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INSOURCING GONE AWRY: OUTSOURCING SMALL BUSINESS JOBS

HEARING

BEFORE THE

SUBCOMMITTEE ON CONTRACTING AND WORKFORCE

COMMITTEE ON SMALL BUSINESS

UNITED STATES

HOUSE OF REPRESENTATIVES

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INSOURCING GONE AWRY: OUTSOURCING SMALL BUSINESS JOBS

THURSDAY, JUNE 23, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE ON CONTRACTING AND WORKFORCE,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., in room 2360, Rayburn House Office Building. Hon. Mick Mulvaney (chairman of the subcommittee) presiding.

Present: Representatives Mulvaney, Landry, Chu, Schrader, and Critz.

Chairman MULVANEY. Good morning to everyone. Welcome. We are going to go ahead and start on time. This is the new government. We are actually starting on time. We will finish on time. Thank you very much for coming in.

Some explanation of how we are going to proceed today. I was just telling the ranking member, Ms. Chu, that ordinarily when we have these 10 o'clock meetings we are under the gun with votes that are imminent. We just learned that we will not have votes probably till around noon today. So I will be a little slower with the gavel. If you go over a few minutes on your opening testimony, that would be great. We will also give more latitude to the members in their five minutes of questioning.

As I was discussing with Ms. Carroll before the hearing, five minutes, if you have not done this before, really is not that long a period of time. And this is an important topic that I think it is important enough for us to build a good solid record on all sides of this issue. So we are going to try and do this as thoroughly as we can today.

The order of business is I will give a brief opening statement. Ms. Chu will give her opening statement as the ranking member. Then we will introduce each of the witnesses. We will introduce them together and then we will have you take your testimony and then we will go back and give every member of the Committee a chance to ask a round of questions. I will then make a closing statement, as will Ms. Chu, and we will wrap up.

So again, thank you. We are going to go ahead and call the meeting to order. And I want to thank you again for participating.

In 1987, Ronald Reagan brought attention to the need for the federal government to procure commercial goods and services for the best value whether from government employees or from the private sector. He recognized that inherently governmental work should be performed by government employees, but that, at the

same time, inherently nongovernmental functions could and should be performed by the private sector, including small businesses. Such an outsourcing of nongovernmental functions would encourage private growth, help small business, and actually save the taxpayer money.

Toward that end, we support the continued insourcing of inherently governmental work. This hearing then is not about outsourcing military operations, for example. This hearing is about the recent push to insource inherently nongovernmental work for alleged cost savings.

Over the past five years, primarily at the Department of Defense, there have been concerted efforts to take commercial or nongovernmental functions performed by the private sector and make them a permanent government function.

In the 2006 National Defense Authorization Act, the Secretary of Defense was instructed to ensure that consideration is given to using Federal Government employees for any work done by federal employees since 1980, and any work that is inherently governmental was not competitively awarded or was poorly performed due to excessive costs or inferior quality.

In the 19, excuse me, the 2008 National Defense Authorization Act, that guidance was expanded and codified to ensure that the Department of Defense civilian employees are used on a regular basis to perform activities that are currently performed by contractors but could be performed by federal employees.

In 2009, insourcing was expanded even further to include agencies outside the DoD and agencies were directed to produce specific guidance on insourcing. We are still waiting on much of that insourcing guidance from the civilian agencies. However, this lack of guidance has not stopped those agencies from insourcing but has merely meant that the insourcing that is being done is being done without any transparency or without any regular process. Even at the Department of Defense where there is a detailed guidance on insourcing, the cost comparisons used to justify insourcing commercial or noninherently governmental work previously performed by small business has not held up to scrutiny, and yet there is no process for the small businesses to challenge the decisions.

Insourcing was initially sold as a way to save the Department of Defense as much as 40 percent. President Obama claimed that it would save as much as $40 billion a year. However, after years of implementing this policy, the Department of Defense has admitted that they have not achieved significant cost savings. In fact, in February, the Army froze all insourcing efforts without direct approval of the secretary due to cost increases.

Our national debt stands at $14.3 trillion. Our federal deficit is higher now than at any point since World War II. The federal budget comes in a $3.7 trillion—a quarter of our entire GDP. And the federal workforce has expanded to over 2.1 million employees. We need to find ways to both reduce spending and to keep it low. Continuing the policy of insourcing commercial functions without demonstrable cost savings increases the size and the cost of the federal government and moves us in exactly the wrong direction.

When the government chooses to consider insourcing, the burden should fall on the government agencies to prove that the full, long-

term cost (including pay, benefits, and support) of hiring and training new federal employees is, in fact, less than a temporary government contract. Recent reports indicate that it is not.

I want to thank the small businesses that have come here today to testify about the lack of transparency in the insourcing process and the need to reform the process to ensure that taxpayer dollars are being used to maximize productivity and not to maximize government employment or union membership. I would also like to thank the work of outside groups, including the Business Coalition for Fair Competition for documenting the many instances in which the government has sought to compete directly with small business to provide commercial items to the federal government.

I look forward to hearing from the small businesses that will testify today about how insourcing has affected them individually, and, again, I want to thank everyone for their participation.

I will yield now to Ms. Chu, the ranking member, for her opening statement.

Ms. CHU. Thank you, Mr. Chair.

The federal government buys a wide range of goods and services annually running the gamut from office supplies and janitorial services to aircraft and engineering services. In the last decade, such procurement spending has doubled to more than $500 million as policy changes encouraged more and more services to be contracted out to the private sector. With this rapid growth in mind, it is appropriate that we consider the impact of these policies not only on the private sector but also on the government itself.

Over the years, and as administrations have changed, the government's reliance on the private sector has ebbed and flowed. These changes have had a direct affect on the private sector and small businesses in particular with regard to their ability to secure federal contracts. Conversely, it has also affected agencies which now rely on private sector corporations to carry out many functions.

Determining the proper balance of these public-private arrangements is critical to increasing efficiency and reducing costs. Across agencies this balance varies and often there can be disagreements over what is inherently governmental. It is not uncommon for the purchasing needs, management responsibilities, and overall spending related to certain similar tasks to differ across the executive branch.

As a result, many agencies have taken steps to better achieve their core missions. Such rebalancing efforts have been used to ensure that inherently governmental functions be performed by federal employees.

In other cases, the process has been used so that agencies can build their capacity and capabilities in certain critical areas. In doing so, agencies have implemented new processes to review their responsibilities and determine which functions should be retained in-house and which should be conducted by vendor.

In many cases, the process has been complicated. In instances where cost is the primary justification for rebalancing, there has been some disagreement as to the method used to determine which functions are selected. There is a tension here and we must recognize agencies' desire to retain inherently governmental functions,

but also fairly treat small businesses that are currently or may want to in the future perform these tasks.

To make certain that small businesses are respected in these processes, transparency is a key. It is important that small firms that are provided with full and complete information regarding why these efforts are being undertaken but also made a means for them to contest any inequitable treatment that they may be subjected to. Doing so can ensure that agencies can proceed with such efforts but in a manner in which small firms are respected.

The effect of these transformational practices on small businesses has been recognized by administration officials. Agencies have been advised to place a lower priority on reviewing work performed by small firms in certain instances. While this is an important first step in ensuring fair participation by small businesses and federal contracting, additional examination is needed. While we may not be able to always outsource contracts to small businesses, we must do what we can to diminish the impact on them.

Today, this hearing will focus on the process of how functions are selected for federal performance, examine the effects that it has on small firms, and identify steps to improve the process so that we can determine the appropriate balance between functions that should be performed by federal agencies and the private sector. We will hear from a number of witnesses who will provide different perspectives on these practices and look at the challenges they have presented.

I want to thank all the witnesses who have traveled here today for both their participation and their insights. And I look forward to hearing their information about this important topic.

Thank you, and I yield back.

STATEMENTS OF DAWN L. HAMILTON, PRESIDENT AND CEO, SECURITY ASSISTANCE CORPORATION; BONNIE C. CARROLL, PRESIDENT, INFORMATION INTERNATIONAL ASSOCIATES; BRYANT S. BANES, MANAGING SHAREHOLDER, NEEL, HOOPER & BANES, P.C.; JACQUE SIMON, PUBLIC POLICY DIRECTOR, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Chairman MULVANEY. Thank you, Ms. Chu.

It is a great panel. I am looking forward to it. First, we have Dawn Hamilton. Ms. Hamilton is the president and CEO of Security Assistance Corporation, a Virginia-based, small, disadvantaged, woman-owned A business, which she formed in 2003. And Ms. Hamilton will be telling us about her personal experiences with insourcing, specifically, I believe at the Coast Guard.

Next, we have Bonnie Carroll, the president of Information International Associates, a woman-owned, small business headquartered in Oakridge, Tennessee. They provide information management systems and technology services to the government, academic, the private sector, and international entities. Ms. Carroll will be testifying regarding her personal experience with having three contracts insourced.

Finally, we have Bryant S. Banes, the managing shareholder at Neel, Hooper, and Banes. Mr. Banes formerly practiced government contract law on behalf of the Department of Justice, and for eight

years active duty as a judge advocate general. Thank you for your service, Mr. Banes.

Mr. Banes has taught government contracting at George Mason and the U.S. Army's Judge Advocate General's School. He will be talking today about issues of standing and insourcing cases, something that only lawyers could really appreciate, Mr. Banes. So thank you for doing that. As well as the recent Court of Federal Claims, excuse me, Court of Federal Claims Case, Hallmark Phoenix 3 v. The United States.

And I will yield now briefly to the ranking member for the introduction of the fourth witness.

Ms. CHU. Yes. I would like to introduce Jacque Simon, director of Public Policy of the American Federation of Government Employees. Thank you for being here.

Chairman MULVANEY. Very well. Ms. Hamilton, if you will begin. You have roughly five minutes but again, we are going to be a little slow with the gavel today. So do not feel the need to rush.

STATEMENT OF DAWN L. HAMILTON

Ms. HAMILTON. Chairman Mulvaney, Ranking Member Chu, and distinguished members on the Subcommittee on Contracting Workforce, thank you for inviting me today to discuss my experiences with respect to the implementation of the current administration's insourcing policies. I am Dawn Hamilton, president and CEO of Security Assistance Corporation.

SAC was founded in 2002 and is a small disadvantaged, minority woman-owned SBA certified 8(a) security services provider.

In September 2008, the Coast Guard awarded SAC a small business set-aside contract to process merchant mariner applications at the National Maritime Center (NMC) in Martinsburg, West Virginia. This work is comprised of three task orders.

Shortly after receiving the contract, SAC instituted various process improvements at the NMC to alleviate a significant backlog in merchant mariner applications. As a result of SAC's process improvements, the credentialing process is significantly improved today. For this work, the Coast Guard has recognized SAC for its outstanding performance and contribution to the Coast Guard's receiving the Alexander Hamilton award.

Notwithstanding SAC's exceptional performance, and without any warning, on December 23, 2010, I received a call from Coast Guard Headquarters stating that they would be insourcing two of the task orders. By the end of the business day, the Coast Guard posted the relevant position on the USA jobs website.

Soon after being informed of this insourcing action, SAC requested the cost analysis and documents that allegedly justified the insourcing action which revealed that the positions at issue were not inherently governmental. The Coast Guard's insourcing process failed to provide SAC with an opportunity to provide actual cost data or respond to this action.

The cost analysis was incomplete and inaccurate. It underestimated significant costs, including indirect costs, the cost of additional positions, salary, transition, short-term and training costs.

The cost analysis justification and conclusions were also unsupported. The analysis stated without authority that the cost of a

contractor is automatically higher than a government employee and that the insourcing would have no adverse impacts to other organizations. This obviously is incorrect since this insourcing action has the potential of putting SAC out of business.

SAC repeatedly attempted to meet with the Coast Guard to present its findings. When the Coast Guard finally met with SAC, we apprised the Coast Guard of the faulty process and offered to provide actual cost information. In response, the Coast Guard stated they had performed a robust cost analysis, had spent significant time and resources on their analysis and had no interest in reviewing SAC's actual cost data.

SAC then met with the Small Business Administration officials, for which the first time have effectively intervene in an insourcing action. Specifically, the SBA procurement center representative has requested the Coast Guard halt the insourcing action until it is able to conduct a true cost and impact analysis and discuss the results with the SBA.

Regardless, the Coast Guard is moving forward with the action and has already extended offers to over 55 of SAC's employees. In fact, the number of SAC's employees insourced represents approximately 23 percent of all the Coast Guard insourcing for the last two years.

There is no question that the insourcing of these task orders have profoundly affected the future viability of SAC. This action has directly resulted in the loss of 75 percent of SAC's jobs and revenue.

SAC respectfully submits the following recommendations. (1) That a moratorium be placed on all cost-based insourcing actions until further government-wide procedures are in place. (2) That the Federal government adopt government-wide procedures through a public rulemaking process.

At a minimum, such procedures should include: (a) Requirements that affected companies and organizations be provided with all government cost data and analyses used in making an adverse insourcing action; (b) an impact analysis for insourcing actions that affect small businesses; and (c) an appeal process for affected companies and organizations.

And finally, (3) that the SBA be given a defined role in the review of agency insourcing actions.

In summary, the positions at issue in the insourcing action taken against SAC are not inherently governmental functions. Rather, the Coast Guard claims it was done to save money. The cost analysis provided by the Coast Guard is riddled with problems and is ultimately inconclusive of whether the Federal government will realize any cost savings. What is certain is that the Coast Guard's actions have inflicted real and actual harm to my small business—cutting jobs and revenue (during this economic downturn) by up to 75 percent.

Going forward, it is imperative that the impact on small businesses, the driver of our economy, must be a required consideration in any future, excuse me, insourcing action.

I appreciate your time and attention today and look forward to answering any questions that you may have. Thank you.

[The statement of Ms. Hamilton follows on page 30.]

Chairman MULVANEY. Thank you, Ms. Hamilton. And by the way—thank you, Ms. Hamilton. By the way, just an explanation of the lights in front of you. Again, we are going to be a little looser with the time but I do not know if you actually see the amount of time or if you just see red, yellow, and green. Green, obviously, means that there is more than a minute left; yellow means there is a minute; red means that we have ended the five minutes. If we go much over five you will hear a light tapping. A light tapping sound just to bring to your attention the fact it is time to wrap up. But, again, we will be fairly loose with the time.

So thank you, Ms. Hamilton. Ms. Carroll, would you please begin with your testimony?

STATEMENT OF BONNIE C. CARROLL

Ms. CARROLL. Chairman Mulvaney, Ranking Member Chu, and members of the Subcommittee, I appreciate the invitation and opportunity to provide testimony on this very important issue. In addition to being president of Information International Associates, I am also a member of the Professional Services Council and serve on their board. So I am pleased to testify on behalf of many other small businesses at PSC.

The insourcing actions that we have had that were the most significant impact on us has been for the Department of Defense, and particularly the Air Force. So I will focus a little bit on our experiences from the Air Force today. But similar activities are taking place across the government.

We are proud of the quality and level of service we provide the nation's military men and women. We have done work on over 15 Air Force bases. Our contract performance has been outstanding. Our contract prices have saved as much as 33 percent over previous government in-house costs. Our work has never been identified as inherently governmental. In fact, we continue to do that work, as do other contractors across the whole Air Force.

Yet, despite these performances metrics, we have lost 16 percent of our employees to insourcing by the Air Force over the last eight months and we hear rumblings about the potential for another 15 percent. Amen when I say we do agree with the strategic need of the Federal government to strengthen performance of inherently governmental functions, particularly the Federal acquisition workforce and also in areas where the government must have internal expertise to manage agency mission. Coming from Oakridge, I hope the government has internal nuclear expertise.

Where insourcing fulfills a validated strategic need, we support its proper use. As a taxpayer, of course I wholeheartedly support saving the taxpayers money. However, the tactical methods of implementing the insourcing requirement and the impacts on the Air Force mission raise grave concerns for us. What we have observed is that decisions to insource are driven more by arbitrary budget and manpower boogies than by the objectives of enhancing the government's workforce capabilities or by true cost savings.

Furthermore, the reprehensible tactics of directly recruiting our staff before official notice is given about the government's even decision to insource is highly inappropriate.

Finally, where insourcing decisions were based on cost savings, the cost analysis of how the deliberations were made have not been transparent and there really is no effective mechanism for a contractor to gain enough information in appropriate time.

In addition to the faults and the decision and transition process, once the insourcing occurs we do not believe that there is any meaningful internal or external oversight to ensure that the claimed savings and desired programs' objectives have been achieved. In fact, quite the contrary. What we see is evidence that insourced positions have not been fulfilled and services to our war fighters have, in fact, been diminished.

In my written testimony, I have provided three case studies where outsourcing has occurred to the detriment of my company. Rather than going into the details here, I would like to address some recommendations that can be done to perhaps fix some of the problems created by inappropriate insourcing.

First, in the issue of transparency, and I think we are saying many of the same things, Congress should insist on more transparency for any contract which is considered for insourcing. From the moment the consideration begins, some kind of an ombudsman or ombuds process should be appointed to work with industry to assure an appropriate and fair process is followed. Another recommendation in transparency as part of that process, actions taken to fulfill the requirements should be documented and made available to the contractor before contracts are terminated. Going through the FOIA route is not giving people information when they need it to have any kind of reasonable ability to take action.

Next in the issue of competition, when the government is pricing contracted function, a contractor also should be allowed to put in a price to ensure that the taxpayer is, indeed, getting the best price. Five years after a contract begins, the contractor might, in fact, have lower prices to offer. Unless there is significant and special justification in insourcing, small businesses should be allowed to complete the contract with all of the options exercised and not stopped in the middle. Special justification should be required.

Transition planning and consequences. And I emphasize the word "consequences." The government should demonstrate that it can transition the contract just as a contractor would be required to meet a transition plan. There should be consequences to the government's failure, just like there are to a contractor when commitments are not met.

Ongoing reviews of process during performance should be required. This is like the letter of obligation that is applicable under A–76 and some form of it should be used and enforced.

And finally, and probably most problematic, is inappropriate recruitment. Poaching, and I hope you have heard that word before, and other questionable recruitment practices aimed at contractor employees on contracts targeted for conversion should be dealt with. It is against regulations and it has a significant financial impact on the contractor. We recommend where the workforce is converted from private to public sector positions, the government should actually compensate contractors for the cost of hiring and training those personnel. If the government did not take them over,

they would have to incur these costs. At a minimum, these costs should be considered in the cost analysis.

So we are proud to do the work we do and are proud to support the important missions of our government. What we ask for is fair opportunity to compete and a government that makes the right decisions for the right reasons.

Thank you for the opportunity to testify. And I am pleased to answer questions.

[The statement of Ms. Carroll follows on page 41.]

Chairman MULVANEY. Thank you, Ms. Carroll. We will hold off the questions until the very end.

So, Mr. Banes.

