



# **AFGE** Congressional Testimony

**STATEMENT FOR THE RECORD**

**BY**

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**BEFORE**

**THE SENATE COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS**

**SUBCOMMITTEE ON CONTRACTING OVERSIGHT**

**ON**

**CONTRACTORS: HOW MUCH ARE THEY COSTING THE GOVERNMENT?**

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Chairwoman McCaskill and Members of the Subcommittee, on behalf of the American Federation of Government Employees, AFL-CIO, which represents more than 650,000 federal employees who are proud to serve the American people across the nation and around the world, I thank you, Chairwoman McCaskill, for the opportunity to submit testimony in writing for the March 29, 2012, hearing being held by the Subcommittee on Government Contracting entitled "Contractors: How Much Are They Costing the Government?"

Since the latter part of the Clinton Administration, AFGE has worked with Democratic and Republican lawmakers alike to remake the sourcing process into one that is more accountable to taxpayers and less unfair to federal employees. We are pleased by the landmark laws that have been enacted:

1. Requirements that any work last performed by federal employees be subjected to formal cost comparisons which determine that conversions to contractor performance can at least be guesstimated to benefit taxpayers before such conversions may take place;
2. Fundamental reforms to the public-private competition process which ensure that any "guesstimated" outsourcing savings can't be attributable to the provision by contractors of inferior health care and retirement benefits;
3. Prohibitions on the use of the OMB Circular A-76 privatization process until problems documented by the Government Accountability Office (GAO) and the Department of Defense (DoD) Inspector General (IG), among others, can be fixed;
4. Requirements that agencies develop inventories of their service contracts in order to identify which ones should be corrected, divested, or insourced, and to better identify and control the costs of service contracts; and
5. Requirements that agencies give "special consideration" towards insourcing functions that cost too much, are poorly performed, or include functions too important or sensitive to privatize.

Ultimately, except perhaps for some contractors, I think we can all agree that inherently governmental functions ought to be performed by federal employees; that functions closely associated with inherently governmental functions (e.g., overseeing contractors, developing regulations, preparing budgets) should be performed by federal employees "to the maximum extent practical"; that critical functions usually should be performed by federal employees; that performance decisions with respect to other functions should be based on law, cost, policy, and risk; and that agencies should have the same visibility and control over the costs of service contracts that they already have with respect to federal employee costs.

The good news is that there is an adequate statutory structure to ensure that this common-sense vision can become a reality. The bad news is that this Administration, like its predecessors, is unwilling to enforce the relevant sourcing and workforce management laws. As a result, too many sourcing

decisions continue to be made on the basis of the wrong criteria, particularly arbitrary constraints on the size of the federal workforce.

I offer six recommendations for promoting the interests of taxpayers and all Americans who rely on the federal government for important services.

### **1. ENFORCE PROHIBITIONS AGAINST DIRECT CONVERSIONS**

Despite the extensive use of the Office of Management and Budget (OMB) Circular A-76 privatization process (and the resulting proof of the superiority of in-house workforces—federal employees won 80% of the time during the Bush Administration, despite a process that independent observers agree is biased against them), much work last performed by federal employees is still being given to contractors without any proof that such conversions benefit taxpayers.

The Congress, on a bipartisan basis, has, repeatedly, prohibited agencies from perpetrating “direct conversions”—the term used to describe instances in which agencies give work last performed by federal employees to contractors without first conducting statutory cost comparisons. These prohibitions apply regardless of the number of positions or amount of work involved.

The Office of Federal Procurement Policy (OFPP) has embarked on a massive campaign of “myth-busting” in order to make the procurement process less problematic for contractors. On the other hand, OFPP refuses to even issue guidance—let alone mount a public relations effort—to ensure agencies finally comply with longstanding prohibitions against giving work last performed by federal employees to contractors without first complying with statutory cost comparison requirements. Most managers don’t know these prohibitions exist and those who do know believe that there are exceptions which in fact don’t exist. As a result, agencies regularly contract out work last performed by federal employees without any consideration of taxpayer interests. And because of caps, freezes, cuts, and other arbitrary constraints, which are invariably imposed on in-house workforces but not on contractors, much work last performed by federal employees is regularly contracted out based on individual federal employees’ retirement decisions, rather than whether such conversions make sense for taxpayers.

In December 2011, the Department of Defense (DoD), the largest department in the federal government, issued guidance to its managers to guard against direct conversions. This guidance was not issued to protect federal employees, but because of concern “that the Department not become overly reliant on contracted services.” As downsizing goes forward, DoD’s guidance warns that “we must be particularly vigilant to prevent the inappropriate conversion of work to contract.”

Given the budgetary situation, other agencies are also likely to experience significant downsizing. Nevertheless, OFPP refuses to issue guidance “to prevent the inappropriate conversion of work to contract” in non-DoD agencies. According to AFGE’s own survey of eight agencies, OFPP told none of them anything about direct conversions. In fact, an official at the Department of Veterans Affairs (DVA), which regularly violates the prohibitions against direct conversions, told AFGE: “We don’t know what the policy is on direct conversions.”

DoD should be commended for its sincere attempt to safeguard taxpayer interests by actually issuing guidance to enforce prohibitions against direct conversions. However, it should be noted that officials responsible for enforcing the law and the guidance can only use their powers of persuasion, and that direct conversions continue to occur, in large part, because of the arbitrary and arguably illegal imposition of a cap on the civilian workforce, which reduces in-house staffing to FY10 levels. When commanders and managers are required, on the one hand, to comply with prohibitions against direct conversions, and, on the other hand, a ruthlessly enforced Pentagon edict to arbitrarily slash the civilian workforce, even if substituting contractors would be more expensive, it's pretty obvious which path they will choose.

Here's an example of how DoD is ultimately unable to police itself. Some installations are directly converting work last performed by civilian personnel who are ultimately paid through non-appropriated funds (NAF). There are, of course, no exceptions in law or the department's guidance for NAF employees. There is, however, a longstanding prejudice against NAF employees—that they are often military spouses who are considered not to have career ambitions—which renders them second-class employees in the eyes of some managers. It makes no sense to try to carve out an exception to the law based on how employees are paid—let alone where they live or how they vote. The law is to protect taxpayers from arbitrary conversions to contractor performance, period.

The only support that these installations can claim for discriminating against NAF employees is a bizarre GAO bid protest decision that strained to incorporate a definition of “civilian employees” from the OMB Circular A-76, one which does not include NAF employees. However, as anyone familiar with the legislative history behind 10 USC 2461 would know, the whole point of the law was not to duplicate A-76, but rather to require that a particular cost comparison process always be used—in order to make up for the A-76 process' many loopholes which had allowed too much work to be contracted out without any cost comparisons. Far from codifying the A-76 circular, the cost comparison process established by 10 USC 2461 makes only one reference to the A-76 circular (which is limited to the type of most efficient organization that must be used).

