AFGE

Congressional Testimony

STATEMENT BY

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OF THE

HOUSE SMALL BUSINESS COMMITTEE

ON

INSOURCING

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INTRODUCTION

Thank you for the opportunity to appear before the Subcommittee on Contracting and Workforce in order to discuss the importance of insourcing in reducing the federal government's expensive and often risky overreliance on service contractors.

Regardless of what is said today, this hearing has provided a very valuable service, even if it is a setback for critics of insourcing: we now know that of the almost 17,000 in-house positions created in the Department of Defense (DoD) through insourcing in 2010, just 6% were established where the prime contract holder was a small business.[i] Although not the final word, DoD's 6% report is the first fact to be introduced in a debate rife with disinformation and misinformation. Absent faithful implementation of the law that requires the department to establish an inventory of its service contracts, it will be difficult to gain greater insight. It is ironic that contractors and their allies in the executive branch have made it so difficult for that inventory law to be enacted and then carried out.

Moreover, let's provide a bit of context: during FY10, when DoD actually insourced, DoD also spent a record $248 billion on service contracts, including object class 25.3 (purchases from government), a huge increase from $104 billion in FY01. I think defense service contractors would have a very difficult time convincing taxpayers that they have been victimized by insourcing.

For the uninitiated, there is no better reminder of how insourcing can be used to save money for taxpayers and improve services for those who depend on the federal government than the retirement and annuity work at the Defense Finance and Accounting Service (DFAS). The imperative to ensure that military retirees and their families receive the modest benefits they are due for the extraordinary sacrifices they make on behalf of a grateful nation cannot possibly be overestimated.

--In 1997, pursuant to arbitrary numerical privatization quotas imposed during the Clinton Administration, DFAS was forced to review for privatization under the controversial OMB Circular A-76 process the retirement and annuity work performed by civilian employees.

--In 2001, the work was contracted out to Affiliated Computer Services, which was later acquired by Lockheed Martin.

--In 2003, the Department of Defense (DoD) Inspector General (IG) determined that the decision to contract out the retirement and annuity work was in error and reported that a

systematic flaw biased the A-76 process against the in-house workforce and raised serious questions about the integrity of all such privatization studies.[ii]

--Even though in-house performance would have cost taxpayers less, DFAS resisted insourcing the retirement and annuity work during the Bush Administration.

--In 2008, thanks to enactment of a bipartisan insourcing law, DFAS management finally believed that they could consider insourcing this work.

--Despite growing concerns over the contractor's poor performance, including reports that thousands of military retirees with disabilities died before they received their benefits, DFAS did not actually decide to insource the retirement and annuity work until 2010. DFAS' decision to insource 600 jobs saved money for taxpayers and improved services for veterans because of the greater flexibility of federal employees:

> *"`The move will also give the agency the flexibility to manage complex cases, such as disabled veterans' claims,' (the DFAS spokesman) said. When DFAS began processing disability and retirement pay concurrently for certain veterans in 2006, it had to negotiate a new task order with the agency's contractor, Lockheed Martin. Then DFAS had to wait for the contractor to hire and train staff to handle the workload, creating a backlog, (the DFAS spokesman) said. In a fully government shop, it would have been easier to temporarily reassign trained federal employees from elsewhere in the organization to assist with the increased caseload, he said. `With government workers, we could do it overnight,' the DFAS spokesman said."*[iii]

--In 2011, DFAS told the House Defense Appropriations Subcommittee that the insourcing of retirement and annuity work would save $5-10 million in FY11 and $19 million in FY12.

However, this success story can't happen today. As a result of DoD's "Efficiency Initiative", civilian personnel are capped at FY10 levels[iv], while contractor spending would grow significantly under the FY12 budget request—21% for advisory and assistance services, 25% for "other services", 50% for operation of facilities via contract, 5% for medical care via contract, and 50% for operation of equipment via contract.[v]

Federal employees are utterly transparent in the budget process—we know how many federal employees there are, how much they cost, what work they do, and where they work. Contractors are shrouded in secrecy, however. Understanding that with increased visibility comes increased accountability, contractors have always fought efforts to require agencies to inventory their service contracts. If costs can be identified, then they can be controlled. Consequently, when agencies need to reduce costs or at least appear to reduce costs, they impose arbitrary constraints on their in-house workforces because those costs can be identified

and controlled, unlike contractor costs. Historically, application of such constraints forces agencies to replace federal employees with contractors, regardless of cost or programmatic concerns. DoD's "Efficiency Initiative" is only the latest incarnation of this historically ruinously one-sided approach to workforce management.[vi]

An exchange between Senate Armed Services Committee Chairman Carl Levin (D-MI) and Deputy Secretary of Defense William Lynn illuminates the technical constraints that help to explain why the "Efficiency Initiative" imposes disproportionate sacrifices on the department's smaller and less expensive in-house workforce[vii]:

> Levin: *"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. For this reason, Section 806 of the FY08 NDAA required that budget justification documents clearly and separately identify the amounts requested in each budget account for procurement of services. The department has not yet complied with that requirement. When are you going to comply with that requirement?"*
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> Lynn: *"Part of the effort I mentioned would be to comply with that requirement. And I would add I think your implication is right. We are regretting that the department hadn't complied earlier. It would make the task we're undertaking (the "Efficiency Initiative") easier if we had better data, and we're endeavoring to develop that."*

As a practical matter, thanks to DoD's "Efficiency Initiative", DoD can only outsource, and it can rarely if ever insource—no matter how much money can be saved, and even if the work is inherently governmental. In fact, DoD pays tens of thousands of contractors to perform inherently governmental and closely associated with inherently governmental functions involving the awarding of contracts and the supervision of contractors.[viii] However, efforts to insource even this work have been halted. If insourcing to ensure public control over important and sensitive functions is rare, insourcing to save money for taxpayers is even less likely to occur. Despite the obvious savings and better service for military retirees, DFAS today would be forbidden to save money for the taxpayers by insourcing retirement and annuity functions. In fact, DFAS is being punished for successfully insourcing that work and saving money for the taxpayers. Because of the "Efficiency Initiative's" FY10 cap on the civilian workforce, DFAS has told the Congress that it must now eliminate 600 positions in order to make up for the 600 positions it insourced.