STATEMENT OF BRYANT S. BANES

Mr. BANES. Mr. Chairman, Ranking Member Chu, distinguished members of this Subcommittee, it is an honor and a privilege to talk to you today about the legal developments on insourcing, their adverse impacts on small business, and job creation and the lack of transparency in the process. More specifically, I have been asked to talk to you today about the recent decision by the U.S. Court of Federal Claims and Hallmark-Phoenix 3, LLC v. United States. In this case, I want everybody to understand that the Court of Federal Claims—one judge on the Court of Federal Claims issued a decision ruling that the Court lacks jurisdiction to review insourcing decisions by the Federal government because private contractors are not within the zone of interest of the applicable statutes. This was a Defense Department insourcing action by the Air Force, specifically the United States Air Force Space Command. And it concerned a contract that was far from inherently governmental or anything close to that.

I would like to talk to you about this today because it is a very, very bad thing once we understand that we can no longer question our government and we do not have the right to go into court and say stop, take a look at this, and is it the right thing to do.

In this case, that is exactly what the Court said. It looked at the statutes at issue, namely 10 U.S.C. §§ 129a and 2463, the Defense Department's insourcing statutes, and decided that private contractors have no right to question the government's insourcing in court, saying that that is for the halls of Congress.

Well, we are here today, and I would echo the concerns of my distinguished colleagues and the private contractor community. I see the same things where I am for several contractors. I represent several that have been subject to insourcing and it is interesting to see, to talk about Hallmark today because that is an excellent example of insourcing gone awry. The Hallmark contract is a transportation contract and vehicle maintenance contract. It does not concern weapons. It does not concern policymaking. It was competitively awarded. The contractor has no adverse performance history. In fact, did a very good job. And from what we can tell, they were doing the work in a very, very cost-effective manner.

The statutes at issue that we are talking about require the least cost form of manpower, either military, civilian, or private contractor when you are looking at whether or not to do insourcing. The Court, when it was looking at it, said that, well, no, you cannot

look at, you cannot question the analysis that they did because you are not within the zone of issue and legal parlance. In other words, this statute was not passed for your benefit. But when you look at 10 U.S.C. § 129a, it does say and it mandates from Congress that the least costly form of manpower be used. And it specifically states military, federal, civilian, or private contractor.

Now, if a private contractor is the least costly form of manpower, which in the Hallmark case we believe it was, then that would make a private contractor the beneficiary of that statute and one that should get the contract and it should stay outsourced. But for some, for a host of legal reasons that we do not have enough time to go into here, the Court decided that private contractors had no legitimate right to question that action.

There was a CRS (Congressional Research Service) Report issued earlier this year titled Functions Performed by Federal Contractors: An Overview of the Legal Issues. This is an excellent report and it talked about an analysis that the current administration was doing. And this is in line with some of the recommendations we are going to make today.

When we are looking at how we fix the problem of whether we can question insourcing in court, we have to do three things, I think, to make sure that no court in the future denies that opportunity. First of all, we need to amend the Competition in Contracting Act to define protest to include conversion of a function that is being performed by private contractors to federal, civilian, or military employee performance. Second, we need to amend the Competition Contracting Act to provide the prudential standing and a protest action is coextensive with interested party status. And three, I think it is appropriate to impose a legislative moratorium on insourcing, the one that was named in the CRS report, until the administration completes an evaluation of the impact of insourcing on small business and the general overall cost savings.

This is key because when you look at this, in the Hallmark case when we talked to the people at Air Force Base Command, we learned that they had not asked any of these questions. They specifically told us that we have not considered the impact on small business, we have not considered the impact on the union workforces that will lose their jobs, and there is no direct higher authority. So in that context, that was another reason that we had to question the insourcing in court.

Because the administration has not considered these things and has had no emphasis placed on considering these things, that is why we recommend putting the brakes on this today.

[The statement of Mr. Banes follows on page 36.]

Chairman MULVANEY. Thank you, Mr. Banes.

Ms. Simon.

STATEMENT OF JACQUE SIMON

Ms. SIMON. Mr. Chairman, Ranking Member Chu, and members of the Committee, thank you for the opportunity to discuss the importance of insourcing and reducing the Federal government's expensive and risky overreliance on service contractors.

For the uninitiated, there is no better reminder of how insourcing can be used to save money and improve services than

the retirement and annuity work at the Defense Finance and Accounting Service (DFAS). In 2001, the work was privatized. In 2003, the DoD inspector general determined that the decision to contract out had been wrong and reported that a systematic flaw by a CA–76 process against the in-house workforce and raised serious questions about the integrity of all A–76 cost comparisons.

Despite growing concerns over the contractors. 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 work until 2010. DFAS's decision to insource 600 jobs saved money and improved services because according to the agency, federal employees were more flexible, were better able to change the way they worked, and to accommodate increases in demand.

In 2011, DFAS told the House Defense Appropriations

Subcommittee this insourcing would save $5 to $10 million this year and $19 million in the next fiscal year. As DoD reported in December 2010 regarding its overall insourcing, and I quote, "Execution to date has been highly successful. 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 exempt from private sector performance to mitigate risk, ensure continuity of operations, build internal capacity, meet readiness needs, et cetera." 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.

Regardless of what is said today, this hearing has provided a very valuable service because we now know that of the almost 17,000 in-house positions created in DoD through insourcing in 2010, just six percent were established where the prime contract holder was a small business. Although not the final word, DoD's six percent report is the first set of undisputed facts to be introduced in a debate rife with disinformation and misinformation.

Here is a bit of historical context. During 2010, when DoD actually insourced, it has been a record $248 billion on service contracts, a huge increase from the $104 billion spent in 2001. Civilian personnel costs during that same period increased from $41 to $69 billion.

And a little bit about proportions. I think defense service contractors would have a very difficult time convincing taxpayers they have been victimized by insourcing when there has been such a large net increase in service contracting—a $5 billion net increase in 2010 despite insourcing. Insourcing affected less than one percent of contracted outwork at DoD in 2010.

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 do not insist on lengthy negotiations and costly surcharges every time something unanticipated occurs. Yet, despite significant savings from reducing overreliance on contractors, DoD insourcing has all but stopped.

DoD is no longer managing its workforce based on the usual criteria of cost, policy, risk, and the law. Instead, it is not assigning

work to federal employees; indeed, it is taking away work from federal employees merely because they are federal employees, which inevitably undermines the interests of taxpayers and war fighters.

It is also important to understand that the insourcing laws do not cover conversions to performance by military or reserve personnel. This has not stopped lawmakers from offering draconian amendments to stop insourcing even when the so-called horror stories that inspired them actually involve insourcing to military or reserve personnel, not to 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.

I realize that both of those points are obvious, but the vast majority of alleged horror stories we have been presented with are actually contracts that are not continued or have been converted to performance by military and reserve personnel. At a time of large budget deficits, it is important that contractors, both big and small, be required to make the same sacrifices that rank and fire 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 enormous amounts of discretionary spending. No effort to reduce the burden of contractors on the taxpayer can be taken seriously if it does not allow managers to substitute federal employees for contractors when savings are possible.

This concludes my statement. I would be happy to answer any questions members of the Committee may have.

[The statement of Ms. Simon follows on page 47.]

Chairman MULVANEY. Thank you, Ms. Simon. And thank you to everybody.

As is my practice, I will defer first to Ms. Chu and then allow the members who are participating to ask their questions and I will hold my questions till the end. So Ms. Chu, you have as much time as you need.

Ms. CHU. Thank you, Mr. Chair.

Ms. Simon, last year the Department of Defense instituted the efficiency initiative to reduce taxpayer costs by increasing efficiencies and eliminating redundant functions. And you have talked in detail about that. What was the impact on insourcing and why is it important that agencies comply with the laws that require them to inventory their service contracts?

Ms. SIMON. I will answer the second part of your question first if that is okay. One of the reasons bipartisan majorities of the Congress have endorsed a moratorium on outsourcing is because the outsourcing policy based on A–76 competitions was conducted in a way that was not consistent with the public interest. There has never been systems in place that have allowed agencies to actually track the costs and savings, if any, of A–76. The A–76 process itself has been found by independent third parties, such as the DoD, IG, and the Government Accountability Office, to be systematically biased against in-house performance because of the vast overstatement of overhead costs that are put onto the in-house cost estimate. And I can talk about that further.

And then there is the fact, and it is very interesting to hear my fellow panelists talk about the importance of transparency. You know, one of the reasons that federal employees have been the exclusive targets of the efficiency initiative is because we are so transparent in the budget process. Anybody looking at an agency's budget, DoD or any other agency, can see exactly how may federal employees there are, what they do, and how much they cost. But the same has never been true for the contractor workforce that is in many cases many, many times larger than the federal workforce, you know, the civilian in-house workforce and any given agency.

Consequently, the moratorium on A–76 was imposed to exist unless and until agencies could compile inventories of their service contracts, that it would allow them to bear the same kind of scrutiny that the federal employee workforce bears on a continual basis. We want to know, and the public deserves to know given the hundreds of billions of dollars spent on service contracts, exactly how many there are, what they do, and how much they cost.

And in that context, because, and you can see in my written statement there is an exchange between Senate Armed Services Chairman Levin with the person from DoD in charge of the efficiency initiative where he admits that in the efficiency initiative contractors have been spared any kind of scrutiny or any kind of proportional request for sacrifice because they are invisible in the budget. Nobody can tell exactly how much they cost, what they are doing, and how many of them there are.

And so because of the fact that we are easy targets because we are visible because of the transparency, and I am not complaining about the transparency about federal employees, it is as it ought to be, there just ought to be equivalent and comparable transparency to the even larger service contract workforce.

Ms. CHU. Now, it seems to me that there are certain inherently governmental functions. For instance, oversight on spending. What type of positions do you think should be performed by federal employees?

Ms. SIMON. Well, our position is that obviously inherently governmental functions should be performed by federal employees. I mean, that is not just our position as, you know, I think there does not even seem to be any disagreement about that. There is always going to be disagreement about the definition of what is inherently governmental. It is a controversial concept but we do have one both in statute and regulation that if we only enforced that we would be in a much better place than we are today according—the Army, the Department of the Army is the one agency in the government that has actually done a good job in creating a contractor inventory and its initial findings are that there are about 45,000 inherently governmental jobs being performed by contractors right now.

But there is also the concept of work that is closely associated with inherently governmental work and critical functions. In fact, the OMB's Office of Federal Procurement Policy is in the process right now of putting together a new definition of inherently governmental that will include the concept of critical function. And the FAR includes a long list of examples of work that—specific examples of work that fall into the category of closely associated with inherently governmental. And it involves things like preparing

budgets, writing regulations, evaluating contract bids. I mean, a lot of work that is currently performed by contractors that even on the face of it raises people's eyebrows because it is work that is so closely identified with the public interest and work where there is almost inevitably a conflict of interest when it is performed by a private business that we would want it performed by employees of a federal agency.

Then there is also work that has been contracted out without any competition. The vast majority of federal employees who lose their jobs to outsourcing do so when there is what is called a direct conversion. There is no cost comparison, there is no competition, there is often no private-private competition. Just the work is handed over to one particular contractor. And we have suspicions. Since everyone in this room is a great believer in the benefits of competition, that competition lowers prices. And when work is handed over without benefit of any kind of competition—public-private or private-private—I think that there is certainly a good public policy argument to be made that at a minimum it should be subjected to some form of competition.

And then, of course, there is the category of work that is poorly performed by contractors, either far more expensively than originally promised or quality problems. And God knows we have a long, long list of headlines in the newspaper of contracts that are, you know, poorly performed for one reason or another or very, very, very expensive, more expensive than they ought to be.

Ms. CHU. Let me ask a question about the controversies with regard to the costing methodology for analyzing whether a particular function should have been in-house or outsourced. Has the costing methodology for DoD where there was predominantly more reviews than efficiency been reviewed by other congressional committees?

Ms. SIMON. Oh, yes, they have. I have a few different things I would like to say, if I may, about the DoD's costing methodology and the insourcing context. But in answer to your question, the Armed Services Committees, which are the committees that probably have spent the most amount of time actually studying and analyzing questions of cost comparison methodology have codified now twice. And the National Defense Authorization Act for fiscal year 2011 and then again when the Democrats were in charge and now again when the Republicans have been in charge, in the fiscal year 2012 National Defense Authorization Act, two times that Committee had codified and endorsed the DoD costing method that has been used in the context of insourcing.

We are aware, of course, of the critique that has been put forward by CSIS of the costing methodology and we have actually asked the Department of Defense to respond to that critique. It is interesting to us, however, you know, our critique of A–76 costing methodology has been validated by independent third parties, Government Accountability Office, and the Department of Defense Inspector General. So far at least the contractors have only been able to find one of their own to criticize DoD's costing methodology.

I think the fact that, you know, two separate House Armed Services Committees have endorsed this costing methodology and that to date we have no independent third party that has validated in any way the CSIS arguments gives us reason to at least have some

faith in it but we are absolutely—if there are flaws in that methodology, we would want them to be corrected.

Ms. CHU. And, in fact, the non-DoD agencies do not have a public costing methodology. And, of course, you have mentioned that the Professional Services Council has recommended OMB circular A–76. Would that alleviate the costing methodology concerns raised by contractors?

Ms. SIMON. I doubt it. I think that, you know, they are looking for some kind of issue to hang their objections to, and costing methodology is sort of the argument of the day. A–76 is systematically biased and we know that. Bipartisan majorities in both houses of Congress have also recognized that. The GAO has recognized it. The DoD IG has recognized it. I mean, during the heyday of A–76 outsourcing during the Bush administration, it is true that in-house bids won most of the time in spite of this rather enormous bias against in-house performance. I mean, the overhead costs, it is not just double counting. You know, overhead costs should only be charged to the in-house bid when it is a cost that would only—that would go away when the work is outsourced. And, of course, what the DoD IG found was these costs continued even after outsourcing. So they were inappropriately charged to every in-house bid.

And so A–76 is just—it is a deeply flawed costing methodology. It is possible that the OFPP will issue a new and improved A–76 and we expect any time that OFPP will issue a costing methodology for non-DoD agencies to use in the insourcing context because I think there is obviously, in DoD, if half of the work that is considered for insourcing is because it is inappropriate for outsourcing and half is due to cost reasons, well, then there is a lot of money to be saved once these non-DoD agencies have an opportunity to perform these kinds of rational cost-based comparisons.

Ms. CHU. Okay. Thank you. I yield back.

Chairman MULVANEY. Thank you. I am going to recognize now the gentleman from Louisiana, Mr. Landry, for five minutes.

Mr. LANDRY. Thank you, Mr. Chairman.

Ms. Simon, when you say that contracts that have been insourced to private contractors are performed poorly, are they poorly performed because they may be poorly managed? I mean, is it possible that the management of the Federal government in some of those contracts may not be adequately supervised and managed improperly? Is that possible?

Ms. SIMON. Well, I would not say that it is a logical impossibility but it seems really doubly unfair to federal employees to blame them when they are performing the government work if it does not go well and also blame them when it has been contracted out and it does not go well. I mean, federal——

Mr. LANDRY. Would you say there is a bias when you manage those kind of projects?

Ms. SIMON. No. I think that, unfortunately, there were in the course of hollowing out agencies that occurred in the great downsizing of the '90s, we did find ourselves with so much work contracted out that contract management itself was contracted out. And agencies lacked adequate in-house personnel to effectively oversee their contractor workforce. When the contractor workforce

was five, six, seven times bigger than the in-house workforce, things were completely out of control. And that is exactly what gave rise to the idea of insourcing work that is inherently governmental.

Mr. LANDRY. But the private industry has a record of being able to manage, you know, they have management teams that easily manage seven, eight, nine times their size and perform well in the private sector. And when they perform well, of course, you can see that they perform well because their profits go up. And so I just wonder, you know, the problem I have is that, you know, it is easier, and especially in times when this country is broke and American families are having to tighten their belt and cut certain things, you know, whether it be going to the movies or not taking that summer trip to Disneyland and just going to the park instead, it is—it becomes, I guess, easier for us to be able to look into, especially when we are insourcing, to be able to eliminate programs that are not useful. But when you load them up with federal employees, they seem to become difficult and become this animal that you are not able to properly cut when you should be cutting.

And so those are my two concerns, is that one, are we properly managing our private contractors? I have yet to be able to, even before I came to Congress, find a government agency that really is as proficient as the private sector. Now, I will admit my bias. I come from the private sector so I just mention that. I did want to just ask Ms. Hamilton a question before I run out of time. Why do you think your contract was canceled?

Ms. HAMILTON. Excuse me. Well, I only have what was given to me by the Coast Guard and the FOIA request which is it is based on cost. And that is all I can really say.

Mr. LANDRY. And what is your feeling on it though?

Ms. HAMILTON. Well, the numbers. There are a lot of people on the contract. It did make up over 23 percent of all the contracts that they have insourced over the last couple of years. So I guess it is numbers. They are under pressure to cut contractor positions by the agency that oversees them.

Mr. LANDRY. But you believe that you are creating a cost savings to the Coast Guard?

Ms. HAMILTON. Oh, there is no—I am creating a cost savings, yes.

Mr. LANDRY. Right.

Ms. HAMILTON. But insourcing—I do not believe.

Mr. LANDRY. So why would there be pressure for them—there should be pressure for them to save in the budget rather than to spend more money. So what is the pressure?

Ms. HAMILTON. I think it is just the appearance of numbers being cut. They are being asked to cut by these jobs and save this money and then they are producing a document that is saying it is saving $5 million and it is coming out of their pocket. And then I guess it goes over to the Federal government's pocket instead of the Coast Guard's pocket. So it creates that appearance or illusion of saving some money from that agency when, in fact, it is not; it is just coming from a different purse.

Mr. LANDRY. I see. Mr. Chairman, I yield.

Chairman MULVANEY. Thank you, Mr. Landry.

We are going to recognize now Mr. Critz from Pennsylvania for five minutes. Mr. Critz.

Mr. CRITZ. Thank you, Mr. Chairman.

I was actually going to ask a couple of questions other than to Ms. Simon, too, to give other people a chance to talk and give you a chance to rest a little bit. Now I am going to—let me get my papers in front of me.

Ms. Hamilton, you had mentioned that—well, in your testimony you had 75 percent of your workforce you lost with a Coast Guard contract. Is that correct?

Ms. HAMILTON. That is correct.

Mr. CRITZ. How much notice did you get that this contract was going to be eliminated or you were not going to get a follow on or anything?

Ms. HAMILTON. Well, they called me on Christmas Eve, as I stated, and said—then jobs were posted that evening. Through the FOIA request we did see that they had sent out a notice. However, it was sent to the wrong address. So if it was sent to the right address that would have been maybe six months. But that did not happen.

Mr. CRITZ. Oh, so they sent a notice out but because it went to the wrong address you did not get that six months notice. Is that what you——

Ms. HAMILTON. That is correct. And we brought that to their attention when we met with them.

Mr. CRITZ. Okay. All right. The contract you had with the Coast Guard, what was our margin, would you say on it?

Ms. HAMILTON. You mean our profit?

Mr. CRITZ. Yes.

Ms. HAMILTON. Probably around six percent.

