotas by simply giving the federal employee jobs reviewed to contractors without public-private competition, i.e., through direct conversions.

According to an article posted on the GovExec.com website on June 6, OMB Deputy Director for Management Sean O'Keefe, after declaring his devotion to public-private competition, was "asked what he would tell agencies that only use direct conversions to meet the 5 percent target, (and) O'Keefe replied,

'Let's talk."

That is, if agencies hit their combined target of 42,500 jobs in FY02 and 85,000 in FY03 through direct conversions, Mr. O'Keefe would have a chat with those agencies afterwards. Mr. Chairman, that's not good enough for me. It should not be good enough for any friends of taxpayers and federal employees. I would hope that's not good enough for you. How desperately in need of reform is a system that allows agencies to give away tens of thousands of jobs without any guarantee of savings to the taxpayers?

The Solution: The TRAC Act

Bush Administration officials talk a good game on public-private competition. For example, Mr. O'Keefe in the article discussed above averred that he is "very much more an advocate of public-private competition, because it brings out the element of efficiency...There is no bias towards privatization or outsourcing...(We are trying) to get agencies to think about different ways of delivering their services."

However, the service contracting policies developed by Bush Administration officials betray their real positions. In spite of the rhetorical support of public-private competition, Bush Administration officials oppose allowing federal employees to compete for new work and for contractor work. And many, if not most, of the federal employee jobs reviewed will be given to contractors without public-private competition. That is, public-private competition only "brings out the element of efficiency" when federal employee jobs are subjected to public-private competition, but not when the work is new or performed by contractors. And even when the work is performed by federal employees, the "element of efficiency" doesn't always leap out; hence, the Bush Administration's strong emphasis on direct conversions. Put another way, the Bush Administration believes that agencies should "think about different ways of delivering their services"—as long as it means federal employees lose their work to contractors, with or without public-private competition. That's not a philosophy of public-private competition. Rather, it's merely pork-barrel politics: rewarding contractors for past and future favors.

The sponsors of the TRAC Act don't just talk public-private competition; they mean it. The legislation would require that agencies subject work performed by federal employees as well as new work to public-private competition before it is given to contractors. The public-private competition requirement was carefully written to ensure that it would not apply to work performed by the private sector prior to the date of enactment, including the renewals of contracts in effect when the legislation becomes law.

Here are two recent precedents for this much-needed reform:

1. *Interservice Support Agreements*: As discussed earlier, the Bush Administration is on the verge of requiring that agencies automatically subject to competition all contracts between agencies for services, both new

ones as well as old ones that are continued or renewed. The TRAC Act is not quite so ambitious. It would only require public-private competition for work performed by federal employees as well as new work before it is given to contractors.

2. *The Recovery Audit Act (H.R. 1827)*: Mr. Chairman, I appreciate your support last year for the inclusion of a clear and unambiguous public-private competition requirement in this legislation for all recovery audit contracts. We also appreciated the support of House Government Reform Committee Chair Dan Burton. Thanks to you and Chairman Burton, as well as the strong support from Ranking Member Henry Waxman, the recovery audit legislation, with its clear and unambiguous public-private competition requirement, passed the House of Representatives by a vote of 375-0. We look forward to reassembling that same bipartisan coalition behind the TRAC Act's public-private competition requirement.

The TRAC Act's requirement that work currently performed by federal employees as well as new work be subjected to public-private competition before it is given to contractors would not just benefit taxpayers and everyone who depends on federal agencies for important services by ensuring reduced costs and real choices in service delivery. It would have many additional benefits as well:

1. *Reduced Times for Public-Private Competitions*: Currently, agencies have no incentive to become quicker and more adept at performing public-private competition because managers are accustomed to simply giving work to contractors. The more competitions they conduct, the more expert managers will become. Once agencies understand that public-private competition is not an optional extra, managers will have no choice but to develop the capacity to expeditiously and economically conduct the comparisons. With respect to new work that is subject to the public-private competition requirement, agencies can perform that work in the interim with federal employees—either existing or newly-hired temporary or permanent employees in that agency or in another agency—or contractors.

2. *Eliminating the Incentive to Manage Federal Employees by Arbitrary Personnel Ceilings*: Over the years, the Congress has striven to prevent DoD from managing its civilian workforce by arbitrary end-strengths. Unfortunately, despite much effort, lawmakers have been singularly unsuccessful. Work that either should be performed by civilian employees because of its inherently governmental nature or could be more efficiently performed by civilian employees is contracted out in order to stay under onerous and illegal personnel ceilings. A public-private competition requirement, however, eliminates any incentive to discriminate against the civilian workforce because DoD would have to consider in-house performance. Pentagon officials would then shift from downsizing the civilian workforce to rightsizing the civilian workforce.

3. *Ensuring Better Management and Better Managers*: Right now, when managers run into trouble, they all too frequently contract out the work. In other words, they outsource their problems, instead of working to solve them with rank-and-file employees through labor-management partnerships. Because it is so easy to contract out, and because they can often count on working for the contractor, managers sometime have little incentive to improve service.

   Some contractors have said that the TRAC Act would curtail or even eliminate DoD's "strategic sourcing" initiative. To the extent that "strategic sourcing" is about taking work from federal employees and giving it to politically well-connected contractors without public-private competition, that is true. To the extent that strategic sourcing is about reorganizing, reengineering, and reinventing how DoD provides services, that is false. In fact, by eliminating the unsavory, pork-barrel aspects of strategic sourcing through a public-private competition requirement, DoD managers can be more creative than ever.

4. *Ensuring Better Contract Administration:* The establishment of a public-private competition requirement will give agencies real choices in the delivery of services and ensure that careful consideration is given before the taxpayers are billed for additional service contracting. By ensuring that they are allowed to compete, federal employees will be able to keep contractors honest—and vice-versa, of course.

   Agencies may well choose to keep commercial activities in-house for reasons of better contract administration. As the authors of "IT Outsourcing: Maximizing Flexibility and Control," which appeared in the *Harvard Business Journal* in 1995, pointed out, allowing in-house staff to compete for information technology services doesn't just cut costs; it also allows managers to

   > *"gain a much deeper understanding of the costs of a given service and the best way to provide it. If they decide to outsource it in the future, they will be in a stronger position to evaluate bids and to write a contract that serves their own interests. Do we have the knowledge to outsource an unfamiliar or emerging technology? A company can't control what it doesn't understand. Many managers think that because no one in the company has enough technical expertise to assess new technologies, they should hand the job over to an outsider. After all, why devote internal resources to acquiring 'esoteric' knowledge? Most of the companies in our study that outsourced emerging technologies experienced disastrous results because they lacked the expertise to negotiate sound contracts and evaluate suppliers' performances."*

By retaining important elements of the OMB Circular A-76 process—the formal cost comparison process, the 10% differential, and the most efficient organization—the TRAC Act ensures that the interests of taxpayers will be paramount. Contractors complain that the TRAC Act focuses on reducing the costs of services to the taxpayers. Well, this time they're right. Guilty as charged. In the context of A-76, lowest price is the only objective and fair criterion on which to base a decision on whether or not to outsource. In the process of analyzing which party should perform the work under review, the contracting officer should always decide what level and quality of service her agency needs, and then cost the work in order to decide which bidder can do the work at the lowest price. That is, qualitative improvements in service delivery are part of the OMB Circular A-76 process.

It should also be noted that best value factors are already incorporated into the competitive provisions of the Supplement to OMB Circular A-76: Part I, Chapter 3, Paragraph H, 3(c), (d), and (e):

- This provision establishes the responsibility of the source selection authority to identify the offer which represents the best overall value to the government," and requires that this most responsive–not least cost–bidder compete with the in-house cost estimate.

- This section then allows the in-house to adjust or technically level its bid in order to assure that the government's in-house cost estimate is based upon the same scope of work and performance levels as the best value contract offer.

This fair arrangement allows federal decision-makers to take into consideration best value factors, allows the in-house bid to meet or exceed the new scope of work, and allows an objective evaluation of the relative merit and value of the new performance level in terms of its cost.

One cannot help but be amused by the contractors' well-rehearsed pleas for "best value." When the Clinton Administration announced plans to subject tens of thousands of DoD civilian jobs to A-76 reviews, the rationale was to generate savings that could be plowed back into weapons procurement. When the savings failed to materialize, contractors needed a new sales schtick and fell back on "best value." It's as if a used car salesman were forced to admit to a customer, "Sure, you're not saving any money, but what about our incredible customer service?"

To the extent that "best value" addresses qualitative improvements, that's already part of the A-76 process, as I discussed above. To the extent that "best value" is a pretext for allowing contracting officers, already operating under the prejudicial constraints of arbitrary federal employee conversion and

competition quotas, to abuse their discretion and award work to contractors on the basis of unneeded "bells and whistles" and "revolutionary systems and approaches" that are unrelated to the government's actual needs, it is not part of A-76—nor should it be.

Here's the bottom line on best value: Contractors win only 40% of A-76 competitions. So, they reason, why not change the rules? Hence, best value. Sorry, Mr. Salesman, no deal.

5. *Bringing About an End to the "Human Capital Crisis":* GAO has warned the Congress repeatedly about the federal government's worsening "human capital crisis"—the shortages of federal employees in critical occupations in agency after agency. This crisis is, of course, entirely self-inflicted: the natural and inevitable consequence of years and years of senseless downsizing and indiscriminate service contracting. By eliminating the discretion of agencies to give work to contractors without public-private competition, agencies will give serious consideration to in-house performance and begin the necessary restaffing process.

   Private sector firms—even those that are only nominally in the private sector because they derive the vast majority of their revenues from government service contracts—are constantly confronted with "make-or-buy" decisions. That is, businesses decide to keep or start a service in-house or outsource it. Right now, federal agencies can only "buy." Thanks to the public-private competition requirement, agencies will be able to make real and informed "make-or-buy" choices.

   In some instances, that will mean starting a new service in-house, sometimes with new staff or existing staff. Contractors often acquire work and then staff up, sometimes by hiring the federal employees who used to do the work, albeit often with reduced compensation packages. In fact the NIMA information technology contract I spoke of earlier in my testimony will likely be awarded to a "ghost," a contractor whose capacity to perform the complicated and sensitive information technology contract work required barely exists on paper.

   Mr. Chairman, I know how closely you follow the information technology industry. I'm sure you've seen the recent articles in *The Washington Post*, most recently on May 21 and June 17, about how the local public sector is absorbing layoffs in the information technology private sector. (It is instructive to remember that those firms are not experiencing slowdowns because of arbitrary personnel ceilings or because they are forbidden to compete.) The TRAC Act, by ensuring that agencies seriously consider in-house performance of work, ensures that your constituents adversely affected by the rightsizing of the information technology industry can secure gainful

employment in the federal civil service and also benefits the American people through the provision of even better government services.

Mr. Chairman, we need to work together to make sure agencies have all of the tools they need to recruit and retain the federal employees they will need upon winning the public-private competitions required by the TRAC Act.

For example, managers should be using the broad flexibility granted them under the Federal Employees Pay Comparability Act (FEPCA) that evidence shows they use only rarely. Under FEPCA, managers have authority to offer retention allowances of up to 25% of base pay. Another provision of the law gives managers the authority to offer one-time bonuses of up to 25% of basic pay to recruit employees and / or relocate employees to less desirable locations. In spite of the existence of such pay incentive flexibility under FEPCA, OPM reported in December 1999 that the special pay incentives have been received by less than 1% of federal employees. Further, when these incentives are implemented, they have been most often paid at a rate of 10% of basic pay, or less.

I know that you will continue to be a leader, Mr. Chairman, on such other federal employee pay and benefits issues—from closing pay gaps with the private sector to increasing the employer share of health insurance premiums to expanding opportunities for child care subsidies to federal employee parents to defending the earned retirement benefits of federal employees—that are so necessary for agencies' recruitment and retention purposes.

We will also work with you, Mr. Chairman, to speed up the hiring process in view of reports that agencies lose out on hiring desirable job candidates to employers able to make on-the-spot hiring decisions, as long as merit principles, veterans' preference, and internal candidates' rights are preserved.

But all of that work will be futile if agencies are not systematically required to consider the appropriateness of in-house performance, as is called for by the TRAC Act.

I realize that the public-private competition requirement of the TRAC Act is difficult for contractors to take. However, during the unprecedented downsizing of the civil service over the last eight years, I often heard it said that "the federal government is not a jobs program for federal employees." Well, you know what, Mr. Chairman, the federal government is not a dividend-enhancement program for contractor executives whose firms have been sheltered from actual competition, whether it be public-private or private-private, for far too long. In fact, according to an article in the May 7 edition of *Federal Times* ("Government Is Hot New Market for Contractors"), contractors

"are generating less of their revenues from commercial sales...Another reason why companies are returning to the government is that they have discovered it is not as easy to find new customers in commercial markets as they had imagined...`They are realizing it is a bit more complicated to go into those markets,' (said an official at Grant Thornton LLP, a leading contractor consultant). `How do you advertise, market and develop customer relationships? That's time-consuming and long-term. And a lot of company executives are former Defense Department employees and have already established ties with Defense.'"

TRAC ACT OBJECTIVE #3: Agencies would be freed from the shackles of anti-federal employee and anti-taxpayer in-house personnel ceilings that prevent federal employees from competing for work and force agencies to contract out work that could be performed more efficiently by reliable and experienced federal employees.

The Problem: Arbitrary in-house personnel ceilings prevent agencies from choosing the more efficient service provider.

A major reason why federal employees are prevented from competing for work is the use of arbitrary personnel ceilings that keep agencies from hiring or forces the firing of in-house staff. Agencies then simply contract out the work—often at higher costs. Agencies should be required to manage their workforces by workloads and budgets, not by arbitrary numbers. When workload exceeds arbitrary limitations on workforce, contracting out should not be the only option.

According to OMB, during the Clinton Administration, several agencies—including the Departments of Agriculture, Health & Human Services, Housing & Urban Development, State, Education, and Treasury, as well as the Environmental Protection Agency—said that they each could have saved millions of dollars by performing work with federal employees instead of contractors but did not do so because they were forced to work under arbitrary personnel ceilings. GAO has also reported that agencies sometimes manage their in-house workforces by personnel ceilings set by OMB that "frequently have the effect of encouraging agencies to contract out regardless of the results of cost, policy, or high-risk studies."

The problem is particularly bad at DoD. In 1995, the personnel directors of the four branches of the Armed Forces told the Congress that arbitrary personnel ceilings—not workload, cost, or readiness concerns—were forcing them to send work to contractors that could be performed more cheaply in-house. GAO reported in 1997 that a "senior command official in the Army stated that the need to reduce civilian positions is greater than the need to save money". An earlier report by the DoD Inspector General noted that the goal of downsizing the public workforce is widely perceived as placing the DoD in a position of having to contract for services regardless of what is more desirable and cost-effective.

The tradition of arbitrary personnel ceilings is, alas, being faithfully observed by the Bush Administration. On the campaign trail, then Governor Bush promised to arbitrarily reduce the number of federal managers by 40,000. And, of course, the direct conversion component of the Bush Administration's review of at least 425,000 federal employees over the next four years is nothing more than an

arbitrary reduction of the number of federal workers so that they can be replaced by contractors without any public-private competition.

The Solution: The TRAC Act

The TRAC Act would move us away from sterile debates about downsizing and upsizing so that we can finally talk about rightsizing. If agencies prove they can do work more efficiently through a public-private competition, they can hire the additional employees necessary to do the work, notwithstanding any arbitrary personnel ceilings imposed by OMB. If they can't do the work, then the agency couldn't hire any additional employees. The legislation would ensure that agencies always use the most efficient, most effective, and most reliable service provider, instead of having to always choose contractors.

TRAC ACT OBJECTIVE #4: Agencies would be required to look to their massive contractor workforces for savings and efficiencies by ensuring that contracting in is emphasized to the same extent as contracting out.

The Problem: Despite acquiring their work with virtually no public-private competition and little private-private competition, contractors are never subjected to much-needed public-private competition to see if their work could be performed more efficiently by reliable and experienced federal employees.

The prospect of contracting in would keep contractors from forcing taxpayers to swallow costly post-award mark-ups. Usually, there is very little competition among contractors for work, especially when the initial contract comes up for renewal. Columbia University Professor Elliot Sclar, who testified before the House Government Reform Subcommittee on Government Management in 1998 on contracting out, has described service contracting as a

> *"...dynamic political process that typically moves from a competitive market structure towards a monopolistic one. Even if the first round of bidding is genuinely competitive, the very act of bestowing a contract transforms the relative market power between the one buyer and the few sellers into a bilateral negotiation between the government and the winning bidder.*
>
> *The simple textbook models of competition so prized by privatization advocates provide no guidance to what actually occurs when public services are contracted. Over time, the winning contractor moves to secure permanent control of the `turf' by addressing threats of potential returns to (contracting in) or from other outside competitors. To counteract the former threat, they move to neutralize competition, most typically through mergers and market consolidation among contractors. This trend helps to explain why two-thirds of all public service contracts at any time are sole-source affairs...."*

The Department of Energy (DoE) is a notorious example of what happens when an agency becomes completely dependent on sole-source contractors because it can provide no in-house competition when expensive contracts come up for renewal. In 1994, DoE officials became alarmed at skyrocketing service contract costs. Noting that only a handful of contracts had been put up for bid when an incumbent contractor wanted to stay on, DoE officials put their collective foot down and said that service contracts would no longer be automatically renewed.

What was the response from DoE contractors? According to *The Washington Post*, "the `specter of competition' led some contractors, including Westinghouse Electric Corp...to offer to reduce costs by 15 percent to 20 percent `If implied competition will do that, imagine what real competition will do,' quipped a DoE official."

This could have been a success story—recompeting contracts seemed so simple a solution. But by 1997 it was clear that this reform effort was not going to have a happy ending. According to GAO, DoE continues to make noncompetitive awards for management and operating (M&O) contracts despite having changed its policy and adopted competitive contract awards as the standards for these contracts. "Of 24 M&O contracts awarded between July 1994 and August 1996, DoE awarded 16 noncompetitively. Also, DoE decided not to compete three major contracts before it renegotiated the terms of the contract renewal—a practice that is contrary to contract reform."

Because DoE has given up the capability to do the work itself and will not reconstitute that capability in-house so that work might be contracted in, taxpayers are paying far more than they should for dozens of multi-billion dollar service contracts. Obviously, DoE's contractors have not been shy about using their influence in the executive branch and in the Congress to make sure that their sole-source arrangements are left undisturbed.

Mr. Chairman, AFGE has long believed that if savings were possible from competing the jobs of federal employees, then they were possible from competing the jobs of contractors as well. As you know, OMB Circular A-76 provides for insourcing as well as outsourcing. The same rules and the same rationales apply.

The Clinton Administration agreed with us—or so we believed. A senior OMB official even committed to ensure that agencies undertook more contracting in. In a February 2, 1999, letter to me, Acting Deputy Director for Management G. Edward DeSeve wrote,

> *"I also agree with you that we should ask federal managers to `take pause' and consider the potential benefits of converting work from contract to in-house performance. As I indicated at our October meeting, OMB will encourage agencies to identify opportunities for the conversion of work from contract to in-house performance..."*

No such guidance was ever offered. We were not deterred, however. Working with lawmakers on the House and Senate defense appropriations subcommittees, we secured the enactment of this report requirement:

> *"The Secretary of Defense shall submit a report to...identify those instances in which work performed by a contractor has been*

> *converted to performance by civilian or military employees of the Department of Defense...In addition, the report shall include recommendations for maximizing the possibility of effective public-private competition for work that has been contracted out."*

U.S. Congress, FY 2000 Defense Appropriations Act, Section 8109.

The resulting report on DoD's contracting in activities—or, more precisely, the lack of contracting in activities—was hardly a surprise. DoD's compliance—or, more precisely, DoD's complete failure to comply—with the second requirement to develop a contracting in policy did cause me some surprise.

> *"Eight of the 286 (OMB Circular A-76 public-private competition) studies (completed during the previous five years) involved work which was being performed by the private sector." (Note: Federal employees were victorious in five out of the eight cases.) "In responding to the Section 8109 requirement to present recommendations for maximizing the possibility of effective public-private competition for work that has been contracted out, the Department reiterated existing policy guidance on the subject."*

General Accounting Office, DoD Competitive Sourcing (01-20), December 2000.

At a time when the Pentagon is supposedly championing public-private competition, less than 3% of all A-76 studies performed by DoD were directed at work performed by contractors. (Chart 4) In other words, public-private competition is being used to replace federal employees with contractors, instead of to make DoD as a whole more efficient. Moreover, after being directed to come up with a plan for increasing its contracting in, the Pentagon thumbed its collective nose at the Congress. As usual, the situation is worse in non-DoD agencies where contractors' work is never subjected to the scrutiny of public-private competition.

With respect to contracting in, it's illustrative to look at local government, using survey data collected by the International City / County Management Association.

> *"Our data show significant incidence of reverse privatization or contracting back in previously privatized services...From 1992-1997, 88 percent of governments had contracted back in at least one service and 65 percent had contracted back in more than three services. On average across all places, 5 services were contracted back in from 1992 to 1997."*

Mildred Warner and Amir Hefetz, Privatization and the Market Structuring Role of Local Government, Cornell University Department of City and Regional Planning Working Paper #197, December 2000."

Why so much contracting in? The authors explain:

> *"Contracting back in reflects problems with the contracting process itself, concerns over limited efficiency gains and maintenance of service quality...Analysis of cases of contracting back in shows that it is motivated by desire to maintain service quality and local control and to ensure cost savings in the face of changing markets."*

Let's revisit the scene at the federal level: The A-76 process is a money loser. Contract administration is virtually nonexistent. Sole-source contractors have federal agencies at their mercy. To engage in a bit of understatement, it's safe to say that conditions are ripe in federal agencies for the same sort of corrective contracting in that's occurring in local government.

What is the explanation as to why there is so much contracting in at the local level and so little at the federal level, especially given the strong likelihood that there is much less private-private competition for the federal government's work because of the much greater complexity of the work required and contract administration problems are so much more severe?

Here's the most likely explanation:

> *"Ideology does not dominate local service delivery decisions; rather, pragmatic local government demonstrate the continued importance of public investment, innovation and direct involvement in service delivery."*

In other words, local officials want to do what's right for their communities. Can the same good intentions be attributed to those who have run federal service contracting in recent years? What about those now in charge of federal service contracting policies? During the next four years, the Bush Administration will convert or compete at least 425,000 federal employee jobs. During that time, not a single contractor job will be reviewed for conversion or competition. If only work performed by federal employees is subjected to public-private competition, then Bush Administration officials are simply replacing federal employees with contractors, rather than trying to make the federal government more efficient.

The Solution: The TRAC Act

The TRAC Act would neither prohibit contracting out nor require contracting in. Rather, the legislation would simply require agencies to subject equivalent numbers of federal employee and contractor jobs to public-private competition. That is, agencies would choose how many and which contractor jobs would be subjected to public-private competition.

It should also be pointed out that this comparability of competitions provision is far more generous to contractors than they deserve. This provision does not encourage—let alone require—the use of direct conversions on work performed

by contractors. Rather, any work brought back in-house would come as the result of fair and full public-private competitions. Unlike contractors, who simply want to take our work without bothering to prove that they can perform more efficiently, federal employees are confident that they can compete—and win—on their own merits.

TRAC ACT OBJECTIVE #5: The Office of Personnel Management and the Department of Labor would be charged with comparing the pay and benefits of federal employees to their contractor counterparts and then report back to the Congress in order to determine the human toll from contracting out.

The Problem: Little Is Known About The Human Toll From Federal Service Contracting.

It is well-established that contracting out has been used in the private sector and in the non-federal public sector to shortchange workers on their pay and benefits and to avoid unions. It is likely that this pernicious phenomenon exists at the federal level as well.

In 1998, at the request of AFGE, Representatives Steve Horn (R-CA) and Dennis Kucinich (D-OH) asked the GAO to examine the pay and benefits of the federal service contractor workforce; Congressional auditors, however, came back empty-handed: agencies couldn't be helpful because they didn't keep the relevant information and contractors did not respond to surveys. A survey conducted by GAO in 1985 of federal employees who were involuntarily separated after their jobs were contracted out revealed that over half "said that they had received lower wages, and most reported that contractor benefits were not as good as their government benefits."

The Economic Policy Institute (EPI), in a recent ground-breaking study, determined that more than one in ten federal contractor employees earn less than the "living wage" of $17,000 per annum, i.e., the amount of money necessary to keep a family of four out of poverty.

> *"The federal government saves money by contracting work to employers who pay less than a living wage ($8.20 per hour). Even the federal government jobs at the low end of the pay scale have historically paid better and have had more generous benefits than comparable private sector jobs. As a result, workers who work indirectly for the federal government through contracts with private industry are not likely to receive wages and benefits comparable to federal workers...*

Economic Policy Institute; "The Forgotten Workforce: More Than One in 10 Federal Contract Workers Earn Less Than a Living Wage"; November 27, 2000; page 2.

Contractors ritualistically invoke the Service Contract Act whenever the human toll from service contracting is raised. However, EPI's research reveals the very limited reach of that prevailing wage law.

> *"In 1999, only 32% of federal contract workers were covered by some sort of law requiring that they be paid at least a prevailing wage...But even this minority of covered workers is not guaranteed a living wage under current laws. For example, the Department of Labor has set its minimum pay rate at a level below $8.20 an hour for the workers covered by the Service Contract Act in 201 job classifications."*

Economic Policy Institute; "The Forgotten Workforce: More Than One in 10 Federal Contract Workers Earn Less Than a Living Wage"; November 27, 2000; page 2.

GAO has been unable to determine the extent to which contracting out undercuts workers on their wages and benefits. And despite its pioneering work in this area, EPI acknowledges that

> *"Further research, such as a survey of contracting firms, is needed in order to know more about these workers and their economic circumstances."*

The Solution: The TRAC Act

It is outrageous that the Administration and the Congress—despite their words of support for working Americans—continue to allow contractors to take work away from federal employees simply because, in many cases, they pay their workers less and provide them with inferior benefits. When the budget has generated unprecedented surpluses and the economy's booming, how can any politician justify replacing working and middle class Americans with contingent workers who are forced to make do with significantly smaller compensation packages?

The TRAC Act, by itself, would not require comparability of wages and benefits between federal employees and contractors; nor would the legislation take wages and benefits out of the public-private competition process. Instead, the legislation would require that the Office of Personnel Management (OPM) and the Department of Labor (DoL) compare the wages and benefits of federal employees to their contractor counterparts and then report the findings to the Congress.

The OPM-DoL report would give lawmakers all the information they need to address the human toll from federal service contracting in a forthright manner. In the interim, this subcommittee can begin to address the human toll of service contracting on wages and benefits by ensuring the expedited consideration of Representative Gutierrez's "living wage" legislation" (H.R. 721), which I discussed earlier in my testimony.

The TRAC Act's Enforcement Mechanism

As an enforcement mechanism to ensure agencies' prompt compliance with the TRAC Act's requirements to track contractor costs, ensure public-private competition for our work and new work before it is given to contractors, abolish the use of arbitrary in-house personnel ceilings that prevent federal employees from competing for work, and emphasize contracting in to the same extent as contracting out, the legislation includes an enforcement mechanism.

AFGE worked seriously and constructively with the Clinton Administration to deal with the concerns of federal employees about the service contracting process. Despite commitments—to develop a contractor inventory, start contracting in work, stop managing federal employees by arbitrary in-house personnel ceilings, and establish a system to track contractor costs—and laws—to end the practice of managing the DoD civilian workforce by personnel ceilings, develop a plan for contracting in work, regularly consider contracting in work, stop replacing downsized employees with contractors without public-private competition—the situation has not improved. And the Bush Administration, with its aggressively pro-contractor agenda, is likely to make this situation far, far worse.

That's why it became necessary to secure agencies' prompt compliance by including a temporary suspension on new service contracting in the TRAC Act. That will give agencies the necessary incentive to correct longstanding problems as soon as possible. This enforcement mechanism does not interfere in any way with existing contracts or renewals of existing contracts. Section 4, which includes the temporary suspension, "does not apply to work performed by the private sector prior to the date of enactment of this Act."

Moreover, the exceptions allow agencies sufficient flexibility to continue necessary service contracting: when it's essential to 1) national security, 2) patient care, or to 3) avoid extraordinary economic harm. There are no administrative, legislative, or judicial reviews or appeals to the use of the exceptions. AFGE can't tie up agencies in courts or Congress over the use of those three broadly-worded exceptions.

The temporary suspension is intended to last only as long as it takes for agencies to make the much-needed reforms required by the TRAC Act. It is temporary, instead of being for a fixed period of time, in order to give agencies the incentive to accomplish these important tasks as soon as possible. If it takes three days, the Congress can lift the suspension in three days. If it takes longer, the Congress can lift the suspension later. Moreover, the criteria the Congress uses to make its decision are completely up to lawmakers in order to allow them the maximum flexibility. The Congress could wait until the work is done before lifting the suspension or lawmakers could merely wait until the agencies had begun a good faith effort.

Mr. Chairman, I will now provide additional details about why an enforcement mechanism is a necessary part of TRAC.

Here are the commitments made by the Clinton Administration to address long-standing problems in the service contracting process:

1) to AFGE, in 1998, to develop a contractor inventory administratively in exchange for AFGE's neutrality on the Federal Activities Inventory Reform Act;

2) to AFGE, in 1999, to establish firm guidance to prevent the management of federal employees by arbitrary personnel ceilings;

3) to AFGE, in 1999, to develop guidance to ensure that agencies consider contracting in work;

4) to federal employee unions, in 1993, to use the workforce reductions required by the Federal Workforce Restructuring Act to improve manager-employee ratios—thus reducing overhead and making the in-house side more competitive—instead of disproportionately reducing rank-and-file federal employees; and

5) to the Congress, in 1999, to establish a system to track DoD service contracting costs.

Not a single one of those commitments was kept.

Here are the laws that were enacted, particularly in the context of DoD, to address long-standing problems in the service contracting process:

1) forbid the management of DoD civilian employees by arbitrary personnel ceilings (a perennial general provision in the defense appropriations bill);

2) forbid the replacement of downsized employees with contractors without public-private competition (The Federal Workforce Restructuring Act of 1994, which arbitrarily reduced the federal workforce by 275,000 employees);

3) require DoD to develop recommendations to "maximize public-private competition" for contractor work (Section 8109 of the FY00 defense appropriations bill); and

4) require DoD to regularly consider the appropriateness of bringing in-house work performed by contractors (10 U.S.C. 129a).

DoD still regularly manages it workforce by arbitrary personnel ceilings. It is widely acknowledged that agencies replaced federal employees downsized by the Federal Workforce Restructuring Act with contractors without public-private competition.

DoD never came up with the required contracting in plan and has consistently failed to follow 10 U.S.C. 129a.

The Bush Administration's aggressively pro-contractor agenda indicates that they have no intention of making the federal service contracting process more fair to federal employees and more accountable to the taxpayers:

1) requiring that agencies directly convert to contract performance or subject to public-private competition over the next four years at least 425,000 federal employee jobs—without directly converting or even subjecting to public-private competition a single contractor job;

2) encouraging agencies to use anti-taxpayer, anti-federal employee direct conversions (i.e., giving work to contractors without public-private competitions) to achieve the 5% / 10% FAIR Act quotas; and

3) unilaterally expanding the FAIR Act to include inherently governmental jobs—while leaving the much larger contractor workforce shrouded in mystery with respect to its cost and size.

Contractors have always had—and will always have—an important role to play in the provision of services that are truly commercial in nature, particularly those that are nonrecurring or highly specialized. The temporary suspension in the legislation is a mean to an end—securing compliance with the TRAC Act's requirements—not an end in itself. It is the least important part of the legislation and was included only to ensure compliance with the essence of the TRAC Act: tracking contractor costs and ensuring full and fair public-private competition.

I would be the first supporter of the TRAC Act to go to its sponsors and ask them to eliminate the temporary suspension section—provided that an acceptable alternative enforcement was put in its place.

For example, the Senate TRAC Act requires agencies to have made "substantial progress" during the 180 days after enactment towards meeting the legislation's requirements for tracking contractor costs, requiring public-private competitions for new work and work performed by federal employees, ending the use of arbitrary personnel ceilings, and subjecting contractors to the same degree of public-private competition as federal employees. Under the Senate TRAC Act, OMB is responsible for certifying "substantial progress" towards compliance on an agency-by-agency basis. If OMB, which is commonly acknowledged to be run and staffed by those who are predisposed towards downsizing and service contracting, is unable to certify that a particular agency is in compliance, that agency may not undertake any new service contracts. That agency, however, may ask OMB at any time—the next week, the next day, or later that afternoon—for another chance to be certified, presumably as a result of making "substantial progress" towards reforming its service contracting processes. During any temporary suspension of service

contracting, OMB may waive it, on an agency-by-agency basis, for service contracts necessary for national security, patient care, and extraordinary economic harm. (This provision, incidentally, was based on a bipartisan, non-controversial provision in last year's Senate defense authorization bill that imposed a moratorium on further downsizing of the DoD acquisition workforce unless the Secretary could certify that certain criteria had been met.)

Mr. Chairman, AFGE understands that you don't care for the TRAC Act's enforcement mechanism. Given the failure of the previous Administration to follow up on its commitments or carry out the law and the determination of the current Administration to implement a wholly one-sided pro-contractor agenda, what alternative enforcement mechanism would you include in the TRAC Act in place of a temporary suspension?

