CONTRACTING OUT: SUMMARY AND OVERVIEW

HEARING

BEFORE THE

SUBCOMMITTEE ON
CIVIL SERVICE

OF THE

COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

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CONTRACTING OUT: SUMMARY AND OVERVIEW

WEDNESDAY, MARCH 29, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL SERVICE,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:15 a.m. in room 311, Cannon House Office Building, the Honorable John Mica (chairman of the subcommittee) presiding.

Present: Representatives Bass, Gilman, Mascara, Mica, Moran, and Morella.

Staff present: George Nesterczuk, staff director; Daniel Moll, senior policy director; Garry Ewing, counsel; Susan Mosychuk and Ned Lynch, professional staff members; Caroline Fiel, clerk; and Dave McMillen, National Economic Growth, Natural Resources, and Regulatory Affairs.

Mr. MICA. Good morning. I call to order the meeting of the Subcommittee on Civil Service. Thank you for your patience. We had a Republican conference in conflict with our scheduled starting time, and appreciate your patience this morning. I want to take this opportunity to welcome you and our witnesses to our hearing. This is an important hearing because we're going to begin a review of the subject of contracting out.

The hearings today and next week are for the purpose of determining what the Federal Government has done right and what we've done wrong in the area of contracting out. It's my hope that we can extract from these hearings, and from our experience today, the correct formula and proper course to utilize the benefits of contracting out. It is critical today that we achieve more cost effective and efficient services for our taxpayer dollars.

With proper guidelines and focus, I believe that within the next 4 years it should and could be possible to contract out more than 50 percent of the services and activities of the Federal Government as we know it today. In November 1987, President Reagan issued Executive Order 12615, directing executive branch agencies to conduct cost comparison studies and inventory commercial functions being performed by Federal employees.

At that time, OMB identified more than 900,000 positions that could be compared to private sector performance. I believe that Executive order is still in effect, but has long been ignored. For the past 10 years, corporate America has experienced substantial downsizing and created more effective and efficient organizations in the process.

Now it is time for the Federal Government to catch up with its private sector counterparts. Competition has proved to be the catalyst for genuine improvements. We need that competitive spirit to bring genuine reform to our Federal Government operations. State and local governments routinely contract for a wide variety of public services. In fact, in my State right now, in Florida, they're looking at contracting out the entire responsibility of the Department of Commerce.

In Baltimore, there's an interesting experiment with the schools. Some of the five worst school operations in the city of Baltimore have been contracted out to the private sector, utilizing the former union employees. And, from what I understand, there's a great record of success and improvement in the operations of the schools. On the positive side, it appears that over the short term, and from what I can determine from the material presented to me, we've saved about $1 billion at the Federal level by contracting some of the government functions over the past 15 years.

It's really hard to get a handle on these figures, and we'll get into that with our witnesses. On the negative side, it appears that the agencies have resisted contracting out, ignored cost comparison reviews, and undermined real opportunities for change. Why should more than 15 Federal agencies be in the business of developing and marketing maps in competition with private firms that could provide the same function?

Why should many Federal law enforcement agencies, the Customs Service, Border Patrol, the Secret Service, and the Federal Bureau of Investigation operate vehicle repair facilities when contracting out for at least some of those services would allow them to dedicate their employees to their primary responsibility—law enforcement—rather than providing commercially available support services.

I believe it's time that employee groups, unions and private businesses should be eligible to hold franchises for services, and that taxpayers should gain the benefits of improved operations. Just as we've seen with some of the employee groups in the private sector, whether taking over an airline or a car rental business, maybe it's time for some of the employees to look at taking over the responsibilities of conducting these responsibilities in the private sector as private citizens.

If common sense does not move us quickly in the direction of increased contracting for commercial services, certainly budget constraints will. As we move toward reality and necessity in contracting for additional Federal functions and services, it is essential that protections be established and maintained for Federal employees. We must take, in my opinion, several precautions.

First, we must make certain that contracting out is cost-effective for the taxpayers. The record to date seems to reflect much more bureaucratic foot-dragging than actual cost comparison. And the public interest is never served by these contrived delays. Second, we must ensure that inherently governmental functions remain within the government. But as both the Office of Management and Budget and the General Accounting Office will testify, that list of inherently governmental functions is not extensive.

Every function that is not inherently governmental should be considered for open competition. Since 1955, Presidents of both parties have stressed the importance of relying upon the private sector for commercial goods and services. However, numerous barriers have been erected to efficient and effective management, including enactment of laws by previous Congresses that actually prohibit Federal agencies from even studying contracting opportunities.

These hearings will provide an opportunity to examine the record of congressional interference with contracting, and help us to develop measures to bring these laws into the 21st century. Third, we must ensure the fair treatment of employees in a transition period following any contracting of activities currently being performed by government personnel. And as I said in my statement, they should also be given the opportunity to participate in this competitive process.

The evidence that will be presented by today's witnesses is not encouraging to taxpayers concerned about efficiency or effective government operations. We will hear of Federal agencies taking as long as 6 years to conduct cost comparisons. We'll hear that Federal agencies lack the management analysis and expertise necessary to conduct proper cost comparisons.

We will also hear that Congress must bear a portion of the responsibility for this less-than-effective record. I'm also deeply concerned about what we will not hear today. Because OMB Circular A–76 mandates that Federal employees have "the right of first refusal" to work for contractors if commercial firms win in competition, OPM has been assigned responsibility to facilitate opportunities for Federal employees to gain other Federal positions.

GAO has addressed some of these concerns. We invited the Office of Personnel Management to report its efforts to protect Federal employees, but other activities have precluded the Director, Mr. King, from being with us today. I look forward to OPM addressing these concerns. The General Accounting Office is here today because it has long monitored contracting activities of government agencies and can provide some of the historical and institutional perspective necessary to understand these issues fully.

GAO has reported on these topics frequently, and I look forward to maintaining this good working relationship. And again, we welcome Mr. Nye Stevens, to present GAO's testimony today. We also have with us, from the Office of Management and Budget, or its predecessor agencies which have managed the executive branch's contracting policy since 1955, Mr. John Koskinen.

With the current emphasis on streamlining government operations, I look forward to the testimony from the Deputy Director, who will describe the role that contracting plays in the administration's plan to improve the efficiency and effectiveness of government operations. That concludes my opening remarks, and I will yield now to the ranking member, Mr. Moran.

[The prepared statement of the Honorable John Mica follows:]

PREPARED STATEMENT OF HON. JOHN L. MICA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Good morning. I want to thank our witnesses today as we begin a review of the subject of contracting out. The hearings today and next week are for the purpose of determining what the Federal Government has done right and what we have

done wrong in the area of contracting out. It is my hope that we can extract from these hearings and from our experience to date a correct formula and proper course to utilize the benefits of contracting out. It is critical today that we achieve more cost effective and efficient services for taxpayer dollars.

With proper guidelines and focus, I believe that in the next four years it should be possible to contract out more than fifty percent of the services and activities of the federal government. In November, 1987, President Reagan issued Executive Order 12615 directing executive branch agencies to conduct cost comparison studies and inventory commercial functions being performed by Federal employees. At the time, OMB identified more than 900,000 positions that could be compared to private sector performance. I believe that executive order is still in effect, but has long been ignored.

For the past ten years, corporate America has experienced substantial downsizing and created more effective and efficient organizations in the process. Now it is time for the Federal Government to catch up with its private sector counterparts. Competition has proven to be the catalyst for genuine improvements. We need that competitive spirit to bring genuine reform to government operations.

State and local governments routinely contract for a wide variety of public services. On the positive side, we appear to have saved about a billion dollars at the Federal level by contracting some government functions over the past fifteen years. On the negative side, it appears that the agencies have resisted contracting out, ignored cost comparison reviews, and undermined real opportunities for change.

Why should more than fifteen Federal agencies be in the business of developing and marketing maps—in competition with private firms that could provide the same function? Why should many Federal law enforcement agencies—the Customs Service, the Border Patrol, the Secret Service, the Federal Bureau of Investigation—operate vehicle repair facilities when, by contracting for those services, they could dedicate more employees to their primary law enforcement mission, rather than providing commercially-available support services?

I believe that it's time that employee groups, unions, and private businesses should be eligible to hold franchises for services and that taxpayers should gain the benefits of improved operations.

If common sense does not move us quickly in the direction of greater contracting for commercial services, certainly budget constraints will. As we move toward reality and necessity in contracting for additional Federal functions and services, it is essential that protections be established and maintained for Federal employees.

As we move by necessity toward more contracting out, we must take several precautions.

First, we must make certain that contracting out is cost effective for the taxpayers. The record to date seems to reflect much more bureaucratic foot dragging than actual cost comparison, and the public interest is never served by these contrived delays.

Second, we must ensure that inherently governmental functions remain within the government. But as both the Office of Management and Budget and the General Accounting Office will testify, that list of inherently governmental functions is not extensive. Every function that is not "inherently governmental" should be considered for open competition.

Since 1955, Presidents of both parties have stressed the importance of relying upon the private sector for commercial goods and services. However, numerous barriers have been erected to efficient and effective management, including the enactment of laws by previous Congresses that prohibit Federal agencies from even studying contracting opportunities. These hearings will provide an opportunity to examine the record of congressional interference with contracting, and help us develop measures to bring these laws into the twenty first century.

Third, we must insure the fair treatment of employees in the transition period following any contracting of activities currently being performed by government personnel.

The evidence that will be presented by today's witnesses is not encouraging to taxpayers concerned about efficiency or effective government operations. We will hear of Federal agencies taking as long as six years to conduct cost comparisons. We will hear that Federal agencies lack the management analyst expertise necessary to conduct proper cost comparisons. We will also hear that Congress must bear a portion of the responsibility for this less than effective record.

I am also deeply concerned about what we will not hear today. Because OMB Circular A-76 mandates that Federal employees have "right of first refusal" to work for contractors if commercial firms win competitions, OPM has been assigned responsibilities to facilitate opportunities for Federal employees to gain other Federal positions. GAO has addressed some of these concerns. We invited the Office of Per-

sonnel Management to report on its efforts to protect Federal employees, but other activities precluded Mr. King from being here today. We look forward to OPM addressing these concerns.

The General Accounting Office is here today because it has long monitored contracting activities of government agencies and can provide some of the historical and institutional perspective necessary to understand these issues fully. GAO has reported on these topics frequently, and I look forward to maintaining this good working relationship. I welcome Mr. Nye Stevens to present GAO's testimony today.

The Office of Management and Budget—or its predecessor agencies—have managed the executive branch's contracting policies since 1955. With the current emphasis on streamlining government operations, I look forward to testimony from Deputy Director John Koskinen describing the role that contracting plays in the administration's plans to improve the efficiency and effectiveness of government operations.

Mr. MORAN. Thank you, Mr. Chairman. I'm glad we're having these hearings. They're terribly important. I have been somewhat critical of the reinventing government effort because I felt that the goals were arbitrary and were driven more by budget considerations than good, thoughtful, programmatical considerations.

Clearly, we can reduce the size of the Federal work force, but I think we ought to be doing it through a careful analysis of what activities can be responsibly devolved down to States and localities, and thereby save money and perhaps see programs run even more effectively, as well as efficiently.

But we have seen that while it is relatively easy to downsize the Federal work force, it is much more difficult to downsize Federal responsibilities. And the reality is that very few Federal activities have actually been eliminated. And so what we have is Federal workers being responsible for more and more functions with fewer and fewer resources. That's true both of managers as well as their staff.

So it concerns me, the direction in which we are going, and I think that the legislative branch is the primary culprit in this lack of forward planning. But all of this is very intricately tied into the role that contracting out plays at the Federal level with the executive branch, because to the extent that we downsize the Federal work force and don't concomitantly reduce the responsibilities that the Federal Government has to carry out, then it increasingly is going to fall upon Federal contractors.

And so I'm not on either side in terms of Federal contracting versus Federal employees and vice versa, because I think both have an important role to play. There are a lot of Federal contract employees as well as Federal workers in my district. And I think that is the case in many districts. What we need to do is to make clear what are the appropriate roles for contract personnel vis-a-vis direct Federal employees?

What do we give up in terms of latitude, flexibility and, more importantly, control, when we contract out? And in what kind of experience and skills do we need to maintain? One of the reasons why we have maintained the size of the Federal work force we have now is because it was necessary to keep people with the kind of institutional knowledge, as well as skills and education, within the Federal work force to be immediately available when their skills were called for.

We aren't going to have that anymore. The people with a lot of the institutional knowledge that we desperately need are going to be in the private sector. I think it's important that we be able to

contract with them on an as-needed basis, and that, to some extent, we have a national need to maintain a skilled private sector that is able to contract with the Federal Government if we are going to continue in this mode of radical downsizing of the Federal work force.

So I'm anxious to see what we come up with in terms of inefficiencies and fallibility of the Federal contracting companies and personnel. But I'm far more interested in some long-term planning as to the respective roles of each. I don't know if Mrs. Morella shares my concern, but I think even more than trying to maintain Federal employees who have devoted their careers to serving the Federal Government, is the need to maintain those individuals in a manner that is accessible to the Federal Government, even if they are in the private sector.

And I would hope that that long-term view is taken by this committee. I have a suspicion that if we go too far too fast with the downsize in the Federal work force, the pendulum is going to swing back again. And there is going to be a public outcry for adequate personnel to deliver the kinds of functions that the American people have come to rely upon. For example, processing Social Security checks; making sure that there is integrity within the system; rapid review of IRS returns; programmatic expertise in the areas of education and health.

At the very least, the Federal Government is always going to be filling gaps and trying to build capacity within the American economy, the American society. And those personnel need to be available to the Federal Government. And I hope that we can find a way to develop a mutually constructive interdependent work force that is going to meet the public's demand not just for the short term, but for the long term as well.

So I thank you, Mr. Chairman, for starting these hearings. I really see them as being in the context of a much broader public policy. And I hope we get at that—the structure of that public policy.

[The prepared statement of the Honorable Jim Moran follows:]

PREPARED STATEMENT OF HON. JAMES P. MORAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Chairman:

I appreciate you for having this hearing today. My district, as you can imagine, includes a large number of federal employees and a large number of contractors. I am sensitive to the needs of both and to the role that both play in ensuring that our government works effectively and efficiently.

As you know, I have been extremely critical of past efforts to set arbitrary federal workforce reduction goals. The Congress has shown itself to be very effective in cutting the federal workforce, but very poor in actually reducing federal programs. We have created a situation where, in the future, we are going to have fewer and fewer employees doing more and more work. The government will be forced to increasingly rely on contractors to ensure that the work gets done.

As I said before, I am extremely supportive of federal contractors. They can be more flexible than the federal workforce and can help reduce costs in some areas. I do not, however, think that we should begin a wholesale conversion from federal employees to federal contractors, particularly if we have no idea of the long term impact this will have on the costs of government and the efficiency of government programs. Contractors do perform a vital public service, as do federal employees. We must ensure that a delicate, but critical balance remains between the need for a strong federal workforce and the flexibility that contractors can offer. As we know,

contractors are not infallible. There have been examples of contractors abusing their role and wasting taxpayer money.

In the end, it comes down to effective planning and effective oversight. We must not rely on outdated Executive Orders or arbitrary privatization goals. We must ensure that the federal agencies themselves develop plans on what functions can best be privatized. More importantly, we must ensure that federal agencies also maintain the ability to properly and effectively review federal contracts.

I hope this is an issue that the Subcommittee will pursue judiciously and carefully. We have a responsibility to ensure that the programs and initiatives coming out of this Subcommittee protect the federal taxpayer and improve the federal workforce. This takes time.

Mr. MICA. I thank the gentleman from Virginia, and now yield to the gentlelady from Maryland, Mrs. Morella.

Ms. MORELLA. Thank you. Thank you, Mr. Chairman. I certainly want to add my thanks to you for holding this important meeting, the first of two on this subject. You and I have discussed the fact that I have long been interested in comparing the cost of using outside contractors versus Federal employees to perform services for the agencies of the Federal Government.

And as you know, the General Accounting Office in 1994 issued a report at the request of the Senate Committee on Governmental Affairs, regarding the cost-effectiveness of using contractors over Federal employees. GAO had reviewed nine studies, all of which seemed to indicate that, "savings may be available in certain situations if services were performed by Federal employees, rather than by contractors."

In one of the nine studies, the quality and timeliness of the services provided by the contractor was evaluated. And in terms of quality, the work done by the contractor was acceptable and satisfactory. However, Federal employees working in-house were able to complete the required services faster than the contractor. The GAO report also states, in all candor, that the studies had some limitations.

