

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

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October 28, 2014

The Honorable John McHugh
Secretary of the Army
101 Army Pentagon, Room 3E700
Washington, DC 20310-0101
FAX: (703) 697-8036

Dear Secretary McHugh:

On behalf of the American Federation of Government Employees, AFL-CIO, which represents more than 650,000 federal employees, including in the Department of the Army, I thank you for the opportunity to provide our comments on guidance drafted for “managing civilian personnel within manpower and budgetary limitations.” I may subsequently supplement these views.

I appreciate that the arbitrary cap imposed on the size of the civilian workforce, especially coupled with intermittent sequestration, has unnecessarily complicated the Army’s planning. The cap by itself has significantly undermined sourcing and workforce management policies; in particular, Army managers have been unable to make performance decisions that are consistent with law, cost, policy, and risk. I also appreciate that the draft “guidance and procedures for requesting exceptions to Department of Defense” is a sincere attempt to reconcile the Army’s implementation of the cap with 10 USC 129, a clear prohibition against such arbitrary constraints on the civilian workforce as the cap. Unfortunately, the draft guidance would do little to mitigate against the intrinsic arbitrariness of the cap; it would also leave in place a policy that exalts the means of the cap at the expense of the objective of cost-reduction.

1. Faulty premise

The development of this guidance is based on your commendable acknowledgement in the Army’s August 4 report on compliance with 10 USC 129: “(I)t has come to my attention that there may be elements of the Army that appear to be operating with de facto caps on the civilian workforce.”

However, as the Army itself had acknowledged earlier, the application of the cap on the civilian workforce is neither isolated nor merely an appearance. As the Army testified in 2012, more than two years ago, before the Senate Homeland Security and Governmental Affairs Committee:

As a result of the civilian cap, individual Army Commands have a cap on their own manpower, in order to ensure the Army’s ongoing compliance with policy. This cap limits the flexibility that the Army has, both as a whole and in individual components, when managing its manpower mix. If a civilian cannot be hired, then the only remaining options are to contract the function, or use borrowed military manpower. The use of military personnel is usually not an option, which leaves only contracting as a viable means of executing a mission.

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When faced with hiring decisions, people are therefore being placed in the unenviable position of having to decide whether to comply with the civilian cap, or to comply with the other statutes and policies governing the workforce (like the prohibition on the performance of inherently governmental functions by contractors).

Although the goal of the civilian cap—the reduction in overall Department of Defense expenditures—is clearly a good one, the workforce cap has had the unintended consequence of limiting the flexibility of the Army in managing its workforce. Cost-effective workforce management decisions ought to be based on allowing for the hiring of civilians to perform missions, rather than contractors, if the civilians will be cheaper. The lifting of the civilian workforce cap would restore this flexibility, and in that sense it would seem to be a positive potential step forward.

The Army acknowledged that its application of the cap resulted in higher costs to taxpayers and the illegal performance by contractors of functions too important or sensitive to privatize. Implicitly, the Army acknowledged that the cap also caused it to defy 10 USC 129. Strangely, the carefully considered views in this Congressional testimony never managed to inform earlier Army reports on compliance with 10 USC 129.

AFGE's members in the Army report without hesitation that the application of the cap has become even more onerous as the budget's vise has been further tightened. For example, as the Army itself acknowledged, in "POM 14-18 Realignment of Resources, As of 5-30-2012," hundreds of civilian security guards, all of them veterans and many of them partially disabled veterans, were arbitrarily eliminated because of the cap:

Headquarters Department of the Army directed IMCOM to execute a cost and risk-informed functional prioritization to identify offsets for emerging manpower requirements. After a careful and deliberate review of programs and functions, IMCOM has identified authorizations to adjust or eliminate in order to meet these requirements.

A total of 988 DA Civilian authorizations across the command will be eliminated by FY '14 to offset the emerging manpower requirements for programs and services...

Authorizations to be eliminated are 598 Security Guard authorizations at 13 FORSCOM installations...

I think this example of the perverse impact of the cap is particularly pertinent. This conversion of work was entirely dictated by the cap on the civilian workforce. There was no attempt to establish a Military Occupational Specialty linkage between the security guard positions and the incoming soldiers. There was no attempt to determine if this massive conversion was cost-effective. At a time of heightened concern over security, there was no attempt to determine if military personnel could perform the work as reliably and comprehensively as it had been performed by civilians. Consequently, these conversions were not made consistent with the Army's own guidance. And, of course, this directive was issued by your own office.