Your opinion means a lot to AFGE, Mr. Chairman. We know the influence you have with this Administration on federal service contracting issues. If you could personally guarantee that the TRAC Act's cost tracking and public-private competition requirements would be faithfully implemented, I believe the sponsors would remove the temporary suspension provision on their own. In any event, it is imperative that we get beyond concerns over the temporary suspension provision, whether real or manufactured, so we can instead concentrate on the rest of the legislation and how we can ensure that when the TRAC Act becomes the law of the land that this time the federal service contracting process will finally be made fair to federal employees and accountable to the taxpayers.

Conclusion

Giving work performed by federal employees to contractors without public-private competition is pork-barrel politics at its worst. AFGE's opposition to direct conversions, whether through share-in-savings contracts, Native American direct conversions, or the myriad of exceptions loopholes, and waivers in the A-76 process is non-negotiable, whether five jobs or five hundred jobs are at stake.

Atr the same time, public-private competition must be used to make the federal government more efficient, not as a "spoils system" by the new Administration to replace federal employees with the businesses of politically well-connected contractors. Contractors and their allies can no longer have it both ways, the federal sector always under scrutiny, the contractor sector immune from review; competitions and conversions mandatory for the jobs of federal employees but strictly off-limits for contractors; showering new work on contractors while putting federal employees on a starvation diet.

The establishment of a process that subjects work to public-private competition before it is given to contractors and holds contractors to the same scrutiny as that experienced by federal employees, like that in the TRAC Act, will benefit taxpayers and all Americans who depend on agencies for important services.

First, taxpayers will save money because contractors will finally have real competition. Second, the quality of work will be improved because managers will finally have real choices in the delivery of services. Third, a real public-private competition process will bolster contract administration and thus reduce waste, fraud, and abuse. Fourth, ensuring that agencies consider the appropriateness of in-house performance will help to end the "human capital crisis."

It's time for contractors and their friends in the Congress and on this subcommittee in particular to face a fundamental and inescapable truth: if public-private competition works, then it works for new work and contractor work—not just federal employee work. If public-private competition isn't right for contractor work or new work, then it's not right for federal employee work either—and the entire outsourcing process must be shut down.

Mr. Chairman, that concludes my testimony. I would be happy to entertain any questions.

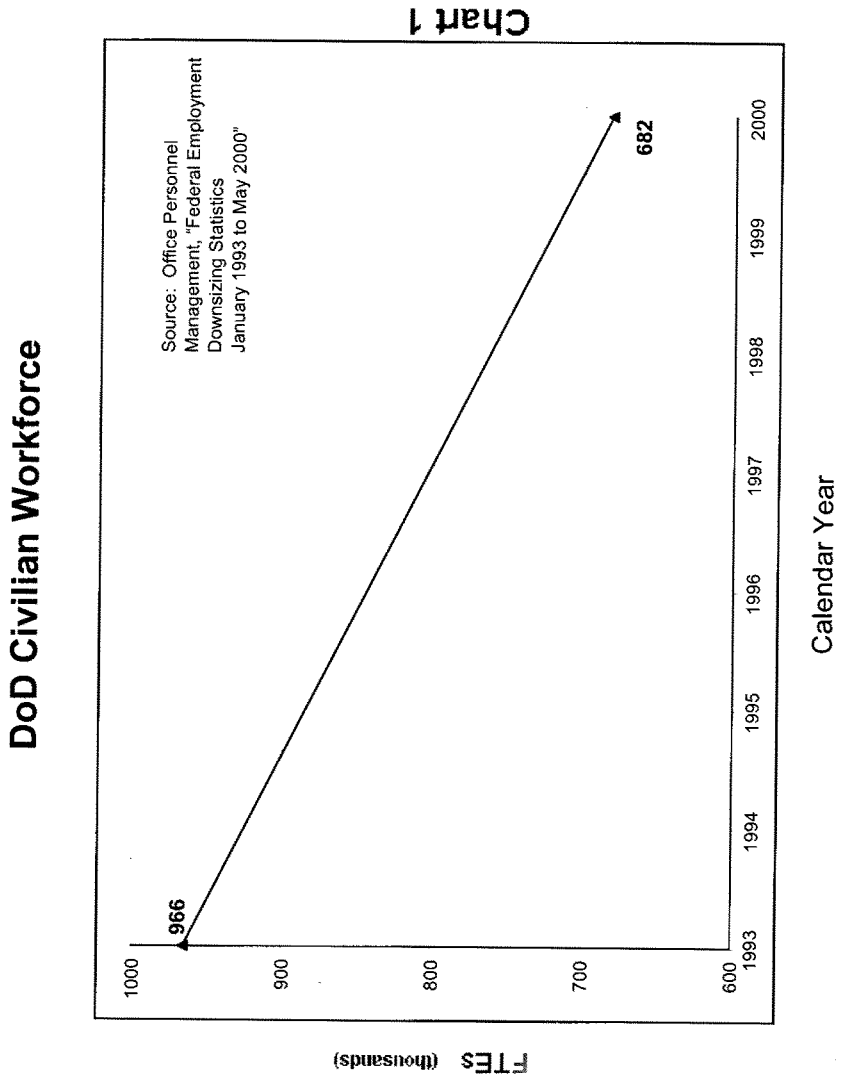
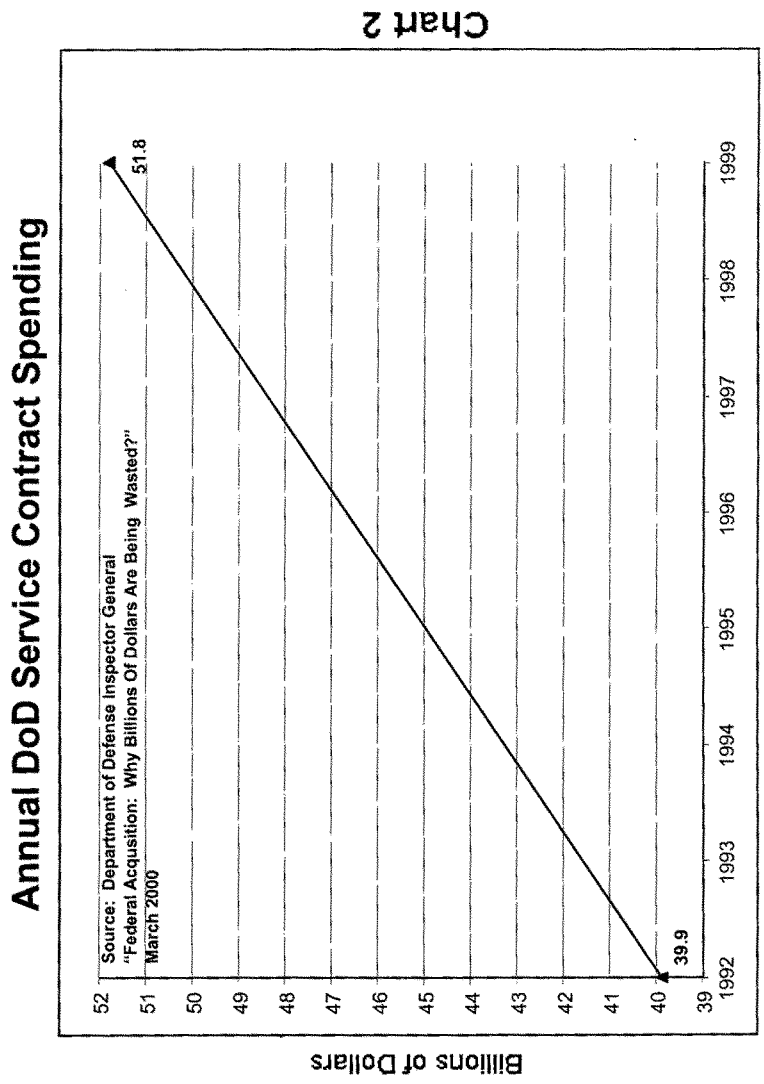


Chart 1
DoD Civilian Workforce
Source: Office Personnel Management, "Federal Employment Downsizing Statistics January 1993 to May 2000"
966
682
1000
900
800
700
600
1993
1994
1995
1996
1997
1998
1999
2000
FTEs (thousands)
Calendar Year

Chart 2


Annual DoD Service Contract Spending
Source: Department of Defense Inspector General
"Federal Acquisition: Why Billions Of Dollars Are Being Wasted?"
March 2000
51.8
39.9
Billions of Dollars
52
51
50
49
48
47
46
45
44
43
42
41
40
39
1992
1993
1994
1995
1996
1997
1998
1999
Calendar Year

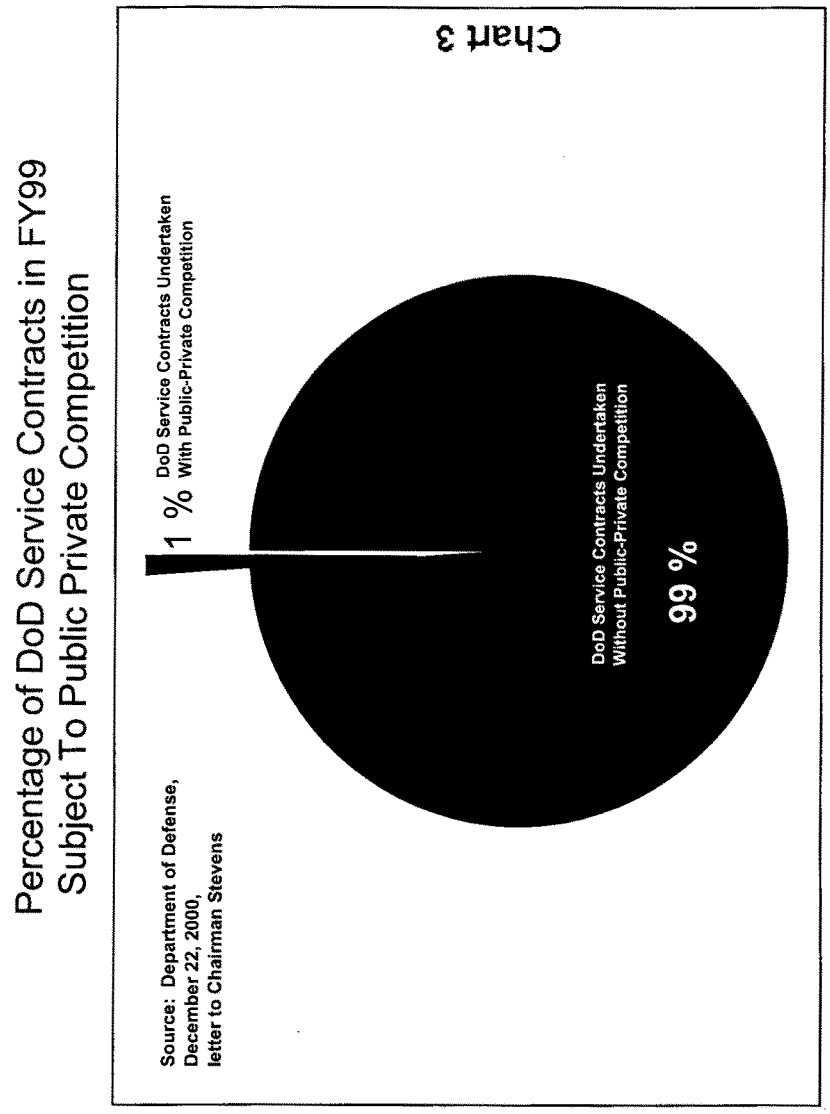
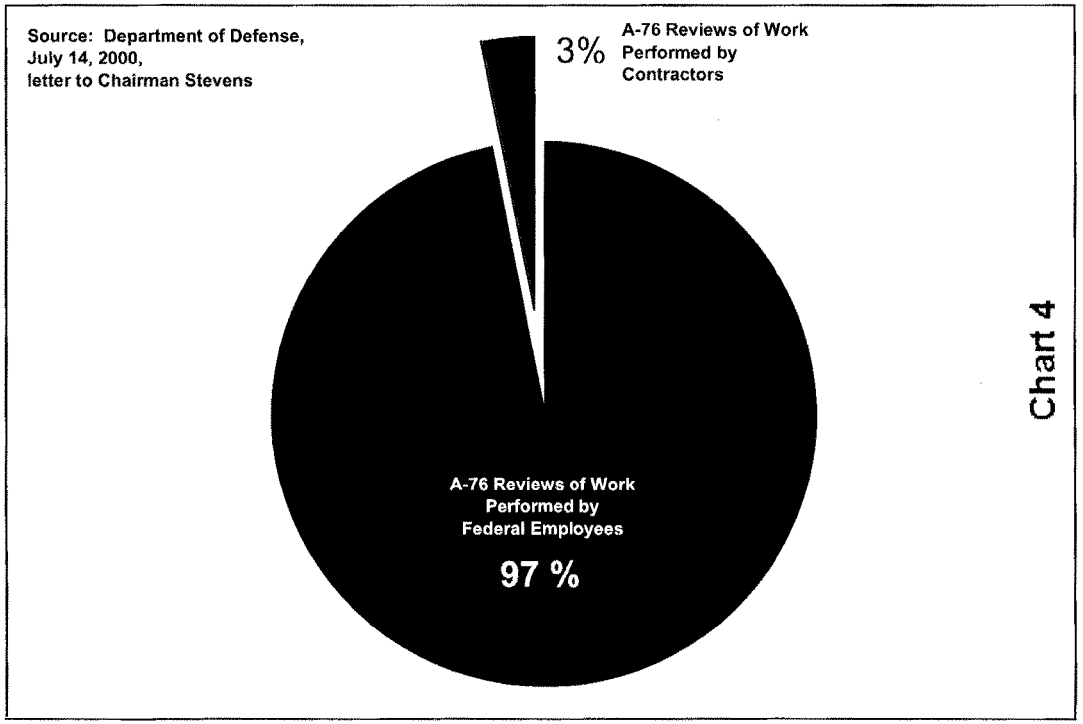


Chart 3
Percentage of DoD Service Contracts in FY99
Subject To Public Private Competition
1 % DoD Service Contracts Undertaken With Public-Private Competition
DoD Service Contracts Undertaken Without Public-Private Competition
99 %
Source: Department of Defense, December 22, 2000, letter to Chairman Stevens

Percentage of DoD A-76 Reviews of Work Performed by Contractors



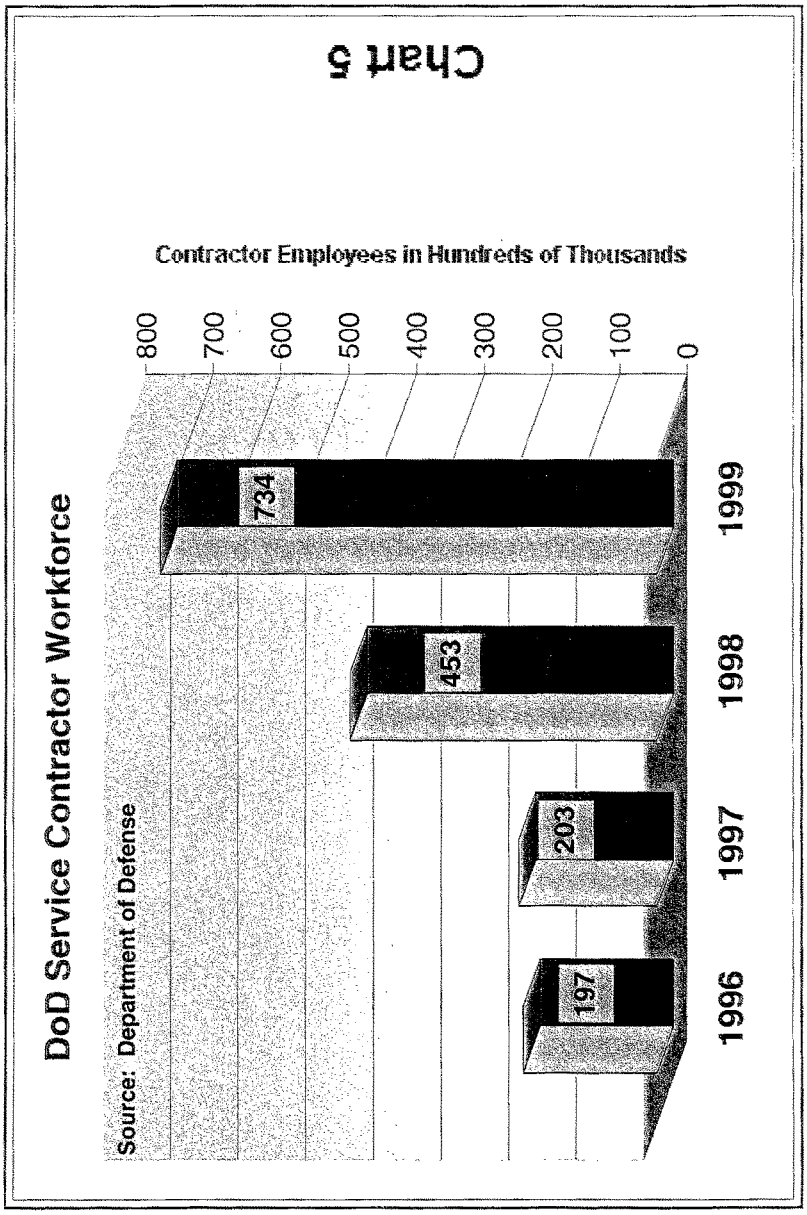
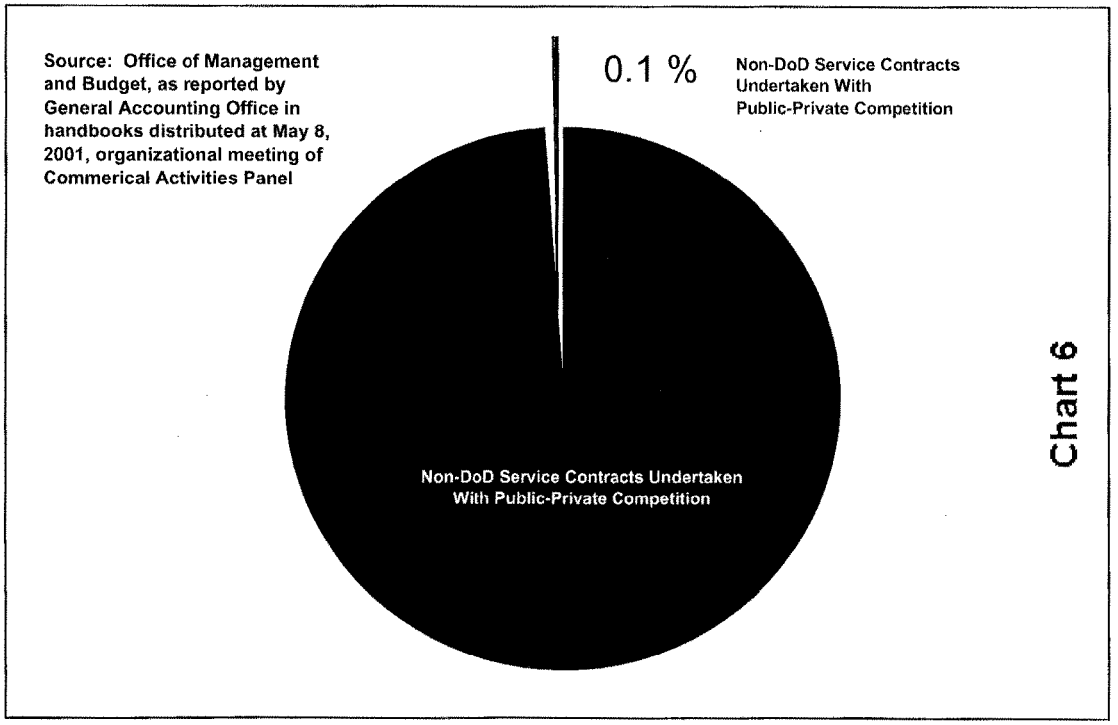


Chart 5
DoD Service Contractor Workforce
Contractor Employees in Hundreds of Thousands
800
700
600
500
400
300
200
100
0
734
453
203
197
1999
1998
1997
1996
Source: Department of Defense

Percentage of Non-DoD Service Contracts Subject To Public Private Competition



Mr. TOM DAVIS OF VIRGINIA. Ms. Kelley.

Ms. KELLEY. Thank you, Chairman Davis, ranking member Turner, the subcommittee. As the national president of the National Treasury Employees Union, I want to thank you for the opportunity to testify today on behalf of NTEU members across the country, Federal employees, 150,000 strong who do the work of our Federal Government every day. We are here to debate who should deliver government services and what the process should be for making that determination.

I'm sure we can agree on a couple of things. We can agree that government services should be delivered to the American taxpayers in the most reliable, most efficient, and most cost-effective manner. We can agree that steps need to be taken to resolve the Government's human capital crisis to ensure that there are Federal employees to deliver the work of the Federal Government in the years ahead. And we can agree that taxpayers rightly demand and expect that there is accountability for how their tax dollars are spent on delivering services.

When it comes to accountability and oversight of the Federal work force there is crystal clear transparency. There is very little we do not know about the quality and the costs of the government services that are delivered by Federal employees.

However, we know virtually nothing about the contractor work force and the work being done by contractors. What we do know is often based on reports from the media, sometimes successes of course but more often problems. One was referenced earlier by Mr. Cummings concerning the Washington Post article on the advertising agency that's producing anti-drug messages for the Government.

We also learned earlier this year that a contractor hired by the IRS mistakenly mailed out forms that contained confidential taxpayer information to the wrong taxpayers, and just this week the Boston Globe reported that a contractor hired by the IRS has lost checks from 1,800 taxpayers.

Now, there should be the same level of transparency and accountability for the work performed by contractors as there is for –7e work performed by Federal employees. Before Congress even considers methods to change Federal accounting procedures or Federal contracting procedures, the taxpayers deserve to know exactly how their tax dollars are being spent on current contracts.

Even though more dollars are doled out every year for contractor work than is spent on the Federal work force, there is little or no oversight of the Federal contracts once they have been awarded. We need to get a better handle on the current contracts under a new system, and NTE believes the way to do that would be for Congress to support and approve the TRAC Act, which of course would require agencies to implement systems to track whether current contracting efforts are saving money, whether the contractors are delivering services on time and efficiently and that when a contractor is not living up to his or her end of the deal that the government work is then brought back in-house.

Unfortunately, even though no new accountability procedures have been adopted, the administration has taken the extreme actions that will undoubtedly exacerbate this problem with contract-

ing out and the lack of oversight. For example, OMB recently directed agencies to include inherently governmental jobs on the fair inventory lists to be submitted this month. Inherently governmental work was deliberately excluded from the scope of the FAIR Act because there was a bipartisan consensus that inherently governmental work should be performed by Federal employees. If it is listed, it will just be a matter of time before contractors are performing inherently governmental jobs.

It is very, very difficult to assign cost values to the protection of the privacy of America's taxpayers, to the security of our Nation internally and externally, or responding to the economic or unknown crisis in the future. But the question is, is it worth the long-term risks to our Nation to shut the Government out of the government service business. I think the answer is no.

NTE agrees with your concerns, Mr. Chairman, on the recent OMB directive to agencies that at least 5 percent of the jobs on the FAIR Act inventories must be either put up for competition or directly converted to the private sector without competition during fiscal year 2002, and the administration will then direct agencies to open up 10 percent of the jobs in 2003 as part of a larger effort toward the 425,000 Federal jobs that have been targeted. But how can the administration set these arbitrary quotas without first evaluating their impact on an agency's ability to deliver the services? Quotas are not the answer.

Furthermore, since many agencies have very little experience in administering public private competitions, they are turning to contractors to run the competitions. For example, at the Farm Service Agency in order to meet the 5 percent directive from OMB, the agency is hiring a contractor to develop the agency's most efficient organization, to develop the agency's statement of work, and then the official government cost estimate for performing the work will be delivered by a contractor, and the agency is using additional contractors to train the agency's contracting personnel. Something is inherently wrong when private contractors are being hired to put the Government's bid together and to train the government employees on how to administer the competitions.

Our fear, as you noted, Mr. Turner, is that the agencies will opt instead to direct conversions of these jobs in order to meet the OMB targets. What incentives do agencies have to go through the expense of hiring contractors to run a competition when they can just as easily directly convert the work. As my friend National President Bobby Harnage and I stated recently in a letter to OMB Director Mitch Daniels, absent a compelling rationale arising out of an extraordinary set of circumstances there can be no justification for a direct conversion to private contractors, no matter how many or how few jobs are at stake.

We're also concerned about the number of contractor oversight employees available in the services today, in the agencies that can oversee these contracts. As you know, I am a member of the Commercial Activities Panel, which was established last year by Congress to look at the subject we are discussing today. I am hopeful that this subcommittee will wait for the panel to complete its work before legislating any changes at all to government contracting pro-

cedures. However, I do believe there should be more accountability controls put in place, and I am hopeful that this subcommittee will work with us to address those.

Thank you.

[The prepared statement of Ms. Kelley follows:]

Testimony
Of
Colleen M. Kelley
National President
National Treasury Employees Union

NTEU Views on Contracting Out Government Services

June 28, 2001

Subcommittee on Technology and Procurement Policy
Committee on Government Reform
2154 Rayburn House Office Building

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Chairman Davis, Ranking Member Turner, and other distinguished Members of this subcommittee, my name is Colleen Kelley and I am the National President of the National Treasury Employees Union. As you know, NTEU represents more than 150,000 employees in 25 federal agencies and departments, including employees who work at the Department of Treasury, Department of Health and Human Services, and the Department of Energy. I want to thank you for giving me the opportunity to present testimony on behalf of these dedicated men and women who are on the front lines in delivering government services in an efficient and cost effective manner to the taxpayers.

We are here today to debate who should deliver government services and what the process and criteria for making that determination should be. I am sure we can all agree that government services should be delivered to the American taxpayers in the most reliable, most efficient, and most cost-effective manner. Furthermore, I am sure there is agreement that steps need to be taken to resolve the federal government human capital crisis to ensure that these services will continue to be improved and delivered well into the future. And I am sure we can agree that the taxpayers rightly demand and expect that there is accountability for how their tax dollars are spent on the delivery of these services.

When it comes to accountability and oversight of the federal workforce, thanks to the checks and balances within the federal civil service system, and oversight and scrutiny of federal agencies by Congress, there is crystal clear transparency of the work being done by federal employees. And through the budget and appropriations processes, the Government Performance and Results Act, and the FAIR Act, there is little we don't know about the quality and costs of government services delivered by federal employees.

However, we know virtually nothing about the contractor workforce and the work being performed by contractors. It is only due to the work of GAO, OMB, and the media that we are hearing more and more examples about the failure of contractors to deliver services to the government on time, on budget, and as promised. The American taxpayers want the same level of transparency and accountability of the work performed by contractors as there is of the work performed by federal employees. They want to be sure there are systems in place to track whether contracting out is saving money or improving the delivery of government services. And they want to be sure they are getting the best possible return on their investment of tax dollars, both in the short term and long term.

NTEU is very concerned about the lack of accountability within agencies to track the true costs of contracting out, and to determine whether contractors are delivering the services they promised. Before Congress even considers methods to change federal contracting procedures, the taxpayers deserve to know exactly how their tax dollars are being spent on current contracts. Even though more dollars are doled out to contractors each year than are spent on the federal workforce, there is little or no oversight of federal contracts once they have been awarded. And agencies continue to contract out federal work even though there are no reporting systems in place to determine whether contracting out has achieved real cost savings or improved government services for the taxpayers. Agencies need to implement reliable accounting and reporting systems and dramatically increase contract oversight to track the true costs of contracting out and the quality of services being delivered by contractors.

We need to get a better handle on the current system, and NTEU believes the best way to do this would be for Congress to approve, and President Bush to sign into law, H.R. 721, the TRAC Act. The TRAC Act would require agencies to implement systems to track whether current contracting efforts are saving money, whether contractors are delivering services on-time and efficiently, and that when a contractor is not living up to his or her end of the deal, the government work is being brought back in-house.

Unfortunately, even though no new accountability procedures have been adopted, the Bush Administration has taken extreme actions that will undoubtedly only exacerbate current problems with contracting out. For example, OMB recently directed agencies to include inherently governmental jobs on their FAIR Act Inventories. Inherently governmental work was deliberately excluded from the scope of the Federal Activities Inventory Reform Act because there was a bipartisan consensus that inherently governmental work should be performed by federal employees. But now the Bush Administration wants agencies to list on their FAIR Act inventories the inherently governmental jobs right next to jobs that are not inherently governmental, despite the fact that the FAIR Act requires only the listing of jobs that are not inherently governmental. We believe that if we head down the path initiated by the Bush Administration, it will be just a matter of time before contractors are performing a majority of inherently governmental jobs. At some point, this will likely lead to a one-stop shop on OMB's website for contractors to go shopping on-line for more government work. Point – click – enter your contract bid – and hit send: suddenly a private contractor will be collecting your taxes next April.

Congress excluded inherently governmental jobs from the FAIR Act because Democrats and Republicans alike agree: some government functions should not be performed by private sector companies. The American taxpayers do not want tax collection services to be contracted out to the private sector companies who may have an interest in selling taxpayer information. They do not want private sector consultants to control what illegal goods flow through our ports and borders. They do not want new prescription drugs or medical devices to be tested and approved by the same people who develop and manufacture them. And they do not want our financial markets regulated by banks or securities firms.

We believe that in many instances the American taxpayers are willing to pay a little bit more for certain government services to ensure that these jobs continue to be done by government employees, not private contractors. It is very difficult to assign cost values to the protection of the privacy of American taxpayers, the security of our nation both externally and internally, or responding to economic or unknown crises in the future. Sure, a private contractor may be able to submit a bid to perform a certain government function over the next three years for less cost than federal employees, but what happens when that private contractor goes broke in the 2nd year of that contract? Who is going to pick up the slack if a sole source contract is awarded for inherently governmental work and that contractor is in bankruptcy court? Is it worth the long-term risks to our nation to shut the government out of the government service business, and be dependent on profit-driven private sector companies? It is incumbent upon Congress and the Administration to make investments in increased agency staffing and better training so that

government services can be delivered by federal employees at even lower costs and increased efficiency than they are today.

Another example of a misguided Bush Administration policy is the recent OMB directive to agencies that at least five percent of the jobs on their FAIR Act inventories must be either put up for competition or directly converted to the private sector without competition during FY02. And we just learned last week that the Administration will direct agencies to open up ten percent of the jobs in Fiscal Year 2003, as part of a larger effort to arbitrarily open up to the private sector 425,000 federal employee jobs. Again, how can the Bush Administration set these arbitrary quotas without first evaluating their impact on an agency's delivery of services? Most agencies will likely see a sharp decline in service performance with such a severe cut, yet the directive makes no mention about what affect contracting out five percent, or ten percent, or fifty percent of the work will have on an agency's mission. We believe these actions are only going to lead to more waste, more broken promises, and more cost overruns in government contracting. And we know that this directive is already having a negative impact on the morale of the federal workforce.

Furthermore, since many of the non-military Departments and Agencies have very little experience in administering public-private competitions, they are turning to contractors to run the competitions. For example, at the Farm Services Agency, in order to meet the five percent directive, the agency is hiring a contractor to develop the agency's Most Efficient Organization, the agency's statement of work, and the official government cost estimate for performing the work. And the agency is using additional contractors to train the agency's contracting personnel. Something is "inherently wrong" when private contractors are being hired to put the government's bid together, to estimate the government's costs, and to train the government employees on how to administer the competitions.

So we now know that agencies opting for the public-private competitions are hiring outside private contractors to run the competitions. However, we believe that most other agencies will opt instead for direct conversions of these jobs to meet the arbitrary targets. What incentives do agencies have to go through the expense of hiring contractors to run a competition, when they can just as easily directly convert the work? As AFGE National President Bobby Harnage and I stated in a letter to OMB Director Mitch Daniels earlier this year, "absent a compelling rationale arising out of an extraordinary set of circumstances, there can be no justification for a direct conversion to private contractors, no matter how many or how few jobs are at stake. If federal employees are performing the work and taxpayers will continue to pay for the work to be done, then that work cannot be taken from federal employees without giving them adequate chances to defend their jobs." NTEU continues to urge the Administration to withdraw its shortsighted five percent directive.

Next, NTEU is very concerned that as the amount of government work being contracted out continues to increase – and with it the workload for contract officers – there has been a steady decline in staffing levels for agency contracting offices. The increased workload and decrease in staffing has led to inadequate public-private competitions and practically non-existent contractor oversight. And according to the General Accounting Office, the problem is only going to get worse. At a hearing before this very subcommittee last month, the GAO

testified that 27 percent of agencies' current contracting officers will be eligible to retire through the year 2005. So now we're going to turn around and give the federal employees who must look over the contracts more work and not provide them with the resources they need to do their jobs? Again, what's going to happen once those contracts have been awarded? How are we going to monitor them?

Mr. Chairman, the issues before us are very complex and finding solutions is no easy task. As you know, I am a Member of the Commercial Activities Panel, which was established last year by Congress to look at the subject matter we are discussing today. The Panel, chaired by Comptroller General David Walker, and comprised of members from the Bush Administration, federal employee labor unions, government contractors, and scholars, is working to develop a set of recommendations for Congress on how best to improve our government's service delivery decision-making procedures. The Panel is required to report to Congress by May of next year, and I am hopeful that we can reach agreement on methods to improve the delivery of government services to the taxpayers. I have urged the Panel to recommend to Congress five changes: institute accountability systems to track contractor costs and delivery of services, increase involvement of front-line employees in discussions on how agencies carry out their missions, ensure public/private competitions are held on a level playing field, give federal employees appeal rights of agency decisions, and increase oversight of government work being performed by contractors.

