TESTIMONY

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ON
FEDERAL SERVICE CONTRACTING

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INTRODUCTION

Chairman Lieberman, Ranking Member Thompson, Chairman Durbin, Ranking Member Voinovich, and other distinguished members of the Senate Governmental Affairs Committee, on behalf of the 600,000 federal employees across the nation and around the world represented by the American Federation of Government Employees, AFL-CIO, I appreciate this opportunity to discuss the serious and longstanding problems in federal service contracting policy. Let me also take this opportunity to thank you, Senator Durbin, for leading the effort to correct those problems through the introduction of the Truthfulness, Responsibility, and Accountability in Contracting (TRAC) Act (S. 1152). I also want to thank the 17 Senators who have cosponsored this important legislation, including Senators Lieberman, Torricelli, and Dayton who sit on this committee.

We speak and act in the long and looming shadow of the Bush Administration's scheme to throw up for grabs the jobs of at least 425,000 federal employees over the next three years, either through direct conversions to contractor performance (i.e., giving work to contractors without public-private competitions) privatizations (again without competition) or public-private competitions. Not since the "spoils system" at its very worst have the American people seen an incoming Administration attempt on such a massive scale to gut the civil service, replacing the working and middle class Americans in the federal workforce with their political supporters in the business community.

As AFL-CIO President John Sweeney pointed out last year to the General Accounting Office's (GAO) Commercial Activities Panel:

> *"After abuses too infamous to ignore, the nation as a matter of law and policy rejected a `spoils system' that allowed new presidents to replace their predecessors' workforces with cronies and political supporters. We adopted, instead, a civil service system to ensure that the American people would always be served by women and men who chose to devote their lives to public good rather than private gain.*
>
> *"Rank-and-file federal employees provide the continuity, attention to details, and institutional memory necessary to ensure that the American people continue to be the best governed in the world.*

Because they are not political appointees, these civil servants can do their job of serving the public without fear or favor. And because civil servants are part of the enduring fabric of government, the American people can always count upon them for service, regardless of a President's political affiliation or ideological bent.

"The idea that as much as one-fourth of the federal government's executive branch workforce could be outsourced over the next four years raises grave concerns that, under the banner of `efficiency,' the nation could well return to a latter day `spoils system.'"

GENERAL ACCOUNTING OFFICE'S COMMERCIAL ACTIVITIES PANEL

Over the last several months, we have heard a lot of talk about the GAO's Commercial Activities Panel. Specifically, contractors have insisted that AFGE members stop lobbying in support of the TRAC Act until the panel has submitted its recommendations to the Congress in May.

AFGE did not believe it was necessary to establish a panel to correct the serious and longstanding problems in federal service contracting policy. The two worst problems—the absence of mechanisms to track the cost of service contracting and the refusal to permit federal employees to compete in defense of their own jobs, for new work, and for contractor work—are obvious, and their solutions don't require the intervention of a panel.[1]

Rather, the time to establish a panel to look at outsourcing was when the controversial "acquisition reform" effort was first undertaken, not after the damage had been done: the creation of the "human capital crisis," audits of service contracts so bad they left the Department of Defense Inspector General "startled," almost no public-private competition and levels of private-private competition so low that even Bush Administration officials are alarmed, the finding that more than one-tenth of the federal contractor workforce made poverty-level wages and that less than one-third of the federal contractor workforce was covered by prevailing wage laws, etc.

Moreover, the panel was clearly stacked to favor contractor interests. Seven of the twelve panelists are either contractors or officials in the Bush Administration. In fact, I would not have even joined the panel had Senate Armed Services Committee Chairman Carl Levin not assured me that his committee would not take up proposals from the panel that did not represent a consensus of views. At the same time, I must also emphasize that I have the utmost respect for all of my colleagues on the panel. I can't say that I agree with all of them as far as federal service contracting issues are concerned. However, I will readily agree that all panelists have conscientiously and capably advocated for their particular points of view.

It is expected that federal employees and their unions wait patiently for the panel's report. Have contractors and their friends in the Bush Administration waited on the panel's report? No, clearly not. Here are some examples of how the other side has failed to wait for the panel:

1. OMB officials have committed the Bush Administration to privatizing, converting to contractor performance without public-private competition or subjecting to

public-private competition at least 425,000 federal employee jobs by the end of 2004.

2. As part of that scheme, agencies were required to convert or compete at least 5% of the jobs (42,500) listed on their Federal Activities Inventory Reform (FAIR) Act inventories during Fiscal Year 2002.

3. During Fiscal Year 2003, the quota is at least 10% of the jobs (85,000) on the FAIR Act inventories.

4. In FY03, agencies will be encouraged to use privatizations to hit their arbitrary quotas.

5. OMB has pressured agencies to contract out jobs that senior agency managers have always insisted be performed by reliable and experienced federal employees by requiring that agencies publish lists of their inherently governmental jobs. This would, of course, constitute a unilateral expansion of the FAIR Act beyond its carefully delineated boundaries—and one that would clearly require the enactment of additional legislation.

6. OMB sent out guidance on July 11, 2001, that instructed the Department of Defense (DoD) to consider contracting out work that have historically been performed by reliable and experienced civilian employees, including "Installation Services; Other Nonmanufacturing Operations, Real Property Management, Operations and Maintenance; Intermediate, direct or General Repair Work; and Education and Training."

7. OMB has proposed a dramatic change in OMB Circular A-76 with respect to interservice support agreements (ISSAs), contracts for services between agencies that may ultimately be performed by civilian employees or contractors. In a *Federal Register* notice, the Administration proposed that all ISSAs, old and new, be competed, usually at least every three to five years.

8. In its own package of recommendations for last year's defense authorization bill, DoD asked for authority to directly convert to contractor performance without public-private competition work performed by civilian employees, contract out depot maintenance work, and privatize the commissaries.

9. In last year's defense authorization bill, the Congress moved forward on a range of service contracting issues, ranging from a Base Realignment and Closure process last year that institutionalizes the controversial privatization-in-place mechanism to a recovery audit mandate with an inadequate public-private competition requirement to an extension of streamlined procedures for commercial items with values less than $5 million.

The Administration has not waited for the panel's report, the Pentagon hasn't waited for the panel's report, the contractors haven't waited for the panel's report, and the Congress hasn't waited for the panel's report. Only federal employees and their unions are supposed to wait for the panel's report—and wait not just for any panel's report: rather, we are told to wait for a report from a panel stacked in favor of contractor interests. While contractors and the Administration continue to attack federal employees, we are told to lay down our arms until *they* get some reinforcements. Even by inside-the-beltway standards, the bald assertion that federal employees and their unions must

wait for the panel's report racks up a level of disingenuousness that takes one's breath away.

AFGE was urging the Congress to require agencies to carefully track the costs of contractors, uphold the use of costs as the ultimate criterion in any public-private competition process, ensure that federal employees have opportunities to compete for work they are doing as well as for new work, abolish the use of arbitrary in-house personnel ceilings that prevent federal employees from competing for work, ensure that agencies emphasize contracting in to the same extent as contracting out, and provide federal employees with the same appellate rights as contractors before the GAO Panel was established because those principles promote the interests of taxpayers and everyone who depends on the federal government for service. Regardless of the recommendations offered by the panel, AFGE will still be fighting for those principles.