Given this example, you can understand why AFGE's Army members find the premise for the guidance to be fatally flawed. The application of the cap is not just an appearance but reality, and the inevitable

results are illegal and costly mis-assignments of work. As the Army suggested in its 2012 testimony, the cap should be lifted because of its “unintended consequences.”

Instead, the Army should manage by budgets and workloads. If it has work to do and funding to pay for that work to be done, no Army manager should be prevented from using civilian employees because of a cap. Performance decisions should be driven by law, cost, policy, and risk-mitigation. The Army knows which functions it must perform and how much funding it will be given to perform that work.

Consequently, the Army should think of its workforce holistically and assign work to military personnel, civilian personnel, and service contractors based on approved criteria, rather than arbitrary constraints on the civilian workforce. This approach would be consistent with 10 USC 129, allow the Army to reduce the size of its entire workforce, enhance compliance with laws and regulations which require work to be assigned to particular personnel, and reduce costs since work could be assigned to the most efficient workforce when costs are the sole criterion. I appreciate that the guidance tries to move, however haltingly, in that direction in 1.c. and d., albeit only for new or expanded requirements (which need to be identified more thoroughly in your guidance).

2. Faulty enforcement mechanism

I appreciate that the guidance at least attempts to make it more difficult, in 1.b., to eliminate Army civilian personnel and subsequently replace them with an alternative workforce. However, Congress understands that the imposition of an onerous cap on the size of one workforce can simply drive work to a less constrained workforce. As the Senate Armed Services Committee wrote in the report its FY12 National Defense Authorization mark:

The committee concludes that an across-the-board freeze on DOD spending for contract services comparable to the freeze that the Secretary of Defense has imposed on the civilian workforce is warranted to ensure that the Department maintains an appropriate balance between its civilian and contractor workforces and achieves expected savings from planned reductions to both workforces.

So what steps has the Army undertaken to deter managers from shifting work from a capped civilian workforce to service contractors? Has the Army imposed similar constraints on the growth of service contract spending? Are new service contracts or expansions of existing service contracts being subjected to the same intense bureaucratic scrutiny that proposed increases in the civilian workforce experience now or would experience under the draft guidance? Clearly not.

Although the Army hasn't imposed a comparable constraint on its service contract spending, Congress has. Unfortunately, the Pentagon hasn't managed to comply, as the House Armed Services Committee noted in report language to its FY15 NDAA mark:

The committee notes that a Government Accountability Office review found that the Department of Defense failed to adhere to the enacted limitations on contracted services in the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81), exceeding the limitations by more than \$1.0 billion in fiscal year 2012. Moreover, guidance for adherence to the extension of the limitations for fiscal year 2014 has yet to be issued. The committee is concerned that the Department does not have adequate policies,

procedures, and controls in place to enforce limitations on the annual amounts expended on contracted services.

The committee is also concerned that not all contracted services are being subjected to the spending limitations because of the exclusion of contracted services involving Economy Act transfers between and within Department of Defense components. Also, because of the disparity between the levels of contracted services captured in the Inventory of Contracts for Services, required under section 2330a of title 10, United States Code, and what the Department budgets for contracted services, the committee concludes that the Department does not deliberately plan for most contracted services. At the same time the Department exceeded its spending limitations on contracted services, the Department furloughed a majority of its civilian workforce and, in the case of many Department of Defense components, under-executed civilian spending.

Sadly, the Army has found compliance with the cap on service contract spending to be particularly difficult. In fact, the Army wouldn't have had to furlough civilian employees, which is a polite way of saying slash their income by 20% for six weeks, if the component had not over-indulged its service contractors. This really is untenable considering the cap on contractor spending is a law and the cap on civilian personnel is merely an internal DoD policy. It would seem to an average American that DoD would be first in line to follow the law above someone's misguided policy decision.

Of course, the absence of an inventory of service contracts that is integrated into the budget makes it difficult for the Army to have the same transparency into and control over service contract spending. While the Army must be commended for its leading role in developing the inventory, the component's work is still far from done. Senate Armed Services Committee Chairman Carl Levin was the first to identify compliance with the inventory requirement 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.

