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Honorable Betty McCollum
Chairwoman
House Appropriations Committee
Defense Subcommittee
H-405 U.S. Capitol
Washington, D.C. 20515

Honorable Jon Tester
Chairman
Senate Appropriations Committee
Defense Subcommittee
S-128 U.S. Capitol
Washington, D.C. 20510

Dear Chairwoman McCollum and Chairman Tester:

On behalf of the American Federation of Government Employees, AFL-CIO (AFGE) which represents over 700,000 federal and District of Columbia employees who serve the American people in 70 different agencies, including approximately 300,000 in the Department of Defense (DoD), we appreciate your support of a strong national defense and your recognition of the importance of a professional, apolitical civil service supporting our uniformed servicemen and women. As you and the Armed Services Committees begin work on the Defense Appropriation for Fiscal Year 2023, we write to urge your support on the following issues which we will be submitting as Member Requests in accordance with each Member’s prescribed formats.

1. **Include language enforcing compliance with section 815 of the Fiscal Year 2022 NDAA, codified at section 4506 of title 10, with respect to services contract budget submissions.** Absent appropriations language, there is little incentive for the Department to come into full compliance with section 4506 of title 10, which was enacted to great fanfare by former Chairman Thornberry in the 2018 NDAA as a major acquisition reform that would finally provide the Department and Congress transparency over services contracts in response to longstanding GAO findings and recommendations. Five years later, the Department has not fully or consistently complied with the various statutory prohibitions incorporated into section 4506 of title 10 against privatizing federal employee jobs and requirements to mitigate risks of contractor performance of “closely associated with inherently governmental” and “critical functions” by giving “special consideration” to federal employee performance of such functions., The Department should be mitigating those risks both for new requirements as well as those currently performed by contractors. Numerous GAO reviews have documented the Department’s inadequate effort to do so. As late as February 2021, the GAO still found the Department to be largely non-compliant with section 4506, retaining services contract management on its high-risk list. See, GAO-21-267R (Feb. 2021). It is wasteful and an abrogation of oversight responsibilities not to deal with this issue covering a substantial share of DoD’s top line, much more than is spent on the civilian workforce. The FY2020 HAC-D markup had directive report language to address this issue, but then the issue dropped off the radar, both in fiscal year 2021 and 2022 Defense Appropriations: “The Committee notes that 10 USC 2329 [now 4506] requires the Secretary of Defense to ensure that appropriate and sufficiently detailed data are collected and analyzed to support the validation of requirements for services contracts and inform the planning,



programming, budgeting, and execution process of the Department of Defense. Appropriated funds should not be used to fund services contracts that have not complied with the planning, programming, budgeting and total force management requirements of 10 U.S.C. sections 2329 and 2330a....” See pp. 13-14 of HAC-D FY2020 markup. This language needs to be codified in the Defense Appropriation, or we will be talking about the same problems five years from now.

- 2. Please include language in the NDAA markup prohibiting the misuse of term or temporary hiring authorities for enduring functions.** The Department has misused term and temporary hiring authorities for “enduring functions,” a practice we commented on at length in a May 5, 2021, letter. According to a GAO analysis of DoD data, during fiscal years 2016 through 2019: “approximately 35 percent of DoD term and temporary personnel were converted to permanent civilian positions within the federal government [after DoD had] increased term personnel by 40 percent.” See GAO 20-532: “DEFENSE WORKFORCE: DOD Needs to Assess Its Use of Term and Temporary Appointments” (Aug 2020). A particularly egregious example of the abusive use of successive term appointments comes from the Defense Language Institute-Foreign Language Center at Monterey, CA, where highly trained foreign language faculty are hired indefinitely using successive one year term appointments. When new language requirements arise, these talented faculty are thoughtlessly discarded, notwithstanding the government’s acute need for foreign language skills, as noted by Senate appropriators. This use of term appointments is completely contradictory to treating employees as if they have enduring human capital value.

For additional information or questions, please contact John Anderson, (703) 943-9438, john.anderson@afge.org or Richard Loeb, richard.loeb@afge.org.

Sincerely,



Julie N. Tippens
Legislative Director

Cc: HASC
SASC