However, with the downsizing of Federal agencies and the Federal work force, I believe there's a need to make further comparisons between the public and private sectors in doing the government's work cost-effectively and efficiently; and we have that in common. We are facing a cut in the Federal work force of 272,900 jobs. And as the GAO report points out, agencies may find themselves in a position where they must look to the private sector for the services regardless of the cost.

Shouldn't the cost, quality of service and the timely delivery of those services guide the decision to choose an outside contractor? I think we agree on that. Is it wise to force the use of outside contractors when it clearly would be less expensive to perform the service in-house? Should each agency be required to conduct a cost comparison between work performed by an outside contractor and by an in-house resource or resources? And I think you agree with that, that that needs to be done.

So I really look forward to exploring some of these issues with the expert witnesses on our panel today, and then following through in our second panel. You know, the mantra of reinvent government seems to be, smarter, cheaper and faster. And we may find that in-house will serve those three points. I thank you, Mr. Chairman.

Mr. MICA. I thank the gentlelady for her comments, and now yield to the gentleman from Pennsylvania, Mr. Mascara.

Mr. MASCARA. Thank you, Mr. Chairman, and thank you for the opportunity to make a statement this morning. I must say, from the onset, that I get a little nervous when people start talking about massive contracting out of needed Federal services, largely as a means of saving money. I think if you look more closely, it translates into a back door effort to cut Federal jobs and to privatize government.

Several weeks ago, I had the honor of sitting in for Congresswoman Carolyn Maloney at a hearing about privatizing Federal Government functions. Earlier in the session, the full committee, if I recall correctly, held a hearing on procurement reform. What I took away from these hearings is a simple message: Beware, what looks cheaper on the surface may end up costing more.

Moreover, the service you get, in the end may prove to be shoddy. Now, this does not mean that I am totally against contracting for goods and services. When I served as a county commissioner in Washington County, PA, State law required the county to get competitive bids for a great many purchases and other specified services in a dollar amount that exceeded the State requirements.

By and large, the system worked well and the county generally got its money worth. But the trick was, we had a strict system in place, and it was constantly and closely monitored. My impression, from reading over the testimony given at the contracting out hearings last fall, and from what I have heard during the hearings I mentioned, is this is far from the case as it relates to the Federal Government.

All this is beginning to make me wonder if anybody, if any Federal agency can hand me a computer printout showing all the contracting out and procurement that is being done in that particular agency.

Next, I'm beginning to think it would be a miracle if someone in that agency could explain to me exactly why. It is obvious to me, as a relative newcomer, that this whole issue of contracting out is in serious need of a thorough examination and review.

I hope that the subcommittee will take the time to do this without quickly rushing ahead with legislation that could end up pushing agencies into a contracting out frenzy that only ends up costing the government more, not less. I look forward to today's testimony, and hope it will shed some light on this very important matter. Thank you very much, Mr. Chairman.

Mr. MICA. I thank the gentleman, and now yield to the gentleman from New York, Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman. And I want to thank you for calling this hearing to discuss possible savings benefits that government agencies could achieve by contracting out Federal work to the private sector. And of course, if cost comparison research is able to show that certain services can be provided by the private sector at a lesser cost to the Federal Government, it's only reasonable that the purchasing agency should save taxpayer dollars.

That tool could be especially useful in agency efforts to comply with Federal Work Force Reduction Act of 1994. However, it is essential that we point out that we must make certain that the dedi-

cated Federal employees who are adversely affected by agency contracting decisions are assisted in finding continued employment.

I understand the OPM representatives were unable to attend today, and I think it's extremely important that we examine the Office of Personnel Management's progress in future plans in that regard. And we must also make certain that in contracting out, we're going to do stringent oversight to make certain that any proposal for contracting out will be cost effective and will reduce costs.

In the past we've had experience where there was contracting out and subsequent cost comparisons showed that these actions did not result in any savings to the Federal Government. I want to welcome our distinguished witnesses today—John Koskinen, Deputy Director for Management for the Office of Management and Budget, and Mr. Nye Stevens, Director of Planning and Reporting, from General Accounting Office—to our subcommittee.

And I hope that their testimony will enable us to evaluate the effect that contracting out work previously accomplished by Federal agencies, what effect that would have on the Federal work force and, in turn, the Federal budget deficit. Thank you, Mr. Chairman.

Mr. MICA. I thank the gentleman, and now I would like to swear in our witnesses, Mr. Stevens and Mr. Koskinen, as is customary with our panel.

[Witnesses sworn.]

Mr. MICA. Again, I welcome each of you and would like to call on Mr. Stevens first. Mr. Stevens is the Director of Planning and Reporting, the General Government Division of the GAO. Welcome and we look forward to your testimony.

STATEMENT OF L. NYE STEVENS, DIRECTOR OF PLANNING AND REPORTING, GENERAL GOVERNMENT DIVISION, GENERAL ACCOUNTING OFFICE; AND JOHN KOSKINEN, DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET

Mr. STEVENS. Thank you, Mr. Chairman and other members of the subcommittee. As you mentioned in your own statement, Mr. Chairman, we've done a great deal of work in this area over the years, and I've listed a number of the reports we've issued since 1980 in the attachment to my statement. Now, I used those to prepare the written statement itself, and with your permission, what I'd like to do is just submit that for the record and hit three or four high points in 5 minutes or less.

Mr. MICA. Without objection, and we look forward to your summary.

Mr. STEVENS. The first point that I'd like to mention in summary is that the contracting out program has always been a controversial one with the U.S. Congress. Many of the requests that we've gotten over the years have been from Members of Congress whose constituents have objected, either prospectively or at the fact, to the prospect of their functions being contracted out.

There have been dozens of restrictions passed on A–76 studies themselves, both in authorizing and in appropriations language passed by Congress. Some of these are still in effect. We don't really have a current inventory of those at the moment, because they do come and go. Some of them expire, and some of them are writ-

ten in such arcane language specific to particular programs that it's difficult to identify that their effect is on contracting out studies.

The second point I'd like to make is that Federal workers perceive that the A–76 program really is a contracting out program, rather than having a broader purpose of improving efficiency and economy within government. Although there are some protections in the circular, we've found the A–76 program, on balance over the years, has had an adverse effect on employee morale and productivity.

The study process itself is disruptive in that employee anxiety, understandably, begins as soon as an A–76 study is announced. Some affected employees begin right away to look for other jobs. There's a reduction in individual and organizational productivity. And it frequently results in the loss of some of the best employees. The cost studies themselves are, in practice, mostly done by operational managers and operational workers rather than by trained management engineers or management analysts.

They're required by the circular to develop detailed work statements and analyses. These are tasks that they are often not very skilled in; they may never do again; and they're often given as extra duties. The absence of good workload data, and particularly good cost accounting systems, makes the task they face all the more difficult. The time that it takes to do A–76 studies has been a major problem in the past, and contributed to the disruption.

When we checked DOD—the Defense Department has done most of the contracting out so far—when we checked their data base in 1989, we found 940 active A–76 studies going on. Of those, about 44 percent, or 411, had been started in 1983 or earlier. So they had been going on for 6 years at least. We haven't done any recent work on the question of what happens to displaced workers under the A–76 program. However, in a 1985 report on the program's impact on the Defense Department employees, we found that the majority of Federal workers whose jobs had been contracted out did obtain other Federal employment, most often at the very same installation that they had been at. Only 7 percent wound up working for the contractor, in spite of the right of first refusal that's in the circular.

Of that small minority who did, more than half said that they had received lower wages from the contractor, and most reported that the contractor benefits, particularly retirement, were not as good as their government benefits. So there's a built-in reluctance to take the contract route in those days. Now, the current governmentwide downsizing effort, we think, will not even provide the same opportunities that we've seen in the past.

Under OPM's Interagency Placement Program, in the 9 months before last September, from an inventory of over 2,000 registrants, we found that agencies made just 204 job offers. And I'm sure not all of those wound up being accepted.

The third point is that we have consistently found that evaluating the overall effectiveness of contracting out decisions and verifying the estimated savings reported by agencies, and by OMB in the aggregate, is extremely difficult to do after the fact. As a result, we can't convincingly prove, nor can we disprove, that the results of

Federal agencies' contracting out decisions have been beneficial and cost-effective in the aggregate. This has, of course, contributed to the congressional skepticism about the program. But remember that the way our requests come in, we have not looked at a representative sample of studies. We're rarely asked, for example, to look at the 50 percent of A–76 studies in which the government workers prevail in a cost competition.

There's really not the same level of controversy there. We also rarely get anything as clean, from an auditor's perspective, to look at, as in the postage stamp printing example that's in my prepared statement. In an attempt to address some of the broader performance questions, we have gone into the General Services Administration, which is one of the four major contracting out agencies.

They had a work force of some 40,000 early in the Reagan administration. I read in Mr. Johnson's statement a few days ago that they're down to 16,000 today. So there's been a great deal of contracting out at that agency. However, despite our intensive look at the records that they're keeping on the results of this program, we still have not been able to provide a clear assessment of whether GSA has indeed realized savings from the program and the benefits that it expected.

The major problem is that the lack of a common baseline has prevented us from comparing what the contract costs are currently with what they would have been if the other option had been chosen. But even if such baseline data were available, we found that the post-decision comparisons would be extremely difficult because most activities just simply change over time. They don't remain static.

It's also a fact that we have confirmed many times, in our broader contracting work, that poor contract administration, including poorly worded performance work statements which inexactly prescribe what is expected of contractors, have contributed to contract revisions and cost escalations that very quickly outdated comparisons with precontract performance of the functions.

In summary, Mr. Chairman, we have long held that the concept of encouraging competition in the provision of Federal services is a sensible management objective, and that with its strong endorsement by the National Performance Review, it now has the unequivocal support of both political parties. NPR has unequivocally advocated exposing agency operations to competition, both with other Federal agencies and with the private companies.

But it has also advocated providing agencies with the flexibility to obtain services from the best possible source, whatever their analysis indicates that is. As long as agencies and managers are held to close account on the numbers of people that they employ, this flexibility, I believe, is likely to be more rhetorical than real.

The NPR also recognized this lack of flexibility and recommended eliminating personnel ceilings and allowing Federal managers to manage to their budgets, using ceilings on operational costs rather than numbers of people to control spending. And we, too, believe that is more sensible than arbitrary personnel ceilings that do limit that flexibility. I'll conclude my statement there, Mr. Chairman, and respond to any questions after Mr. Koskinen has spoken.

[The prepared statement of Mr. Stevens follows:]

PREPARED STATEMENT OF L. NYE STEVENS, DIRECTOR, PLANNING AND REPORTING, GENERAL GOVERNMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE

GOVERNMENT CONTRACTORS—AN OVERVIEW OF THE FEDERAL CONTRACTING-OUT PROGRAM

Summary of Statement

GAO has done a large body of work on federal contracting-out and has drawn on this work to (1) provide a brief history of the contracting-out program, (2) discuss the effect of contracting-out decisions on federal employees, (3) examine the effectiveness of contracting-out decisions, and (4) describe legislative or any other impediments to the program's ability to promote the effective and efficient operation of government agencies.

Office of Management and Budget Circular A–76 is the federal policy that governs how contracting-out decisions are made in the government. The 40-year policy encourages government agencies to rely on the private sector for commercial goods and services. Since 1967, the objective of the A–76 program has been to achieve efficiencies by encouraging competition between the federal workforce and the private sector for providing commercial services. More recent revisions to the circular and other actions have more clearly detailed how cost studies were to be carried out, specified activities that were "inherently governmental" and should only be performed by federal employees, and extended the cost study requirement for advisory and assistance services.

Circular A–76 offers a number of provisions designed to protect the rights of federal employees adversely affected by contracting-out decisions, such as requiring that federal agencies exert maximum effort to find other jobs for these employees. GAO notes that while its earlier reports found that a significant number of displaced federal workers found employment in another government job, the current downsizing environment may not provide the same opportunities.

GAO found that evaluating the overall effectiveness of A–76 decisions and verifying the estimated savings reported by agencies is extremely difficult. GAO cannot prove or disprove that the results of federal agencies' A–76 decisions have been beneficial and cost-effective.

The A–76 program has never been adopted legislatively. In fact, Congress has enacted many restrictions on A–76 studies and on contracting out jobs presently held by federal employees. These restrictions generally fall into one of the following three categories: prohibitions on contracting out specific activities, minimum staffing requirements, and restrictive requirements regarding cost studies. Personnel ceilings imposed during the budget process are sometimes an impediment to choosing the option of federal performance when that is more cost-effective.

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to testify on the Subcommittee's oversight of federal contracting-out policies and their implementation over the years. You asked us to (1) give a brief history of the contracting-out program, (2) discuss what problems have surfaced among federal employees affected by contracting-out decisions, (3) examine the basis for measuring the performance of the contracting-out program, and (4) describe any legislative or other impediments to its success at promoting effective and efficient operations of government agencies.

We have done a large body of work on contracting-out. The attachment to my statement lists some of the most relevant products we have issued since 1981. I will draw on this body of work to respond to your questions.

History of the Contracting-Out Program

The federal government contracts for a wide variety of goods and services over the course of a year. Approximately $108 billion per year is spent for service contracts. The practice of entering into service contracts that are the result of decisions to convert work performed by federal employees to contract is commonly known as contracting-out.

Office of Management and Budget (OMB) Circular A–76 is the policy that governs how contracting-out decisions are made in the federal government. As a general policy, presidential administrations since 1955 have encouraged federal agencies to rely on the private sector for commercial goods and services. Since 1967, the objective of the A–76 program has been to achieve efficiencies by encouraging competition between the federal workforce and the private sector for providing commercial services needed by government agencies. Subsequent revisions to the circular and other actions have more clearly detailed how cost studies were to be carried out; specified activities that were "inherently governmental" and should be performed only by federal employees; and through a rescission of Circular A–120, which covered the provi-

sion of advisory and assistance services, extended to them by implication the cost study requirement.

As Congress considers the proposals of the Contract With America and of the National Performance Review (NPR) to downsize the federal government, contracting issues have assumed renewed prominence since the use of contractors may be a substitute for government employment. We believe that contractors can provide valuable services to the government. We have long held that the concept of encouraging competition is a sensible management objective that can contribute to more efficient and effective government operations and potentially result in significant savings. However, despite its appeal on a conceptual level, the A–76 program has suffered from a number of implementation problems that raise questions on the amount of savings actually achieved and that prevent governmentwide acceptance.

The A–76 program has been and continues to be controversial. In more than 100 reviews we and others have done, managers accepted its objectives of seeking efficiencies and cost savings, but they also said that the program is time-consuming, difficult to implement, disruptive, and threatening to both managers and employees.

Effects on Employees

The circular contains a number of provisions designed to protect the rights of federal employees affected by contracting-out decisions. First, unless a waiver is received, any activity consisting of more than 10 full-time equivalent jobs (FTE), must undergo a cost study, and the study's results must indicate that contracting-out would result in more than 10 percent savings over comparable in-house costs before the activity can be converted. Federal employees may appeal these decisions to the agency performing the cost study if they believe that the cost study was faulty.

Secondly, under A–76, once the decision to contract out is made, federal agencies must exert maximum effort to find other jobs for adversely affected employees. These efforts include giving them priority consideration for available positions within the agency, establishing reemployment priority lists, paying reasonable costs for training and relocation, and coordinating with the Office of Personnel Management (OPM) to provide access to governmentwide placement programs. The winning contractor must also give adversely affected employees the right of first refusal for positions for which they are qualified.

These policy provisions were strengthened by the Federal Workforce Restructuring Act of 1994 (P.L. 103–226). This act prohibits agencies from increasing the procurement of service contracts in order to achieve the personnel reductions mandated by the act, unless an A–76 cost study shows that the contracts would be to the financial advantage of the government.

Despite these protections, the A–76 program adversely affects workers' morale and productivity. Our work has shown that because employees affected by an A–76 study are uncertain about their current employment, employee anxiety can begin as soon as the study is announced. Some affected employees begin to look for new jobs, reducing individual and organizational productivity and frequently resulting in the loss of good employees.

The cost studies required by Circular A–76 are in practice mostly done by managers and operational workers rather than trained management analysts. They are required to develop detailed work statements and analyses—tasks they are often not skilled in, may never do again, and frequently are assigned as extra duties. The absence of workload data and adequate cost accounting systems makes the task all the more difficult. The time it takes to do A–76 studies has contributed to disruption in the workplace. Cost studies completed by the Department of Defense (DOD) between 1978 and 1986 took an average of 2 years to complete. When we checked DOD's database in 1989, we found 940 cost studies in process. Of these, 411, or 44 percent, were started in 1983 or earlier and had been in process at least 6 years.