In closing, I am hopeful this subcommittee will wait for the Commercial Activities Panel to complete its work and send its recommendations to Congress before legislating any changes to government contracting procedures. However, I do believe that more accountability controls over current government contracting, such as those contained in the TRAC Act, cannot afford to wait for the Panel to finish its work. The most important thing to do before any more service contracts are awarded is to clean up the current system. The government should not contract out government work if we do not know if it is in the best interests of the taxpayers. Furthermore, I am hopeful this subcommittee will use its oversight authority to urge the Bush Administration to withdraw the recent arbitrary directives to contract out more work. We cannot continue to allow agencies to arbitrarily award contracts to private companies to meet quotas, while simultaneously letting valuable resources – our federal employees – slip away.

Thank you for giving me the opportunity to testify today.

Mr. TOM DAVIS OF VIRGINIA. Thank you very much. Ms. Armstrong, thank you for being here.

Ms. ARMSTRONG. Chairman Davis, Ranking Member Turner and members of the subcommittee, my name is Patricia Armstrong. On behalf of the 200,000 executives, managers and supervisors in the Federal Government whose interests are represented by FMA, I would like to thank you for allowing us to present our views before this distinguished subcommittee.

I am currently a program analyst, Industrial Management Branch, Naval Air Systems Command, at Patuxent River, MD. Previously I spent 20 years at the Naval Air Depot at Cherry Point. My statements are my own in my capacity as an FMA member and do not represent the views of the Department of Defense or the Navy.

When balancing interests, government needs, employee rights and contractor concerns, there are fundamental value differences in costs, accountability and control between performing work in the private and public sectors. The Government is ultimately responsible for the work and must abide by legal and ethical rules that do not apply in the private sector, such as the Freedom of Information Act. Civil servants also face challenges in managing third party contractors who are outside their hierarchical authority. The private sector, whether performing more efficiently or not, differs in that it is guided by profit motive.

FMA is encouraged by the direction taken by the administration to ask agencies to submit reports this week on work force planning and restructuring before moving forward with any government right-sizing. Arbitrary figures without reasoned justification do not have a place in the right-sizing arena. OMB announced this week, however, the requirement for agencies to compete at least 10 percent of all government positions considered commercial in nature in fiscal year 2003. FMA has concerns about the use of arbitrary targets when attempting to achieve the most efficient organization across government.

The FAIR Act reporting process is flawed in that it assumes the job title is always a commercial activity across government, even though this assessment is best made by the agency based on responsibilities of the person in that particular position. The term "inherently governmental" as defined under the FAIR Act has never been clear. Perhaps a checklist of questions should be created to determine whether or not work is inherently governmental before contracting out work. For FAIR Act reporting, lack of clear definitive guidance and revisions of guidance as well as misinterpretation of intended requirements all result in confusion as to what is and what is not inherently governmental.

Caution should be exercised if commercial activity studies are thought to be a panacea for efficiency savings. Conducting a cost comparison generally consumes 2 to 3 years and is paid for by the agency using contractors and government employees. Implementing the results of cost comparison, either the Government MEO or contractor MEO, generally consumes another year. Since most activities are dynamic in nature, the CA study costs generally outweigh the planned benefits.

Furthermore, there are many issues that impact the activities aside from just cost, such as morale, downgrading of employees, loss of experienced workers and the training cost of new employees. In many cases the work force has achieved its right size by normal attrition, and the A–76 cost comparison which results in an MEO is at the required staffing level or in some cases must hire up to fulfill the MEO staffing requirements. Cost savings are calculated and reported on all completed studies. However, whether the MEO results in a smaller work force or just a lesser paid work force, the cost savings are just not there when the cost of the studies are considered.

An alternative A–76 that I know, Mr. Chairman, you have taken an interest in is the bid-to-goal process, which gives Federal employees the chance to streamline their operations. Similar to an A–76 competition, bid-to-goal begins with the creation of a performance work statement. Contractors and the in-house group then submit bids to fulfill the performance requirements at the lowest cost. The in-house team is afforded the first opportunity to meet the performance standards at the lowest cost bid. If the in-house team is unable to meet this performance threshold, the work is then outsourced to the private sector.

Another idea is the use of transitional benefit corporations [TBCs]. Unlike A–76 procedures, however, the TBC model would also allow outsource workers to retain their Federal health and pension benefits. With respect to TBCs and the bid-to-goal, however, we at FMA would want to be assured that the initial outsourcing of the activity is warranted in the first place.

President Bush directed the Secretary of Defense to provide an assessment of our future defense needs. The President's 2002 defense budget has increased $33 billion over fiscal year 2001's budget in an attempt to improve readiness. But if we don't match that plan with an assessment of what the Government should maintain as an in-house capability, we may find that we are at the mercy of nongovernment forces when it comes to contingency response. We do not want to create monopolies or limit ourselves to foreign suppliers of our defense needs. We must ensure competition by maintaining an ongoing strike-free, in-house depot capability that can quickly gear up for any contingency.

I have got one more paragraph.

Forty-three percent of depots have already been closed. The 20 remaining depots account for only 4.4 percent of the domestic bases. For military readiness, any future BRAC should exclude depot bases.

Mr. Chairman, FMA applauds Congress for establishing the GAO Commercial Activities Panel to hold public hearings and look for a better approach to the problems. As I testified before this panel 2 weeks ago, it is our hope that the A–76 process will be changed to empower Federal managers to determine what is a commercial activity and what is inherently governmental and implement their own MEOs, MEOs that measure the entire work force both public and private, and report their cost and performance. FMA urges support for legislation, the TRAC Act, to correct several longstanding inequities in the contracting out process.

Thank you, Congressmen Kanjorski, Waxman, Cummings, Kucinich, Congresswoman Mink for cosponsorship.

I want to thank you again, Mr. Chairman, for having FMA to serve as a sounding board in an effort to ensure that policy decisions are made rationally and provide the greatest return for the taxpayer. I hope these experiences are helpful.

This concludes my statement. I'll be happy to answer your questions, including those on best value and actual studies.

[The prepared statement of Ms. Armstrong follows:]

FMA

Federal Managers Association

Testimony
Before the Committee on Government Reform
Subcommittee on Technology and Procurement Policy
United States House of Representatives

For Release on Delivery
Expected at
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Federal Government Outsourcing

Statement of
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Chairman Davis, Ranking Member Turner, and Members of the Subcommittee:

My name is Patricia Armstrong. On behalf of the 200,000 executives, managers, and supervisors in the Federal Government whose interests are represented by FMA, I would like to thank you for inviting us to present our views before the House Government Reform Subcommittee on Technology and Procurement Policy.

I am currently a Program Analyst, Industrial Management Branch, Naval Air Systems Command, Patuxent River, Maryland. My statements are my own in my capacity as a member of FMA and do not represent the official views of the Department of Defense or the Navy.

Established in 1913, FMA is the largest and oldest Association of managers and supervisors in the Federal Government. Our Association has representation in more than 25 Federal departments and agencies. We are a non-profit advocacy organization dedicated to promoting excellence in government. As those who are responsible for the daily management and supervision of government programs and personnel, our members have a broad depth of experience with the government's practice of contracting-out for services.

The question today is: How do we improve the current outsourcing framework in manners that reflect a balance among taxpayer interests, government needs, employee rights, and contractor concerns? We at FMA applaud the efforts of the new Administration to not merely cut federal jobs, but to focus agency attentions on how to carry out missions more effectively and efficiently. Performance measurements, goal tracking, and insertion of new technology and business practices are vital to success in today's fast-paced market. These cultural changes within the government can only be accomplished with thoughtful interaction between government and industry. My testimony reflects both your intention and the voices of the Federal managers throughout the government in our mutual goal to pursue excellence in government service.

As tax-paying Americans first and civil servants second, FMA members have long been concerned about the consequences of shifting important governmental responsibilities to a shadow-

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government of contractors. Since 1993, the non-postal executive branch civilian workforce has been reduced by some 400,000 positions. Agencies are being asked to do more with less, compete Federal functions with the private sector, streamline procurement processes, and at the same time deliver higher-quality service to the American public.

Federal managers and supervisors want our government to work the best it can for the American people. However, as the number of civilian employees continues to shrink, this task is becoming increasingly difficult.

In fact, earlier this year GAO for the first time added workforce management to its list of the Federal Government's "high-risk" areas. Strategic human capital management across government was the only area added to the "high-risk" list this year. "Human capital shortfalls are eroding the ability of many agencies—and threaten the ability of others—to economically, efficiently, and effectively perform their missions," said Comptroller General David Walker in the report. "Initial rounds of the downsizing were set in motion without sufficient planning relating to the longer term effects on agencies' performance capacity," he further stated. "A number of individual agencies drastically reduced or froze their hiring efforts for extended periods. This helped reduce the size of agencies' workforces, but it also reduced the influx of new people with new skills, new knowledge, new energy, and new ideas—the reservoir of future agency leaders and managers."

Federal functions performed by civil servants are being subjected to unprecedented competition with the private sector. The Office of Management and Budget's (OMB) January 15 memorandum to agency and department heads (OMB M-01-15) called on agencies to expand OMB Circular A-76 competitions in addition to submitting position inventories in accordance with the 1998 Federal Activities Inventory Reform (FAIR) Act. Under the FAIR Act agencies are required to submit to OMB lists of positions that are considered commercial activities under OMB Circular A-76.

In March of this year, OMB directed agencies to compete at least five percent of those jobs – or 42,500 Federal positions – considered commercial in nature by October 2002. Now there is word that OMB will require agencies to compete at least ten percent of all government positions considered

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"commercial in nature" in fiscal 2003. Agencies will be able to use direct conversions – in which jobs are converted to the private sector without competition – and public-private competitions to meet the ten-percent target. As in fiscal 2002, agencies will not be allowed to use reason codes to exempt any FAIR Act positions from the ten-percent competition requirement. These initiatives fall in line with the President's commitment to open to competition with the private sector at least one-half of the Federal positions listed on the FAIR Act inventory of commercial functions.

The FAIR Act reporting process is flawed in that it assumes a job title is always a commercial activity across government even though this assessment is best made by the agency based on the responsibilities of the person in that particular position. Lack of clear, definitive guidance and revisions of guidance, as well as misinterpretation of intended requirements all result in confusion as to what is and what is not "inherently governmental". Additionally, inadequate and unrealistic processing times for report submissions dictated to field activities by the Chain of Command contribute to inventory being submitted inaccurately or incompletely. Furthermore, once submitted, no vehicle exists to rectify the errors.

We at FMA can understand the Administration's position that competition is the best way to find efficiency. However, we have concerns about the use of arbitrary targets such as five and ten percent when attempting to achieve the Most Efficient Organization (MEO) across government. It is imperative that an analysis of the core missions of agencies be conducted to determine the MEO and ensure that essential skills are retained in the Federal workforce. The term "inherently governmental" as defined under the FAIR Act ("a function so intimately related to the public interest as to mandate performance by government employees") has never been clear and continues to be skewed for the benefit of one side or the other. What should be asked is whether or not the function is in-line with the agency's mission.

FMA is therefore encouraged by the direction taken by the Administration to ask agencies to submit reports on workforce planning and restructuring before moving forward with any government rightsizing. As we have witnessed over the past decade, arbitrary reductions, including cutbacks in managerial and leadership positions, without mission analysis serve to undermine the efficiency and

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cost-effectiveness of government. Arbitrary figures without reasoned justification do not have a place in the rightsizing arena.

Caution should be exercised if commercial activity (CA) studies are thought to be the panacea for efficiency savings. The cost of conducting the actual cost comparison is borne by the activity, and these costs are considered unfunded burdens to the activity with respect to Congressionally approved appropriations to conduct the studies. To conduct the studies, Federal employees are being pulled away from their primary duties of carrying out the agency's mission to write performance work statements. A clear definition of what is "performance based" must be achieved first. Too many liberal interpretations exist, not only in the A-76 community, but also in the Procurement Contracting field, and constant altering of the definitions and "rules" significantly hampers the development of a truly performance-based document. The return on investment is largely lost whether the work stays organic or goes commercial.

Conducting a cost comparison generally consumes two to three years. An August 2000 General Accounting Office (GAO) report (GAO/NSIAD-00-107) found that A-76 studies conducted within the Department of Defense (DoD) were taking longer than the anticipated two-year average to complete. Implementing the results of cost comparison, either the government MEO or contractor MEO, generally consumes another year. Since most activities are dynamic in nature, the CA study costs generally outweigh the planned benefits. Furthermore, there are many issues that impact the activity aside from just cost, such as morale, downgrading of employees, loss of experienced workers, and the training costs of new employees. In many cases the workforce has achieved its "right size" by normal attrition, and the A-76 cost comparison which results in an MEO is at the required staffing level or must in some cases "hire" to fulfill the MEO staffing requirements. Cost savings are calculated and reported on all completed studies. However, whether the MEO results in a smaller workforce, or just a lesser-paid workforce, the cost savings are just not there when the costs of the study are taken into consideration.

There must be a better way. The new Administration is drafting legislation that will help agencies account for the full cost of their programs and make it easier for managers to assess program performance. If we are serious, however, about integrating a performance-based process that focuses on

the strategic management of human capital, we must measure the entire cost of programs, including the current shadow workforce of contractors. A major concern to FMA is the Federal Government's inability to track costs and inventory of the contractor workforce and the functions it assumes once work is outsourced. FMA has consistently urged that the FAIR Act be amended to require an inventory of the Federal contractor workforce. The fiscal 2000 Defense Authorization bill requires the armed services to complete and publish contractor inventories. The Army has, in fact, already established standards for counting the number of its contractors. This process must continue and must be properly enforced. Only with an accurate count of contractor jobs and costs can we even begin to assess cost-effectiveness and have the information at hand to consider whether or not it is in the best interest of an agency's mission to outsource a function.

DoD recently adopted a new method to rate contractors' performance and is building a central database to store performance evaluations for its contractors. The new rules revise May 1999 DOD guidance on how to collect and use past performance information by outlining a new single rating system that relies on the central database. The new method requires contracting officers to describe contractors' performance in detail in certain categories. "Best value" considers factors other than the lowest price – such as performance – and can be useful if there is a true "apples to apples" comparison. Price is a component of the "best value" considerations, but should not be the "only" consideration. The government may be required to pay more to achieve better results. The "best value" determination eliminates multiple bidders to a single competitor who competes for the work solicited. It should remain the leading criteria for selection of the service provider. "Best value" comparisons should be considered by those Federal managers responsible for the mission and be based on factors that best support the agency's mission.

Under current government contracting rules, when the government wins a contracting competition we are periodically audited to determine if we remain the most cost-effective providers of service. Ironically, no similar rule is applied to contractors that win competitions. As a result, the biggest criticism of government contracting is that once the work moves to the private sector there is no way to know if Americans are still getting the best deal for their hard-earned tax dollars. It is also interesting to note that a March 2001 GAO report (GAO-01-388) found that the in-house organization

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usually experiences a reduction-in-force regardless of whether the public or the private sector wins the competition.

With respect to our National Defense, we as a nation must maintain the in-house "capability" for any necessary military requirement. Since the last round of BRAC, many support services were directly converted from public to private providers with no opportunity for project bidding. Less than 1 percent of DoD's contracts are first subjected to public-private competition, despite GAO's findings that Federal employees win 60 percent of the competitions actually conducted. Almost all of the $115 billion worth of work performed annually by contractors is acquired with no public-private competition.

Meanwhile, we are continually undergoing a "silent BRAC." We are still suffering from the negative impacts to readiness of the last round of BRAC, which closed some installations but simply converted others from public to private, thus not having the intended effect of decreasing defense infrastructure.

President Bush has directed the Secretary of Defense to provide an assessment of our future defense needs, and this is certainly the most important step in formulating an overall plan. But if we don't match that plan with an assessment of what the government should maintain as an in-house capability, we may find that we are at the mercy of non-government forces when it comes to contingency response.

We do not want to create monopolies or limit ourselves to foreign suppliers of our defense needs. At the same time, we must be able to exercise some control over competition. We should at a minimum be capable of an ongoing, strike-free, in-house depot capability that can quickly gear up for any contingency. Activities in support of this mission require trained technicians, engineers, and managers to perform major overhauls of weapons systems and equipment, completely rebuild parts and end items, modify systems and equipment by applying new or improved components, and manufacture parts unavailable in the private sector. While contractor employees are frequently trained to work only on their own company's equipment, public employees are typically trained to work on many different systems.

In June of 1996, 6,700 workers from the St. Louis headquarters of one of DoD's largest contractors, McDonnell Douglas, went on strike. These workers were responsible for building the F-15 and the F-18 fighters, the Navy's T-45 training jet, part of the Air Force's C-17 cargo plane, and for upgrading the Harrier strike aircraft. The employees were protesting McDonnell Douglas's practice of outsourcing work. (06/05/96, *New York Times*, p. A18)

In negotiating higher wages, the private-sector union chief at Sheppard AFB, Texas called the right to strike the union's "ace in the hole." When private-sector flight-line maintenance workers for Sheppard's T-37 and T-38 trainer jets went on strike they brought the base's training mission to a screeching halt. The strike affected the training of 250 pilots. (08/25/97, *Federal Times*, p. 14)

FMA is also concerned that the Federal Government is developing an unjustified and short-sighted reliance upon privatization of public depots as a means of resolving budgetary issues. The reality is that depot maintenance is not the budget monster it is portrayed to be. Organic depots account for only 1.45 percent of the fiscal 2001 DoD manpower requirements. Forty-three percent of depots have already been closed and personnel reductions are over 58 percent. The twenty remaining depots account for only 4.4 percent of the domestic bases.

The President's budget proposal indicated the possibility for additional base closures. The Administration stated in its proposed fiscal 2002 budget that the military has a 23 percent surplus of bases: "It is clear that new rounds of base closures will be necessary to shape the military more efficiently." However, this 23 percent surplus potentially represents an additional reduction of 14,825 employees (or the equivalent of 5 depots), for a total personnel reduction of 68 percent (from 156,000 to 106,367), and a total installation reduction of 57 percent (from 35 to 15). Experience has shown that military base closures yield neither the desired near-term benefits nor the necessary enhancements to military readiness. Base closures again would prove to be costly when dollars are becoming increasingly scarce, as well as wasteful of an irreplaceable national resource. For these reasons and for the sake of military readiness, therefore, any future BRAC should exclude depot maintenance bases.

The requirement to establish organic depot maintenance capability within four years of fielding a new system should be strengthened and all core work for old and new systems should be maintained in the organic depots. Organic depots assure absolute readiness and maintain surge requirements for the major weapons systems to include; aircraft, ships, tanks, helicopters, air-defense systems, artillery, and more. Depot maintenance should be funded to re-capitalization levels and guarded so these funds are not transferred to fund other projects or programs.

Current law requires that no more than 50 percent of the funds made available in a given fiscal year to a military department for depot-level maintenance and repair workload be used to contract for performance by non-Federal Government personnel. This preserves readiness, surge requirements, and competition. The depot organic base is supported with fewer than 65,000 employees and only accounts for approximately 2.5 percent of the DoD Budget. This is a bargain, not a budget monster devouring valuable support dollars. Organic depots have been reduced by over 58 percent over the last 10 years. To realize true savings and increased readiness, more work – not less – needs to be performed by the organic base. However, to obtain the best of both worlds, public and private, both sides should establish and strengthen teaming relationships. Where government can partner with industry to provide the American people with the best possible services, we should look at those options as well. This cultural integration will take time, strong leadership, and hard work by all concerned.

We as a government should at a minimum determine the true mission and the core workforce size needed to perform the mission. We should empower individual agencies to implement their own MEOs rather than continue the use of arbitrary and unbefitting personnel ceilings. And, we should ensure that agencies have the tools to shape and attract a strong civilian workforce.

An alternative to A-76 that I know you, Mr. Chairman, have taken an interest in is the bid-to-goal process, which gives Federal employees the chance to streamline their operations without facing direct competition from the private sector. Similar to an A-76 competition, bid-to-goal begins with the creation of a performance work statement. Contractors and the in-house group then submit bids to fulfill the performance requirements at the lowest cost. But even if a bid from a private company is low, the in-house team is offered the first opportunity to meet the performance standards at the lowest cost. If the

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in-house team is unable to meet this performance threshold, the work is then outsourced to the private sector.

Another idea is the use of transition benefit corporations, or TBCs. The TBC model is based on a provision in the Federal Acquisition Regulation (FAR) that allows agencies to bypass A-76 rules and directly privatize work. Unlike A-76 procedures, however, the TBC model would also allow outsourced workers to retain their Federal health and pension benefits. Like bid-to-goal and the normal A-76 process, the TBC method begins with the creation of a performance work statement. This statement becomes a contract between the agency and the TBC, a non-profit organization that acts as a representative for outsourced employees. The TBC also coordinates work to fulfill the performance work statement, which could be performed by outsourced workers or private-sector employees, or a combination of both. Outsourced workers would keep their Federal benefits as long as they remained with the TBC. Under the TBC model, agencies would also be able to rely on TBC employees if an emergency surge in workload took place. With respect to TBCs, however, we at FMA would want to be assured that the initial outsourcing of the activity is warranted in the first place.

Nonetheless, Mr. Chairman, FMA applauds the thoughtful examination of new and innovative ways to make our government more efficient and cost-effective. As a start, FMA urges support for legislation introduced by Congressman Albert Wynn, H.R. 721, the "Truthfulness, Responsibility, and Accountability in Contracting (TRAC) Act," to correct several longstanding inequities in the contracting-out process. This legislation, for instance, would require agencies to accurately track costs for work that is contracted out. This information could then be used to potentially bring work back in-house when it can be performed more effectively and efficiently by the Federal workforce.

In addition, FMA applauds Congress for establishing the GAO Commercial Activities Panel to hold public hearings and look for a better approach to the problems associated with A-76 studies. It is our hope that the A-76 process will be changed to precisely define what is a "commercial activity" and what is "inherently government." The process should allow agencies to measure the entire workforce – both public and private – and associated costs, report the costs and performance, and determine what is the best mix of public and private employees. Most importantly, Federal managers must be given the

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authority to maintain responsibility for their individual agency mission and the costs associated with performing that work.

Despite some positive steps, there is still much work to be done in the way of reversing the damage caused by a decade of arbitrary civil service reductions. We must take the time to fully examine how we can reach an optimal size and shape for the Federal workforce. FMA would like to serve as a sounding board in an effort to ensure that policy decisions are made rationally and provide the greatest return for the American taxpayer, while recognizing the importance and value of our nation's civil servants. It is in the best interest of policy-makers, taxpayers, and the future well-being of our country that any rightsizing effort be executed in an objective and cost-effective manner that does not simply shift resources from in-house operations to a shadow government of contractors.

I want to thank you again, Mr. Chairman, for inviting FMA to present our views on contracting-out to the Subcommittee. FMA looks forward to continuing to work with you and all interested parties to improve the ability of Federal managers and supervisors to ensure the delivery of high-quality goods and services to America. I hope the experiences and suggestions FMA has shared with you will be helpful in any future efforts you may undertake to reform the government's current practice of contracting-out for services. This concludes my prepared remarks. I would be happy to answer any questions you may have.

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ADDENDUM

- FMA members at the Air Logistics Center at Warner Robins AFB in Georgia rejoiced in 1997 after winning a head-to-head competition with private sector companies to win a bid for $434 million worth of work over seven years for inspection, repair, overhaul and modification of the C-5 Galaxy transport aircraft. Warner Robins beat out defense giants Boeing and Lockheed Martin. The closest private sector bid was $22 million more than the one turned in by Warner Robins. (09/08/97, *Defense Week*, p. 3)

- "A Canadian warship surged out of heavy fog in the North Atlantic yesterday in an attempt to force into port a rogue U.S.-owned freighter that for two weeks has refused to relinquish a cargo of battle tanks and other combat gear representing 10 percent of Canada's armored might. Because of recent military spending cuts, Canada has to rely on civilian shipping or air companies to transport its soldiers and gear to peacekeeping assignments around the world." (*Source: Boston Globe – August 1, 2000, Pg. 6, "Canada Warship Shadows Freighter Laden With Cargo Of Arms"*)

- "Minimizing Outsourcing Risks," an article in the Resource Management, 4th Qtr 2000. PB-48-00-4 by Charlie Ulfig who prepared this paper for the 1999 class of the Army Comptroller Program at Syracuse University. There are several interesting points on private-sector outsourcing:

  a. "Many companies that have used outsourcing are now facing major problems. Their outsourcing arrangements have failed to yield the savings and competitive advantages that were projected, and/or the contractor is unable to respond to changing business needs. I don't think we would ever, in the foreseeable future, entertain any ideas of large scale outsourcing again," said E.P. Rogers (chief information officer) at Mutual of New York (MONY)."

  b. "The Insurer this month finished rebuilding its in-house (information systems) structure after terminating a $210M contract with Computer Sciences Corp. in May, less than halfway through its 7-Year term' (Caldwell, B. and McKee, M.K. 1997). They find themselves in a difficult situation because the cost of contract cancellations and the costs of either finding a new vendor or bringing the processes back in-house are enormous."

  c. "One reason companies end up in this predicament is that they take a short-term focus on cost savings and fail to anticipate the long-term consequences," states Lam Truong, CIO at the Milpitas, Calif., chip maker LSI Logic states. "Outsourcing didn't work for us, a Silicon Valley company, because we changed our mind all the time (Caldwell, B and McGee, M.K., 1997). Failure to foresee future needs and to provide for them in contracts often leads to disaster."

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Mr. TOM DAVIS OF VIRGINIA. Thank you very much. Mr. Lombardi, thank you for being here.

Mr. LOMBARDI. Mr. Chairman, members of the subcommittee, my name is Paul Lombardi. I am the president and CEO of DynCorp, a technical and professional services firm. I'm also the chairman of the Professional Services Council, which is the principal trade association representing technical and professional service providers. It is in that capacity I appear before you today. I have also supplied the subcommittee with my written testimony and now wish to focus my remarks in three areas, outsourcing, TRAC bill and public and private competition under A–76. I will keep my comments very short.

Outsourcing is not a new concept. In fact, many high performance companies like IBM, Microsoft, British Aerospace and others outsource noncore functions to service providers as well as focusing on their true mission and product lines. More and more State governments and local governments are outsourcing, like the city of Indianapolis, who has saved an enormous amount of their budget while getting good citizen satisfaction.

In the Federal Government outsourcing should be about quality and performance of service. It's about having government employees focus on inherently governmental and core capabilities. It's about a constructive partnership with the private sector to serve the taxpayer in a more efficient and productive manner. It's about doing more with less. It's about smart, strategic management.

There are a number of recent reports that have been quoted already to the subcommittee from GAO and CNA, the Center for Naval Analysis, that positively talks to these very issues. That brings me to the TRAC Act, which I believe is an ill-conceived piece of legislation for the following reason, and all the benefits of innovation that it would bring. It would stop outsourcing. It would also severely slow down all service contracts, including options. It would have a severe impact on a large number of government contractors that we represent.

It is hard to argue against truthfulness responsibility and accountability, but this bill does nothing to improve any of that. If it is accountability you want in the bill, the bill completely ignores that, that the Government already has a complete insight into all contractor activities, yet really has no insight into the governmental control of its internal activities. Furthermore, Congress has already addressed truthfulness responsibility and accountability by passing the Federal Acquisition Streamlining Act in 1984, Clinger-Cohen in 1996 and the Government Performance and Results Act. We do not need this new proposed legislation.

Simply put, TRAC is not about accountability at all. It is about killing competition and outsourcing.

Finally, although the PSE does not truly endorse public-private competition, if it must occur a better process must be put in place. The A–76 process is severely flawed and must be rewired to meet the government needs of today. A new model must be followed. It must clearly eliminate the built in conflict of interest in source selection. It must require the Government to utilize full activity-based cost accounting systems internally so real costs can be accurately accrued. It must eliminate the practice of technical leveling.

It must require that all offers, public and private, be subjected to similar best value evaluations and it must seek innovative solutions.

Mr. Chairman, PSE's position on this matter is aligned with recent goals announced by the Office of Management and Budget and the Bush administration. We believe that government industry outsourcing is good government. We believe that H.R. 721 is a redundant piece of legislation and could be devastating to the Government. We believe that A–76 reform is a must.

Although my comments before you today are short and to the point, they are further elaborated in my written testimony.

Thank you for your time this afternoon. I'll be happy to take any questions.

[The prepared statement of Mr. Lombardi follows:]

TESTIMONY OF

PAUL LOMBARDI

CHAIRMAN,

PROFESSIONAL SERVICES COUNCIL

Before the

The Committee on Government Reform
Subcommittee on Technology and Procurement Policy
U.S. House of Representatives

June 28, 2001

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June 28, 2001

Mr. Chairman and members of the subcommittee, thank you for the opportunity to provide testimony this morning on what I believe to be very important issues facing the Congress and the federal government. I am Paul Lombardi, president and chief executive officer of DynCorp, a major supplier of technical and professional services to the federal government. I am also the chairman of the Professional Services Council, the principal national trade association of technical and professional services providers. It is in that capacity that I appear before you this morning. Today, I wish to focus my remarks on the subject of outsourcing, both in industry and government.

Outsourcing is not a new concept. Indeed, if you look across the landscape of high-performing American companies, you will see a clear and ever-growing trend toward outsourcing non-core functions to enable companies to focus on their true missions and capabilities. The examples are everywhere. Microsoft outsources all manner of functions, from some of its own software development to the management and maintenance of its facilities. So too do companies like IBM, Boeing, American Express, AT&T, Federal Express, and many more. The June 11 issue of the *Wall Street Journal* contained a very interesting story about IBM, and its growth as a provider of outsourced services, which captured many of these critical themes and I commend the article to you. Many state and local governments are also now using competitive outsourcing to reduce costs and improve service. To cite just two examples, the city of Indianapolis found that an outsourcing strategy resulted in the city budgets dramatically being reduced while citizen satisfaction was dramatically improved. And the county of San Diego recently outsourced its information technology requirements. We also should note that effective use of outsourcing is not

limited to the United States. Outsourcing is being used around the globe to help companies be competitive in the fierce global marketplace.

Moreover, in virtually every one of these cases, the companies do not approach outsourcing as a necessary evil, which is how it is so often portrayed in government, but, rather, as smart and good management strategy that enables increased performance at reduced costs. They deal with their outsourced providers as partners with a common goal and vision. They focus on true performance metrics. They steer clear of micromanaging and dictating solutions and they rely heavily on innovative incentives and other arrangements to drive continual improvement.

Advances in technology and the advent of the Internet have changed the way all organizations, whether governmental or commercial, do business. Outsourcing is an essential tool in accessing and applying people and complex technology-based solutions and systems rapidly, with an emphasis on quality and value, and minimizing the expense and risk associated with the entire application life cycle, including acquisition, implementation, upgrades and support, and continual improvement. Increasingly these capabilities reside in the private sector and government needs to have ready access to them to enhance the performance of the missions, just as private companies, large and small, are doing.

I mention this because we collectively tend to approach government outsourcing from the wrong perspective. Too often it is cast as a "we vs. they" world, a world of good vs. evil. We focus too often on direct and immediate costs, to the extent government is even capable of measuring its own internal costs, as opposed to overall value, productivity and quality. Moreover, the debate is too often one in which the perception is that the government workforce is the problem when, in fact, we in the private sector view them as an asset that with significant frequency comes to work with us once a function is outsourced.

As such, I would like to recommend that any discussions this committee has on this topic be conducted from a balanced perspective and that it avoid the usual pitfalls that I outlined. Outsourcing is and should be about quality and performance; it is and should be about focusing on inherently governmental and core capabilities; and it is and should be about an active collaboration and partnership with the private sector to serve the taxpayer and customer better.

Further, there is a set of inarguable facts that I believe should underpin any discussion on outsourcing. One: outsourcing, conducted in the competitive marketplace, saves money and improves performance; two: the government has far greater visibility into and control over its contracted work than it does its own internal activities; three: the government workforce is a valued asset and should be viewed as such; four: in those cases where federal workers move to the private sector, face penalties on their pensions or other benefits, more can be done to protect their interests; and five: to the extent we continue to conduct public-private competitions, (and in many areas such competitions simply make no sense), a lot must be done to improve the process. In fact, the Professional Services Council has developed a strategy for public-private competitions and outsourcing that we believe contains important improvements. I would like to submit an outline of our approach to the committee for the record.

We know outsourcing saves money, and we know those savings are retained over time. One can argue that the government has inadequate systems in place to document, at the aggregate, global level, the precise amount of money that is saved through outsourcing, but that does not change the fact that competition and outsourcing work or the fact that at the activity level, there is full insight into the costs and performance of contractors—something that simply does not exist with internal government operations.

The General Accounting Office, as recently as March 2001, stated unequivocally that competition and outsourcing saves money. The Center for Naval Analyses reported this spring that not only are initial savings targets met, but also that long-term savings average approximately 34 percent. That study also clearly documented another fact that is critical to this discussion. In attempting to review 49 different activities, 25 won by contractors and 24 won by government activities, CNA was able to obtain adequate data and information to assess close to 60 percent of the contracted workload, but they could obtain only adequate data to assess 8 percent, of the in-house, government operations.

One of the constant refrains we hear from opponents of outsourcing is that once work is contracted out it disappears into some black hole of the private sector and the government loses all visibility and control. In reality, as the CNA study demonstrates, precisely the opposite happens. Between continual recompetitions of outsourced work; or the equally powerful potential for recompetition and loss of contracts; ongoing and sometimes overly aggressive auditing requirements; the increasing use of fixed price contracts; and the immediate and absolute visibility at the local, activity level of contract cost increases or reductions, the government actually knows a great deal about its contractors. However,

when we turn to internal government operations, the opposite is true. Local activity budgets do not include all costs, with many - such as some overhead, pension, construction, equipment and other elements - spread across many lines of an overall agency budget.