THE PROBLEMS IN FEDERAL SERVICE CONTRACTING POLICY AND THE SOLUTION: THE TRAC ACT

Federal service contracting policy is in desperate need of reform. As a result of wholesale downsizing of the in-house workforce and indiscriminate service contracting, the federal government, DoD in particular, is experiencing an entirely self-inflicted "human capital crisis." Despite the relative absence of competition between contractors for government work, contractors still acquire and retain almost all of their work without public-private competition. Agencies, even those with experience with service contracting, still lack reliable and comprehensive systems for tracking costs. Evidence mounts that to the extent savings are achieved through service contracting they come at the expense of workers. The entire competition process remains unaccountable because only contractors, not federal employees, have the appellate rights necessary to contest agencies' service contracting decisions.

And the situation is not getting any better. OMB has imposed arbitrary, one-size-fits-all conversion / competition / privatization quotas on all agencies, deliberately encouraging agencies to give federal employee jobs to contractors without any public-private competition.

(OMB insists that direct conversions that occur without a cost comparison must be justified by the contracting officer and must result in reasonable contract prices or a significant quality improvement or both. That's a pretty loose arrangement, however. It's one thing to allow agencies the discretion to undertake a direct conversion involving a few employees. It's another thing entirely to require agencies to hit large, arbitrary targets in very short time periods, using at least in part direct conversions. A federal employee would be very justified in believing that, in such an environment, direct conversions are vulnerable to abuse, either by contracting officers who want to contract out because of management prejudice and their power to do so is unchecked since there is no public-private competition process or by contracting officers who are trying desperately to hit their large and arbitrary targets in very short time periods.)

Moreover, DoD's high-level Business Initiatives Council is reportedly considering a wide variety of mechanisms to convert work to contractor performance without public-private competition that would take jobs away from tens of thousands of employees.

That's why today's hearing is so important. We will have an opportunity to review those problems and consider pending legislation—the TRAC Act—that would go a long way towards resolving those problems. No piece of legislation is perfect, especially one that attempts to solve the serious and longstanding problems in federal service contracting. Indeed, AFGE, at a 2001 hearing of the House Government Reform Subcommittee on Technology and Procurement Policy, has already indicated its willingness to work with all lawmakers, conservative and progressive, Republican and Democratic, to further refine the TRAC Act.

And we translated those good intentions into real action when we worked last year with Republican and Democratic lawmakers who care about readiness and efficiency on the House Armed Services Committee to attach a modified, DoD-specific version of the TRAC Act to the defense authorization bill. Contractors were only able to remove the service contracting reform provisions from the legislation after the House leadership threatened to prevent the defense authorization bill from ever going to the floor and committing to deal with the concerns raised by the pro-taxpayer provisions in conference. It came as no surprise to AFGE that those commitments were never kept.

1. Problem: Indiscriminate Downsizing and Service Contracting Have Created a "Human Capital Crisis"

No solution to the "human capital crisis"—the current and looming shortages of federal employees in critical occupational categories in agency after agency—is possible without a serious reform of federal service contracting policy. The "human capital crisis" did not happen by accident. It is the natural result, in large part, of arbitrary in-house personnel ceilings that force agencies to reduce their workforces and then prevent them from growing their workforces, irrespective of their workloads, in favor of an excessive reliance on service contractors. The TRAC Act would allow agencies to carefully recover from this self-inflicted crisis by preventing work from being contracted out without public-private competition and ending the use of arbitrary personnel ceilings.

a. Solution: The TRAC Act Would Ensure Public-Private Competition In Most Cases Before Work Could Be Given Contractors

The TRAC Act would neither prevent agencies from downsizing, whether the staff cuts were the result of BRAC or regular reductions-in-force, nor prevent agencies from contracting out work performed by federal employees. However, the TRAC Act would prevent agencies from replacing federal employees with contractors without first demonstrating the value of service contracting to taxpayers.

As I mentioned earlier, the federal workforce has not just been cut. In order to stay under arbitrary personnel ceilings, many agencies have essentially stopped hiring federal employees and let attrition take its inexorable toll. Instead, agencies have contracted out the work, starving the workforce of new blood, new skills, and new ideas. The TRAC

Act would ensure that agencies consider the appropriateness through a public-private competition process of performing some new work in-house. In other words, federal agencies would undertake the same "make-or-buy" decisions that are made by private sector firms, including contractors, on a daily basis.

The TRAC Act would make the federal government a more attractive employer. Although nobody is going to get rich from a career in the civil service, the work has traditionally been relatively immune from politics. Such is no longer the case. Why would a person join the civil service today when his or her job could be contracted out tomorrow, perhaps even without public-private competition?

As mentioned earlier, the TRAC Act would not end service contracting. However, it would ensure that federal employees have opportunities to compete in defense of their jobs before they were contracted out. That is, with respect to the competitive process, whether their jobs were kept in-house would depend on an objective cost comparison process, and not whether their work was coveted by politically well-connected contractors. Indeed, if their installations or offices were productive, federal employees would be allowed, under the TRAC Act, to compete with the private sector for additional federal government work. This more enlightened approach for the determination of work assignments obviously creates many recruitment and retention incentives for productive careers in the federal government.

The TRAC Act also provides the framework for appropriately growing the federal workforce. It is commonly acknowledged that agencies will have to hire additional staff if the federal government is to begin recovering from the "human capital crisis." The TRAC Act does not require that certain amounts or categories of work be brought back in-house. Rather, the legislation gives agencies the discretion to determine how many and which contractor jobs will be reviewed to determine the appropriateness of in-house performance through public-private competition; the measure also ensures that agencies will review new categories of work to determine whether it makes more sense to have the work performed by contractors or federal employees. The TRAC Act would allow agencies to recover from the "human capital crisis" by carefully considering, on a case-by-case basis, which categories of work are appropriate for in-house performance.

The TRAC Act would also give managers incentives to improve. Currently, when managers run into trouble, they all too frequently contract out the work. They outsource their problems, instead of working to solve them. Because it is so easy to contract out, and because they can often count on working for the contractor, managers sometime have little incentive to improve in-house service.

There will be no shortage of candidates to perform additional work in-house. Many federal employees will lose their jobs through direct conversions, public-private competitions, privatizations, downsizing, and BRAC over the next several years. The cost comparison requirements for new work and contractor work will give federal agencies an opportunity to retain that valuable human capital. Additional staff may well come from the private sector, particularly with respect to work acquired from contractors. Just as contractors sometimes "staff up" to perform work by hiring some of the federal employees who used to do the work, so would federal agencies "staff up" by hiring former contractor employees.

b. Solution: The TRAC Act Would Eliminate Arbitrary In-House Personnel Ceilings

The TRAC Act would eliminate the arbitrary in-house personnel ceilings that have been instrumental in bringing about the "human capital crisis." Arbitrary personnel ceilings keep agencies from hiring new staff or force the firing of existing staff, irrespective of budgets and workloads. When workload exceeds the in-house workforce, agencies simply contract out the work—often at higher costs. The TRAC Act would ensure that agencies manage their workforces by workloads and budgets, not by arbitrary numbers, empowering agencies to use federal employees or contractors, depending on which workforce is more efficient.