We have not done any recent work on the question of what happens to displaced federal workers under the A–76 program. However, several reports that we did in the 1980s may provide some insight. For example, in a 1985 report on the program's impact in DOD,[1] we found that the majority of federal workers whose jobs had been contracted out obtained other federal employment, most often at the same installation. We found that of 2,535 DOD employees we sampled who worked in activities that were contracted out in fiscal year 1983, 74 percent had found other government jobs, most often at the same installation; 7 percent went to work for the contractor; 5 percent were involuntarily separated; and most of the remaining 14 percent resigned or retired. Of those who obtained other government positions, about 56 per-

[1] "DOD Functions Contracted Out Under OMB Circular A–76: Contract Cost Increases and the Effects on Federal Employees" (GAO/NSIAD–85–49, Apr. 15, 1985.

cent received lower grades, and about 44 percent received the same or higher grades.

In early 1985, we followed up by questionnaire with those employees who had been involuntarily separated or had gone to work for contractors. Of those respondents who were involuntarily separated, over half were reemployed with the federal government. Over half also said that they had received unemployment compensation and/or public assistance. Fifty-three percent who went to work for contractors said they had received lower wages, and most reported that contractor benefits were not as good as their government benefits.

It is worth noting, however, that although our earlier reports indicated that a significant number of displaced workers found employment in another government job, the current downsizing environment may not provide the same opportunities. For example, OPM operates an interagency placement program to assist separated employees. Under this program, agencies are required to give priority to separated employees when filling positions through competitive appointments. According to OPM, between the program's inception in December 1993 and September 16, 1994, from an inventory of 2,018 registrants, agencies made 204 job offers.

Among other things, OPM attributes the low number to the fact that agency downsizing has substantially reduced the number of vacancies.

Effectiveness of A–76 Decisions

During the long history of our work in this area, we have consistently found that evaluating the overall effectiveness of contracting-out decisions and verifying the estimated savings reported by agencies is extremely difficult after the fact. As a result, we cannot convincingly prove nor disprove that the results of federal agencies' contracting-out decisions have been beneficial and cost-effective.

In previous reports, we expressed concerns about the implementation of A–76 and the lack of complete and reliable data on the extent to which estimated savings have been realized.[2] For example, our 1990 evaluation of DOD savings data showed that neither DOD nor OMB had reliable data on which to assess the soundness of savings estimates or knew the extent to which expected savings were realized. At the time of our reviews, DOD did not routinely collect and analyze cost information to monitor actual operations after a cost study had been made. In addition, DOD's database on costs contained inaccurate and incomplete information. If contracts were subsequently modified, or in-house organizations were revised from the configurations used in the comparison of government and contractor costs, this information was not available for post-study analysis. Poor contract administration, including poorly worded performance work statements, contributed to contract revisions and cost escalations that quickly outdated comparisons with the precontract performance of the functions.

In an attempt to address some of the broader performance questions, we began looking at the overall contracting experience of the General Services Administration (GSA) at the request of Senator James Inhofe. GSA began systematically reviewing its real property services in 1982 using the guidelines in Circular A–76. In a report released last year,[3] we were able to report on the overall extent of contracting-out by the agency and to identify the results of individual contracting decisions and the reported savings. However, for the reasons that follow, we have, thus far, not been able to provide a clear assessment of whether GSA has realized the expected savings and benefits from the activities contracted out or retained as a result of this process.

There is no common baseline available to evaluate subsequent performance of either contract or in-house services. As a result, we have not been able to compare the actual costs of these activities with what could have been the cost if other options had been chosen. However, even if such baseline data were available, we found that post-decision comparisons would be extremely difficult, if not impossible in some cases, because most activities do not remain static over time.

While Circular A–76 contains a list of typical commercial activities and requires agencies to compile an inventory of all government activities that are commercial in nature and could be contracted out, these listings or inventories are not current and may not be comprehensive. To our knowledge, no comprehensive inventory exists that identifies activities for which government agencies compete with private

[2] See, for example, "Achieving Cost Efficiencies in Commercial Activities" (GAO/T–GGD–90–35, Apr. 25, 1990) and "OMB Circular A–76: DOD's Reported Savings Figures Are Incomplete and Inaccurate" (GAO/GGD–90–58, Mar. 15, 1990).

[3] "Public-Private Mix: Extent of Contracting Out for Real Property Management Services in GSA" (GAO/GGD–94–126BR, May 16, 1994).

contractors or identifies which agencies perform these activities in-house and which perform them through contract.

It would be ideal for cost comparison purposes, Mr. Chairman, if an inventory existed of activities performed both under contract and by federal employees under similar conditions, with good cost data on each. Such an inventory could be the basis for establishing cost and performance benchmarks to evaluate the effectiveness of contracting-out decisions and, perhaps, even streamlining the A–76 process. However, such an inventory could be compiled only if similar activities were performed in both the public and private sectors. In addition, it could be costly and difficult to maintain.

In isolated cases, we have been able to (1) obtain good cost data for similar activities performed by both government employees and private contractors under similar conditions and (2) perform equitable post-decision cost comparisons. For example, in 1992 we reviewed the Postal Service's initiative to procure postage stamps from the private sector and determined that the private sector was a lower cost source than the Bureau of Engraving and Printing for seven of the eight pairs of postage stamps we examined.[4] In this review, we were able to control for such factors as stamp size, printing method, and quantity produced and compare government and private sector costs. The cost comparison revealed that except for one case, private sector-produced stamps ranged from 6.8 to 62.4 percent lower than the cost of government-produced stamps.

Legislative Impediments

Observing the absence of definitive evidence to support projected cost savings and management improvements and being frequently contacted by constituents upset by the process, Congress generally has been concerned about the impact of contracting-out on agency operations and skeptical of efforts to accelerate contracting out activities being done by federal employees. The A–76 program has never been adopted legislatively. In fact, over the years, Congress has enacted many restrictions on A–76 studies and on contracting-out jobs presently held by federal employees. While we could not find a comprehensive list of these restrictions, the restrictions generally fall into one of three categories:

—Prohibitions on contracting-out specific activities. For example, GSA is prohibited from contracting out for custodians, guards, elevator operators, and messengers unless the contract is to a sheltered workshop employing the severely handicapped. Similarly, the Farmers Home Administration is prohibited from contracting with private debt collection firms to collect delinquent payments. The Department of Commerce is prohibited from contracting out any part of the National Technical Information Service or from selling, leasing, or transferring any part of the weather satellite system.

—Minimum staffing requirements. Minimum staffing requirements create a level that effectively restricts contracting-out if contracting-out would cause the agency to fall below that level. Minimum employment levels exist at the Department of Agriculture's Stabilization and Conservation Service, and its Soil Conservation Service.

—Restrictive requirements. For example, DOD may not use its funds to complete any A–76 cost study that is more than 24 months old and involves a single activity or that is more than 48 months old if it involves multiple activities.

It is worth noting that in addition to restrictions on contracting-out, there can be similar restrictions on performing activities in-house. For example, we have found 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. Many of the examples of this phenomenon are in the newer, more scientifically oriented agencies such as the Environmental Protection Agency, National Aeronautics and Space Administration, and the Department of Energy,[5] rather than in old-line agencies whose organizational principles and base employment levels were established before aggregate federal employment became a sensitive national issue.

Competition and Flexibility to Manage the Government's Work

As I have mentioned, the goal of the A–76 program is to achieve efficiencies by encouraging competition between the federal workforce and private sector for pro-

[4] "Postage Stamp Production: Private Sector Can Be a Lower Cost Optional Source" (GAO/GGD–93–18, Oct. 30, 1992).

[5] "Federal Contracting: Cost-Effective Contract Management Requires Sustained Commitment" (GAO/T–RCED–93–2, Dec. 3, 1992); "Government Contractors: Are Service Contractors Performing Inherently Governmental Functions?" (GAO/GGD–29–11, Nov. 18, 1991); "Energy Management: Using DOE Employees Can Reduce Costs for Some Support Services" (GAO/RCED–91–186, Aug. 16, 1991).

viding services needed by government agencies. This goal, I believe, is shared by both political parties and recently endorsed by the NPR which, among other things, advocated

—exposing agency operations to competition—with other agencies and private companies and

—providing agencies with the flexibility to obtain services from the best possible source.

To achieve the A–76 program's goal, our work has shown that once agencies consider the comparative costs of contracting-out versus using in-house personnel and relevant noncost factors, the agencies then need to have the flexibility to have the work performed in the most cost-effective manner.[6] Because of the federal downsizing in progress;, agencies may lack the necessary flexibility to perform activities in the manner that is most beneficial to the government. The NPR also recognized this lack of flexibility and suggested eliminating personnel ceilings and allowing federal managers to manage to their budgets—using ceilings on operation costs to control spending. The NPR recognized that personnel ceilings could cause agencies to contract out work that could be done more efficiently in-house.

As Congress and the executive branch continue to revisit issues associated with contracting-out and Circular A–76, we should not lose sight of the underlying objectives of seeking greater effectiveness and efficiency in government operations. Despite the problems experienced in the implementation of Circular A–76, the basic policy of relying on competition to guide procurement decisions in those markets where competition exists makes sense and is generally accepted. We also need to recognize the importance of the A–76 policy in encouraging agencies to systematically review the potential costs of their activities and to consider alternatives. Any prospective revision of Circular A–76 and federal contracting policies should seek to preserve the benefits of fair competition while addressing the concerns of all parties—managers, federal employees, contractors, and taxpayers—about the impediments to its effective implementation.

This concludes my prepared statement, Mr. Chairman. I will be pleased to answer any questions you or the Members of the Subcommittee may have.

Mr. MICA. We thank you, Mr. Stevens, and will now turn to John Koskinen. John is the Deputy Director for Management of OMB. Welcome.

Mr. KOSKINEN. Thank you, Mr. Chairman, members of the subcommittee. I appreciate having the chance to discuss with you this morning Federal policies related to service contracting. My testimony today will focus on the Office of Management and Budget's Circular A–76, Performance of Commercial Activities, the protections provided for Federal employees affected by agencies' contracting decisions, and recent efforts to improve contracting for support services.

Let me begin by noting that every administration since 1955 has endorsed the principles of competition and a general reliance on the private sector for the provision of commercial activities. The formal A–76 cost comparison process began in 1979, when the Carter administration sought assurances that agencies make/buy decisions were cost-effective and that cost-based decisions to perform in-house or by contract reflected a level playing field.

The Reagan and Bush administrations also supported the circular's cost comparison process. Circular A–76 is a management reinvention process, designed to use competition to encourage change and improve the quality and cost of commercial support services. The process consists of three basic elements: the development of the performance work statement; the management study; and the submission of formal bids in the conduct of the A–76 cost comparison.

[6] "Government Contractors: Contracting-Out Implications of Streamlining Agency Operations" (GAO/T–GGD–95–4, Oct. 5, 1994).

Let me briefly describe each element before discussing the costs and benefits of the process. The first step is one of the basic building blocks, implementing, actually, the Government Performance and Results Act, passed recently. It requires agencies to define their workload requirements in terms of measurable performance standards. This approach allows government employees and the private sector to competitively bid on the same scope of work.

This often has been a major undertaking. Describing the output of a service requirement, rather than measuring inputs, is a significant culture change with many agencies. And defining specific functions at a sufficient level of detail for fair and open competition often requires significant effort. And as Mr. Stevens noted, a number of times, people engaged in that activity are not professionals in making those analyses.

Many departments and agencies do not have the accounting and financial management support systems to readily provide for measuring the current costs associated with commercial functions. Second, the circular requires agencies to conduct a management study, allowing for the restructuring of the organization, to identify the government's Most Efficient Organization, as it is called, or the MEO.

This requirement protects current employees from historical inefficiencies in the cost comparison itself; creates incentives to restructure services and reduce costs; and serves to protect the procurement process itself by protecting the in-house bid. Managers and employees review in-house service alternatives and the application of private sector methods. Quality work circles, market studies, work flow analyses, position management reviews, communications and supply systems reviews, and the development of individual performance indicators have been used to improve service quality and reduce costs.

Historically, savings from reviewing the current before A–76 organization and implementing the government's MEO have averaged over 20 percent per study—a saving to the government that is achieved whether or not the function is ultimately performed by in-house or contract employees. At a minimum, as required under the circular, another 10 percent savings must be experienced before a function can be converted from in-house to contract performance.

Finally, the circular requires a cost comparison. The circular's handbook describes the specific cost elements of a cost comparison, and includes such things as fringe benefits, material support, facilities, insurance, contract administration and overhead. These specifications are necessary in order to ensure that both the in-house bid and the private sector bids compete on the level playing field I mentioned earlier. The bottom line test ultimately is the cost to the taxpayer.

Agencies that have pursued A–76 competitions to both contract out and to contract in say it has been an effective mechanism for achieving savings without reducing the provision of needed services. And, as was stated earlier, the ultimate test is, what is the quality of the services being provided? Because that is a critical element in the operation of the Federal Government.

It has also been effective—Circular A–76—in ensuring that the method of determining a financial advantage to the government is

fair, open to all parties and based on the level playing field. Savings are achieved through efficiencies in the management of the organization, identified as part of the competition process; by holding the winning organization to stated performance standards; through competitive costing; and through the implementation of improved contracting techniques. Circular A–76 cost comparison and appeals procedures have ensured that all parties to the competitions have equal access to the information and input to the decision process.

Once a decision to contract is reached, the circular requires agencies to exert maximum effort to find available positions for adversely affected employees within the agencies. Federal employees are afforded the right of first refusal for jobs created in the successful bidder's firm by the award of the contract. This requirement is provided at 52.207–3 of the Federal Acquisition Regulations. In addition, and as a result of President Clinton's Executive Order 12933, signed on October 20, 1994, last fall, Federal employees also enjoy the right of first refusal for jobs created in successive contracts for these services.

The A–76 Circular has been criticized, however, as overly burdensome, time consuming and complex. And Mr. Stevens described several of the internal problems. It is true that the three-step process takes time, and relies heavily on the procurement process to complete. Depending on an agency's workload and financial accounting systems, the development of historic data necessary to prepare a performance work statement may take considerable time and effort. The development of the government's in-house management plan, and the most effective organization, the MEO, is a process that is intended to improve program performance, allow employees the maximum opportunity to compete for the work, and to protect the procurement process itself.

However, the MEO process can take time, depending on the conditions that exist in-house and the state-of-the-art within the private sector. As for the cost comparison, the handbook was developed over the years to try to ensure that the competitive cost to the government of both the in-house bid and the private sector were fully reflected. Simpler cost comparisons increase the risk that the comparison will not be as accurate or as fair.

The fact that the cost comparison process relies on the procurement process to generate competitive private sector bids also results in additional time requirements. Nevertheless, we have recently met with representatives of the departments and agencies to discuss ways that the cost comparison can be streamlined and improved. We hope these discussions will allow us to make it easier to use Circular A–76 and that increased use will generate additional operational efficiencies.

Numerous inspector general and GAO office reports, congressional hearings and internal agency studies have documented contract performance problems in service contract cost overruns. Many of these problems stem directly or indirectly from the fact that agencies often do not adequately define what they want. As a result, contractors waste time and money trying to anticipate our performance requirements. Unfortunately, it has all too often been a case of telling contractors and Federal employees, I'll know what I want when I see it. As part of this administration's effort to

reinvent Federal procurement, senior officials from the Office of Management and Budget, 26 executive agencies and four industry associations have signed a pledge to implement performance-based contracting for designated contracts. Performance-based contracting is a concept by which the government pays for the work it needs to accomplish its mission and does not try to dictate how contractors get the job done. We believe that performance-based contracting will improve contracted services, increase competition, cut waste and result in lower costs.

With respect to concerns regarding possible efforts by the agencies to contract out to meet FDE reduction goals, I would cite Director Rivlin's August 19, 1994, letter to agencies, outlining the requirements of section 5(g) of the Federal Work Force Restructuring Act of 1994, and GAO's September 22, 1994, testimony before the Subcommittee on Compensation and Employment benefits. GAO stated that neither the agencies GAO surveyed nor the union representatives GAO interviewed reported that contractors were being hired to do the work of separated employees or employees being offered buyouts under the Federal Work Force Restructuring Act. Though difficult to monitor and often open to interpretation, we are unaware of any instances where backfilling has occurred behind the buyouts being offered without a cost comparison.

While we have not maintained an inventory of functions routinely performed by contract, we do have an inventory, which, unfortunately, is very dated, of commercial activities performed by Federal employees. Since 1981, the government has competed approximately 112,000 FTEs, under the provision of A–76. Approximately 67,000 FTEs have been eliminated due to efficiencies gained through the management and review process or conversion to contract. We believe that there are an additional 250,000 or more in-house FTEs that could be cost compared under the circular. I know the chairman has referenced an earlier study at OMB of 900,000. But our present information is 250,000, and we'll try and see if we can reconcile what the actual number is. But either way, it is a significant number of positions that could be cost compared under the circular.