In some instances, commanders and managers may feel compelled to convert work performed by civilian employees to performance by military personnel, a workforce sometimes referred to as “Borrowed Military Manpower”. Because of their deservedly superior compensation packages, military personnel are usually considered to be twice as expensive as civilian employees. Nevertheless, the “Efficiency Initiative”, with its cap on the civilian workforce, encourages managers to substitute military personnel for civilian personnel, regardless of cost or adverse impact on readiness.

There are no legal requirements to conduct cost comparisons before making civilian-to-military conversions. However, DTM 09-007, “Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contract Support”, provides a methodology for conducting such costs comparisons. The Army attempted to rationalize civilian-to-military conversions with the issuance of guidance in October 2011. However, there are now indications that the Air Force and the Marine Corps are undertaking wasteful civilian-to-military conversions. DoD issued helpful department-wide guidance earlier this month. Elimination of the cap on the civilian workforce would in turn eliminate much of the bureaucratic coercion to undertake such conversions. Ultimately, Congress should require DoD to use the DTM before converting work from civilian or contractor performance to military performance.

The issuance of guidance on civilian-to-contractor conversions and civilian-to-military conversions constitutes both good news and bad news. On the one hand, the department acknowledges it has a problem and is attempting to satisfactorily resolve it. On the other hand, the consensus necessary to issue such guidance would only be achieved if instances of direct conversions, whether to contractors or military personnel, were numerous or even rampant. And, ultimately, the perverse incentives that cause these direct conversions can only be eliminated if supervisors are allowed to manage federal employees by budgets and workloads, rather than by arbitrary caps, freezes, cuts, or other constraints.

## **2. *MANAGE FEDERAL EMPLOYEES BY BUDGETS AND WORKLOADS, NOT ARBITRARY CONSTRAINTS***

With the implementation of the “Efficiency Initiative”, DoD has reverted to its traditional approach of managing its overall workforce at the expense of the civilian workforce. The imposition of an arbitrary FY10 cap on the civilian workforce is contrary to the law and completely inconsistent with the imperative to manage civilian personnel by budgets and workloads. If there is work to be done and money to pay for that work to be done, DoD managers should not be prevented from using civilian employees simply because they are civilian employees. Instead, performance decisions should be made on the basis of law, policy, risk, and cost. DoD claims that exceptions are allowed to the cap, mitigating against its intrinsically arbitrary nature. However, the process by which exceptions are sought and reviewed is as cumbersome as it is forbidding.

Two factors complicate the imposition of the cap. Workload reductions have not been commensurate with reductions in civilian personnel. Activities are attempting to muddle through with salami-slice tactics, whereby they struggle to do the same with less. In few instances, particularly with respect to the Army and the Air Force, have workload analyses been conducted prior to the imposition of reductions in civilian personnel. What functions are being divested and downsized because of these reductions? All too often, there are no answers to these questions. Doing more with less, i.e., not making the tough decisions about what the department will no longer perform, is a self-defeating management approach in the context of downsizing on the scale being contemplated for DoD. As non-DoD agencies begin to downsize, the DoD model is one to discard.

Worse, no comparable constraints are being imposed on DoD service contract spending. From FY01 through FY10, civilian personnel funding grew from \$41 billion to \$69 billion, while service contract spending grew from \$73 billion to \$181 billion. Even though civilian employees are cheaper and less numerous than their contractor counterparts, the “Efficiency Initiative” imposes far greater sacrifices on civilian employees. The inevitable result of the civilian personnel reductions, particularly in the absence of workload analysis, is that work that is now or could be performed more efficiently or more appropriately by civilian personnel is being outsourced or remaining outsourced. This can’t help but increase costs to taxpayers and increase the amount of work performed by contractors that is actually inherently governmental, closely associated with inherently governmental functions, or critical.

Section 808 of the FY12 National Defense Authorization Act caps DoD's spending on service contracts for FY12 and FY13 (excluding Overseas Contingency Operation spending) at the level of the President's budget request in FY10. This cap, which originated in the Senate bill, was imposed because of the Senate Armed Services Committee's (SASC) concern that "(e)xpected savings from the reduction in staff augmentation services and the civilian workforce freeze could be easily lost if other categories of service contracts are permitted to grow without limitation so that spending can shift to these contracts". Moreover, as the SASC noted, "Over the last decade, DoD spending for contract services has more than doubled, from \$72 billion in fiscal year 2000 to more than \$150 billion, not including spending for OCO, while the size of the department's civilian employee workforce has remained essentially unchanged." The SASC also reported that a senior DoD official testified in September 2010: "(T)he low-hanging fruit really is (in contract services). There's a lot of money. There has been a very, very high rate of growth over the last decade, in services. They have grown faster than everything else...I think great savings can be had there, across the Services. It's essential that we look there...because that's half the money".

Unfortunately, DoD is not interested in complying with this law. In fact, DoD is already in violation of the law by failing to even issue the required guidance necessary to implement the law. Failure to comply with the means that DoD will continue to impose budget sacrifices disproportionately on the smaller and cheaper civilian workforce. Moreover, under Section 808, DoD can lift the contractor cap to the extent it lifts the self-imposed cap on the civilian workforce. Therefore, if DoD does not actually comply with Section 808, it will have no incentive to lift the civilian personnel cap, which is widely regarded as skewing sourcing decisions in favor of contractors (because the size of the civilian workforce is constrained while spending on contractors is not, absent compliance with Section 808).

It makes no sense to always cut the cheapest and most efficient of the department's three workforces. As Representatives Buck McKeon (R-CA) and Adam Smith (D-WA), the Chair and Ranking Member of the House Armed Services Committee, pointed out last year: "The Department now spends a greater portion of its budget purchasing services than it does purchasing weapons systems, hardware, and other products. In fact, the Department spends more on contracted services than it does on pay for military and civilian personnel combined."

We are seeing variations of the DoD "Efficiency Initiative" in other agencies. Whether they are called freezes, caps, or cuts, they invariably are being imposed in one-sided fashion—on the in-house workforce, not on the contractors. This can't help but skew sourcing decisions in favor of contractors and make it significantly less likely that such decisions will be made on the basis of acceptable criteria—law, cost, policy, and risk. Chairman Richard Durbin (D-IL) included a section in the FY12 Financial Services Appropriations Bill that would have taken the DoD requirement that the civilian workforce be managed by budgets and workloads and apply it to the non-DoD agencies. It is unfortunate that it is necessary to codify what should be common-sense. However, as downsizing proceeds, it is imperative that Congress take action to prevent the application of arbitrary constraints on the federal workforce that will prevent managers from assigning work to federal employees simply because they are federal employees.