According to OMB, during the Clinton Administration, several agencies—including the Departments of Agriculture, Health & Human Services, Housing & Urban Development, State, Education, and Treasury, as well as the Environmental Protection Agency—said that they each could have saved millions of dollars by performing work with federal employees instead of contractors but did not do so because they were forced to work under arbitrary personnel ceilings. GAO has also reported that agencies sometimes manage their in-house workforces by personnel ceilings set by OMB that "frequently have the effect of encouraging agencies to contract out regardless of the results of cost, policy, or high-risk studies."

The problem is particularly bad at DoD. In 1995, the personnel directors of the four branches of the Armed Forces told the Congress that arbitrary personnel ceilings—not workload, cost, or readiness concerns—were forcing them to send work to contractors that could be performed more cheaply in-house. GAO reported in 1997 that a "senior command official in the Army stated that the need to reduce civilian positions is greater than the need to save money". An earlier report by the DoD Inspector General noted that the goal of downsizing the public workforce is widely perceived as placing the DoD in a position of having to contract for services regardless of what is more desirable or cost-effective.

And it's gotten worse. The Bush Administration's direct conversion and privatization quotas are nothing more than arbitrary reductions in the number of federal employees so that they can be replaced by contractors without any public-private competition.

The TRAC Act would move us away from sterile debates about downsizing and upsizing so that we can finally talk about rightsizing. If agencies prove they can do work more efficiently through a public-private competition, they can hire the additional employees necessary to perform the work, notwithstanding any arbitrary personnel ceilings. If they can't perform the work more efficiently, then the agency couldn't hire any additional employees. The legislation would ensure that agencies always use the most efficient, most effective, and most reliable service provider, instead of having to always choose contractors.

For DoD, management by arbitrary personnel ceilings has been statutorily prohibited, both in Title 10 as well as in a perennial general provision in the defense appropriations bill. Nevertheless, DoD's high-level Business Initiatives Council recently repudiated the use of "civilian full-time equivalent targets…in order to make the most efficient use of civilian personnel," implicitly acknowledging that DoD continues to manage its workforce by personnel ceilings.

The TRAC Act's requirement for public-private competition would eliminate any incentive for the Pentagon to continue to defy the prohibitions against artificially constraining the civilian workforce: since the work has to be competed in most cases,

there's no reason to unfairly discriminate against federal employees.

c. Solution: The TRAC Act would allow lawmakers to develop a better understanding of the human toll from service contracting as well as the impact of inferior private sector pay and benefits on contractor performance.

The Office of Personnel Management and the Department of Labor would be charged under the TRAC Act with comparing the pay and benefits of federal employees to their contractor counterparts and then reporting back to the Congress in order to determine the human toll from contracting out.

It is well-established that contracting out has been used in the private sector and in the non-federal public sector to shortchange workers on their pay and benefits and to avoid unions. It is likely that this pernicious practice exists at the federal level as well. In 1998, at the request of AFGE, Representatives Steve Horn (R-CA) and Dennis Kucinich (D-OH) asked the GAO to examine the pay and benefits of the federal service contractor workforce. Congressional auditors, however, came back empty-handed: agencies couldn't be helpful because they did not keep the relevant information and contractors did not respond to surveys. A survey conducted by GAO in 1985 of federal employees who were involuntarily separated after their jobs were contracted out revealed that over half "said that they had received lower wages, and most reported that contractor benefits were not as good as their government benefits."

The Economic Policy Institute (EPI), in a ground-breaking 2000 study, has determined that more than one in ten federal contractor employees earn less than the "living wage" of $17,000 per annum, i.e., the amount of money necessary to keep a family of four out of poverty.

> "The federal government saves money by contracting work to employers who pay less than a living wage ($8.20 per hour). Even the federal government jobs at the low end of the pay scale have historically paid better and have had more generous benefits than comparable private sector jobs. As a result, workers who work indirectly for the federal government through contracts with private industry are not likely to receive wages and benefits comparable to federal workers…

Economic Policy Institute; "The Forgotten Workforce: More Than One in 10 Federal Contract Workers Earn Less Than a Living Wage"; November 27, 2000; page 2.

Contractors ritualistically invoke the Service Contract Act whenever the human toll from service contracting is raised. However, EPI's research reveals the very limited reach of prevailing wage laws.

> "In 1999, only 32% of federal contract workers were covered by some sort of law requiring that they be paid at least a prevailing wage…But even this minority of covered workers is not guaranteed a living wage under current laws. For example, the Department of Labor has set its minimum pay rate at a level below $8.20 an hour for the workers covered by the Service Contract Act in 201 job classifications."

Economic Policy Institute; "The Forgotten Workforce: More Than One in 10 Federal Contract Workers Earn Less Than a Living Wage"; November 27, 2000; page 2.

GAO has been unable to determine the extent to which contracting out undercuts workers on their wages and benefits. And despite its pioneering work in this area, EPI acknowledges that

> *"Further research, such as a survey of contracting firms, is needed in order to know more about these workers and their economic circumstances."*

The issue of contractor pay and benefits received considerable attention during the recent debate on aviation security. Virtually all participants in that debate, regardless of their political affiliation or position on the ideological spectrum, agreed that the failure of contractors to provide workers with decent pay and benefits contributed significantly to the crisis in aviation security that ultimately led to broad and bipartisan support for the function's federalization.

While there is much talk about the "human capital crisis" in the federal workforce, the debate over aviation security focused much-needed attention on the "human capital crisis" in the contractor workforce, one that has been shrouded in secrecy because of poor contract administration and contractors' stubborn opposition to even the most basic efforts to determine what work contractors are performing and how much they cost.

(The TRAC Act, as discussed elsewhere in this testimony, would require agencies to track the cost and quality of all service contracting efforts, allowing managers to finally begin to understand the impact of inferior contractor pay and benefits on the delivery of services.)

In fact, the Aviation and Transportation Security Act (S. 1447) established a valuable precedent with respect to the pay and benefits of federal employees. Concerned about the impact of substandard compensation on the quality of work of airport screeners, the legislation requires future contractor screeners to provide their employees with no less compensation than that earned by federal employee screeners. This precedent should eventually pave the way for excluding pay and benefits from consideration during the competition process, so that awards can be based on systems and staffing levels, rather than what's worse for workers.

2. *Problem: Federal employees are unfairly prevented from competing in defense of their own jobs, for new work, and for contractor work. Taxpayers are prevented from learning which sector is able to deliver government services in the most cost-effective manner.*

a. Solution: The TRAC Act would ensure federal employees have opportunities to compete for their own work as well as for some new work.

Contrary to the interests of taxpayers and federal employees, almost all work is given to and retained by contractors without any public-private competition, even though federal employees win 60% of the competitions actually conducted.

DoD, the agency considered to be the champion of public-private competition, nevertheless, almost never uses public-private competition before giving work to contractors.