Mr. CRITZ. Six percent. But you were still saving the Coast Guard money and making six percent?

Ms. HAMILTON. Yes.

Mr. CRITZ. Okay. All right.

Ms. Carroll, you lost work and it looked like from your testimony about 25 percent of your workforce?

Ms. CARROLL. It was 16 percent in the last 18 months with another 15 potential.

Mr. CRITZ. Okay. How much notice did you get that this contract was going to be eliminated?

Ms. CARROLL. Well, you know, notice is a funny thing because we get lots of rumblings. Okay? We get, oh, this is going to be insourced. We hear from our people this is going to be insourced and things like that. So we did get some notice, maybe four to six months notice on some of these contracts.

Mr. CRITZ. Okay.

Ms. CARROLL. One of which was canceled before the last option year.

Mr. CRITZ. Yeah.

Ms. CARROLL. And so, you know, the official notice versus the rumblings that go on and when people are approached and told to apply for jobs when we have not even been told that an official decision is made is a real problem.

Mr. CRITZ. Okay. Thank you. Mr. Banes, you cited a CRS report and I missed what report—what the title of the report was.

Mr. BANES. Yes, sir. It was Functions Performed by Federal Contractors: An Overview of the Legal Issues. Excuse me. It was Functions Performed by Federal Contractors: An Overview of the Legal Issues. The cite to it is in my testimony.

Mr. CRITZ. Is it? Okay. I went through rather quickly and I did not see it. Thank you very much.

Now, for the three of you, I have some data here in front of me and I was curious if you were aware of it. There is a report by the Office of the Director of National Intelligence in '08 that concluded that in the intelligence community, contractors make up around 29 percent of the workforce yet they account for nearly half of the personnel budgets. So obviously there is an issue. And I think what you see from the Federal government is that we have a way of making a one-size-fits-all solution and I think you can cite personally that one-size-fits-all did not fit you because you were doing good work. But when the Federal government moves, it is a huge mass of people that move and trying to save money.

And I am on the Armed Services Committee. I used to work for a member that was Defense Appropriations. And what I can tell you is when you go into country in Iraq or you go into country in Afghanistan, there are way more contractors than there are military personnel and it is a huge problem because the management, as Mr. Landry cited, is tough because there are so many moving parts. And I think things like this, what I just cited with intelligence, is that it is not working as it was set to be. But it works in some instances. You can cite that. But it does not work in all instances because there are some functions that are inherently governmental. There are some functions that are better done within the government. And it is not a perfect system. And I think it is great that we all can sit down here and talk about this.

The one thing that Ms. Simon brought up that I think is very interesting is that of all the insourcing, 17,000 in-house positions created in DoD, six percent of them were displaced small businesses. So it is not perfect but it is close.

Go ahead.

Ms. CARROLL. That number is a very interesting number but, you know, numbers can be used to tell many stories. The reality is maybe there is a big company that has 800 positions. Okay, so are we talking percentages by contract? You have to look at how many small business contracts there are and what percentage of small businesses being insourced versus large contractors and what percentage. That six percent does not really mean very much to me.

Mr. CRITZ. Well, it says where the prime contract holder was a small business, six percent.

Ms. CARROLL. Of the money? Of what? I do not really understand that money.

Mr. CRITZ. Ms. Simon, can you address that?

Ms. SIMON. I would have to get back to you with the details but I believe it is of contracts.

Mr. CRITZ. Of contracts. Okay. My time has expired. Thank you, Mr. Chairman.

Chairman MULVANEY. Thank you, Mr. Critz. I am now going to yield five minutes to Mr. Schrader from Oregon for his questions.

Mr. SCHRADER. Thank you, Mr. Chairman. I am just trying to get a handle on the fairness of the contracting issue area and reference is made to—each agency I guess gets to pick how it wants to define what cost should be allocated to a contract. I guess I ask Ms. Simon and Mr. Banes that question.

Ms. SIMON. I am sorry. I am not sure I understand the question.

Mr. SCHRADER. In other words, there does not appear to be a standard methodology for the Federal government to include, you know, a set number of costs, whether it is in your variable costs, you know, direct costs, overhead. I mean, all these——

Ms. SIMON. As we——

Mr. SCHRADER. It is up to each agency. Is that correct?

Ms. SIMON. Well, no. Not exactly.

Mr. SCHRADER. Okay.

Ms. SIMON. As we speak, only the Department of Defense has issued and had codified into law a costing methodology for use when making insourcing decisions that are not based on—that are based on cost as opposed to based on whether the work is inherently governmental, closely associated to inherently governmental poorly performed——

Mr. SCHRADER. It seems like cost, providing it is not national security interests it would be.

Ms. SIMON [continuing]. Competition. Non-DoD agencies right now are not insourcing for cost as far as we know because they are waiting for OMB to issue a costing methodology that they can use when their insourcing decisions are going to be based on which is the lowest cost.

Mr. SCHRADER. When is that due? Or do we know?

Ms. SIMON. I have no idea. They are on their own schedule.

Mr. SCHRADER. You indicated at one point, well, sorry, Mr. Banes, a comment on that also?

Mr. BANES. Yes, sir. When you are looking at what the costing methodology is for the Department of Defense, I mean, Ms. Simon is right in her exposition of what the field of play is. But the directive-type memorandum 09–007 is the Department of Defense costing methodology. That one was talked about in the Ike Skelton Act and it basically was reviewed at that point. The interesting thing about it, and from a fairness perspective, is that there were two sets of numbers that are made in this directive-type memorandum or that are used.

One is the set of numbers that is used to justify insourcing and then the other set of numbers is used to report to Congress how much money you need or how much money the agency needs. The number that the agency needs in reports to Congress is up here. The number that is used to justify insourcing is down here. It is less. So, you know, I did not, you know, I did not think the government was supposed to make a profit in its appropriations but that is one way.

Mr. SCHRADER. So there is a mix and match? In other words, a report of two different numbers using different variables?

Mr. BANES. Yes, Your Honor. Or yes, sir. I am thinking I am in court.

Mr. SCHRADER. That is okay.

Mr. BANES. Sorry. But, you know, it is an interesting memorandum. When you look at it there are just two sets of numbers in there. There is one in the front that talks about reports to Congress.

Mr. SCHRADER. I see. So the reporting is different than the costing actually to some degree.

Mr. BANES. Yes, sir. And that is the, you know, that is our concern, is the full costing methodology. I would echo the chairman's concerns that, you know, I do not think the DTM actually has a full costing in it on the insourcing side. I think it does on the report to Congress side. But we do not, you know, no one ever sees the insourcing side. That is secret. You know, I cannot—it is under a protective order. I cannot tell you what it was for the Hallmark contract here today.

Mr. SCHRADER. Okay.

Mr. BANES. But I can—but Ms. Simon is right. You can go to Congress and you can see what the agency asked for. But you cannot see what the justification was.

Ms. SIMON. Well, and I would also like to add, of course, what Mr. Banes says may be true but it is also true that the true costs of service contracts are truly invisible in the budget process. And the cost of hiring federal employees and the full lifetime costs of hiring federal employees are extremely transparent and known to all of us in great detail.

Mr. SCHRADER. I appreciate that. You mentioned the CSIS critique and stuff. Could you elaborate a little bit on that?

Ms. SIMON. Well, I only raised it because it is certainly—the contractor lobbying organizations and pressure groups have tried to make great fanfare out of this report that we are not sure if they commission it or not. We do not really know, you know, what moved CSIS to suddenly jump into this arena. But they produced a report. And like I said earlier, we have formally requested that the Department of Defense respond to the criticisms that CSIS has made. From our own cursory review we did not find them persuasive. And what we find least persuasive is the recommendation in the report that the government revert to A–76 as a costing methodology because we know that that is a fatally flawed methodology.

Mr. SCHRADER. Thank you very much. I yield back.

Chairman MULVANEY. Thank you very much. And again, thanks to all the panelists for coming in today and thank you for the questions.

I will take a few minutes now and go down with each of the witnesses and ask a couple of questions.

Ms. Hamilton, tell me a little bit more about your contract. What—you spoke briefly about the services that you were providing. Could you go down that list again of what you were actually doing under your contract?

Ms. HAMILTON. Sure. Absolutely. What we do is we perform professional qualification evaluation of merchant mariner credential applications and safety and suitability screening of these applications as well. So basically the criteria is established by the Coast Guard and we simply administer its routine and administrative

function in nature. SAC does not—it is not involved in any exercise of government discretion. So it is just administrative.

Chairman MULVANEY. So it was personnel-based?

Ms. HAMILTON. It is personnel services. Yes.

Chairman MULVANEY. And I guess my question to Ms. Simon, Ms. Simon, you talked about the horror stories. The horror stories of either contracts that had been canceled or contracts that were non—that were performing inherently or near inherently governmental functions. I guess my question to you is what she just described, does that raise your eyebrows as to whether or not it is inherently governmental?

Ms. SIMON. If Ms. Hamilton says that she learned from the agency that the work had never been categorized under a Fair Act inventory or otherwise as inherently governmental, I have no reason to doubt the truthfulness of her statement. Whether or not it is closely associated with inherently governmental work is really a judgment that is inherently governmental. I think that is for the agency to decide. You know, it is not really—I am absolutely a layperson when it comes to these kinds of distinctions but there are people in the agencies who are much more knowledgeable about the integration of the work of the agency and are in a much better position to judge when work is a critical function for an agency or whether it is closely associated with inherently governmental.

Chairman MULVANEY. Ms. Simon, give me a few examples of what would not raise your eyebrows, of something that to you is absolutely noninherently governmental?

Ms. SIMON. Well, I would be happy to answer that question but I just want to put my answer in a little bit of context. I am sorry that Mr. Landry left because one of the arguments that contractors—the most compelling arguments that contractors have, I believe, made in their own favor is that they are essentially disposable. You can hire contractors for temporary needs, for surge situations, but not necessarily for ongoing functions that are core to the mission of an agency. And I think this concept that once a contract is let to a contractor, the contractor has some kind of a fundamental right to a continuation of that work and perpetuity. It just seems to be certainly counter to everything I know about the free enterprise system and what people can expect from their government.

There are jobs that are, you know, commercial in nature and that, you know——

Chairman MULVANEY. What would some of those be in your mind?

Ms. SIMON. I think that, you know, I guess the rule that I personally use when I analyze this kind of issue, I look at a business and if a business has 100 percent of its work is government work, that makes me think that business might be inherently governmental. If it has——

Chairman MULVANEY. If I was the food service——

Ms. SIMON [continuing]. Absolutely no customers outside of the government and there is not that good or service is never exchanged solely in the private sector——

Chairman MULVANEY. If I was the food service provider in this building and that was 100 percent of my business or 100 percent

of my business was providing services to the government, would you consider that to be inherently governmental or commercial?

Ms. SIMON. I will tell you a food service function that I do think is inherently governmental, and that is the food service in a VA hospital. And that has been inappropriately contracted out in far too many cases.

Chairman MULVANEY. Why is the food service in a VA hospital inherently governmental?

Ms. SIMON. The veterans—an overwhelming majority of the employees of the VA who do provide food service are veterans themselves and providing, you know, veterans who are in a VA hospital are acutely ill, of course, and they often have very special dietary needs. And the integration of—food service is actually very highly integrated with patient care in a VA hospital and it is part of the internal functioning of the holistic care of a veteran who is in the hospital. And often what has happened when food service has been contracted out solely for cost reasons is people get inappropriate meals that might have food or additives in their meals that are actually—counteract the effectiveness of the drug regime they might be on or that they are only available certain hours and so people are forced to have frozen meals that are, you know, that also vary from either their taste or the regime that they have been placed on by their health care provider.

Chairman MULVANEY. Is not food service provided commercially?

Ms. SIMON. I think food service is a great example.

Is food service provided commercially at every hospital?

Chairman MULVANEY. At every hospital other than VA hospitals in this country?

Ms. SIMON. At every hospital. Of course it is. But I think that other hospitals, private hospitals, do not outsource their food service.

Chairman MULVANEY. I am sorry. What?

Ms. SIMON. Private hospitals do not outsource their food service to patients. Selling a hamburger to visitors, sure, that is commercial.

Chairman MULVANEY. Okay. All right. You mentioned before, Ms. Simon, that to your knowledge it was only the DoD that was doing this on a cost basis. I think you said they were the only ones that had come up with the actual rules and to our knowledge there were other——

Ms. SIMON. To my knowledge, yes.

Chairman MULVANEY. Who as your contract with, Ms. Hamilton?

Ms. HAMILTON. The Coast Guard.

Chairman MULVANEY. And the Coast Guard falls under what agency?

Ms. HAMILTON. Department of Homeland Security.

Chairman MULVANEY. Ms. Carroll, your contract was with whom?

Ms. CARROLL. Air Force One with the Department of Labor.

Chairman MULVANEY. Department of Labor. Is that under the Department of Defense?

Ms. CARROLL. No.

Chairman MULVANEY. Is it fair to say then that in the real world what is actually happening is there are other agencies other than

the Department of Defense that are doing this supposedly based on cost?

Ms. Carroll, tell me a little bit more about the Department of Labor contract that you had. You did not get a chance to talk about the specific examples. And I do think the specific examples are real. In fact, the reason we are having this hearing is because I was approached by somebody who went through something that was very similar to what you folks have gone through. He was a mapmaker, a cartographer who showed up at work one day to find out that he had been insourced and that all of his employees had been hired by the Federal government. And when he inquired as to whether or not the employees were willing to do that he was informed that they were actually getting paid 20 percent premium to go to work for the government over what he was paying for them. And it was in large part that experience that drove this hearing today. So I think the individual experiences are real. And Ms. Carroll, I will be curious to know yours.

Ms. CARROLL. In the Department of Labor, as I said in my testimony, we were not the prime. We were a sub. We were working with a minority business. We had been in that library a number of years before so we knew the library. And they just said—a lot of the things we are hearing today come down to the way contracts are managed. I totally agree. That is what someone said. The problem is that the government has to step up and manage these contracts right. When you say in the food service that, you know, the right thing is not served, if there are standards of performance and they are well written, then the right things will, in fact, be done. And I know many contractors will do the right things even though it is not written in there.

So in the case of the Department of Labor, they—eight weeks before the end of the contract we were notified that the contract would not be renewed nor recompeted. We had no indication why that would happen except we knew that the Cos, the management of that contract, the COTR changed all the time. So they really did not understand what was going on at all. And they somehow had the idea to pull that work in.

We had two librarians that worked there and two of the people were insourced. The rest were just laid off. They gave us no time to really prepare for that kind of an action. And since we were not the prime, we could not motivate the prime to go ahead and do FOIAs and do various things. They just said you know what? At some point it is worth just going on. And they did.

Chairman MULVANEY. Ms. Carroll, you also mentioned something that I am not familiar with which is poaching. To me that is shooting an animal that does not belong to you. What does it mean in your world?

Ms. CARROLL. Not necessarily shooting but taking an animal that does not belong to you. How about that?

Chairman MULVANEY. Is that the term for hiring away the employees and so forth?

Ms. CARROLL. Right. Yeah. You do a very extensive recruitment process. You hire people. You train them. They work. And the government comes in and suggests that this person apply for a government job.

Now, there are two kinds of poaching. Okay? There are some contracts we have we know this is going to occur. We know we are going to hire people and eventually they are going to become government. And yeah, they post the jobs but everybody knows that that person is wired for that kind of a job. That is kind of voluntary. The individual has the right to choose to apply for a government job that is posted. Okay? But it is the involuntary poaching that really is very distressing.

Our project manager at an Air Force base in California was told before we were told that the contract was officially going to be outsourced—of course there were rumblings—she was told your job is being posted. Go and apply for it.

Chairman MULVANEY. Do you have any idea what it paid in that particular circumstance?

Ms. CARROLL. No, I do not know that.

Chairman MULVANEY. Whether it was more or less?

Ms. CARROLL. I could get you data on that. I do not know what GS level it was. I never did that cost comparison but I could get it if you would like it.

Chairman MULVANEY. We talk about cost comparisons and I am going to ask Ms. Simon a question in a few minutes about some of this supposed systematic bias in the A–76 process I think you mentioned specifically about overhead. Are you convinced, Ms. Carroll, that when you do or when the departments do the cost comparisons that they are taking into consideration all of the costs that they should when they cost the government side of things? When they cost the government option?

Ms. CARROLL. No, I am not convinced that they do cover it. The problem is that government lifecycle costs for employees for benefits are in many different pots, sometimes not even in the same organizational pot. And so I do not think it is that transparent a process. I think you would have to go through all kinds of roots in order to really know what the full lifecycle cost to these people are. On the other hand, with a contractor it is very clear exactly what the costs are.

Chairman MULVANEY. You and I were talking before the hearing about a circumstance with a posting overseas. Do you want to share that with the panel?

Ms. CARROLL. Yeah. We had a contract, U.S. Air Force Europe (USAFE). And we were doing, you know, we were performing very well. Before the end of the contract they decided they would not exercise the last option year. And they said they were insourcing. Unfortunately, the German labor laws and the U.S. agreement requires those people to come back to the United States so they could not be directly insourced. So some of the people just were out of jobs.

But what happened was very interesting. The government never filled some of—still has not—months later still has not filled those positions. We are hearing through our previous project manager who still is in Europe that the positions are not filled. And what they are doing now is they are paying people to go on duty to Germany. Now, was this figured in the cost? I mean, what is the accountability and what is the metrics and the measurements after the fact on whether this really works?

We know a couple of the positions are still vacant, which means there is not good data for promotions, for career paths, and other things. So the servicemen and women are suffering.

Chairman MULVANEY. You raise a good question, something I heard from all three of the panelists. Regarding finding out about the process, Mr. Banes, given the decision in the Hallmark case, what methods, what avenues are available to Ms. Carroll if she wants to find out how the government costed that project?

Mr. BANES. Mr. Chairman, I do not think there are any avenues at that point because if you cannot file—if you cannot file in the Court of Federal Claims, if there is no jurisdiction there, then you cannot get a protective order to look at this data. So, because, and the government takes the position when you ask for it under the Freedom of Information Act that it is source election information. And that is secret. So I cannot tell you what the numbers were in the Hallmark case sitting here today because they are still under a protective order.

But I can tell you that when you scrutinize them there are two aspects that are totally out of whack. One is how many people it would take to do the job internally in the government; and then two, how much—what are the full costs of performance of those individuals? And when you look at them and scrutinize exactly what is going on and exactly what the Air Force is going to do in the future, it does not make any sense at all. And now under this decision there may not be an opportunity to even find out ever.

Chairman MULVANEY. Ms. Simon, I will ask you. What is wrong with making the process public? What is wrong with sharing the information with the contractors with the public? What is wrong with granting standing to the businesses that have had their contracts terminated?

Ms. SIMON. Well, I am listening to the three panelists. All I could think of is welcome to our world. This is the exact same situation that federal employees, only I would say we are in an even weaker position. This is the same kind of situation that federal employees face in the outsourcing context. We do not have—we still do not have standing ever to go to the Court of Federal Claims. We are allowed to be an interested party and intervene but we can only do so when we get the information on the in-house bid, the bid that was made on our behalf, and the contractor bid after it is too late to file a protest. We are in a complete veil of ignorance.