As we have seen, insourcing can be used to improve service, save money, and reassert public control over public functions. Federal employees are often far more flexible than contractors because they don't insist on lengthy negotiations and costly surcharges every time something unanticipated occurs. But that can't happen now. Despite DoD's acknowledgement of significant savings from reducing its overreliance on contractors, insourcing has all but stopped.

DoD is no longer managing its workforce consistent with the law—which requires DoD, if there is work to be done and money to pay for that work to be done—to make performance decisions based on the usual criteria of cost, policy, risk, and the law.[ix] Instead, DoD is not assigning work to federal employees—indeed, it is taking work away from federal employees—merely because they are federal employees, which inevitably undermines the interests of taxpayers and warfighters.

Recently, House lawmakers had an opportunity to reform the "Efficiency Initiative" to ensure that DoD managers could use federal employees or contractors, depending on what was best for the department's mission, instead of forcing them to use contractors regardless of cost or programmatic concerns. We thank Ranking Member Chu as well as Representatives Schrader, Clarke, Critz, and Richmond for voting for the Andrews Amendment to the FY12 National Defense Authorization Act, which would have reduced costs to taxpayers and improved services for warfighters.[x]

At a contractor gabfest held last week industry cheerleaders chortled over how the "Efficiency Initiative" killed off insourcing: "Kevin Plexico, Senior Vice President of Research & Analysis for Deltek Information Services, does see one threat to the contracting industry disappearing. `I think the insourcing movement is dead,' he told the audience...At Deltek INPUT's 9th Annual MarketView seminar in McLean, Va., Gary Winkler, the former director of the Army's PEO for Enterprise Information Systems offered that `the Army's insourcing efforts are over. That's a trend that has grown out of the army and DOD, and will grow out of the civilian agencies.'"[xi] One contractor lobbying group recently, and with no fanfare, removed a lurid "Insourcing Action Center" link from its website's splashpage.

AFGE could understand a hearing being held to raise serious questions about how DoD's "Efficiency Initiative" poorly serves taxpayers and warfighters by forcing work to be privatized or to remain privatized regardless of cost or sensitivity. Perhaps such a hearing could be entitled "Historic Insourcing Reform Effort in DoD Halted: Taxpayers Denied Savings, Warfighters Denied Better Services"? However, given this subcommittee's approach, as evidenced by its colorful title for today's hearing, that might be "a bridge too far". Then why not a hearing during which triumphant contractors can take victory laps and boast about how

they killed off insourcing, ensuring that DoD no longer follows its statutory requirement to even consider whether to insource contracts that cost too much, contracts that are poorly performed, contracts that were awarded without competition, or contracts that include functions too important or sensitive to have been privatized?

We are grateful for the opportunity this morning to correct the record on insourcing, Mr. Chairman, but we would certainly caution lawmakers against following the lead of contractor lobbyists who benefit financially when precious time and money are wasted on whacking imaginary moles, particularly those contractor lobbyists who piously invoke the interest of small business contractors in order to advance the hidden agenda of big business contractors.[xii]

HISTORY

Insourcing began during the Bush Administration, not during the Obama Administration. After fifteen years of indiscriminate and wasteful outsourcing, overreliance on contractors had resulted in higher costs to the taxpayers and important or sensitive functions being wrongly privatized. In DoD, for example, civilian personnel funding increased from $41 billion in FY01 to $69 billion in FY10. During the same period, as mentioned earlier, spending on service contractors increased from $104 billion to $248 billion. In July, DoD Secretary Robert Gates told *The Washington Post* that "federal workers cost the government 25 percent less than contractors".[xiii]

The Government Accountability Office (GAO) reported in 2007 and 2009 that both DoD and the Department of Homeland Security (DHS) regularly privatized functions that are closely associated with inherently governmental functions, e.g., preparing budgets, developing regulations, conducting inspections, awarding contracts, and overseeing contractors.[xiv] Last month, the House Armed Services Committee, in report language to the FY12 National Defense Authorization Act, even had to admonish DoD for having privatized thousands of inherently governmental positions, directing that such work be insourced immediately.[xv]

The requirement that DoD develop an insourcing policy was included in the FY08 National Defense Authorization Act[xvi]—supported by then Senate Armed Services Committee Ranking Member John Warner (R-VA) and signed into law by President Bush. In that same bill, DoD was also required to finally inventory its contracts in order to identify those contracts that cost too much or included functions too important or sensitive to have privatized. An almost identical requirement was enacted in the FY09 Financial Services Appropriations Bill for non-DoD agencies.[xvii] The FY10 Financial Services Appropriations Bill extended the contractor inventory requirement to cover the non-DoD agencies.[xviii]

DoD had used insourcing successfully. As DoD reported in December 2010: "Execution to date has been highly successful. As of the end of FY2010: All DoD Components met or exceeded their plans for FY2010; The FY2010 cumulative plan has been exceeded—over 17,800 new positions were established in FY2010; More than half of current insourcing actions are because the contracted work was determined to be inherently governmental, closely associated with inherently governmental, or otherwise exempted from private sector performance (to mitigate risk, ensure continuity of operations, build internal capacity, meet readiness needs, etc.)"[xix] Also according to DoD, "Moreover, on a case-by-case basis at the organizational level, DoD components are finding that they can generate savings or efficiencies through insourcing certain types of services or functions."[xx]

Naturally, contractors howled. In May 2010, a top Pentagon official was forced to remind contractors of the exceedingly modest nature of DoD's insourcing effort: "While the Department's in-sourcing plans impact less than 1% of currently contracted services, the net growth in contracted services last year was more than $5 billion."[xxi] In the federal budget context, we often hear lawmakers complain about how difficult it is to cut entitlement spending. Although contractors are generally paid through appropriations, there is no question that contractors regard unfettered access to hundreds of billions of taxpayer dollars as their own entitlement program.

DoD has historically been required to "consider" shifting government functions for cost reasons, consistent with military needs, between its military, civilian, and contractor workforces.[xxii] Under the FY08 NDAA and the FY09 Financial Services Appropriations Bill, all agencies were required to give "special consideration" for insourcing four categories of government functions:

1. those that are contracted out but poorly performed, and which might be more efficiently performed by civilian employees;
2. those that were outsourced without competition, and thus may have cost more than they should[xxiii];
3. those that have traditionally been performed by federal employees, and
4. those that are closely associated with inherently governmental functions[xxiv].