> "(C)ontracts resulting from a cost comparison performed in accordance with OMB Circular A-76 represent an extremely small portion of the

> total number of service contracts awarded by the Department during fiscal year 1999 (less than 1 percent). Further, these contracts represent a very small portion of the total dollars awarded by DoD to private sector contractors during fiscal year 1999."

Jacques Gansler, Under Secretary for Acquisition & Technology, Department of Defense; Senate Report 106-53; December 26, 2000.

At the same time that DoD's civilian workforce has been significantly downsized, service contracting in DoD has increased dramatically.

> "From FY 1992 through FY 1999, DoD procurement of services increased from $39.9 billion to $51.8 billion annually. The largest subcategory of contracts for services was for professional, administrative, and management support services, valued at $10 billion. Spending in this subcategory increased by 54 percent between 1992 and 1999."

Robert J. Lieberman, Assistant Inspector General, Department of Defense; "Federal Acquisition: Why Are Billions of Dollars Being Wasted?" (testimony before the House Subcommittee on Government Management, Information, and Technology); March 16, 2000.

That is, DoD has dramatically increased service contracting and, as discussed earlier, reduced its civilian employee workforce—while almost never using public-private competitions.

There is actually even less public-private competition outside of DoD. According to GAO, in the handbook for the Commercial Activities Panel's organizing meeting, "OMB reports that one-tenth of one percent of civilian agency commercial activities has been competed using OMB Circular A-76." It is important to keep in mind that non-DoD agencies contract out for more than $40 billion worth of services annually.

At the Department of Housing and Urban Development (HUD), for example, despite hundreds of millions of dollars worth of service contracting over the last several years involving work that has historically been performed by federal employees, the A-76 public-private competition process has never been used. HUD managers systematically invoke exceptions that allow contractors to acquire work without any public-private competition. And according to a Department of the Interior (DoI) internal memorandum, "it is DoI's policy to use exemptions to formal A-76 cost comparisons to the maximum extent possible."

Moreover, there is often little competition among contractors for work. The DoD Inspector General reported to the House Government Reform Subcommittee on Government Management that in excess of three-fifths of the contracts he and his staff surveyed suffered from "inadequate competition." Regardless of the level of private-private competition, 77% of the surveyed contracts had "inadequate cost estimates" that "clearly left the government vulnerable—and sometimes at the mercy of the contractor to define the cost."

The relative absence of private-private competition holds true even with regard to markets considered more active.

> "Most of the 22 large (information technology goods and services) orders we reviewed were awarded without competing proposals having been received. Agencies made frequent use of statutory exceptions to the fair opportunity requirement. Further, contractors frequently did not submit proposals when provided an opportunity to do so. Only one proposal was received in 16 of the 22 cases—the 16 cases all involved incumbent contractors and represented about $444 million of the total $553 million awarded."

General Accounting Office, "Contract Management: Few Competing Proposals for Large DoD Information Technology Orders" (GAO/NSIAD-00-56), p. 4.

Bush Administration officials have noticed with alarm the inadequacy of competition between contractors.

> "Because we are spending the public's money, there are some goals that cannot be compromised in the name of efficiency. Since the beginning of the (acquisition) reform movement, over a decade ago, I have not seen a serious examination of the effects of reform on competition, fairness, integrity, or transparency. As a result, I think we are seeing some serious competitive problems surface with the proliferation of government-wide contracting vehicles and service contracting."

Angela Styles, then the Nominee to be Administrator of the Office of Federal Procurement Policy, Hearing of the Senate Governmental Affairs Committee; May 17, 2001; p. 2.

Federal agencies need not be at the mercy of sole-source contractors, however. If GAO reports that savings are possible from individual A-76 competitions, and if OMB insists that savings are generated through A-76 competitions generally, whether the work stays in-house or is contracted out, and if federal employees win 60% of the public-private competitions actually conducted, then federal employees should be competing for more work, both for their own as well as for new work and currently outsourced work.

If agencies were being run in the interests of taxpayers and the people who depend on the federal government for services, managers would be actively considering in-house performance of work. Would a firm in the private sector—a big defense contractor, let's say—automatically contract out almost all new work, as DoD does now? Of course not.

It is a homely metaphor, but today, in the federal services marketplace, there are two shops, a civilian employee shop and a contractor shop. However, agencies never use the civilian employee shop—no matter how much less costly, no matter how much more efficient we are, and no matter how much more reliable we are.

The TRAC Act would require that agencies subject work performed by federal employees as well as new work to public-private competition before it is given to contractors. The public-private competition requirement was carefully written to ensure that it would not apply to work performed by the private sector prior to the enactment of the legislation. The public-private competition requirement also does not apply to contracts with values less than $1 million for work not performed at the time by federal employees. The legislation also completely exempts contracts for design, construction, and engineering, as well as specialized scientific and technical contracts for work not

performed at the time by federal employees that are undertaken for research and development.

The establishment of regular public-private competitions will reduce the time necessary to complete the competitions. Currently, agencies have no incentive to become quicker and more adept at performing public-private competition because managers are accustomed to simply giving work to contractors. The more competitions they conduct, the more expert managers will become. Once agencies understand that public-private competition is not optional, managers will have no choice but to develop the capacity to conduct the competitions expeditiously, equitably, and efficiently. With respect to new work that is subject to the public-private competition requirement, agencies can perform that work in the interim with federal employees—either existing or newly-hired temporary or permanent employees in that agency or in another agency—or even temporary contractors.

b. Solution: The TRAC Act would ensure that federal employees have fair opportunities to compete for some work that is currently outsourced.

Despite acquiring their work with virtually no public-private competition and little private-private competition, contractors are never subjected to much-needed public-private competition to see if their work could be performed more efficiently by reliable and experienced federal employees.

The prospect of contracting in would keep contractors from forcing taxpayers to swallow costly post-award mark-ups. Usually, there is very little competition among contractors for work, especially when the initial contract comes up for renewal. Columbia University Professor Elliot Sclar, who testified before the House Government Reform Subcommittee on Government Management in 1998 on contracting out, has described service contracting as a

> *"...dynamic political process that typically moves from a competitive market structure towards a monopolistic one. Even if the first round of bidding is genuinely competitive, the very act of bestowing a contract transforms the relative market power between the one buyer and the few sellers into a bilateral negotiation between the government and the winning bidder.*

> *The simple textbook models of competition so prized by privatization advocates provide no guidance to what actually occurs when public services are contracted. Over time, the winning contractor moves to secure permanent control of the `turf' by addressing threats of potential returns to (contracting in) or from other outside competitors. To counteract the former threat, they move to neutralize competition, most typically through mergers and market consolidation among contractors. This trend helps to explain why two-thirds of all public service contracts at any time are sole-source affairs...."*

AFGE has long believed that if savings were possible from competing the jobs of federal

employees, then they were possible from competing the jobs of contractors as well. As you know, OMB Circular A-76 provides for insourcing as well as outsourcing. The same rules and the same rationales apply.