### **3. COMPILER INVENTORIES OF CONTRACTS**

Because the federal government's service contract workforce is larger and more expensive than its civil service workforce, any effort to achieve savings in how agencies provide services necessarily requires subjecting service contractors to severe scrutiny. In order to allow for such scrutiny, a law was enacted in 2009 that required non-DoD agencies to develop inventories of service contracts, which copied a 2007 law that required DoD to establish an inventory of service contracts.

Senate Armed Services Committee Chairman Carl Levin was the first to identify compliance with the inventory requirement and integration into the budget process as necessary if downsizing is to be done intelligently: "In the past, we've found that proposed cuts to contract services are nearly impossible to enforce because expenditures for service contracting are invisible in the department's budget."

As House Armed Services Committee Chairman McKeon and Ranking Member Smith recently noted, sagely, "A credible inventory that is fully integrated into the budget submission is necessary to identify and control contract costs, particularly in this time of fiscal constraints." Despite bipartisan and bicameral support for compliance with the DoD contractor inventory, OFPP is holding up the process at the request of contractors, refusing to grant the department the necessary exemption from the Paperwork Reduction Act, an exemption OFPP has already granted to the Army for its own contractor inventory even though the Army's methodology for its inventory is the basis for the methodology DoD uses for its own inventory.

Moreover, OFPP has been slow to implement the inventories of service contracts for non-DoD agencies and has failed to integrate those inventories into budget and management processes. In fact, OFPP has gone out of its way to oppose efforts to ensure that the contract inventories are comprehensive and reliable. The most recent example of this occurred in relation to the Senate's version of the FY12 Financial Services Appropriations Bill. OFPP objected to this language in Section 741: the service contractor inventories for non-DoD agencies should be based on "direct labor hours and associated cost data collected from contractors". This language--lifted directly from 10 USC 2330a, the contractor inventory requirement for DoD--was enacted pursuant to the FY11 NDAA. Why would OFPP accept this language for DoD's contractor inventory but not for the contractor inventories for the non-DoD agencies?

The contractor inventory law for non-DoD agencies already requires the collection of information related to direct labor hours. The new language would simply have clarified that contractors would supply this information in order to ensure its accuracy. The Army is already collecting this information from contractors, and its inventory is considered by Congress to be the model for the entire federal government.

Nevertheless, OFPP declared that "The proposed requirement to collect cost data would be unnecessarily burdensome on contractors without commensurate benefit." However, less than two weeks later, DoD, already under the law, came to the opposite conclusion when its Acquisition, Technology, and Logistics as well as Personnel and Readiness offices unambiguously endorsed, on behalf

of the Pentagon, the Army methodology of collecting from contractors labor hours and associated cost data “to the maximum extent possible”, stipulating that “(a)fter five years of reporting” (i.e., collecting from contractors labor hours and cost data), “the Army has found that costs and administrative burden on the private sector have been minimal as well as the associated costs to Army organizations.”

Reliable and comprehensive contractor inventories are indispensable if agencies are ever to have the same visibility into, and control over, contractor costs as they have now over federal employee costs. The absence of reliable and comprehensive contractor inventories explains why agencies are now focusing downsizing efforts disproportionately on federal employees, even though federal employees are usually fewer and cheaper than contractors. At a time when the federal government is striving to reduce its costs, why would OFPP want to prevent non-DoD agencies from receiving the same cost information from contractors that DoD collects from its contractors? Why would OFPP reject as “burdensome on contractors” a methodology that DoD has embraced to the “maximum extent possible” because of its “minimal” impact on contractors?

#### **4. USE INSOURCING TO REDUCE COSTS**

All agencies are now required to develop insourcing policies for new work and outsourced work, in particular outsourced work that is inherently governmental and wrongly contracted out, work contracted out without competition and presumably more expensive than it should be, and work contracted out that is poorly performed. Nevertheless, insourcing in non-DoD agencies is proceeding slowly. In fact, OFPP has failed to issue guidance that would allow agencies to use insourcing to save money for the taxpayers by bringing in-house functions solely for cost reasons.

Given the results of the recent study by the Project on Government Oversight (POGO), which compared the costs of federal employees and contractors, taxpayers may well wonder why OFPP would want to shield from scrutiny the army of contractors who are responsible for so much documented waste, fraud, and abuse. According to POGO’s study—*Bad Business: Billions of Taxpayer Dollars Wasted on Hiring Contractors*—“on average, contractors charge the government almost twice as much as the annual compensation of comparable federal employees. Of the 35 types of jobs that POGO looked at in its new report—the first report to compare contractor billing rates to the salaries and benefits of federal workers—it was cheaper to hire federal workers in all but just 2 cases.”

The last OFPP administrator praised this study to POGO’s chief executive. So why would OFPP ignore the “special consideration” law and not ensure that agencies can systematically consider whether to substitute federal employees for contractors? Agency officials tell us that they would like to insource for cost reasons because they think significant savings are possible. However, they won’t do so until OFPP provides “political cover,” i.e., issues the necessary guidance. Some agencies may become so desperate to insource that they will devise their own costing methodologies. Most of those agency-specific methodologies will be accurate and reliable. OFPP bears responsibility for those that are not because of its failure—now going on four years—to issue the necessary guidance.

After sixteen years of indiscriminate privatization, DoD attempted to rebalance its workforce through targeted insourcing during parts of 2009 and 2010, both of functions which are inappropriate for contractor performance and functions which can be performed more efficiently in-house. DoD



reported that in FY10 insourcing generated significant savings, \$900 million, and brought in-house work performed by thousands of contractors that was actually too important or sensitive to privatize. Ultimately, 17,000 civilian personnel were added to handle insourced work. Insourcing continued in FY11; according to unofficial estimates, even with the Army not yet having reported, DoD added 9,100 positions through insourcing, with nearly 4,500 hiring actions executed against those and another 1,700 in process.

Contractors and their Congressional cronies took another shot last year at ending DoD insourcing in order to protect contractors at the expense of taxpayers and warfighters. However, on a bipartisan basis, Congress upheld the insourcing process in the FY12 NDAA. A House provision that would have allowed contractors to perform inherently governmental work was defeated. Another House provision that would have allowed insourcing determinations for closely associated with inherently governmental, acquisition, and critical functions to be made on the basis of cost, rather than the traditional legal and regulatory basis of risk, was also defeated. Still another House provision which would have narrowly defined critical functions was also defeated. A minimum cost differential (i.e., the 10%/\$10 million rule, which already applies when DoD tries to contract out work performed by civilian employees) was imposed on DoD before it can insource contractor work for cost reasons. Civilian employees must be shown to be marginally more efficient than contractors before contractor-to-civilian conversions can take place. Please note that this minimum cost differential does not apply when a large contractor insources work from a smaller contractor or when DoD wants to shift from one contractor to another contractor. Now, that the insourcing rules are settled—with DoD’s insourcing methodology being codified for each of the last two years—DoD should aggressively insource for cost reasons in order to generate substantial savings.

