DOD USE OF CONTRACTORS FOR CIVILIAN EMPLOYEE WORK

SAMPLE LETTER (FORMAL 7114)

THIS SAMPLE LETTER IS DESIGNED TO MEET THE STATUTORY REQUIREMENTS OF AN INFORMATION REQUEST ESTABLISHED BY THE FLRA AT 5 U.S.C. §7114(b)(4), ALTHOUGH THERE IS NO GUARANTEE THAT THE AGENCY WON’T ARGUE OTHERWISE.

THIS SAMPLE REPRESENTS A MORE FORMAL APPROACH TO MANAGEMENT THAN THE ALTERNATIVE LESS-FORMAL NON-7114 SAMPLE.  CONSIDER USING THIS LETTER IF YOU DID NOT RECEIVE THE INFORMATION YOU REQUESTED USING THE LESS FORMAL LETTER OR YOU HAVE A DIFFICULT RELATIONSHIP WITH MANAGEMENT.

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DOD USE OF CONTRACTORS FOR CIVILIAN EMPLOYEE WORK

SAMPLE LETTER (FORMAL 7114)

Date: \_\_\_\_\_\_\_\_\_\_\_

[Name of Agency Official RFI normally submitted to]

[Title]

[Installation]

[Address and email]

Subject: Request for Information on the Use of Contractors to Perform Work Performed By/Designated for Civilian Employees

Dear\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [name of agency official]:

I write on behalf of \_\_\_\_\_\_\_\_\_\_\_\_ [Local/Council and number] of the American Federation of Government Employees (AFL-CIO), which represents \_\_\_ [estimated number] civilian employees at \_\_\_\_\_\_\_\_\_\_\_ [DoD installation] in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_ [city, state]. I am concerned that work normally performed by/designated for civilian employees, \_\_\_\_\_\_\_\_\_\_\_, [name of function] is or will be performed by contractor personnel. Such action would mean that \_\_\_\_\_\_\_\_\_\_\_ [DoD Component or Agency], and therefore the Department of Defense (DoD), would be in violation of federal law, DoD guidance, and Office of Management and Budget (OMB) guidance, all of which prohibit direct conversions (i.e., the contracting out of functions performed by/designated for civilian employees without first performing a formal cost comparison). *(See attached summary of laws and guidance.)*

Insert evidence here. For example: “Management official \_\_\_\_\_\_\_ stated on \_\_\_\_\_\_ [date] that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Or: “In an email dated \_\_\_\_\_\_\_\_\_, management official \_\_\_\_\_\_\_\_ stated that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Currently, \_\_\_\_\_ [add number] civilian employees work on these functions.

Federal statute 10 U.S.C. §2461 prohibits DoD from converting work from civilian employee to contractor performance without first conducting a formal cost comparison (governed by “OMB Circular A-76”.) DoD is currently prohibited by Congress from conducting OMB Circular A-76 studies because the process is significantly flawed. Because DoD cannot conduct the required cost comparison, and that cost comparison is required before contracting out work, DoD cannot use contractors to perform work performed by/designated for civilian employees. This law includes the following restrictions:

* No Loopholes. DoD cannot get around this rule by modifying, reorganizing, dividing or in any other way changing a function.
* No Exception for Increase or Surge in Work. An increase in work, temporary or not, is no exception to the law. A DoD function that is expanded (or reengineered, reorganized, modernized, upgraded, or changed), but essentially provides the same service, is not “new work”.
* No RIF Does Not Equal No Violation. The law applies even if civilian employees are not “adversely affected” under labor/management rules.
* No Exception for Personnel Ceiling. Agencies cannot use contractors to perform federal employee work to circumvent a federal employee personnel ceiling.

DoD has issued EIGHT directives to implement the relevant laws. The latest is an April 21, 2016 memorandum entitled “Update on OMB Circular A-76 Public-Private Competition Prohibitions – FY2016”:

* “… The Department continues to be statutorily prohibited by law from converting any work currently performed, or designated for performance, by any number of civilian personnel to private sector (contract) performance. … [This restriction] applies regardless of whether or not a position, or billet, is established for that work, and whether or not that position, or billet, is encumbered. This includes workload and positions/billets that are impacted as a result of ongoing institutional reform initiatives, such as delayering or headquarters reductions; workforce reductions …; and position vacancies and workload impacted by hiring freezes or funding shortfalls.”

Finally, OMB guidance reiterates the prohibitions. OMB Circular A-11 states that “… agencies are precluded from converting, in whole or in part, functions performed by federal employees to contract performance … ,” and OMB Memorandum M-13-05 states that “Agencies must also ensure that appropriate controls are in place to prevent the increased use of contractors to perform work due to any restrictions on hiring.”

Please see the attached information request. I ask that the agency respond to this inquiry [within 10 business days or date specified in the Collective Bargaining Agreement] and rectify prohibited use of contractors \_\_\_\_\_\_ function. I look forward to resolving this issue together.