That is why moving to a real and meaningful activity-based costing (ABC) system is so critical. The taxpayers and customers of government's many activities deserve to know the full and complete costs associated with activities; and only by implementing effective ABC strategies would one ever have a complete picture as to the relative benefits of outsourcing. Indeed, logic suggests strongly that as the government moves in the direction of ABC, not only would visibility into total costs improve but so too would the documentation of the benefits of outsourcing. Even without all of the government's costs accounted for, we know today that competition and outsourcing save money. That picture would only improve when the government can more fully calculate its costs.

This, Mr. Chairman, is the reason that HR 721, the so-called Truthfulness, Responsibility and Accountability in Contracting Act, or TRAC, is a terrible piece of legislation. It would add unnecessary and redundant OMB reviews of all government service contracts, take away from responsible government managers the ability to pursue innovation and efficiencies and in the end, effectively stop all outsourcing and other services contracts and contract options, and thus deny the government a tool that has been proven, beyond any doubt, to be a source of efficiency and increased performance. It's hard to argue against truthfulness, responsibility and accountability, but this bill does nothing to improve accountability and, in fact, completely ignores the clear reality that the government has complete insight at the local activity level into all contractor costs and performance, but has little or no real insight into or control over its own internal activities.

I would contend that Congress already has addressed truthfulness, responsibility and accountability with the Federal Acquisition Streamlining Act of 1994, the Clinger-Cohen Act of 1996, and the Government Performance and Results Act. Together, these laws helped focus attention where it belongs—on performance and quality—inside and outside of government. For example, for government contractors, past performance is now a paramount source selection criteria, and we all know that if we fail to perform, if we do not perform as a truthful, accountable and responsible contractor, we cannot expect to get the kind of positive performance reports we need in order to win future business.

In addition, by requiring that ALL contracts be subjected to public-private competitions, the bill ignores the government's existing difficulties in attracting and retaining new talent and its fundamental inability to fully account for its own costs—a key element in making an appropriate sourcing decision. It ignores the benefits that have been proven to be derived from long-term strategic supplier relationships that incentivize investment and enable the government to leverage private sector capital. It ignores the complaint most often heard from both the unions and industry—that public-private competitions are very expensive to conduct, for both industry and government. And most of all, the TRAC Act ignores a fact that any objective observer would recognize: the government MUST be in a position to maintain robust partnerships with the private sector not only to enable the kind of business and other transformations that are so desperately needed, but simply to meet its mission.

To think, as proponents of the TRAC Act would suggest, that the government can go it alone is to ignore the lesson learned by the private sector over the last 20 years: a truly high-performing organization focuses on its core - or inherently governmental - functions, and relies on the competitive marketplace for the rest. To do otherwise threatens any chance the organization has of optimizing performance and optimizing its services to its customers.

Simply put, TRAC is not about accountability; it is about killing outsourcing and competition. And its genesis lies not in some mystery of contracting, but rather in the federal unions' concerns that as the workforce continues to age and retire, and as the private sector continues to dramatically outpace the government in terms of innovation, technology, people and processes, the government will not fully rebuild its organic workforce. For the unions, this becomes a crisis related to their membership rolls and dues base. That may be a legitimate concern. But I submit to you it is not a basis on which to make public policy.

If enacted, HR 721 would effectively stop all service contracts and inordinately delay decisions that have been expedited under the reforms of recent years. And if enacted, HR 721 could effectively slow down the entire government and cause untold damage to the citizens of the United States and our national security. Mr. Chairman, attached to my testimony is the Professional Services Council's white paper titled "OFF TRAC", which outlines in detail why HR 721 is not only a thinly veiled attempt to stop all forms of outsourcing, but also a great danger to the proper stewardship of the government. With your permission, I would like to submit it for the record as well.

Outsourcing often represents an exceptional opportunity for the federal workforce. As GAO noted in a recent report, the suggestion that contractors achieve their efficiencies through indiscriminate layoffs and sharply reduced pay and benefits, simply cannot be substantiated. From the perspective of a company that has been a service provider to both government and commercial customers for over 50 years, I can unequivocally state that such assertions ignore the fundamental reality of our business. PSC represents service providers. By definition, our work is people and technology driven. If we abuse or otherwise fail to invest in and support either component, we will lose our discriminator in a highly competitive marketplace. By and large, service companies invest far more in their people than does the government, not only in terms of total compensation, but also in terms of training, education and professional development.

Moreover, as the federal unions have been claiming for some time, there is a pay and benefits gap between the private and public sectors, particularly for the high-end technology-skilled workforce we all seek. Thus, it is counter-intuitive to suggest on one hand that contractors succeed by slashing salaries and benefits, and to then suggest a pay gap exists between the public and private sector.

The issue of benefits, particularly retirement benefits, should be carefully considered. There are undoubtedly cases in which federal workers suffer some penalties when work is outsourced, particularly if they are in the Civil Service Retirement System as opposed to the Federal Retirement System. Through appropriate soft-landing provisions, those disadvantages can and should be addressed. But in many cases, the outsourced workforce actually benefits financially. This is due to the private sector's tendency to match retirement contributions in ways the government does not. Moreover, many of those retirement eligible employees will draw their government retirements PLUS their compensation from the contractor, including additional retirement contributions. Thus, their total compensation actually rises. In such cases, workers often find that whatever loss they might experience relative to their government retirements more than made up for by this combination.

Finally, it is time to take aggressive action to address the many fundamental inequities in the current A-76 process. The process is seriously flawed and must be revised to meet the government's needs of today. A-76 was issued in 1955 in the Eisenhower administration and although it has undergone minor revisions over the years, it simply does not work in today's technology-driven environment. As I noted earlier, PSC has prepared a proposed strategic framework for dealing with this issue. It is based on several fundamentals:

*After agencies have clearly identified their commercial-type activities, (as required under the FAIR Act), they also should be given the authority to exercise their management discretion in determining which activities are suitable for public-private competition and which are not. It is clear to us that the more developmental, technologically driven and complex the requirement, the LESS it lends itself to public-private competition. In those cases, a simple competitive procurement and not an A-76 study is the appropriate outsourcing process.

*A new model for public private competition should be followed. That model must, among other things, clearly eliminate the built-in conflicts of interest in the current source selection process; require that the government be able to utilize full, activity-based cost accounting so the real costs and benefits can be accurately assessed; eliminate the practice of technical leveling which is fundamentally unfair contrary to sound business practices and requires companies to place at risk their highly valuable and critical intellectual property; require that all offerors, public and private, be subjected to similar best value evaluations to ensure that decisions truly represent the best interests of the government and drive government activities to true performance based standards that invite and welcome the best kinds of innovative solutions.

In conclusion Mr. Chairman, PSC's position is aligned with the recent goals announced by the Office of Management and Budget and this Administration. Outsourcing is being used ever more frequently in the commercial world as a key strategic, management tool that enables a company to focus on the things it must do and does best, while leveraging the competitive, profit-focused commercial marketplace for its remaining requirements. It does not amount to a judgment on the people involved; rather, it represents a recognition that collaborative, value-based relationships are "win-win" for customer and supplier and are part and parcel of smart management. The government does not have a profit motive, but like all companies it exists in a resource-constrained world and must serve its customers and stakeholders. Thus, those charged with its management, must have the type of flexibility and empowerment necessary to ensure optimal stewardship of the public dollar.

Thank you for your time and the opportunity to testify this morning. I look forward to answering any questions you might have.

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A New Model for Public-Private Competition

Background:

The Office of Management and Budget's recent guidance on implementing the Federal Activities Inventory Reform Act (FAIR) has renewed a long-standing debate over the proper relationship between the public and private sectors. It is a question of what the government should do and what the private sector should do. Two basic premises apply in this debate. First, inherently governmental functions, as embodied in Office of Management and Budget Policy Letter 92-1 of September 23, 1992, should be performed by government employees. Second, government should not compete with its citizens. In fact, federal government policy clearly directs federal agencies to rely on commercially available goods and services for all but inherently governmental functions, whenever available.

Despite this policy, the federal government, over the past few years, has acted in inconsistent ways. On the one hand, there has been new emphasis on outsourcing and privatization. On the other hand, in a variety of ways, federal departments and agencies have been encouraged to compete among themselves and with the private sector in providing services which are essentially commercial in nature. By creating these conflicts and inconsistencies, the government has put itself in the untenable position of customer, competitor, and adjudicator. These conflicting roles undermine its ability to provide effective policy and management leadership during a time of rapid and needed change in how the government operates and are creating an environment forcing most of these companies to the brink of exiting the government marketplace.

Fully understanding the clear advantages of relying on the private sector to the maximum extent possible for needed goods and services is complicated by the fact that government entities who are competing with the private sector are not subject to the same tax, accounting, auditing, and regulatory compliance requirements as the private sector. Ironically, while OMB Circular A-76 contains the government's policy of reliance on the private sector, it also sets forth the only methodology that the federal government has to determine and justify whether certain work should be performed by the government or by the private sector. Despite an attempt to improve the A-76 methodology in 1996, that methodology remains fatally flawed and should be replaced by a basic policy of direct outsourcing of those services that are not inherently governmental.

The New Model:

The Professional Services Council (PSC), a national trade association representing the for-profit professional and technical services industry, strongly advocates that all non-inherently

governmental activities be performed by private sector companies. However, PSC also recognizes the difficulty in transitioning to this ultimate state in a short time frame. Within that context, PSC advocates a short-term solution which accepts public-private competitions as a possible course of action for agencies, if the competitions are performed under a substantially improved methodology. This improved methodology is represented by PSC's New Model for Public-Private Competition. A transcending factor of this new model is the preservation and strengthening of agencies' abilities to access private sector capabilities and expertise without being forced to use a public-private competition.

This new model envisions:

- Agencies first performing surveys to clearly identify commercial type activities eligible for outsourcing, as required by the FAIR Act.
- Once completed, agencies should be allowed to exercise their management authority to conduct either private-private competitions or public-private competitions based on the character of each outsourcing candidate. This decision should include obvious factors such as past performance (of both industry and government) and the degree of developmental content, degree of risk, or demand for the cutting-edge technology required.
- If agencies chose to conduct public-private competitions, then they should use the new model as described below.

The model's goals include: leveling the playing field; utilizing best value source selection; greatly reducing the conflict-ridden, fox-in-the-henhouse syndrome; providing independent objective planning, analysis, and evaluation of resources; and ultimately fostering an environment where our nation's most capable and expert private sector companies want to do business with the federal government.

To achieve these goals, the new model corrects a number of critical deficiencies in the current process, including:

- Inherent conflicts-of-interest of source selection boards whose decisions directly affect members of those boards;
- The lack of full cost accounting needed to understand the benefits of a particular source selection decision;
- The absence of vehicles for constructive recommendations from the private sector;
- The patently unfair syndrome of technical leveling and transfusion;
- Characteristics that allow federal agencies to shift their energies away from fulfilling their own missions and to entrepreneurial activities solely to legitimize the existence of unnecessary excess capacity; and
- A distorted application of best-value procurement to only the private sector bidders and not the government bidder.

A New Model for Public-Private Competition

STRATEGIC OBJECTIVE

Create a policy and operational architecture for conducting public-private competition, which embodies objectivity and freedom from conflict-of-interest; equity and fairness; straightforward, consistent methodology; and best value principles in source selection.

KEY STRUCTURAL ROLES

1. **OMB Executive Function**
   OMB will oversee federal public-private competition policy and high-level implementing strategies.

2. **Public-Private Competition Advisory Committee**
   A FACA governed advisory committee, whose membership includes senior representatives from the public and private sectors, will advise OMB.

3. **Federal Competition Managers**
   A series of federal competition managers, who are separate and fully independent of the organization being subjected to public-private competition, will conduct public-private competitions. Representatives of organizations subjected to public-private competition will be precluded from any involvement in the source selection process.

4. **Independent Planning and Design**
   The development of the procurement package and the development of the government's best value proposal (including cost) will nominally be performed by a party retained by the independent competition manager described in number three above, using appropriate, accepted conflict of interest avoidance plans.

5. **Best Value Source Selection**
   Interested contractors and the government organization whose function is subject to the competition will develop proposals and compete with each other in a one-step process and on a best value basis.

KEY PROCESSES AND MECHANISMS

1. **Best Value Process**
   A straightforward definition of best value principals and procedures will be derived from existing sources (FAR 15, etc.).

2. **Estimating Government Costs**
   A simplified procedure for estimating government costs will be developed, reviewed, and approved by the advisory committee. This is a fundamental component to a workable system.

   - Special emphasis will be placed on identifying and consistently capturing all relevant indirect costs.
   - The contractor identified in number four above will develop case-by-case government cost estimates under the direction of the independent government competition manager.
   - Minor cost elements which do not yield to an apples-to-apples comparison will be taken out (i.e., normalized) of the best value equation.

3. **Soft Landing**
   Generic, standard "soft landing" procedures for displaced Federal employees will be incorporated in every solicitation to assure consistency and avoid any gaming in this most sensitive area.

4. **Information Integrity**
   Rules will be promulgated to assure that knowledge of the content of the government's and competing contractors' proposals is confined to those parties playing official roles in source selection.

5. **Technical Leveling/Transfusion**
   Rules will be promulgated strictly forbidding any form of technical leveling or transfusion.

PSC is the principal, national trade association representing the professional and technical services industry. Our sector's products are ideas, problem-solving techniques and systems that enhance organizational performance. Primarily, these services are applications of professional, expert and specialized knowledge in areas such as defense, space, environment, energy, education, health, international development, that are used to assist virtually every department and agency of the federal government, state and local governments, commercial and international customers. Our members use research and development, information technology, program design, analysis and evaluation, and social science tools in assisting their clients. This sector performs more than $400 billion in services nationally including more than $100 billion annually in support of the federal government.

OFF TRAC

H.R. 721 Would Grind Government to a Halt, and That's Bad for America

IT IS TIME TO SAY NO TO TRAC AND YES TO PERFORMANCE AND RESULTS.

H.R. 721, the Truthfulness, Responsibility, and Accountability in Contracting (TRAC) Act, purports to be a reasonable effort to ensure the U.S. government gets what it pays for in contracting. In reality, the bill would grind government to a halt. TRAC is a thinly veiled attempt to stop government outsourcing and require the in-sourcing of commercial work along with a massive build-up of the federal workforce, regardless of cost or performance. If passed, in whole or in part, the TRAC Act would seriously threaten the government's ability to meet its many diverse missions.

PROFESSIONAL SERVICES COUNCIL

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PSC
PROFESSIONAL SERVICES COUNCIL

H.R. 721 WOULD GRIND GOVERNMENT TO A HALT...
AND THAT'S BAD FOR AMERICA

TRAC Facts

1. The TRAC Act is about killing competition; it is not about accountability, performance, or responsibility. The GAO and virtually every other objective body have reached the same conclusion: Competition saves money. So why kill it? Some have raised concerns about whether government agencies can track precisely how much money they are saving through outsourcing; however, as the GAO and others also stress, the issue is not *whether* money is being saved, but *how much*.

2. The TRAC Act would impose a potentially permanent moratorium on all outsourcing for government services. While the bill speaks to a temporary moratorium, it offers no end and establishes a series of burdensome and, in some cases, unattainable requirements for agencies to meet before the moratorium is lifted.

3. The TRAC Act does not subject government agencies and activities to the same degree of responsibility and accountability applied to competitively awarded contracts. The TRAC Act focuses solely on work to be competitively outsourced and ignores the billions of dollars of commercial work performed by government employees. The TRAC Act is not about meaningful accountability and performance. It is a draconian measure that would cost American taxpayers billions of dollars.

4. The TRAC Act would cripple federal agencies. The TRAC Act would make it impossible for agencies to function because of the requirement to conduct thousands of costly public-private competitions. It ignores the government's human capital crisis, its difficulty in recruiting and retaining personnel, and its inability to keep pace with private sector innovations. The TRAC Act would force agencies to hire thousands of technology workers at a time when it is losing thousands both to retirement and the more competitive private sector.

"COMPETITION AND EFFORTS TO IDENTIFY MOST EFFICIENT ORGANIZATIONS ARE KEY TO ACHIEVING GREATER EFFICIENCIES AND SAVINGS."

- U.S. GENERAL ACCOUNTING OFFICE, *MARCH 2001*

5. The TRAC Act ignores the fact that almost all of the work it covers already is routinely competed in a robust and competitive marketplace. Assuming the moratorium were lifted, the TRAC Act would require that every contract, modification, task order, renewal, or recommendation undergo a lengthy public-private competition, regardless of whether the government has the requisite skills and personnel to perform the work. This new bureaucratic process overlooks existing procedures enabling contracted work to be brought back in-house. Instead, under the guise of "good government," the bill would create a chaotic environment where the only goal would be to build up the federal workforce rather than serve the interests of the American taxpayer.

6. The TRAC Act would require the preparation of redundant reports and data, overwhelming the government workforce and diminishing government interest in pursuing competition. Much of the information the TRAC Act requires is mandatory under other statutes. The sheer volume and scope of additional reporting required would cause agencies to shun competition, despite evidence that competition drives higher performance and greater efficiency.

7. In 2000, Congress directed the General Accounting Office to convene a blue ribbon panel to study and make recommendations on commercial activities and outsourcing. Before contemplating legislation as radical as the TRAC Act, Congress should wait until the GAO panel concludes its work and issues its report.

IT IS TIME TO SAY NO TO TRAC AND YES TO PERFORMANCE AND RESULTS.

"GET RID OF TRAC. DOD COULD NOT FULFILL ITS MISSIONS IF IT WERE TO PASS"

- BUSINESS EXECUTIVES FOR NATIONAL SECURITY, *MARCH 2001*

Mr. TOM DAVIS OF VIRGINIA. Thank you very much. Mr. Psomas.

Mr. PSOMAS. Thank you, Mr. Chairman. Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you this afternoon and to share my views on the outsourcing of government commercial activities. My name is Tim Psomas. I'm president of Psomas Engineering, a California-based company that provides professional engineering services to both the public and private sector. We provide civil and environmental engineering, surveying and geographic information systems services to the Federal Government.

My firm is an active member of the American Council of Engineering Companies [ACEC], which is the primary business association of the engineering industry, representing over 5,800 engineering companies in the United States and totaling over 500,000 employees. These firms range from large multi-disciplined architectural and engineering firms to small business and minority-owned firms. Regardless of size, ACEC members deliver vital infrastructure services to the American people, including the design and construction of roads, airports, power plants and waste water treatment facilities, the safe disposal of unexploded ordnance, the clean-up of Superfund sides and brownfield redevelopment. The quality and innovation that ACEC's members bring to the environment ensures the safety of those who ultimately pay for these services, the U.S. taxpayers.

Today's topic, outsourcing of government commercial activities, is the No. 1 issue of ACEC this year. We applaud the Bush administration for campaigning on the importance of outsourcing in smart government, and we appreciate the efforts of Mitch Daniels, Director of OMB, and his Secretary Angela Styles for advancing the concept of best value procurement.

The debate that is currently taking place regarding the outsourcing of government commercial activities occurs at a critical time for the U.S. Government. As Federal agencies face tight budgets and a looming capital crisis, a human capital crisis, the need to efficiently allocate scarce resources has become increasingly important. Outsourcing is a proven management tool that directly contributes to enhanced performance through improved quality, reduced standby costs, increased innovation and access to technical expertise not available in-house.

Regarding improved quality, outsourcing provides a direct source of accountability and responsibility by tying contractor compensation to the successful implementation of contracts.

Regarding reduced standby costs, most public agencies have found that it is not cost efficient to retain highly specialized individuals for work that is infrequent and use outsourcing as a means to easily draw upon a reliable pool of expertise.

Regarding increased innovation, when private firms are required to compete for the government contracts, a climate is created that spurs new ideas and innovative thinking.

And regarding access to expertise, as private engineers are exposed to a wide variety of clients with challenging projects, they often bring unparalleled experience to their assignments.

I am particularly interested in commenting on anti-outsourcing legislation that was introduced in February, as I am a veteran of

a similar battle that occurred in the State of California, and let me tell you my story.

In 1998, the professional engineers and California government introduced Proposition 224, which aimed at severely limiting outsourcing. The reasons were similar to the reasons articulated by representatives of the Federal Employees Union. Chief among them was the supposed high cost of contractors. The union argued that a cost comparison is the only fair way to choose the design team. What they didn't say is that their proposed method of comparing costs was anything but fair, as it would take into account only the marginal cost of State work and compare them with the total cost for private work, and the competitions that were proposed would require a long process of solicitation with various government agencies and locations throughout the State, an untenable situation.

Despite the attempt of the union, 62 percent of California voters rejected the idea that the use of private design consultants by State and local public agencies should be severely limited. A huge coalition, including private sector unions, local governments, broad based business groups, taxpayer groups, contractors, transportation groups and ANE firms vocally opposed Proposition 224. Following defeat of that proposition, the engineering industry led a coalition that sponsored a ballot measure to change the California State constitution to allow State and local governments to outsource architectural engineering services.

Along with Federal contractors, the engineering industry was disappointed that the TRAC bill was reintroduced this year. The legislation is not only out of step with current trends in Federal procurement, but it's also out of step with the advice that the multilateral development banks give to former Soviet bloc countries as it would dramatically increase the size and scope of government. As with the PEG initiative in California, this legislation is based on a flawed assumption that government contractors are not held accountable for cost performance. Performance of outsourced measures is routinely measured and monitored in the Federal system.

Mr. Chairman, thank you for allowing me to share my thoughts on this important public policy issue.

[The prepared statement of Mr. Psomas follows:]

TESTIMONY OF TIMOTHY PSOMAS
BEFORE THE
HOUSE SUBCOMMITTEE ON TECHNOLOGY AND PROCUREMENT POLICY
HEARING ON
OUTSOURCING OF GOVERNMENT COMMERCIAL ACTIVITIES

JUNE 28, 2001

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you this afternoon to share my views on the outsourcing of government commercial activities. My name is Tim Psomas, President of Psomas Engineering, a California-based company that provides over $65 million in professional engineering services to both the public and private sector. Psomas Engineering provides civil and environmental engineering, surveying and geographic information system services to the federal government.

My firm is an active member of the American Council of Engineering Companies (ACEC), the primary business association of the engineering industry, representing over 5,800 engineering companies in the United States totaling over 500,000 employees. These firms range from large, multi-disciplined, architectural and engineering firms to small business and minority owned firms. Regardless of size, ACEC members deliver vital infrastructure services to the American people including the design and construction of roads, airports, power plants, and waste water treatment facilities, the safe disposal of unexploded ordnance (UXO), the cleanup of superfund sites, and brownfield redevelopment. The quality and innovation that ACEC's member firms bring to the built environment ensures the safety of those who ultimately pay for these services – the US taxpayer.

The federal government has long benefited from the expertise of private engineering firms. My firm and those of many of my colleagues' would choose to offer more of our talents to the government if more of its commercial activities were open to the private sector. Federal Civilian Workforce Statistics, a document released by the Office of Personnel Management in September of 2000, suggests that there is much room for improvement. The report identifies over 123,000 engineering and architectural positions within the federal government. Many of these individuals are performing work that is not inherently governmental and thus, directly competing with private industry.

Outsourcing as a Management Tool

The debate that is currently taking place regarding the outsourcing of government commercial activities occurs at a critical time for the US government. As federal agencies face tight budgets and a looming human capital crisis, the need to efficiently allocate scarce resources has become increasingly important. In order for federal agencies to provide the best service to US taxpayers, they must concentrate on strengthening their core (inherently governmental) mission and outsource other activities to private industry. Outsourcing is a proven management tool that directly contributes to enhanced performance through improved quality, reduced standby costs, increased innovation, and access to technical expertise not available in-house.

- ***Improved Quality:*** Outsourcing provides a direct source of accountability and responsibility by tying contractor compensation to the successful implementation of contracts. The increased trend towards performance based contracting at the federal level means that contractors are even more accountable for delivering quality services within budget. As past performance is also a key determinant in securing new work, most contractors are vigilant in ensuring that their work meets or surpasses a client's expectations. Contractors who deliver low quality services fare poorly when bidding on future contracts. Our free market system delivers the ultimate accountability by quickly weeding out underperforming contractors.

- ***Reduced Standby Costs:*** Most public agencies have found that it is not cost efficient to retain highly specialized individuals for work that is infrequent and use outsourcing as a means to easily draw upon a reliable pool of expertise. One of the key benefits of outsourcing is that it allows agencies to better accommodate fluctuating demand for labor, thereby reducing standby costs. Following the Loma Prieta and Northridge earthquakes, Caltrans, the state transportation agency, began an intensive seismic retrofit project of all California highways. In fiscal years 1996-97, Caltrans purchased 1,250 man-years of highly specialized seismic design work from private engineering firms. Once the work was completed, the firms redeployed the engineers to other assignments around the globe. Had Caltrans decided to perform the work in-house, it would have had to lay off these engineers or maintain a staff that far exceeded its need for this expertise.

- ***Increased Innovation:*** When private firms are required to compete for government contracts, a climate is created that spurs new ideas and innovative thinking. This is especially true when government specifies desired results and requires a contractor to develop innovative methods of achieving those results.

- ***Access to Expertise:*** As private engineers are exposed to a wide variety of clients with challenging projects, they often bring unparalleled experience to their assignments. To again use California as an example, many engineers who participated in the Caltrans seismic retrofit program took their experience to other seismically active areas of the world such as Turkey, a country whose government did not possess strong capabilities in this area. By tapping the expertise of the American engineering community, the Turkish government helped to dramatically improve the safety of its infrastructure, and as a result, thousands of lives will be saved should another devastating earthquake hit that nation.

The above are a just a few illustrations of the benefits of outsourcing, though there are numerous others including faster project delivery and lower project costs. Outsourcing is a concept that I've embraced as president of Psomas Engineering. My company outsources a variety of services that could be performed with in-house staff. These services range from public relations assistance, and human resource support, to training administration and ESOP management. These services are outsourced to achieve all of the benefits mentioned above. In addition, approximately 20% of our revenue is generated by the inclusion of sub-consultants on our project teams who bring special expertise to specific client needs. In each case we have made a policy decision to buy rather than perform services that are not in our core business.

Major Challenges Facing Government Outsourcing and Suggested Initiatives

While it is clear that outsourcing is a valuable management tool, it is also recognized that it may not be appropriate for all situations. Ensuring that outsourcing makes good business sense is one of the major challenges facing public agencies when determining what and how much to outsource to private industry. In the past, many public sector agencies approached the concept of outsourcing in an ad hoc manner that focused more on cost cutting than improving overall performance and efficiency. Unfortunately, this has sometimes led to less than perfect results.

ACEC proposes that Federal agencies approach the question of what to outsource by applying basic business principles that stress the importance of focusing on core competency. The 1993 Government Performance and Results Act (GPRA) and the strategic planning process that it engenders may be an excellent vehicle by which to identify functions that are not within an agency's core competency and thus, able to be outsourced. GPRA mandates that agencies create strategic plans, set performance goals and report on progress in achieving them. As agencies go through this process, they should consider outsourcing initiatives that make sense from the standpoint of improving efficiency and focusing on core competency.

Another challenge facing the federal government as it continues to outsource is how to confront the human capital crisis that is increasingly evident. My firm is awarded over $5 million in contracts annually with federal government agencies, including the US Army Corps of Engineers, the U.S. Navy, and the National Park Service. We find that contract managers within these agencies are, for the most part, well trained, highly motivated, and competent. They are technically knowledgeable and capable of prudently negotiating scope and budget to accomplish the work at hand. They care about their work and perform in the best interest of the taxpayers. However, many are approaching retirement age and we are concerned as to who will replace them. My colleagues at other firms have expressed similar concerns.

On the other hand, some ACEC member companies are engaged in building design work for the Navy, the Post Office, the Corps of Engineers and the Air Force report that architects and engineers employed by the government lack the ability to write performance work statements. Members report that many professionals in government are too involved with design details and don't understand how to write a work statement for architectural and engineering design of building projects. Additional training for government architects and engineers should include mentoring of junior staff as well as formal education on project management, contract administration, scoping, budgeting and scheduling.

Low Price as a Deciding Factor in Competitions and the Role of Best Value

While the discussion of whether or not to outsource government commercial functions has often been portrayed as a battle between government employees and private contractors, the real issue is ensuring that the government achieves the best value for the taxpayer.

While many competitive contracts are awarded on low cost, Federal law (40 U.S.C. 541 et. seq.) requires that architectural, engineering and design related services be procured on a two-step, best value basis: first, selecting the best-qualified team and second, negotiating the most favorable scope and fee. This law is often referred to as the Brooks Act or Qualifications Based Selection (QBS). Using this procurement method, competition is significant and heated. However, rather than price, qualifications is the determining factor in awarding a contract. The winning contractor must demonstrate best qualifications for the specific project and services. This includes not only successful firm experience with the specific project type, but also availability and commitment of specific senior professionals to manage and accomplish the assignment. In the event that the government is unsuccessful in reaching an agreement on project scope and fee with the most qualified contractor, the second most qualified contractor is engaged in a negotiation. Through QBS, taxpayers are guaranteed to receive best value as the most qualified firm is selected at a fair price. I believe that the public would be well served if more projects were procured using a process similar to QBS.

Impact of H.R. 721 on the Contracting Community and Federal Government

I am particularly interested in commenting on anti-outsourcing legislation that was introduced in February as I am a veteran of a similar battle that occurred in the State of California. In 1998, the Professional Engineers in California Government (PECG) introduced Proposition 224 which aimed at severely limiting outsourcing. The reasons were similar to the reasons articulated by the representatives of federal employee unions -- chief among them was the supposed high cost of contractors. The PECG union argued that a cost comparison is the only fair way to choose the design team. What they didn't say is that their proposed method of comparing costs was anything but fair as it would only take into account the marginal costs of state work and compare them with the total cost for private work. In other words, state costs were only the incremental costs of doing another assignment and did not include a pro-rata share of the cost of the agency. If a fair process for cost comparison were found, it would involve rewriting the accounting program for state government. And each competition would require a long process of solicitation within various government agencies and locations throughout the state-- an untenable situation.

Another issue that was raised during the Proposition 224 campaign was accountability. PECG advanced the notion that an additional 25% of the consultant fee amount would be required to fund quality control over a contractor's work. Our industry has successfully argued that regardless of whether the work is done by private consultants or internal staff, the same process of quality control and accountability is appropriate. Caltrans has come to our industry's point of view and is currently installing just such a process with our input.

Despite the attempt by the PECG union, 62% of California voters rejected the idea that the use of private design consultants by state and local public agencies should be severely limited. A huge coalition, including private sector unions, local governments, broad based business groups, taxpayer groups, contractors, transportation groups, and architecture and engineering organizations vocally opposed Proposition 224.

Following defeat of Proposition 224, the engineering industry led a coalition that sponsored a ballot measure to change the California State Constitution to specifically allow state and local governments to outsource architectural, engineering and other design related services. In approving the measure 55% to 45%, voters established public policy in California that state and local government should take advantage of commercially available services in delivering government to the people of the state.

Along with other federal contractors, the engineering industry was disappointed that the TRAC bill was reintroduced this year. The bill alleges to be about bringing truthfulness, responsibility, and accountability to federal contracting, but instead is an attempt to halt government outsourcing, and increase the federal workforce regardless of cost or quality. The legislation is not only out of step with current trends in federal procurement, but it's also out of step with the advice that multilateral development banks give to former Soviet bloc countries as it would dramatically increase the size and scope of government.

As with the PECG initiative in California, this legislation is based on a flawed assumption – that government contractors are not held accountable for cost or performance. Performance of outsourced functions is routinely measured and monitored in the federal system. On federal projects that my firm has worked on, the government held us accountable for cost, schedule, quality, safety and innovation. The process is really quite simple. The contracting officer does not approve payment until we have satisfied the requirements of our contract with the government. As stated earlier, the private sector bears the ultimate accountability – if work is continually performed poorly, the contractor will cease winning work.

If passed, H.R. 721 would have a devastating impact on the private engineering industry as it would impose a moratorium on all outsourcing for government services. While the bill speaks to a temporary moratorium, it offers no end and establishes a series of burdensome and, in some cases, unattainable requirements for agencies to meet before the moratorium is lifted. H.R. 721 would bring millions of dollars in infrastructure projects to a grinding halt and would jeopardize public safety. This is despite union claims that architecture and engineering firms are exempt under a construction waiver in Section 10 of the legislation. As written, the bill exempts construction of new structures but fails to exempt services that lead to construction such as program definition, preliminary studies, feasibility reports, design and construction phase services.

The legislation would require extensive public-private competitions, which typically take three or four years to conduct, before any existing contract could be renewed or recompeted, whether or not the functions performed under the contract ever were, could be, or should be performed by the government. Furthermore, this provision would reverse the 30 year old law requiring that engineering services be procured on a QBS basis. In short, the call for increased public-private competitions which are selected on lowest price is not a good model for the future. Again, the focus should be on achieving best value.

Commercial Activities Panel

The engineering industry is concerned about the reintroduction of H.R. 721 in that it comes at a time when the General Accounting Office (GAO) convened a national panel to review the performance of commercial activities, public-private competitions, and other related issues. This panel is due to report its findings to Congress in March of 2002. Any attempt to advance legislation (either pro- or anti-outsourcing) that would interfere with the panel's deliberations would be precipitous.

The engineering industry is fully engaged in the work of the Commercial Activities Panel and is hopeful that significant reforms to the outsourcing of government commercial activities will be included in the panel's report to Congress. We remain hopeful that during their deliberations, panel members are mindful of the spirit of OMB Circular A-76 which reads:

> ***"In the process of governing, the Government should not compete with its citizens. The competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services the Government needs."***

I truly hope that the wisdom that prevailed over 45 years ago continues to be recognized today.