Contractors are now trying to use the appeal of small businesses to undermine insourcing. Earlier this month, the House Small Business Committee marked up three bills that included anti-insourcing provisions.

Two of the bills introduced would require that all agencies allow officials to advocate on behalf of small business contractors in insourcing decisions, while a third would give contractors legal standing to oppose agencies’ insourcing decisions.

Under H.R. 3980, agencies would be required to allow small business advocates to “participate in any session or planning process and review any documents with respect to a decision to convert an activity performed by a small business concern to an activity performed by a Federal employee”.

Under H.R. 3851, agencies’ small business advocates “shall review and advise such agency on any decision to convert an activity performed by a small business concern to an activity performed by a Federal employee”.

And under H.R. 3893, contractors would be given legal standing to challenge insourcing decisions before GAO and the Court of Federal Claims. It would also prohibit insourcing from occurring until agencies had “made publicly available, after providing notice and an opportunity for public comment, the procedures of the agency with respect to decisions to convert a function being performed by a small business concern by a Federal employee” and until those procedures are reviewed by officials who advocate for small business contractors.

H.R. 3980 and H.R. 3851 would provide officials advocating for small business contractors unprecedented ability to influence insourcing decisions. Politicizing sourcing decisions, whether in favor of small businesses or unions, is wrong, period. Federal employees have no comparable advocates on their behalf when their jobs are being reviewed for outsourcing. Proponents claim that the legislation is based on a recent OMB policy letter, which requires that “The agency should involve its small business advocate if considering the insourcing of work currently being performed by small businesses.” Obviously, the legislation and the policy letter are fundamentally different with respect to the degree of involvement of the small business advocates. Moreover, this flawed argument does nothing to address our concern about the one-sidedness of these provisions.

H.R. 3893 is also one-sided. It gives legal standing to contractors in the insourcing context, but not to federal employees. Contractors have long had legal standing in the outsourcing context before GAO and the Court of Federal Claims. Not until recently were federal employees given limited legal standing before the GAO in the outsourcing context. Moreover, this legislation is unprecedented in that it gives contractors the ability to file bid protests even when agencies are attempting to insource work that is inherently governmental, closely associated with inherently governmental, or critical. Finally, agencies are not required to publish for comment their outsourcing plans, let alone run them past federal employee advocates.

It is not responsive for opponents of insourcing to ritualistically invoke OMB Circular A-76. The executive branch used A-76 indiscriminately in DoD during the Clinton Administration and in all agencies during the Bush Administration. A-76 aficionados—a collection of sad, misguided souls and unreconstructed federal employee haters—had their way for 16 years. And what do they have to show for the havoc and the disruption, besides enriching consultants (i.e., Beltway Bandits)? Nothing.

According to GAO, there is no proof all of this activity resulted in any savings.

*“We have previously reported that other federal agencies—the Department of Defense (DoD) and the Department of Agriculture’s (USDA) Forest Service, in particular—did not develop comprehensive estimates for the costs associated with competitive sourcing. This report identifies similar issues at the Department of Labor (DoL). Without a better system to assess performance and comprehensively track all the costs associated with competitive sourcing, DoL cannot reliably assess whether competitive sourcing truly provides the best deal for the taxpayer...”<sup>1</sup>*

If A-76 had been a weapons program, it would have been killed a long time ago. Moreover, the A-76 process has been generally and specifically prohibited by Congress because of documented flaws in the process that have been identified by GAO and the DoD IG and acknowledged by OMB. Whether A-76 can be reformed and the prohibitions lifted are questions completely divorced from insourcing. According to GAO and the DoD IG, the A-76 privatization process

1. failed to keep track of costs and savings,

*DoD IG: “DoD had not effectively implemented a system to track and assess the cost of the performance of functions under the competitive sourcing program...The overall costs and the estimated savings of the competitive sourcing program may be either overstated or understated. In addition, legislators and Government officials were not receiving*

*reliable information to determine the costs and benefits of the competitive sourcing program and whether it is achieving the desired objectives and outcomes...<sup>ii</sup>*

*GAO: “[The Department of Labor’s (DoL)] savings reports...exclude many of the costs associated with competitive sourcing and are unreliable...(O)ur analysis shows that these costs can be substantial and that excluding them overstates savings achieved by competitive sourcing...DoL competition savings reports are unreliable and do not provide an accurate measure of competitive sourcing savings...Finally, the cost baseline used by DoL to estimate savings was inaccurate and misrepresented savings in some cases, such as when preexisting, budgeted personnel vacancies increased the savings attributed to completed competitions...<sup>iii</sup>*

2. resulted in the actual costs of conducting the privatization studies exceeding the guesstimated savings, and

*GAO: “For fiscal years 2004 through 2006, we found that the Forest Service lacked sufficiently complete and reliable cost data to...accurately report competitive sourcing savings to Congress...(W)e found that the Forest Service did not consider certain substantial costs in its savings calculations, and thus Congress may not have an accurate measure of the savings produced by the Forest Service’s competitive sourcing competitions...Some of the costs the Forest Service did not include in the calculations substantially reduce or even exceed the savings reported to Congress.”<sup>iv</sup>*

3. included fundamental biases against the in-house workforce.

*DoD IG: “...In this OMB Circular A-76 public/private competition—even though (DoD) fully complied with OMB and DoD guidance on the use of the overhead factor—the use of the 12 percent (in-house) overhead factor affected the results of the cost comparison and (DoD) managers were not empowered to make a sound and justifiable business decision...In the competitive sourcing process, all significant in-house costs are researched, identified, and supported except for overhead. There is absolutely no data to support 12 percent as a realistic cost rate. As a result, multimillion-dollar decisions are based, in part, on a factor not supported by data...Unless DoD develops a supportable rate or an alternative method to calculate a fair and reasonable rate, the results of future competitions will be questionable...”<sup>v</sup>*

Until the implementation of the reforms listed below, AFGE strongly believes that the temporary suspensions on new A-76 privatization studies should be continued:

1. The establishment of a reliable system to track costs and savings from the A-76 process that has been implemented, tested, and determined to be accurate and reliable, over the long-term as well as the short-term.
2. Consistent with the law, the establishment of contract inventories so that agencies can track specific contracts as well as contracts generally.