We do not have current data on the number of the studies being done, or data on how the studies have cost, in response to the chairman's question. Over the years, the costs to conduct A–76 studies have varied, depending on the agency's workload, performance and financial systems, the scope of the study, its complexity, and, frankly, the desire of agency managers to bring the study to completion. Based upon agency information, however, and as reflected in the chairman's opening statement, aggregate A–76 cost comparisons have reduced service costs by approximately $1 billion a year.

The number of existing commercial support service contracts and their dollar value can be found through the Office of Federal Procurement Policy's Federal Procurement Data System. The Federal Procurement Data System, however, measures contract support in terms of contract dollar values, not FTEs. We estimate the total now of service contracts to be, in fiscal year 1994, $108 billion.

In terms of recent trends, which the letter of invitation inquired about, in the past 5 years, there have been relatively few cost com-

parisons conducted. But with the reinvention efforts of this administration and the renewed emphasis on budget savings, we believe that that situation is changing. The renewed emphasis on budget savings is forcing agencies to reconsider how work is being performed and whether competition could reduce costs.

Finally, you asked about legislative impediments and whether the administration would seek legislation to authorize cost comparison guidelines, such as those contained in Circular A–76. Clearly, any legislation that limits the executive branch's ability to contract out, privatize or contract in for the performance of commercial activities impedes our ability to hold managers accountable for cost-effective management decisions. Historically, restrictions have surfaced in a number of areas, including, as Mr. Stevens noted, legislative FTE ceilings and floors; specific limitations as to what commercial activities can or cannot be contracted out by function and location; agency-specific cost comparison procedures; and specific prohibitions from even the study of contracting out options. We have no recent list of current legislative obstacles to contracting out, privatization or contracting in. We understand, however, that the staff of the National Performance Review has begun to develop such a list. If and when it is prepared, we would be happy to share it with you. Frankly, we believe that any legislation with respect to Circular A–76 or its requirements is unnecessary at this time and, in fact, could even make the process more difficult.

The A–76 cost comparison process can be a win-win situation for all concerned. By improving management and creating incentives to change the way commercial activities are performed, by cutting out the waste and confusion caused by antiquated workload and financial systems, and by improving our contracting methods, the agencies will achieve better performance at lower cost. The private sector is already an important partner in the provision of services needed by and for the Federal Government. The question here is whether or not the private sector should provide additional levels of support, and, if so, when? By improving the level of fairness in competitions between in-house and contract resources, in-house and contract employees can be assured that their efforts will be rewarded appropriately. Taken together, this approach promises a reduction in unnecessary administrative support costs and will, we believe, enable us to concentrate more on mission and mission delivery for every agency. We look forward to working with you and your committee as we seek to make improvements in this entire process.

Mr. Chairman, that concludes my prepared statement, and, like Mr. Stevens, I will be pleased to answer any questions you or the committee may have.

Mr. MICA. I thank you both for your testimony and your participation. After reading through your testimony and some of the background, it's kind of amazing that anything gets contracted out, with some of the barriers and constraints that have been set up, and the patchwork and sort of quiltwork of prohibitions and obstacles that have been set up to make—I guess—to protect certain interests. And maybe some of it is to make an honest attempt at contracting out.

It would drive me bonkers if I was in the private sector and had to go through all these hoops and barriers. Mr. Koskinen, you just testified and said—and correct me if I'm wrong—did you say you don't favor legislative action to replace the A–76 Circular?

Mr. KOSKINEN. That is correct.

Mr. MICA. Well, I have to disagree with you. I think the Circular A–76 has been a semi-failure. And I think it's incumbent on myself, chairing this committee, and upon this committee to develop some legislation to replace the Circular A–76. By your own testimony, you said that we have congressional and legislative restrictions—prohibitions—that we've imposed.

Also we have the ceilings that we've imposed. And we have sort of studied the process to death, by both of your testimonies. Then, Mr. Stevens says, "GAO found that evaluating the overall effectiveness of A–76 decisions and verifying the estimated savings reported by agencies is extremely difficult. GAO cannot prove or disprove that the results of Federal agencies' A–76 decisions have been beneficial and cost-effective."

So what we're doing doesn't really give us any basis for making a determination?

Mr. KOSKINEN. That's correct.

Mr. MICA. And still you don't favor legislative action?

Mr. KOSKINEN. Well, as I noted and as I stated last fall, we have started a review with the agencies of a revision of A–76 to make it more efficient and more user-friendly, both for contracting in as well as contracting out. To the extent that your focus on legislation would be to remove the impediments that the Congress has imposed, obviously that would improve the operation of the circular across the government.

Our concern is that the natural inclination of people, when they are proposing legislation, would be in fact to mandate a new A–76 process. And the problem with that is that these processes need to change over time because they are complicated, as we've noted. To try to freeze a process into legislation would be very complicated and difficult and would not necessarily deal with the problems we're trying to deal with in the review, which is how to make this process work more efficiently.

Mr. MICA. But could we not set some general guidelines by legislation and then give the flexibility to proceed in a more orderly fashion than we have now? And not only orderly—maybe the current process is orderly—but to speed up the process. You're getting into a situation where we're going to have to find some way to do things quicker and more efficiently and cost-effectively.

The host of choices out there is not too appetizing. You fire or RIF people, you close down agencies of Federal Government. And this is an interesting process. We're only 2½ months into it. But in all the studies on downsizing you have given us, we have shifted many people around and in corners and positions—except for the civilian defense work force, which has taken the brunt of the downsizing.

Now we're going to get into some serious new ways of doing things. And you don't think that we can legislate this?

Mr. KOSKINEN. I think the standards for what the level playing field ought to look like are clear. So the legislative guidance about

what those standards ought to be, it seems to me, are not necessary. Our problem is not that we do not know what we're trying to accomplish. The problem is, how can you implement a system with detailed regulations to make sure that, in fact, you collect the right information and you make the correct comparisons.

Therefore, I don't think there's any disagreement in terms of what the goal is or, in fact, what the standards ought to be. The problem, and as the GAO studies reflect, is, how can we get this implemented most effectively? And that's usually not a legislative problem. Legislative problems, as you note appropriately, are, what are the standards; what are our goals?

Well, our goals here are clearly to create a level playing field. It's been the same goal since this process started. And our goal is to, in fact, increase the ability and the flexibility of managers to manage in the most cost-effective way. There are obstacles that have been imposed by legislation that, if we removed those obstacles, that would be an improvement.

Mr. MICA. But that's going to require, again, legislation——

Mr. KOSKINEN. Yes, as I said.

Mr. MICA. And even NPR recommended eliminating personnel ceilings and giving Federal managers the ability to manage their budgets. And some of this is going to require legislative authority.

Mr. KOSKINEN. Yes. As I said earlier, I think that's exactly right. With regard to the process of A–76, though, there I think our problem is not that we do not know what the standards ought to be or what the goals ought to be. Our problem is that the GAO studies and others say; if there are problems, how can we effectively create the cost comparison process so that, in fact, we get the right information in a timely way and so that the managers can use it?

Mr. MICA. Well, some of this is done by the agencies. Shouldn't some of this be done by people who are capable of doing it? I think one or two of you testified that sometimes they don't have even the capability of determining whether they can perform the service, or determine the cost, or do these analyses. Is that right, Mr. Stevens?

Mr. STEVENS. Yes, sir, we did say that had been a common problem in the past. These are management people rather than management analysts.

Mr. MICA. And you provide us with some studies, a list of the studies, and you've also testified, I believe, that the GAO studies looked at primarily problem contracting. Was that your comment? So you really haven't done an evaluation of the overall impact of the program?

Mr. STEVENS. We've attempted that at the General Services Administration. That was the purpose of our work there, was to look at their overall historical program; try to determine whether the maybe 30,000 employees—or between 20,000 and 30,000 employees—whose work is not now being performed, except by contract, and determine, has this been a good thing or a bad thing?

And we just really cannot prove that. The data from the cost studies, at the beginning, they do prove it. The cost studies say that indeed you will save money by contracting out. We go in 5 years later, the question we're asking, did we save money by contracting out? And things have changed so much—the baseline is

not there, the changes that would have affected Federal performance can't be projected into the future—that we simply cannot confirm it.

Mr. KOSKINEN. I would add that the full statement from Mr. Stevens is very accurate and clear about this. That problem is not, again, either a problem in the circular or a problem needing legislation. It is a problem that, as you can imagine, it's a dynamic system. When you make the cost comparison, you're taking a snapshot at a given point in time. When you come back and measure later, the Federal employees have changed in terms of what they're doing, and the contract often has changed.

So it is very tough to get a control group in which you can—in 1 year, 2 years, 3 years later—come back and find an unchanged situation. In fact, in almost every situation, the employees will be doing different things, the work structure will be changed, the agency activities will have changed.

So after the fact, to try to verify what the savings were doesn't mean that there weren't any. It's just very difficult to find the adequate comparisons thereafter. To mandate that we ought to do better 3 years after the fact won't change the reality. We will not be able to do that. So what we have to do is make sure that the system, when it is applied, is applied accurately; that the information is the best we can get; and that the comparisons are fair at that time for the work that is being contracted out.

As I noted, one of the things we're concerned about, whether it's in contracting out or otherwise, is that the service contracts ought to be performance based. They ought not to be for time and charges, they ought not to be overly general. We ought to try to improve the procurement process, and we're working very hard on that, to make sure that every contract, over time, will actually tell a manager not what are the inputs of the contract, but will basically tell a manager, this is what I'm buying—this is the service or the product I'm buying from the private sector.

Mr. MICA. I don't want to monopolize the time, and we have several other members I want to yield to. But I just noticed in one of your reports here, "GAO's cleaning costs are needlessly higher than in the private sector," and was conducted, I guess, in 1981, released in 1981. It brought to mind a great visual and personal experience.

In 1981, I set up a U.S. Senate office in the Federal building in Miami, FL. I went into that Federal office building and it was kept like sort of a trash heap. I mean, you walked in, and the maintenance was disgusting. Several years later, I walked into the building 1 day and the floors were sparkling and the elevator was clean. I went up to the Senate office and asked someone what happened.

They said that they retained a private contractor to take over the cleaning of the Federal building. But it's interesting, because at that time, they were paying more and getting less. And it's like somebody said in one of their statements—sometimes it's hard to describe what you want, but you know it when you see it. And that's what I'm trying to get to.

With that observation, I will yield to Mr. Mascara from Pennsylvania.

Mr. MASCARA. Thank you, Mr. Chairman. I'm a newcomer to Capitol Hill, so I come with no biases. I have virgin ears. But I am

discerning more and more, as I attend these hearings and different mark-up sessions, that nothing ever really changes. And I'm not sure which of you gentlemen recollected that somehow, in the 1950's in the Eisenhower administration, that the genesis for all of this started, back in the 1950's.

Mr. KOSKINEN. Right.

Mr. MASCARA. And 40 years later, I think it was 1955, 40 years later, we're still here talking about whether A–76—we're not sure that it works; it probably doesn't work; should we take legislative action to remedy some of these problems? So it's my opinion—and it's only my opinion—that we are not prepared to deal with privatization at this time, because no one really knows what's best for the people of this country.

And if you talk about privatization, I noted here, Mr. Stevens, that you mentioned only 7 percent of the people went to the private sector——

Mr. STEVENS. Went to the contractor who took over a Federal function, sir.

Mr. MASCARA. Did anybody ever ask the question, what a drain this is on the valuable resources that we have with our Federal employees? I mean, if 7 percent went, the other 93 percent had to go someplace. You did say that some took positions with other agencies in the Federal Government. But even then, that's a drain on our most valuable resources, and that's the experience of the people who work for the Federal Government.

Mr. STEVENS. Well, we did do a questionnaire of those people, Mr. Mascara, and generally found that the people directly affected did not think that they had been positively affected. Only a few were in better shape after the decision was made, whether or not they were still working for the government or the contractor, than they had been before. From the employees' point of view—and they perceived this accurately—as soon as an A–76 study is announced, it's likely to be an unpleasant experience.

Mr. MASCARA. That's difficult to measure, I understand. But when we talk about privatization, we have to look at all aspects, even the abstract kind of things like if 7 percent of the people went to the new private organization, the other 93 percent that they hired have loyalty to their boss and their company, not loyalty to the American people, who pay for it.

I mean, let's not kid each other—the money is still coming from the Federal Treasury, paying the private sector to do what was normally a Federal job.

Mr. STEVENS. Indeed it is, yes, sir.

Mr. MASCARA. So I'm not working for the Federal Government anymore, and I'm not working for the people of America. I'm working for John Smith, who owns this company, who now cleans this building that Chairman Mica speaks about. And I think we need to take a look at that. But more specific, do either of you gentlemen—the question is for either of you—have a sense as to how much contracting is currently going on, and what dollar figure that might amount to, currently?

Mr. KOSKINEN. I think in service-based contracting, the best number we have now for fiscal 1994 is $108 billion. So there is a significant amount of service-based contracting going on, in terms

of provision of services by the private sector to the Federal Government.

Mr. MASCARA. What kind of services? Is there any kind that might fall in a similar category—cleaning or whatever?

Mr. KOSKINEN. Yes. I haven't got the list, but service contracting basically would include all the range of things we've been talking about. It includes, besides base maintenance, all kinds of standard blue collar work, and runs across the spectrum to research and development work. A substantial amount of environmental clean-up work is done under service contracts.

Mr. STEVENS. Our nuclear weapons program is, I believe, a contract operation. The laboratories are included in that.

Mr. MASCARA. Where do they get their skilled employees to deal with that? If the Federal employees would not decide——

Mr. STEVENS. Well, they're competing for scientists and technicians. Some are former Federal employees. There are university affiliations, usually, with the national labs.

Mr. KOSKINEN. A number of these services have been contracted out for a substantial number of years, so that the contractors have been in the private sector competing for young college graduates, graduate students, people in the work force, laborers.

Mr. MASCARA. You may have answered this question as a result of Mr. Mica's questioning. I may not have heard it. But if the A–76 doesn't work and the legislative approach, you feel, is not the answer, then what do you think is the answer to accomplishing the job that we want to accomplish?

Mr. KOSKINEN. I don't think we've established that it doesn't work. I think what Mr. Stevens' testimony has been and what we've talked about is, it's very difficult to establish, after the fact, what the savings are. If you look at what the studies demonstrated, as the chairman noted in his opening comment, our estimate is that we're presently saving about $1 billion a year from the contracting out process.

A significant portion of that is the savings that have resulted from the reconstruction of the Federal work force and keeping the process in house. Part of the National Performance Review focus is that what you need to develop over time, and what we are going to try to focus on in A–76, is a process that is a fluid one rather than a static one. All too often what happens is, you do a very good cost comparison; you do an analysis of whether to primarily contract out; and then that's it.

There is very little future rebidding of the process. It does not get bid back in, in terms of contracting back in. Or, if it's decided to stay in, very rarely do you, in fact, do another study to contract it out. What we need to do, as has been noted in Mr. Stevens' testimony and other statements, is to encourage competition across the board. We need to have franchise funds and operations within the government so that we have government agencies that provide very effective services competing for the provision of those services with other government agencies.

We have that going now, and the National Finance Center is everyone's favorite example. The Agriculture Department runs it. It's processing payroll for a vast number of Federal employees. My check is written out of Columbus, OH, out of the Defense Depart-

ment. So we need to encourage, ultimately, competition. And the competition is not necessarily just between the private sector and Federal employees, because your point is well taken—most Federal employees are very skilled, very hardworking and dedicated.

What we need to do is open the process up so that we encourage Federal employees, as the MEO process has, to become as efficient as they can, become as effective as they can, and, to the extent that they can, we ought to increase what they do rather than decrease what they do.

Mr. MASCARA. Mr. Chairman, just one brief statement and then I'll keep quiet. What I'm understanding here is that there's some need for us to intensify privatization. It's my opinion that we're not ready to intensify privatization; that there are a lot of unanswered questions. And what else concerns me is, one of the Presidential candidates talked about HUD and Energy and Education, about closing the lights, going home, locking the doors.

And that might be a microcosm of our rush, somehow, to decimate this government and to dilute the talent of the employees that we have in this government. I'm very concerned about what I've heard thus far. Thank you very much, Mr. Chairman.

Mr. MICA. I thank the gentleman for his comments and questions, and now would like to yield to the gentlelady, Mrs. Morella.