Thank you again for allowing me to share my thoughts on this important public policy issue.

Mr. TOM DAVIS OF VIRGINIA. Thank you very much. Colonel, thank you for being here. You're last, but not least. Save the best for last.

Mr. FLOYD. Absolutely. I thank you, Mr. Chairman and members of the committee, for allowing me to testify this afternoon on these issues. Like the gentlemen, before me I've already submitted my information for testimony. I want to summarize a couple of things here that are important to my group.

My name is Aaron B. Floyd. I'm a Colonel, retired from the Air Force, and I own a company, a small business, and I represent 110 other small business persons, all colonels or majors or lieutenant colonels from the Army, Air Force and Navy. We have, last year we, combined, our income was like $400 million. We provide jobs for thousands of people around the Beltway, thousands of folks, and we are Federal Government employees before when we're on active duty. Now we're on the other side of the street, and we think that outsourcing is the way to go. We actually believe that because we can see it as it works out, because if you don't outsource then where are we going to go, what are we going to have for ourselves in terms of work? We've earned it, we're veterans, we fought in the wars, and now we own companies and want an opportunity to participate, and outsourcing gives us that opportunity.

We believe that the TRAC legislation goes the wrong way. We believe if it goes the way it's purported to go it will stop competition and stifle it, and it will create a lot of folks on payrolls that don't need to be there. We believe a fair and equitable way to do that is the A–76 and the way it is going. I want to make that clear from my group.

There's one other thing that my group is concerned with, however, that is not on the agenda, and that's the effect of bundling. We believe as small business persons that the way bundling is now done is not fair for us. Right now the Government takes the large—the contracts and gives them to a bunch of large guys and then the little guys only get what's left, and we can't compete with Lockheed Martin and the other large companies involved, and the only way you can grow a small company is to have one prime contract. You don't get one when you bundle. When you bundle the only contract you get is a subcontract. With a subcontract all you get is a technical person and you don't get any money for overhead or for finance or all the things that requires a company to be a company.

So I have survived in this business for 13 years. I have one great contract that is not bundled. I won it fair and square in competition and—but it was a small contract when I got it, about $7 million. Now it's worth about $28 million. I am the readiness contractor for the Pentagon. I run the readiness data base that tells the chairman, when he wants to send people to Kosovo it tells him what forces can go and their readiness status. I am surviving because I'm the prime on that contract, and I have been able to grow it that way. If I was not the prime, I wouldn't be here talking to you today. So bundling is anti-that. It keeps us from being private; it's the antithesis of allowing small businesses to grow.

Those are basically my comments. I think basically again the A–76 is a good practice and it just needs to be fine-tuned. The FAIR Act is basically fair, and TRAC is a bad bill.

Thank you.

[The prepared statement of Mr. Floyd follows:]

Retired Military Officers Association response to Congressional Inquiry

What do you consider the major challenges facing government outsourcing? What initiatives do you proposed to address these concerns?

The major challenges facing government outsourcing, relative to FAIR, is the perception among contractors that the playing field in not level. FAIR does not subject government agencies and activities to the same degree of scrutiny and accountability as non-government contractors. When non-government contractors win an award, we have to live with the bid price, even if it means taking a loss. We have observed that conversely government winners often use other available government resources, including uniformed military personnel, to insure contract performance, with the taxpayer paying the cost. We propose that all A-76 awardees undergo an objective and detailed annual in-depth audit to insure a level playing field is maintained.

Should the lowest price continue to be the deciding factor for job competitions? What is the benefit of using best value as the benchmark?

We have always been concerned when the lowest bidder is awarded a contract. Most of us wouldn't want to fly in an airplane, if we knew the lowest bidder manufactured it. The same rationale should apply to government contracting. We believe that a weighted average, i.e. Best Value, is a much better approach, since it includes scrutiny of performances on previous similar contracts, cost overrun records and other areas deemed appropriate, to obtain a balanced view. We also think the Request for Proposal (RFP) method should be used as often as possible since this process enables the government ample time to evaluate all proposals, for the best value, using standard evaluation criteria.

Are federal employees adequately trained to write performance work statements for job competition and manage contracts awarded to the private sector? What further training would assist federal employees?

While a few federal employees excel at writing work statements for job competition, that is not the norm. Most work statements are boiler-plates, voluminous and poorly written, and often fuel disputes between the contractor and the government contracting community. To help alleviate these disparities, we propose that all government proposal writers receive specific writing training from one of the many local firms that offer such training.

Please discuss the affects of the proposed bill H.R. 721, the Truthfulness, Responsibility and Accountability in Contracting Act. What effects would the bill have on the federal government and the contracting community.

H.R. 721, the Truthfulness, Responsibility and Accountability in Contracting (TRAC) appears to be the anti thesis to outsourcing, as it fosters "in-sourcing" by imposing a potentially permanent moratorium on all outsourcing of government services. The bill states that it is a temporary moratorium, but it affects, if enacted would permanently cripple government out-sourcing as it is correctly practiced. TRAC requires the "in-sourcing" of commercial work along with a massive build-up of the federal workforce, regardless of cost or performance. It refers frequently to accountability, performance and responsibility, but it's passage would kill competition. TRAC even proposes to return work that has already been outsourced back in-house. As Small Business owners we are naturally concerned about losing contract opportunities, but as we are more concerned as taxpayers because this bill would build up the federal workforce to previously unheard of levels, and be difficult or impossible to reverse once these additional federal employees are on the payroll and protected by federal employee guarantees. In 2000, Congress directed the GAO to convened a blue ribbon panel to study and make recommendations on commercial activities and outsourcing. We recommend that no decision be made on TRAC until the GAO panel concludes its work and issues a report.

The Federal Activities Inventory Reform Act requires federal government agency heads to provide to OMB an inventory of agency functions that are not inherently governmental. Please comment on the federal agencies' implementaion of the FAIR Act. Discuss any flaws you see in the commercial activities reporting process required by the FAIR Act.

The FAIR Act is basically fair, however we would offer some modifications to make FAIR more user friendly. For example, the information provided in the Federal Agency Fair Act inventories is not sufficiently detailed to allow a contractor to determine the suitability of the many classification codes assigned. Secondly, there are inconsistencies where functions contracted to private industry at one location, are ineligible for competitive outsourcing at other locations. There are also instances where positions have been classified as exempt from competition due to public law or executive decision, with no supporting law or decision cited. Finally, many of the positions listed in the DoD's Fair Act inventory of commercial activities are not performed by civilian government employees, but rather by military personnel, but this important and critical distinction is not included on the inventory. This widespread practices "skews" the Act in favor of the government.

Other outsourcing concerns

In addition to the particular outsourcing issues, the RMOA membership is also concerned with the negative effect that contract bundling is having on limiting most small business opportunities for prime contracts, thereby seriously effecting our opportunities for growth. As you are no doubt aware, obtaining a prime contract is the only way most small businesses can sustain stable growth and vitality, because a prime contractor receives overhead expense reimbursement that allows a firm to hire permanent staff in the most critical corporate areas like program management, accounting and finance,

contract management and administrative support. Subcontracting does not allow for these overhead expense reimbursements. The trend so far is that almost all entire prime contracting opportunities have been awarded to large prime contractors. The Small Business Subcontractors are limited to filling Technical personnel vacancies. While we recognize that the Federal government realizes many cost efficiencies through bundling due to economics of scale, if this trend continues unabated it will decimate the ranks of small businesses persons being able to attain prime status. We are certain that this was not the intent of the bundling legislation, but we are convinced that it will be the inevitable result.

One ray of hope we noted recently, when twelve (12) Small Businesses formed a "Consortium" called TeamQultec to bid on a large Naval Air Systems Command (NAVAIR) contract and won a $698 Million 10-year award. This is the only such instance of a bundled contracts being awarded to a team of Small Businesses. We urge your support in continuing this trend. For your information the RMOA consortium is comprised of 110 diversified commercial businesses, whose ownership includes African-American, male & female Military Veterans. RMOA members annual receipts are in excess of $400 Million, and together we employ thousands of individuals in the Washington Metropolitan area and elsewhere in the United States and overseas. Our Business expertise consortium members who qualify as 8(a); SDB's; Small Business: Women-Owned Business; Veteran and Disabled Veteran Owned Business, established quality programs including, ISO 9000, numerous GSA & DoD contracts vehicles.

I am certain that we are not the only consortium in existence, and we urge that you give special attention to insuring that awards to consortium/teaming unions among small business become a viable alternative.

Mr. TOM DAVIS OF VIRGINIA. Thank you very much. Well, let me start the questioning. OK. First, let me ask Ms. Kelley, let me ask you and Mr. Lombardi and Mrs. Armstrong, when is it appropriate to outsource? Can you describe in your opinion when is it appropriate to go outside government for contracts? Can you give us some idea where you think this might be appropriate?

Ms. KELLEY. I think it's always fair to ask the question of if it's appropriate to contract out, and on that point when the question is asked, the processes have to be in place to ensure that the right questions are being asked, and if the answer is yes, then the question is what are the procedures that should be used, and all of these things are things that are being looked at and under the purview of the Commercial Activities Panel. These are exactly the questions that this panel is wrestling with and that will be part of the report in May 2002.

Mr. TOM DAVIS OF VIRGINIA. Are you comfortable that you're having adequate input into that panel and having a dialog with people on both sides of this issue?

Ms. KELLEY. Yes, there is a lot of dialog, a lot of input and I actually believe everyone on the panel has come there with a very open mind and a very good listening mode. We've been sharing incredible amounts of information even though we have different opinions perhaps on what the solution is, but I'm hopeful that as we work through the process, by the time it's time for our report we will have been able to learn and absorb all of this and come up with the best answers for the Government in this recommendation.

Mr. TOM DAVIS OF VIRGINIA. I think this committee is eagerly watching what happens there. That doesn't mean we won't act before or after or will even act on it, but we think it is a good format for exchanging views, and as you can see, even among Members from both sides there's a lot of different views on this. So I think the dialog is important. So everyone understands everyone's position because I'm not sure anybody's wrong here but there are different perspectives as we get into it, and I think we need to be guided at the end of the day by the best value for the American taxpayer. That's my own view on this. I appreciate the comment.

Mr. Harnage, do you have any comment?

Mr. HARNAGE. Yes. And you know we haven't implied an end to A–76 and we haven't implied an end to outsourcing. We've noticed today and before today there's a lot of people like hollering fire in a theater. What amazes me so far is that everybody wants to throw away the solution rather than develop the solution. If there's some problems with TRAC let's talk about the problem with TRAC and make it a better piece of legislation rather than just say we don't want any transparency, we don't want any accountability of the contract.

Certainly there are times that outsourcing makes sense. The construction industry, for example, would be the first one that would pop to my mind, something that we only have a temporary need, whether it be a 3-month construction project or a 2-month construction job, probably too expensive for the Government to maintain that capability in-house, but it makes sense to keep the maintenance of that construction once it's done in-house. The same with we don't want to build aircraft, but it makes sense that once the

aircraft is turned over to the Government the Federal employees, the military people maintain that aircraft, because it's really not cost efficient for that contractor to maintain that inventory. They want to move on to bigger, newer and better aircraft.

So there are areas that surely it makes sense to outsource, and our position has not been to end the outsources as some people might want to imply.

What we're asking for is competition and the opportunity to compete for the jobs, and what we're asking for is that it not always be our job that's competed. OMB says competition saves money, but why does OMB say but we are only going to look at the Federal employee? We're saying let's look at new work. If it makes sense to bring it in-house, if we can do it better and less expensive, why not do it, why is it a foregone conclusion that it is going to go outhouse, and that's a pun intended.

Mr. TOM DAVIS OF VIRGINIA. OK. Ms. Armstrong.

Mr. ARMSTRONG. I think there are cases where outsourcing is useful. It's certainly been used successfully since BRAC and the defense depots, mainly out of necessity more than the choice. For example, at the depots they always carry a quadrille of contractors that work on the aircraft itself and that's beneficial. When you have a certain workload, you can hire contractors, and when the workload goes down, you can let them go. But as far as where it's best used, I think that partnering with industry to bring in new technology to help train Federal workers in those areas, those core skill areas, is helpful. You don't exactly want to turn over your core functions to contractors, but have them come in and partner. I think that's beneficial, and that's the Federal manager can make that decision.

Mr. TOM DAVIS OF VIRGINIA. That's helpful. Mr. Lombardi, let me ask and you and the panel on the other side. We always get in this fight of price versus value. This has been, ever since I have been involved in government contracting, the question is should price drive it, should value drive it. Do you have a general philosophy of where you think price ought to drive it? Clearly, if you are cutting grass or something, price ought to be the determinative, but when you get into some of these complex IT areas, building a spaceship, you need to look at overall value. Do you have a criteria on what ought to be price and value driven or do you think they're intertwined?

Mr. LOMBARDI. Yeah. I would say, Mr. Chairman, they're somewhat intertwined. It's difficult in every case to generalize that price is the only issue. The Government has gone a long way, I believe, in terms of bringing best value back into the procurement process. Price is an issue, that's part of the best value, but certainly quality performance, innovation, technology, bringing technology to bear where it hasn't been before. That's what the private sector is here to support.

Mr. TOM DAVIS OF VIRGINIA. So basically you're saying you get more innovation at the private level and that's what you get by bringing that into the processes?

Mr. LOMBARDI. I think what the Government has always depended upon is to bring technology and innovation to the table.

Mr. TOM DAVIS OF VIRGINIA. OK. I appreciate it. Any comments on it?

Mr. PSOMAS. Mr. Chairman, thank you. In that regard the AE and design-related services industry has been somewhat fortunate to have the advantage of the Brooks Act procurement process, which is really a two-step best value procurement whereby the competition is really for qualifications and the availability of the best qualified, the individual who can deliver that service to the Government, and so on that basis a selection is made. And then the second step is the negotiation of scope, fee, budget, schedule with the contractor that's selected to do that work. So again the AE industry perhaps has a good deal of experience with a competition that is really a two-step, best value competition.

Mr. TOM DAVIS OF VIRGINIA. Thank you very much. Colonel Floyd, you want to add anything to that?

Mr. FLOYD. Just finally, I think the two watchwords ought to be fairness and equity on any legislation we're talking about, and that's what I think that my constituents would like me to ensure, that in it all, whether it be TRAC or whether it be A–76, that it's fair and equitable and there's an opportunity for all of us to participate.

Mr. TOM DAVIS OF VIRGINIA. Thank you. Mr. Turner.

Mr. TURNER. Thank you, Mr. Chairman. One of the issues that I'd be interested in your comments on is this initial decision as to whether or not to allow a public-private competition, and I noticed Mr. Lombardi in the suggestion that you had made of the Professional Services Council model for public-private competition, it addresses a number of the deficiencies that you see in the current A–76 process, but your model assumes, as I read the presentation of it, that the agency would first make the determination as to whether or not they should conduct a private-public competition based on what you referred to in your statement as some obvious factors. I want a little help on this because there clearly are some activities that you might look at on their face obviously wouldn't be appropriate to contract out if it's an activity that is currently being carried out by government employees. If those government employees want to submit a proposal or try to be competitive, what's wrong with always allowing that as an option, because many times obviously that option would not be exercised, depending on these obvious circumstances that you're referring to. So what would be wrong with allowing that in the mix?

Mr. LOMBARDI. Mr. Turner, I think the A–76 process is again what my comments were focused in on. The public-private competition, it's not a level playing field from the private sector's point of view. It is just not a way in the public sector to get accountability for costs. I have a wing full of auditors that are defense auditors who basically audit everything my company does and so do all defense contractors. So in DOD I think there are certain things that public-private competition is important and, in fact, competition over and over again every 3 to 5 years doesn't disallow the public sector from coming back into play. I think there's a lot of misconceptions associated with A–76. We think it's the process that has to be fixed, not whether or not there should be public-private competition.

Now having said that, in the civil sector, where there's new work coming out, not work that has been done previously by the Government, Federal employees and I might also say, I'm a Federal employee from 17 years so I have access to both sides of that equation. When innovation and technology is required in an agency, mostly in the civil agencies, we believe that it should just be a competition between the private sector involved. That is the motivation. It's not a profit motivation per se. It is winning that private competition that motivates us. That's what our society allows us to do.

Mr. TURNER. Any of the other panelists have a comment on the issue of the initial decision about a public-private competition? I mean, I'm asking that question basically in light of the fact that we have very few of them and it could be that in many cases there they are not appropriate, but I'm wondering if we're missing an opportunity here not to allow a little more flexibility with regard to the initial decision as to whether or not there should be a public-private competition.

Ms. KELLEY. Mr. Turner, I believe there always should be that option. I agree, as you say, that many times the option may not be exercised, but the fact that the work is not done today in the Government and now someone has determined it needs to be done for the Government, that the Government and the employee should surely have the opportunity to be a part of the process to determine who can do it best for America's taxpayers, and I think the, you know, words that many of us have used over and over again that would oversee that process would be one of fairness, one of oversight, a level playing field has been mentioned often, and the issue of transparency.

So I believe the opportunity should be there and then to be exercised in each case as the situation dictates.

Mr. ARMSTRONG. Mr. Turner, I have a comment. Yes, I agree that we should be offered the opportunity to have a competition. In most cases we have not been able to. It has always been decisions to outsource with no competition. As far as the cost is concerned, I think that the Federal Government is making great strides in activity-based costing, ERP and other initiatives to have a better accounting system for their costs. And it's in the TRAC bill we are asking for the cost of contractors to be reported, if it's true. As my colleague Mr. Lombardi says, that companies have a team of auditors to have audit information on their costs, why would it be such a burden to report that so that we can have true competition. I think we need to get better at doing that and share more information.

Mr. HARNAGE. Mr. Turner, if I might I'd like to add, I think you have hit on a very important point of the TRAC Act. I refer to this often as a magician, a magician tries to divert your attention to somewhere else other than what he's doing his deed. We've heard testimony today that 2 percent at best, maybe a little over, of all the privatization service contracting is done by A–76. That means that between 97 and 98 percent of the service contract done in the Federal Government is done without public-private competition, and if we look at OMB and this administration's proposal to increase the amount of competitions under the FAIR Act, we're only going to raise that a few percentage points. You know, maybe we'll

get to 5 percent or 8 percent, let's say 10 percent, but nobody wants to focus on that other 9 percent and what's happening to it. We want to continue focusing on that small percentage of what's happening, that small A–76 process where it all ought to be under competition and not just a Federal employee job or not just every now and then.

So I think you've hit on a very important point, and that's what the TRAC Act says; let there be competition. Everybody agrees that competition saves the taxpayers dollars, whether it stays in-house or whether it goes outside. So let's have, if that's true then let's compete all of it. Let's just not be selective in what we compete, and it shouldn't always be the Federal employee's job that's competed. If competition is good for us, it's good for them.

Mr. LOMBARDI. Mr. Turner, I would also—I support that it's only been 2 percent of service contracting which is under A–76 competition. So what about the other 98 percent? By far the largest growth area in service contracting has been in the ADP or IT arena. In the civilian agencies the growth over 10 years has been more than 300 percent. At DOD the growth has been 100 percent, but it's all in the ADP area. We are not displacing Federal employees in those areas. The private sector is introducing the technology that's being purchased and it is being competed, severely competed in the private sector.

Mr. TURNER. And I would assume those types of contracts would be contracts that Federal employees would have no interest in competing in, probably do not have the ability or the capability to compete for those types of contracts. Would that be accurate?

Mr. LOMBARDI. I wouldn't judge that. All I would say to you is that if the governmental agencies are going out-house, so to speak, to get new technology, that technology isn't being developed by the public sector. It's being developed—enabling technology being developed and introduced by the private sector.

Mr. TURNER. I notice in your presentation you mentioned a number of deficiencies that exist in the current A–76 process. I'm looking here at the new model for public-private competition. Would you mind discussing those six areas that you have identified as being problem areas for the A–76 process. Some of them I'm not sure I understand exactly the nature of the problem you're describing is the reason I was asking you to refer to them.

Mr. LOMBARDI. OK. In my written testimony, Mr. Turner, I have included a PSE document which gives you some further explanation of that. Just to talk to these points though, conflict of interest is one, in our opinion, on the private sector, the people whose jobs could be displaced as a result of the A–76 competition, judge the whole procurement, including the private sector's proposal. To me that's an inherent conflict of interest. Activity-based cost accounting, we have that. My cost of my office, my salary, my fringe is included in every bid that goes out. I doubt very seriously whether the GNA costs associated with the Government overhead employees, not the people who actually perform the job are going to be layered into those bids. That's why we need activity-based accounting in the Federal Government.

Technical leveling is a way whereby there's constant discussion between the contracting official on the government side and the

competitors on the private sector side. Now remember in A–76 the public sector picks a private sector winner and the private sector then competes against the public sector. So we have a tendency to be leveled in that particular area before we even compete with the public sector bid.

And innovative solutions, if we introduce ways of including technology to displace people, we're saving the Government money, we are also helping our bid in terms of its discrimination against our competition, and that is usually taken out because we're competing against an MEO in many cases. So these are the kinds of things I think would be further elaborated in our point paper, which is included in my testimony.

Mr. TURNER. What does "transfusion" refer to? You mentioned that in relationship, you say the "syndrome of technical leveling and transfusion." What does "transfusion" refer to? That's in that same list of deficiencies in the current process that you were, I think, looking at the same list that I'm looking at, which is on page 2 of the new model for public-private competition.

Mr. LOMBARDI. OK. Well, I don't have that in front of me.

Mr. TURNER. I'm looking at a different document. Another item that you mention on here is a distorted application of best value procurement to only the private sector bidders and not to the Government bidder. What does that refer to?

Mr. LOMBARDI. When we introduce our proposals on the private sector side, again we're introducing new ideas, new technologies. We spend an inordinate amount of time and money in the development of these proposals. When we then go up against the public sector's bid, we are only going against what's called the MEO, which is the Mean Effective Organization. Our value proposition, as it were, is not compared against anything on the public sector side. That is what I had in mind there.

Mr. TURNER. And the model that you recommend to remedy these deficiencies that you have outlined involves, as I understand it, an advisory committee that would actually make the decision separate and apart from the agency itself is that at kind of the heart of your structure of your revised model.

Mr. LOMBARDI. What I had in mind, there is in the evaluation of the public sector bid and the private sector bid that the agency procuring—I mean the actual people who are involved in the MEO creation should be taken out of the process of source selection, and in fact that has happened in many cases and the most recent being the A–76 out of Andrews Air Force Base on the 89th Wing.

Mr. TURNER. And one of the factors that you say should be a part of this process is a generic, you say generic standard soft landing procedures for displaced Federal employees be incorporated in every solicitation to assure consistency and avoid any gaming in this most sensitive area. Speak to that issue.

Mr. LOMBARDI. Yes. I think the—there's no question that when the private sector wins an A–76 competition, the first place they look for the work force, especially in regions that don't have vast work forces available, is to the work force that has been displaced as a result of that particular decision. So soft landing issues would be to have a process built into the A–76 process to take right of first refusal on the part of the displaced employees to have a soft

landing in terms of the development of the new work force under the private sector tutelage, and in fact that happens in many places, if not in all places. I don't have the exact statistics, but somewhere around 80 percent of the Federal employees who are displaced as a result of a private competitor win are asked back into the private sector, many at higher pay grades.

Mr. TURNER. But you're suggesting that information be included as a part of the initial proposal rather than being an after the fact offer to those employees?

Mr. LOMBARDI. It can be and it could also be one of the issues, one of the process changes that goes into the A–76 review process. In other words, if we—if the committee were to use the authorization bill that's already been passed to restudy A–76 our proposition would be that would be fertile ground to be included in the new process.

Mr. TURNER. Now, Ms. Kelley, would that be an improvement, the suggestion Mr. Lombardi just made?

Ms. KELLEY. It would surely address issues that have been issues for some employees, but I think it's a much bigger question. It is a start and would it be well received by some. Depending on where they are in their Federal career and what the salary and growth opportunities were, sure, I definitely think it would be seen as a step forward. I don't think it solves the whole problem, but I see it as a step forward.

Mr. TURNER. Thank you, Mr. Chairman.

Mr. TOM DAVIS OF VIRGINIA. Thank you very much. One of the concerns that I have with the TRAC Act as it's currently drafted in particularly some of these very complex, high level IT procurements is the inability of the current Federal work force, given the training and capital management issues, to handle those in-house. We have not done a good job in the Federal Government of being able to train and retrain people with the latest technologies and bring people in with a skill level and retain them in that. We just have not done the job. Part of it is our competition. And part of it is the training is one of the first things that get cut when budgets get cut.

We aren't utilizing some of our most skilled and valuable people in the best way possible, and OMB has come up now with a restructuring initiative to assess human capital management, what they call a crisis in the Government, but I think that is part of it, and that is part of my concern, is that we are just not ready yet to step up to the plate on at least one level of procurement. That's not to say we're not in some other areas, but in many of the areas that Mr. Lombardi's group, the engineering groups that they represent in these levels, we don't have the in-house skills at this point or the in-house compensation packages to try to compete at the Federal level, given current Civil Service regulations, and I think it would take a change of those to bring us up to a competitive level, and I understand your frustration, Ms. Kelley, when you talk about how some of these procurements are managed by outsiders. We outsource procurements. We have people in the frustration level. That certainly isn't the fault of your workers. It's not a fault of your members, but it is a failing of the Government, appropriately, I think, to utilize what they have and to look for it, and

until we get that solved I think in these procurements that it would be in my judgment very difficult to implement at least in these sectors, some of the things that the TRAC Act calls for.

That's my concern. I'd like anybody to address that over on the left side of the table if you have any, you want to rebut me or share a concern or add to what I'm saying.

Mr. HARNAGE. Well, we have the same, some of the same concerns that you do. You know, this did not happen by accident. I have had a lot of frustrations in trying to deal with the Department of Defense over the last few years. And for 20 years now we've—it's not a matter of whether we should have been training our people to keep up with the high-tech industry. The decision was made not to do that. Who made that decision I'm not sure, but some of it was through budget cuts and some of it's through the agencies not using the funds available to them for training and using them somewhere else. I had high hopes of working with Senator Voinovich on that because every one of his subjects that we had several meetings over is how do we get more training into the Federal Government so that we would have that capability, and I think the question that you have to ask when it comes to high-tech, and I think you're absolutely right on the current situation, but should we have that capability in-house in order not only to be competitive but to serve as an oversight of those contracts that we do have to have.

Mr. TOM DAVIS OF VIRGINIA. If I could add to that, I don't think Mr. Lombardi would disagree for a second that you ought to have more in-house capability. It's frustrating for them on some of these procurements, too, to have officers who aren't trained to oversee them. Is that correct, Mr. Lombardi? And I'm not trying to put words in your mouth. I don't think there's any disagreement on these things, but we are dealing with a structure that has evolved before we were on the scene, and it just has gotten worse and worse and worse.

Mr. HARNAGE. You're that young, I'm not.

Mr. TOM DAVIS OF VIRGINIA. I don't mean to interrupt, but thank you.

Mr. LOMBARDI. At the fear of adding a little levity to the hearings, I'd have to give you an analogy. My son is an engineer, mechanical engineer. He's 4 years out of Virginia Tech. He happens to be an Oracle finance expert, if you want to say that, 4 years out of Virginia Tech. He happens to make more than the Secretary of Defense.

Mr. TOM DAVIS OF VIRGINIA. Probably worth more than the Secretary of Defense we could argue on some days. It just depends on how you look at it. At least that's what the marketplace judges.

Mr. PSOMAS. Mr. Chairman, I'd like to add to that if I might. ACEC really looks to a very strong Federal work force, well paid, well trained. That's really where we want to work. We see this as really a partnership. However, even in my firm there are activities that are not really activities that we're going to train employees in. They're not things that we do regularly and for this special expertise we go outside and we outsource. So there is—I think there are situations that it's really not prudent to provide staffing on a full-time, permanent basis for activities or technologies that change, for

things that are not going to be reusable by any organization, whether it's governmental or private.

Mr. TOM DAVIS OF VIRGINIA. OK.

Ms. KELLEY. Mr. Chairman, if I could just add, I do think this borders on another issue that has garnered a lot of activity over the past year, and unfortunately what I continue to see is that we talk about it but don't do a lot about it, and that is the Government stepping up to the need for funding to provide recruiting and retention incentives for the on-board work force so that expertise can be retained and can be increased, and we don't do that. We talk about it a lot but nothing happens, and as a result we are facing this critical loss of expertise that will only raise the question even higher as to whether outsourcing is the appropriate answer, because there's just no one left.

Mr. TOM DAVIS OF VIRGINIA. Well, and just to take it a step further on this, I mean one of the arguments that was made in the previous panel and I would say we've all seen it happen, is people leave government service, they walk across the street after retirement or whatever, they go to work maybe for one of the companies Mr. Lombardi represents and they make more money doing something that's outsourced either because we don't have the in-house capability to do the work or sometimes it is managed better and they take people and can pay them more. How does that work, Mr. Lombardi, where you can walk and pay people more on the outside and at the same time save the Government money?

Mr. LOMBARDI. Well, it works, I would say.

Mr. TOM DAVIS OF VIRGINIA. Yeah. I want to know how.

Mr. LOMBARDI. I don't have an exact number for you, Mr. Chairman, but a fair amount of our work force is previous government employees, maybe 70 percent, and not only do they bring the expertise with them, they bring the culture with them, and they bring the understanding of the various agencies.

Mr. TOM DAVIS OF VIRGINIA. You have a more flexible management style, don't you, than you do in government?

Mr. LOMBARDI. And we can also train them because we have within our own—we have to train them or we lose them. So the work force has to be continuously upgraded in that regard, and I think, I don't want to confuse TRAC with the compensation issue for Federal employees. I don't think those are the same issues here at all.

Mr. TOM DAVIS OF VIRGINIA. No, they're not.

Mr. LOMBARDI. I left government service because of compensation issues.

Mr. TOM DAVIS OF VIRGINIA. I understand. Let me ask Mr. Floyd, you have people who have worked for the Government, they come over and work for you, they seem to be doing pretty well, and yet I think you would say you manage these better than you could do some of these in-house. Is it just because we have so many rules in government that don't allow this and this isn't the fault of the employees; this is just because we have rules and regulations and things that inhibit management from being as efficient as it might be?

Mr. FLOYD. First thing, you're right, that in my company, for instance, I have 60 people. I would think 40 to 60 percent are ex-gov-

ernment employees and some of them because the Government didn't, in the computer area, some of the Government services decided not to promote those people at all and those are the very people I wanted and the Government had a job for those people but they wouldn't promote them so they got out and came to work for me. I was able to pay them and my company offers all the services. We offer health care and benefits and all those kinds of things, but because we have to maintain a certain—when we bid we have to maintain our bid rate. We know what we have to pay and we know what we can do. We can pay them more but we don't have 10 people doing the job where two people can do it. We put two people on it and get it done that way.

Mr. TOM DAVIS OF VIRGINIA. So it's management flexibility basically?

Mr. FLOYD. Absolutely, and someone mentioned that contractors don't get oversight. We in fact do get a lot of oversight and that my contracts are normally 5-year contracts, 1 base year and 4 option years, and every quarter they look to see how I'm doing and if I don't do well I won't get those option years. So I am just kept, you know, on an even keel by the Government oversight. There is oversight.

Mr. TOM DAVIS OF VIRGINIA. Let me just say this to all of you. We have a series of votes now, so I'm going to recess. I think you all have been very articulate for your particular points of views, and on some of these issues there is no difference. We understand the basic problems and we need to address them at a different level than this committee has, but we need to—I think there is unanimity on that. I think we are going to keep talking with some of the committees that we have organized, and we will revisit this as well and try to meet with everybody individually as well to look at this, but I just appreciate everybody coming out here today.

I particularly want to thank the employees who have taken probably a day off to come here, sit through these hearings. We understand the concerns that you have. We want to try to address them. It's more complex. I hope you get an appreciation for some of the complexity of this as well, but we hear you and we understand it.

And before we close, I want to just again thank everybody and I want to thank our staff for organizing this. We're going to keep the record open for 10 days if you would like to submit anything as a followup, something occurs to you, you just want to enter into the record and make sure it's part of the public record. I'm going now to enter into the record a briefing memo that was distributed to the subcommittee members.

Again, I guess we're going to hold the record open for 2 weeks instead of 10 days from this date for those who may want to move forward with submissions for possible inclusion, and again thank all of you very much and these proceedings are closed.

[Whereupon, at 5:32 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

COALITION FOR OUTSOURCING AND PRIVATIZATION

Testimony of the
Coalition for Outsourcing and Privatization
Submitted for the Record to the House Subcommittee on
Technology and Procurement Policy Hearing on
Outsourcing of Government Commercial Activities
June 28, 2001

On behalf of the associations and individual companies that comprise the Coalition for Outsourcing and Privatization, we appreciate this opportunity to submit testimony for the record on the *outsourcing of Government commercial activities.* The Coalition, which represents over one million companies, is a broad-based national coalition of key industry groups formed to champion competition of Federal government commercial activities. Our membership includes businesses already engaged in providing goods and services to the Federal government, and that would be able to compete for commercial functions currently performed by Federal employees. Our membership also includes thousands of firms that are not presently in the Federal market, but would be if more of the government's commercial activities were open to competition by private firms through increased outsourcing. Our members are firms of all sizes, including small business and minority owned firms. (The Coalition membership list is at the end of this statement.)

Introduction

Since the Eisenhower Administration, it has been the policy of the United States Government to rely on the private sector for the provision of goods and services. This policy is embodied in the OMB Circular A-76, *"Performance of Commercial Activities."* This circular set up a formal process by which Federal commercial activities could be opened for private/public sector competitions or direct conversion to private sector performance. The debate surrounding outsourcing, however, has often been divisive and controversial.