Chairman MULVANEY. Well, certainly somebody in the government has that information. Right?

Ms. SIMON. But not us.

Chairman MULVANEY. Who are you in that circumstance?

Ms. SIMON. The employees that are losing their jobs. The employees that have——

Chairman MULVANEY. But you are a counterpart to what Ms. Carroll and Ms. Hamilton do. I mean, the bosses, I guess, have access to the information. Do they not?

Ms. SIMON. There are designated individuals within the agency that have that information but certainly not the people who are affected by the decision to outsource the government work.

And there is effectively no appeal right because by the time we get the information, again, through FOIA requests or the interven-

tion of members of Congress, it is too late for us to file any kind of protest or do anything about it.

We are for transparency. On the other hand, I think that be careful what you wish for. If contractors are granted the right to engage in endless litigation whenever there is any possibility of having their contract terminated, I think agencies will certainly think twice before they sign these contracts because it certainly raises the stakes and raises the long-term costs of engaging in a contract with a private company because you do not have the flexibility that contractors, you know, use as their best argument for themselves. If you can never terminate a contract because you no longer want to perform that function or you would like to compete it in another way or bring it back in-house and the prospect is endless litigation, why would you ever want to subject yourself to that?

Chairman MULVANEY. I think there is a distinction. We might be using legal terms here that mean different things to different people. To me the termination of a contract is one thing. The expiration of a contract is another. The expiration of a contract would be the ending of a contract by its own terms and it is completely contemplated in the document itself. The termination of a contract is the breaking of a contract.

Ms. SIMON. Yeah. I think that what Ms. Hamilton referenced was that the government did not exercise all of its options. Is that correct?

Ms. HAMILTON. No, that is not correct. I am sorry.

Ms. SIMON. Ended prematurely? I am sorry.

Chairman MULVANEY. I think there has been testimony that some of the contracts discussed today were that but other ones were actual terminations. So I guess my question to you is to get—to try and focus here, it is fairly simple which is what is wrong with giving the managers of private businesses the same information that the managers of the government projects have?

Ms. SIMON. I think that we have no problem with the concept of notice. Notice is one thing. And the provision of all the internal costing information prior to the decision is another. And we have some misgivings about that. Notice, no problem at all.

Chairman MULVANEY. All right. Then lastly, I do want to touch on this issue of overhead because in my world, Ms. Simon, by the way, you are the first person I have heard in Washington and I mean this slightly tongue in cheek, that has said that this place is inherently transparent and everybody understands what is going on. You may be the only person in town who believes that.

Ms. SIMON. No, I said that with respect to federal employees, not the government as a whole.

Chairman MULVANEY. That is right.

Ms. SIMON. Certainly, there is a contractor workforce——

Chairman MULVANEY. But regardless of transparency, as a lawmaker, as someone who is ultimately called upon to sot of choose between these two things, obviously we set policy and it gets implemented at a different level, if you present me with a private contract for Ms. Hamilton to provide the services to the United States Coast Guard that she described, I know exactly what that is going to cost. I know how long it is going to cost and what it is going to cost on a year-to-year basis. I have what in the legal world we

call a liquidated sum. I know it is going to be $100,000, whatever the number is. If you come in and tell me, well, I also want to hire the same number of government employees to do that exact amount of work, I would suggest to you I have no idea how much that is going to cost because what I am doing now is I have got permanent workers. I am not—I do not have a short-term contract. I have not hired contract workers to do this work. I am actually taking federal workers and putting them to work on this particular job. You mentioned that overhead should not be counted. It strikes me that that is bizarre. No one in the private sector would ever say those words, that you cannot cost overhead into what you are doing. And it just strikes me as odd that you have taken the position today that you actually know what the government is paying for these services because I think the exact opposite tends to be the case.

I am going to yield back to Ms. Chu. And I will give you a chance to propose——

Ms. SIMON. May I respond?

Chairman MULVANEY. Very briefly. Let me get Ms. Chu and she may give you the opportunity to do that. I have spoken for way too long and I apologize for doing that. So Ms. Chu, if you have any follow-up questions I will yield to you as much time as you need.

Ms. CHU. Well, I will just thank all the witnesses for coming and give you a chance to respond to that question.

Ms. SIMON. Okay. I would not agree that when you sign a contract that specifies a certain amount of work to be done for a certain price that that is the end of it. One of the problems with service contracting is that that is often not the end of it. When new requirements arise, unanticipated events occur, it requires renegotiation, new task orders. You know, there is often—contracts often grow far beyond their initial terms and costs. In contrast, when you hire a federal employee, you agree to pay a certain salary or an hourly rate for when they are working. But each time you give the federal employee a new assignment or a new task, you do not suddenly raise their pay. You do not have to engage in a whole new negotiation over the terms of employment. There is a very useful term in every federal employee's job description—other duties as assigned.

You can move federal employees around, you can tell them to do whatever you want them to do and they have to do it. And there is no increase in cost.

And I would also object to the assumption that once a federal employee is hired they are forever. The efficiency initiative in the Department of Defense, for example, the 600 employees that I talked about that DFAS hired when it insourced that work, because of the sort of zero—it is not a zero sum. Because of the fact that the efficiency initiative has a cap on federal FTE, any new employees hired have to be offset with positions eliminated. So many federal employees are going to lose their jobs and many federal positions are going to be eliminated in the context of the efficiency initiative.

Ms. CHU. Thank you. I yield back.

Chairman MULVANEY. Ms. Chu, I am finished. Would you like to give your closing statement?

Ms. CHU. I would just like to thank all the witnesses for coming. It was a very informative hearing today.

Chairman MULVANEY. Thanks very much. I will close with this. I do appreciate everyone's participation. I think it has been a healthy debate and it has been helpful to me to help frame the issues.

Ms. SIMON, I especially appreciate your testimony.

Ms. SIMON. Thank you.

Chairman MULVANEY. It is obvious counter to what positions I would take. And I would, before we close, point out that actually it was Robert Gates who said that in his opinion this system within the DoD, the insourcing system, has completely failed to meet its goal to save costs. As is so often the case, one part of the government is saying one thing and one is saying the other. In fact, I see some heads nodding negatively in the body so I will read the quote. "We were not seeing the savings we had hoped for from insourcing as the Defense Department brought work from the private sector in-house," Secretary Gates said on August 9th of last year. And thank you to everybody.

Having the stories, not only from the private sector but on behalf of the federal employees is extraordinarily helpful to us. And as this Subcommittee continues to focus on creating opportunities for small businesses to compete for federal contracts, we will continue to investigate instances where agency actions harmed small business and cost the taxpayer more money.

Ms. Simon mentioned earlier today that most of the horror stories were probably contracts that were expired over their own terms or that were inherently governmental. I would suggest to everyone here in the room that that is not the purpose of this hearing. The purpose of this hearing and the purpose of the additional hearings that we will do will be to focus on the exceptions to those two things. I cannot sit here and defend somebody who is upset because their contract that was a three-year contract with the government expired and they have not decided not to hire them again. That is the government's right and it is the contract terms that set forth that. Similarly speaking, if you were doing something like trying to shoot people, I would think that that would be one of those inherently government functions that should be insourced.

I want to focus, however, as we go forward on the other things, the other exceptions to those two rules where the government actually reaches out and takes things from the private sector that are not inherently governmental functions and that do not save costs. We are here on the Small Business Committee and both party members I know agree with this, to protect the interest of small business. And to the extent that the Federal government is trampling on the opportunities that are afforded to our small businesses, I know that both parties where will do everything we can to prevent that from happening.

After today's hearing we are going to take four actions. I am going to ask the full Committee to follow up with the agencies mentioned by Ms. Hamilton and Ms. Carroll. Secondly, I am going to send a copy of the transcript to the Office of Federal Procurement Policy so they can suggest, excuse me, they can look at the suggestions offered by our witnesses as they finalize their policy guidance.

Third, I will send a letter to OMB requesting that each agency publish their insourcing guidance pursuant to notice and comment rulemaking and that OMB and each agency ask them to impose a moratorium on cost based insourcing until those rules are, in fact, published. Fourth, as we consider contracting legislation, excuse me, contracting legislation for this Congress, we will look at ways we can address standing for small businesses, facing insourcing difficulties, and ways that we can strength the SBA's roles in this process.

At this time I would also ask unanimous consent that members have five legislative days to submit statements and supporting materials for the record. Hearing you objection, it is so ordered.

Thank you all again. Thank you for participating. This meeting is adjourned.

[Whereupon, at 11:28 a.m., the Subcommittee was adjourned.]

THE PREPARED STATEMENT OF
DAWN HAMILTON,
OWNER, PRESIDENT & CHIEF EXECUTIVE OFFICER
SECURITY ASSISTANCE CORPORATION
BEFORE
THE HOUSE COMMITTEE ON SMALL BUSINESS'S
SUBCOMMITTEE ON CONTRACTING AND WORKFORCE
JUNE 23, 2011

Chairman Mulvaney, Ranking Member Chu, and distinguished members of the Subcommittee on Contracting and Workforce, thank you for inviting me today to discuss my experiences with respect to the implementation of the current Administration's insourcing policies. I am Dawn Hamilton, President and CEO of Security Assistance Corporation (SAC).

Background on SAC:

The Security Assistance Corporation ("SAC"), founded in 2002 and located in Arlington, Virginia, is an 8(a) certified, small disadvantaged, minority woman-owned security services provider. SAC provides security, counterintelligence, personnel security, engineering and administrative support and consulting services to the Federal Government and large corporations nationwide. To date, SAC has provided exemplary support for Federal Government customers.

SAC's Contract with the United States Coast Guard:

In September of 2008, the United States Coast Guard (USCG) awarded SAC a small business set-aside indefinite-delivery, indefinite-quantity contract (Contract No. HSCG23-08-D-MMZ339) (Contract) to process merchant mariner credentials at the National Maritime Center (NMC) in Martinsburg, West Virginia. The Contract had a one year base period and four one year options periods.

The processing of merchant mariner credentials requires several services. The USCG procured these services by issuing three separate task orders (TOs) against the Contract. This included TOs for the following services:

1. Professional qualification evaluation services;
2. Safety and suitability evaluation services; and
3. Mariner information call center services.

A fourth service necessary for completing merchant mariner credentials was not made a part of the Contract. To timely and successfully perform these services required approximately 85 staff members.

With respect to payment, these TOs included a graduated billing structure designed to maximize processing time and quality. In other words, the faster and more accurately SAC processed merchant mariner credential applications, the more SAC was paid per case.

SAC's Successful Track Record with the USCG:

Shortly after receiving the Contract, SAC was confronted with a significant backlog in merchant mariner credential applications. This backlog was the result of a confluence of several factors, including: staffing shortages related to the merchant mariner credentialing process that are not part of SAC's Contract; changes in relevant federal regulations; and centralization of the entire credentialing process at the NMC.

On several occasions, the NMC has been called to testify before Congress regarding concerns over productivity. This was due in large part to a backlog of several thousand cases in the medical branch, which was the only part of the evaluation process not performed by SAC. This meant that U.S. flagged carriers had difficulty putting to sea, causing significant economic impact to companies, and the U.S. economy.

SAC was tasked with eliminating this backlog and immediately applied its expertise in business process re-engineering, utilizing ISO 9000 quality control measures. By streamlining the process and providing incentives to its employees, SAC increased processing times to an unprecedented average of 19 days per case and eliminated the backlog in 6 weeks. As a result of SAC's process improvements, the merchant marine credentialing is significantly improved today.

Subsequently, for this work, SAC has been recognized by the USCG for its outstanding performance and has consistently received excellent past performance ratings. Moreover, many of SAC employees have received performance awards, and SAC was recognized as an integral and successful part of the NMC when they received the Alexander Hamilton Award.

The USCG's Insourcing of the SAC Contract and its Faulty Cost Analysis:

Notwithstanding SAC's outstanding performance, and without any warning, on December 23, 2010, I received a call from USCG Headquarters stating that they would be insourcing the TOs related to professional qualification and safety and suitability evaluation services. By the end of the business day, the USCG posted the relevant positions on the USA Jobs website. SAC's employees became aware of this development and became alarmed over their future with SAC right before going into the holiday season.

Soon after being informed of the insourcing action, SAC retained counsel and through counsel, on January 21, 2011, SAC requested the cost analysis and supporting documents, that allegedly justified the insourcing of the Task Orders, through a Freedom of Information Act (FOIA) request. After nearly two months, the USCG had not substantively responded to SAC's FOIA request. Finally, SAC requested Department of Homeland Security's (DHS) officials assist in facilitating a response to the FOIA request. Within a week of the USCG receiving a call from DHS, the USCG released the cost analysis. Based on these materials, it has become apparent that:

- The positions at issue under the TOs were determined not to be inherently governmental.
- The USCG's insourcing process did not provide SAC with an opportunity to provide information regarding its actual costs or respond to the insourcing action. In particular, the USCG retained the accounting firm Deloitte to identify contracts for insourcing. As part of this process, Deloitte routinely contacted the prime contractors of the target contracts for information and to afford them an opportunity to respond. The notice Deloitte sent to SAC, however, was never received by SAC because Deloitte used an incorrect address. Consequently, SAC was unaware of the

insourcing action until December 2010 and the failure of USCG/Deloitte to notify SAC caused Deloitte to assess the contract at issue without actual cost information.

- The cost analysis was based on the TOs' ceiling value, which has left the analysis seriously flawed. SAC is paid on a "per mariner application" basis and USCG, in soliciting the TOs, over-estimated the number of potential applications for review in a single year, thus, the ceiling value of the TOs is inflated. Historically, SAC has not received the maximum number of application processing requests – indeed, it has been much less. In addition, the Task Orders include an incentive clause with an increasing CLIN/pricing structure. To date (after the submission of 52 invoices to USCG), SAC has never billed at the highest CLIN/rate. As a result, USCG has never paid, and it is indeed an impossibility for SAC to bill, the maximum Task Order value. Thus, it is unreasonable for the USCG to attribute the maximum value of the Task Orders to the outsourced cost in the cost analysis.

- The cost analysis was incomplete and inaccurate. The analysis admittedly omits and under-estimates significant costs, including some of the indirect costs associated with government employees, the cost of additional positions that may be needed, understated salaries, certain transition and short-term costs, and training costs.

    - For instance, the analysis states that "[t]he benefit from decreasing government review/oversight of contractor work will make overall process more efficient." This is irrational because the government will be hiring at least seven new positions to replace SAC (increasing SAC's workforce of 63 to 72). Moreover, USCG admitted in other documents that more supervisors may be necessary to oversee the new government employees. The cost of these additional supervisors was not included in the analysis.

    - With respect to estimated salaries, when Deloitte inquired as to the salaries the USCG would offer newly hired employees, the USCG left the issue open and failed to provide supporting information:

        > I'll get more detail on this, but because the NMC is the only organization doing this type work in the USCG, we can't merely take some other LIE and correlate. Rather, we looked at the skill set, complexity, education, experience, responsibility, public impact, etc. and with our Command Staff Advisor, have determined the equivalent levels. There is some science behind our assessment.

        There is no record that USCG provided Deloitte with "more detail on this," and the USCG admitted that this is the first time this had been done. It is clear that the low GS levels assigned to this work will lead to retention issues. The failure to apply the appropriate GS levels calls the entire cost analysis into question.

    - Regarding the exclusion of relevant costs, the USCG stated in the cost analysis that:

        > From a cost perspective, the insourcing savings model begins in FY11. Any short-term task order requirement transition should be funded from FY10. Consequently, the project insourcing savings remains intact.

        This essentially hid certain costs from the analysis to inflate FY11 savings.

- With respect to USCG's failure to include certain costs into the analysis:

  > NMC defers to CG-912 on contract termination penalties. The only other cost associated with insourcing at the NMC will be the initial non-recurring NACLRC SPC cost per FTP. If a short term task order is proffered during transition, the monthly liability for this task order is expected to be: $< >

  These statements admit that two costs have not been included: 1) contract termination penalties, which are neither found in the cost analysis, nor did the analysis contain an opinion from CG-912 that no such costs exist; and 2) short-term liabilities were a known potential, but the placeholder was never completed, either with a zero (0) or an anticipated cost.

- Regarding training, the assumptions are incomplete. Training costs are not included. There is no anticipation of the opportunity cost of current Government trainers or the need to hire additional trainer(s), which is more likely. USCG also makes an unwarranted assumption that training is "not expected to be difficult." This is an irrational assumption because USCG has allocated low GS grade levels and salaries to these positions. Further, USCG unreasonably anticipates 12 to 19 weeks of training, whereas SAC's experience is that to train a fully qualified evaluator takes six months (in a few exceptional cases) to a year (average). This process includes constant and continuous refresher training. Finally, from a policy perspective, should the government rely upon and encourage the training of personnel by a small business, only to insource the labor once trained?

- The cost analysis' justification and conclusions were irrational and unsupported. For instance, the analysis:

  - Stated without authority that "[t]he cost of a contractor is automatically higher than the cost of a government employee;"

  - Attributed "[n]early $1M in hidden costs to support contractors' footprint with infrastructure and equipment ...," ignoring the fact that government employees will occupy the same space and require the same infrastructure, if not more;

  - Does not seek to save taxpayer dollars, but rather aimed to "right-size" the NMC; and

  - Claimed that the insourcing would have "no adverse impacts to other organizations, partnerships, or organizational relationships with converting contractors to government employees." This is incorrect. This insourcing initiative will irreparably harm SAC, including potential insolvency.

- The heavy reliance on retaining SAC employees violated USCG regulations and good governance. For example, the "MWRI Rules of Engagement: Contractors and Contractor Employees" provides that the USCG must:

  > Ensure improprieties in the hiring of a contract employee for a federal career position do not occur. The Office of Inspector General at the Department of Energy

> (DOE) found evidence that a contract employee was granted preference or advantage not granted to other applicants ...

It is clear from the insourcing justification that USCG not only anticipates but needs a high percentage of SAC employees to accept the government positions to keep training costs down. This need will ultimately result in improprieties and favoritism in the hiring process.

- The USCG failed to properly assess retention rates and assumed little initial and no ongoing attrition costs. SAC has a 92% retention rate, in part, because of the favorable salaries and benefits. USCG cannot argue that it will have a similarly high initial or ongoing retention rate without comparing its salary ranges to SAC. However, because USCG violated its practices by failing to notify and involve SAC in the cost analysis process, USCG did not have SAC's salary information to perform a proper comparison. Thus, USCG's assumption regarding the initial and ongoing retention of trained and experienced staff is unsupported. Finally, it is again noteworthy that SAC performed the above tasks with at least nine less positions (*i.e.,* 63 versus the 72 proposed by USCG) than what USCG anticipates. Moreover, SAC had plans to further reduce its staff by two positions, for at total of 61 positions.