Ms. MORELLA. Thank you very much, Mr. Chairman. I'll try to be brief. I'd like to be lengthy, but I've got to go testify before what used to be the Interior Committee on behalf of some projects. I am particularly interested in the GAO report, and I've gone through a lot of sections in it where some statements have been made that I find very, very provocative.

One part says, "The administration . . . such downsizing of the employees could in effect create rather than eliminate personnel ceilings, with agencies finding themselves in a position of having to contract out to meet the downsizing goal, regardless of what cost comparison studies show." I realize there was a statement that came out later that said, oh, that should not be done.

Nevertheless, it is always a kind of factor. On another page here it says, "The contractor's performance was considered to be acceptable in terms of quality. However, in terms of timeliness, the contractor was not able to deliver the needed services as quickly as agency personnel." I've done some markers here. In another page, it says, "and in some cases, cost analyses are not prepared prior to entering into new contracts," and that is with regard to the report that said "many agencies do not routinely perform independent cost analyses of the market reasonableness of contractor bids prior to the renewal, extension or recompetition of existing contracts."

Another section here, "Unless agencies are specifically authorized to hire needed Federal employees in circumstances where meaningful cost comparison indicates that in-house performance is desirable, agencies could be in a position of having to contract for services, regardless of what a cost comparison study shows. OMB and Congress will need to reconcile this potential conflict as they implement the NPR recommendations."

"Applying a cost comparison requirement to advisory and assistance service would be another step forward in a disciplined ap-

proach to ensuring that the government gets the most for its money." That's the concept of OMB's intent to reconsider the A–76 guidance as timely and harmonious. I know you are looking it over in terms of trying to make it more effective.

"As part of its guidance," this is about OMB, "as part of its guidance to agencies in preparing cost comparisons for advisory and assistance services, OMB should recognize that non-cost factors also need to be considered, and specify any circumstances that might exempt an agency from the cost comparison requirement." I mean, I could go on—"OMB should require agencies to adequately justify and document decisions, not to conduct cost comparisons, and not allow agencies to use these factors solely as a basis for avoiding a comparison."

What I am wondering is, are agencies required to conduct cost comparisons to determine whether or not to contract for assistance and advisory services if, in fact, you're going to say an agency isn't exempt? What would be the circumstances that might exempt an agency? And this is directed to both of you.

Mr. STEVENS. Yes. A number of the functions dealt with in that study were ones that are now done by contract. And the A–76 program, really, is a requirement that affects just ones that Federal employees are now doing. Our recommendation was basically that there should be a level playing field here. We should apply cost analysis requirements to functions that are now being done outside the government to determine if they can and should be done more effectively within the government.

In many cases, this is not happening. The A–76 process is a sticky one. As Mr. Koskinen said, it is very rare that once a function has been contracted out that a new cost study is done and it is brought back into the government. There are a number of examples where it can be shown and where we've shown that functions can be performed more effectively and less expensively by Federal employees.

That's not right now an equally advantaged option. And I believe with the 272,000 FTE reduction in the Federal work force, if that becomes the predominant way in which such analyses are made, that will be true in the future, too. I don't see a relief from that.

Ms. MORELLA. Would you like to comment on that?

Mr. KOSKINEN. It is correct that once a contract is contracted out, or a service is, over the course of time, then it's not subject to the A–76. So the over $100 billion in service contracting that's contracted out is not subject, automatically, to the A–76 reviews.

Ms. MORELLA. So that means it's not subject to the cost comparison analysis?

Mr. KOSKINEN. No. There may have been—and GAO notes that between 2 and 3 percent of those contracts originally were subject to the cost comparison, so they were once. A number of contracts have been put out before the A–76—those functions were contracted out before A–76 came into effect. Others are in areas, such as research and development, that are not automatically required to be covered by A–76.

What we're trying to do—and I think what our goal ought to be, as I said earlier, in regard to where the National Performance Review is going and this administration's restructuring is going—is to

answer the basic question: how does the government best obtain services and products? We should have a level playing field both ways. We should be continually evaluating where we're going.

One of the things that we need to bear in mind has to deal with not particularly the FTEs, but with the budget situation. Life clearly has changed significantly in the last 25 years of A–76 to the extent that there are now budgetary caps and limitations on what the agencies can do. A lot of the dialog and consideration of what we should be driving the agencies to do, or mandating in terms of almost micromanaging them, was in a context in which, if money wasn't any object, at least there were not the same financial constraints, on the agencies.

Now what we're looking at is a situation where the agencies have finite resources to deploy to achieve their missions. So there is increasing pressure on them to become more cost-effective. Our focus has to be, what can we do to encourage their cost-effectiveness; to remove the impediments to their being able to do that. As we noted, there are a range of legislatively imposed obstacles to managers being able to decide how best to achieve the results of their activities.

One of the restructuring goals of the streamlining plans that we talked about last fall, and the entire Phase I and Phase II of the reinvention of government proposals of this administration, are to get the agencies to change the way they do their work. Independent of contracting in or contracting out, agencies need to change the way they actually are structured; just the way the private sector has changed the way it is structured.

So I think, as stated earlier in this hearing, what we have to do is move away from very specific requirements—that either you will do this or you will do that—and move into more general accountability standards of, here are your resources; what are the goals you're going to pursue and your objectives; and how will you measure whether you've achieved those objectives? Then leave it to the managers, with requirements that they be as effective as they can, to achieve those goals.

The budgetary limitations are driving the managers, inevitably, to have to become more efficient in the delivery of those services. Our role in A–76, for instance, ought not to be to have a bias either way. The debate always seems to change around A–76 in terms of whether people are trying to encourage contracting out or in.

Ms. MORELLA. It's just that contracting out can seem to be the easier road when confronted with so many——

Mr. KOSKINEN. Right. My point is that we ought not to have a bias in favor of performing the activity in the private sector or in the government. Our bias ought to be that you should place an activity where it is most cost-effective and it provides the best service and product for the government. We ought to have a fluid, continual analysis of that.

Ms. MORELLA. It sounds like that's the kind of thing we need to do, to look more into the cost comparison analyses. And I've got to go, but again, in the GAO report, there were 12 Department of Energy contracts in 1990 that were looked at. And "in testimony before a Senate subcommittee, the Assistant Secretary of Management and Administration at DOE cited estimated savings through

in-house performance versus contract performance of 20 to 25 percent."

I found that very significant. Then I also looked to, what if we abolished the Department of Energy; who would perform these functions, too? If you want to extend it beyond that, those necessary programs. These are the kinds of things. Any brief comment on that?

Mr. STEVENS. Yes. There are such savings, and those are examples of them. What we've cautioned against in that report and others is extrapolating from those examples to the government as a whole. And that's where our work at the GSA was designed to cover a broad range of contracts, not just ones where it can readily be proven that Federal employees are cheaper, but the entire range.

The anecdotal evidence that is generally used does not prove the point. And I think even the aggregate body of our work does not prove the point, because we have generally been asked to look at cases in which the Federal employees have lost a competition. And that generates political interest and pressures. We are rarely brought in to look at a case in which the A–76 program caused a manager to reexamine his operation to come up with a more efficient internal organization to save 20 percent by streamlining the organization internally, because it's not controversial. There's no real objection to that.

Mr. KOSKINEN. One little footnote I would add to your example, which is a very good one, is, even with the limitations of the Federal Work Force Restructuring Act, we authorized the Department of Energy to contract in if they could establish that was the most effective way to proceed. And we allowed them the additional FTEs necessary for that. So we're trying not to automatically or by rote apply the downsizing issues.

We are trying to make sure that the FTE limits are applied in response to what the most effective way to run an agency is.

Ms. MORELLA. And you know, the chairman and I actually both agree on this particular issue, in terms of finding out what is best in terms of what's most efficient and what is fair. And we hope we can call on you to assist in this regard. Thank you. Thank you, Mr. Chairman.

Mr. MICA. I thank the gentlelady. Mr. Koskinen, in testimony before the Civil Service Committee, the predecessor of this subcommittee, last October, you indicated that OMB Circular A–76 was under revision. It's my understanding that the most recent revision of the circular was in 1983. What's the status of the revision? Can we expect it anytime soon?

Mr. KOSKINEN. Actually, we are engaged in a series of dialogs and outreaches to the agencies who are most affected by A–76, collecting their best judgments as to how we could improve the A–76 process. I can't give you a definitive time, but I can give you a commitment that we are, in fact, committed to providing an A–76 process that is more streamlined.

I've looked at the handbooks and the guidance, and it's a very thick document. It seems to me that, while we need to make sure that we collect the right costs and do this appropriately, we also

need to make sure we're not going through paper exercises that don't actually move us in the directions we're trying to go.

Mr. MICA. But it is coming out. I notice, again, in testimony from the administration, that the NPR has recognized a lack of flexibility and suggested eliminating personnel ceilings, allowing Federal managers to manage their own budgets using ceilings and operations costs to control spending. The NPR recognized that personnel ceilings could cause agencies to contract out work that could be done more efficiently in house.

They are looking at both sides of this. What is the status, do you know, of the administration's recommendation in this area, as far as recommending any legislative changes or any other types of congressional action that may be required to eliminate some of these barriers that have been set in place?

Mr. KOSKINEN. Well, the barriers—a number of them Mr. Stevens mentioned—are clearly interfering with the ability of managers to manage. So if anybody would like to eliminate those, that would be fine. With regard to the 272,000 and the issue of management by FTE limits, we think as a general matter, much like mandating results of any kind, rather than saying we should contract in or out more or less, our standard should be to do the best we can.

Similarly, with FTEs, we think that it is not an appropriate way to manage costs by simply continually focusing on how many FTEs are in the government. However, we are satisfied that we are well on the way to meeting the Work Force Restructuring Act requirements—the 272,000 decline over a 5-year period—without any unnecessary adjustments within the agencies in terms of how they deliver their mission.

We've reviewed their streamlining plans. That's an ongoing process. The agencies are reinventing the ways they propose to do their work, the way they are operating. They're increasing the spans of controls of supervisors. We think that the reality today, with the budget debate that is going on, is that the driving force for what an agency does is not its FTEs ceilings, it is its budget caps.

Mr. MICA. Well, it's taken 40 years. Everyone says that since 1955, each administration has proposed and supported contracting out. But I think we've seen 40 years of impediments being placed in the way of actually making that happen. The only thing that's driving this exercise now is the question of downsizing, of the tremendous strain of the deficit on the Federal budget. So we definitely have some motivation.

I'm convinced, even after this preliminary hearing and the information that I've received, that we should take some legislative action in this area and I would like to seek your counsel on some of the elements that should be included. I'm wondering if we reverse the process in some way and had OMB and GAO—right now there is some identification of those positions or functions that can be contracted out—I'm wondering if we could possibly have some sort of joint or mandatory identification of those positions, and then mandatory action required on those. What would you think of including that in this type of prospective legislation?

Mr. STEVENS. I think one of the problems you'll run into, Mr. Chairman, would be definitions. And I believe the reason there is

such a discrepancy now in the numbers that OMB has had now and in the past—I think from 250,000 to 900,000—is this definitional question. As I understand the way it worked back 5 or 6 years ago, using definitions in A–76, which, admittedly, are not absolutely precise, OMB asked the agencies, how many of your positions are susceptible to being commercial or being done by something other than Federal employees.

And basically, on a voluntary basis, they got back something in the 250,000 range. That's what emerges if you don't press very hard in this regard. The Commission on Privatization, using some OMB figures that emerged from a more intensive dragnet, where some OMB people went to the Office of Personnel Management and looked at job titles and asked just on the basis of what anybody could see, could this be a function that could be contracted out? How many people are in that function? And they totaled up the answer.

They came up with something in the 850,000–900,000 range, went back to the agencies and confirmed that it was actually 2 or 3 times what they'd come up with voluntarily. And that was arguable, of course; it's still arguable. And I would submit that as long as the definitions are as imprecise as they are today as to what a inherently governmental function is; what is and is not appropriate for Federal employees to perform, I'm not sure we could come to a agreement. And if we did, I'm not sure you would agree.

Mr. MICA. You'd be surprised how crafty I can be in coming up with legislation?

Mr. KOSKINEN. I think that's right. As Mr. Stevens stated, and I was going to note as well, A–76 actually has a set of definitions of what are functions that could be competed in the private sector. As you stated, those are somewhat subject to discussion and dispute. But again, I don't think our problem here is that we don't know which are the positions that could be contracted out.

In fact, we have to bear it in mind that the $108 billion worth of service-based contracting that now goes on is not a small amount of money. If you look outside of the mandatory budget, a significant part of the Federal budget is spent on contracting out. In fact, in the past, one of the arguments has been, there's too much contracting out.

So again, I think our focus on this specific issue of contracting in or out ought to be trying to find out, how can we establish a level playing field, make it an effective device, and then let the process decide whether we ought to proceed one way or the other.

Mr. MICA. Well, I'd like to do that possibly legislatively. I'm trying to find the best mix of oversight and that would be one of your responsibilities, or possibly OMB, or maybe in some combination. Let me ask you about some other elements that you might recommend. It could be legislative. The administration has talked about removing floors or ceilings. Would that be an element that should be included?

What we're going to have to do is go back and look at some of these legislative constraints that have been imposed. What's your opinion on that?

Mr. KOSKINEN. We've generally opposed floors and ceilings. We think that's a micromanagement instruction to an agency that doesn't allow them to make good management judgments.

Mr. MICA. All right. And then, it is your recommendation that these prohibitions—now everybody has had great intentions since 1955, but we've also put in a whole bunch of prohibitions: you can't even study or consider some of this; you can't include some of these folks?

Mr. KOSKINEN. Right.

Mr. MICA. We're going to pull those prohibitions out in my potential legislation. What do you think of that idea?

Mr. KOSKINEN. Well, again, I think the only way to get them out is by legislation. Again, our judgment is that, in this day and age, managers need to have the greatest flexibility that they can to deliver services under the budgetary constraints and the focus on what do the customers get from the government. Arbitrary micromanagement is not effective. So any way we could get rid of that would be fine.

Mr. MICA. The next item that concerns me is the speed of the process. Some of these things go on and on. They study them to death or such and such is up for consideration. I guarantee you, some of those 250,000 positions that you've identified were identified under the 1981 Reagan exercise.

Mr. KOSKINEN. Right.

Mr. MICA. But nothing gets done. So would you include an element to mandate some time constraints, or something to speed up the process, establish some timetable?

Mr. KOSKINEN. Again, on the same theory that we ought not to be arbitrarily trying to have one-size-fits-all rules, I think it would be unwise to say that there is no circumstance under which you should take longer than, fill in the blank, 6 months, 12 months, 24 months, whatever it is. I think the real issue is that we ought to make sure that the process can be done efficiently and in a reasonable time.

It will vary, as I said, by complexity, by the number of employees involved. I think what we also have to stress is the focus here is what can we do for the existing positions to contract out? We have to be willing to look at the existing contracts that are out and be willing to have those contracted in.

We have a sort of stasis here, that, to some extent, no one on supporting Federal employment wants to have more Federal jobs contracted out, and no one supporting the private sector wants more private sector jobs contracted in.

The best thing for the system would be what the concept of A–76 is, and that is to have competition so that in fact the private sector would have to be competitive with the abilities of the Federal sector. To the extent that Federal employees can be more effective, they ought to be able to perform the function.

Initially, the assumption was, you would contract out all sorts of services, garbage collection and the rest of it. In many cities, they have now discovered that the employees in the city government are, in fact, capable of banding together, organizing themselves and contracting back in and the service improves. So it works both ways.

Mr. STEVENS. Mr. Chairman, one of the restrictions that OMB has targeted as a burdensome one does, indeed, deal with this question of how long the studies are. In Public Law 103–35, Section 8043, which is the fiscal year 1995 DOD Authorization Act, it prohibits the use of DOD funds to complete any A–76 cost comparison that is more than 24 months old and involves a single function, or more than 48 months old and involves multiple functions.

The overall effect of this, really, is to cancel ongoing studies, and, it seems to me, to open some opportunities for foot-dragging: if we could only make this thing take up another few months, maybe we won't have to go through with it.

Mr. MICA. Well, just in the political process for the 27 months that I've been here, its easy to see how these things evolve and how the Congress gets wrapped up in passing prohibitions that don't make any sense and do not allow us to do the job we set out to do.

Mr. STEVENS. Right.

Mr. MICA. Mr. Koskinen, you took the words right out of my mouth and answered the next question, which was—but I don't know if you answered it completely—it's encouraging competition. That seems to be the key to success in the private sector or where these things have been successful: that you have true, real competition and a level playing field. Do you think we can craft something legislatively that would also encourage competition, or do you think that can only be done in a circular fashion, no pun intended?