Sincerely,

\_\_\_\_\_\_\_\_\_\_\_,

President

AFGE Local/Council \_\_\_\_\_\_\_\_

Enclosures

Cc: Head of Installation

Head of Component or Agency

REQUEST FOR INFORMATION

Date: \_\_\_\_\_\_\_\_\_\_\_

[Name of Agency Official RFI normally submitted to]

[Title]

[Installation]

[Address and email]

Subject: Request for Information on the Use of Contractors to Perform Work Performed by/Designated for Civilian Employees

Dear [name of agency official]:

I write on behalf of \_\_\_\_\_\_\_\_\_\_\_\_ [Local/Council and number] of the American Federation of Government Employees (AFL-CIO), which represents \_\_\_ [estimated number] civilian employees at \_\_\_\_\_\_\_\_\_\_\_ [DoD installation] in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_ [city, state]. I am concerned that work normally performed by/designated for civilian employees, \_\_\_\_\_\_\_\_\_\_\_, [name of function] is or will be performed by contractor personnel. Such action would mean that \_\_\_\_\_\_\_\_\_\_\_ [DoD Component or Agency], and therefore the Department of Defense (DoD), would be in violation of federal law, DoD guidance, and Office of Management and Budget (OMB) guidance, all of which prohibit direct conversions (i.e., the contracting out of functions performed by/designated for civilian employees without first performing a formal cost comparison). *(See attached summary of laws and guidance.)*

This request is being made under 5 U.S.C. §7114 (b) (4) and serves as the union’s interest in this matter. This notice thus preserves the right of the union to bargain changes in working conditions of represented employees and to pursue a grievance should it be determined such action is necessary in representing bargaining unit employees or in policing and enforcement of the collective bargaining agreement. Particularized need for each request is provided.

The following information is requested:

1. Facts: Please describe the planned and actual use of contractor personnel for the work described above for the previous, current, and next fiscal years, including the amount of work to be performed by contractor(s) (as expressed in civilian positions, FTEs, or labor hours). *This information is necessary to determine if contractors are being used to accomplish work previously performed by represented employees and to what extent this work is being performed.*
2. Decision Factors: What factors contributed to the decision to use contractor personnel? Please provide documentation. Was the decision based to any extent on an unavailability of civilian employees? If so, please provide any additional related documentation. *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of contractors.*
3. Federal and DoD Guidance: Is the use of contractor personnel for the work described above consistent with federal law and DoD guidance? If so, please explain. *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of contractors.*
4. Contract Vehicle: What type(s) of contracting vehicles are being used (e.g., new contract, modification of existing contract, task order, GSA Schedule, etc.)? Please provide copies of the contract(s) and solicitation(s). *This information is necessary to determine if contractors are being used to accomplish work previously performed by represented employees and to what extent this work is being performed.*
5. Contract Details:
   1. Where would the work be performed? *This information is necessary to determine the impact on the bargaining unit by determining whether the work will stay in the same location or will be outright moved.*
   2. Which functions would be performed? *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of contractors.*
   3. When would the contracts be awarded and how long would they last? *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of contractors.*
   4. What is the total dollar amount obligated for services? *This information is necessary to determine the impact on the bargaining unit by determining the degree of the use of contractors.*
   5. Which organizational component(s) contracted for performance of the functions? *This information is necessary to determine which parts of the agency have information on whether the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of contractors.*
6. Ending Use of Contractors for this Work:
   1. Does the agency intend to return this work to civilian employee performance? If so, when? Please provide documentation and describe related actions. *This information is necessary to determine if the agency acted outside of instructions by the department, if the agency acted within prescribed measures for use of contractors, and any steps the agency is taking to rectify the situation.*
   2. Is the agency in the process of securing enough civilian employees to perform this work in the future? For example, is the agency hiring new civilian employees to fill vacant positions? Is the agency funding additional positions if necessary? Please provide documentation. *This information is necessary to determine if the agency acted outside of instructions by the department, if the agency acted within prescribed measures for use of contractors, and any steps the agency is taking to rectify the situation.*
7. General Use of Contractors at Installation: Please describe the installation’s planned and actual use of contractor personnel in all functions for the previous fiscal year, the current fiscal year, and next fiscal year, to supplement the work of civilian employees, or otherwise perform work designated for civilian employee performance, including the number of civilian positions/FTEs/labor hours by function. *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of contractors.*
8. Cost: Please provide any information gathered about the cost of civilian employee and/or contractor performance of these functions, including information gathered to comply with DODI 7041.04 regarding the full cost of manpower. Was the decision to use a contractor for the work described above made in accordance with DoD policies regarding the full cost of manpower in DODI 7041.04 (formerly DTM 09-007)? Please provide the analysis. *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of contractors.*

The following particularized need applies to each of the items requested above, in addition to the specific need for this information stated with each numbered item above. This information is necessary to determine:

* If the agency has met its obligation for specific notice to the union of a mid-term change.
* What impact may be appropriate for bargaining and may be necessary for the union to fulfill its obligation in the representation of covered employees.
* If the agency is in compliance with the collective bargaining agreement [date of last contract].

I ask that you provide the requested information within [10 business days or date specified in the Collective Bargaining Agreement]. If you have any questions concerning this request, please contact the undersigned.

Sincerely,

[President]

[AFGE Local/Council]