Finally, I have had to ask the Office of Personnel and Readiness for assistance on several cases in which work performed by Army civilian employees was either illegally converted to contractor performance or inappropriately converted to military performance.

As the Army recognized in 2012, it's time to scrap the cap and its inevitable "unintended consequences," which the component either can't or won't mitigate, in favor of managing the Army's workforce holistically as well as consistently with budgets and workloads.

3. Excessively narrow offsets

As the cap is applied today, new work invested in the civilian workforce means that corresponding numbers of job elsewhere must be eliminated elsewhere in the civilian workforce. Sometimes, the work performed by these civilian employees is either no longer needed or can no longer be justified. However, in other instances, the work is needed and the Department subsequently turns to an alternative, more expensive workforce. Under the proposed guidance, this latter scenario is,

admittedly, less likely to occur. First, managers will find it more difficult to revive work that they had earlier eliminated in order to comply with the cap. Second, although forbidding, cumbersome, and applied only to work performed by civilian personnel, the process created by the guidance could lead to actual exceptions to the cap, assuming very stringent conditions are met, i.e., there are, among other things, “no lower priority functions which cannot be eliminated or streamlined without unacceptable risk to the Command or Army’s mission.”

Moreover, shouldn’t managers be prioritizing “all functions performed by all components of manpower (Military, Civilian, and contractor)”, as the guidance requires? In other words, when considering whether work, either new or previously performed by alternative workforces, should be assigned to civilian personnel, should the Army strive to eliminate or streamline lower-priority functions in all “three major bins”, not just in the smallest of the three major bins? The Army, as the military service forced to take the brunt of the military budget cuts, should take the lead on insisting on a rational workforce management policy.

The Department must strive to generate efficiencies at all times, but especially now, when defense dollars are so precious. In FY13, the Department spent \$435 billion on services, with civilian personnel consuming \$72 billion, military personnel \$146 billion, and contractors \$216 billion. Does it really make sense to look only at less than 17% of the Department’s overall workforce for savings, especially given that the civilian workforce not only costs the least but has also grown the least of the three workforces since the post-9/11 build-up? An inevitable response is that the Department is looking for savings in those workforces as well, but we all know that the scrutiny given to contractors and military personnel is not remotely as intense as that given to civilian personnel. This draft guidance is compelling evidence of that indisputable fact.

The Department has conceded that civilian personnel are generally less costly, often significantly less costly, than their contractor and military counterparts. Former DoD Comptroller Robert Hale acknowledged in 2013 testimony before the Senate Defense Appropriations Subcommittee that service contractors generally cost two to three times what in-house performance costs, particularly for long-term functions, a view subsequently affirmed by General Ray Odierno, the Army Chief of Staff, in House Armed Services Committee testimony. The Defense Business Board and the Congressional Budget Office have declared that the conversion of tens of thousands of military positions to civilian positions would result in significant savings.

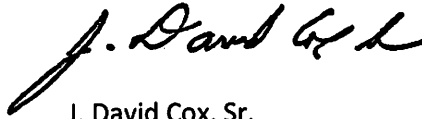
Consequently, it makes no sense to limit the search for offsets to civilian personnel when considering whether to assign additional work to the reliable and experienced in-house workforce. It should be self-evident that greater savings are possible and the risk from eliminating or streamlining work is more acceptable if scrutiny is given to military and contractor personnel as well as civilian personnel. Moreover, it is perverse to assign work to civilian personnel for legal and policy reasons (e.g., because it is closely associated with an inherently governmental function) or because costings conducted pursuant to DoD Instruction 7041.04 determine them to be the most or more efficient, and then eliminate the jobs of their colleagues without first determining whether there is work performed by the other two workforces which could be more acceptably eliminated or performed at lower costs.

Casting a wider net with respect to the imposition of offsets would allow the Army to more effectively contain or even reduce the cost of its overall workforce. Army decision-makers ultimately need to

acknowledge that in order for the costs of services to be reduced the civilian workforce will have to be increased.

Thank you for the opportunity to provide the views of the civilian employees represented by AFGE. Please contact John Threlkeld of my staff (threlj@afge.org / (202) 639-6466) if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "J. David Cox, Sr.", written in a cursive style.

J. David Cox, Sr.
National President