The Clinton Administration agreed with us—or so we believed. A senior OMB official even committed to ensure that agencies undertook more contracting in. In a February 2, 1999, letter to me, Acting Deputy Director for Management G. Edward DeSeve wrote,

> *"I also agree with you that we should ask federal managers to `take pause' and consider the potential benefits of converting work from contract to in-house performance. As I indicated at our October meeting, OMB will encourage agencies to identify opportunities for the conversion of work from contract to in-house performance…"*

No such guidance was ever offered. We were not deterred, however. Working with lawmakers on the House and Senate defense appropriations subcommittees, principally Senator Durbin, we secured the enactment of this report requirement:

> "The Secretary of Defense shall submit a report to…identify those instances in which work performed by a contractor has been converted to performance by civilian or military employees of the Department of Defense…In addition, the report shall include recommendations for maximizing the possibility of effective public-private competition for work that has been contracted out."

U.S. Congress, FY 2000 Defense Appropriations Act, Section 8109.

The resulting report on DoD's contracting in activities—or, more precisely, the lack of contracting in activities—was hardly a surprise. DoD's compliance—or, more precisely, DoD's complete failure to comply—with the second requirement to develop a contracting in policy did cause some surprise.

> "Eight of the 286 (OMB Circular A-76 public-private competition) studies (completed during the previous five years) involved work which was being performed by the private sector." (Note: Federal employees were victorious in five out of the eight cases.) "In responding to the Section 8109 requirement to present recommendations for maximizing the possibility of effective public-private competition for work that has been contracted out, the Department reiterated existing policy guidance on the subject."

General Accounting Office, DoD Competitive Sourcing (01-20), December 2000.

At a time when the Pentagon is supposedly championing public-private competition, less than 3% of all A-76 studies performed by DoD were directed at work performed by contractors. In other words, public-private competition is being used to replace federal employees with contractors, instead of to make DoD as a whole more efficient. Moreover, after being directed to come up with a plan for increasing its contracting in, the Pentagon thumbed its collective nose at the Congress. As usual, the situation is worse in non-DoD agencies where contractors' work is never subjected to the scrutiny of public-private competition.

With respect to contracting in, it's illustrative to look at local government, using survey data collected by the International City / County Management Association.

> *"Our data show significant incidence of reverse privatization or contracting back in previously privatized services…From 1992-1997, 88 percent of governments had contracted back in at least one service and 65 percent had contracted back in more than three services. On average across all places, 5 services were contracted back in from 1992 to 1997."*

Mildred Warner and Amir Hefetz, Privatization and the Market Structuring Role of Local Government, Cornell University Department of City and Regional Planning Working Paper #197, December 2000."

Why so much contracting in? The authors explain:

> *"Contracting back in reflects problems with the contracting process itself, concerns over limited efficiency gains and maintenance of service quality…Analysis of cases of contracting back in shows that it is motivated by desire to maintain service quality and local control and to ensure cost savings in the face of changing markets."*

What is the explanation as to why there is so much contracting in at the local level and so little at the federal level, especially given the strong likelihood that there is much less private-private competition for the federal government's work because of the much greater complexity of the work required and contract administration problems are so much more severe?

Here's the most likely explanation, according to the authors:

> *"Ideology does not dominate local service delivery decisions; rather,*

pragmatic local government demonstrate the continued importance of public investment, innovation and direct involvement in service delivery."

In other words, local officials want to do what's right for their communities. Can the same good intentions be attributed to those who have run federal service contracting in recent years?

The TRAC Act would neither prohibit contracting out nor require contracting in. Rather, the legislation would simply require agencies to subject approximately the same numbers of federal employee and contractor jobs to public-private competition. That is, agencies would choose how many and which contractor jobs would be subject to public-private competition.

c. Solution: The TRAC Act would ensure that award decisions for public-private competitions would continue to be based on the objective criterion of costs and thus uphold the interests of taxpayers.

Contractors are not happy about losing almost three-fifths of the public-private competitions conducted under OMB Circular A-76. Rather than cut their costs and provide taxpayers with a better deal, contractors want to junk the circular and replace it with a pro-contractor system that emphasizes "best value."

Instead of making the best decision for taxpayers, i.e., what costs less, acquisition officers would be encouraged to use all manner of subjective criteria to determine the winner of a public-private competition process, including such whimsical notions as a contractor's ability to respond "flexibly" to changing circumstances or the contractor's use of "innovative" approaches. "Best value" would allow a contractor to exceed the requirements of the solicitation with the understanding that although she may charge more, her bid is more "responsive," and thus more closely follows the intent of the solicitation. In other words, what the contractors can't win on costs, maybe they can win with "fudge" factors.

Contractors try to justify the use of "best value" by falsely asserting that A-76 doesn't allow for consideration of qualitative factors. Wrong. Agencies can already use a real "best value" system—one that is being used today to improve the quality of service while still ensuring that the ultimate decision on who should provide the service is based on costs—a bottom-line criterion that, even in the morally murky world of federal service contracting, is objective.

Even the strongly pro-contractor Clinton Administration strongly disagreed with contractors on "best value." In a July 21, 1998, letter, a senior OMB official, wrote that "The Administration fully supports the use of `best value' procurement techniques and is currently using them in private-private competitions and public-private competition, conducted in accordance with the requirements of OMB Circular A-76. It must be clear, however, that the Federal Acquisition Regulations at Part 15 were not developed with

public-private competitions in mind…We are opposed to any language that could be interpreted to permit DoD or any other agency to rely simply on Part 15 in a public-private competition."

By retaining important elements of the OMB Circular A-76 process—the formal cost comparison, the 10% minimum cost differential, and the most efficient organization—the TRAC Act ensures that the interests of taxpayers will be paramount.

Problem #3: Agencies don't track the costs, size, and quality of their contractor workforces, allowing waste, fraud, and abuse to run rampant through federal service contracting.

I shall speak a lot about the Department of Defense (DoD) in my testimony. That is because DoD has the most experience with service contracting, spending the majority of service contracting dollars. It is also one of the few agencies that has over the last several years been subjected to more than cursory Congressional oversight of its service contracting because of the bipartisan concern generated over how service contracting has undermined readiness and failed to come close to achieving the savings goals established by its proponents.

a. The TRAC Act would allow agencies to track their contractors' costs.

No one knows exactly how much DoD is spending on service contracting, let alone if those billions of taxpayer dollars are being spent wisely. We do know that the cost to taxpayers for service contracting has increased dramatically. Over the last six years, Pentagon officials have systematically replaced federal employees with contractors, often regardless of whether or not it makes any sense. According to the Office of Personnel Management, the DoD civilian workforce fell from 966,000 to 640,075 in 2001. Service contracting, on the other hand, increased from $39.9 billion in 1992 to $55.9 billion in 1999, according to the Federal Procurement Data System. (As discussed below, GAO estimates that the annual bill for taxpayers for DoD service contracts is almost $100 billion.)

It is clear that the emphasis in DoD's service contracting crusade has been giving the jobs of federal employees to contractors, not in making sure that work has been well done.