It is important to recall what the insourcing laws don't require:

1. that government functions be insourced (only that the option actually be considered with respect to four categories of privatized functions);
2. the use of a particular costing methodology[xxv]; or
3. quotas, targets, or goals for reviewing certain numbers of contractors.[xxvi]

It is also important to understand that the insourcing laws don't cover conversions to performance by military or reserve personnel. That hasn't stopped lawmakers from offering Draconian amendments to stop insourcing to federal employees even when the "horror stories" that supposedly inspired them to action actually involved insourcing to military or reserve personnel, not federal employees. The insourcing laws also have nothing to do with contracts that are terminated simply because the agency no longer needs the work to be performed. Or when one contractor is simply replaced by another contractor. I realize those points are obvious, but the vast majority of alleged "horror stories" are actually contracts that aren't continued or are converted to performance by military and reserve personnel or other contractors.

Moreover, few if any functions are being insourced by non-DoD agencies for cost reasons because OMB has yet to issue the necessary costing methodology. Indeed, DHS, the one non-DoD agency that has conscientiously embarked upon an effort to rebalance its workforce, has seen its insourcing effort endorsed by the leading service contractor pressure group.[xxvii]

REFORMS

1. **Ensure insourcing is permanent, ongoing, and based on inventories of contracts.**

DoD blundered, largely because of the Comptroller's office, in regarding insourcing as a one-time, five-year, budget drill, rather than a vital effort that should be permanent and ongoing. As a result, DoD tried to make up for years of privatization-related blunders, negligence, and malfeasance in an almost preposterously compressed timeframe.

Moreover, with respect to inherently governmental, closely associated, and critical work that must be insourced for reasons of risk, policy, or law, it is important to remember that costs may sometimes stay the same or even increase as a result of insourcing. Ensuring that work is performed consistent with the law, policy, and the need to avoid risks sometimes requires spending more money.

Insourcing, as DoD's experience in 2010 proved, is no panacea for ever-increasing service contractor costs. Although, as DoD has acknowledged, insourcing resulted in substantial savings, those savings were more than offset by dramatic increases in service contracting costs.[xxviii] In addition to pursuing insourcing steadily as opposed to in fits and starts, insourcing should be based on contract inventories, rather than be conducted on an ad hoc basis, let alone pursuant to targets. Even skeptics of the policy acknowledge that the Army conducted an exemplary insourcing program that successfully counteracted the Comptroller's budget drill

approach because its insourcing decisions were based on a thorough review of its inventory of contracts.

Insourcing is a policy which ultimately must be undertaken, but small business contractors are exceedingly unlikely to be unfairly singled out if insourcing decisions are based on the interests of taxpayers and warfighters, as opposed to political imperatives and budget drills, and rendered only after careful scrutiny of the contractor inventory.

2. **Make insourcing policy on the basis of facts instead of anecdotes and outright disinformation.**

And just as insourcing decision-makers must make rational decisions based on the law and the facts, critics of insourcing have an obligation to offer well-informed judgments—an obligation which they have consistently failed to meet. For years, for example, insourcing critics have insisted that the imperative to rebalance the federal government's overall workforce was devastating to small business contractors. However, now we learn that of almost 17,000 in-house positions created through insourcing in 2010, just 6% were established where the prime contract holder was a small business.

Perhaps the Oversight and Government Reform Committee should hold a hearing in order to raise a fuss about the disproportionate impact of insourcing on big business contractors? Should we expect the anti-insourcing policy "entrepreneurs" to apologize for their canards? No, of course not. What they lack in fidelity to facts they make up for in brazen chutzpah and big public relations budgets. However, the rest of us can strive to do better.

If only we could determine how many of those small business contractors in that 6% were actually started up by former senior military and civilian officials who cash in on their connections? Or how many were Alaska Native Corporations that are actually big business contractors that receive unlimited, high-value government contracts without competition? With respect to the remaining small business contractors who claim to have been particularly disadvantaged by insourcing, how many had failed to develop a robust portfolio or a sustainable business model, or establish themselves as leaders in any niche of the marketplace? In other words, let's not make insourcing the all-purpose scapegoat for every small business contractor that doesn't flourish. Finally, let's never lose sight of the fact that DoD's spending on service contracting increased significantly at the same time its modest insourcing effort was underway, which, as it turned out, had the most marginal impact on small business contractors. How much of that significant increase in contractor spending did DoD direct to small business contractors?

Anti-insourcing critics would also do well to avoid making policies on the basis of anecdotes. Any policy that breaks from an untenable status quo will inevitably result in mistakes—which should be aggressively and systematically corrected. However, while the federal government benefits from many dedicated and hard-working contractor workers, we can quickly stipulate

that privatization is all too often a vast and squalid cesspool of waste, fraud, and abuse as well as conflicts of interest and outright corruption.

Given the seemingly infinite number of critical and caustic reports over the years from federal watchdogs and auditors, privatization would have been outlawed by Constitutional amendment during the early days of the Republic if we had been making contracting out policy based on anecdotes. If federal privatization frequently gives taxpayers nightmares, DoD's brief and modest insourcing effort is by comparison a model of probity and thoughtfulness. Outraged contractors are the not unexpected result of an agency's successful effort to reduce their costs and ensure that they are not performing inappropriate functions. With occasional exceptions, contractors' complaints about insourcing mean that the policy is working and that they are finally being asked to make sacrifices—like the ones so many ordinary Americans, including federal employees, are already making because of the Great Recession.

3. **Use insourcing to ensure public control over public functions and save money for the taxpayers.**

AFGE continues to support the reforms begun during the Bush Administration that require closely associated with inherently governmental functions to be performed by federal employees to the "maximum extent practical".[xxix] Indeed, this standard should be applied to the non-DoD agencies—and would have been applied if the FY11 Financial Services Appropriations Bill and the FY11 National Defense Authorization Act had been considered under regular order.

This standard ensures that such functions as preparing budgets, developing regulations, awarding contracts, overseeing contractors, and conducting inspections are likely to be performed by reliable and experienced federal employees, while still allowing agencies discretion to privatize. We know that OMB will, eventually, propose a new definition of inherently governmental that will incorporate the notion of critical functions. It is unclear whether and when this new definition, assuming it is deemed satisfactory, will be incorporated into law and regulation.

The definition of inherently governmental is one that will always be fraught with controversy. We believe that the time and effort spent devising a new definition would have been far better expended on enforcement of the existing definition--preventing functions that are inappropriate for contractor performance from being privatized; as well as identifying such functions when they have been wrongly privatized, and then expeditiously returning them to in-house performance.