Mr. KOSKINEN. That's right. Well, again, I think back to where we started earlier in my testimony—I don't think we have any disagreement on what the goals ought to be or the standards ought to be. In fact, I don't think the circular is unclear about those goals or standards. The real question is, can we get the process to work effectively? I think your focus is right. Can we remove the impediments on managers, whatever they might be, to, in fact, function effectively?

As I say, what's driving the system, that has changed, certainly, in the last 5 to 6 years, is that the managers themselves understand that they've got to become more effective in their use of resources because they have fewer resources that are available to them. What we have to be careful about, as we start to drive them to be more efficient, is that we don't tell them specifically how each and every one of them ought to do each and every thing they do.

That's a natural tendency, not just of legislatures, it's a natural tendency of central management agencies, as well, to say, this is the only way to do it. The Federal Government is a vast enterprise with wide-ranging responsibilities and activities. What we have to do is be able to provide the tools and the mechanisms for effective management, then monitor it to ensure it's done well; but basically, not try to tell people how to do their jobs.

Mr. MICA. In this imaginary legislation that I'm crafting, we're up to Title 3, which is called employee protection. How would you institute some protections for employees, and what rights and benefits should be preserved for competition and continuance of employment?

Mr. STEVENS. Mr. Chairman, Congressman Conyers, then in capacity of Chairman of the Government Operations Committee, did

submit a bill that would have legislated the contracting out program, I think, in 1990. And the thrust of that bill, I think, really was employee protection. So there are some precedents there. It was also apparent that when you start writing these into legislation, you are not necessarily going to speed up the process.

Appeal rights for employees, a checklist for various ways in which employee protections are built in or participate in the process, can be a complicating rather than a simplifying factor.

Mr. KOSKINEN. I think there's a point where we ought not to be winging it here on our side of the table, since you probably have a pretty good idea of where you would like to go with this. So it's hard to craft this legislation. I have general principles we can respond to. When you get down to this level, again, there are a set of employee protections in the way the circular has been implemented.

We ought to be careful about those. I think your instinct is right—we want to make sure, as the earlier statement was, that we do not unnecessarily lose the ability that we've built into the Federal work force. We've spent a lot of time training people; they work here a long time; they're dedicated. They are a great resource. Most companies, most countries, most cities and States recognize that their most valuable resource is a well-trained, highly efficient work force.

We have a very well-trained work force, and we ought to be very careful that we do not gratuitously lose the expertise that those people can bring to bear on the system. Again, I think, when you look at this structure, our thought is that what we need here, other than removing obstacles, is not legislation that says, do this. There is a circular that says, do this; there is a consensus that we ought to do that.

I think what we ought to take a look at is what the agencies' response is now in this day and age—and the circular has not been revised, as you know, for several years—to see what the process can bring. Because I do not detect any difference in view, again, which you would normally solve by legislation, saying, this is in fact what the circular's goal ought to be.

I think we all have the same goal for the circular. The real question is, can we revise it and provide the agencies with an atmosphere in which they can actually exercise the responsibilities under that circular.

Mr. MICA. Do you think you can go back now and look at some of these functions and activities that could fall into the realm of contracting out? I mean, I don't want anyone excluded from this. You can even include OMB and GAO. Certainly there are some good accounting firms out there that could do a good job to supplement what GAO is doing. But do you think that's possible?

Mr. KOSKINEN. One of the things I should say—this is not the subject of this hearing, but it is important and relates back to the early points of Congressman Moran. We are in what we call Phase II of reinventing government. As the President and the Vice President announced, the basic question every agency, every commission is being asked is, what is its basic fundamental Federal role; what is it doing that no longer needs to be done and can be terminated; which of its functions can be done better in the private sector;

which of its functions can be done more effectively by State and local governments.

We have created in the budget a whole series of performance partnerships by which we will, in fact, enter into arrangements with States and localities in which they will, in fact, assume more responsibility, subject to accountability for performance, for a range of Federal functions. HUD is basically talking about restructuring itself and going from 60 programs to ultimately 3, which are founded on performance partnerships with State and local government.

So this is not an abstract exercise, as it might otherwise be, and not a discussion about privatization. There is, in fact, a review going on now in terms of efficiency, in terms of restructuring the government, asking every agency to look very hard at what it can do; what the private sector can do better; what no longer needs to be done; and what the States and local governments can do.

Mr. MICA. We haven't gotten into the area of State and local government, which you just mentioned, but it would be my guesstimate that many functions could be transferred to the State for them to perform functions with some financial assistance. The EPA comes to mind, for example. There's tremendous duplication that I see from my State of Florida and what the national EPA does. There are some things of regional and national and international importance that must continue to be their function and responsibility.

EPA isn't a good example because they already contract out a good deal of their work on some of those projects. But, we could look for more efficient ways of providing services or oversight or enforcement of various EPA functions by contracting with State and local governments; is that not true?

Mr. KOSKINEN. Yes, but that discussion, as I say, goes far beyond the A–76 issue we're talking about. It's part and parcel of what's going on right now across the government. In fact, EPA specifically is taking a look at just that issue: what different relationships can they have with State and local governments. They're doing that not as an A–76 issue.

Mr. MICA. Right.

Mr. KOSKINEN. A–76 is really a means to get to that end. They're doing it on a basic fundamental analysis of what are they about. This is a process that started when we did streamlining plans, and when the NPR first issued its reports in the fall of 1993. So this process has been going on and been driven for some time. It is now moving at a pace that really is somewhat awesome to behold.

We are actually reviewing with every agency—we have almost a meeting every day—and every small commission, everyone, we're asking them these questions: what can the private sector do better; what can the States and localities do better; what programs should no longer be managed at all?

Mr. MICA. Well, I think I'd have to disagree with the ranking member. He's not here to defend himself, but it's a great time to bring it up. He mentioned processing Social Security forms and IRS returns, and also mentioned education. Well, I think those are all primary targets for looking at contracting out, even within the agency in which we have jurisdiction, OPM. They're undergoing

some tremendous internal self-examinations on investigations and training.

I guess the bulk of their remaining employees are in the retirement area, and possibly some of those services could be contracted out, too. There's a whole range of areas that we could look at—again, giving employees an opportunity to compete, creating a real spirit of competition.

Mr. KOSKINEN. That's right. But again, as I say, those are substantive issues that are going on. The A–76 function is to make it possible for an agency, when it decides to look at privatization or contracting out, to be able to make a sound business judgment. The A–76 Circular is not the vehicle for driving the system either way. I think it would be a mistake for us to try to convert the A–76 Circular by bootstrap into that dialog.

You might argue we should do that if we didn't have all of this momentum going. But in light of everything that's gone on in the last couple years, and certainly in light of everything that's gone on in the last several months, those forces for momentum and change and movement in those directions are already unleashed. As you say, OPM is taking a look at those functions not being driven by A–76; it's looking at those functions being driven by budgetary factors, by efficiency drives, by attempts to reorganize itself to provide its services in the most effective ways possible.

Mr. MICA. And I think that also will drive anything we do at this subcommittee or committee level or congressional level. I just note in conclusion here, that in this morning's Wall Street Journal, there's a little article by management consultant Peter Drucker. And he noted, "A much larger proportion of adults now participate in the U.S. labor force than did 30 or 40 years ago. Most especially, the great majority of educated people do, indeed, work for an organization. But they are not employees of that organization; they are contractors and have other roles."

It is interesting how, even since the beginning of that circular in 1983 or the attempt in 1955 by other administrations to address this problem, that life in the work place and work force has dramatically changed. And sometimes our circulars and laws and regulations don't keep up with that.

Mr. KOSKINEN. No, I think that's right. Again, I think if there was going to be one impact of trying to make the circular more effective, it would be not so much necessarily just contracting out, it may well be—and appropriately so—contracting in. If you look at the State and local experiences, the initial movement out has been balanced, not totally, by a movement back in, again, as a result of the competition. Where employees can provide the service more effectively contracting in will work for the city or the State or local government.

So our bias ought not to be either way. Our bias ought to be to try to continue to have the process respond and encourage employees wherever they work to respond effectively and cost-efficiently to the needs we have for work that needs to be done.

Mr. MICA. Again, I thank both of you for testifying, and want to try to come to a conclusion of the hearing this morning. We have a continuation of this hearing; we may have a series of these before we finish. And I believe our hearing is next Wednesday, April 5,

at 1:30 p.m., in this room. And also, gentlemen, I have additional questions which I would like to submit to you in written form. And without objection, those will be entered into the record.

[The information referred to follows:]

QUESTIONS FOR AND ANSWERS FROM THE GENERAL ACCOUNTING OFFICE

INHERENTLY GOVERNMENTAL

1. Question: Previous hearings of the Post Office and Civil Service Committee indicate that the Office of Management and Budget has developed a list of "inherently governmental" functions and that GAO has participated in the effort to define such functions.

Is it fair to say that anything not on the inherently governmental list has a counterpart in the private sector, and could therefore be subject to competitive cost comparisons?

Answer: OMB, in its Policy Letter 92–1 entitled, "Inherently Governmental Functions," (September 23, 1992) includes a list of 19 functions that are considered to be inherently governmental in nature. According to OMB, this list is illustrative. This implies that the list is not all-inclusive, and thus additional functions not on the list could also involve inherently governmental functions. As the missions and activities of the many federal agencies vary considerably, it is very likely that many other activities could fall within this category.

The OMB policy letter also includes a list of 19 other functions that are not considered to be inherently governmental. Although, as OMB states they could approach this definition because of the way in which the contractor performs the contract or the manner in which the government administers the contract. When contracting for such services and actions, OMB cautions, agencies should be fully aware of the terms of the contract, contractor performance, and contract administration to ensure that appropriate agency control is preserved.

Accordingly, we do not believe that it is fair to assume that anything not on OMB's inherently governmental list has a counterpart in the private sector and could therefore be subject to cost comparisons. Instead, we believe that the determination as to which activities are subject to cost comparisons should more appropriately be made by each individual agency, taking into account the agency's context, and applying the OMB criteria.

Can you estimate for this subcommittee what portion of the current workforce is performing such "inherently governmental" functions?

Answer: We have no information that would permit us to estimate what portion of the current workforce is performing inherently governmental functions. One factor that makes such an estimate particularly difficult is the varied and diverse nature of the duties and responsibilities of most federal employees. During a normal workday, the typical employee may participate in the performance of many functions. To specifically break out that portion of an employee's time that may be devoted solely to inherently governmental functions would require a study of the activities of selected employees. Such a study probably could not then be generalized to account for how other employees spend their time, but rather would only provide statistical data relating to the employees being studied.

PERSONNEL IMPACT

1. Question: Your testimony indicates that federal employees have rights to appeal if they believe that the methodology used in A–76 cost comparisons is unfair.

Do competing contractors have corresponding appeal rights?

Answer: The purpose of the A–76 appeal process is to provide all affected parties with the ability to resolve questions relating to (1) determinations resulting from A–76 cost comparisons and (2) justifications for converting contracts without a cost comparison in accordance with the Circular's provisions. As affected parties, all contractors who have participated in the A–76 cost comparison process may appeal an A–76 determination if (1) it is not a question of awarding to one contractor in preference to another or a question of a government management decision, (2) it can be demonstrated that the result of an appeal could change the cost comparison decision, and (3) the appellant meets the filing deadlines specified in the Circular.

As managers of the contract appeals process, has GAO conducted any particular overviews of A–76 appeals? What portion are filed by employees or their organizations?

Answer: As managers of the contract appeals process, GAO has not conducted any overviews of the A–76 appeals process. Some contract disputes arising from A–76

decisions are brought to GAO by disappointed bidders. While we generally do not review disputes over an agency's determination under A–76 to perform work in-house rather than to contract out, we will consider protests alleging that there was a faulty or misleading cost comparison which materially affected the agency's decision. Even in those cases, however, our review is intended only to protect the parties that competed from the arbitrary rejection of their bids; our review does not extend to protests by non-bidders such as federal employees or union locals that represent federal employees.

2. Question: Your testimony reported that under the Office of Personnel Management's program for priority placement of federal employees affected by reductions in force, only 204 of 2,729 registrants gained positions with other agencies.

Do you have any information about the number of people separated as a result of cost comparisons during this period?

Answer: We have no information on the number of federal employees separated as the result of cost comparisons. We are not aware of such information being developed and maintained by federal agencies. On the other hand, federal agencies may have data on cost comparisons performed as the result of employee downsizing. The Federal Workforce Restructuring Act of 1994 (P.L. 103–226) established ceilings on the total number of full-time equivalent positions for federal agencies. Section 5(g) of the act provides that there should be no increase in the procurement of service contracts by reason of the federal downsizing effort, except in cases in which a cost comparison demonstrates such contracts would be to the financial advantage of the federal government. To the extent that certain functions are now being performed by contractors that were previously performed by federal employees since separated through downsizing, the required cost comparisons presumably showed that the government could benefit through contracting.

Can you inform the Committee about the overall extent of federal hiring during that period?

Answer: In our statement, we indicated that, according to OPM, between the interagency placement program's inception in December 1993 and September 16, 1994, from an inventory of 2,018 registrants, agencies made 204 job offers. We further stated that OPM attributes the low number to the fact that agency downsizing has substantially reduced the number of vacancies. An OPM official advised us that, despite downsizing, executive branch agencies hired about 219,000 new employees during fiscal year 1994. However, only 38,000 of these employees were in full-time permanent positions (exclusive of on-call, seasonal, and student trainee employees).

IMPLEMENTATION

1. Question: In conducting A–76 studies, federal agencies are required to review their organizations and develop a "most efficient organization" or MEO, which becomes the basis of the "in-house" bid, against which contractors are compared.

Do you have any record of federal agencies winning A–76 cost comparisons, then failing to implement the MEO?

Answer: Circular A–76 does not require agencies to routinely evaluate the performance of activities that remain in-house as a result of an A–76 cost comparison. Therefore, it is very difficult to know with certainty whether agencies fully implement the "Most Efficient Organization" (MEO) that they use in their in-house bids. In our recent work examining the contracting-out experience at the General Services Administration (GSA), we reviewed a random sample of GSA's in-house versus contracting decisions. GSA has an internal evaluation process for activities that are retained in-house, known as the Post-MEO Review. While files and documentation on the actual implementation of MEOs were available for only a few cases, GSA's evaluations showed that actual costs remained within the acceptable 10 percent range above or below the estimated costs for most of the activities we sampled. Overall, the evaluated scores showed a range of actual costs from 13.5 percent below to more than 25 percent above the estimated costs of the MEO. The sample activity with a difference of more than 25 percent between actual costs and estimated costs failed the agency's evaluation and was converted to contract.

Although documentation was limited, our review indicated that there were delays in meeting all requirements for implementing the MEO. There were also reports that changes in in-house workload—additions to or deletions from the workload anticipated in the A–76 cost comparison—were not always documented. In general, the documentation provided anecdotal evidence that organizations found it difficult to separate MEO activities from other activities and to view the MEO scope of work as a "contractual" obligation.

METHODOLOGY

1. Question: Your testimony indicated that agencies claim that the cost comparison studies required by OMB Circular A–76 are cumbersome, time consuming, and difficult to perform because they require management analyst expertise that many federal employees don't have.

But aren't these methods simply the same procedures that would be used in any organizational assessment or review of operations?

Answer: To a large extent the management study required by A–76 to form the basis of the in-house cost estimate involves the same methods or procedures that would be used in any organizational assessment or review of operations.

Could you, for example, compare the A–76 cost comparisons to private sector companies' decisions to produce or buy goods or services?

Answer: The A–76 decisions to contract-out or retain activities in-house are similar to the "make or buy" decisions made by private sector companies. However, our recent work examining GSA's contracting-out experience indicates that private sector companies may not always base their decisions on A–76-like cost comparisons. For example, real estate companies we examined commonly used performance-based approaches to evaluate their activities. Specifically, the companies

—developed performance measures to evaluate the effectiveness of programs and service delivery (i.e., established a baseline and looked at the subsequent outcomes and results);

—benchmarked the companies' performance against that of others, particularly the "best in class" for the particular activity; and

—decided to retain an activity in-house only if its performance was consistent with that of the benchmarked companies, or if it was part of the company's "core" business.

If agencies don't have enough people to perform such management analyses, what means do we have of developing effective organizational assessments?

Answer: If agencies don't have enough people to perform needed management analyses, they could contract out for such expertise.

If agencies don't have enough management analysis expertise, what resources are being used to conduct the National Performance Review?

Answer: We have not conducted an analysis of how the National Performance Review work is being performed. It is our understanding that agency personnel have been detailed to the National Performance Review.