3. Consistent with the law, the development and implementation of plans to actively insource new and outsourced work, particularly functions that are closely associated with inherently governmental functions, that were contracted out without competition, cost too much, and are being poorly performed.
4. Consistent with the law, the enforcement of government-wide prohibitions against direct conversions.
5. The development and implementation of a formal internal reengineering process that could be used instead of the costly and controversial A-76 process.
6. Revision of the rules governing the A-76 process to make it more consistent with agencies' missions, more accountable to taxpayers, and more fair to federal employees.
  - a. Increase the minimum cost differential to finally take into account the often significant costs of conducting A-76 studies, including preliminary planning costs, consultants costs, costs of federal employees diverted from their actual jobs to work on privatization studies, transition costs, post-competition review costs, and proportional costs for agencies' privatization bureaucracies (both in-house and out-house).
  - b. Double the minimum cost differential for studies that last longer than 24 months—from the beginning of preliminary planning until the award decision.
  - c. Eliminate the arbitrary 12% overhead charge on in-house bids.

## **5. CAP CONTRACTOR COMPENSATION**

OMB has imposed a two-year freeze on the pay of federal employees who, among other things, care for our veterans and patrol our borders. With respect to contractors, however, OFPP can only call for capping at \$200,000 the taxpayer-subsidized compensation of each contractor's five most lavishly rewarded employees, while allowing thousands of contractors to charge taxpayers for compensation that far exceeds \$200,000 per employee, costing taxpayers tens of billions of dollars. In fact, OFPP is poised to significantly raise the current cap on taxpayer reimbursement of each contractor's five most lavishly compensated employees from almost \$700,000 annually to take into account an overdue hike from 2011 and an upcoming hike in 2012. That contrasts with the position taken by many Congressional Republicans who want to extend the freeze on federal employee pay for an additional three years without asking millionaire contractors to make any sacrifices.

Why do OMB and the Congress insist on imposing significant sacrifices on even the most modestly-paid federal employees, while allowing almost every single upper-income contractor to make no sacrifice whatsoever? The federal government employs hundreds of thousands of talented doctors, scientists,

and other award-winning professionals who are the most qualified in their fields. Why is it necessary for taxpayers to spend tens of billions of dollars on overpaid contractors instead of on reliable, experienced, and inexpensive federal employees?

Now, it is time for the richest contractors to make modest sacrifices. Currently, contractors can charge taxpayers up to \$693,000 annually for the compensation of a single employee. Since 1998, the compensation cap applicable to government contracts has more than doubled, from an egregious \$340,650 in 1998 to an unconscionable \$693,951 in 2010. From 1998 to 2010 the benchmark has grown 53 percent faster than the rate of inflation! Of course, contractors often make millions of dollars per year because their firms richly supplement the already generous compensation provided by taxpayers with fees and profits earned on federal contracts. AFGE is not proposing to limit contractor incomes; rather, we propose capping how much taxpayers must contribute towards contractor compensation. A former senior DCAA executive estimates that a cap of \$200,000 for all contractors would save \$50 billion over ten years.

Special praise should be given to Senators Barbara Boxer (D-CA) and Charles Grassley (R-IA) for successfully offering an amendment to the Senate version of the FY12 National Defense Authorization Act to cap taxpayer reimbursement for contractors at \$400,000 annually. (The cosponsorship of Chairwoman McCaskill and Senator Tester of this amendment is much appreciated by AFGE.) Although their dollar cap disappeared in the subsequent House-Senate conference, the two Senators were at least ultimately successful in subjecting all DoD contractors to the current \$693,000 cap. Previously, only the top five most lavishly compensated employees at each contractor were subject to the cap. Senators Boxer and Grassley recently introduced legislation (S. 2198) to cap compensation for all contractors at \$400,000. Representative Paul Tonko (D-NY) also deserves praise for introducing legislation (H.R. 2980) to cap compensation for all contractors at \$200,000.

## **6. ABOLISH OFPP**

OFPP should be abolished and its responsibilities transferred to OMB's resource management offices (RMO's). It's not that what OFPP does isn't important. In fact, what OFPP does is of the utmost importance. That's why procurement and sourcing decisions shouldn't be made by an understaffed and increasingly isolated bureaucracy that has been all but taken over by the industry it is supposed to be regulating. Contractors are OFPP's one consistent constituency. Even the most independent-minded career staff would be beaten down by the relentless lobbying of a notoriously self-interested industry.

If procurement and sourcing decisions were made in the context of OMB's larger budget and management responsibilities, instead of in isolation, there is no question that the ability of contractors to influence those decisions would be greatly reduced, and that as a result those decisions would promote better management and take into account their impact on the budget. Of course, specialization is a virtue. However, in this instance, that specialization has been commandeered so that it is being consistently used to promote private interests at the expense of the public good. AFGE is not advocating that OMB stop making procurement and sourcing policy. However, it is clear that the public interest would be better served if those decisions were integrated into OMB's overall budget and management responsibilities.

Why should the contractor-controlled OFPP be allowed to make decisions about the inventories of service contracts? The federal government spends hundreds of billions of dollars annually on service contracts, but we can't identify and control those costs, let alone systematically identify contracts that cost too much or include inappropriate functions. These inventories would allow agencies, for the first time, to control and rationalize huge parts of their budgets. At a time of downsizing, such newfound capabilities would be almost heaven-sent. We know why contractors oppose these inventories—with increased visibility inevitably comes increased accountability. But why should OFPP identify with contractors instead of taxpayers? OFPP opposes DoD's attempt to establish a department-wide inventory because of the "burden" imposed on contractors. Apparently it's a "burden" for contractors to provide taxpayers with cost data for the contracts they pay for, even though the provision of such information is required by law. Even contractors who provide services to the Army, whose inventory methodology is the basis for DoD's own inventory methodology, scoff at that nonsense. And what of the non-DoD contract inventories? They have become little more than painfully incomplete, check-the-box inventories that are divorced from their agencies' budget and management agendas. The Army is using its inventory to eliminate wasteful and duplicative contracts and identify those contracts that include inappropriate functions. How can that happen in the non-DoD agencies with OFPP calling the shots? Does anyone believe agencies would not have been much closer towards establishing reliable and comprehensive inventories that would have been integrated into their management processes if this policy had not been driven—i.e., derailed—by OFPP?

Why should OFPP be responsible for defining inherently governmental, "closely associated", and critical? Only contractors were pleased by OFPP's belated reaffirmation of the inadequate status quo that has left contractors supervising other contractors and contractors making policy, preparing budgets, and writing regulations. Is it any wonder that OFPP's definitions focused almost exclusively on acquisition and information technology functions, because of their parochial relation to the office's mission, while ignoring the myriad other functions that have been undermined by over-reliance on contractors? And look at what's happened after the definitions were promulgated? Virtually nothing. Has OFPP set deadlines for agencies to end their reliance on contractors for inherently governmental functions or to review contracts that include "closely associated" or critical functions to see if they should be corrected or insourced? Of course not. That would not be in the interests of OFPP's clients.