SAC's Efforts to Inform USCG of its Actual Costs:

Upon receiving and examining the USCG cost analysis, SAC repeatedly attempted to meet with the USCG to present its findings. When the USCG finally met with SAC, SAC apprised the USCG of the faulty process and offered to provide actual cost information so that a proper analysis could be performed. In response, the USCG stated that they had performed a "robust" cost analysis, had spent significant time and resources on their analysis, and had no interest in reviewing SAC's actual cost data. Notwithstanding, SAC's efforts, the USCG has continued forward with the insourcing action based on a flawed cost analysis.

The Involvement of the Small Business Administration:

After learning that its efforts to educate and inform the USCG of its misguided insourcing effort, SAC met with the Small Business Administration (SBA) officials. The SBA Procurement Center Representative (PCR) agreed that the USCG proceeded with its insourcing action unfairly and to the detriment of SAC. As a result, the PCR has taken steps to halt the insourcing action until a proper cost analysis and a true assessment of the negative consequences of this insourcing action can be fully understood. Currently, SBA is attempting to meet with the USCG to discuss this matter.

The Impact of the Insourcing Action on SAC:

For a small, disadvantaged company, there is no question that the insourcing of these TOs have profoundly affected the future viability of SAC. In fact, this action has directly resulted in the loss of 75% of SAC's jobs and revenue. Additionally, although SAC was not guaranteed the option years under each TO, due to exemplary performance, it had reasonable assurances that the need for this work would continue beyond the base period of each TO. In light of this, SAC made numerous business investments to better serve the USCG. This included signing a five-year lease to accommodate additional staff necessary to administer the work under the task orders (*e.g.,* payroll, human resources, etc.); and hiring corporate staff to administer the work under the task order (*e.g.,* payroll administrator, human resources personnel, etc.). Moreover, SAC made significant investments in its employees, which the USCG now intends to recruit and hire. This included training, counseling and promoting of staff; and

entering into agreements with medical and insurance carriers to provide staff with competitive benefits. Both of these initiatives only furthered SAC's ability to attract, hire and retain top talent for the work under these task orders.

Causes for Concern and Recommendations:

In light of the above, SAC respectfully submits the following recommendations to the Subcommittee on Contracting and Workforce:

1. That a moratorium be placed on all cost-based insourcing actions until government-wide procedures are in place.

2. That the Federal government adopt government-wide procedures (civilian and defense alike) through a public rulemaking process with public notice and an opportunity to comment. At a minimum, such procedures should include:

    a. Requirements that affected persons, companies, organizations, etc. be provided with all cost data, analyses, etc. relied upon by the government in making its decisions. Businesses, particularly small businesses, should not have to incur the time and expense of a FOIA request when the cognizant agency has already collected the materials in making its insourcing determination;

    b. Mandate the evaluation of insourcing actions that impact small businesses, including requiring discussions with the small business in advance of the insourcing action; and

    c. An appeal process for affected persons, companies, organizations, etc.

3. That the SBA be given a more clearly defined role in the review of agency insourcing actions.

Conclusion

The insourcing action taken by the USCG against my company was not done to bring inherently governmental functions back into the Federal government. Rather, the USCG claims it was done to save money. However, the cost analysis provided by the USCG is riddled with problems and is ultimately inconclusive of whether the Federal government will realize any cost savings, at best, or at worst, even cost the Federal government more. What is certain is that the USCG's actions have inflicted real and actual harm to my small business – cutting jobs and revenue (during this economic downturn) by up to 75%.

All insourcing actions should comply with uniform processes that ensure fairness and correctness in determining whether or not a function is inherently governmental or if there is true and actual cost savings. Moreover, the impact on small businesses, the driver of our economy, should also be a required consideration.

In light of the conduct and harm inflicted upon SAC, I am seeking and formally requesting Congress' assistance and intervention to halt all insourcing actions, including that which the USCG has exacted against my company, until guidelines regarding government-wide cost analyses are issued and full and complete costs analyses can be performed. I appreciate your time and attention today and look forward to answering any questions that you may have. Thank you.

TESTIMONY OF BRYANT STEVEN BANES
Before the Congress of the United States
U.S. House of Representatives
Committee on Small Business
Subcommittee on Contracting and Workforce

June 23, 2011 Subcommittee Hearing – 10:00 A.M.
Insourcing Gone Awry: Outsourcing Small Business Jobs

Mr. Chairman and members of the Small Business Committee on Subcontracting and Workforce: It is an honor and a privilege to comment regarding recent legal developments on insourcing, their adverse impacts upon small business and job creation, and the lack of transparency in the process, particularly within the Department of Defense. More, specifically, I have been asked to provide you today with my insights into the recent decision by the U.S. Court of Federal Claims in *Hallmark-Phoenix 3, LLC v. United States*, No. 11-98C (Fed.Cl.) (May 13, 2011) ("*Hallmark* case"). In the case, the Court ruled that it lacks jurisdiction to review insourcing decisions by the federal government because private contractors are not within the "zone of interests" to be protected by the insourcing statutes at issue, namely 10 U.S.C. §§ 129a & 2463. Most troubling, the Court stated in footnote 24 of its opinion that "[w]hile some of the district courts in these [insourcing] cases have (correctly) concluded that they lack jurisdiction, it appears more accurate to say that no court has jurisdiction over suits such as these." While I do not agree that this pronouncement reflects the current state of the law and have challenged it, I am here to recommend legislative actions that I believe will eliminate any barrier to small business having their day in court with respect to insourcing. Simply stated, this should include:

1. Amending the definitions of "protest" in the Competition in Contracting Act ("CICA"), 31 U.S.C. § 3551(1) to provide that such includes: (F) Conversion of a function that is being performed by private contractors to federal civilian or military employee performance.

2. Amending 31 U.S.C. § 3551(2) to provide: (C) Prudential standing in a protest action is coextensive with interested party status.

3. Imposing a legislative moratorium on insourcing until the Obama Administration completes its evaluation of the impact of insourcing on small business, and the general overall cost savings (if any) of the insourcing initiative to date.

On May 5, 2011, the Congressional Research Service ("CRS") issued a report titled *Functions Performed by Federal Contractors: An Overview of the Legal Issues. See* www.fas.org/sgp/crs/misc/R41810.pdf. In this report, CRS opined that Congress could expand courts' jurisdiction over insourcing decisions, require that agencies issue guidelines that are more or less likely to be found legally binding under the Administrative Procedure Act, expand or limit direct-hire authority, impose or remove restrictions on federal employment of former contractor employees, or protect small businesses from the effects of insourcing. CRS noted pending legislation, the Freedom from Government Competition Act, S. 785, H.R. 1474, which would require a "public-private competitive sourcing analysis" and a determination that insourcing provides best value. *See* 53 GC ¶ 143. This report does an excellent job of pointing out the issues and highlighting that much more thought is needed in this area regarding the impacts of insourcing, especially as it relates to small business and their labor force. It may also be time to put on the brakes while these impacts are studied.

What has happened since the CRS Report was issued has made Congressional oversight and action even more critical. On May 13, 2011, the Court of Federal Claims issued its opinion in the *Hallmark* case. This was a bid protest that arose from an insourcing determination by the United States Air Force Space Command ("Air Force") relating to a small business contract for transportation and vehicle maintenance services. This is not an instance where we are dealing with inherently governmental functions, work that was historically done by federal civilians, or a poor contractor. One of my first actions as a procurement law advisor in Iraq in 2004 was to

issue an opinion saying that we cannot hire contractor mercenaries to guard convoys destined for military use in a combat zone. This is not Hallmark's contract. We're talking wrenches not weapons; paint not policy making. Hallmark has received excellent performance marks. And we also know that, despite their vague representations to the contrary, the Air Force will continue to outsource vehicle maintenance. So, the case is strong that early termination of Hallmark's contract is imprudent and contrary to statute and regulation. The applicable statutes were 10 U.S.C. §§ 129a and 2463, which together required the Air Force to use the "least costly" form of manpower, whether "military, civilian, or private contractor." Hallmark has asserted in this litigation that the government is indeed not using the least costly form of manpower and has not followed its own directives in several respects. The Air Force responded in Court that only Congress can question their conclusions and the manner in which their analysis was performed and the Court ultimately agreed. The matter is now on appeal to the Federal Circuit.

To add an interesting twist to this, the Court had issued an opinion in another case with a different judge that accepted jurisdiction over a similar insourcing case. The case was *Santa Barbara Applied Research, Inc. v. United* States, No. 11-86C (May 4, 2011) ("*SBAR* case"). The Court in the SBAR case decided simply that jurisdiction over a protest was coextensive with interested party status. Showing an economic interest in both SBARs and Hallmark's case sufficient for interested party status was certainly not difficult since they both had options remaining on their contracts and would continue to bid the work when it was time to bid again. The decision in the *SBAR* case was both simple and logical given the history of protests, so my recommendation here is for Congress to legislatively adopt the reasoning of the SBAR case to provide that jurisdiction is coextensive with interested party status. Before that occurs, however,

we should discuss a little about what the Court did in the *Hallmark* case and whether that makes any sense.

What was so surprising in the *Hallmark* case is how the Court went through a litany of arcane legal concepts in a seeming exercise to manufacture a host of legal hurdles to private contractors' challenge of insourcing. Ultimately the Court in the *Hallmark* case concluded that despite the plain language of 10 USC § 129a, Congress somehow intended to deny private contractors a judicial remedy. Even though Section 129a clearly and explicitly requires the Department of Defense to use private contractors if they are the least costly form of manpower, the Court reads this language out of context by saying that private contractors were not the intended beneficiary of the statute. In legal parlance, the Court decided that there was no "prudential standing" because private contractors are not within the "zone of interest" of the statutes. In other words, the Court decided that no one, other than Congress, can be relied upon to challenge an agency determination using other than the least costly form of manpower, even where, as here, substantial and judicially manageable questions exist. *Contra CC Distributors, Inc. v. United States*, 883 F.2d 146, 151-153 (D.C. Cir. 1989).

This stands in direct conflict with how 10 U.S.C. § 129a became law. The Court in *CC Distributors* found that there were no judicially manageable standards for the statute in question because it did not require either a cost comparison or use of the form of manpower that is "less costly." *Id.* 883 at 153-154. However, the Court went on to find that the underlying regulations required the Defense Department to use the "less costly" form of manpower and required a cost comparison when making the determination. The regulations here require the same comparison, and the statute, 10 U.S.C. § 129a, was changed the following year in 1990 to require the use of the "least costly" form of manpower (military, civilian, or private contractor) and an "apples to

apples" comparison. *Id.* at 152-154. This erased the prior gap in prudential standing, assuming one was required at all. The Court in the *Hallmark* case ignores these legislative facts and disregards the Court's contrary decision in the *SBAR* case, which properly dismissed the concept of prudential standing. The Court in the *Hallmark* also ignored that Hallmark's interests were clearly aligned with those of Congress in assuring that the "least costly" form of manpower is used.

Ultimately, it is the decision of Congress whether to allow challenges to insourcing by private contractors. Secretary Gates has wisely put a freeze on federal civilian hiring and the Army's Secretary has required all insourcing actions be approved at his level. Internally, the Department of Defense recognizes that it has not addressed all of the impacts. I spoke personally with the decision-makers at the Air Force after the insourcing of Hallmark's contract was announced. They conceded that they had not considered the impact to either small business or the impact to the union labor force that worked for Hallmark. We note here that part of the basis for Hallmark's protest was that the Air Force had not met all legal constraints, including those designed to protect small businesses. Congresswoman Jackson-Lee of Texas recently commented on this case and the impropriety of the Defense Department competing with small businesses for other than inherently governmental functions. *See* Congressional Record p. H3624-25, May 25, 2011). This statement is more than just a "sense of Congress;" it is statutory policy. *Accord* 10 USC Sec. 2304e (prohibiting competition between DoD and small business). Perhaps it is time the Defense Department be required to consider these things before they do further damage the small business contractors through insourcing.

Testimony of
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Before
House Small Business Committee
Subcommittee **on Contracting and Workforce**
"The Negative Impact of In-sourcing on Small Businesses"

June 23, 2011

Introduction

Chairman Mulvaney, Ranking member Chu, and members of the Subcommittee, I appreciate the invitation and the opportunity to provide this testimony on the important issue of the adverse impact of the federal government's in-sourcing policies and practices on small businesses. Information International Associates (IIa) is a woman-owned, small business headquartered in Oak Ridge Tennessee doing just over $20M in annual revenues. IIa is also a member of the Professional Services Council (PSC) and I serve on the PSC Board of Directors. I am also pleased to testify on their behalf.

Today about 25% of our work is for the Department of Defense. At one time it was over 50%. The in-sourcing actions that have had the most significant impact on us are at DoD, particularly at the Air Force (AF), so I will focus on that today. But similar activities are taking place in agencies across government.

We are proud of the quality and level of services we provide the nation's military men and women domestically and abroad. We have done work on 15 AF bases over the last decade supporting Military Personnel in various Command and Service Flights, as well as Air Force Europe (USAFE) Headquarters. Our contract performance has been outstanding as evidenced by our annual evaluations, the special awards we have received, but most of all by the many personal letters of appreciation for the performance and positive impacts of our staff. Our contract prices have been shown to save over 33% of previous government in-house costs estimated through the A-76 process. Yet, despite these performance metrics, we have lost 15% of our employees to in-sourcing activities by the U.S. Air Force over the past eight months.

We agree with the strategic need of the federal government to strengthen its performance of "inherently governmental" functions, particularly the federal acquisition workforce, and other specialty areas where the government must have internal expertise to manage agency missions. Where in-sourcing fulfills a validated strategic need, we have no objection to its proper use. As a good corporate citizen and a taxpayer, we also wholeheartedly support saving the taxpayer money. However, the tactical methods of implementing the in-sourcing requirement and the impacts on the Air Force mission raise grave concerns to us.

Specifically, we have observed that decisions to in-source are often driven more by arbitrary budget and manpower bogies sent down from the top levels of the DoD or AF than by the objectives of enhancing the government's workforce capabilities or true cost savings. Further, the reprehensible tactics of approaching our

staff directly to recruit them before official notice about the government's in-sourcing decision was sent to the company and then not working through official contract processes, is highly inappropriate. Finally, where in-sourcing decisions were notionally based on cost savings, the cost analyses of how the decisions were made were not transparent. In one instance, when we tried to get official information, it took 12 months after we filed a Freedom of Information Act (FOIA) request to receive any reasonable information. Then since April of this year our appeal has had no response. By now it is far too late for us to make any practical response.

In addition to the faults in the decision and transition process, once the in-sourcing occurs, we do not believe that there has been any meaningful internal or external oversight to ensure that the claimed savings and desired program objectives have been achieved. Quite the contrary, we have informal evidence that in at least one case, positions the government planned to in-source have not been filled and services to our warfighters that Ila previously provided have been diminished.

Real World Examples

Perhaps the best way to fully understand the negative impacts of in-sourcing on small businesses is to provide you with some Ila case studies.

Case 1: Ila competitively won a contract in 2008 with USAFE Headquarters to provide Personnel Systems Management and Base Enlisted Specialty Training services at three sites in Germany. [PSM/BEST contract (FA5613-08-C-0007).] Ila has had outstanding performance on this work as evidenced by the formal annual performance evaluation process and recorded in the CPARS system. This was never considered an "inherently governmental" function. We do identical work at other bases in CONUS and OCONUS. But in 2009 the functions under our contract were selected to be in-sourced based on

1) the dollar amount of the contract; and
2) the number of employees needed to meet a USAFE number bogie for in-sourcing.

The final option year of our contract was not exercised. At contract completion, November 2010, many of our current employees immediately became unemployed. Their expertise was lost because the bilateral agreements between the U.S. and the Government of Germany, German labor rules do not allow contractor employees to become U.S. government employees without a return to the United States. In addition, position descriptions and postings were not completed for the government positions and hiring was not in place to facilitate any sort of transition.

In February 2010, I participated in a PSC organized meeting with DoD Undersecretary of Defense/Comptroller Bob Hale on the topic of in-sourcing. Mr. Hale stated emphatically that all DoD in-sourcing actions comply with all guidance and requirements to perform a cost comparison and analysis on every contractor-performed service to identify whether in-sourcing the service would result in a cost savings to the government. After that meeting in May 2010, Ila requested documentation of the government's review and analysis that resulted in the decision to in-source our USAFE work in Germany. When a first response was received in December 2010, 90% of the pages were redacted. The package did not contain a letter describing our appeal options. We have received help from the Manpower Office at the Pentagon and the National Archives and Records Administration FOIA

Office, both offices expressing their frustration with USAFE's lack of response. We have since appealed the USAFE FOIA response and the case is currently pending with the Air Force FOIA appellate authority, AFLOA/JACL. The FOIA response is still in the appeal process. Our last notification was received April 5, 2011 – nearly one year from our initial request.

And now what is the end of this story? Based on informal information we have received, the current situation in Germany is that they have not been able to staff these functions as planned and services to the installations have been reduced. Since they have not been able to staff the function as planned, they now have four PSMs with three slots qualifying for relocation and housing expenses just to get someone hired. This has to add significant costs to the original government analysis. To understand this possible change in cost projections, we've requested an estimated cost per employee hired under this method. A contractor in this situation would not have been able to ask for more funding and would have been expected to perform as proposed. But worst of all, our AF servicemen and women are not receiving the level of service they deserve and that Ila had been providing. June makes month eight that USAFE and its bases in Germany have had inferior PSM data to rely on to manage our troops. This puts USAFE leadership in jeopardy of not having accurate, reliable data on which to base their strategic manpower decisions and could potentially hurt our servicemen and women regarding careers, training, and promotions.

Case 2: A contract at Edwards AFB, CA, for Education Center Management and BEST training services was awarded to Ila in 2003 as a result of an A-76 competition and resulted in 33% reduced costs to the government. The services performed under the contract were not defined as "inherently governmental" at the time and have not changed since award. Under Ila's management, Edwards was an award-winning "Best in Command" Education Center and BEST services. Six months before in-sourcing and before the company was formally informed of the decision through the appropriate contracting process, Ila employees were told by government employees to look for other jobs and the government actually directed Ila's Project Manager to apply for a government posted position. During the last six months of the contract, which was extended on short term increments because the government was not ready to take over the work, employees had already started to look and accept other positions, leaving morale low, an impossible situation to replace staff, and a void in professional employees to provide required education and training services to our men and women of the Air Force. Since Ila is proud of our performance and strives to always be outstanding, it was a challenge for us to keep our frustrated employees motivated to continue providing our outstanding level of customer service

Case 3: Not an AF situation, but one from the Department of Labor (DOL) will round out our case studies. Since 2007, Ila teamed with ARRAY Information Technology, a Maryland based, 8(a) Small Business, has managed the DOL Wirtz Labor and Law Libraries. During that time, we successfully implemented a labor Digital Library, streamlined operations, assisted with DOL-wide licensing agreements, and increased library usage by providing outstanding customer service and innovative programs. We brought recognition to the library when it received the American Library Association *John Sessions Memorial Award*. After exercising the last option year of our contract, with less than eight weeks before the end of the contract, DOL notified us that the contract would not be renewed nor re-competed. As two small businesses and with such little notice, we were not able to absorb or place the library staff.