Has the NPR diverted federal employees from routine analytical duties?

Answer: We have no information on whether federal employees were diverted from routine analytical duties to be assigned to NPR.

2. Question: Your testimony indicated that federal agencies face absence of workload data and lack adequate cost accounting systems to perform proper cost comparisons.

Have these deficiencies been addressed by the Chief Financial Officers Act, or other legislation?

The Chief Financial Officers Act of 1990 (CFO Act) and the Government Management Reform Act of 1994 (GMRA) which extended several major provisions of the CFO Act, both contemplate the improvement of financial management systems including systems used to determine, record, and report on the cost of programs. The Federal Accounting Standards Advisory Board (which recommends accounting standards for the Federal Government to OMB, Treasury, and GAO) will shortly issue its statement recommending concepts and standards for managerial cost accounting for the federal government.

The managerial cost accounting concepts and standards contained in the draft statement are aimed at providing reliable and timely information on the full cost of federal programs, their activities, and outputs. The cost information can be used by Congress and federal executives in making decisions about allocating federal resources, authorizing and modifying programs, and evaluating program performance. The cost information can also be used by program managers in making managerial decisions to improve operating economy and efficiency.

What additional information would be needed to conduct adequate cost comparisons?

Answer: Agencies still need to collect adequate workload data. While agencies have sufficient cost data to conduct an adequate cost comparison, the quality of the cost comparison would be improved if the agency accounting systems could provide precise costs for such things as rent, supplies, and utilities on the activity under review. This would eliminate the common need to prorate costs among a number of activities. State and local governments are beginning to shift toward activity-based costing, an accounting technique that identifies all costs associated with an

individual activity irrespective of its place within an organizational structure, to improve the precision of their cost estimates.

3. Question: You reported that in 1989, more than 400 cost comparisons being conducted by the Department of Defense had been in progress for more than six years.

Why does it take so long to get a routine operational analysis completed?

Answer: Our previous work has identified three key factors that caused lengthy cost studies (GAO/GGD–91–100). We found that time-consuming cost studies resulted from the following:

—There was not a sufficiently high priority on ensuring that cost studies moved quickly through the various points of review. A low priority was particularly evident if those called upon to review studies were outside the A–76 office or the studied function.

—There was a lack of necessary skills to prepare the work statement. Preparation of this document, which must precisely define the government's requirements, was often a collateral duty of employees in the function being studied. The frequent lack of staff with the necessary professional skills to lead cost studies contributed to the length of the completion time. In some cases, the very initiation of an A–76 study caused some good employees to seek and gain employment elsewhere.

—There was a lack of work load data that had in some cases extended study times and contributed to poorly prepared work statements. When such data are missing, the A–76 cost-study process is lengthened, and those doing the study must do much more work to determine what the activity being studied actually accomplishes. In December 1990, the President's Council on Management Improvement reported that it was not unusual for A–76 studies to require anywhere from 18 months to 2 or more years to collect historical and performance data and to develop a competitive management study called the "most efficient organization"—the government's estimate of the lowest number and types of employees required to do the functions described in the work statement.

You mentioned that appropriations riders have barred spending funds to complete studies more than four years old. Have any other Congressional actions contributed to these delays?

Answer: The A–76 program has sometimes been restricted by legislative action. Such actions have not necessarily delayed the completion of cost studies, but have affected their performance. For example, our past work has shown that certain legislation has affected the Department of Defense's (DOD) A–76 program (GAO/GGD–91–100). As we indicated in our testimony, the DOD Appropriations Act for 1991 (P.L. 101–511, Nov. 5, 1990) provided that funds appropriated under the act could not be used for single function A–76 cost studies exceeding 2 years in duration and multifunction studies in progress for over 4 years. A similar provision has been included in the DOD appropriation acts for fiscal years 1992 through 1995.

In addition, a provision in the National Defense Authorization Act for fiscal years 1988 and 1989 (P.L. 100–180, Dec. 4, 1987) decentralized A–76 authority in the military services. The provision gave individual military installation commanders the authority and responsibility to determine, without approval from the services' headquarters A–76 officials, which A–76 commercial activities at their installations would be studied (the Nichols Amendment). This provision has been extended through the end of the current fiscal year and will expire unless further extended.

The DOD authorization act for 1993 prohibited DOD from using the results of an A–76 cost comparison study to contract out a function that had previously been performed in-house, with certain limited exceptions. A similar provision was included in the DOD authorization act for 1994, but was limited to the first six months of that fiscal year.

What could Congress do to facilitate the process?

Answer: As we indicated in our testimony, the A–76 program has never been adopted legislatively. The A–76 program has been and continues to be controversial. Generally, the objectives of the program, to seek efficiencies and cost savings, have been accepted by federal managers. However, managers view the program as time-consuming, difficult to implement, disruptive, and threatening to both managers and employees.

We have been advised by OMB that it is in the process of revising its A–76 guidance to federal agencies. We understand that this revision has been in process for quite some time. We believe that OMB needs to intensify its efforts to complete this process. We believe that Congress may wish to emphasize to OMB the importance of completing this project and perhaps have OMB commit to a reasonable timetable. If OMB can deliver revised guidance that addresses the concerns raised, then we do not believe legislation would be needed.

4. Question: Your testimony noted that the Postal Service had realized savings in the printing of stamps by using contractors rather than the Bureau of Engraving and Printing.

Some people have alleged that contracting might have some adverse effects on non-cost factors that often are invoked in these discussions.

For example, do you have any evidence that contract printers have any difficulties implementing appropriate security procedures for printing? Would they, for example, be more vulnerable to fraud or counterfeiting than the Bureau of Engraving and Printing?

Answer: In our report, "Postage Stamp Production: Private Sector Can Be a Lower Cost Optional Source," (GAO/GGD-93-18, Oct. 30, 1992), we found that the Postal Inspection Service monitors contractors' compliance with security requirements. While the Postal Inspection Service has found some deficiencies in contractor security systems, it found no serious security problems at contractor facilities. Some, if not most, of the contractors were firms—such as the American Bank Note Company and the United States Bank Note Company—a major portion of whose business is the printing of stamps, currency, and negotiable securities for other countries.

LEGISLATION RECOMMENDED?

Question: Would the General Accounting Office recommend adopting legislation to require agencies to review their activities and identify those that are performed by private firms for studies—perhaps using procedures similar to the A-76 Process?

Answer: As stated in our testimony, we do not believe that it is necessary for Congress to legislate the A-76 process. We note that Congress did require, through passage of the Federal Workforce Restructuring Act, that federal agencies conduct cost comparisons before contracting out for downsized federal activities. Congress, however, left the manner in which the comparisons were to be made to OMB. OMB advised us that it is revising its A-76 guidance to address concerns that have been raised. If OMB can deliver revised guidance, in a reasonable period, that addresses past concerns, then we do not believe legislation would be necessary. This decision is, of course, up to Congress. Congress may wish to monitor OMB's progress in this effort before reaching a decision on the need for legislative action.

QUESTIONS FOR AND ANSWERS FROM THE OFFICE OF MANAGEMENT AND BUDGET

INHERENTLY GOVERNMENTAL

1. Question: ". . . The Office of Management and Budget has developed a list of "inherently governmental" functions . . . Is it fair to say that anything not on that list has comparable positions in the private sector, and could therefore be subject to competitive cost comparisons?"

"Can you estimate for this Subcommittee what portion of the current workforce is performing such 'inherently governmental' functions?"

Answer:

The Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, dated September 23, 1992 (Federal Register 9/30/92, page 45096), provides agencies with guidance on inherently governmental functions. The policy letter also provides an illustrative list of functions that are considered, as a matter of policy, to be inherently governmental. On a functional or site-specific basis, the application of the criteria provided by the policy letter could result in additional functions being designated as inherently governmental.

At this time, we are unable to estimate the percentage of total non-military Federal employees performing inherently governmental functions. Agency inventories of commercial activities are dated and have not required the listing of inherently governmental positions. Developing a percentage is also complicated by the fact that certain commercial activities may be exempt from contracting out, in the interest of the Government, for reasons of national defense, direct patient care, no commercial source, etc.

ADMINISTRATION POLICY

1. Question: "Please supply for the record a listing of agencies that have conducted cost comparisons under OMB Circular A-76 for the past five years. Please identify the number of FTE affected by those studies and the savings projected as a result of the cost comparison."

Answer:

We do not have a current list of agencies that have conducted cost comparisons over the last five years. The Department of Defense reports that 4,185 FTE were

reviewed in the period 1990–1994, with estimated annual savings of $135.6 million. This number was restricted by the legislative moratorium on DOD conversions of work to the private sector in 1992 and 1993. Since 1990, the civilian agencies, including the Department of Veterans Affairs, the General Services Administration and the Department of Transportation, have reported that they have submitted approximately 2,500 FTE to review under OMB Circular A–76.

METHODOLOGY

1. Question: "Your testimony indicates that agencies claim that the cost comparison studies required by OMB Circular A–76 are cumbersome, time consuming and difficult to perform. Aren't these methods simply the same procedures that would be used in any organizational assessment or review of operations?"

Answer:

The methods used in an OMB Circular A–76 cost comparison are very similar to the methods used by the private sector in their make or buy decisions. The difficulty lies in (1) what is meant by a cost comparison; (2) the unique requirements of the Federal procurement process; and (3) the need to level the playing field between the calculation of Federal and private sector costs.

The first step in the A–76 process is to define the workload. This is often a major undertaking, as many departments and agencies do not have the management support systems to identify in-house workloads or their fully allocated costs. Second, a management study is conducted that allows for the restructuring of the organization. This is an important part of the A–76 process that may or may not be included in a private sector make or buy decision. It is intended to protect current employees from historical inefficiencies, creates incentives to restructure services, reduce costs, and serves to protect the procurement process itself, by protecting the in-house bid. Finally, the Circular requires that a cost comparison be conducted with bids from the private sector. This requires that the Federal procurement system be used to solicit bids from the private sector and to comply with prohibitions against "bid shopping."

Private sector make or buy decisions are similar in that they too require a workload definition, a sense of the fully allocated in-house and contract costs, and must seek comparable estimates from outside providers. They are not, however, bound by Federal procurement regulations, the need to treat all potential offerors as equals or even seek full and open competition. Private sector make or buy decisions do not involve public versus private sector cost considerations, the need to provide an administrative review process so that decisions can be made with full public disclosure, nor are they under any obligation to offer their employees an opportunity to compete for the work.

2. Question: "Has OMB compared the methodology used in private company's decisions to produce or purchase goods and services to the methodologies used in A–76 cost comparisons? What results have your obtained from such cost comparisons?"

Answer:

In the development of the 1979 and 1983 versions of the Circular, wide public and private sector comment was solicited. Agency, union, and private sector comments were received. As noted, the private sector's make or buy decision process is not, generally, as rigorous or as open to public review as that required by the Circular. The Circular is designed to ensure that all interested parties have an equal opportunity to participate in the process and to ensure that the vested interests and rights of all parties are protected.

3. Question: "Your testimony indicates that the state of the art in the private sector is one factor complicating government agencies challenges in defining their most efficient organizations. Why? If the Government is that far behind the private sector in technology for example, shouldn't the contracting decision be automatic?"

Answer:

The reference to the private sector's "state-of-the-art" does not necessarily refer to any technological advantage. The reference was made with regard to the level of effort required to develop the Government's in-house MEO. The development of the MEO is a process that can take time depending on the conditions that exist in-house and the competitive environment that the in-house organization is about to enter. Managers and employees review in-house service alternatives and the application of private sector methods. Market studies, work flow analyses, position management reviews, supply systems reviews, and performance standard reviews have been used to improve in-house service quality and reduce cost.

Ultimately, the lessons learned from the MEO process are reflected in the Government's in-house cost estimates. In addition to permitting employees to compete for the work and the protections offered to the procurement process itself, the MEO

process ensures that the resulting cost comparison reflects the lowest possible cost to the taxpayer.

4. Question "GAO reported that, a few years ago, the Department of Defense had more than 400 cost comparisons that had taken more than six years to complete. Is it common for cost comparisons by federal agencies to require that much time?"

Answer:

Agencies report that the average time to complete a relatively small cost comparison, e.g., less than 50 employees, is 12 to 18 months. Of this, a significant amount of this time is related to the requirements of the procurement process. Many are completed in much less time. Larger studies, due to increased workload and other data collection requirements may take up to two years.

The GAO and Congress have historically considered a study to have begun at DOD's legislatively mandated congressional notification, not at the formation of a study team or the issuance of a solicitation. In some cases, congressional notification was not followed up with active study development for two or more years.

It is not clear why any study would take more than two years to complete. By law, no DOD function can be converted to contract performance without a completed cost comparison. Legislative requirements to cancel DOD studies over two years in process and the moratorium on additional studies, may have also created unintended consequences.

PERSONNEL

1. Question: "GAO testified that agencies lack the management analysts to conduct A–76 studies in-house. What has OMB done to provide management analyst positions for agencies in the course of budget reviews?"

"Could Congress help the process by directing greater effort toward the conduct of cost comparisons?"

"If agencies lack such analysts, could the services be acquired through contracts?"

Answer:

It is an agency's responsibility to manage agency workforce requirements. Governmentwide there are approximately 50,000 management analysts and technical support staff and approximately 7,000 program analysts, with the general skills necessary to conduct A–76 studies. A–76 specific training has been available through the Defense Department, OPM and through the private sector. Technical and full A–76 cost comparison study skills are also available and have been acquired through contracts with the private sector.

IMPLEMENTATION

1. Question: "What vehicle does OMB have to ensure that, when agencies win cost comparisons, they actually make the organizational changes developed through the cost comparison?" "Does your office have any record of organizations winning a competition and then not implementing the MEO?"

Answer:

The Circular's Supplemental Handbook provides at paragraph E. 5., page I–12, that "Should the cost comparison result in a decision to perform the work in-house, implementation of the in-house staffing plan must be initiated within one month after cancellation of the solicitation and completed within six months."

Agencies are responsible for implementing the Government's MEO when an A–76 cost comparison is "retained" in-house. We are not aware of any instances where agencies have not implemented the MEO.

2. Question: "Your testimony and GAO's indicated that . . . it is very difficult to determine the scope of savings that can be attributed to cost comparisons. If that is so, how do critics of the A–76 program arrive at estimates that the costs of contracts have increased after the contract is implemented?"

Answer:

A–76 cost comparisons provide a "point-in-time" snapshot of the expected workloads and estimated costs associated with the performance of work by in-house and contract resources. If the function is retained in-house, the "savings" reflected on the A–76 Cost Comparison Form are really opportunity cost savings that demonstrate that it is cheaper to implement the MEO than to convert to contract performance. What is not shown on the A–76 Cost Comparison Form is the difference between the original cost of in-house performance and the estimated cost of MEO performance. These savings have been estimated separately by OMB and the agencies. GAO has generally not given consideration to MEO savings in its analyses. We believe these saving to approximate 20 percent.

If the function is converted to contract performance, the "savings" reflected on the A–76 Cost Comparison Form are calculated as the difference between the Govern-

ment's bid MEO and the contractor's winning offer, after adjustments for such items as the 10 percent minimum differential. In addition, and what is again not shown on the Cost Comparison Form are the MEO savings noted above.

After the completion of the cost comparison, unplanned scope changes, changes in the Service Contract Act's minimum wage and fringe benefit determinations, and other considerations may change the actual cost of in-house or contract performance, in comparison to the original cost comparison. Post implementation comparisons have often sought to compare the cost comparison's original estimates with current costs, without the necessary adjustments and without consideration for MEO savings. While individual contract costs may increase, it is generally not clear that these cost increases were inappropriate or that they would not be common to both in-house or contract performance.

3. Question: "Page 2 of your testimony indicated that savings as a result of contracting out are achieved, in part, by holding the winning organization to stated performance standards. Can you describe any mechanism that OMB has in place to ensure that winning government organizations implement their reforms?"

"If work statements are often modified after contracts are awarded, doesn't that complicate the task of holding anyone to performance standards?"

Answer:

Agency heads are responsible for ensuring that the Government's MEO is fully implemented within six months of the cancellation of the solicitation. This implies that agencies must meet the performance and quality standards of the Government's MEO bid or be subject to immediate re-competition with the private sector. OMB has no additional or recurring reporting requirement to certify agency compliance with the performance standards of the solicitation.

Consideration has been given to a requirement to conduct Post-MEO Reviews. The General Services Administration, for example, has conducted "second cycle" studies to ensure that managers have fully implemented their MEO. It is our understanding that the GSA Post-MEO studies confirmed that continued in-house performance was appropriate. Implementation of the Government Performance Results Act and the Chief Financial Officers Act will also establish performance standards and mechanisms to track performance.