Benefits of Outsourcing

Recently, the rapid advancements in technology, wide-ranging Federal government downsizing and constrained budgets have combined to bring new urgency to the question of outsourcing –bringing both opportunities and roadblocks. By outsourcing functions that are commercial in nature, a Federal agency can address many concerns including: deep and growing shortages of skilled workers; stabilizing costs via multiyear service level agreements; improving the agency's effectiveness and responsiveness via a partnership relying on companies to implement processes to continually refresh agency methods and technologies, rather than being held captive by methods and assets that are quickly outdated, and strategically refocusing agencies on their core, inherently governmental missions.

Today, outsourcing in the commercial sector is being recognized as an accepted management tool for redefining and re-energizing an organization – usually through the use of business process reengineering of core functions at all levels of an enterprise (*the attachment lists commercial sector outsourcing opportunities).* The Government is beginning to recognize that fundamental restructuring, (not onetime, short-term savings), is more appropriate to respond to budget pressures. Outsourcing its commercial functions, while retaining inherently governmental functions and a requisite core competency in other functions, must play a large part in this reengineering.

1. Outsourcing results in a competitive advantage and enhanced operations by providing the opportunity to transform functions, focus on customers, and utilize commercial best practices – freeing government to focus on its core missions.
2. Outsourcing can help increase flexibility and responsiveness to changing market conditions.

3. Outsourcing is a powerful agent for change – In the government, opportunities exist to reduce waste, fraud and abuse; enhance collections; and improve logistics operations by reducing inventory, while significantly improving cycle times.
4. Outsourcing provides access to skills, resources and capacity that would not otherwise be available.
5. Outsourcing provides a direct source of accountability and responsibility through contracts.
6. Outsourcing can help to reduce or share risks by tying contractor compensation to the successful implementation/completion of contracts.
7. Outsourcing helps to improve technical capability, not just reduce costs.
8. Outsourcing removes the management worry of keeping up-to-date with processes and technology.
9. Outsourcing helps attract, develop, and retain the "best people" whose careers depend upon staying abreast of the very latest techniques and technologies.
10. Conscientious outsourcing transition and transformation plans can mitigate productivity interruptions in the short-term and improve productivity in the long-term.

Outsourcing myths

Opponents of outsourcing have perpetrated a series of myths to prevent implementation of this important management tool. Each of these myths, and others, have been debunked through the use of sound, concise, outsourcing arrangements that provide for such elements as an exit strategy, approvals of technology direction, soft landings for existing employees, and creative use of performance incentives.

1. Myth: "The government will be tied to the contractor forever or held captive to its processes and technologies." In truth, the government never forfeits its right to terminate a contract or to recompete the work.
2. Myth: "The government will have less visibility to what is actually going on within its organizations." In truth, a decade of acquisition reform has created a teaming environment where competent government managers are an integral component of the contractor partnership.
3. Myth: "The government will lose its valuable people and will not be able to take the effort over again if there is ever a problem." In truth, through outsourcing, the government is gaining access to the state-of-the-art technologies and processes that it cannot replicate efficiently in-house.
4. Myth: "The government has different incentives that drives it and whereas the outsourcing firm is driven by profit, the government is driven by customer service." In truth, the Federal government has made significant process in moving toward performance based contracting that holds contractors more responsible than ever for quality and where past performance is one of, if not the most significant competitive discriminator, and customer service is a prime motivator for government contractors.
5. Myth: "The government will not be able to document savings." In truth, the commercial sector, which was already performing much more efficiently than the federal government, has been able to realize monumental savings through outsourcing. As the government reforms its accounting practices and methods, these same savings will become evident. In the meantime, the government will be able to realize improved program results and expanded capabilities by aggressively outsourcing its commercial functions.
6. Myth: "A shadow government will be created. Government will not really be made smaller." In truth, in the new performance based contracting environment, the private sector is much better equipped to scale its workforce to the federal government's requirements – expanding to fill a need and shrinking to maintain optimum efficiency. The federal government expands slowly and cannot tighten its belt at anything other than a glacial pace. Outsourcing is an important tool for the Government to redirect its resources and personnel toward more essential core missions.
7. Myth: "Contractors will abandon the most difficult programs at the most inopportune times." In truth, contractors have successfully completed the most demanding requirements imaginable, including working side-by-side with U.S. armed forces in battlefield situations (i.e. Viet Nam, Desert Storm, and Bosnia).
8. Myth: "Employees are severely disadvantaged by outsourcing policies." In truth firms that are awarded outsourcing contracts attach a high priority to the placement of many, if not most, employees responsible for performing the function prior to the new outsourcing arrangement beginning. These firms typically consider their greatest asset to be their people. A highly skilled existing workforce, possessing considerable corporate memory and technical depth, has great value as a foundation for the new work group assuming responsibilities under the outsourcing arrangement. This value translates into a number of

additional benefits to the employees including: dramatic opportunities for upward mobility, continuous learning/training environments to maintain competitiveness, portability of skills, and high rates of retention.

Competition

The ability of Federal agencies to meet the tough budgetary and mission targets that Congress has set for them hinges, in large part, on the ability of Congress and the American public to know how agencies are using their resources to meet their core missions, and ensuring that scarce resources are used most efficiently. Study after study, from sources as diverse as the GAO, OMB and innumerable think tanks, have shown that competitively outsourcing the Government's commercial activities saves money. For the taxpayer, this means an average savings of 30% regardless of who wins the competition. This figure represents an average of 20% savings when an in-house team wins and an average of 40% savings when a private firm wins. Even reports that are critical as to the amount of savings achievable through outsourcing conclude that competition for work, including competition between the public and private sector - regardless of who wins - can result in cost savings.

Those opposing outsourcing continually state that contractors achieve savings by paying their employees less. This is misleading and wrong. For example, the service contract industry is governed by a host of wage laws, among them the Service Contract Act. Under the SCA, the Government determines the wage rates for a variety of employees in addition to setting fringe benefit rate. According to the implementing regulations in the Federal Acquisition Regulations (FAR), all solicitations for service contracts must include the requirement that employees of service contractors be paid the same Federal Grade Equivalence (FGE) in wage rates, and be given the same in fringe benefits, as if that contractor employee was employed by the Federal contracting agency. And, all private sector government contractors must abide by the Fair Labor Standards Act, the Occupational Safety and Health Act and numerous other statutes. Private firms also pay Federal, State and local taxes – a requirement not imposed on in-house Government activities.

Faced with the need to downsize Federal staff and budgets, Congress initiated a series of actions aimed at improving the efficiency and effectiveness of the Federal Government. These include the 1993 Government Performance and Results Act, the 1994 Government Management Reform Act, the 1994 Federal Acquisition Streamlining Act, and the 1996 Clinger-Cohen Act. Linked with these Congressional initiatives was the National Performance Review (NPR), with its goal of reinventing and improving the Federal Government. Central to NPR was a review of every Government program in terms of whether it is critical to the agency's mission. If no, then that program should be terminated or privatized. If yes, then consideration should be given to whether it can be performed as well or better by competing the activity with the private sector.

Voluntary efforts, however, to obtain information on agency activities necessary to do the reviews suggested by NPR never met with much success. Mr. Franklin Raines, before leaving the Office of Management and Budget, issued a memo requesting all Federal agencies to develop a list of the activities they perform. However, like the A-76 policy itself, this request was not mandatory and cooperation from the Federal agencies widely varied. This eventually led to the enactment of the *Federal Activities Inventory Reform Act* (FAIR Act). This statute represented a true compromise between all parties involved – an excellent tool for the Office of Management and Budget (OMB) and the agencies to effectively manage the performance of commercial activities, using all methods available to the Federal government. The Act embodied some of the key principles outlined by the OMB: to achieve the best deal for the taxpayer; be fair and equitable to all interested parties and be considered in view of the government's overall reinvention effort.

The FAIR Act also turned the "Raines" memo request into a mandate, ensuring a process that will thoroughly identify and categorize all activities currently being performed by the Government. In other words, it requires the Federal government to do what business and taxpaying families do everyday: to take stock of how they can best direct their scarce resources. The FAIR Act clearly delineates between activities identified as inherently governmental versus non-inherently governmental and reiterates a long-standing policy of the Federal government to rely on the capabilities of the private sector. While this policy, embodied in the Office of Management and Budget Circular A-76, is more than forty years old, there are still activities that are not inherently governmental which the Government itself continues to perform. By focusing on those activities, the FAIR Act will help the Federal government focus on its core missions and responsibilities rather than competing with its own citizens – and it furthers the on-going efforts to streamline the Federal government.

In general, the Coalition has significant philosophical reservations regarding public-private competition. Indeed, we feel that it is not in the best interest of the taxpayer, or Government employee, for the Federal government to compete directly with its citizens; this is partly reinforced by the lack of comparability between Government and industry cost accounting systems. Furthermore, many persons joined Government for public service, not to run state-sponsored enterprises. The current public-private competition process fosters hostility between the public and the private sector and undermines the partnerships necessary to improve Government service. We recognize, however, that there continues to be broad-based support for public-private competition – and, therefore, we wish to work to improve the overall process.

The general issues that must be addressed to improve the process include:

- The process used to account for costs requires total "visibility." It is absolutely critical that a government-wide activity-based cost accounting system or generally accepted practice be established to assure that federal cost proposals truly reflect all relevant direct and indirect costs. Only after such an accounting practice is adopted, in conjunction with other steps, will public-private competitions have the potential to be conducted fairly.

- The system should incorporate "all costs (including the costs of quality assurance, technical monitoring of the performance of such functions, liability insurance, employee retirement and disability benefits, and all other overhead costs)." This would also include the "time value of money", including depreciation and amortization, as well as otherwise unaccounted for labor costs, such as the use of military personnel. The foregoing examples do not represent an exhaustive listing of direct and indirect cost deficiencies.

- An activity-based cost accounting system, or other generally accepted practice, alone is not enough to ensure taxpayers are getting fair public-private competitions. There are a number of other areas that must be addressed. Comparisons of public and private bidders must be "normalized", or adjusted, to reflect unique elements on both sides, such as indemnification premiums and state and local taxes for private sector contractors. Areas where there are clear differences between industry and government operating structures, which would complicate standard accounting practices, should be broken out and either resolved or taken off the table. In addition, all binding areas on contractors, where there are differences between treatment of these for industry and government, should be identified and attempts to resolve those differences should be made (except where they do not apply, *i.e.*, commercial).

- A major shortcoming of the current process is that it focuses on low cost between the government and private sector bidder, while ignoring the most important factor in government procurement: best value. Creating the situation where government organizations are ultimately competing with the private sector on a cost rather than a quality-dominated basis is in sharp contrast with the quality/best value principals that were strongly enunciated in the National Performance Review. Ironically, as government acquisition policy has significantly moved away from price as a key factor and toward best value, the current process for public-private competitions continues to require simplistic cost comparisons.

  The current cost comparison process only applies best value comparisons to private sector bidders. Once a contractor has been selected on the basis of best value, it must then compete with the government on a cost only basis. This potentially allows the evaluators of the competition to select the highest priced industry offeror to compare to the government's Most Efficient Organization (MEO) which was simply prepared to compete on a low price basis. This is grossly unfair to industry and does not achieve the cost savings intended nor does it give the government or taxpayer the best performance. Public-private competitions must be based upon best value principles, subjecting both the government and the contractors to evaluation of past performance, quality, innovation, workforce flexibility, organizational capabilities, problem-solving approaches, management and key personnel, special scientific and technical capabilities, and other applicable non-cost/price factors.

- Meaningful performance and service levels must be incorporated into the overall performance requirements. This is in addition to the utilization of performance-based work statements in all cases, as well as the incorporation of performance penalties, which have equivalent impact on both public and private sector performers. Currently the government is not being held to the same procurement disciplines and risks as industry offerors.

- Past performance is not being evaluated for government MEO proposals under the current process. It is not true that the government has no valid past performance records. Individuals by position are being proposed in the MEO. These personnel have performance records. Therefore, just as contractor key personnel are evaluated, so should be the government's personnel. Further, there are often records to document program cost overruns and schedule slippages in past government performance. There are also records demonstrating the accomplishments of training or other services against specific goals. These records should be reviewed and evaluated as part of a value judgment of the government proposal.

- The critical importance of an independent source selection board. Recent cases point to what the private sector has known for some time. The current process for public-private competitions has not addressed sufficiently the inherent conflict of interest found in some government source selection boards. The process has allowed the activity being studied for possible outsourcing to conduct the procurement and act as the source selection authority for the award. Government personnel involved in evaluating the procurement should, as you correctly propose, be required to declare any interest in the competing offers and if an employee is or will be affected by the procurement personally, that employee should not be in a position to influence the award decision.

The Coalition stresses that, in those circumstances where agencies elect to conduct public-private competitions, the process used should be kept as high-level and streamlined as possible, avoiding the excessively detailed, overly mechanistic, aspects of the current A-76 procedure.

Areas where there are clear differences between industry and government operating structures should be identified and addressed in such a manner that results in true cost comparability. Further, the fundamental difference in contract type should be addressed. While a private offeror may be competing for a fixed-price contract, the public offeror in effect always competes for a cost-plus contract. The public sector offeror does not have to bear a financial consequence for an underestimate of the amount of work involved.

Stop the "Government Shutdown" bill

H.R. 721, the Truthfulness, Responsibility, and Accountability in Contracting (TRAC) Act, purports to be a reasonable effort to ensure the government gets what it pays for in contracting. In reality, the bill would grind government to a halt. TRAC is a thinly veiled attempt to stop government outsourcing and require the in-sourcing of commercial work along with a massive build-up of the federal workforce, regardless of cost or performance. If passed, the TRAC Act would seriously threaten the government's ability to meet its many diverse missions.

- The TRAC Act would cripple federal agencies.
- The TRAC Act would impose a potentially permanent moratorium on all outsourcing for government services.
- The TRAC Act ignores the fact that almost all of the work it covers already is routinely recompeted in a robust and competitive marketplace.
- The TRAC Act is about killing competition; it is not about accountability, performance, or responsibility. The GAO and virtually every other objective body have reached the same conclusion: Competition saves money.
- The TRAC Act does not subject government agencies and activities to the same degree of responsibility and accountability applied to competitively awarded contracts.
- The TRAC Act would require the preparation of redundant reports and data, overwhelming the government workforce and diminishing government interest in pursuing competition

In 2000, Congress directed the General Accounting Office to convene a blue ribbon panel to study and make recommendations on commercial activities and outsourcing. Before contemplating legislation as radical as the TRAC Act, Congress should wait until the GAO panel concludes its work and issues its report.

Recommendations

In order to ensure the proper implementation of the competitive sourcing process, we believe the Office of Management and Budget (OMB) must take a strong, active leadership role in resolving issues related to public-private competitions – and are encouraged with the statements being made by the Bush Administration in this regard . Indeed, any Federal public-private competition initiative with the attendant consequence of worker displacement is a complicated and demanding public management exercise. To be successful, such policy requires: strong engaged senior leadership (i.e., OMB); an artfully designed set of policies and operating protocols; a performance/metric driven environment; and, most importantly, a central adjudicative authority to facilitate the inevitable challenges and policy issues. All of this argues very persuasively for a proactive central role for OMB.

Specifically, areas that need additional attention and review by OMB include:

1. Source selection procedures and authorities need to be revised to avoid conflicts of interest. In fact, the government should establish organizational conflict of interest (OCI) screening procedures similar to the private sector. For example, a consulting firm hired by the government to develop the Performance Work Statement (PWS) for an A-76 competition is then hired to help the MEO develop its proposal.
2. Discipline as to the length of time involved with conducting the studies needs to be maintained.
3. Greater cost comparability must be achieved.
4. The use of the best value process must be consistent throughout the competition, not only for the private sector but for the public section as well.
5. The public sector should not be allowed to adjust its bids after the fact (after the private sector bids are submitted and disclosed).
6. A one size fit all overhead rate (12 percent) should be discarded; the rate should be appropriate to the mission.
7. Government benefit, marketing and facilities costs should be included in the cost accounting for government entities.
8. Qualified accounting systems that measure agency performance and CAS-type standards (allocable, allowable, auditable) should be used by government entities.
9. Provide for independent government estimate (should cost) of contract.
10. Provide for oversight/audit of MEO during transition period(did they implement what they bid) and during the performance of the contract have continuing review with regard to savings. Private sector contracts are subject to such oversight/audits.
11. Similar past performance requirements should be levied on MEOs, their government predecessors and private sector contractors.

Conclusion

The *FAIR Act* and other ongoing strategic sourcing initiatives are aimed at helping agency management identify those programs that did not support its strategic plan under the Government Performance and Results Act (GPRA) – and to help agency management identify those programs that did not support core missions. Once identified, agency management would then determine what to do with the function, presumably using the decision model outlined in the NPR. The Federal government would shed non-core functions and Federal employees would be redirected to core agency programs. The end result is a more efficient and effective government that is better able to serve the American public.

Aerospace Industries Association * American Council of Independent Laboratories* American Council of Engineering Companies * American Electronics Association * The American Institute of Architects * Contract Services Association of America * Design Professionals Coalition * Electronic Industries Alliance * Management Association for Private Photogrammetric Surveyors * National Association of RV Parks and Campgrounds * National Defense Industrial Association * Professional Services Council * Small Business Legislative Council * Textile Rental Services Association of America * The National Auctioneers Association * U.S. Chamber of Commerce

ATTACHMENT

Top 10 Reasons Companies Outsource

1. Reduce and control operating costs
2. Improve company focus
3. Gain access to world-class capabilities
4. Free internal resources for other purposes
5. Resources are not available internally
6. Accelerate reengineering benefits
7. Function difficult to manage/out of control
8. Make capital funds available
9. Share risks
10. Cash infusion

Top 10 Factors for Successful Outsourcing

1. Understanding company goals and objectives
2. A strategic vision and plan
3. Selecting the right vendor
4. Ongoing management of the relationships
5. A properly structured contract
6. Open communications with affected individual/groups
7. Senior executive support and involvement
8. Careful attention to personnel issues
9. Near term financial justification
10. Use of outside experts

Top 10 Factors in Vendor Selection

1. Commitment to quality
2. Price
3. References/reputation
4. Flexible contract terms
5. Scope of resources
6. Additional value-added capability
7. Cultural match
8. Existing relationship
9. Location
10. Other

Source: Survey of Current and Potential Outsourcing End-Users
The Outsourcing Institute, 1998

AFSCME®

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Statement

of the

American Federation of State, County and Municipal Employees (AFSCME)

on

H.R. 721, The Truthfulness, Responsibility and Accountability in Contracting Act

Before the

Government Reform Subcommittee on Technology and Procurement Policy
U.S. House of Representatives

June 28, 2001

Statement of the
American Federation of State, County and Municipal Employees
On H.R. 721
The Truthfulness, Responsibility and Accountability in Contracting Act
Before the
Government Reform Subcommittee on Technology and Procurement Policy
U.S. House of Representatives
June 28, 2001

The American Federation of State, County and Municipal Employees (AFSCME) submits the following statement on behalf of its 1.3 million members across the country and on behalf of its affiliate, AFSCME Council 26, which represents 10,000 federal employees. Our members include employees of state, county and municipal governments, school districts, public and private hospitals and universities and private non-profit agencies. Our Council 26 members work at the Federal Aviation Administration (FAA), the Departments of Justice and Agriculture, the Library of Congress, Architect of the Capitol, Peace Corps, Corporation for National Service, and Voice of America.

The broad diversity of our membership means that the union has many diverse concerns, but one overarching concern of all our members is government policies and procedures for contracting with a private entity to perform publicly-funded public services. We strongly support H.R. 721, the Truthfulness, Responsibility, and Accountability in Contracting Act. Both the legislation and this hearing are especially timely in light of the Administration's expressed intent to contract out at least 425,000 additional federal jobs over the next four years.

It is time, we believe, for political leaders to be candid with the American people about the extent of government activity for which they pay. For years, they have defined the size of government in terms of the number of civil servants on their payroll as they have reduced their ranks through attrition and other methods. In order to keep public services going, they have used contracting out as a way to adhere to rigid personnel ceilings while also claiming credit for making the public workforce smaller.

At the federal level, in fact, the contract workforce dwarfs the civil service workforce. In his recent book, The True Size of Government, Paul Light dramatically lays out the extent of this "shadow government". He identifies 1.9 million civil service workers directly employed by federal agencies but 5.6 million jobs generated under federal contracts. Additionally, the Government Accounting Office has noted that contracting for service by federal agencies increased 42 percent in the 1990s.

Clearly, the scope of federal activity is far greater than generally imagined. Yet we can think of no recent instance in which serious consideration has been given to such questions as: "How much contracting is enough?" or "When does contracting out

become so extensive that, as a practical matter, government officials cede control of the public's business to private officials who are not accountable to the public?"

Notwithstanding these concerns, frequently the decision to contract out is driven more by expediency or ideology than a methodical consideration of the true costs of contracting out compared to the true cost of improved management by the public agency. In addition, these decisions are made without adequate consideration for the degree of government supervision necessary to ensure that the public's interest – instead of the contractor's private interest – remains paramount.

And finally, there is virtually no recognition of the fact that shifting the business of the federal government from public agencies to private contractors undermines important public safeguards painstakingly developed over many years. These include civil service rules that ensure that the federal workforce is professional and that personnel policies are objective, based on merit and free from political influence. They also include laws that ensure that the conduct of the public business is open to public scrutiny and rules that the public has fair recourse in the event of adverse decisions by government officials.

H.R. 721 addresses several of these crucial policy concerns. It would ensure that the decision-making process concerning contracting out is objective, fair and in the public interest. It would temporarily suspend new service contracts by federal agencies until policies and procedures are revised to prevent indiscriminate and arbitrary contracting out. Currently arbitrary personnel ceilings distort choices between contracting out and conducting work directly. Many agencies do not have adequate capacity to administer their contract workforce effectively and, in effect, become a captive of the private contractor.

H.R. 721 would address these problems by requiring the establishment of systems to monitor the costs, efficiency and savings of contracting out and will allow for the adjustment of personnel ceilings when it can be shown that it is more economical and efficient to perform work in house. Both of these requirements are simple common sense. Taxpayers cannot evaluate the quality and efficacy of the work of private contractors without adequate basic information that is comparable to what is available for the public workforce and public agency activities. In addition, it hardly makes sense for arbitrary staffing limits to force the use of a private contractor even when it can be demonstrated that the public agency is more effective and efficient.

H.R. 721 also would create a more level playing field between federal employees and private contractors. It would replace the current system in which only work performed by public agencies is subjected to competition with one in which both federal agencies and private contractors are subject to the same level of public-private competition. It also would require the Office of Personnel Management and the Department of Labor to compare the wages and benefits of federal employees and contract employees. Too often the supposed savings from contracting out stem from low

contractors wages and benefits instead of from meaningful management efficiencies and improvements.

Again, these requirements make simple common sense. With so much work now performed by private contractors, there is a real need to subject private contractor work to public-private competition. Otherwise, over time, private contractor monopolies may develop, and federal agencies may have little choice but to rely on the contractors even in instances of cost overruns or poor performance. In addition, in our experience, contractors that pay low wages and few benefits also provide low quality service because they cannot attract a skilled or stable workforce. At a minimum, government agencies should have basic information on wages and benefits so that they can take this consideration into account.

AFSCME generally prefers collaborative labor-management partnerships to improve the provision of public services over public-private sector competition. We have participated in many such partnerships over the years, and they have produced impressive cost savings and improvements in quality.

For a public-private competition to be meaningful and produce the best results for taxpayers, however, the process should not be biased in favor of private contractors. H.R. 721 takes important steps toward achieving a level playing field. Indeed, we think it should be adopted before further contracting out occurs and urge you to approve it expeditiously.

ACQUISITION REFORM WORKING GROUP

Aerospace Industries Association * American Council of Engineering Companies* American Shipbuilding Association * ACIL * AeA * Contract Services Association of America * Electronic Industries Alliance * National Defense Industrial Association * Professional Services Council * U.S. Chamber of Commerce

Statement on Outsourcing

Submitted for the Hearing Record of the
House Government Reform Subcommittee on
Technology and Procurement Policy
June 28, 2001

The multi-association Acquisition Reform Working Group (ARWG) appreciates this opportunity to submit a statement for the House Government Reform Technology and Procurement Policy Subcommittee hearing on *outsourcing*.

The members of ARWG represent virtually every element of the Government contracting community – including large and small businesses, manufacturers and service companies; the member associations are listed in the statement letterhead. It was established in 1993 to coordinate an industry review and response to the report of the Acquisition Law Advisory Panel (commonly known as the Section 800 panel), which resulted in the 1994 Federal Acquisition Streamlining Act (FASA). Since that time, ARWG has been working closely with the Congress and the Federal agencies to develop new initiatives and continue pushing the acquisition reform agenda forward.

Introduction

The issues of outsourcing and privatization are among the most prominent and important issues facing the Department of Defense (DOD) and civilian agencies. Indeed, much of what has been accomplished in the area of acquisition reform can and must now be applied to a more aggressive and comprehensive policy of competing commercial activities currently performed by Government agencies. Moreover, how and where such competitions are conducted is a key acquisition reform issue.

Need for Change:

While we recognize that public-private competitions will continue to be the rule, ARWG still believes that such competitions ultimately disadvantage all parties. For the private sector, the playing field is not, and likely never will be, entirely level. This is primarily due to the fact that:

1) The Government does not have cost accounting systems in place to provide valid and reliable financial data on workloads;
2) The Government does not have to pay taxes; and

3) The methods by which the Government computes its overhead rates are not comparable with those of industry, nor does the Government "pay" for infrastructure (*e.g.*, buildings and land). In addition, the Government does not face, either qualitatively or quantitatively, the same risks as a commercial contractor *(i.e.*, on issues relating to termination for default, absorption of cost overruns, potential Civil False Claims penalties, etc.).

The factors listed above make it extremely difficult for industry to win a competition. For the Government, such competitions often result in decisions to retain work in-house because it does not appear that outsourcing represents the lowest cost to the taxpayer. However, in many such cases, the appearance is vastly different from the reality. The Government's "cost" is typically based on accounting systems that are simply unable to capture the actual total cost and that almost always fail to provide an adequate framework for determining whether the Government's "cost" is, in fact, the best value for the taxpayer, including meaningful assessments of past performance. Indeed, award to the Government is not even made on the basis of best value. If Government agencies are to continue to compete against private offerors for the provision of goods or services, it is vital that such competitions be conducted on the basis of truly comparable cost accounting practices, past performance and best value.

This precept is partially embodied in the *Federal Activities Inventory Reform (FAIR) Act* (P.L. 105-270), supported by ARWG's members. The measure requires an inventory of all commercial activities within the Federal government and allows contracting of those activities to achieve the best value for the taxpayer. It requires realistic and fair cost comparisons and establishes a definition for inherently Governmental functions. The Act is a rational and appropriate approach towards achieving the proper balance between public and private resources. This is the second year of agency inventories released under the *FAIR* Act; for the year 2000, as a whole, 115 Federal agencies with approximately 1.7 million employees have identified 849,389 FTE or about 50 percent as commercial in nature.

Significant attention should be given **NOW** to the rules of engagement for these competitions. New energy and attention must be devoted to leveling the playing fields and, more importantly, to more accurately reflecting the best value for the taxpayer.

ARWG supported Section 817 of the FY01 National Defense Authorization Act (P.L. 106-398), which is intended to address problems inherent in the current system and improve the overall process. As required, the Comptroller General has convened a panel of experts to study the rules and procedures for public-private competitions for the performance of the Government's commercial activities. Its first public meeting was held recently on June 11.

For that reason, we believe that support for, or any legislative action on, legislation such as the "*Truthfulness, Responsibility and Accountability in Contracting Act*" (H.R. 721) would be precipitous. As the title implies, the bill appears to be a simple and logical attempt to ensure that Government contracting results in meaningful cost savings and efficiency enhancements. But the impact of the bill bears little relation to its title or its purported intent. Indeed, the legislation would suspend all new service contracting activities within the Government. And, it would throw into disarray all other contracting for Government services, regardless of its nature –

including contract renewals and contract recompetitions. The legislation would require extensive public-private competitions, which typically take three or four years to conduct, before any existing contract could be renewed or recompeted, *whether or not the functions performed under the contract ever were, could be, or should be performed by the Government.* As such, the bill would, by any measure, disrupt scores of Government operations, severely impact national security, slow down or entirely stop vital environmental clean up operations, and much more. In short, this bill represents a serious and unprecedented threat to the ability of Government agencies to meet their ongoing missions and improve efficiencies. And, as already noted, any action on this bill – prior to the Commercial Activities Panel report in May 2002 – would be decidedly premature.

Recommendations:

ARWG supports a number of initiatives designed to ensure a rational, flexible and fair decision-making process. These initiatives include:

1) improved oversight and implementation of the FAIR Act;
2) development of an activity based cost accounting system and implementation of a streamlined best value mechanism for all public-private competitions;
3) the replacement of outdated training methods with a continuous learning environment for acquisition professionals; and
4) the creation of a clear policy process for the use of waivers, as well as the repeal of statutes (including those listed below) that are clear barriers to competition or which unreasonably bias the playing field in one direction or another.

Furthermore, ARWG encourages full support of the national level review panel required by the FY01 National Defense Authorization Act. We note that this commercial activities panel review is not intended to question the current need for public-private competition, which is a necessary means of saving money for the U.S. taxpayer – and, that therefore, agencies should continue to move forward with their A-76 studies during this review period.

In addition, the policy guidance requiring review and revision to ensure fair and uniform implementation of future competitive sourcing, outsourcing & privatization initiatives includes, but are not limited to:

- OMB Circular A-76, "Performance of Commercial Activities," August 4, 1983
- DOD Instruction 4100.33, "Commercial Activities Program and Procedures," September 9, 1985
- DOD Directive 4100.15, "Commercial Activities Program," March 10, 1989
- Government Performance and Results Act (GPRA), 1993
- OMB Circular A-76 Revised Supplemental Handbook, "Performance of Commercial Activities," March 1996 including OMB Transmittal Memoranda relative to these procedures
- Department of the Army Regulation (AR) 5-20, "Commercial Activities Program", 1 October 1997
- Department of the Navy (DON) Competitive Sourcing Handbooks: "Succeeding at Competition" and "Business Unit Definition and Analysis Guide", 31 December 1997

- Department of the Army Pamphlet (DA PAM) 5-20, "Commercial Activities Study Guide", 31July 1998
- Chief of Naval Operations Instruction (OPNAVINST) 4860.7C, "Commercial Activities Program Manual", 7 June 1999
- Department of Defense Strategic and Competitive Sourcing Programs Interim Guidance, April 3, 2000 (issued by the Under Secretary of Defense for Acquisition, Technology and Logistics)
- Department of the Air Force, Headquarters Air Education and Training Command (AETC) Pick-a-Base Action Plan, 1 Jan 2000
- Department of the Air Force Instruction (AFI) 38-203 (Draft), "Air Force Commercial Activities Program Instruction"
- OFPP Best Practices Guide to Performance-Based Service Contracting Independent Review Guide

Finally, those statutes that should be repealed include:

15 U.S.C. 3704(b)
Prohibits outsourcing of the functions of the National Technical Information Service

10 U.S.C. 2461
Requires notice to Congress of all DOD A-76 studies, and mandates public-private competitions

10 U.S.C. 2462
Requires contract award to the Government if the Government is "low bid," thereby prohibiting the application of best value principles to such procurements (ARWG recommends that this provision be repealed or, alternatively, amended to replace the terms "low cost" with "best value")

10 U.S.C. 2463
Requires semi-annual report to Congress of all conversions of workload at DOD involving more than 50 full time equivalents (FTEs)

10 U.S.C. 2464
Limits the contracting out of logistics support activities to 50 percent of the total workload. ARWG supports outright repeal of this provision. At a minimum, however, ARWG supports a change that would base the workload calculations on the facilities utilized rather than personnel; this is necessary in order to fulfill DOD's and Congress' vision of partnerships and innovative teaming arrangements

10 U.S.C. 2465
Prohibits the contracting out of firefighting and guard services at DOD facilities

10 U.S.C. 2466/2469
Limits the contracting of depot maintenance workload and requires public-private competitions for workloads exceeding $3 million

10 U.S.C. 4532/9532
Mandates use of Government factories and arsenals

40 U.S.C. 490(c) or Section 507 of P.L. 100-440
Prohibits GSA from contracting for guard, elevator, messenger or custodial services

16 U.S.C. 668(d)
Prohibits the Fish and Wildlife Service from outsourcing the management and operations of wildlife refuges

The House Government Reform
Technology and Procurement Policy
Subcommittee

Hearing on The Best Services at the Lowest Price: Moving Beyond a Black and White Discussion of Outsourcing

June 28, 2001

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The American Institute of Architects (AIA) is a professional society representing approximately 66,500 licensed architects and associated professionals located in 305 chapters throughout the United States. Our members are leaders in their communities and understand the contributions small businesses make to the economic vitality of America. Working together with other elements of the design and construction industry, the AIA promotes a better quality of life through good design.

The AIA strongly opposes H.R. 721, the "Truthfulness, Responsibility, and Accountability in Contracting" (TRAC) Act. This measure would override successful federal policy that has been in place for more than 30 years that has drawn upon the valuable expertise and resources of the private sector. The TRAC Act would hinder the effective design, construction, and restoration of federal government buildings. Under this legislation, private-sector contracts would not be awarded unless there is "extraordinary economic harm" to the government. We believe that this language is inappropriate and unresponsive to the needs of federal agencies. The AIA urges you to oppose this legislation.