One week before the end of the contract, we were asked to provide a transition plan, which was reviewed in a meeting that lasted less than 10 minutes. Two of our employees were hired to become civil servants. The remaining seven staff received layoff notices. To date, 23 days from the end of the contract, our two former employees are the only staff working at the library. There was no effective transition planning nor was the government in-sourcing decision and implementation a transparent process that would have allowed for company or human resource planning.

So what of the future? Not only have past actions hurt small businesses, but some decisions in process continue to erode opportunities for small businesses to compete, which typically come at a higher cost to taxpayers and our servicemen. For example,

We are faced with rumors of future in-sourcing to other IIa contracts, which would impact another 16% of our employees. Although IIa is fortunate to be growing in other strategic areas, the loss of 31% of staff in 18 months is a challenge to any small business, particularly in today's economy.

And finally, the impacts of in-sourcing have diminished small business opportunities for future growth and caused redirection and reallocation of business development resources at a significant penalty to our bottom line. IIa has been following a re-competition of a contractor-won A-76 opportunity at Robins AFB, GA for nearly four years with our intent to team with an incumbent service-disabled, veteran-owned, small business (SDVOSB). Having to follow and market such competitions is a significant cost to a small business. The SDVOSB was told in January that the entire contract will be in-sourced at the next option period 10 months later. Not only did this announcement put the services being performed at risk, but it created an atmosphere of indifference, and limited that company's and IIa's opportunities in the marketplace. We would request transparency in the decision so we can all see the rationale the government uses in making these procurement decisions. Based on past experience, it is not likely we will get sufficient and timely information to permit effective and timely action.

Recommended Actions

So what can be done to begin to fix the problems created by inappropriate in-sourcing? We would like to summarize some points and suggest possible ideas for consideration.

Transparency

The Air Force has been allowed to go forward with in-sourcing without any demonstrated strategic analysis of the work to be performed, the long-term benefit to the government, or who can offer the best value at the lowest cost to taxpayers. There has been no transparency in the process.

Recommendation: Insist on more transparency and for any contract which is considered for in-sourcing, at the moment consideration begins, an industry liaison should be appointed to ensure an appropriate and fair process is followed.

Before converting contractor work to Federal work, OMB's in-sourcing guidance calls for agencies to determine:

1) whether an outsourced function is inherently governmental;
2) whether the skills are otherwise needed within the government; and
3) whether there is a good business case to in-source.

Recommendation: As part of the transparency process, actions taken to fulfill these requirements should be documented and made available to the contractor.

Competition

The entire in-sourcing process is taking place without legitimate competition, leaving small businesses to take significant hits on life cycle cost projections on contracts.

Recommendation: In-sourcing from small businesses, unless there is significant and special justification, should not be allowed until the complete contract with options are exercised.

Transition Planning

Filling a civil service position can take six-nine months to accomplish, whereas our DoD contracts have a requirement that our positions cannot be vacant longer than 30 days. It is likely the government will have to function six-nine months without important personnel. In addition to costs, there are work quality issues the government has ignored in its approach to in-sourcing. This is not a level playing field.

Recommendation: The government should demonstrate that it can transition the contract just as a contractor would be required to meet a transition plan. There should be consequences to the government's failure just like there are to a contractor when commitments are not met.

Recommendation: On-going reviews of progress during performance should also be required. This is an element of the "letter of obligation" that is applicable to a federal "most efficient organization" under the A-76 process and some form of it should be applicable here, too.

Inappropriate Recruitment

"Poaching" and other questionable recruitment practices aimed at contractor employees on contracts targeted for conversion should be prohibited.

Recommendation: Where the workforce is converted from private to public sector positions, the government should compensate contractors for costs of hiring and training of those personnel. If they did not take over contractor personnel, they would have to incur these costs. At a minimum, these costs should be considered in the initial cost analysis.

Summary

As a corporate citizen of this great country, we are proud of the work we do and are proud to support the important missions of our government. What we ask for is a fair opportunity to compete and a government that makes the right decisions for the right reasons.

I would be happy to provide any additional information that would be useful on this most important issue in federal contracting with small businesses.

Thank you again for the opportunity to testify on behalf of IIa, the Professional Services Council, and many other small businesses who are committed to support important government missions.

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?"*
>
> 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]
>
> 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]
>
> *"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.

SAM GRAVES, MISSOURI
CHAIRMAN

NYDIA M. VELAZQUEZ, NEW YORK
RANKING MEMBER

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

June 29, 2011

The Hon. Daniel I. Gordon
Administrator
Office of Federal Procurement Policy
Executive Office of the President
1650 Pennsylvania Avenue, N.W.
Washington, DC 20503

Administrator Gordon:

As you may be aware, on June 23, 2011, the Subcommittee on Contracting and Workforce of the Committee on Small Business held a hearing to review the implementation of the Administration's insourcing policies, and the effect of these policies on small businesses. As you are preparing your final policy letter on insourcing, I wanted to share a transcript of that hearing with you, in the hopes that it may help inform your policy decisions. As I understand that new guidance may be imminent, I am enclosing copies of the written statements presented by our witnesses, and I will forward a copy of the full hearing record when it is published.

Simultaneously, I wanted to share with you my concerns regarding the implementation of insourcing for cost savings, especially when the contract is one suitable for performance by a small business. I know that you share some of these concerns, given the guidance provided in Attachment 5 of your February 11, 2011 Memorandum on Increasing Small Business Participation in Federal Contracting, which you issued in conjunction with the Small Business Administration and the Minority Business Development Administration.

While I applaud your decision to advise agencies that "[w]hen prioritizing what outsourced work should be reviewed for potential insourcing, agencies generally should place a lower priority on reviewing work performed by small businesses where the work is not

inherently governmental and where continued contractor performance does not put the agency at risk of losing control of its mission or operations," and the direction that agencies should "apply the 'rule of two' to work that will continue to be performed by contractors following the insourcing of part of the work," I would like to encourage you to go further in your advocacy for small businesses. First, I would urge you to better disseminate this policy guidance – several agencies with whom Committee staff has recently spoken were unaware of your memorandum – the good work you are attempting to do serves no purpose if it is not in the hands of the relevant agency officials.

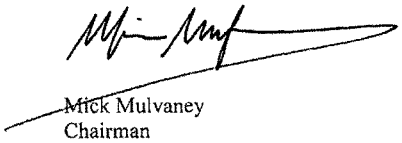
Second, I am very concerned that agencies are insourcing for cost savings without having published the guidance and policies required by the Omnibus Appropriations Act of 2009, which required that the guidance be in place in July 2009. Given the absence of published policies, small businesses have no way of knowing how to navigate insourcing. For this reason, I believe that a moratorium on insourcing for cost purposes should be imposed until such time as each agency has published its final insourcing guidance. Further, since the guidance will clearly have a substantial effect on small businesses, I believe that it should be published pursuant to notice and comment rulemaking procedures, and that a Regulatory Flexibility Act analysis should be voluntarily conducted.

Having previously heard you testify, I know of your commitment to transparency. Given the current budget situation, the quality of cost analysis becomes paramount, so that agencies can make reasoned and objective decisions that will benefit the taxpayers. I believe that your office can increase transparency, serve the taxpayers, and mitigate the effects of cost-based insourcing on small businesses by standardizing the process for conducting cost comparisons. Indeed, any such comparison should allow small businesses to voluntarily provide cost information, and should ensure that there is a transparent process. Small businesses should not have to fight for months or years to find out why their work has been insourced, or to see if the justification makes sense.

Finally, any policies put in place must allow for an appeal process. If there is better information available, or if there are flaws in the government's decision making process, it would be arbitrary and capricious to refuse to review that information. As a government, we must do better than that.

If you would care to discuss any of these recommendations, or if the Committee may provide you with additional information, please do not hesitate to contact me. Likewise, I would like to be kept informed of the progress you are making in these areas, and would particularly appreciate seeing the results of the data collected in response to your February 11, 2011 memorandum. Please provide this information to Emily Murphy with the Committee.

Sincerely,



Mick Mulvaney
Chairman
Subcommittee on Contracting and Workforce

SAM GRAVES, MISSOURI
CHAIRMAN

NYDIA M. VELAZQUEZ, NEW YORK
RANKING MEMBER

Congress of the United States
U.S. House of Representatives
Committee on Small Business

2361 Rayburn House Office Building
Washington, DC 20515-6315

June 29, 2011

The Hon. Jacob Lew
Director
Office of Management and Budget
Executive Office of the President
725 17th Street, N.W.
Washington, DC 20503

Director Lew:

As you may be aware, on June 23, 2011, the Subcommittee on Contracting and Workforce of the Committee on Small Business held a hearing to review the implementation of the Administration's insourcing policies, and the effect of these policies on small businesses. As the Administration continues to implement policies on insourcing, I wanted to share a transcript of that hearing with you, in the hopes that it may help inform your policy decisions. As I understand that new guidance from the Office of Federal Procurement Policy (OFPP) may be imminent, I am enclosing copies of the written statements presented by our witnesses, and I will forward a copy of the full hearing record when it is published.

Simultaneously, I wanted to share with you my concerns regarding the implementation of insourcing for cost savings, especially when the contract is one suitable for performance by a small business. These concerns were not addressed in the Memorandum on Managing the Multi-Sector Workforce issued by your predecessor Peter Orszag on July 29, 2009. While OFPP did attempt to address some of these concerns with the guidance provided in Attachment 5 of the

February 11, 2011 Memorandum on Increasing Small Business Participation in Federal Contracting, issued in conjunction with the Small Business Administration and the Minority Business Development Administration, it had a much smaller distribution list than the Orszag Memorandum.

While I applaud OFPP's decision to advise agencies that "[w]hen prioritizing what outsourced work should be reviewed for potential insourcing, agencies generally should place a lower priority on reviewing work performed by small businesses where the work is not inherently governmental and where continued contractor performance does not put the agency at risk of losing control of its mission or operations," and the direction that agencies should "apply the 'rule of two' to work that will continue to be performed by contractors following the insourcing of part of the work," I would like to encourage the Office of Management and Budget (OMB) to better advocate for small businesses. First, the OFPP guidance should be disseminated to the heads of the Departments and Agencies, as small business should receive the full attention of all in the Executive Branch. .

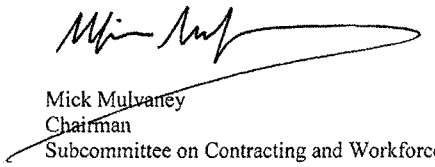
Second, I am very concerned that agencies are insourcing for cost savings without having published the guidance and policies required by the Omnibus Appropriations Act of 2009, which required that the guidance be in place in July 2009. Given the absence of published policies, small businesses have no way of knowing how to navigate insourcing. For this reason, I believe that a moratorium on insourcing for cost purposes should be imposed until such time as each agency has published its final insourcing guidance. Further, since the guidance will clearly have a substantial effect on small businesses, I believe that it should be published pursuant to notice and comment rulemaking procedures, and that a Regulatory Flexibility Act analysis should be voluntarily conducted.

Given the current budget situation, the quality of cost analysis becomes paramount, so that agencies can make reasoned and objective decisions that will benefit the taxpayers. I believe that OMB can increase transparency, serve the taxpayers, and mitigate the effects of cost-based insourcing on small businesses by standardizing the process for conducting cost comparisons. Indeed, any such comparison should allow small businesses to voluntarily provide cost information, and should ensure that there is a transparent process. Small businesses should not have to fight for months or years to find out why their work has been insourced, or to see if the justification makes sense.

Finally, any policies put in place must allow for an appeal process. If there is better information available, or if there are flaws in the government's decision making process, it would be arbitrary and capricious to refuse to review that information. As a government, we must do better than that.

If you would care to discuss any of these recommendations, or if the Committee may provide you with additional information, please do not hesitate to contact me. Likewise, I would like to be kept informed of the progress you are making in these areas.

Sincerely,



Mick Mulvaney
Chairman
Subcommittee on Contracting and Workforce

Statement of
Rep. Yvette Clarke
On Thursday, June 24, 2011
House Small Business Committee Subcommittee on Contracting and Workforce
Insourcing Gone Awry: Outsourcing Small Business Jobs

Thank you Mr. Chairman and Ranking Member, and I thank the panel for their testimony today.

I'd like to preface my remarks by stating that I am not opposed to government contracting. As a matter of fact, I have been, and will continue to be a vocal advocate of the SBA's 8(a) program, especially with regards to assisting minority/women and veteran small business secure federal procurement.

However, given our nation's economic circumstances, I believe the federal government must have the latitude to be able to withdraw from contracts that are deemed non-cost effective.

While I sympathize with Ms. Carroll regarding the inappropriate recruiting, and with the economic impact on a small business when a contract option is not picked up; as the Majority continually points out, we must use all tools at our disposal to bring our nation's fiscal house in order.

Ms. Simon's testimony lays out, in pretty convincing detail, the benefits of insourcing as a cost-saving measure. Ms. Hamilton, your testimony lays out a narrative of the imperfect audit performed by Deloitte. However, I didn't see a convincing case of where your services would have saved the government money. I'd like to give you the opportunity to make a stronger case. In your opinion, what would a more deliberate audit have shown with regards to government savings?

June 23, 2011

The Honorable Mick Mulvaney, Chairman
Subcommittee on Contracting and Workforce
House Committee on Small Business
U.S. House of Representatives
Washington D.C. 20515

Dear Mr. Chairman:

The Business Coalition for Fair Competition (BCFC), commends you for holding a hearing this Thursday, June 23, titled, "Insourcing Gone Awry: Outsourcing Small Business Jobs". We wish to have this statement entered into the record of the hearing.

BCFC (www.governmentcompetition.org) is a national coalition of businesses, associations, taxpayer organizations and think tanks that are committed to reducing all forms of unfair government created, sponsored and provided competition with the private sector. We appreciate this opportunity to comment on the negative effects insourcing is having on the private sector, including small business.

Insourcing is stealing private sector jobs and creating more expensive and expansive government jobs. Secretary of Defense Robert Gates conceded in August of 2010 that insourcing is ***NOT*** producing anticipated savings. Instead, insourcing is hurting the private sector, including small business, minority firms and veteran owned firms. The Obama Administration has not issued standards for insourcing. It has no methodology for demonstrating cost savings. There is no transparency with regard to rights or appeal procedures for small business. In the landmark court case on this matter, the Air Force reinstated a contract planned for insourcing when it could ***NOT*** document that it had conducted any analysis to demonstrate cost savings. In February of this year, Secretary of the Army John McHugh issued a memo also calling for widespread insourcing to halt within the Army.

The Chairman of the full House Small Business Committee, Mr. Graves of Missouri, has also taken action on this issue via his May 24, 2010 letter to Office of Federal Procurement Policy Administrator Daniel Gordon. In that letter, Rep. Graves wrote:

> *"I fear that small businesses, the ones that create the majority of new jobs in the country, will lose out to unfair competition from the federal government and that a reduction in competition for government contracts will add more burdens onto the taxpayer."*

We believe Congress should be taking steps to encourage the creation of private sector jobs, not growing government. Unfair government competition with the private sector can be reduced or minimized through implementation of the '"Yellow Pages' Test" – if a product or service can be found from a private business in the Yellow Pages, the government should ***NOT*** be doing it.

To put this issue in perspective, here are a few facts:

According to the Office of Personnel Management, the Federal government employs some 2 million Executive Branch, full-time, permanent employees (excluding the Postal Service and uniformed military personnel).

Some 850,000 of those employees are in jobs that are "commercial" in nature, as identified in the agency inventories conducted pursuant to the Federal Activities Inventory Reform (FAIR) Act, Public Law 105-270.

The Office of Management and Budget has reported only a handful of the 850,000 commercial positions have been studied under OMB Circular A-76 to determine whether government employees or private sector workers can perform these activities more effectively.

Not only do Federal agencies duplicate private business, but many engage in unfair government competition with the private sector. Each time there has been a White House Conference on Small Business (1980, 1986, and 1995), one of the top issues identified by American entrepreneurs is unfair government-sponsored competition with the private sector.

The Obama Administration claims insourcing only affects "inherently governmental functions". That is not the case. We have seen examples of contracts for mapping, food service, fire-fighting, audio-visual services and other obviously commercial activities being insourced. While there should be oversight to assure that inherently governmental activities (as defined in the FAIR Act) are not being contracted to the private sector, we believe Congress should impose a moratorium on insourcing of commercial activities.

Congress and the Administration should develop and implement a workable policy and prevent expensive and illogical decisions in the interim. Section 965 in H.R. 1540, the 2012 National Defense Authorization Act, would provide a period of time to do that.

Congress has taken recent action to reverse course from the damage to the private sector, including small business, created by insourcing and unfair government competition. These include:

- On April 12, Rep. John J. Duncan, Jr. (R-TN) and Sen. John Thune (R-SD) reintroduced the "Freedom From Government Competition Act (FFGCA) of 2011" (H.R. 1474 and S. 785 respectively). FFGCA would end government monopolies by codifying the "yellow pages" test for commercial activities currently performed by Federal employees; save up to $27 billion annually; and help job creation in the private sector, including small business. It implements a "Yellow Pages" test to make certain government is not unfairly competing with small business and to assure that products and services are provided at the best value to the taxpayer;

- On May 25, the House passed H.R. 1540, the National Defense Authorization Act (NDAA). H.R. 1540 contains a "Sense of the Congress" amendment that creates a moratorium on insourcing commercial activities out of the private sector and into the Federal government. Rep. Nan Hayworth (R-NY) sponsored the amendment, Rep. Pete Sessions (R-TX) cosponsored, and Chairman Buck McKeon (R-CA) enrolled the amendment in his managers amendment;

- On June 2, the House voted to strike Section 514 from H.R. 2017, the Department of Homeland Security Appropriations Act of 2012. The amendment, sponsored by Rep. Pete Sessions (R-TX), was agreed to by a 218-204 vote. Section 514 would have created a moratorium on A-76 public-private competitions in DHS; and

- On June 15, the House voted to strike language from H.R. 2112, the Department of Agriculture Appropriations Act. The amendment sponsored by Rep. Pete Sessions (R-TX), was agreed to by a 226-199 vote. The language stricken by the Sessions amendment would have created an impediment to A-76 public-private competitions in USDA.

The trend in authorization and appropriation bills has been to protect government-run monopolies for commercially available goods, services and activities. More troubling language detrimental to the private sector, including small business, is found in:

- H.R. 1540, the 2012 National Defense Authorization Act (NDAA) (Sections 931 and 939);

- The Department of Defense Appropriations bill (Sections 8015, 8027 and 8101);

- The Energy and Water Development Appropriations bill (Section 102);

- The Financial Services Appropriations bill (Section 733); and

- H.R. 1, the original CR (Sections 8016 and 8105).