Why has no guidance been issued that would make it easy for agencies to substitute federal employees when they'd be cheaper than contractors? At a time when dollars are few, but service contracting consumes a huge part of discretionary spending, it is almost unimaginable that cost-based insourcing guidance has not been issued, especially when an independent study has shown that contractors usually cost almost twice as much as federal employees. Why does OFPP invest inordinate resources in "myth-busting" in order to create an even more relaxed and informal procurement environment for contractors, but never bother to uphold taxpayer interests by issuing guidance to enforce statutory prohibitions against direct conversions? Does anyone reasonably believe that, in both instances, taxpayers would not have fared better had such decisions been made by OMB's RMO's, which have to take into account broader interests than OFPP?

Does anyone really think that OFPP's handling of contractor compensation is a model of good government and sound economy? It is one thing to carry out a bad law, but another to lobby against efforts to reform that law, as OFPP did last year in fighting back against the Boxer-Grassley amendment to cap contractor compensation at a more reasonable \$400,000 per annum. If policy on contractor compensation were not made in a contractor-controlled bureaucratic citadel like OFPP, is it not more likely that the executive branch would have proposed significant reform on its own a long time ago? Would the budget side of OMB really have left \$50 billion in unnecessarily lavish contractor compensation on the table the way OFPP has?

OFPP's credibility is further strained by claims of taxpayer savings from its procurement reforms. OFPP has touted an initiative to reduce service contract spending by 15% per year. However, OFPP's claims are based on a very small reduction in a sliver of service contracting dollars. The 15% "savings" is based on a claim of a \$6 billion reduction in "targeted" product and services codes (PSCs) that amount to only \$40 billion in overall service contract spending, and the \$40 billion baseline represents only 12% of all service contract spending! So, the actual savings in service contract spending--if any is to be claimed at all—is less than 2%. In terms of overall federal contract spending, it is only about 1%. Changes in "contracting policy" have little to no impact on such a remarkably small change in spending. Much more relevant to these changes are factors such as appropriations availability, programmatic requirements, agency mission changes, and any number of factors that determine an agency's need for contracted services.

No discussion of OFPP's work on behalf of contractor interests would be complete without some mention of OFPP's monumental role in helping to diminish and undermine the work of the Cost Accounting Standards (CAS) Board. The CAS Board, which was originally chaired by the Comptroller General, was responsible for issuing accounting principles applicable to larger government contracts. During the past ten to fifteen years, unless prompted by specific Congressional action, the sole interest that OFPP has shown in the work of the CAS Board seems to be centered around limiting CAS applicability to the most narrow set of contracts and contractors possible, thus potentially costing taxpayers billions of dollars in improperly allocated costs. OFPP has openly flouted the CAS Board statute by appointing "accounting" industry members who were little more than shills for contractor interests. OFPP has sought to ignore the basic statutory appointment process by making appointments that do not even conform to the term requirements contained in the statute (4 years term appointments). The previous administrator justified ignoring the statutory requirements by claiming that he wanted to "stagger" the CAS Board member terms, which although perhaps a laudable goal, was done in manner contrary to the statutory requirements. Under the notorious leadership of a former administrator, who is currently serving a sentence in a federal penitentiary, OFPP allowed the CAS Board to function with "members" who had not been duly appointed at the time of their initial meetings. As an auditor, Chairwoman McCaskill, you may be surprised and disappointed by the mockery that OFPP has made of this once proud accounting standards setting entity.

Chairwoman McCaskill, thanks very much for inviting AFGE to provide our views about the important issues raised by this hearing. In choosing not to participate, OMB has missed a very significant opportunity to work with you to make sourcing decisions more accountable to taxpayers.

## **APPENDIX: AFGE REVIEW OF GAO CRITIQUE OF DOD A-76 REPORT (GAO-11-923R)**

In Section 325 of the FY10 National Defense Authorization Act (NDAA), the use of the OMB Circular A-76 privatization process was suspended in DoD until the department finally complied with an FY08 NDAA requirement to inventory its service contracts and submitted a report to Congress on how it would address longstanding problems in the A-76 privatization process that have been identified by the DoD IG, GAO, and others. In that same law, GAO was charged with assessing DoD's report.

According to GAO, DoD acknowledges it has not complied with the inventory requirement: *“DoD officials told us that the accuracy of the service contracts inventory is improving, but it is not ready to be certified.”* (Page 11) As Senate Armed Services Committee Chairman Carl Levin (D-MI) noted: *“In the past, we’ve found that proposed cuts to contract services are nearly impossible to enforce because expenditures for service contracting are invisible in the department’s budget. For this reason, (the FY08 NDAA) required that the the budget justification documents clearly and separately identify the amounts requested in each budget account for procurement of services. The department has not yet complied with that requirement.”*

While acknowledging that DoD had submitted its A-76 report in June 2011, thus complying with the report requirement, GAO did express remaining concern about two very longstanding problems with the A-76 process, specifically the tracking of costs and savings as well as the calculation of in-house overhead costs. Unfortunately, GAO, on too many occasions, failed to critically examine DoD's excuses and rationales for not reforming the A-76 process.

Here are five of the more significant problems in the A-76 process that DoD was supposed to address in its report.

### **1. Failure to enforce prohibitions against direct conversions (i.e., giving work to contractors without first complying with the requirements of a formal cost comparison process):**

DoD: *“(T)he Department has not had an opportunity to ‘comply’ with the changes directed by Sec 321”* because of the prohibitions imposed against the use of A-76. (Page 5)

GAO: *“Should the current moratorium on competitions be lifted, DoD’s report states the department will not have any issues implementing and complying with the report.”* (Page 7)

AFGE: Prohibitions against direct conversions in DoD were first imposed in the Defense Appropriations Bill, through annual general provisions, starting in FY04; the FY06 NDAA included a prohibition in Title 10. These laws prohibited DoD from giving work to contractors without first complying with the requirements of a formal cost comparison process for functions with more than 10 employees. In the FY10 NDAA and Defense Appropriations Act, the exceptions for functions involving 10 or fewer employees were eliminated.



It is very surprising that GAO would let pass DoD's fundamentally wrong assertion that it *"has not had an opportunity to comply"*. The danger of direct conversions exists whether A-76 studies are being undertaken or the process has been prohibited. Indeed, that is why the Army, on its own, issued guidance against direct conversions in May 2011, i.e., while the A-76 prohibition is still in effect, helpfully pointing out that, *"(I)t is imperative that that as the Army implements the results of its organizational assessments, we must be particularly vigilant in complying with statute and prevent any inappropriate conversion of work to contract performance"*.<sup>vi</sup> Unfortunately, this well-intentioned effort has not succeeded in eliminating direct conversions within the Army. Even DoD knew—unlike GAO, apparently—it had an *"opportunity to comply"*. Unfortunately, it wasn't until December 2011 that department-wide guidance was issued, i.e., again while the A-76 moratorium is still in effect. Worse, this guidance appears to have little effect. In order to comply with the arbitrary and arguably illegal FY10 cap on the civilian workforce, work performed by civilian employees is not just being illegally directly converted to contractor performance but also directly converted to military performance as well. That's not AFGE propaganda. The issuance of department wide guidance in the case of contractor direct conversions and military direct conversions is an implicit acknowledgement that these practices are widespread.