THE TRAC ACT WOULD ALTER A LONG-STANDING PUBLIC/PRIVATE PARTNERSHIP

Since 1966, it has been the federal government's policy to utilize the services of the private sector. OMB Circular No. A-76 states that the federal government should rely on commercial resources to supply the products and services the government needs. Under this current policy, a comparison is made between the cost of contracting out to the private sector and the cost of in-house performance. The federal policy acknowledges that "competition enhances quality, economy, and productivity." The government frequently depends upon private marketplace services because they result in cost savings, increased public trust, and quality service. Unfortunately, the TRAC Act, as presently written, would undermine this public/private partnership by encouraging increased numbers of federal employees to perform roles previously and ably performed by the private sector. Just two years ago, the citizens of California, with bipartisan support, soundly rejected such an approach in the form of a constitutional amendment, known as Proposition 224. They concluded then, and we assert now, that we do not need or deserve ***more*** government. What we need is ***innovative and more productive*** government.

PRIVATE-SECTOR ARCHITECTS BRING SPECIALIZED EXPERTISE AND UNIQUE INSIGHT TO FEDERAL GOVERNMENT PROJECTS

Federal agencies manage and coordinate the design process, but look to the specialized expertise of private-sector architects and engineers to perform the actual design work. Innovative design and cost savings in the private sector get transferred to the public-sector client when private firms bring their specialized skills and experience to federal contract projects. From post offices to courthouses, good design enhances peoples' lives.

When it is combined with the forces of public architecture, good design becomes a symbol of our civic pride. Through innovative design solutions, private-sector architects provide the federal government with superior value and unique insight.

For example, the design for laboratories and scientific facilities, such as the National Institutes of Health (NIH) and the United States Geological Survey (USGS), requires a high level of specialization and expertise to meet contemporary research and safety standards. Some federal agencies don't have the special skills to complete such highly sophisticated work. Private-sector firms do this type of work for their private clients – such as universities, institutions, and biotech companies – and then bring this expertise to federal government projects.

Complex renovations also require a high level of expertise. Architects develop the base of their experience in doing complex renovations from primarily private-industry work. By renovating major facilities and historic buildings in the private sector, architects develop specialized skills. Through their private-sector work, they acquire a keen understanding of how to work with the historic fabric of buildings. Renovating historic buildings is challenging because it involves designing contemporary workplaces and incorporating modern buildings systems.

Moreover, facilities often remain occupied during complex renovations. Both the U.S. Department of Justice and the U.S. Geological Survey (USGS) buildings remained substantially occupied during renovations. The USGS had 11 phases of construction. It was a very complex project, and the architects designed the systems in a phased manner that accommodated renovations and maintained occupancy while the work was being done so that laboratories and offices were functional. This highly planned phasing process and balancing of multiple aspects result from the years of experience that private-sector firms bring to federal government projects.

PRIVATE-SECTOR DESIGN WORK RESULTS IN COST SAVINGS FOR THE FEDERAL GOVERNMENT

Another advantage of using private-sector architects for federal design work is the substantial cost savings. Architecture firms take on the risk for the government of being able to provide services and resources when a project requires them. Conversely, there are phases in the design process when the demand for resources declines. All projects experience ebbs and flows of manpower requirements. The nature of a private architecture firm is that it is able to staff projects when needed and then move those resources to other projects when the demand diminishes. The federal government depends upon private-sector firms to figure out how to distribute their resources in ways that keep their overhead low and allows them to put people on projects in a timely fashion. When a project is outsourced, the risk of full utilization is the responsibility of the private-sector firm. Architecture firms provide a high level of efficiency that the federal government could not sustain itself.

Architecture firms develop expertise from their work with the private sector and then bring that experience to the government project. If the federal government wants to maintain this experience internally for highly specialized projects, it would come at a great premium. Furthermore, it would be difficult for the government to utilize these resources well once they acquired them because there isn't as broad a project pool in the federal government to relocate employees with specialized skills.

Government outsourcing promotes innovative design, specialized skill, and cost savings, which results in superior value and unique insight. The federal government significantly benefits from the expertise private-sector architects provide. By tapping into their best practices, architects apply their skills and innovation to federal buildings. This type of experience can only be developed in the environment of the private sector, but can be applied to all federal government facilities.

Recently, the General Accounting Office (GAO) estimated that there is a $4 billion backlog in "repair and alteration work that need[s] to be completed at federal buildings." Thus, not only would the TRAC Act severely reduce government contract work for architects and other private-sector contractors, but it would also paralyze the government and make it impossible for federal agencies to complete needed repairs to ensure the modernization and safety of federal facilities.

THE TRAC ACT EMPHASIZES LOW COST RATHER THAN QUALIFICATIONS

The AIA has serious concerns that passage of the TRAC Act would undermine the integrity of architectural and engineering (A/E) services as specified in the Brooks Act. Public-sector building projects involve public health and safety considerations. The agency that builds such a facility is responsible for obtaining the best design possible. To ensure that the highest standards are met, the Brooks Act requires that architects and engineers be selected on the basis of professional qualifications, competence, and prior performance. Using qualifications-based selection (QBS), the federal government is required to hire the most qualified architecture firm, while at the same time obtaining a price that is "fair and reasonable." However, the TRAC Act emphasizes price competition only, rather than qualifications-based selection. As a result, private architecture firms would need to focus on lowering the cost of their services to compete with subsidized federal agencies. This emphasis on low cost, rather than qualifications, compromises the intent of the Brooks Act.

Furthermore, these cost comparisons between public-sector and private-sector performance are difficult to execute fairly. Any cost comparison must truly track actual costs, a goal that is often illusive when trying to track actual government costs. Moreover, comparing the public and private sector is like comparing apples and oranges. For architecture firms selected for public-sector work based on the quality of their design, a detailed and comprehensive price proposal, based on actual costs, is disclosed and evaluated in detail. Every cost factor is considered, from direct labor costs to every aspect of overhead and other expenses and taxable profit. These factors are often difficult to assess for public-sector design employees due to the simple fact that the

government does not track actual individual costs in a manner that is both usable and results in accountability when estimates prove to be inaccurate.

The supporters of the TRAC Act have argued that it will restore "Truthfulness, Responsibility, and Accountability in federal contracting." This bill's broad brush does not, however, take into account the fact that commercial firms in general – and architecture firms in particular – already meet those standards. The architecture community is a highly competitive marketplace where a premium is placed on ideas that result in design excellence. The professional standards that AIA members adhere to form the backbone of our relationships with our public and private-sector customers. Any firm or individual architect that cannot meet those standards cannot – and does not – survive for long. Our reputation is a critical asset as we seek more work. Federal legislation would do well to emulate the practices found in the professional design marketplace rather than trying to artificially create new standards.

THE TRAC ACT IS SIMPLY BAD PUBLIC POLICY

The TRAC Act, simply put, is bad public policy. While it may serve well for some contracts involving elementary services, the intent of this legislation should not include the technical and sophisticated work of architects and other professionals.

H.R. 721 includes an exception stating that the bill "does not apply with respect to contracts for the construction of new structures or the remodeling of or additions to existing structures" (Section 10 (3), Pg. 20, beginning on line 22). While many may assume this provision covers architectural services, they are wrong. This language simply states that the TRAC Act does not apply to the "construction" or "remodeling" of structures, which would not apply to the design services of an architect. Thus, it is clear that the TRAC Act would negatively affect the architecture profession.

The AIA urges the members of this Subcommittee not to abandon procurement reform, but rather to refocus your efforts on areas of real substantive change that will improve the services delivered. Problems in federal contracting do exist, and the occasional problem contractor does seek unfair advantage. The way to correct those problems and enhance and protect the jobs of federal employees is to ensure that they are the best trained and educated in the area of contract governance. Money spent on new cost comparisons mandated by the TRAC Act should instead be spent on federal employee training. This would improve the ability of the government to operate in a cost-effective manner.

The AIA strongly urges you to oppose H.R. 721, the TRAC Act. This legislation is detrimental to both the federal government and the private sector because it effectively excludes the private sector from being awarded federal contracts regardless of skill, quality, efficiency, or cost savings.

Statement for the Record
by

General Richard D. Hearney, USMC (Retired)
President and Chief Executive Officer
Business Executives for National Security

for the

Technology and Procurement Policy Subcommittee
of the
House Committee on Government Reform

June 28, 2001

Thank you for the opportunity to submit this statement on behalf of BENS – Business Executives for National Security – a national, non-profit, non-partisan group of business leaders working to enhance our security by bringing the best practices from the business world to bear on the challenges facing our nation. Our members know how important outsourcing has been to the success of America's leading businesses over the last two decades. Outsourcing has allowed them to focus their attentions on their core businesses while leveraging the talent, technology, and capital of their strategic outsourcing partners to the benefit of all – including, most especially, their customers.

Today, our government is already benefiting from outsourcing, as more and more we have put the performance of commercial activities – activities clearly not core to the government's missions – in the hands of private sector providers who are experts in performing these activities. Outsourcing is bringing talent and technology – and new solutions – to government business processes and providing vital support to critical operations literally around the world. There are some who are calling on the government to back away from outsourcing just as we are starting to create the kinds of strategic partnerships that transformed America's businesses. That would be a tragic mistake – and would do tremendous harm to our nation's security.

BENS' only interest is in enhancing our nation's ability to deal with the threats and challenges of a rapidly changing world. There are many who would say that our defense forces have suffered in recent years from trying to do too much, for too long, with too little. True or not, we do know that one of the reasons our military has been able to maintain its sharp edge despite significant budget reductions and increased demands has been the improved support – and savings – that have come with the updated technologies and business practices introduced through outsourcing.

Today, as always, even when asked to do too much with too little, the men and women of our military continue to do everything we ask of them. They do their jobs despite aging equipment that is more difficult and expensive to maintain with each passing year - equipment that is not being replaced at anything like an adequate pace. They do them while living and working on aging bases that are not always up to the standards they

should be. And still, too often, they do them with broken and inefficient processes more suited to the last century and the realities of the Cold War. They deserve better. And that is the heart of why BENS supports wide-spread reform of the Department of Defense's business practices, in general, and increased reliance on the private sector to provide those things they do best, in particular.

Too often, however, when the discussion turns to defense reform, it revolves around what we believe is a false dichotomy. This dichotomy suggests an "either/or" choice between taking care of federal employees or taking care of our fighting forces. If that were truly the choice, it's clear that almost everyone would do everything is his or her power to ensure our men and women in uniform are trained and ready to protect our great nation.

Fortunately, that isn't a choice we have to make – we can do both. We can strengthen our national defense by improving our combat capabilities, and still take care of our government employees – military and civilian. And a strong outsourcing program should be a centerpiece to achieving both objectives. Being in favor of a strong outsourcing program is being in favor of a strong defense and strengthening the combat capability of our soldiers, sailors airmen, and Marines. It is being in favor of good stewardship of the taxpayers' money. It is being in favor of transparency in government processes. It is also being in favor of fair competition that promotes growth and progress. And it means being in favor of improved quality of life for our men and women in uniform.

Outsourcing Contributes to a Strong National Defense

If our number one objective is always a strong national defense, we must be in favor of a strong, improved outsourcing program. Our soldiers, sailors, airmen and Marines need – and deserve – modern, "best in the world," equipment and support – and they need – and deserve – a high quality of life – for themselves and their families. Providing these is going to mean spending more on new equipment and technology and personnel benefits than we have been spending. We can, and undoubtedly will, debate where that money should come from. But common sense tells us that if we can get better service and save money from activities we are already doing, that's a good place to start. Outsourcing is already helping us find that money. Money now being spent on expensive and outdated processes and infrastructure can be saved to pay for some of the new combat equipment our forces need. And outsourcing will deliver the new technologies and processes that will improve the way they work and live.

It is important to say a word here about money and savings. The primary reason companies outsource is to get improved service. The government's goal in outsourcing is to provide better services and products to our military personnel. But saving money is an important and desirable companion goal. There are those who would try to stop the use of outsourcing by saying it does not save money. That is not supported by actual experience, numerous studies, or common sense. One of the chief ways the government has of deciding whether it is more economical to outsource commercial activity being performed by government employees is the Office of Management and Budget's (OMB) Circular A-76 process. Study after study of the results of A-76 competitions has shown,

the savings are real. We may not be able to account precisely for each dollar in savings but we do know that conducting an A-76 competition will save the government at least 20% – often much more. CNA, GAO, OMB, DoDIG and numerous others who have looked at it agree. The DoD accounting system is just simply not up to the task of capturing the numbers with the kind of precision we would demand in the business world –the kind of precision demanded of companies who contract with the government.

GAO's August 2000 examination of savings from nine recently completed competitions confirmed these observations – the savings are real and lasting. At just one Air Force Air Training site, the government saved nearly $30 million over the term of the contract – over half of their original costs – by outsourcing its base operating support activities. What if they were so far off on their calculations that it was really only 30%? Or even 20%. Should we forego those savings just because we'll never know the exact amount?

Outsourcing Contributes to Improving Combat Capability and Quality of Life

Survey after survey shows that our men and women in uniform and the civilian workforce that supports them feel best about their jobs and their quality of life when they have the tools to do the missions we give them and when their families are happy. That means new equipment that truly is the best in the world and the kind of support in their jobs they have come to expect in their private lives. It also means good housing and medical care and good support for their families while they are deployed. All of these should be provided so that our military personnel get the best values they possibly can. Here again outsourcing is already playing a huge role. Numerous quality of life services are provided by the private sector today – from medical care to family counseling to base support and food service, just to name a few. In the years ahead, privatization and outsourcing of functions such as housing and utilities will leverage the private sector's ability to attract capital to deliver new, improved and more reliable housing and utilities infrastructure at lower cost. They will also play an ever bigger role in replacing outdated and inefficient business practices with modern systems so that the savings can be reinvested in combat capability. And they will be key to bringing to the Pentagon new technologies and support processes.

Outsourcing Contributes to Transparency of the Government's Processes

Third, a strong, well-managed outsourcing program increases the public's insight into the workings of their government. A broken or mismanaged process, again the A-76 process is a perfect example, built on nearly inscrutable rules and subject to many reversals and re-reversals only serves to sow suspicion and doubt about the fairness of all of our processes. Ultimately this will be extremely corrosive to the credibility of all our leaders. Transparent competitions – whether between public and private competitors or solely private sector providers – shine a light on the workings of our government and serve to reassure everyone that the government is acting in their best interests.

Outsourcing Improves our Stewardship of the Taxpayers' Money

In the business world, if we knew we were delivering better services and products to our constituents while saving money – we would expand and improve, not hinder or stop what was working. If we couldn't account for every dollar – we would fix the accounting systems. That is what the government needs to do, because an objective we can all agree on is that we have a sacred obligation to be good stewards of the taxpayers' money. Tax dollars are precious – they should not be wasted. And outsourcing is already contributing to ensuring that they are not – even in its current state. It is providing better services and reducing costs wherever it is applied.

Outsourcing and Competition Promote Flexibility and Change

Open, fair competition is a worthy objective, in and of itself. But it is insufficient if we don't have a strong, well-run and strategically driven process that puts the process to good use. We know that we must have this competition if our system is to remain vibrant and adaptable. In a rapidly changing world, open competition promotes growth, confidence, and fairness. Outsourcing can bring the government talent it can't compete to hire, capital investment it could never fund on its own, and technology that is evolving so rapidly its procurement processes can't keep up. We know we will have to outsource if we are to fulfill our Defense missions – we simply cannot do what we have to as well as we should without it. If we are going to compete and outsource, we should do it out in the open using a rigorous and carefully crafted process – one the taxpayers can understand and have confidence in – that fosters competition and does not rely on the sort of back-room deal-making that so many fear is the way things are really done here in Washington.

So Why the Resistance?

Despite the clear need for and benefits of outsourcing, there remains significant resistance to its use. This resistance is manifest most clearly today in the "Truth, Responsibility, and Accountability in Contracting Act." This Act would be a disaster for our government – the DoD certainly could not function were it to pass. Nor, we believe, could most of the rest of the government. Its proponents have fallen into the trap created by this false dichotomy we spoke of earlier. As long it is always presented as an "either/or" choice between protecting government employees and outsourcing to save money, there will be those who will seek to stymie the process.

Our failure to educate federal employees better about the goals of outsourcing and to ensure that provisions to soften the blow of a potential outsourcing are in place is a disservice to the men and women at the tip of the spear, to the taxpayers who pay to keep them there, and to the men and women who labor so valiantly to serve them. We know we can do better and still take care of loyal, talented, and dedicated public servants. Outsourcing can bring new technologies to their federal jobs and new training to them – making them even more valuable. We know we can build in provisions for "soft landings" in the event the private sector should win a competition. We may need to get better at contracting and at the bidding process, and we may need provisions for better pension portability, but we know we can do it.

Changes are needed

Are there things we can do to make the Department of Defense's outsourcing program and processes better? Absolutely. There is no overarching strategy to our outsourcing efforts. Outsourcing is implemented on a piecemeal basis and there is no central authority with the power to make and enforce decisions. There are still too many complex rules. It still takes too long from request to bid to award. The government's finance and accounting systems still are not up to the task of identifying the government's true cost of doing business or the benefits accruing from any reforms. We still compete – or judge the final result – with too much emphasis on price instead of performance and best value. And the government employee personnel compensation and benefits systems are still too inflexible to make transitions between the public and private sectors smooth. This makes the process unnecessarily disruptive and adversarial – pitting the government against the very contractors that we say we want as our "partners."

Management Challenges for the Pentagon

The challenges for our government leaders are clear. Comptroller General David Walker said it well in his report in January of this year. Our military forces are the best in the world but "the same level of excellence is not evident in many of the business processes that are critical to achieving the Department's mission in a reasonably economical, efficient, and effective manner."

The report outlined several management challenges facing the Defense Department. They range from reform of outdated acquisition and contracting processes, to management of finances and information technology, to how the Department will maintain access to the human and intellectual resources it needs to ensure our fighting forces remain the best in the world.

These were the same challenges America's business community faced during its "competitiveness" crisis of the 70s and 80s. Companies had to find the best way to allocate limited resources in order to stay competitive and profitable in an ever more demanding and rapidly changing marketplace. Increasingly, business has learned that it does best when it focuses on what it knows best – its *core* business – while partnering with others whose expertise is providing world-class support functions.

The Forcing Function – Does it still exist at DoD?

In the private sector, the motivation behind much of the move to outsourcing has been pure and simple – survival. Businesses have simply figured out that they need to do what they do best and buy what they don't do well from others. Savings and efficiencies accrue directly to the bottom line – and stockholders and employees can all prosper.

In government, the motivation is usually the top line and the Pentagon budget's top line was decreasing. At the same time the Pentagon was meeting still large operational demands with a down-sized operating force. All the while, they were maintaining both an aging fleet of planes, ships, and tanks and a support infrastructure that had not been

down-sized commensurate with the operational force. The Pentagon had no choice but to pursue every possible savings.

Recent discussions of budget increases notwithstanding, it should now be clear that there will not be huge increases to the Department of Defense's budget. Recent plus-ups and anticipated increases are not going to be sufficient. The first challenge for all of the leadership of our government is to restate and reinforce the obvious imperative to change.

Commitment and Leadership from the Top

Change is difficult in any organization. One of the first lessons from any business undergoing a significant transformation is that to be successful, the head of that organization has to take the prime leadership role and must drive the change on a daily basis. The Secretary of Defense has indicated his willingness to make that commitment to change in the Department of Defense. He should start by renewing the Department's commitment to the outsourcing and reform process. He must insure that the Department has clear guidance and firm expectations. Only setting high expectations and then holding people accountable for results will make the process work.

Soft-Landing Provisions – An Essential Element

The Secretary's commitment should include changes in the way the Department approaches the process of changing and can begin with two areas often dealt with only as afterthoughts. The first of these would be a real effort to reform personnel systems and enhance the range of soft-landing provisions available to managers. Many are already being used to effect smooth transitions from public to private operation. Provisions such as continuation of employability, pension and benefit carryover, immediate vesting, and maintenance of leave/vacation balances have been included in previous government contracts. Other employee "soft- landing" that should be considered include:

- Pension portability
- Employee input into the process
- Expanded use of buy-outs and early retirement packages.

Education – Too Often The Last Element

Another key to making future reform efforts of any kind work may be the easiest one – but is the one most often ignored until things have bogged down or failed. The leadership of the Department of Defense must work to make sure their workforce has a much clearer understanding of both the goals of and the processes involved their reforms. They can, also, do a better job of advertising – both inside and out of the Pentagon – the success stories of preceding reforms. This education could go a great distance toward preparing the ground for future attempts to take root.

A Strategic Approach – "You Don't Have to Own it to Control It"

The Pentagon's reform initiatives have been repeatedly criticized as lacking an overarching strategy to govern and direct them. With a firm commitment from the top

and education for the government workforce in place, we believe the strategy can be built around a framework that starts with two simple ideas. First, the private sector's successes in outsourcing can be used to identify the areas that are best candidates for the government to "get out of the business of ..." Second, a lesson from the private sector to captured in the Dawkins Panel's report on Commercialization in the Department of Defense – "You don't have to own it to control it." The Department must take a hard look at everything it does, and really scrub its business processes to shift its focus to the "core" things that only the government can do and rid itself of the things the private sector can and should do.

Private Sector Outsourcing Candidates are a Place to Start

There are several sectors where the private sector holds a comparative advantage – either their employees have talents for which the government is unable to compete or they have developed technologies, processes, or expertise that the government cannot readily replicate. These are common problems throughout government and the Defense Science Board and others have adequately detailed the potential for savings in these areas. For comparison and by way of example, here are the areas where the Outsourcing Research Council says the private sector has chosen to spend its outsourcing dollars:

- information technology deployment,
- logistics (inventory and transportation),
- document management,
- component manufacturing (the "make/buy" decision),
- financial management,
- human resources,
- and raw materials management (commodities).

Shine a Bright Light on Every Process

In developing and implementing its strategy, the Department should renew its efforts to reengineer and outsource using all the tools they have in hand. The Pentagon's business processes are not world-class – they are not what our men and women in uniform deserve – and they will not stand up to the "bright light and wire-brush" scrutiny they should be given. Every process and every position needs to be reexamined – there is no justification for many of the positions in the Pentagon's most commercial of entities being exempted from competition.

A strategic approach to outsourcing, done correctly, will enable the Department to look at all of its functions, not just those it classifies as commercial, and all of its positions, even those classified inherently governmental or otherwise exempted from competition. Far too many of the Department's most commercial of activities of have been exempted from competition for what amount to specious reasons.

BENS Suggestions for Changes

In the last 15 years, as our fighting forces were drawn down over 40%, we saw a continual shift in the balance of Defense spending from fighting forces – "tooth" – to support functions – "tail." Today, only 3 out of every 10 Defense dollars go to funding the weapons, training and people providing the combat capability we rely on to fight and win America's wars – DoD's core business. Support functions eat up 70% of today's defense budget. No community would put up with having 7 out of every ten police officers sitting behind desks with only 3 out on the beat. And no business could survive with 70% of its spending dedicated to overhead.

It was this dramatic imbalance that led to the charter of the BENS Tail-to-Tooth Commission – and it was this unacceptable turnabout of spending priorities that caused the commission to reverse the importance of the usual "tooth-to-tail" formulation in its name. The Tail-to-Tooth Commission – comprised of chief executive officers of leading companies, former Defense Secretaries Frank Carlucci and Bill Perry, and a group of senior military advisors – was a three-year effort to promote business models to help the Defense Department cut overhead, buy smarter, and budget better.

The Commission knew that by adopting successful business models the Department of Defense could pare billions of dollars from support "tail" that could be reinvested in combat "tooth." The Tail-to-Tooth Commission's *Call to Action*, released in February of this year, provides specific steps for implementing eleven reforms aimed at doing just that. Very briefly, some of the ideas for reform contained in the *Call to Action* include:

- Stepping up the pace of the ongoing efforts to make the private sector the preferred providers of utilities and housing infrastructure and management throughout the Department of Defense.
- Making the private sector – either the original equipment manufacturer or the prime contractor – responsible for the entire life-cycle support and supply chain management for Department of Defense weapons systems.
- Taking full advantage of current Congressional authorities to pilot test new acquisition strategies and methods. Much of the authority needed to pursue innovative solutions is already available, including the expansion of the use of FAR Part 12 contracts for acquiring housing, utilities, and information technologies as parts of service contracts.
- Increasing the use of performance-based contracts for goods and services throughout DoD.
- Dropping detailed and lengthy "performance work statements" and specifications in favor of "performance based" competitions with short, clear "statements of objectives." Today's functional analyses and complex "performance work statements" are time consuming, costly, and, worst of all, too often lock both the government and private providers into broken business processes while locking out innovative solutions.
- Awarding contracts for "best value" and establishing – and enforcing - performance incentives and/or penalties for the winning bidder. Best value contracting includes an evaluation of technical competence, proven past

performance, management capability, life cycle cost—not just initial price, and quality.

- Incorporating activity-based costing methods throughout the Department of Defense. Business decisions could then be made on a valid cost structure – identifying true costs – not estimates, as we currently must – when determining the government's cost of doing business.

A Little Help From Congress – Money for Accounting Systems and Pilot Programs

It should be clear from the list above that much of what the Pentagon will need in terms of authority to proceed, it has. It will need, though, two things more from the Congress. First, money for things like activity-based costing systems that require significant up-front investment. Only with reliable cost data can the participants in these competitions have faith in the numbers that determine the outcomes. These new systems are essential to establishing the transparency of the process and the sound business footing that are needed to make this process work in the long run. The second thing the Congress can provide is support for conducting some pilot program tests of some new and more wide-ranging competition schemes.

Summary

BENS is made up of business men and women, but we know that the Department of Defense is not a business. That does not mean, however, the Pentagon – and especially its business-like support functions – cannot be run in a more business-like way. Over the last twenty years, BENS has been privileged to work to try to bring the best lessons of the business to the Pentagon. Restoring vigor to a process that can bring all the benefits of competition and outsourcing to the Pentagon's support functions is critical to having a strong, effective, affordable defense.

Strong and continual competition is what makes American industry the envy of the rest of the world. It creates new technologies, improves existing ones, and gives us new and better products at a lower price every day. This same competitive environment can serve to strengthen our national defense by bringing 21st Century business technologies and practices to the support of our fighting forces. It can enhance our combat readiness at the same time it improves the quality of life of our fighting men and women and their families. Our people deserve the best weapons we can buy and first-rate support for themselves and their families. We won't be able to provide these things unless we change the ways the Pentagon is allowed to do its business functions. A strong, reformed outsourcing process is vital to strong, effective defense.

INDUSTRY LOGISTICS COALITION

Aerospace Industries Association * American Council of Engineering Companies * American Shipbuilding Association * ACIL * AeA * Contract Services Association of America * Electronic Industries Alliance * National Defense Industrial Association * Professional Services Council * U.S. Chamber of Commerce

Statement on Outsourcing

Submitted for the Hearing Record of the House Government Reform Subcommittee on Technology and Procurement Policy

June 28, 2001

Outsourcing is an integral element of the business strategies of successful organizations in today's global economy. Outsourcing is equally important to the public and private sectors. Strategic outsourcing substantially lowers costs, risks, and fixed investments while greatly improving flexibility, innovation and products and services. This results in more value for both customers and shareholders. Organizations with successful outsourcing strategies concentrate more power than anyone else on a few capabilities that customers genuinely care about; innovate constantly to ensure that their performance and value-added exceeds competitors; develop flexible business models to deal with changing competitor pressures and opportunities; and finally, leverage their resources significantly by using the capabilities and investments of others. Outsourcing strategies must be tailored to the unique business requirements of an organization. Unfortunately, many public sector organizations approach outsourcing in an ad-hoc fashion, which contributes too much confusion and misunderstanding and leads to counterproductive results.

Keys to an effective outsourcing strategy include creating a comprehensive framework, coordinating organizational policies and goals, and defining outsourcing objectives in a cooperative fashion.

First, organizations must understand their core competencies. Core competencies are not products or "those things we do relatively well". They are usually intellectually based service activities or systems that an organization performs better than any other enterprise. They are the sets of skills and capabilities that an organization delivers at "best in the world" levels to create unique value for its customers. Understanding these factors allows the organization to:

- Focus and flatten their organizations by concentrating their limited resources on a relatively few knowledge-based core competencies where they provide or can develop best-in-the-world capabilities.

- Leverage innovation through effective links to outside knowledge sources.

- Eliminate inflexibilities of fixed overhead, bureaucracy, and physical plant by leveraging the resources of both their customer chain downstream and their technology and supply chain upstream.

In the United States, more than 90 percent of the major corporations have outsourced some services. Outsourcing has migrated from a tactical, primarily manufacturing perspective to the more strategic philosophy of contracting out any functions, especially services, not identified as core competencies of the company. Upon serious investigation, most companies find that 60 to 90 percent of their in-house activities are neither being performed at best-in-the-world levels nor contributing significantly to their competitive edge. We believe these figures are equally applicable within the Federal sector including the Department of Defense. The current redefinition of our national military strategy provides an excellent opportunity for DoD to re-assess its core competencies and leverage the commercial market's proven capabilities through outsourcing. This would enable DoD to achieve excellence more quickly, with less expenditure of resources.

Once an organization's core competencies are understood, it can fully exploit three high-leverage areas for outsourcing:

- Traditional functional or service activities performed in-house (e.g., accounting, IT, payroll, or employee benefits functions).

- Complementary, integrative, or duplicative activities that need to be coordinated across the enterprise but are lodged within many different organizations.

- Those disciplines, subsystems, or systems where outsiders have much greater expertise or capabilities for innovation because of access to wider or different sets of customer needs or more specialized knowledge and/or technology.

Successful outsourcing begins with clearly defined and articulated expectations that fit the organization's missions and goals. Many failures have been attributed to ill conceived or unrealistic expectations. Outsourcing is too often looked upon as a method of getting rid of a problem area. If the root cause of the problem is internal and systemic, outsourcing will not provide resolution. The need to identify clear outsourcing objectives cannot be overemphasized, especially if the business conditions that affect the contract are dynamic.

After the service deliverables or desired level of output performance have been identified, the next step is selecting a contractor that not only has the technical and managerial capabilities to provide the required level of service, but also understands and is committed to meeting the stated expectations. Choosing the right long-term partner rather than simply choosing a service provider can mitigate the risks of outsourcing and provide a strategic focus on accomplishing organizational business requirements.

An effective outsourcing strategy should include some means of assessing performance. Although actual performance metrics depend on the particular type of project, as a minimum, they should measure timeliness, adherence to budget, and success at meeting the project's agreed upon objectives. In an ideal world, an objective numerical value could be assigned to every aspect of performance. However, performance ratings frequently require a subjective scale, with marks ranging from poor to excellent. In such a case, each member of the project's evaluation team should rate his or her experience separately, giving reasons to justify the grade given. The

team should then meet to discuss those individual grades and agree on which areas need improvement. Sharing the results of this performance analysis is always a best practice, especially if a long-term relationship is a primary goal. In many instances, on-line visibility into day-to-day performance provides real-time oversight to preclude unexpected results. This on-line visibility can also facilitate implementation of award-term, performance-based contracts.

Because it is impossible, especially in services, to predict every situation, yesterday's traditional, specific, narrow, ironclad contracts may no longer meet today's needs. The real challenge lies in writing a commercial-like contract that is specific enough to protect an organization yet flexible enough to accommodate unplanned events. As managers are called to manage outsourced services, they must learn to "manage the contract, not the contractor."

If the Federal government and the taxpayer are to fully realize the benefits of outsourcing several impediments must be immediately addressed to ensure fair and uniform implementation of future competitive sourcing, outsourcing and privatization initiatives.

Recommended Change:

Focus on Best Value vice Lowest Cost

The OMB A-76 process was established in an era where cost was the principal award determinant for all competitions. However, in today's era of best value procurements, which recognize that cost is but one of many important factors which assure taxpayer interests are most appropriately served, the old "cost-based" decision tree is no longer valid. Current OMB A-76 and Federal agency specific implementation guidance inhibits achievement of the Government-stated quality performance and cost reduction goals and severely hinders the implementation of outsourcing plans central to savings already incorporated into recent budget requests.

Change is already evident within the private sector. Routinely, even in A-76 competitions, private offerors are now evaluated in a "best value" manner, with such items as past performance, technical competence, and management experience being considered factors and in some cases, more significant factors than cost. In today's environment however, these factors also become highly problematic since A-76, by design, does not seek to account for such items within the public sector. As anyone familiar with the award process knows, when one compares a cost-based proposal (in this case, the Government's Most Efficient Organization) to a proposal which also evaluates, in real, and significant terms, non-cost factors, the cost-based proposal has a significant advantage. However, within DoD, past performance is, by policy, is supposed to account for at least 25% of every award decision. While the Industry Logistics Coalition strongly supports this change we firmly believe the nation is best served by implementing a new "Government-wide Commercial Activity Policy," which would replace the A-76 process, suited to emerging 21st century requirements and based on commercial practices as defined in recent acquisition reform initiatives.