At a time of 9.1% unemployment and anemic private sector job creation, an annual deficit of $1.5 trillion, and a national debt of $14.3 trillion, Congress should be encouraging cost savings and growth in the private sector. BCFC has identified more than $517 billion in annual savings simply by getting the federal government out of activities that duplicate or compete with the private sector, which subsidize unfair competition with private, for-profit companies, or by privatizing activities for which there are current or potential private sector providers. This would not only help eliminate approximately one-third of the annual deficit, but it would improve the delivery of services to the American people, unleash private sector job creation, generate new tax revenues to the government, and create thousands of jobs and hundreds of millions of dollars in business opportunities for small and minority owned businesses.

Provisions like those stricken from H.R. 2017 and H.R. 2112 that prohibit, impede, interfere, obstruct, encumber, or delay OMB Circular A-76 or competitive sourcing studies, or that provide for insourcing – the cancelation of contracts to the private sector and the conversion of work to performance by federal employees – should be kept off all remaining appropriations bills.

Congress should also consider the costs to taxpayers when the Federal government engages in insourcing and government-run monopolies:

- $27 Billion. Subjecting the 850,000 Federal employee positions, which are commercial in nature, to a public-private cost comparison generating on average a 30% cost savings regardless of which sector wins the competition (Heritage Foundation);

- $47 Billion. Federal employees enjoy better pay and benefits than their counterparts in the private sector, so if pay parity were leveled, tremendous savings would be generated (Heritage Foundation); and

- $4.27 Million. Average career-long cost of each new Federal employee to the taxpayer for salary, overhead, and benefits (Americans for Tax Reform).

Since August 2010, BCFC has been collecting examples of insourcing from various businesses and organizations. BCFC respectfully submits the following examples for your review and action:

1) **Agency:** Air Force
   Contract Number: FA8623-05-C-6350
   Scope of Work: Operations and Maintenance, Guard Services, Airfield Operations, Fire Fighting (Structural and Aircraft Rescue), Engineering, Aircraft Fueling, Maintenance, IT, Grounds and Janitorial, Vehicle Maintenance at Plant 42, Palmdale, California.
   Insourcing Rationale: Cost savings.

2) **Agency:** Air Force
   Contract Number: FA4890-10-C-0006
   Scope of Work: Meteorology Services (weather forecasting, weather observation, maintenance and support services) at 11 Army Bases Nationwide.
   Reason Stated for Insourcing: Cost savings.

3) **Agency:** Air Force
   Contract Number: FA3002-04-C-0005
   Scope of Work: Pilot Training at Pensacola Naval Air Station, Florida.
   Insourcing Rationale: Cost savings.

4) **Agency:** Army
   Contract Number: NAFIB9-08-C-0023
   Scope of Work: Library Administrative Support at Fort Polk, Louisiana.
   Insourcing Rationale: Cost savings.

5) **Agency:** Army
Contract Number: W911SE-07-G-0001-0001
Scope of Work: Helpdesk, Engineering Network, System Security, Mail Administration Support at Ft. McPherson, Georgia.
Insourcing Rationale: Cost savings.

6) **Agency:** Army
Contract Number: W911SE-08-C-0023
Scope of Work: Program Management for the Command's Antiterrorism/Force Protection Program at Ft. McPherson, Georgia.
Insourcing Rationale: Cost savings.

7) **Agency:** Army
Contract Number: W911SE-07-D-0035-0002
Scope of Work: All Personnel, Supplies, Administration, and Management to Operate the G3 Force Management Division (FMD) Mission at AERCENT Headquarters, Fort McPherson, Georgia and Kuwait.
Insourcing Rational: Cost savings.

8) **Agency:** Army
Contract Number: W911SE-07-D-0024-0002
Scope of Work: Military Vehicle Condition Evaluations at Ft. McPherson, Georgia.
Insourcing Rational: None.

9) **Agency:** Army
Contract Number: W912SU-08-P-0037
Scope of Work: Provide Civilian Instructors to Teach Advanced Individual Training (AIT) and Transition Students for Military Occupational specialty (MOS) 14E Patriot Operator Maintainer Training and Teach the Warrant Officer Basic Course (WOBC) to Warrant Officers Who Are Attending the 140E Patriot Technician Course at Fort Eustis, Virginia.
Insourcing Rationale: None.

10) **Agency:** Army
Contract Number: W81K00-09-P-0314
Scope of Work: Non-personal Services to Provide Outpatient Clinical Coding, Physician Documentation Training, and Auditing of Written and Computerized Medical Records at Raymond W. Bliss Army Health Center (RWBAHC) and its Clinics Located within the Health Center and at Primary Health Care Sites on the Fort Huachuca Installation at Fort Sam Houston, Texas.
Insourcing Rationale: None.

11) **Agency:** Army
Contract Number: W911SO-09-P-ORI-01
Scope of Work: Providing U.S. Army Students the Specialty Skills and Technical Ability to Perform the Duties of a Motor Vehicle Operator (otherwise known as Motor Transporter) of Light and Medium Tactical Wheeled Vehicles under Varying Field Conditions and Convoy Operations at Fort Leonard Wood, Missouri.
Insourcing Rationale: None.

12) **Agency:** Army
Contract Number: W911KF-08-C-0008
Scope of Work: Production Supply Support including Material Handling, Fuel Distribution, Tire Repair, and Disassembly and Assembly Support at Anniston Army Depot, Alabama.
Insourcing Rationale: None.

13) **Agency:** Army
Contract Number: W911KF-06-C-0001
Scope of Work: Production Cleaning including Steam Cleaning, Vehicle Cleaning, and Container Cleaning at Anniston Army Depot, Alabama.
Insourcing Rationale: None.

14) **Agency:** Army
Contract Number: W81K00-07-P-0950
Scope of Work: Perform Medical Support Assistant Services, (also known as a Medical Clerk) at the Medical Treatment Facility (MTF), Raymond W. Bliss Army Health Center (RWBAHC), Fort Huachuca, Arizona.
Insourcing Rationale: None.

15) **Agency:** Army
Contract Number: W81K00-06-P-0731
Scope of Work: Provide the Services of a Clinical Psychiatric Nurse to the Institute of Surgical Research Burn Center at Brooke Army Medical Center, Fort Sam Houston, Texas.
Insourcing Rationale: None.

16) **Agency:** Air Force
Contract Number: FA9301-09-R-0007, Order 0001
Scope of Work: Photography and AV Services at Edwards Air Force Base, California.
Insourcing Rationale: Cost savings.

17) **Agency:** Air Force
Contract Number: FA663308D0002
Scope of Work: Base Network Control Center at Minneapolis-St. Paul Air Reserve Station, Minnesota.
Insourcing Rationale: Cost savings.

18) **Agency:** Navy
Contract Number: N44255-02-D-9000
Scope of Work: Supply services to FISC, US Navy-Naval Air Station Fallon and FISC, Fallon, Nevada.
Insourcing Rationale: Cost savings.

19) **Agency:** Coast Guard
Contract Number: HSCG23-08-D-MMZ339
Scope of Work: Contract supports function of licensing merchant mariners at the Coast Guard's National Maritime Center in West Virginia.
Insourcing Rationale: Cost savings.

20) **Agency:** Air Force
Contract Number: FA8771-04-D-0003 TO QW02
Scope of Work: 30SW GeoBase (IGI&S) Support at Vandenberg AFB, California.
Insourcing Rationale: Cost Savings.

21) **Agency:** Air Force
Contract Number: GS-35F-0425P/GST0509BM0062
Scope of Work: Installation and Expeditionary Geospatial Information & Services Program Sustainment and Support, 6 AFMC Installations.
Insourcing Rationale: Cost Savings.

22) **Agency:** Air Force
Contract Number: GS-35F-0425P / GST0509BM0111
Scope of Work: Program Support for Communications Mission Data Sets with Cyberspace Infrastructure Planning System (CIPS) Visualization Component, Various AMC Installations.
Insourcing Rationale: Cost Savings.

23) **Agency:** SPAWAR System Center Pacific
Contract Number: N66001-10-C-0040
Scope of Work: Provide Travel Service Support for the Command (5.7 FTEs).
Insourcing Rationale: Save money

24) **Agency:** NAVFAC Southwest
Contract Number: N62473-10-C-4007
Scope of Work: Provide GIS and Data Administration Support Work (2 FTEs).
Insourcing Rationale: None

In addition, BCFC has been collecting examples of insourcing in news articles. The following passages will provide excerpts from various media highlighting the negative impacts insourcing is causing in the private sector, including small business.

1) With 450 employees, Jan Smith's defense contracting business is considered small. She started it 16 years ago and built it up through thoughtful recruiting of bright minds, often giving them bonuses for relocating and paying for their moving expenses and for training they needed to do a certain job. "We make these investments knowing it will take five or six years to recoup those expenses," said Smith, president of System Studies & Simulation Inc. A fairly new practice being implemented by the federal government interrupts the recouping process. It's called "insourcing," and it allows the government to convert some contracting jobs because the tasks the employees are performing functions "inherently governmental." But several local defense contracting firms have a problem with the way the government is implementing the process, which was passed in 2008. ... Smith, who has workers at 33 government sites, said she's lost 30 employees to insourcing in the past year, and she knows she's slated to lose more. "That's a pretty drastic number for a small business," she said. "When the government hires them away from us, we lose the position and we lose the employee. (Small defense contracting firms) were notified in Washington this week that the government will insource another 7,000 this year and 11,000 in 2012. We absolutely believe some of these will come from Huntsville." The problem isn't with the concept of insourcing, Smith said. It's the way it's being implemented. She said it feels as if it's being arbitrarily done, in almost a quota-fashion instead of someone taking a close look at the jobs and determining if the work is "inherently governmental." "(Defense Secretary Robert) Gates' memo said it was not a quota, that if the government found there were jobs being handled by contractors that were governmental in nature, then a change would be made," she said. "We were assured it wasn't a matter of numbers but a matter of finding the occurrence and correcting the problem. But they're insourcing all kinds of jobs that don't fit that requirement. And its hurting small business." ... Wallace Kirkpatrick, CEO of Defense Energy Space Environment (DESE) in Huntsville said he's lost 5 percent of his modeling and simulation workforce to insourcing: "There's a total disconnect to the way this is being handled." "I don't know of anyone who disagrees with the premise that the government should be handling inherently governmental functions," Kirkpatrick said. "But they need to do a much better job of defining that and following a plan, not just going about it willy nilly. "I know it's a mandated thing, but slow down. Get it right." (May 4, 2010 - http://blog.al.com/huntsville-times-business/2010/05/huntsville_defense_contractors.html)

2) The mandate has left some local defense contractors, like Alpha Ten Techonologies Inc. President and COO Dave Dickey feeling "squeezed." After working with the Army for five years, Alpha Ten's 10 information technology employees were replaced by 13 government workers. ... Kenneth Slaght, of General Dynamics (NYSE: GD) and president of NDIA, said he worries that government entities are not looking at the long-term costs of insourcing. He said he knows from his former position at SPAWAR that the government does not factor in retirement costs and benefits for new employees when pricing insourced labor. "When you bring government people on they're never going away," he said. With outsourcing, however, during program or budget cuts the government can close

out contracts and not refill the positions. ... Laura Barish, president of Bernardo Technical Services Inc. (BTSI), said she is concerned about how insourcing affects small businesses in particular. According to the Small Business Administration, just over half of people in the United States work for a small business. Additionally, the SBA reports small businesses created 64 percent of net new jobs over the past 15 years. "When you get into insourcing and take away from small business, you're hitting the breadbasket," she said. Currently, major contractors have to fulfill requirements for utilizing different types of small businesses. However, insourcing can limit the potential for new contracts, therefore "debilitating up-and-coming small businesses," Barish said.
(May 18, 2010 - http://www.intellisolinc.com/Download.aspx?id=20)

3) The government refers to the hiring push as "insourcing," but it feels more like "stealing" employees to Dave Everhart, president of Veteran Defense Services Inc. of Bellevue. He said the military is hiring the contractors' employees to do the work they're already doing. In the process, the military cuts out the contractors who paid to recruit and train those people, he said. Everhart said he has had 10 employees snapped up by the military over the past year and expects several more to go this summer. He's not sure exactly how many will go because often he learns which employees are making the move only when they're walking out the door. By then he's left in the lurch, typically losing both the contract and the employee. ... "A year ago, it became a fire sale," Everhart said. Offutt Air Force Base houses the 55th Air Force Wing and the U.S. Strategic Command. The wing has yet to make any hires under the insourcing push, but StratCom has hired 164 people to do work previously slotted for contractors. ... Everhart's offices are housed in a modest red-brick building just off Cornhusker Road. The offices are quiet, the conference room dark, as his employees mostly work in the government facilities at Offutt, alongside their government counterparts. Their work is classified but generally involves tasks such as assessing StratCom mission performance and software engineering. The Greater Omaha Chamber of Commerce named the contractor its 2009 Emerging Business of the Year, and the Bellevue Chamber of Commerce named it 2009 Small Business of the Year for those employing 16 to 50 workers. At its peak the company employed 32 people but is down to 15, partly because of insourcing.
(June 8, 2010 -www.omaha.com/article/20100608/NEWS01/706089949)

4) Aquasis Services Inc. in Pensacola, Fla., is one of those small businesses whose existence is being threatened by insourcing. "I've lost everything," said company President Steve Westerlund. Last year the Department of Defense decided to insource his administrative support contract at Fort Leavenworth, Kan., where his firm's 30 employees ordered, warehoused and distributed instructional materials for the Command and General Staff College. This year the Navy is in the process of taking over his administrative support contract for flight training at Naval Air Station Whiting Field in Milton, Fla., where Aquasis employs 70 people. That will leave his company with no contracts. "There is nothing to bid on," Westerlund said. "The whole landscape of service contract work for the government, doing functions like I've been doing for 27 years, no longer exists."
(June 18, 2010 –
http://baltimore.bizjournals.com/baltimore/stories/2010/06/21/story10.html?b=1277092800^3527641)

5) In addition to paperwork, a constant menace to small business owners trying to operate with the government is the government itself. President Obama sent out a memo 15 months ago directing all federal agency heads to "clarify when governmental outsourcing is or is not appropriate." Since its release, there has been a push to turn over "inherently governmental functions" to federal agencies. ... Senator Robert Menéndez (D-NJ) spoke to the some of the small business people who attended the Minority Roundtable Luncheon during a separate reception held at the Russell Senate Office Building. Asked by Hispanic Link about in-sourcing and how it affects small businesses, he said it seemed "counter-intuitive to the President's goal of creating opportunities in the federal contracting system for diversity." "We already have a much more limited universe than we should, and if that is being pursued, then it is only going to erode what exists, so it doesn't make a lot of sense to me," Menéndez said.
(June 21, 2010 - www.pontealdia.com/columnists/procurement-pinata-out-of-hispanic-reach.html)

6) Now, Native-owned companies are also coping with the effect of government "insourcing," a process by which government agencies stop using private companies to perform "recurring commercial activities" and instead bring the work back in-house to be performed by government employees. Such jobs might include phone banks, mail sorting and data entry, to name a few. In the past, Native-owned and other small businesses were able to land some of those contracts, but they say they are already feeling the pain of the Obama administration's recent

insourcing directive. ... "We are getting crucified out there," said a man from Colorado-based Aleut Management Services. His company had, he explained, just lost $10 million in contract opportunities and jobs to services that had recently been determined to be "inherently government work." Another company complained that the government lured one of its engineers away, and lawyers presenting later in the day told the crowd instances of the government "cherry picking" new employees from private companies did not appear to be isolated. "This is serious," the man from Aleut pleaded. "You are putting small business out of business."
(June 23, 2010 - www.alaskadispatch.com/projects/investigating-8a-contracting/5772-government-shift-to-insourcing-impacting-native-owned-businesses)

7) In the past, government recognized that private companies, especially small businesses, could perform work for the government more efficiently and more economically than could the government worker. Example: My company took over the management of the Air Force bombing range at Avon Park. The government performed the work with 15 people and used seven trucks. My company managed the same work on contract for 6 years with seven people and two trucks, saving the Air Force millions of dollars over the 6-year period. However, after three months in office, President Obama directed that the Department of Defense "insource" as much of the contracted work as possible — a process that will convert about 40,000 private-sector workers to government civil servants. USA Today recently published an article that compared the cost of a government worker to that of a private-sector worker and found that the government worker costs about 35 percent more than the private-sector worker. The government even states in its own publications that it recognizes that a government worker is about 15 percent less productive than a private-sector worker. I can tell you with certainty that this will be expensive — very expensive — for the American taxpayer. Yes, I have a vested interest. But I also pay lots of taxes. This process will undoubtedly put more people on the government payroll, while at the same time put a burden on our economy.
(July 5, 2010 - www.tcpalm.com/news/2010/jul/05/letter-taxpayers-will-soon-be-footing-the-bill/)

8) Huntsville wears "The Rocket City" proudly, but it would be no less accurate to call this place "Federalburg." Redstone Arsenal is rightly praised as a federal campus, not only an Army post. It hosts offices and operations for NASA, the Missile Defense Agency, the FBI, the Justice Department's Bureau of Alcohol, Tobacco and Firearms - a total of more than 60 government agencies and organizations managing a total of over $50 billion in annual budgets. Of the approximately 35,000 who work behind the gates on the arsenal every day, 17,000 are civilian government employees, GS-whatevers on the job for the Department of the Army, NASA and other federal bosses. Arsenal spokeswoman Kim Henry said there are also about 1,900 soldiers. The rest - about 16,000, or 45 percent - are contractors, drawing paychecks from private employers. Off the arsenal, thousands more work for companies on government-funded projects in Cummings and Thornton Research Parks, the Progress Center and in hundreds of anonymous office buildings throughout Madison County. ... Federal agencies outside the intelligence realm are also trying to reduce the use of contractors, and those are the efforts felt most in the Rocket City, where there is more work involving helicopters, missiles, spacecraft and procurement than spies and tracking terrorist movements. To do that, agencies are "in-sourcing" certain jobs and contracts that have been out-sourced to contractors, creating government positions to carry out what federal rules call "inherently government functions." But someone still has to do the work. What worries CEOs and managers is that government agencies will be hiring the same men and women performing that work now away from their companies. It's especially worrisome in Huntsville board rooms, where there are already concerns about having enough of a skilled work force to meet the demands of job growth spurred by the 2005 Base Realignment and Closure decision.
(July 25, 2010 - http://blog.al.com/breaking/2010/07/post_367.html)

9) I wrote a letter recently about a March 4, 2009, memo from President Barack Obama that directed agencies to convert contractor personnel to government civil servant positions, but only after the government did an analysis to determine if the government cost would be less. My company has two contracts that were subject to this in-sourcing. I requested through the Freedom of Information Act that the government furnish me its analysis as it had determined that on both of my contracts that government was cheaper. The government stonewalled my request for months — so much for transparency — until I finally hired an attorney to help. On one response the government outright lied about its analysis, and just this week admitted to using "wrong data," but only after my company filed a lawsuit against the Army, Air Force and Department of Defense. On the second contract, an Air Force colonel who was on the inside with the Air Force government analysis stated to us confidentially that the