Recently, a majority of House lawmakers made it more likely that clearly inherently governmental work as well as closely associated with inherently governmental work could be

given to contractors when they voted for an amendment to the FY12 Homeland Security Appropriations Bill to strike a safeguard first included in FY04 that prevents functions related to the investigation and adjudication of citizenship rights and benefits from being privatized. We thank Ranking Member Chu as well as Representatives Schrader, Clarke, Critz, and Richmond for voting against the Sessions Amendment to the FY12 Homeland Security Appropriations Bill.[xxx]

In addition to ensuring public control over public functions, insourcing can also yield significant savings for taxpayers, as DoD's experience illustrates. At a time of large budget deficits, it is imperative that contractors, both big and small, be required to make the same sacrifices that rank-and-file federal employees are already making. Proposals to prevent managers from using federal employees instead of contractors even when money would be saved for taxpayers are indefensible. Contractors consume huge amounts of discretionary spending. No effort to reduce the burden of contractors on the taxpayers can be taken seriously if it does not allow managers to substitute federal employees for contractors when savings are possible.

Contractors' recent nostalgia for the OMB Circular A-76 process unintentionally reminds us of why federal managers should be allowed to use federal employees instead of contractors for cost reasons. It is widely conceded that the A-76 process is biased against federal employees, in large part because in-house workforces are charged excessively for their overhead costs. The DoD IG reported in 2003 that such costs were overstated and recommended that the A-76 process incorporate a more supportable overhead rate. The failure to correct this profound flaw has left the A-76 process biased against federal employees and prevented managers from making what the IG called "sound and justifiable business decision(s)."[xxxi]

Nevertheless, federal employees won 83% of the positions subject to public-private competition during the Bush Administration.[xxxii] Contractors now consider the A-76 costing process to be a preferable alternative to DoD's costing methodology. Given the extraordinary success of federal employees in public-private competitions against contractors, even though the process was stacked against them, surely contractors would be the first to concede that federal employees are just as competitive for commercial functions performed out-house as they have been for commercial functions performed in-house.

With respect to insourcing of commercial functions, we support the position taken recently by the House in the FY12 National Defense Authorization Act that when costs are the sole basis for the determination to insource, DoD should be held to the department's costing methodology.[xxxiii] When costs should be the sole criterion in making an insourcing decision is an inherently governmental decision that must be made by the department.

DoD is increasingly substituting military personnel for civilian personnel and even contractors. Because of the unique sacrifices that military personnel make on behalf of our country, their personnel costs can't help but be less competitive. Nevertheless, because of the perverse incentives of the "Efficiency Initiative", the cost of military personnel is often not adequately considered. There may be well-founded readiness reasons to use military personnel instead of civilians and contractors even when it costs more. However, such conversions should generally be based on DoD's insourcing costing methodology.

Contractors always strenuously opposed being subjected to the same A-76 process that has all too regularly been used against federal employees. What was good enough for federal employees apparently was not good enough for contractors. Now, contractors complain about the three prohibitions that have been imposed on the use of the A-76 process with respect to federal employees:

> Prohibition #1: No new A-76 privatization studies may be started by any agency.[xxxiv]
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> Prohibition #2: DoD may not start any new A-76 studies until it complies with certain requirements.[xxxv]
>
> Prohibition #3: DoD may not start any new A-76 studies or finish any old A-76 studies until it complies with those requirements.[xxxvi]

The government-wide prohibition on the A-76 process was imposed because of reports from the DoD IG and the GAO that agencies are consistently unable to demonstrate that A-76 studies result in savings and that agencies fail to consider the significant costs of conducting the studies:

> *"DoD had not effectively implemented a system to track and assess the cost of the performance of functions under the competitive sourcing program...The overall costs and the estimated savings of the competitive sourcing program may be either overstated or understated. In addition, legislators and Government officials were not receiving reliable information to determine the costs and benefits of the competitive sourcing program and whether it is achieving the desired objectives and outcomes..."*[xxxvii]
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> *"For fiscal years 2004 through 2006, we found that the Forest Service lacked sufficiently complete and reliable cost data to...accurately report competitive sourcing savings to Congress...(W)e found that the Forest Service did not consider certain substantial costs in its savings calculations, and thus Congress may not have an accurate measure of the savings produced by the Forest Service's*

competitive sourcing competitions...Some of the costs the Forest Service did not include in the calculations substantially reduce or even exceed the savings reported to Congress."[xxxviii]

"[The Department of Labor's (DoL)] savings reports...exclude many of the costs associated with competitive sourcing and are unreliable...(O)ur analysis shows that these costs can be substantial and that excluding them overstates savings achieved by competitive sourcing...DoL competition savings reports are unreliable and do not provide an accurate measure of competitive sourcing savings...Finally, the cost baseline used by DoL to estimate savings was inaccurate and misrepresented savings in some cases, such as when preexisting, budgeted personnel vacancies increased the savings attributed to completed competitions...

"We have previously reported that other federal agencies—the Department of Defense (DoD) and the Department of Agriculture's (USDA) Forest Service, in particular—did not develop comprehensive estimates for the costs associated with competitive sourcing. This report identifies similar issues at DoL. Without a better system to assess performance and comprehensively track all the costs associated with competitive sourcing, DoL cannot reliably assess whether competitive sourcing truly provides the best deal for the taxpayer..."[xxxix]

In the FY10 National Defense Authorization Act, the Congress established bipartisan guidelines for reform of the A-76 process. Section 325 prevents DoD from starting new A-76 studies until

1. DoD has reported to the Congress
   a. Whether the department is in compliance with the law that prohibits work performed by federal employees from being given to a contractor without first determining whether that conversion would actually be in the interests of taxpayers;
   b. Whether systems have been established to track costs and savings from using the A-76 process;
   c. How to prevent the actual and substantial costs of conducting A-76 studies from exceeding savings guesstimates and prevent federal employees from being overcharged for overhead; and
   d. Whether the department is in compliance with the law that prohibits contractors from gaining competitive advantages by providing their employees with bad health care and retirement benefits.