> *"…DoD managers and contracting personnel were not putting sufficient priority during the 1990's on (service contracting), which likewise was virtually ignored for the first few years of recent acquisition reform efforts. Consequently, we think the risk of waste in this area is higher than commonly realized…We reviewed 105 Army, Navy, and Air Force contracting actions, valued at $6.7 billion, for a wide range of professional, administrative, and management support services amounting to about 104 million labor hours, or 50,230 staff years. We were startled by the audit results, because we found problems with every one of the 105 actions. In nearly 10 years of managing the audit office of the IG, DoD, I do not ever recall finding*

problems on every item…"

Robert J. Lieberman, Assistant Inspector General for Audits, Department of Defense; "Federal Acquisition: Why Are Billions of Dollars Being Wasted?" (testimony before the House Subcommittee on Government Management, Information, and Technology); March 16, 2000.

One of the principal architects of DoD's massive transfer of work from federal employees to the private sector, Dr. Jacques Gansler, was sheepish when asked during a Senate Readiness Subcommittee hearing later that year about the IG's damning report:

> *"…I agree with (the IG about) needing significant improvements in service contracting…(T)his has become a major challenge for us…(W)e have to really significantly improve our service buying…(I)t's probably going to take us a few years…to shift towards really professional service buying."* 1

Jacques Gansler, Under Secretary for Acquisition & Technology, Department of Defense; "A Hearing on Acquisition Reform" (testimony before the Senate Subcommittee on Readiness); April 26, 2000.

GAO has weighed in as well, both with respect to service contracting undertaken pursuant to OMB Circular A-76 and service contracting generally.

> *"Efforts to improve the accuracy of data on savings from A-76 (public-private competition) studies at the time the studies are completed are warranted, as are efforts to assess savings over time. Both are key to establishing more reliable savings estimates and improving the credibility of the A-76 program amidst continuing questions in Congress and elsewhere."*

General Accounting Office, DoD Competitive Sourcing (NSIAD 01-20), December 2000.

In an earlier report on A-76, GAO had noted that entries in the Commercial Activities Management Information System (CAMIS), the system that is supposed to be used to monitor contracts undertaken pursuant to the circular,

> *"are not modified and are being used continuously without updating the data to reflect changes in or even termination of contracts. DoD officials have noted that they could not determine from the CAMIS data if savings were actually being realized from A-76 competitions. Our work continues to show important limitations in CAMIS data…During our review, we found that CAMIS did not always record completed competitions and sometimes incorrectly indicated that competitions were completed where they had not yet begun or were still underway. We also identified where savings data recorded for completed competitions were incorrect based on other data provided by the applicable service."*

General Accounting Office, DoD Competitive Sourcing: Results of Recent Competitions (NSIAD-99-44), March 2000.

According to GAO, DoD has chosen not to keep its commitment to the Congress to improve its system for reporting the costs of contract services.

> *"The Department of Defense (DoD) spends tens of billions annually on contract services—ranging from services for repairing and maintaining equipment; to services for medical care; to advisory and assistance services such as providing management and technical support, performing studies, and providing technical assistance. In fiscal year 1999, DoD reportedly spent $96.5 billion for contract services—more than it spent on supplies and equipment. Nevertheless there have been longstanding concerns regarding the accuracy and reliability of DoD's reporting on the costs related to contract services —particularly that expenditures were being improperly justified and classified and accounting systems used to track expenditures were inadequate…*
>
> *"…DoD has not developed a proposal to revise and improve the accuracy of the reporting of contract service costs. DoD officials told us that various internal options were under consideration; however, these officials did not provide any details on these options. DoD officials stated that the momentum to develop a proposal to improve the reporting of contract services costs had subsided. Without improving this situation, DoD's report on the costs of contract services will still be inaccurate and likely understate what DoD is paying for certain types of services."*

General Accounting Office, CONTRACT MANAGEMENT: No DoD Proposal to Improve Contract Service Costs Reporting (01-295), February 2001.

As bad as the Pentagon is at tracking the costs of service contracting, DoD at least has some experience in this regard (although most of it could hardly be called instructive or worthy of emulation). Nevertheless, the Administration is directing non-DoD agencies to undertake massive increases in their service contracting without first establishing systems to reliably and accurately track their outsourcing costs.

To her credit, the new OFPP Administrator has acknowledged that "agencies do not have a recurring system to adequately track A-76 savings over the long term." That is a stunning admission, given that the Bush Administration intends to use A-76 to convert / compete / privatize at least 425,000 jobs over the next three years. Surely it is not too much to expect that agencies be required to track the billions and billions of dollars spent on service contracting. Clearly, effective contract administration is one of the many additional costs of service contracting. Otherwise, service contracting becomes all about replacing federal employees with contractors, regardless of the expense.

The TRAC Act would require agencies to keep track of the costs and savings of its service contracting. For each service contract, the following cost information would be tracked and made public: the cost of federal employee performance at the time the work was contracted out, the cost of federal employee performance under a most efficient organization plan, the anticipated cost of contractor performance, the current cost of contractor performance, and the actual savings achieved by the contract.

If imitation is the sincerest form of flattery, then TRAC Act supporters should feel very flattered, indeed. The FY01 defense authorization bill included a provision (Section 354) that required DoD to establish a TRAC-like inventory of all work involving 50 or more employees that has been subject to performance review (OMB Circular A-76, strategic sourcing, privatization, or any other analysis to determine whether the performance of work should be changed). For each such activity reviewed, the inventory is 1) tracking the cost of conducting the review; 2) comparing the cost of performance before and after the review; and 3) comparing the anticipated savings with actual savings, if any. Reviewed activities will be tracked for this information for at least five years. Reports from this inventory will be submitted to the Congress annually. The TRAC Act would establish a similar system for all contracts in all agencies, offering real hope that federal service contractors will finally be held accountable to the taxpayers.

Of course, the cost-tracking requirement of the TRAC Act has already won outright flattery from the leader of a major service contracting group. According to the April 2, 2001, *Federal Times*, "(Contract Services Association Gary) Engebretson said he agrees with part of the TRAC Act that calls for more reliable accounting systems to track the cost and savings from outsourcing."

Moreover, the establishment of a public-private competition requirement will give agencies real choices in the delivery of services and ensure that careful consideration is given before the taxpayers are billed for additional service contracting. By ensuring that they are allowed to compete, federal employees will be able to keep contractors honest—and vice-versa, of course.

b. The TRAC Act would allow agencies to track their contractors' effectiveness.

The TRAC Act does not focus only on efficiency. The legislation would also ensure that agencies track contractors' effectiveness. The TRAC Act would require agencies to describe for each contract the quality control process used by the agency in connection with monitoring the contracting effort; identify the applicable quality control standards and the frequency of the preparation of quality control reports; and then determine whether the contractor met, exceeded, or failed to achieve quality control standards.

c. The TRAC Act would allow agencies to track their contractors' workforces.

A former senior OMB official once said when asked about the size of the contractor workforce, *"You can use any number you want. . . But whatever it is...it is a lot of people."* Indeed, it is. Research by Paul Light of the Brookings Institution who is the

author the ground-breaking book, The True Size of Government, indicates that the service contractor workforce is approximately 4 million employees. In contrast, there are just over 1.8 million executive branch federal employees. This means the service contractor workforce may well have grown to at least twice the size of the federal government's in-house staff.