Implement Activity Based Cost Accounting

Reliable cost and past performance information is crucial to the effective management of Government operations and to the conduct of competitions between public or private sector offerors. Unfortunately, this information has not been generally available and/or has often been found to be unreliable. The Chief Financial Officers Act of 1990 (CFO Act) included among the functions of chief financial officers "the development and reporting of cost information" and "the systematic measurement of performance." This includes performance by in-house, contract or

ISSA resources. In July 1993, Congress passed the Government Performance and Results Act (GPRA), which mandated performance measurement by Federal agencies. The Statement of Federal Financial Accounting Concepts No. 1, "Objectives of Federal Financial Reporting (1993)," stated that one of the objectives of Federal financial reporting is to provide useful information to assist in assessing the budget integrity, operating performance, stewardship, and control of the Federal government. In 1995, the Federal Accounting Standards Advisory Board (FASAB) recommended standards for managerial cost accounting, which were approved by the Director of OMB, the Secretary of the Treasury and the Comptroller General. These standards were issued as the Statement of Federal Accounting Standards No. 4, "Managerial Cost Accounting Standards for the Federal government." Despite these initiatives the current process perpetuates an aspect of the public-private competition policy that has been severely discredited in recent years; the Department of Defense still does not possess the cost systems or cost accounting procedures to accurately tally its costs for in-house activities. The DoD should immediately implement an activity based cost accounting system. However, if the Federal government, including DoD, is unwilling to make the investment in a world class accounting system maybe other factors should come into play, regardless of the cost to Government today. Outsourcing then becomes a viable strategy regardless of today's cost. In this case, the benefits may include immediate cost savings through the reduction in personnel, eliminating the need to modernize antiquated infrastructure, and/or improved system performance.

Mandate Independent Government Estimate

Next to a good specification (including reliable workload data), there is nothing more critical to the evaluation of offers (public or private) than a competent, thorough, and responsible independent Government estimate (IGE) of the manpower and non-labor resources needed to successfully perform the specified work with minimum risk of unsatisfactory performance. Unfortunately, an IGE is seldom done. Or, if one is prepared, it is typically seriously flawed because it was based on factoring from the staffing and other resources of the existing contract. Clearly, if the existing contract is not optimized, any IGE produced by such factoring will also be sub optimal. Ideally, a responsible IGE should be derived from a thorough work breakdown structure estimate that is zero-based and which reflects an appreciation of modern commercial practices. This IGE also becomes a baseline for justifying future scope growth driven by changing requirements and/or evaluating cost adjustments. It is recommended that an independent Government estimate (IGE) be prepared for every solicitation.

Provide for the Efficient, Fair and Full Implementation of the FAIR Act

The ILC believes Congress intended the FAIR Act's provisions to have broad and continuing coverage over all agencies and all methods available to the Federal government for managing its procurement of commercial activities. The Industry Logistics Coalition has summarized the implementation elements of the act it feels must be immediately addressed through revision of the FAIR Act.

- The information provided in the Federal agency Fair Act inventories is inadequate to describe the positions and functions listed in sufficient detail that a non-Government interested party, within the meaning of the FAIR Act, could determine the suitability of the classification codes assigned. There is also no way to determine what functions or activities were omitted by the various service branches, or the total number of other positions that may not be included for the activities identified – in order to validate the accuracy of the list.

- Agencies classified such a high proportion of the total positions as being "other than eligible for competitive sourcing," that it calls into question the entire inventory. Lacking supporting detail and rationales for the classifications, industry cannot determine which classifications are reasonable and which are not.

- Many instances of apparent inconsistency where functions, which are, contracted to private industry at one location are classified as ineligible for competitive sourcing at other locations. Where positions have been classified as exempt from competition due to public law or executive decision, no supporting detail citing the claimed basis of exemption has been provided. And, in many cases, positions have been rolled-up into single large categories. Such aggregated numbers are of little help in reviewing the inventory – these generic codes should be broken down into the specific functions as called for in Appendix No. 2 to OMB Circular A-76 supplemental handbook.

- Finally, many of the positions listed in the DOD's FAIR Act inventory of commercial activities are not performed by civilian Government employees, but rather by military personnel – and have not been included on the inventory. The justification given was that these are personnel attached to a squadron that must be available to be deployed overseas in time of war. However, OMB Transmittal Memorandum #20 (6-21-99) specifically states that the requirements to inventory commercial activities "*is not limited to civilian employees. Accordingly, military personnel performing commercial activities are subject to the FAIR Act and must be inventoried.*"

Kill the Truthfulness, Responsibility and Accountability in Contracting (TRAC) Act

The Truthfulness, Responsibility and Accountability in Contracting Act (H.R. 721) appears to be a simple and logical attempt to ensure Government contracting results in meaningful cost savings and efficiency enhancements; however, the impact of the bill bears little relation to its title or purported intent. The bill essentially calls for a moratorium on new service contracting. True, the word "moratorium" is not used. However, section 4 of H.R. 721 does indeed call for a temporary suspension of NEW contracting out, privatization, outsourcing, contracting and other such initiatives – in our view, that essentially is a moratorium. In addition to suspending all new Government service contracting, it would throw into chaos all existing contracting for Government services, regardless of its nature – by requiring all new contracts, options and renewals to be subjected to public-private competition. This could cost additional taxpayer dollars – in order to compete to bring work back in-house, equipment may have to be moved, new facilities built or modified and additional workforce hired and trained. The bill would, by any measure, disrupt scores of Government operations, severely impact national security, slow down or entirely stop vital environmental clean-up operations, and much more. In short, the ILC believes this bill represents a serious and unprecedented threat to the ability of Government agencies to meet their ongoing missions and improve efficiencies. It should be noted that just last year the Congress directed the General Accounting Office to convene a national panel to review the performance of commercial activities, public-private competitions and related issues. That panel, which convened in early May and is composed of both industry and union representatives, as well as, Government and academic experts, is due to report back to Congress in March 2002 with its recommendations. Thus, to support or move forward any legislation, such as the as this "Government shutdown" bill, now would be precipitous.

Industry Logistics Coalition, June 28, 2001

DBIA

DESIGN-BUILD
INSTITUTE OF AMERICA

The Honorable Thomas M. Davis III
Chair, Subcommittee on Technology
and Procurement Reform
U.S. House of Representatives
Washington, D.C. 20515

Re: House Bill: H.R. 721

Dear Mr. Chairman:

The Design-Build Institute of America (DBIA) provides a voice for design-build practitioners, advocates best practices, creates and disseminates educational information, furnishes advice and support to facility owners and users. Founded in 1993, DBIA promotes the widespread and successful use of the design-build method of project delivery throughout industry and government. With its headquarters in Washington, DC, DBIA currently counts over 885 design-build practitioners on its membership roles. As compiled by ENR magazine, DBIA members accounted for over $70 billion in construction put in place in 2000.

DBIA is opposed to the passage of H.R. 721 because of the detrimental effect it would have on the business of the Federal Government and, ultimately, the taxpayer. H.R.721 is ***not*** in the public interest for the following reasons:

- The immediate suspension of all Federal service contracting is not necessary to compile the information to ensure public-private competition;
- The immediate suspension of all Federal service contracting would have a deleterious effect on the business of the Federal Government; and
- The establishment and implementation of the waiver program (necessary to alleviate the effect of the suspension) would cost significant additional tax dollars.

DBIA appreciates the opportunity to submit comments on this important piece of legislation and hopes that its comments will be considered in any deliberations on this bill.

Sincerely,

Jim Mains

for Tanya C. Matthews, AIC
Vice President, Government Affairs

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Putting the private sector to work... for the public good.

Statement on Outsourcing
Submitted for the Hearing Record of the
House Government Reform Subcommittee on
Technology and Procurement Policy

June 28, 2001

This statement is being submitted for the subcommittee hearing record on behalf of the members of the Contract Services Association of America (CSA). Now in its 35th year, CSA is the premier industry representative for private sector companies that provide a wide array of services to Federal, state, and local governments. Our members are involved in everything from maintenance contracts at military bases and within civilian agencies to high technology services, such as scientific research and engineering studies. Many of our members are small businesses, including 8(a)-certified companies, small disadvantaged businesses, and Native American owned firms. Our goal is to put the private sector to work for the public good.

We appreciate this opportunity to share our views on the ability of the Federal government to fully utilize competitive sourcing, outsourcing, and privatization options to achieve the necessary performance of commercial activities more efficiently, at "best value" and at lower total operating cost. Unfortunately, current statutes and Federal implementation policies unduly restrict the Government's actions related to competitive sourcing of commercial activities.

Still, outsourcing has significant benefits for the U.S. taxpayer. As former President Ronald Reagan said about privatization in 1986: *"the Federal government has increasingly sought to provide services that can be more efficiently provided by the private sector. To address this problem, I have established a working group to investigate which Government functions could be effectively returned to the private sector. I have also included several initiatives in this area in the recently-released budget. This strategy does not necessarily require eliminating services now provided by the Government. Rather, it would make private alternatives available. Such a strategy ensures production of services that are demanded by consumers, not those chosen by Government bureaucrats. It also leads to more efficient and lower cost production of those services, and often removes Government-imposed restraints on competition."*

The Road to Acquisition Reform

During the height of the Cold War, the Department of Defense (DOD) had substantial budgets and its weapons systems were essentially defense-unique. Not much attention was even paid to civilian agencies. All that has changed in the last ten years. Tremendous advances have been made in the commercial sector in technology – no longer is the Government on the leading edge, but rather it is the private sector, with the Government lagging far behind. Recognizing this, Congress enacted a series of important acquisition reform initiatives. These all contributed to a more functional, effective acquisition process aimed at allowing the Government to purchase goods and services in the **commercial** marketplace, as well as strengthening the national industrial base. In the words of former Representative Bill Clinger, author of the 1996 Federal Acquisition Reform Act (commonly known as the Clinger-Cohen Act), acquisition reform achieved *"the goal of creating a more responsive system which provides more discretion to Government buyers and freedom for those who sell to them while maintaining the requisite degree of control and fairness."*

Indeed, reforms like best value procurement and performance based contracting have changed both the practical and, just as importantly, the philosophical foundation of Federal contracting. For instance, the use of past performance as a selection criteria should help contracting professionals feel more comfortable with the awardees selected for given contracts – knowing that the contractor has an established track record of providing quality service, being responsive and responsible. And that can only result in better business relationships all around. The

same is true with the broader application of performance-based contracting initiatives and, of course, the still too little utilized concept known as partnering.

These initiatives can improve the credibility of the processes involved, and of the contractors themselves. That, in turn, should eventually help reduce some of the psychological barriers to increased outsourcing and privatization that we see today.

Acquisition Reform and Outsourcing

The issues of outsourcing and privatization are among the most prominent and important issues facing the Federal government. Indeed, much of what has been accomplished in the area of acquisition reform can and must **now** be applied to a more aggressive and comprehensive policy of competing commercial activities currently performed by Government agencies. Moreover, how and where such competitions are conducted is a key acquisition reform issue.

This is certainly not a new concept. Back in World War II, private support was standard. It was only during the Cold War when we experienced a huge buildup of Government operations that we came to think of Government support as the norm. In a sense, we're now going "back to the future." Over the past decade, we've begun to look for new opportunities to contract out and privatize. There are many examples of successful transitions, including food establishments, grounds maintenance, and water treatment plants at our defense facilities. And, we've privatized the security police and civil engineering functions at many civilian facilities. We've gradually extended private support to cover the entire range of service and support functions.

A. Rewards are well worth the effort

There are many advantages we can realize as a result of privatization and outsourcing. The Government can become entangled in its own power, stifling creativity and productivity. Government agencies responsible for supplying goods and services often miss out on the drive stimulated by the global market.

We should look at outsourcing and privatization as an opportunity, not a crisis, and keep an open mind to constructive alternatives and new possibilities. As an old Chinese proverb says, "man who says it cannot be done should not interrupt man doing it."

Outsourcing is a response to practical considerations such as budget cuts and fewer people. But more fundamental, it's **the right thing to do.** We're responding to American taxpayers who demand and deserve fair value for the government's expenditures. It's yet another way of exercising an increased level of stewardship over the public purse.

B. What it's all about

Outsourcing and privatization are not about cutting services. Neither is it a question of doing "more with less." And we are certainly not talking about a loss of capability. It is about changing the **source** of a service. It's about becoming more efficient, saving money and, in the case of the United States military, maintaining combat capability and improving performance and readiness.

Competitive sourcing offers several advantages. By competing in-house staff commercial activities against the private sector, Federal agencies are forced to look at how they perform their **missions** and incorporate new and innovative methods to reduce time and cost. The end result, whether a service stays in-house or converts to contract, is improved performance, more efficient use of resources, and savings that can be used for modernization.

The U.S. private sector's restructuring experiences of the last decade yield an important lesson that is worthy of mention. Concentrating on **core expertise** and **spinning off the rest** contributes to the **bottom line.** In the Pentagon's case, the "bottom line" is measured in terms of readiness and modernization. Outsourcing and privatization can do for defense what it did for America's leading edge businesses – free up resources to concentrate on **core competencies**. In the end, the Federal government must accept this undeniable fact – when it comes to running commercial-type operations and services, the private sector has "built a much better mousetrap."

The Demand for Competition and a Fair Process

Outsourcing offers a chance to become more efficient in an increasingly demanding environment. Economically, there are obvious reasons for the switch. It all comes down to capitalizing on the advantages of the market. Competition pushes costs down, keeps output attractive, and gives the consumer a choice, increasing the options. Finally, a Government agency does not always have the impetus or the funds to keep abreast of the latest technology, to find the newest cost-saving developments, or to innovate – but the private sector does.

We are not advocating that all Government services be contracted to the private sector. But as we continue to reinvent Government we must focus on competition. And that focus requires a balanced, responsible and unyielding commitment to exploring new ideas, challenging old prejudices and looking carefully at what services the Government must provide. It also requires a careful examination of **who**, inside or outside of Government, is in the best position to provide each service in the most efficient and effective way. This means, too, that the Government should adopt from the best of private enterprise those tools that foster the necessary incentives and rewards for high performance. And it must follow a fair process designed to protect the interests of the taxpayer and address the legitimate concerns of current Government workforce while, at the same time, ensuring that the Government operates in a maximally efficient manner. Above all, we must foster a process that is reliant on competition – and the private sector.

Competition is a key ingredient. Whether it is between the public and private sectors, or solely within the private sector, competition is the principal guarantor of quality and efficiency. Without competition, which provides necessary checks and balances, there is precious little incentive to provide goods and services of the highest quality and least cost. Competition lies at the heart of virtually every contemporary management – yet it remains sorely underutilized and faces formidable barriers within many areas of Government.

But competition is not just an endless quest for the lowest prices or costs. In its truest form, competition is a system of management in which there is an aggressive pursuit of all possibilities (in the case of Government, including a wide array of public/private partnerships) that can help the organization achieve its goals most efficiently and productively.

Therefore we must bring reason back to the discussion. If, as a nation, we are serious about enhancing efficiency and reducing the cost of Government, we cannot ignore the potential offered by increased competition for the provision of Government services. Nor can we afford to continue to tolerate the artificial barriers to that competition, barriers too often erected by parochial interests and so contrary to the real interests of the American taxpayer. As we renew our commitment to growing jobs in the private, rather than public sector, the enhancement of competition in Government becomes even more important.

The Need for Workforce Training

The role of retraining and job placement is a vital one – and it is an area in which the services industry is ready and willing to assist.

The ability of the acquisition workforce to implement and embrace changes hinges on the training and assistance that accompanies it. And it hinges on the degree to which that training is based on, and communicates, a real-world understanding of the competitive commercial marketplace. Because of the importance of outsourcing issues to the Government procurement process, we recommend that procurement officials be provided with special training in the requirements of the A-76 process

Ironically, at the same time extensive cultural and process changes are being mandated through acquisition reform, the acquisition workforce is being reduced without a corresponding reduction in workload required by the "old system." Moreover, fiscal support for education and training is coming under extreme budget pressure. We also may reach a crisis as talented acquisition individuals begin to retire; if not addressed, there is expected to be a gap within five years of trained and experienced high-level acquisition personnel. This must be addressed.

Outsourcing Myths and Realities

A. Contractors pay their employees less.

Several inaccurate assertions have repeatedly been made about the services industry. The first assertion is that service contractors achieve savings by paying their employees less. This is misleading and wrong. The service contract industry is governed by a host of wage laws, among them the Service Contract Act

Under the SCA, the Government provides wage rates for a variety of employees in addition to requiring money to be spent on fringe benefits. Violations of the Service Contact Act can result in fines and debarment. Indeed, the Contract Services Association of America (CSA) has a successful program with the Department of Labor to promote understanding of and compliance with the Service Contract Act.

Under the SCA, service contractors are required to:

- Pay the minimum monetary wage listed in the applicable wage determinations;
- Pay a bona fide fringe benefit or equivalent at the hourly cost listed in the wage determination;
- Prohibit services from being performed under conditions controlled by a prime contractor or a subcontractor which are unsanitary or hazardous or dangerous to the health or safety of the service employees;
- Keep detailed records for all employees who perform services under the prime contract for a period of three years from the date of completion of work on the prime contract;
- Include the standard subcontract clauses in all subcontracts that describe the requirements of the SCA;
- Review subcontractor pay practices to ensure their compliance with SCA (and the prime can be debarred on the basis of non-compliance by a subcontractor);
- Give notice to all service employees, either directly or by posting the wage determination in a prominent location, of the applicable minimum monetary wage applied to their occupational classification and the fringe benefits requirements; and
- Respect collective bargaining agreements in place (for successor contracts).

According to the implementing regulations in the Federal Acquisition Regulations (FAR), all solicitations for service contracts must include the requirement that employees of service contractors be paid the same Federal Grade Equivalence (FGE) in wage rates, and be given the same in fringe benefits, as if that contractor employee was employed by the Federal contracting agency. And, all private sector government contractors must abide by the Fair Labor Standards Act, the Occupational Safety and Health Act and numerous other statutes. Private firms also pay Federal, State and local taxes -- a requirement not imposed on in-house Government activities.

B. It is disputed that outsourcing of Government functions actually saves money.

Study after study, from sources as diverse as the General Accounting Office (GAO), the Office of Management and Budget (OMB) and innumerable think tanks, have shown that competitively outsourcing the Government's commercial activities saves money – potentially a lot of money. For the taxpayer, this means an average savings of 30% regardless of who wins the competition. Broken down, this figure represents an average of 20% savings when an in-house team wins and an average of 40% savings when a private firm wins. At DOD alone, several studies have estimated that potential savings are in the neighborhood of $30 billion dollars. Even reports that are critical as to the amount of savings achievable through outsourcing conclude that "competition for work, including competition between the public and private sector – regardless of who wins – can result in cost savings."

Clearly, competition helps agencies get the best value for its dollar. The competitive outsourcing program enables the Federal agencies to obtain quality services more efficiently in two ways. First, it provides an incentive for the Government's in-house activities to streamline and re-engineer their operations, as well as reduce their operating costs to become more competitive with private suppliers. Second, it provides private competitors an opportunity to compete with one another, and with in-house operations, to take on the business of providing needed goods and services as economically as possible.

C. It is asserted that contractors put Federal employees out of work, only to bring in their own people.

Contractors do not have a "warehouse" of people just waiting to take over the job. A study done by the National Commission of Employment Policy (NCEP), a branch of the Department of Labor, indicates that over half of the workers on outsourced Government functions went to work for the private sector firm, while twenty-four percent of the workers were transferred to other jobs and seven percent retired. The study concluded that less than seven percent of the workers needed to find new employment.

The question of jobs and job loss is one of the most misunderstood and misrepresented issues in the whole debate over competitive contracting. First and foremost, job loss is not a function of contracting but one of identifying the most efficient and productive means of implementing a function or service, whether or not a contract is let. Since the Government's responsibility is to provide services in the most cost and quality conscious manner possible, making the system more cost and quality conscious must by definition involve some reductions in the workforce. Today, perhaps more than ever before, achieving maximum efficiency and productivity is imperative and must be the government's highest priority. But as noted above, the majority of employees easily find other employment.

D. And there is the term "Shadow Government."

It sounds provocative, but in fact it is inapplicable, alarmist and misleading. Oversight of Federal government contractors is, by its nature, an inherently governmental function. The power to create the scope of work, dictate the terms of the work and terminate the contract are functions performed by the Federal government, not the contractor. The contract itself embodies the responsibilities that the contractor must perform in order to keep the business; failure to do so may result in termination of the contract, and even civil or criminal penalties. The term "shadow Government" is nothing more than a "shadow argument."

The Problems Inherent in Public-Private Competitions

There are built-in inequities which must be adjusted if we are 1) to get cost comparisons that are truly fair and 2) engender the kind of confidence in the process that is critical if the goals and objectives of the Federal Activities Inventory Reform Act are to be achieved. And, it goes without saying that the A76 process itself, which is far too time consuming and disruptive must be modified and streamlined if we are to achieve the goals of the reform initiative. There are improvements that could be made today, real improvements, that do not have to wait for that day sometime after the millennium when the Government accounting system is rationalized.

A. Resistance

The resistance of Government managers stems from several basic concerns -- many of which have been alluded to in the above discussion. First, they fear that contracting out will, to some degree, erode their managerial control, causing performance to suffer and diminishing their effectiveness. And, of course, managers justifiably want to protect their employees from adverse actions. Government employees and their unions often consider cost competition a direct threat, either from a diminution of benefits and seniority, or, in the worst case, from loss of jobs. People who choose Government careers for security, stability, and patriotic reasons tend to see their commitment as devalued by a forced move to the private sector. One important fact that goes unrecognized is that, although the results of an outsourcing study could potentially lead to the loss of Federal employment, it usually leads to the transfer to another Federal job or becoming a part of the contractor workforce, whose pay and promotion opportunities are often better.

Unfortunately, opponents of privatization and outsourcing contend that such efforts threaten the American way, fail to provide good quality service, and save less money than proponents claim. Resistance also comes from members of Congress whose constituents are directly affected by privatization and outsourcing. Public employees' unions and the Congress often place obstacles in the path of outsourcing and privatization. Unfortunately, national security considerations have been used to rule privatization or outsourcing as out-of-bounds in many programs. For example, the Congress has blocked cost-saving contracting out of much supply, maintenance, and repair work despite requests from the Pentagon.

B. Cost Comparison Process

Industry has significant philosophical reservations regarding public -private competition, especially when it is based solely on lowest cost. Indeed, we feel that it is not in the best interest of the taxpayer for the Federal government to compete directly with its citizens; this is partly reinforced by the lack of comparability between Government and industry cost accounting systems.

As OMB Director Mitch Daniels stated in an April 18 speech at a General Services Administration Federal Acquisition Conference, *"the general idea that the business of Government is not to provide services, but to see that services are provided seems self-evident to me."*

While industry recognizes that public-private competitions will continue to be the rule, we are concerned that such competitions ultimately disadvantage all parties. For the private sector, the playing field is not, and likely never will be, entirely level. This is primarily due to the fact that, despite several recent laws, the Government does not have cost accounting systems in place to provide accurate or reliable financial data on workloads, does not have to pay taxes, and the methods by which it computes its overhead rates are not comparable with those of industry, nor does the Government "pay" for infrastructure (e.g. buildings and land). In addition, the Government does not face, either qualitatively or quantitatively, the same risks as a commercial contractor (*e.g.*, on issues relating to termination for default, absorption of cost overruns or potential Civil False Claims penalties).

The factors listed above make it extremely difficult and, in some cases impossible, for industry to win a competition. For the Government, such competitions often result in decisions to retain work in-house because it does not appear that outsourcing represents the lowest cost to the taxpayer. However, in many such cases, the appearance is drastically different than the reality. The Government's "cost" is typically based on accounting systems that simply cannot capture the real, total cost and almost always fail to provide an adequate framework for determining whether the Government's "cost" is, in fact, the most efficient organization for the taxpayer (including meaningful assessments of past performance, such as those rightfully applied to the private sector). Indeed, awarding a contract to the government is not even made on the basis of "best value" – a fundamental premise of acquisition reform – but rather low cost. If Government agencies are to continue to compete against private offerors to provide goods or services, it is vital that such competitions be conducted on the basis of truly comparable levels of performance, cost accounting practices, past performance and best value.

To reiterate, reliable cost and past performance information is crucial to the effective management of Government operations and to the conduct of competitions between public or private sector offerors. Unfortunately, this information has not been generally available and/or has often been found to be unreliable. The Chief Financial Officers Act of 1990 (CFO Act) included among the functions of chief financial officers "the development and reporting of cost information" and "the systematic measurement of performance." This includes performance by in-house, contract or ISSA resources. In July 1993, Congress passed the Government Performance Results Act (GPRA), which mandated performance measurements by Federal agencies. The Statement of Federal Financial Accounting Concepts No. 1, "Objectives of Federal Financial Reporting (1993)" stated that one of the objectives of Federal financial reporting is to provide useful information to assist in assessing the budget integrity, operating performance, stewardship, and control of the Federal government. In 1995, the Federal Accounting Standards Advisory Board (FASB) recommended standards for managerial cost accounting, which were approved by the Director of the Office of Management and Budget, the Secretary of the Treasury and the Comptroller General. These standards were issued as the Statement of Federal Accounting Standards No. 4, "Managerial Cost Accounting Standards for the Federal Government." *Despite these initiatives, the current process perpetuates an aspect of the public-private competition policy that has been severely discredited in recent years – the Department of Defense, and the other Federal agencies, still do not possess the cost systems or cost accounting procedures to accurately tally its costs for in-house activities.*

The need for comparable accounting data is implied in the *Federal Activities Inventory Reform Act* (FAIR Act) that is supported by industry. The statute requires an inventory of all commercial activities within the Federal government and allows contracting for the performance of those activities to pursue the "best value" for the taxpayer. It requires realistic and fair cost comparisons and establishes a definition for inherently governmental functions. The FAIR Act embraces several key principles: to achieve the best deal for the taxpayer; to be fair and equitable to all interested parties; and, to be instrumental in the government's overall reinvention effort. It is a rational and appropriate approach towards achieving the proper balance of utilizing public and private resources.

Much of what agencies can achieve through competitive sourcing is constrained by OMB Circular A-76, "Performance of Commercial Activities." This circular established Federal policy for the performance of recurring commercial activities and provides guidance and procedures for determining whether recurring commercial activities should be operated under contract with commercial sources, in-house using Government facilities and personnel, or through inter-service support agreements (ISSAs). In principle, Circular A-76 is not designed to simply contract out. Rather, it is designed to: (1) balance the interests of the parties to a "make or buy" cost comparison, (2) provide a level playing field between public and private offerors to a competition, and (3) encourage competition and choice in the management and performance of commercial activities.

The A-76 process, however, was established in an era where cost was the principal award determinant for all competitions. In today's era of best value procurements, which recognize that cost is but one of many important factors which assure taxpayer interests are most appropriately served, the old "cost-based" decision tree is no longer valid. Current OMB A-76 and Federal agency specific implementation guidance inhibits achievements of the Government-stated quality performance and cost reduction goals and severely hinders the implementation of outsourcing plans central to savings already incorporated into recent budget request.

Change is already evident within the private sector. Routinely, even in A-76 competitions, private offerors are now evaluated in a "best value" manner, with such items as past performance, technical competence, and management experience being considered factors and in some cases, more significant factors than cost. In today's environment, however, these factors also become highly problematic since A-76 by design, does not seek to account for such items within the public sector. As anyone familiar with the award process knows, when one compares a cost-based proposal (in this case, the Government's Most Efficient Organization, MEO) to a proposal which also evaluates, in real, and significant terms, non-cost factors, the cost-based proposal has a significant advantage. And, it is troubling that Government activities are not held to the same standard of historic performance as the private sector sector is held when competing to perform the work. Within DOD, private contractor's past performance – a key acquisition reform initiative – is, by policy, supposed to account for at least 25% of every award decision.

Stop TRAC

The Truthfulness, Responsibility and Accountability in Contracting Act (H.R. 721) appears to be a simple and logical attempt to ensure Government contracting results in meaningful cost savings and efficiency enhancements; however, the impact of the bill bears little relation to its title or purported intent. The bill essentially calls for a moratorium on new service contracting. True, the word "moratorium" is not used. However, section 4 of H.R. 721 does indeed call for a temporary suspension of NEW contracting out, privatization, outsourcing, contracting and other such initiatives – in our view, that essentially is a moratorium. In addition to suspending all new Government service contracting, it would throw into chaos all existing contracting for Government services, regardless of its nature – by requiring all new contracts, options and renewals to be subjected to public-private competition. This could cost additional taxpayer dollars – in order to compete to bring work back in-house, equipment may have to be moved, new facilities built or modified and additional workforce hired and trained. The bill would, by any measure, disrupt scores of Government operations, severely impact national security, slow down or entirely stop vital environmental clean-up operations, and much more. In short, the ILC believes this bill represents a serious and unprecedented threat to the ability of Government agencies to meet their ongoing missions and improve efficiencies. It should be noted that just last year the Congress directed the General Accounting Office to convene a national panel to review the performance of commercial activities, public-private competitions and related issues. That panel, which convened in early May and is composed of both industry and union representatives, as well as, Government and academic experts, is due to report back to Congress in March 2002 with its recommendations. Thus, to support or move forward any legislation, such as the as this "Government shutdown" bill, now would be precipitous.

Recommendations

We face a continuing need to address the fundamental inequities in the area of public-private competitions, which lie at the heart of the Government's desire and ability to privatize and outsource. Most of those competitions are conducted under the auspices of OMB Circular A-76; others, specifically in the depot arena, are subject to a different policy as set forth in the depot cost comparability handbook.

In addition to the specific recommendations detailed below, CSA endorses the recommendations by the Industry Logistics Coalition and the Acquisition Reform Working Group (ARWG), which also submitted statements for the record. ARWG's statement includes a list of existing policy guidance and statues that require review and revision or repeal to ensure fair and uniform implementation of future competitive sourcing, outsourcing & privatization initiatives.

- **Need for a New Government-wide Commercial Activities Policy.** The nation is best served by implementing a new "Government-wide Commercial Activity Policy" suited to emerging 21st century requirements and based on commercial practices as defined in recent acquisition reform initiatives which would eventually replace the A-76 process.

- **Mandate Independent Government Estimate.** Next to a good specification (including reliable workload data), there is nothing more critical to the evaluation of offers (public or private) than a competent, thorough, and responsible independent government estimate (IGE) of the manpower and non-labor resources needed to successfully perform the specified work with minimum risk of unsatisfactory performance. Unfortunately, an IGE is seldom done – although it is common in the hardware world. Or, if one is prepared, it is typically seriously flawed because it was based on factoring from the staffing and other resources of the existing contract. Clearly, if the existing contract is not optimized, any IGE produced by such factoring will also be sub optimal. Ideally, a responsible IGE should be derived from a thorough work breakdown structure estimate that is zero-based and which reflects an appreciation of modern commercial practices. It is recommended that an Independent Government Estimate (IGE) be prepared for every solicitation.

- **Increase the level for exempted activities from 10 FTEs to 100 FTEs.** This will increase the flexibility for agencies wishing to pursue different options under A-76.

- **Focus on agency's core mission.** The the critical and relevant issue is not whether an activity is commercial or "inherently governmental," but whether it is **essential to the core mission** of the particular agency. Core activities should remain in-house; non-core activities should be competed with an eye to pushing them out. The debate must be about what the Federal agencies need in order to achieve their primary missions. Only after that question is answered will we finally get down to the business at hand – decreasing the size of our government and increasing its efficiency.

- **Revise Depot Maintenance rules.** This issue offers an extraordinary example of the way in which parochial politics drive policy. Unfortunately, we all know there will be no major relaxation of the statutes that limit the amount of depot maintenance that can be performed by the private sector. However, at a minimum, the Congress should look at modest changes to those statutes which will allow meaningful public-private partnerships – without moving the workload locations – and, as with A-76, some of the issues related to fair competition that today make depot maintenance competitions almost impossible for a private offeror to win.

- **Provide for the Efficient, Fair and Full Implementation of the FAIR Act.** Industry believes that Congress intended the FAIR Act's provisions to have broad and continuing coverage over all agencies and all methods available to the Federal government for managing its procurement of commercial activities. We remain concerned, however that the DOD Depots were exempted from this legislation and believe this issue should be addressed during the panel's review. The specific implementation elements of the act that should be addressed through regulation or review of the FAIR Act are as follows:

    - **FAIR Act Information Inadequate for Detailed Review.** The information provided in the Federal Agency Fair Act inventories is inadequate to describe the positions and functions listed in sufficient detail that a non-Government interested party, within the meaning of the FAIR Act, could determine the suitability of the classification codes assigned. There also is no way to determine what functions or activities were omitted by the various agencies or service branches, or the total number of other positions that may not be included for the activities identified – in order to validate the accuracy of the list.

    - **FAIR Act Classification Misused.** Agencies classified such a high proportion of the total positions as being "other than eligible for competitive sourcing" that it calls into the question the entire inventory. Lacking supporting detail and rationales for the classifications, industry cannot determine which classifications are reasonable and which are not.

    - **FAIR Act Classification Inconsistent.** There are many instances of apparent inconsistency where functions, which are contracted to private industry at one location, are classified as ineligible for competitive sourcing at other locations. Where positions have been classified exempt from competition due to public law or executive decision, no supporting detail citing the claimed basis of exemption has been provided. And, in many cases, positions have been rolled-up

into single large categories. Such aggregated numbers are of little help in reviewing the inventory – these generic codes should be broken down into the specific functions as called for in Appendix No. 2 to OMB Circular A-76 Supplemental handbook.

- **Inventories Do not Include Military Personnel.** Finally, many of the positions listed in the DOD's Fair Act inventory of commercial activities are not performed by civilian Government employees, but rather by military personnel – and have not been included on the inventory. The justification was that these are personnel attached to a squadron that must be available to be deployed overseas in time of war. However, OMB Transmittal Memorandum #20 (6-21-99) specifically states that the requirements to inventory commercial activities *"is not limited to civilian employees. Accordingly, military personnel performing commercial activities are subject to the FAIR Act and must be inventoried."*

We have an extraordinary opportunity to put momentum behind a policy first initiated by President Eisenhower, but which today remains largely ignored. The ability of Federal agencies to meet the tough budgetary and mission targets that Congress has set for them hinges, in large part, on the ability of Congress and the American public to know how agencies are using their resources to meet their core missions, and ensuring that scarce resources are used most efficiently.