Congress intended the time during which DoD was complying with the inventory requirement would be used to reform the OMB Circular A-76 privatization process. However, DoD has not submitted the report required in Section 325 on how it would correct various problems with the A-76 process that have been identified by GAO and the DoD IG—let alone fixed those

problems. Of course, even if so inclined, DoD cannot make fundamental reforms to the OMB Circular A-76 process precisely because it is the *OMB* Circular A-76 process. Acknowledging that the A-76 process is in need of reform, OMB has not called for repeal of any of the three different prohibitions on the use of the A-76 process.

2. DoD has certified to the Congress that it has completed inventorying service contracts, determined which problematic service contracts need to be corrected (including through insourcing), and integrated the results into the budget process. Federal employees are transparent in the budget process—how many we are, what we do, where we work, and how much we cost. Completion of this requirement will make contractors comparably transparent and will allow for their significant costs to be more easily controlled.

DoD has not yet submitted the certification. GAO reported early this year that the services are still struggling to perfect a uniform methodology for compiling the inventory and that only the Army had begun reviewing problematic service contracts.[xl] The non-DoD agencies were not required to issue their first inventories until the end of January 2011. These inventories do not include important information such as the numbers of contractor employees.

Even putting aside such concerns for the sake of argument, there is no justification for using the A-76 circular to review for outsourcing commercial functions performed by federal employees when agencies are not reviewing for insourcing commercial functions performed by contractors. OMB has never issued costing methodology guidance that would allow non-DoD agencies to use insourcing purely to generate savings, i.e., when the functions need not be insourced because they are inherently governmental. Pursuant to the "Efficiency Initiative", DoD recently imposed a cap on the size of its civilian workforce that, effectively, ends insourcing, particularly if the work is commercial.

Recently, the House had a chance to ensure that DoD was required to finally complete its contractor inventory and reform the troubled A-76 process. We thank Ranking Member Chu as well as Representatives Schrader, Clarke, Critz, and Richmond for voting for the Sarbanes Amendment to the FY12 National Defense Authorization Act.[xli]

4. Don't unduly limit agencies' flexibility to use contractors.

As discussed earlier, work performed by federal employees can be changed or modified without the time-consuming contract modifications and costly surcharges required by contractors. Nevertheless, contractors claim superior disposability—i.e., that it is easier to get rid of them because the services they provide are ostensibly intended to be temporary in nature.

Moreover, when an agency experiences a temporary surge in its requirements contractors argue that it makes more sense to use them instead of federal employees because they are more disposable. (Many of the insourcing "horror stories" are in fact instances in which a temporary surge dissipates and the work performed under the contract is no longer needed.)

The ease with which DoD can cap and even eliminate civil service positions, pursuant to the "Efficiency Initiative", but still find it so difficult to control ever-escalating contractor costs, is a compelling refutation of that contractor shibboleth of superior disposability. Putting that to one side, contractors are seeking changes in the law that would severely limit agencies' flexibility to use in-house alternatives. In other words, contractors wish to weaken if not nullify what they claim to be their greatest advantage--their disposability.

In many cases, contractors seek changes in law that they believe are comparable to the statutory framework for federal employees. For example, the law forbids work performed by federal employees from being converted to contractor performance if the guesstimated savings would not be in excess of a minimum cost differential. The House FY12 National Defense Authorization Act would require the imposition of an identical minimum cost differential in the insourcing context.[xlii] Contractors also seek to force agencies to provide detailed information about insourcing decisions and special legal standing to prevent agencies from determining how taxpayer dollars should be spent. (Interestingly, lawmakers who tirelessly clamor for laws that would limit the ability of consumers to hold businesses accountable for their malfeasance are usually the one most interested in expanding the ability of businesses to retain their often lucrative government contracts.)

Among the many advantages of federal employees, in addition to flexibility, are loyalty, which ensures their focus on agencies' mission, rather than quarterly dividends; stability, which allows them to accumulate invaluable experience and expertise; and economy, because they don't have to bill taxpayers for profits. Consequently, federal employees perform a different role than contractors and play a different part in the government's overall workforce. That is why the statutory framework for federal employees is different than the one for contractors. Essentially, contractors are asking for the same safeguards that apply to federal employees without providing agencies with the same advantages that federal employees do. Contractors no longer want to be disposable, helping agencies to accomplish temporary tasks. Rather, they seek to establish what would, effectively, be a contractor service alongside the civil service.

Knowing the interest of some lawmakers in issues related to notice and standing for contractors in the insourcing context, I will now discuss how inadequate the statutory framework is with respect to these issues for federal employees in the outsourcing context. Although contractor proposals to make it difficult if not impossible for agencies to shift work in-house, regardless of

cost or programmatic concerns, are too numerous to discuss in this testimony, it must be pointed out that many of them are far in excess of anything that exists in the outsourcing context for federal employees.

Most privatization of work last performed by federal employees is done through direct conversions, i.e., without benefit of cost comparisons, not through the A-76 process, although direct conversions are almost always illegal. Under a direct conversion, there is no standard way by which federal employees are notified, if at all, and they have little or no access to documents explaining the decisions in their specific cases. Federal employees are often notified only when contractors show up to take over their work. Federal employees have no right to any cost analysis in the direct conversion context, let alone before the privatization decision has been made.

In an A-76 context, federal employees are neither allowed to see the details of contractor bids nor the details (or even the total) of the in-house cost estimates until after the time for filing bid protests has passed. Even then, agencies usually will not provide the in-house cost estimate without a Freedom of Information Act request or the intervention of a Congressional office. Federal employees don't see any cost analysis, detailed or otherwise, prior to decisions to outsource. Even after the outsourcing decision, federal employees rarely receive any cost analysis other than the amount of the winning contractor bid.

With respect to direct conversions, federal employees have no administrative appeal rights; and GAO has thus far refused to exercise jurisdiction over appeals that involve direct conversions.

Protest rights in the A-76 context are extremely limited because, as mentioned earlier, federal employees don't get to see the details of the in-house bid or a breakdown of the contractor bid. Sometimes, agencies won't even tell federal employees the amounts of the in-house and contractor bids. There is no statutory costing methodology for outsourcing, let alone one that includes "anticipated" increases in contractor costs. There is no statutory costing methodology for outsourcing, and GAO does not enforce the A-76 rules. Federal employees are confined to the GAO bid protest forum and, unlike contractors, can only intervene in cases taken to the Court of Federal Claims.