The shadow workforce of contractors has been built up over many years. As Light observed, the shadow workforce reflects in large part

> *"decades of personnel ceilings, hiring limits and unrelenting pressure to do more with less. Under pressure to create a government that looks smaller and delivers at least as much of everything the public wants, federal departments and agencies did what comes naturally. They pushed jobs outward and downward into a vast shadow that is mostly outside the public's consciousness."*

OMB officials and contractors have long dismissed the need to document the size of the contractor workforce, both at the micro (i.e., number of workers employed under specific contracts) and macro (i.e., number of contractor workers employed agency-wide and government-wide) levels. "Numbers are not important," they blithely insist. "What really matters is how well the job is done." (Of course, because of the problems discussed above, we can't say how well contractors are actually performing.)

In documents ranging from the federal budget to the Federal Activities Inventory Reform Act, detailed information is kept on the number of federal employees, at both the micro and macro levels. Clearly, Bush Administration officials, like those who came before them, believe it is very important to maintain meticulous records about the size of the federal government's in-house workforce. However, they have historically professed no interest whatsoever in keeping the same statistics about the contractor workforce.

Light reminds us that we cannot talk intelligently about what government does and what it needs to do without an accurate head count of the contractor workforce:

> *"It is impossible to have an honest debate about the role of government in society if the measurements only include part of the government. The government also is increasingly reliant on non-federal workers to produce goods and services that used to be delivered in-house. Not only does the shadow workforce create an illusion about the true size of government, it may create an illusion of merit as jobs inside the government are held to strict merit standards while jobs under contract are not. It may also create illusions of capacity and accountability as agencies pretend they know enough to oversee their shadow workforce when, in fact, they no longer have the ability to distinguish good product from bad.*

"Expanding the headcount (to include, among others, contractor employees) would force Congress and the President to confront a series of difficult questions. Instead of engaging in an endless effort to keep the civil service looking small, they would have to ask just how many (employees working directly and indirectly for the government) should be kept in-house and at what cost. One can easily argue that the answers would lead to a larger, not smaller, civil service, or at least a civil service very differently configured."

The Department of the Army is to be commended for its development of a reliable,

comprehensive and unobtrusive methodology for tracking the costs and size of its contractor workforce. It is unfortunate that some contractors and some of their allies in the "acquisition reform" establishment have worked so hard to kill this important initiative. In addition to tracking costs and size, the information collected would be used by the Army to determine the extent to which inherently governmental work had been given to contractors and whether readiness is undermined if commercial activities are contracted out to an excessive extent. It is this methodology—endorsed by organizations ranging from the AFL-CIO to the Reserve Officers Association to the National Association of Public Administration—which agencies could use in fulfilling the TRAC Act's requirement for tracking the contractor workforce.

The TRAC Act's Enforcement Mechanism

The TRAC Act includes an enforcement mechanism to ensure agencies' prompt compliance with the TRAC Act's requirements to track contractor costs, ensure public-private competition for our work and new work before it is given to contractors, abolish the use of arbitrary in-house personnel ceilings that prevent federal employees from competing for work, and emphasize contracting in to the same extent as contracting out.

AFGE worked seriously and constructively with the Clinton Administration to deal with the concerns of federal employees about the service contracting process. Despite commitments—to develop a contractor inventory, start contracting in work, stop managing federal employees by arbitrary in-house personnel ceilings, and establish a system to track contractor costs—and laws—to end the practice of managing the DoD civilian workforce by personnel ceilings, develop a plan for contracting in work, regularly consider contracting in DoD work, stop replacing downsized employees with contractors without public-private competition—the situation has not improved. And the Bush Administration, with its aggressively pro-contractor agenda, is making this situation far, far worse.

The TRAC Act requires agencies to have made "substantial progress" during the 180 days after enactment towards meeting the legislation's requirements. OMB is responsible for certifying "substantial progress" towards compliance on an agency-by-agency basis. If OMB, which is commonly acknowledged to be run and staffed by those who are predisposed towards downsizing and service contracting, is unable to certify that a particular agency is in compliance, that agency may not undertake any new service contracts. That agency, however, may ask OMB at any time—the next week, the next day, or later that afternoon—for another chance to be certified, presumably as a result of making "substantial progress" towards reforming its service contracting processes.

During any agency's temporary suspension of service contracting, OMB may waive it, on an agency-by-agency basis, for service contracts necessary for national security, patient care, and extraordinary economic harm. There are no administrative, legislative, or judicial reviews or appeals to the use of the exceptions. AFGE can't tie up agencies in courts or Congress over the use of those three very broadly-worded exceptions.

This enforcement mechanism was based on a bipartisan, non-controversial provision in the Senate FY01 defense authorization bill that imposed a moratorium on further downsizing of the DoD acquisition workforce unless the Secretary could certify that certain criteria had been met.

Responding to OMB Criticism of the TRAC Act

A representative of the Bush Administration harshly criticized the House TRAC Act (H.R. 721) at a June 28, 2001, hearing of the House Government Reform Subcommittee on Technology and Procurement Policy. While we do not concede the accuracy of the OMB criticism, I am sure, Senator Durbin, you are pleased to know that your legislation satisfactorily addresses that criticism.

1. *"...TRAC would freeze all currently contracted activities to see if they could be performed more cost effectively by the public sector..."*

This is false. Under no circumstances would any temporary suspension in the House or Senate TRAC Acts affect "currently contracted activities." Besides, as discussed above, there is no immediate temporary suspension in the Senate bill. Under the Senate TRAC Act, agencies have 180 days to start making progress towards complying with the requirements of the legislation to track contractor costs, giving federal employees opportunities to compete in defense of their jobs and for new work, abolishing arbitrary in-house personnel ceilings, and emphasizing contracting in to the same extent as contracting out.

If the Office of Management and Budget (OMB) certifies six months after enactment that an agency is making "substantial progress", then there are no consequences. If not, then there would be a temporary suspension on new service contracting-with broad exceptions for national security, patient care, and extraordinary economic harm-until such time as that agency was certified as being in compliance—the next week, the next day, or later that afternoon.

2. *"...and would require an entirely new set of financial and other reporting systems that would not contribute to the government's ability to administer contracts, improve performance, or enhance accountability.*

This is half-right. Yes, the TRAC Act would require new contractor tracking systems. However, these tracking systems would actually be helpful in ensuring better contract administration, as the witness from GAO pointed out during the question and answer session at the June 28th hearing on the House side and as the leader of a major contractor group (the Contract Services Association of America) has already admitted.

3. *"By suspending all facilities and operations contracts including, for example, all federal scientific and criminal lab contracts, many of the primary functions of government would be seriously affected-constituting a serious threat to our national defense.*

As noted above, the Senate TRAC Act does not have an immediate temporary suspension. Rather, agencies have six months to make "substantial progress" towards implementing the reforms required by the TRAC Act until OMB is charged with determining whether they are in compliance. Unlike the House bill, the Senate TRAC Act exempts from the legislation "specialized scientific and technical contracts for work not performed at the time by federal employees that are undertaken for research and development..." Moreover, the TRAC Act's enforcement mechanism poses no threat to "national defense" because there is an exemption for all future contracts necessary for "national security."