4. Question: "Why will it be easier to develop work statements of intended results, when you also testify—in the same paragraph—that one of the difficulties agencies face in writing contracts is to specify what they want?"

Answer:

We believe that an important part of our effort to reinvent Federal procurement is to move away from requirements oriented contracts, which define the work in terms of how the work needs to be accomplished, to performance contracts which define the desired end product. This approach relies less on process description and more on the description of our service goals, less on historical workload records and more on operational end products, less on the description as to how work needs to be accomplished and more on the competitive imagination of our contractors to use technology investments and other resources to maximum advantage.

5. Question: "Does OMB have an inventory of agencies that actually track contracting costs after award?"

Answer:

OMB does not have an inventory of cost comparisons that tracks contracting costs after award. In 1987, OMB attempted to develop and implement a centralized reporting system that tracked the development of A–76 performance work statements, management plans, cost comparisons and post award information, but found it burdensome to the agencies, and generally unreliable.

6. Question: "Your concluding comments indicated a need to improve the level of fairness in competitions between in-house and contract resources. What problems do you see in this area?"

"Why are private contractors required to beat the Government bid by ten percent? Doesn't this "tilt" the playing field?"

Answer:

By improving our solicitations and making them more performance oriented, the in-house and contract resources will be better able to compete. Restrictive or process oriented solicitations limit the offerors' ability to be creative and to approach the provision of services in new and different ways. In some cases, solicitations have been written to require offerors, both in-house and contract, to simply mirror the Government's current approach to the provision of services. The timeframes permitted and the incentives to complete the solicitation, management plan and in-house bid need to be compared to the timeframes provided to private sector offerors. Overhead, fringe benefits, the cost of capital, contract administration costs, and the cost adjustments for tax payments also need to be reconsidered.

The 10 percent minimum differential does not, in our view, "tilt" the playing field of the cost comparison. It is established to ensure that the other non-specified costs to the Government, caused by the conversion of work to contract or in-house performance, are recognized and to ensure that the Government will not convert to contract or in-house performance for marginal estimated savings. Factors such as decreased productivity, and other disruption costs are accommodated by the differential.

While there have been complaints about the 10 percent differential when contracting out, there have also been complaints about the differential added to the in-house bid when considering a conversion to in-house performance. An activity performed by contract shall not be converted to in-house performance, unless the cost differential is greater than 10 percent of total in-house personnel-related costs over the performance period, plus 25 percent of the cost of new equipment and facilities that must be acquired or leased to perform the activity in-house. The additional 25 percent burden is to reflect the opportunity costs of money diverted to facilitate long term in-house performance.

QUESTIONS FOR AND ANSWERS FROM GARY D. ENGEBRETSON, PRESIDENT, CONTRACT SERVICES ASSOCIATION OF AMERICA

I first want to thank you on behalf of the members of the Contract Services Association of America (CSA) for the opportunity you provided me to testify before your subcommittee on April 5, 1995. I greatly appreciated the chance to outline for you and the other members of the subcommittee, the issues CSA, as the nation's oldest and largest association of government service contractors, have identified as those that will most impact our collective ability to enhance the efficiency—and reduce the cost—of providing government services.

I wanted also to take this opportunity to clarify and reiterate some of the key issues that were raised at the hearing. It is my hope that the hearing represented not an end, but a beginning, and that we, therefore, will have additional opportunities to discuss the many important aspects of the issue.

—Public/Private Competitions: Should government agencies compete with private contractors?

This is an issue that really has two, conflicting dimensions, both of which are important and fundamental to the discussion. As such it is important that both perspectives are understood, so that the most appropriate and workable solutions are found.

In short, there is the practical/political aspect to the question (to deny employees an opportunity to compete for the work could negatively impact employee morale, productivity and loyalty) and the sound policy aspect (whenever the government competes with the private sector, our broader national interest—the enhancement of a vibrant private, rather than public, sector is hurt). As you search for ways in which to address the issue in a manner that adequately deals with both points of view, I would like to offer a few observations:

1) When the unions talk about employees competing with the private sector, the implication is that if those employees lose the competition, or are denied the right to compete, they will lose their jobs. Yet the reality is that most contractors prefer to hire the existing workforce—be it government or that of the incumbent contractor—because doing so saves time and money that would have to be devoted to hiring and training a new workforce.

In addition, when a decision to contract a function is conducted via procedures established under OMB Circular A–76, the existing federal employees are given a right of first refusal for all available jobs with the contractor.

In other words, such competitions do not represent "win or lose" propositions for government employees—the system is designed in such a way as to protect their interests.

2) As I stated in my testimony, the current system of cost-comparisons is fundamentally flawed because the government accounting system is incapable of producing accurate cost estimates of in-house performance. The system simply does not allow for full accounting of all indirect costs—including capital and salaries. The net result is that the government is making "buy/no buy" decisions based on incomplete data, a problem which is clearly costing the taxpayers more than is warranted.

Thus, to the extent the government will continue to have cost comparison requirements, it is vital that we come to grips with the issue of how those comparisons can be improved and streamlined.

3) To the extent resources are being unnecessarily committed to "commercial activities" (i.e., those functions of government that are not "inherently governmental" and for which a competitive, private marketplace exists), the government's ability to more fully focus on its core responsibilities is affected. For instance, if, within the limited budgets available, the Border Patrol is doing work in-house (such as fleet maintenance, or information systems, or facilities management) that could be contracted to the private sector, there is less money (because we know that contracting saves an average of 25% per contract) available to put more officers to work patrolling borders.

—Removing Barriers to Efficient Management: Is legislation needed to encourage and incentivize additional contracting of government services?

CSA believes that the Congress can and should take the leadership role in removing all impediments to efficient and flexible management in the government, including removing all obstacles to contracting-out. This is not to say the Congress can or should pass legislation that would force a set amount of contracting to take place. Rather, it is to say that Congress can and should ensure that the system encourages and allows government managers to manage in the most efficient manner possible. This, unfortunately, is not the case today.

Specifically, CSA believes any effort to encourage the contracting of government services must include these elements:

1) Statutory limits on cost comparison studies (to the extent such comparisons are going to continue to be required or allowed) must be shortened from the current 24 months for a single function and 48 months for a multiple function, to 12 months and 24 months respectively. If such legislation is passed, and accompanied as well by a requirement that once studies are announced they proceed without interruption, we believe the process will become far more "user friendly".

As many GAO and other studies have indicated, a principal cause of the lack of aggressive conversion to contract of government services is the drawn out and costly study process. By limiting study times it will do a lot to improve the system and make it more acceptable to those government managers who must work within the process.

2) Address the cost comparison issue (as suggested above) through the authorization of a credible, independent resource (such as a major business school) to study the process and recommend 1) how a factoring or scoring formula might be applied to government "bids" to make them more accurate and 2) how the process itself can be streamlined and made far more simple. This is a natural, and unavoidable, companion to the recommendation above (on limiting study times) and an issue that goes to the very heart of the whole debate.

3) Remove all direct and indirect barriers to contracting, including FTE floors, specifically special interest prohibitions (such as prohibiting the contracting of firefighting and guard services at DoD—services routinely contracted in other agencies).

4) Prohibit government agencies from competing with the private sector for work at other government agencies. As you may know, some government entities, such as arsenals, labs, military depots, etc., are allowed to compete with the private sector for similar workload at other agencies. Such policies are both unfair—since the government has a clear advantage competing against private providers—and contrary to the broad national interest.

Mr. Chairman, we are both appreciative and mindful of the leadership you are demonstrating on these important issues. I sincerely hope I, and my staff, will have additional opportunities to work with you and your staff, as the search continues for the most appropriate and effective means of achieving the goals we share.

My thanks once again for your time and attention and I will look forward to working with you to find ways to save the taxpayers dollars.

STATEMENT OF ROBERT M. TOBIAS, PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

April 18, 1995

The Honorable John L. Mica
Chairman, Subcommittee on Civil Service
Committee on Government Reform & Oversight
U.S. House of Representatives
B-371C Rayburn House Office Building
Washington, D.C. 20002

DEAR CHAIRMAN MICA:

Thank you for your recent correspondence requesting NTEU's submission for the record of additional studies or reports on the federal government's contracting-out practices.

I am pleased to bring the following to the Subcommittee's attention:

1. Audit of the Cost-Effectiveness of Contracting for Headquarters Support Services, Department of Energy Office of Inspector General, (DOE/IG–0297, August 30, 1991).

2. Audit Report on Consulting Services Contracts for Operational Test and Evaluation, Department of Defense Office of the Inspector General, (No.91–115, August 22, 1991).

3. Audit Report on Contracted Advisory and Assistance Service Contracts, Department of Defense Office of the Inspector General, (No.91–041, February 1, 1991).

4. Audit Report on Selected Services Contracts at Wright-Patterson Air Force Base, Department of Defense Office of the Inspector General,(No.92–128, August 17, 1992).

5. Changes Affecting the Pay and Benefits of Federal Employees—Federal Government Service Task Force, January 1993.

6. From Red Tape to Results: Creating A Government that Works Better And Costs Less, Report of the National Performance Review, September 1993.

7. Renewing HUD: A Long-Term Agenda for Effective Performance—National Association of Public Administrators, July 1994.

8. Summary Report of Agencies' Service Contracting Practices—Office of Management and Budget (OMB), January 1994.

9. Testimony of Ambassador Henry F. Cooper, Director, Strategic Defense Initiative Organization, DOD, before the Senate Committee on Governmental Affairs, July 24, 1992.

10. Testimony of Donna R. Fitzpatrick, Assistant Secretary for Management and Administration, DOE, before the Subcommittee on Federal Services, Post Office and Civil Service, Senate Committee on Governmental Affairs, September 6, 1989.

While it is important to recognize that many of the GAO studies cited in my recent testimony are not a random sample of all contracts, it is equally important to acknowledge these studies as definitive representations of specific contracting-out abuses that demand the Congress's critical attention.

As the Committee moves forward on this important issue, I too look forward to working with you to resolve these concerns in the public interest.

Sincerely,

ROBERT M. TOBIAS
National President.

NATIONAL PERFORMANCE REVIEW'S LIST OF LEGISLATIVE RESTRICTIONS TO COMPETITION AND CONTRACTING OUT IN THE FEDERAL GOVERNMENT

June 16, 1995

Over the years Congress has enacted a number of legislative restrictions to contracting out or placed other restrictions on managerial flexibility. The following is a list of legislative impediments. The elimination of such restrictions could result in additional managerial flexibility to improve performance and cost effectiveness.

AGRICULTURE

None. Agriculture was previously restricted from contracting out in its Agricultural Stabilization and Conservation Service (ASCS) and in the Soil Conservation Service, but these legislative restrictions are no longer present.

COMMERCE

1. P.L. 102–555—"Neither the President nor any other official of the government shall make any effort to lease, sell or transfer to the private sector or commercialize, any portion of the weather satellite systems operated by the Department of Commerce or any successor agency."

2. 15 USC 3704(b)—"The functions of the NTIS are permanent Federal functions to be carried out by the Secretary through the Service and its employees, and shall not be transferred from the Service, by contract or otherwise, to the private sector on a permanent or temporary basis, without the express approval of the Congress."

"Regardless of any change in circumstances subsequent to the enactment of this Act, even if such change makes it appear to be in the national interest to commercialize weather satellites, neither the President nor any official shall take any action prohibited by Section 601, unless this title has first been repealed."

DEFENSE

1. Title 10 Section 114(a)(2)—Prohibits contracting out of R&D functions under Circular A–76.

2. Title 10 Section 2461—Requires cost comparisons, congressional notifications, Most Efficient Organization (MEO) certifications and annual reports to Congress to contract out.

3. Title 10 section 2462—Permits contracting out if a cost comparison is fair and includes certain costs.

4. Title 10 Section 2463—Requires a semi-annual report of all conversions to the private sector involving more than 50 FTE.

5. Title 10 Section 2464—Limits contracting out of logistics support functions, unless waived by the Secretary.

6. Title 10 Section 2465—Prohibits conversion of firefighting and guard services to contract performance.

7. Title 10 Section 2466 and 2469—Limits contracting out of Depot Maintenance functions—the 60/40 in-house to contract rule.

8. Title 10 Section 2467—Requires DOD to consult with employees on the performance work statement and MEO and include in the in-house bid certain retirement costs.

9. Title 10 Section 2468 (Nichols Amendment, P.L. 100–800)—Removes from the Secretary and assigns to the local installation commanders the authority to determine whether any function will be studied for possible conversion to contract performance and how many FTE will be studied. Extended through September 30, 1995, by P.L. 103–337 Section 386(c), FY 1995 Authorization Act.

10. Title 10 Sections 4532/9532—Provides for the mandatory in-house use of DOD factories and arsenals.

11. P.L. 103–335 Section 8020, DOD FY 1995 Appropriations Act—Requires MEO certifications and reports to Congress regarding contracting out.

12. P.L. 103–335 Section 8043, DOD FY 1995 Appropriations Act—Prohibits the use of DOD funds to complete any A–76 cost comparison that is more than 24 months old and involves a single function or is more than 48 months old if it involves multiple functions. Designed to cancel studies and prevent conversions to contract.

13. P.L. 103–335 Section 8057, DOD FY 1995 Appropriations Act—Prohibits the use of A–76 to cost compare depot maintenance services. As a result, the DOD Depot Maintenance Cost Comparison Handbook was developed.

14. P.L. 102–392 Section 207—Prohibits DOD from contracting for printing services, except as permitted by the GPO.

EDUCATION

None. Education was previously restricted from contracting out library services, but this legislative restriction has expired.

ENERGY

No legislative restrictions have been identified.

ENVIRONMENTAL PROTECTION

No legislative restrictions have been identified.

GENERAL SERVICES

1. Part 51–5.2, Federal Acquisition Regulations—Effective October 28, 1991, it became mandatory for Federal agencies to order commodities on the CBOSH Procurement List which are in the FSS supply system from GSA.

2. 40 USC 490(c) or P.L. 100–440 Section 507 (Edgar Amendment)—Prohibits GSA from contracting for guard, elevator operators, messengers and custodians (services).

HEALTH AND HUMAN SERVICES

No legislative restrictions have been identified.

HOUSING AND URBAN DEVELOPMENT

No legislative restrictions have been identified.

INTERIOR

1. 16 USC 668(d), Wildlife Refuge Administration Act—Prohibits the Fish and Wildlife Service from contracting for the management, operation and maintenance of wildlife refuges.

2. 43 USC 1707(204)(a)—Requires that Bureau of Land Management (BLM) lands be managed directly by Federal employees.

3. 43 USC 1701 (e)—Prohibits BLM from replacing Federal employees with volunteers.

JUSTICE

No legislative restrictions have been identified.

LABOR

No legislative restrictions have been identified.

NASA

No legislative restrictions have been identified.

OPM

42 USC 2165—The Nuclear Regulatory Agency must acquire personnel background investigations from OPM or the FBI. This limits the competition available to NRC and imposes continuing service requirements on OPM.

TRANSPORTATION

No legislative restrictions have been identified.

TREASURY

No legislative restrictions have been identified.

VETERANS AFFAIRS

Title 38 Section 8110(c), P.L. 103–446 suspended—Section 8110(c) limits the DVA's ability to contract out. Legislatively required cost comparison provisions serve to raise the cost of contract performance, in conflict with the requirements of OMB Circular A–76. In DVA, for example, a 15 percent differential is required vice the 10 percent differential required by the Circular. The Government's cost of conducting the comparison (PWS, management study and cost analysis) is also added to the contractor's bid. P.L. 103–446 suspends Section 8110 (c) for five years.

RAILROAD RETIREMENT BOARD

1. 45 USC 2331(f)(b)(3), 45 USC 362(m) and 45 USC 355—Appeals of RRB decisions can only be reviewed by board members. Taken in combination these provisions prevent the RRB from contracting for alternative dispute resolution services.

2. 26 USC 6103(l)(1)—Limits the distribution of tax information necessary to the provision of services, thereby effectively requiring in-house performance.

SMALL BUSINESS ADMINISTRATION

No legislative restrictions have been identified.

Mr. MICA. We also have some comments and a written statement from the ranking member and other members, and they will be entered into the record, without objection.

Furthermore, during the course of today's discussion, we've identified several questions that would have been asked of the Office of Personnel Management if Mr. King or a representative had been able to be here and respond. We'll hold the record open also for Mr. King and OPM to respond for appropriate number of days. And there being no other business before the subcommittee at this time, this meeting is adjourned.

[Whereupon, at 11:30 a.m., the hearing was adjourned subject to the call of the Chair.]

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