Air Force manipulated the GS grade levels in its analysis so that it could come in under the contractor's price. He was embarrassed to tell us that the Air Force had knowingly submitted fraudulent data. Our company was extremely surprised that the government's attorney finally admitted in court documents that it had made its decision to in-source my work, based on "wrong data." It would have been discovered at some point anyway, but finally having filed the lawsuits prompted government officials to admit what we already knew. George Sigler, Vero Beach (August 14, 2010 - http://www.tcpalm.com/news/2010/aug/14/letter-adventures-in-insourcing-losing-out-to/)

10) Central Texas businesses which contract with the Defense Department are beginning to feel the heat from budget cuts. Not only do they have to compete against other companies, but now they're competing against the government itself. Instead of contracting out the jobs, the government has taken it upon themselves to do the work, hiring away local workers and the jobs. Local business owners say they've seen a significant increase in that sort of work. "The government comes along and says, 'No, we're going to insource all of those guys, and you may lose 20, 30, 40 people.' That hurts particularly," said Dean Honchul, VP of Blackhawk Management. Workers themselves get lured to work with the government in sourcing military work because the stability that government jobs can create, not to mention higher pay than some companies can afford. The budget cuts announced by Secretary of Defense Robert Gates last week means even more government insourcing and less contracting for military work, mounting stress on those who are already feeling it. David Mitchell, CEO of McLane Advanced Technologies in Temple, has already gone through three rounds of layoffs within the past year. One of the contributing factors was government insourcing. "There's simply been a reduction in positions, as a result of no funding available to support them," Mitchell said.
(August 16, 2010 - http://www.kxxv.com/Global/story.asp?S=12988750)

11) The Department of Defense's plan to "in-source" flight simulator instructor jobs at Vance Air Force Base and other undergraduate pilot training bases has drawn fire from Enid's state senator. The defense department is in the process of hiring 76 simulator instructors to take jobs now held by employees of Lear Siegler Services Inc., a private contracting company, at Vance. This is the result of Resource Management Decision 802, announced more than a year ago by Defense Secretary Robert Gates. ... State Sen. Patrick Anderson, R-Enid, agrees in-sourcing would end up costing taxpayers millions of dollars. "This is the kind of bureaucratic bungling that has destroyed the public's trust in the federal government," he said. "Despite claims that this plan would save more than $480,000 over five years, it will actually end up costing taxpayers another $27.5 million — and that's based on the Air Force's own numbers." A letter to Air Force Secretary Michael Donley from Lear Siegler Services site manager Jack "Pappy" Beam and Vance Instructor Association President Kenneth Sumpter urges the effort to in-source Vance simulator instructor jobs be halted and the Lear Siegler Services contract be renewed, "and that a fiscal re-analysis be accomplished over the next year to positively ensure that a conversion to federal employees is cost-effective and warranted." Anderson said U.S. Sens. Tom Coburn and Jim Inhofe, as well as U.S. Rep. Frank Lucas, have joined him in speaking out against the plan to make the contract simulator instructor jobs government positions. "The Obama administration has directed that the private sector jobs be in-sourced and the individuals who are performing the jobs will then become government employees," Anderson said. "You will have the same people doing the same work they are doing today — it will just cost the taxpayers a whole lot more." Vance already has seen some in-sourcing, with civilian contract security forces officers being replaced by Department of Defense security officers beginning last September. The Lear Siegler Services representatives' letter to Donley cited a number of negative effects of the conversion from contract simulator instructors to Defense Department civilians, including the fact each current employee stands to take a $7,000 to $25,000 pay cut and the resulting loss of retirement benefits. That, the letter says, will significantly reduce local tax revenues. Because of hiring practices and restrictions, the letter states, some 10 to 15 percent of current employees will not be rehired, resulting in increased costs of training new simulator instructors. "In this period of economic uncertainty," the letter states, "it makes little sense to increase the government's expense and taxpayer liability, while lowering personal incomes, lowering tax revenues for our communities, putting current employees out of work and shouldering the cost of training replacement employees." The in-sourcing plan, Anderson said, "is part of the Obama administration's attempt to create an illusion that their policies have created new jobs. Otherwise it makes absolutely no sense."
(August 19, 2010 - http://enidnews.com/localnews/x1668174880/Sen-Anderson-at-odds-with-proposed-in-sourcing-of-flight-simulator-jobs-at-Vance-AFB)

12) Insourcing is one of the president's priorities, dating from the campaign, when he pledged to cut contracting dollars by 10 percent. Union membership is growing only in the government sector, so expanding government jobs is vital to the president's union base. One of Obama's first actions, in March 2009, was to issue a memorandum to department heads stating that "government outsourcing for services also raises special concerns" and that "contractors may be performing inherently governmental functions." In addition, insourcing can result in lower-quality services. One example is Camp Smith, a National Guard base in Cortlandt, New York, where contracts with local civilian caterers are not being solicited because the provision of meals for the troops is apparently an "inherently governmental function." The New York National Guard is therefore not allowing small businesses to bid on all catering contracts, even though they can offer better meals at a lower price. This means that rather than a lunch cooked on the base by a civilian caterer, troops must eat plastic-wrapped box meals at a higher total cost. Surely the young men and women who are putting their lives at risk deserve hot meals with salad and dessert rather than prepackaged cold rolls and cans of tuna. Government employees excel in some areas, and private sector workers excel in others. It only takes a little common sense to conclude that government employees should focus only on those in areas where they stand out rather than requiring them by law to do everything. With sky-high deficits and high unemployment, let's hope a little common sense will prevail in Congress.
(October 14, 2010 - http://www.sfexaminer.com/node/248722?category=1530)

13) Two years ago, the U.S. Department of Defense began to reduce its dependence on the contractor workforce. It's a shift that hit Connie Sawdey particularly hard. The president of Beavercreek-based Sawdey Solutions Services Inc. — which provides professional services such as support for information technology, acquisition, logistics and program management — saw the government take back several of her company's largest contracts. In a directive commonly referred to as insourcing, the government has been reclaiming work awarded to defense contractors and, in many cases, poaching personnel those companies had invested lots of time and large sums of money to recruit. Insourcing hit especially hard in the Dayton region, which is home to numerous businesses, such as Sawdey Solutions, that serve the Defense Department. During an 18-month stretch, Sawdey Solutions lost about a third of its workforce, 40 percent of its revenue and half its profit margin. "We had to really struggle and claw our way back," Sawdey said. "We were pretty worried." ... During the past two years, Schwegman's company lost 250 workers, or more than 10 percent of its workforce, to insourcing. In a majority of those cases, its government customers took away the work as well as the worker. ... While many companies are reluctant to talk about the effects of outsourcing, two years of the policy has a heavy taken a toll on the regional defense community, said Dennis DeMolet, president and chief executive officer of Kettering-based DeMolet Consulting. Advisory and service companies, commonly known as A&S, were affected most by insourcing. "Government found out that the cost saving, and most of all the experience, was in fact lost by insourcing," DeMolet said. "Positions that are inherently critical in nature were to be the only position targeted by insourcing, and they were not in many cases. Small business therefore was dynamically effected."
(May 29, 2011 - http://www.bizjournals.com/dayton/news/2011/05/27/defense-firms-optimistic-as-insourcing.html?page=all

The American Legion has strongly spoken out on insourcing.

14) The federal government is taking contracting jobs out of the private sector and making them government jobs, and the Legion says that is a problem. The American Legion criticized a recent shift in federal insourcing policy at its small business development conference during the 92nd National Convention in Milwaukee. Joe Sharpe, director of the Legion's Economic Division, said the federal government is taking contracting jobs out of the private sector and making them government jobs, claiming that such a move will save money. "We have yet to see a study that actually proves insourcing will save the federal government a significant amount of money," Sharpe said. "But what we are seeing is an immediate negative impact on the veteran-owned small business community." By law, the federal government is required to provide 3 percent of its contracting dollars to businesses owned by service-disabled veterans. The standard set by the law, which has been on the books for a decade, has never been met. "They're taking away the people with contracting and procurement skills, hiring them as federal employees, and leaving the smaller companies to go bankrupt," he said. "Basically, federal agencies are saying, 'Come work for us. We'll make you a G-11 for doing the same job.'" "When you take 30 or 40 positions away from a small business, you're essentially crippling their ability to succeed in the private sector," said Mark Walker, deputy

director of the Legion's Economic Division. He cited one situation in Arizona where new federal insourcing policy is endangering five small businesses. One of them, Oak Grove Technologies, is owned by Mark Gross, a member of The American Legion Small Business Task Force. According to Sharpe, three of the Arizona small businesses will probably shut down, and two others will be severely affected. "They'll probably close up shop and go somewhere else." Meanwhile, Sharpe says large defense contractors in the area such as Raytheon are hardly affected by insourcing policy because they have far more employees. ... "The American Legion has been on Capitol Hill, trying to save these five particular veteran-owned companies," Walker said. "We want Congress to re-evaluate this particular contract and whether insourcing really needs to be done." If insourcing has to be done, Sharpe said The American Legion wants to make sure it is done equitably and "not on the backs of small businesses". "We're trying to generate interest from local representatives in Arizona to participate in a congressional review of the policy and its effects," Sharpe said.
(September 2, 2010 - http://www.legion.org/careers/90756/veteran-businesses-threatened)

In June 2010, the SBA Office of Advocacy highlighted small business concerns related to insourcing.

15) Small business trade organizations have in general expressed support for the effort of the government to develop policy guidance on when work must be reserved for performance by Federal employees. However, small businesses want to make sure that they will not lose contracts as a direct result of the government revisiting the issue of "inherently governmental" and insourcing. The Office of Advocacy has received several calls from small businesses who have expressed a concern that as the government attempts to develop a more coherent policy on the definition of what is inherently governmental, the application of this policy by Federal agencies may make their contracts more vulnerable to cancellation unless there is a uniform and clear process of applying the policy guidance. To support this concern, these owners have discussed an Air Force insourcing policy statement that set a percent goal of bringing contract work back for Federal employees. ... Many small federal contractors have developed a single business model based on the business needs of the Federal government. ... Small businesses represent 99.7 percent of all employer firms, and they generate 60 to 80 percent of net new jobs annually. ... It would be unfortunate if small business contracts are cancelled, even though the government's findings indicate that they are being performed at fair and competitive prices, and the government has to hire the small businesses' employees to continue the work.
(June 1, 2010 – http://archive.sba.gov/advo/laws/comments/ofpp10_0601.html)

It is also important to note legal challenges to insourcing. In February 2010, an Air Force contract was insourced for audio-visual services, a commercial activity. The small business affected sued and won the contract back as the Air Force failed to document alleged cost savings associated with the insourcing.
(February 2010 - http://www.tglf.com/documents/2010223pressrelease.pdf)

An additional perspective on insourcing contracts and commercial activities out of the private sector is the revenue loss to state and local governments. With these budgets struggling and often in the red, this pinch on local economies also strains local and state government budgets, and in some cases may lead to an increase in taxes (including those imposed on small businesses to make up for shortfalls caused by insourcing work out of the private sector and into the performance by government employees) in order to balance these struggling budgets.

Finally, it should be noted that implementing Office of Management and Budget Circular A-76, and the process known as competitive sourcing, is extraordinarily beneficial to small business. While imperfect, A-76 is the current federal government "Yellow Pages test". It provides for public-private cost comparisons on commercial activities (the aforementioned 850,000 positions) to determine whether government employees or the private sector can provide the best value to the taxpayer. According to a research report published by the SBA Office of Advocacy, between fiscal year 2001 and 2006, small business won 71 percent of the competed contracts (Impact of A-76 Competitive Sourcing on Small Government Vendors, 2007). **When Congress or the Executive Branch prohibits, impedes, interferes, obstructs, encumbers, or delays OMB Circular A-76 or competitive sourcing studies, or when it implements insourcing – the cancelation of contracts to the private sector and the conversion of work to performance by federal employees – it is killing small business jobs.**

BCFC believes the free enterprise system is the most productive and efficient provider of goods and services and strongly supports the federal government utilizing the private sector for commercially available products and services to the maximum extent possible. **Your action and leadership enacting FFGCA, legislation placing a moratorium on insourcing, eliminating legislative restrictions on OMB Circular A-76, and other such legislation removing unfair government competition with the private sector, including small business, will help support that goal.**

Please let me know how BCFC and the private sector may help with achieving this legislative remedy to this national problem.

Sincerely,

John M. Palatiello, President

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STATEMENT OF

STEVE LYNCH

PRESIDENT, PAR GOVERNMENT

BEFORE THE SUBCOMMITTEE ON IN-SOURCING

SMALL BUSINESS COMMITTEE

U.S. HOUSE OF REPRESENTATIVES

"SATCOM AND TELEPORT COMMUNICATIONS
IN-SOURCING EXPERIENCE AT CAMP ROBERTS, CALIFORNIA"

JUNE 23, 2011

421 Ridge Street, Rome, New York 13440 P: 315-356-0491 www.pargovernment.com

Introduction

My name is Steve Lynch, and I am the President of PAR Government Systems Corporation and Rome Research Corporation, collectively referred to as PAR Government. As a primarily government contractor, our 600 plus employees provide various services to the Government, and a majority of these employees support the Department of Defense's global communications infrastructure. We have been providing these services for over 30 years and have recent experience with the DoD's in-sourcing initiative. In sharing this experience, I will demonstrate the need for greater analytical rigor, transparency and oversight in this process.

SATCOM and Teleport Communications

The DoD's SATCOM and Teleport facilities serve as critical communication nodes for our Armed Forces. The Department of Defense Teleport Site is a telecommunications collection and distribution point which provides deployed warfighters with multiband, multimedia, and worldwide satellite reach-back capabilities to the Defense Information System Network. Teleport is an extension of the Standardized Tactical Entry Point (STEP) program, which provides reach-back capabilities for deployed warfighters via the Defense Satellite Communications System (DSCS) X-band satellites, and the Teleport Program added commercial satellite access capabilities to these DOD STEP Sites. These Teleport facilities have been operated and maintained by both the military and civilian contractors since their inception in 2003. As a matter of fact, the first commissioned DoD Teleport/STEP Site in the world was solely operated and maintained by civilian contractors at commissioning and is still completely contractor operated to this date.

Camp Roberts Global Information Grid (GIG) Defense Information System Network

We are in the fourth year of our current five year contract to provide Operation and Maintenance support for the GIG DISN Teleport at Camp Roberts, California. We were awarded the original contract in 2003 to operate and maintain newly installed commercial satellite terminals. These terminals require an FCC license and are operated by contractors at DoD SATCOM sites around world. After employees heard rumors of in-sourcing and several communications with the command and the contracting office, we were informed on May 10, 2011 that the Army planned to train soldiers to assume these services and that they would not exercise the remaining option year scheduled to start on October 1, 2011. With less than five months notice we have to make plans to train soldiers on the equipment and prepare our employees for other assignments or, regrettably, termination while continuing to provide services and support the mission. Furthermore, in response to our FOIA request, the Army stated Force Design Update (FDU) 05-01 was approved September 23, 2006 providing an increase in military authorizations to operate and maintain the Camp Roberts teleport site. Reportedly, the Army had been planning this transition for five years, yet they only provided us, a long standing and excellent performing contractor, five months.

DoD's In-Sourcing Guidance

In his May 28, 2009 memorandum "In-sourcing Contracted Services – Implementation Guidance", the Deputy Secretary of Defense defined in-sourcing as "the conversion of <u>any</u> currently contracted service/function to DoD civilian or military[1] performance, or combination thereof." The footnote further clarified that contracted services "can only be converted to military performance in very limited circumstances – i.e., when the work is determined to be military essential or justified as legitimate military exemption consistent with DoD Instruction 1100.22." In the same memorandum, and in accordance with 10 USC §2463, he outlined that consideration be given to functions that are inherently

governmental, are exempted from private sector performance, provide unauthorized personal services, have contract administration problems, or can be performed more cost effectively by DoD civilian personnel. Lastly, the Secretary of the Army issued a Memorandum, "Reservation of In-Sourcing Approval Authority", on February 1, 2011 reserving the "authority to approve any in-sourcing proposal" to include any previously approved in-sourcing action where at least one civilian authorization remains unencumbered as of the date of the directive.

Transparency and Accountability in In-Sourcing

To my knowledge, the in-sourcing activity at Camp Roberts does not meet any of the criteria or follow the guidance as stated above. As previously stated, it is commercial equipment operated by contractors around the world. In response to our FOIA request, the Army made no mention as to the justification (only that the FDU authorized personnel) and stated that they (NETCOM/9th SC) did not seek approval from the Secretary of the Army because it was "not a pending proposal as required by the memo." The response also stated that the Camp Roberts contract was "mistakenly identified" for FY11 in-sourcing and authorized Department of Army Civilians (DACs) – none of which were hired and the command is currently "in the process" of turning them in since military personnel will perform the mission. According the Secretary of the Army's memo, since there are unencumbered civilian authorizations, regardless if the command claims they will decline the authorizations, this action is subject to the Secretary of the Army's approval. Furthermore, it is unclear if in fact the command intends to return the DAC authorizations. A recent search on USA Jobs revealed an advertisement for DAC Telecommunications Specialist positions at Camp Roberts. The DoD and the Army have provided clear guidance regarding the implementation of in-sourcing initiatives, yet there is no consistency in execution.

We have worked closely with the military at Camp Roberts and operated and maintained this equipment since it was put into operation over eight years ago and won numerous awards for performance. Yet we have been denied any visibility, awareness or input regarding this in-sourcing initiative. If we, being so close to the issue, are unable to understand the reasoning and justification for it, I struggle to see how the Army can explain it to the American taxpayer. Is this the best use of our military resources? Why should taxpayers pay more for these services? Thus far, this in-sourcing activity has lacked transparency and accountability.

One of Many

Camp Roberts is just one of many communications facilities around the world that make up the DoD's Global Information Grid. To my knowledge, only one other facility has been identified for in-sourcing. As services at that facility are transitioning to DoD civilians, service for its identical sister facility in Hawaii are up for competitive contractor bids. Is there logic in choosing one facility over another, or is it a matter of meeting in-sourcing quotas?

In its FOIA response, the Army indicated the FDU provided authorizations for multiple teleport sites. Other Army teleport sites include Landstuhl, Germany and Fort Buckner, Okinawa. Contractors operate the facilities at both of these locations. The increase in military presence is contrary to efforts to reduce the DoD's footprint in these countries. Furthermore, has the Army considered the total cost of in-sourcing these services? The issue is larger than Camp Roberts alone, and costs significantly increase when considering infrastructure requirements to support an overseas military presence. Again, why should taxpayers pay more for these services?

Conclusion

Despite superb contract performance and an excellent working relationship with the customer, we find ourselves in the dark and our employees in turmoil as a result of the Army's in-sourcing initiative. Time will tell if the Army completed sufficient rigor and analysis to justify in-sourcing SATCOM and Teleport communications functions. Nonetheless, with greater transparency and accountability we could have better prepared the organization and our employees for the transition.

That concludes my statement.