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[i] Department of Defense, Report to House Committee on Small Business (June 20, 2011). Of course, the service insourced could have been from a big business contractor that was operating as a subcontractor to a small business contractor, just as small business contractors may have been acting as subcontractors to the big business contractors from whom the balance of the in-house positions were insourced.

[ii] "...Report No. D-2003-056 documents a $31.8 million error by a Defense and Finance and Accounting Service consultant in the public/private competition that resulted in the award of an A-76 contract with a potential 10 year value to the contractor rather than the lower in-house bid...The DFAS in-house cost estimate included $33.7 million of 'operations and general and administrative' overhead costs that were not reduced or otherwise affected by the conversion from in-house to contract

performance. DFAS followed the procedures in the OMB Circular A-76 Revised Supplemental Handbook and was required to use the standard 12-percent cost factor for overhead costs because DoD did not develop and submit to OMB for approval an accurate overhead factor for DoD. However, after award of the contract, the overhead costs were not reduced or otherwise affected and continued to be a DFAS cost. Using the mandatory overhead factor affected the results of the cost comparison and reducing the overhead costs would have lowered the Government's in-house cost estimate. A supportable overhead rate for DoD operations and general and administrative overhead would result in fairer cost comparisons." Department of Defense Inspector General (March 21, 2003).

[iii] *Federal Times*, "DFAS to Return 600 Contractor Jobs to Feds", (April 21, 2009).

[iv] As the Secretary Gates declared in his January 6, 2011, announcement on the "Efficiency Initiative": "...with some very limited exceptions, a DoD-wide freeze (is imposed) on the number of civilian employees..." There is no comparable constraint on DoD contractors. Because of growth that occurred after FY10, this cap will actually reduce the number of DoD civilian employees by tens of thousands of positions. According to March 21, 2011, edition of *Inside the Army* ("Army Braces For More Belt-Tightening, Life Without Wartime Budgets"), "...officials expect...civilian workforce cuts of 33,000..." The Air Force has a mandatory 2:1 attrition ratio—two employees must leave before one can be replaced. The Army recommends a 3:1 attrition ratio. Needless to say, there are no comparable attrition ratios for contract spending. Moreover, DoD has acknowledged that during FY2012-2016, the civilian manpower cap would generate $13.3 billion in cuts, while cuts in support service contractors would generate just $5.7 billion in cuts, even though DoD civilian personnel cost considerably less than DoD contractors.

[v] Office of Management and Budget, "Object Class Analysis, Budget of the U.S. Government Fiscal Year 2012", page 10.

[vi] The Federal Workforce Restructuring Act of 1994 imposed a reduction in the civil service of 272,000 employees, or slightly more than 10%.

The Clinton Administration acknowledged that personnel ceilings forced agency after agency to replace downsized federal employees with contractors. According to OMB in 1994, several agencies--including the Departments of Agriculture, Health & Human Services, Housing & Urban Development, State, Education, Treasury, and the Environmental Protection Agency—could have saved millions of dollars by performing functions directly but had to contract out because of personnel ceilings. Office of Management and Budget, Summary Report of Agencies' Service Contracting Practices (January 1994).

Noting the pernicious practice at a particular agency, the National Association of Public Administration reported that "(b)ecause of staff shortages, (the Department of Housing and Urban Development) HUD has relied on contractor assistance in instances where considerations of efficiency and economy would favor performance in-house." National Association of Public Administration, Renewing HUD: A Long-Term Agenda for Effective Performance (1994).

In March 1995, GAO reported "that the personnel ceilings set by OMB frequently have the effect of encouraging agencies to contract out regardless of the results of cost, policy, or high-risk studies." GAO, Government Contractors: An Overview of the Federal Contracting-Out Program (March 29, 1995).

The DoD Inspector General noted, in a 1995 report, "the goal of downsizing the federal workforce is widely perceived as placing DoD in a position of having to contract for services regardless of what is more desirable and cost effective." GAO, Defense Outsourcing: Challenges Facing DOD As It Attempts to Save Billions in Infrastructure Costs (GAO/T-NSIAD-97-110).

That downsized federal employees were simply being replaced by contractors eventually became so obvious that the mainstream media noticed. As reported in a front-page article in *The New York Times*: "Even as President Clinton and Congressional Republicans race to take credit for shrinking the Federal payroll, the Government's costs for outside, or contract, employees keeps rising...The Government spent $103 billion in salaries and expenses for its employees in 1995. That is a very slight decline, about $1 billion, from its payroll costs in 1993 and 1994. But the dollar value of Federal service contracts with private companies has risen more than 3.5 percent a year since 1993, to $114 billion last year...President Clinton refers frequently to the elimination of more than 200,000 Federal positions—about 10 percent of the Federal work force—during his tenure, an indication that `the era of big government is over'...Most of that decrease has been in civilian jobs at the Pentagon. But while those jobs have vanished on paper, many of the responsibilities are being fulfilled by outside contractors..." "As Payroll Shrinks, Government's Costs For Contracts Rise", *The New York Times* (March 18, 1996).

Most downsizing during the 1990's was imposed on DoD, and most of that downsizing was in turn imposed on its acquisition workforce, the federal employees responsible for ensuring that contractors don't rip off taxpayers. The DoD Inspector General reported in 2000 that taxpayers were paying "increased program costs resulting from contracting for technical support versus using in-house technical support. Seven of the 14 DoD acquisition organizations stated that reductions in in-house matrix support personnel required the organizations to contract for additional services, such as engineering and logistical analysis, that the Government once would have provided." DoD Inspector General Report D-2000-088, p. 24.

[vii] *Congressional Quarterly* transcript of September 28, 2010 Senate Armed Services Committee hearing on the "Efficiency Initiative".

[viii] According to the Army's contractor inventory, out of 7,100 acquisition contractor positions reviewed, 910 were inherently governmental, 5,380 were "closely associated", and 170 were performing pursuant to unauthorized personal services contracts. What are examples of contractors performing "closely associated" acquisition functions? Here's an excerpt from the FAR, 7.503(d): "(5) Services that involve or relate to the evaluation of another contractor's performance; (6) Services in support of acquisition planning; (7) Contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors); (8) Contractors providing technical evaluation of contract proposals; (9) Contractors providing assistance in the development of statements of work."

[ix] 10 USC 129 and 10 USC 129a.

[x] Roll Call Vote #352.

[xi] GovWin.com, "INPUT MarketView: Experts See Opportunity in Cuts" (June 15, 2011).