Conclusion: Should DoD comply with the law that prohibits giving work to contractors without first conducting formal cost comparisons? Even though such prohibitions have been in effect since 2004, both before and during the current A-76 moratorium, DoD claimed it hasn't had the opportunity to comply. GAO simply restates DoD's position. AFGE thinks responsible lawmakers will hold DoD to a higher standard.

## **2. Failure to tracking costs and savings:**

DoD: We believe *"that the Department of Defense Commercial Activities Management Information System (DCAMIS) is a comprehensive and reliable system for the Department to track the cost and quality of the performance of functions in public-private competitions"*. (Page 11)

GAO: *"(C)oncerns remain...For example, the DoD report stated that upgrades to the current system used to track data on public-private competitions have been made, but because of the moratorium, DoD has not reviewed whether data reliability and accuracy actually has improved."* (Page 2)

AFGE: Concern about DoD's inability to track costs and savings is not a recent phenomenon: *"DoD had not effectively implemented a system to track and assess the cost of the performance of functions under the competitive sourcing program..."*<sup>vii</sup> That DoD can do nothing more but serve up the same blithe assurances that they have finally fixed the problems—at the same time the rest of the department's accounting problems have achieved such notoriety—is, obviously, troubling.

However, GAO failed to remind readers of the concerns it had expressed as recently as 2008 that the A-76 process is systemically flawed because it fails to take into account significant costs of conducting privatization studies:

*“OMB does not require agencies to report these costs (the time in-house staff spent on competition activities, precompetition planning, certain transition costs, and postcompetition review activities) because they reflect what would be incurred as part of an agency’s typical management responsibilities.*

*However, our analysis shows that these costs can be substantial and that excluding them overstates savings achieved by competitive sourcing. For example, we found that including in-house staff time spent on competition activities would have doubled the costs reported for one competition...*

*“We have previously reported that other federal agencies—the Department of Defense (DoD) and the Department of Agriculture’s (USDA) Forest Service, in particular—did not develop comprehensive estimates for the costs associated with competitive sourcing. This report identifies similar issues at the Department of Labor. **Without a better system to assess performance and comprehensively track all the costs associated with competitive sourcing, DoL cannot reliably assess whether competitive sourcing truly provides the best deal for the taxpayer.**”<sup>viii</sup> (Emphasis added)*

Conclusion: Should DoD finally be required to track the costs and savings from conducting A-76 privatization studies? DoD, without proof, says all’s well. GAO expresses concern about the reliability of DoD’s assurances. However, GAO never discussed the findings it had reported earlier about systemic problems in the A-76 process that leave significant costs of conducting privatization studies unaccounted for. As OMB would acknowledge, these systemic problems have not been corrected, which may explain why OMB has not called for repeal of the government-wide A-76 prohibition.

### **3. Inability to ensure that actual costs of carrying out A-76 studies don’t exceed guesstimated savings:**

DoD: *“OUSD(P&R) does not find a need for any significant changes at this time to the conversion differential...”* (Page 13)

GAO: *“DoD’s report states that the cost differential currently in effect is an appropriate methodology. The Commercial Activities Panel also viewed the differential as a reasonable way to take into account the costs of the disruption and risk of converting from the public to the private sector.”* (Page 9)

AFGE: DoD incurs significant costs in conducting A-76 studies. Some of those costs are non-quantifiable (e.g., “disruption and decreased productivity”, per A-76) and some are quantifiable (e.g., hiring outside consultants, diverting employees from their usual work to staff the studies). By its very definition, the A-76 cost differential includes only non-quantifiable costs: *“The conversion differential precludes conversions based on marginal estimated savings, and captures non-quantifiable costs related to a conversion, such as disruption and decreased productivity.”* In order to actually “preclude conversions based on marginal estimated savings”, i.e., ensure that guesstimated savings are not offset or exceeded by real costs, many believe, including AFGE, it is necessary that the minimum cost differential be increased in order to also take into account quantifiable costs.

GAO never even addresses this point, although it has earlier raised concerns, as discussed above, that the A-76 process fails to take into account significant quantitative costs, which can exceed guesstimated savings. GAO's invocation of the Commercial Activities Panel is as troubling as it is misleading. This Panel was deliberately stacked with contractors and Bush Administration officials, leaving pro-federal employee representatives outnumbered, 8-4. Nevertheless, the minimum cost differential as it is currently formulated to capture only non-quantitative costs was not included in the principles adopted unanimously by the panel. Moreover, the endorsement of the minimum cost differential by the pro-contractor majority acknowledged that it did not take into account quantitative costs: "...the Panel views that differential as a reasonable way, consistent with the principles, **to take into account the disruption and risk** entailed in converting between the public and private sectors."<sup>ix</sup> (Emphasis added)

Conclusion: Should we prevent the actual quantitative costs of conducting privatization studies from exceeding the guesstimated savings? DoD says no. GAO, although it has acknowledged earlier that quantitative costs can exceed guesstimated savings, evidently doesn't care. AFGE thinks responsible lawmakers will feel otherwise.

#### **4. Failing to prevent federal employees from being put at a competitive disadvantage through the imposition of excessive overhead charges:**

DoD: *"Clear definitions for overhead, general and administrative costs, operations overhead, indirect cost, and indirect labor now exist for costing in DoD public-private competitions."* (Page 13)

GAO: *"(U)ntil actual overhead costs are used to develop a more meaningful standard overhead rate, the magnitude of savings expected from public-private competitions will be imprecise and competition decisions could continue to be controversial. We recommended that OMB and DoD develop a methodology to determine appropriate overhead rates. The agencies did not agree with our recommendation."* (Page 9)

AFGE: In 2003, the IG reported that an A-76 study involving more than 600 civilian employees had been wrongly decided because tens of millions of dollars in nonexistent overhead costs had been added to the in-house bid. DoD was required to add such costs because of an A-76 rule that automatically charges all in-house bids in all agencies with overhead costs that equal 12% of in-house personnel costs. Based on that scandal, the IG recommended that DoD either concoct a formula for overhead costs that is empirically based or specifically calculate in-house overhead for each A-76 study:

*As a result, multimillion-dollar decisions are based, in part, on a factor not supported by data...Unless DoD develops a supportable rate or an alternative method to calculate a fair and reasonable rate, the results of future competitions will be questionable..."*<sup>x</sup>

DoD dismissed those recommendations then, and, now, eight years later, it is still dismissing them. Instead of judging DoD on its report, as required by the law, GAO allows DoD to, in effect, take the test over again by noting that DoD, *after* submitting its A-76 report in June, had begun in August a review of "procedures used to estimate and compare costs of service contracts". (Page 9) Why had DoD begun this review *after* submitting its A-76 report? Given that the overhead rate is an integral part of the OMB

Circular A-76, which is, obviously, overseen by OMB, how can DoD unilaterally change it? Surprisingly, GAO never bothers to ask such questions.