4. *"Even Medicare would not be able to issue payments since this is performed by contract."*

This is really grasping at straws. If it is not already clear that the legislation is not intended to address Medicare contracts, an exemption can easily be written in the bill at its mark up.

5. *"TRAC also would require public-private competitions for all future contracts, including the exercise of all options, extensions, and renewals by any contracting officer. We estimate that TRAC would affect over 230,000 contract actions involving contracts over $25,000 totaling $100.3 billion in 2000-an untenable outcome."*

That the TRAC Act is serious about ensuring that federal employees have opportunities to compete is true. However, the Senate TRAC Act does not require public-private competitions for "all options, extensions, and renewals." Moreover, the legislation also includes a threshold exempting contracts for new work below $1,000,000 in value from the public-private competition requirement.

Conclusion

Giving work performed by federal employees to contractors without public-private competition is pork-barrel politics at its worst. AFGE's opposition to direct conversions, whether through share-in-savings contracts, Native American direct conversions, or the myriad of exceptions loopholes, and waivers in the A-76 process is non-negotiable, whether five jobs or five hundred jobs are at stake.

At the same time, public-private competition must be used to make the federal government more efficient, not as a "spoils system" by the new Administration to replace federal employees with the businesses of politically well-connected contractors. Contractors and their allies can no longer have it both ways, the federal sector always under scrutiny, the contractor sector immune from review; competitions and conversions mandatory for the jobs of federal employees but strictly off-limits for contractors; showering new work on contractors while putting federal employees on a starvation diet.

The establishment of a process that subjects work to public-private competition before it is given to contractors and holds contractors to the same scrutiny as that experienced by federal employees, like that in the TRAC Act, will benefit taxpayers and all Americans who depend on agencies for important services.

First, taxpayers will save money because contractors will finally have real competition. Second, the quality of work will be improved because managers will finally have real choices in the delivery of services. Third, a real public-private competition process will bolster contract administration and thus reduce waste, fraud, and abuse. Fourth, ensuring that agencies at least consider the appropriateness of in-house performance will help to end the "human capital crisis."

It's time for the Congress to face a fundamental and inescapable truth: if public-private

competition works, then it works for new work and contractor work—not just federal employee work. If public-private competition isn't right for contractor work or new work, then it's not right for federal employee work either—and the entire outsourcing process must be shut down.

That concludes my testimony. I would be happy to entertain any questions.

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[1] Here's another serious and longstanding problem in federal service contracting policy: unlike contractors, federal employees and their unions have no legal standing to appeal agencies' arbitrary service contracting decisions to the Court of Federal Claims and the GAO. Providing federal employees and their union representatives with such standing would ensure both equity and accountability in the contracting process. Although they know their decisions can be appealed by contractors, acquisition officials understand that decisions adverse to the interests of federal employees will never be subject to review. That is, they can only be held accountable by one side. This inequity results in erroneous decisions against the interests of federal employees being left uncorrected. Indeed, it is likely that the accountability for contractors and the complete lack of accountability for federal employees also increases the likelihood that erroneous decisions against the interests of federal employees are made because of bias and political pressure. The competition process is obviously strengthened when contracting decisions are made on the merits. Moreover, stakeholders, both federal employees and contractors, need to have faith in the integrity of the competition process.

As Professor Charles Tiefer, the noted procurement law expert, concluded in a recent article in the Cornell Journal of Law and Public Policy, court "decisions have denied federal employee unions a forum to protest when the work of their members is contracted out in violation of laws and regulations. This disserves the public interest, the intent behind those laws and regulations, and the sense of fair play between the contractors and the federal unions that compete for that work. It is unsound as a matter of law. One way or another, the courts, the Executive, or the Members of Congress can and should let union protests of improper contracting out be heard."

So, one side has appellate rights, the other side does not. Do we need to establish a panel to right that wrong? One side's work is subject to public-private competition, while the other side's is not. Do we need a panel to right that wrong? We say we believe in public-private competition, but we systematically prevent federal employees from competing in defense of their own jobs and for new work, even when in-house performance would be cheaper, in order to reward politically well-connected businesses and falsely claim we're shrinking the size of government. Do we need a panel to right that wrong? We claim that outsourcing saves money, but we don't know how much we're spending on outsourcing, let alone whether that money is being spent wisely. Do we need a panel to correct that mistake?

It is time to stop blaming the hard-working men and women in DoD's acquisition workforce for service contracting waste, fraud, and abuse. AFGE has strongly opposed the ruinous cuts in DoD's acquisition workforce that have been jointly imposed by the Pentagon and the Congress over the last several years. AFGE has warned lawmakers that DoD would lack sufficient in-house staff to keep contractors from perpetrating waste, fraud, and abuse. AFGE has also insisted that the Pentagon is replacing—at higher cost—federal employees in the acquisition workforce with contractors. And according to a 2000 Inspector General report, AFGE's suspicions were completely correct**.**

The IG told the Senate Armed Services Subcommittee on Readiness last year that DoD has

> *"reduced its acquisition workforce from 460,516 people in September 1991 to 230,556 in September 1999, a reduction of 50 percent. Further cuts are likely and, in fact, one of defense acquisition goals (for FY01) is to achieve another 15 percent reduction in the DoD acquisition related workforce."*

These staffing cuts have come at the same time the acquisition workload has increased significantly. According to the IG, from FY 1990 through FY 1999,

> *"the number of procurement actions increased (emphasis original) about 12 percent, from 13.2 million to 14.8 million. The greatest amount of work for acquisition personnel occurs on contracting actions over $100,000, and the annual number of those actions increased about 28 percent from FY 1990 to FY 1999, from 97,948 to 125,692."*

Among the adverse consequences reported by multiple acquisition organizations:

> insufficient staff to manage requirements efficiently, reduced scrutiny and timeliness in reviewing acquisition actions, increased backlog in closing out completed contracts, and lost opportunities to develop cost savings initiatives.

Ominously, the IG warned that the appalling litany of problems caused by the indiscriminate reductions of the acquisition workforce

> "appears to be a conservative summary of the overall impact of the problem and, if further downsizing occurs, these staffing management problems and performance shortfalls can only get worse."

AFGE has warned that precipitous reductions in in-house acquisition personnel were forcing DoD to contract out acquisition work at higher costs. The IG reports that seven different acquisition organizations report "increased program costs resulting from contracting for technical support versus using in-house technical support." As an example, the IG reported that the

> *"lack of in-house engineering staff at an Army acquisition organization caused an increase in customer costs of $20,000 to $50,000 per each work year of support services for weapons programs because of the need to hire contractors to perform the work."*

Considering that DoD essentially stopped hiring acquisition personnel several years ago and that the IG reports 42 percent of the remaining acquisition workforce being lost through attrition by FY 2005, it is imperative that the Congress take steps to actually increase the size of the acquisition workforce. As the IG sagely concluded,

> *"a reasonably sized, well-trained and highly motivated workforce is by far our best safeguard against inefficiency, waste, and fraud."*

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