[xii] The precipitous decline in DoD insourcing is actually bad news for anti-insourcing "entrepreneurs" who now must concoct other threats to justify their fees: "Robert Burton of Venable, LLP. Burton, a former deputy administrator of the Office of Federal Procurement Policy, remained convinced that the movement to replace some contractors with government workers was a threat to the industry...'We see [the Department of Defense] pulling back,' he said. '*On the other hand, civilian agencies are going full blast.*'" (Emphasis added) GovWin.com, "INPUT MarketView: Experts See Opportunity in Cuts" (June 15, 2011).

[xiii] *The Washington Post*, "National Security Inc." (July 20, 2010).

[xiv] Government Accountability Office, DEPARTMENT OF HOMELAND SECURITY: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services (GAO-07-990) (September 2007). Government Accountability Office, DEFENSE ACQUISITIONS: Further Actions Needed to Address Weaknesses in DoD's Management of Professional and Management Support Contracts (GAO-10-39) (November 2009).

[xv] "(Section 939) would amend section 2463 of title 10, United States Code, to require the conversion of any inherently governmental function to performance by Department of Defense (DOD) civilian employees. The committee notes that this requirement was not specifically included in section 2463 when it was enacted originally because it was presumed that such functions were not being performed by contractors. However, the committee is aware that was a false presumption. For example, according to a report by the Government Accountability Office, 'Defense Acquisitions: Further Action Needed to Better Implement Requirements for Conducting Inventory of Service Contract Activities, January 2011', within the Department of the Army, more than 2,000 contractor full-time equivalents are performing work that is inherently governmental, and an additional 45,934 Army contractors are performing activities deemed closely associated with inherently governmental functions. The committee finds this troubling and urges the military services, particularly the Army, to convert such functions immediately to performance by DOD civilian employees." House Report-112-078

[xvi] Section 324.

[xvii] Section 736.

[xviii] Section 743.

[xix] Department of Defense, "Civilian Human Capital Management Report: Supporting the Warfighter Through A Capable, Agile, and Decisive Civilian Workforce" (December 2010), p. 46.

[xx] GovExec.com, "Defense insourcing to continue at military services" (December 7, 2010).

[xxi] Letter from Under Secretary of Defense for Personnel and Readiness Clifford Stanley to Professional Services Council (May 27, 2010).

[xxii] 10 U.S.C. 129a.

[xxiii] We are periodically reminded that there is often little competition among contractors for work. The DoD IG reported 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." DoD IG, Contracts for Professional, Administrative, and Management Support Services (D-2000-100) (March 10, 2000). GAO reported that "(o)ur work, along with that of the Inspectors General, has repeatedly found problems with the practices DoD uses to acquire services. Too often, the department obtains services based on poorly defined requirements and inadequate competition...Similarly, DoD does not always oversee and manage contractor performance, once a contract is in place...Collectively these problems expose DoD to unnecessary risk, complicate efforts to hold DoD and contractors accountable for poor acquisition outcomes, and increase the potential for fraud, waste, or abuse of taxpayer dollars." GAO, "DEFENSE ACQUISITIONS: Improved Management and Oversight Needed to Better Control DoD's Acquisition of Services" (GAO-07-832T) (May 10, 2007).

[xxiv] The Federal Acquisition Regulation includes examples of functions that are considered to be closely associated with inherently governmental functions from the Federal Acquisition Regulation:

(1) Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.

(2) Services that involve or relate to reorganization and planning activities.

(3) Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.

(4) Services that involve or relate to the development of regulations.

(5) Services that involve or relate to the evaluation of another contractor's performance.

(6) Services in support of acquisition planning.

(7) Contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).

(8) Contractors providing technical evaluation of contract proposals.

(9) Contractors providing assistance in the development of statements of work.

(10) Contractors providing support in preparing responses to Freedom of Information Act requests.

(11) Contractors working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the National Industrial Security Program described in 4.402(b)).

(12) Contractors providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.

(13) Contractors participating in any situation where it might be assumed that they are agency employees or representatives.

(14) Contractors participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.

(15) Contractors serving as arbitrators or providing alternative methods of dispute resolution.

(16) Contractors constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

(17) Contractors providing inspection services.

(18) Contractors providing legal advice and interpretations of regulations and statutes to Government officials.

(19) Contractors providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

[xxv] The use of an OMB Circular A-76 public-private competition process for insourcing was prohibited, which is consistent with contractors' longstanding opposition to being subjected to the circular.

DoD's Office of Cost Assessment and Program Evaluation (CAPE) is responsible for Directive-Type Memorandum 09-007 entitled "Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contractor Support," which is used by DoD to determine whether purely commercial functions ought to be insourced.

The Center for Strategic and International Studies (CSIS) recently issued a report that was harshly critical of the department's insourcing costing methodology. CSIS has scant previous record on these issues--whether it's the thrice-outlawed OMB Circular A-76 privatization process, the consequences of DoD's downsizing-driven privatization during the 1990's, the grievous loss of control over inherently governmental functions throughout the federal government, or functions last performed by civilian employees being converted to contractor performance without any proof of savings for taxpayers. However, CSIS seems to have found its voice on an issue of great importance to contractors. Significantly, the release of the report was closely coordinated with Professional Services Council, which obviously undermines CSIS' claim of objectivity, something which has already been questioned by Congressional and DoD staff.

AFGE understands why contractors had to make use of an organization like CSIS--because they've thus far been unsuccessful in inducing the DoD IG or the GAO to find fault with DoD's insourcing costing methodology. Earlier, contractors said that the insourcing costing methodology failed to take into account in-house health care and retirement costs--and they were proven wrong. Now, they are essentially saying that the methodology doesn't take into account in-house overhead costs.

The CSIS report repeatedly insists that DoD should base insourcing decisions on the OMB Circular A-76 privatization process' costing methodology. It's hard to imagine anyone using the A-76 process as a favorable precedent for anything, but particularly with respect to the calculation of in-house overhead, given the seminal IG report on the DFAS' retirement and annuity A-76 privatization study: that the A-76 circular's automatic 12% overhead charge on in-house bids "is not supported by any data" and that "unless DoD develops a supportable rate or an alternative method to calculate a fair and reasonable rate, the results of future competitions will be questionable." Ultimately, the IG determined that DFAS had wrongly contracted out work performed by 600 civilian employees because overhead costs did not change, whether the work was contracted out or kept in-house.

