**DOD USE OF CONTRACTORS FOR CIVILIAN EMPLOYEE WORK**

**SAMPLE LETTER (Less Formal, non-7114)**

THIS SAMPLE LETTER **DOES NOT** **MEET** THE STATUTORY REQUIREMENTS OF AN INFORMATION REQUEST ESTABLISHED BY THE FLRA AT 5 U.S.C. §7114(b)(4).

THIS SAMPLE REPRESENTS A LESS FORMAL APPROACH TO MANAGEMENT THAN THE ALTERNATIVE 7114 MORE FORMAL SAMPLE.  CONSIDER USING THIS LETTER IF YOU HAVE A GOOD RELATIONSHIP WITH MANAGEMENT.

IF YOU DO NOT RECEIVE THE REQUIRED INFORMATION IN RESPONSE TO THIS LETTER, REMEMBER TO **SUBMIT THE 7114 VERSION** OF THIS LETTER TO PRESERVE YOUR RIGHTS UNDER YOUR COLLECTIVE BARGAINING AGREEMENT.

*For the most recent version of this document, please visit us at*

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**DOD USE OF CONTRACTORS FOR CIVILIAN EMPLOYEE WORK**

**SAMPLE LETTER (Less Formal, non-7114)**

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

[Head of Installation]

[Title]

[Installation]

[Address and email]

Subject: Use of Contractors to Perform Work Performed By/Designated for Civilian Employees

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

I am writing on behalf of \_\_\_\_\_\_\_\_\_\_\_\_ [Local/Council number] of the American Federation of Government Employees (AFL-CIO), (AFGE), 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 \_\_\_\_\_\_ (pick the correct verb tense: is being or will be) performed by contractors. This action is prohibited by federal law and also guidance issued by the Department of Defense (DoD) and the Office of Management and Budget (OMB). These rules 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.) Only include this last sentence if the summary is actually attached to this letter.*

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 provide me with the following information within 10 business days.**

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).
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.
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.
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).
5. Contract Details:
   1. Where would the work be performed?
   2. Which functions would be performed?
   3. When would the contracts be awarded and how long would they last?
   4. What is the total dollar amount obligated for services?
   5. Which organizational component(s) contracted for performance of the functions.
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.
   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.
7. 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.

Please respond to my inquiry within 10 business days and rectify prohibited use of contractors for \_\_\_\_ functions. I look forward to resolving this issue together.

Sincerely,

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

President

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

Enclosure

Cc: Head of Component or Agency

Thomas Hessel, Office of the Under Secretary for Personnel & Readiness

The Honorable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Senator’s Name)

The Honorable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Senator’s Name)

The Honorable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Member of US House of Representative’s Name)

The Honorable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Member of US House of Representative’s Name)