Conclusion: Should federal employees be charged for their actual overhead costs? GAO and the IG have reported that federal employees can be overcharged for their actual overhead costs under A-76. Officially, DoD says there is no need for reform. Off the record and after submitting its A-76 report, DoD tells GAO it will look into the matter—11 years after the IG made its recommendation. DoD has to win back our trust, so shouldn't the order be reversed—i.e., make reforms and comply with the law before being given permission to crank up the broken A-76 machinery? Of course, DoD cannot change the overhead rate because it is part of the OMB Circular A-76, not the DoD Circular A-76.

#### **5. Failing to comply with the prohibition against automatically recompeting in-house workforces:**

DoD: *“Current DoD policies are adequate to implement the” prohibition against automatic recompetitions...“(D)ue to the moratoriums, and decreased emphasis on public-private competitions under the current Administration, the draft revision of the Department’s public-private competition policy further clarifying this policy has been suspended.”* (Page 14)

GAO: *“DoD’s report recommended that the department issue clarifying guidance regarding the statutory limitations on recompetitions and how to correctly apply them...”* (Page 10)

AFGE: Under the OMB Circular A-76 process, DoD is required to re-compete under A-76 all in-house activities within five years of their previous winning A-76 bids except in very limited circumstances. Needless to say, this automatic recompetition rule does not apply to contractors who win A-76 studies. Contractor cheerleaders invariably attempt to justify this obvious inequity by claiming that contractors would have to compete against other contractors, even if they are spared having to compete against civilian employees. However, as reported by GAO and the IG, contractors frequently win contracts on a sole-source basis or with limited competition. Congress prohibited automatic recompetition of in-house activities because of concern over the inequity as well as the wastefulness.<sup>xi</sup>

DoD acknowledges that it has failed to implement the prohibitions against automatic recompetitions, but blames Congress for enacting prohibitions against undertaking new A-76 studies. This excuse is as perverse as it is disingenuous. The prohibition against automatic A-76 recompetitions in DoD, which was included in the FY08 NDAA, was enacted on January 28, 2008. The government-wide prohibition against undertaking new A-76 studies, which was included in the FY09 Omnibus Appropriations Act, was enacted on March 11, 2009. (The DoD-specific prohibition against undertaking new A-76 studies, which was included in the FY10 NDAA, was enacted on October 28, 2009.) DoD had more than one year to implement the automatic recompetition prohibition. Indeed, DoD’s failure to implement that law was considered by lawmakers to be yet another reason to impose the government-wide and DoD-specific A-76 suspensions. It is unfortunate that GAO chose not to point this out.

GAO also failed to point out that the automatic recompetition rule is part of the OMB Circular A-76, which is something DoD can't change on its own, even if so inclined. It is surprising that neither DoD in its report nor GAO in its critique of that report ever acknowledged the obvious inequity of A-76 automatically recompeting federal employees but not contractors. As Chairman Levin has declared: *"This rule is fundamentally unfair"*.

Conclusion: Should DoD actually implement the prohibition against automatically recompeting DoD in-house workforces under A-76? DoD has had four years to issue guidance on its own. However, it apparently refuses to do so until *after* the A-76 suspension has been repealed. DoD has to win back our trust, so shouldn't the order be reversed—i.e., make reforms and comply with the law *before* being given permission to crank up the A-76 machinery? And should federal employees, but not contractors, be automatically recompeted under A-76? DoD and GAO can't be bothered to ask this question, let alone answer it satisfactorily. AFGE believes responsible lawmakers will think otherwise.

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<sup>i</sup> Government Accountability Office, Department of Labor: Better Cost Assessments and Departmentwide Performance Tracking Are Needed to Manage Competitive Sourcing Program (GAO-09-14).

<sup>ii</sup> Department of Defense Inspector General, DoD Reporting System for the Competitive Sourcing Program (D-2006-028).

<sup>iii</sup> Government Accountability Office, Department of Labor: Better Cost Assessments and Departmentwide Performance Tracking Are Needed to Manage Competitive Sourcing Program (GAO-09-14).

<sup>iv</sup> Government Accountability Office, Forest Service: Better Planning, Guidance, and Data are Needed to Improve Management (GAO-08-195).

<sup>v</sup> Department of Defense Inspector General, Public/Private Competition for the Defense Finance and Accounting Service Military Retired and Annuitant Pay Functions (D-2003-056).

<sup>vi</sup> U.S. Army, *Update on Converting Certain Functions to Contractor Performance* (April 22, 2011).

<sup>vii</sup> Department of Defense Inspector General, *DoD Reporting System for the Competitive Sourcing Program* (D-2006-028).

<sup>viii</sup> Government Accountability Office, *Department of Labor: Better Cost Assessments and Departmentwide Performance Tracking Are Needed to Manage Competitive Sourcing Program* (GAO-09-14).

<sup>ix</sup> Commercial Activities Panel, *Improving the Sourcing Decisions of the Government*, p. 39.

<sup>x</sup> D-2003-056.

<sup>xi</sup> Senator Carl Levin (D-MI) spoke eloquently in support of the prohibition when it was considered on the floor, on October 1, 2007: "I wish to focus on one provision of the amendment which addresses a fundamental element of fairness in competition between the private and public sectors. OMB circular A-76, which governs public-private competitions, establishes rules for what happens after one side or the other wins a competition. If the private sector wins a competition, the work stays in the private sector forever. If the public sector wins, however, the work must be subject to a new competition within 5 years. Attachment B to OMB circular A-76 specifically states that if the public sector competitor wins a competition, "an agency shall complete another...competition of the activity by the end of the last performance period" in the performance agreement. This rule is fundamentally unfair. It also undermines the morale of Federal civilian employees by contributing to the view of civil servants as second-class citizens. At a time when the Department of Defense should be recruiting thousands of new civilian employees to address a human capital crisis, the rule is clearly contrary to the Department's own interests. The Kennedy-Mikulski amendment would address this problem by stating that OMB may not require the Department of Defense to conduct a new public-private competition within any specified period of time after the public sector wins a competition. That is the right answer. DOD's human capital policies should be driven by the Department's human capital needs--not by arbitrary policies established by the Office of Management and Budget. So I hope our colleagues will support the Kennedy-Mikulski amendment."

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