We have never taken the position that there should be no overhead costs attributed to in-house bids. However, we have insisted that in-house bids be charged for only the amount that overhead would be reduced if the in-house workforce in question no longer existed. Contractors would, in all seriousness, charge in-house bids for notional overhead, including a fraction of the cost of, say, running Air Force One, even though Air Force One would have to be maintained whether the work stayed in-house or was contracted out.

Readers can see notional overhead throughout the CSIS report—from the suspicion that repeated insourcing generates overhead costs that wouldn't be accounted for ("Overlooks the cumulative effect of multiple in-sourcing decisions") to the assumption that the federal sector must intrinsically have higher overhead costs ("Private sector overhead rates are commonly several times higher. Government is not that much more efficient.")

AFGE notes that the use of DoD's insourcing costing methodology was affirmed and codified in the FY11 NDAA, enacted when the Democrats were in charge. AFGE also notes that Section 939 of this year's House FY12 NDAA mark, considered when the Republicans are in charge, would again affirm and codify DoD's insourcing costing methodology.

When AFGE first began fighting for insourcing, we proposed that OMB Circular A-76 be used for insourcing as well as outsourcing. In fact, provisions were included in the House FY02 NDAA mark that required the use of the A-76 circular for new sourcing as well as insourcing. Contractors fought the requirement bitterly. The insourcing law, which was enacted several years later, prohibited the use of the A-76 circular, requiring DoD to develop an alternative approach that would allow the department to rebalance its workforce by providing managers with the flexibility necessary to manage their workforces and meet their missions in an austere budgetary environment. Contractors will, of course, always object to insourcing, no matter what the process is or what methodology is used—and, given their resources and influence, they will always be able to find someone or some group to tell their story.

Nevertheless, DoD is obligated to respond to the CSIS report. AFGE has had numerous problems with DoD's costing methodology for outsourcing, which is not CAPE's responsibility. The difference between AFGE and the contractors is that the

DoD IG and GAO agreed with our concerns. CAPE is not known for being sentimental. In fact, given its involvement in the "Efficiency Initiative," through which work that should be performed by civilian employees for cost or programmatic reasons is instead being given to contractors or left with contractors, nobody could accuse CAPE of being anti-contractor.

If there are problems with the insourcing costing methodology, then they should be corrected. If there are not problems, then CSIS' allegations should be refuted. Regardless, it is imperative that the department use insourcing to reassert public control over important and sensitive functions as well as to reduce the high costs to taxpayers of DoD's overreliance on contractors.

[xxvi] FY11 NDAA, Section 323. AFGE opposed the use of quotas to promote outsourcing and we opposed the use of quotas to promote insourcing. Based on GAO and IG reports, there is an abundance of contracts deserving of insourcing because they cost too much or are poorly performed. To borrow DoD's terminology, we are operating in a "target-rich environment" in which insourcing quotas are clearly not necessary. Our position is distinct from the contractors who championed outsourcing quotas but fulminated against insourcing quotas. Assuming that there ever were insourcing quotas, they were quickly outlawed, and are now, in the "Efficiency Initiative" environment, only a distant memory. And there has never been a serious suggestion that non-DoD agencies have used insourcing quotas.

[xxvii] "[A Professional Services Council (PSC) spokesman] said Homeland Security's balanced workforce effort is off to a better start than Defense, since (DHS) has not set quotas and doesn't appear to be biased toward or against outsourcing. And (the PSC spokesman) said (DHS') willingness to only partially insource some positions shows Homeland Security is thinking strategically. 'I haven't heard anything that suggests they're doing a radical overhaul, but a strategic look,' (the PSC spokesman) said. 'They really are looking to see if they have the right balance, the right skills and in the right place.'" *Federal Times*, "Homeland Security expands push towards insourcing" (February 7, 2011).

[xxviii] DoD Secretary Robert Gates' remarks about insourcing in August 2010 have been misconstrued to damn insourcing. Fortunately, DoD clarified the Secretary's remarks earlier this year: "Q. How do you explain Secretary Gates' comments last year that in-sourcing hasn't produced the kind of savings the Pentagon expected? A. "We had reductions in contracts as a result of insourcing but elsewhere, in other areas like logistics, contracted services were going up. If you look at the budget for fiscal year 2010, the reduction associated with contracting in the budget submitted to Congress was $900 million. But growth in all contracted services was more than $5 billion and the net of that is $4.1 billion of growth in contracts, and that the context of his remarks." Bloomberg Government (bgov.com), "Pentagon In-Sourced 8.500 Jobs in 2010 for Core Government Work (March 4, 2011). As it happens, Secretary Gates' remarks actually damned the ever-escalating costs of contracting.

[xxix] 10 USC 2330a.

[xxx] Roll Call Vote #390.

[xxxi] Department of Defense Inspector General (D-2003-056): "Using the mandatory overhead factor affected the results of the cost comparison and reducing the overhead costs would have lowered the Government's in-house cost estimate. A supportable overhead rate for DoD operations and general and administrative overhead would result in fairer cost comparisons."

[xxxii] COMPETITIVE SOURCING: Report on Competitive Sourcing Results Fiscal Year 2006, OMB, 2007. "Competitions where federal agency selected to perform work (as a percentage of total FTEs competed) 83%."

[xxxiii] Section 939.

[xxxiv] This prohibition was first included in Section 737 of the FY09 Financial Services Appropriations Bill.

[xxxv] This prohibition was included in Section 325 of the FY10 National Defense Authorization Act.

[xxxvi] This prohibition was included in Section 8117 of the FY10 Defense Appropriations Bill.

[xxxvii] Department of Defense Inspector General, DoD Reporting System for the Competitive Sourcing Program (D-2006-028).

[xxxviii] Government Accountability Office, Forest Service: Better Planning, Guidance, and Data are Needed to Improve Management (GAO-08-195).

[xxxix] Government Accountability Office, Department of Labor: Better Cost Assessments and Departmentwide Performance Tracking Are Needed to Manage Competitive Sourcing Program (GAO-09-14).

[xl] Government Accountability Office, DEFENSE ACQUISITIONS: Further Action Needed to Better Implement Requirements for Conducting Inventory of Service Contract Activities (GAO-11-192) (January 2011).

[xli] Roll Call Vote #345.

[xlii] Section 939.