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S. 314—FREEDOM FROM GOVERNMENT COMPETITION ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING, AND THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

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S. 314—THE FREEDOM FROM GOVERNMENT COMPETITION ACT

WEDNESDAY, JUNE 18, 1997

U.S. SENATE,
OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING,
AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE,
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:05 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Sam Brownback, Chairman of the Subcommittee, presiding.

Present: Senators Brownback and Thomas.

OPENING STATEMENT OF CHAIRMAN BROWNBACK

Senator BROWNBACK. Thank you all for coming today. I want to welcome you to the first hearing to investigate the opportunities for greater competitive contracting within the Federal Government as well as other privatization projects at the national level.

After years of talk and debate, the Federal Government appears to have finally joined a worldwide trend when it committed itself to an aggressive privatization program during the 104th Congress. During those 2 years we enacted more privatization into law than had occurred during the previous 12 years.

The support for those initiatives was bipartisan and they were accomplished with the cooperation and support of the President. When finally implemented, they will lead to an improvement in services and savings to the taxpayer.

While the most prominent privatization initiatives of the last Congress focused largely on the divestiture of assets and commercial-like enterprises, such as the Naval Petroleum Reserve and the Uranium Enrichment Corporation, many believe that the greatest opportunities at the Federal level involve the competitive contracting of thousands of routine commercial-type services that the government provides to itself and to the public. Although many such services are already contracted out at the Federal level, a casual review of most government departments indicates that much more can be done, and that we have only scratched the surface in subjecting government's vast array of commercial activities to the benefits of the competitive marketplace.

As several of today's panelists will testify, when competitive contracting has been tried at the Federal level, the savings have often been substantial. Department of Defense has averaged savings of 30 percent with its A–76 program, while similar results were ob-

tained at the General Services Administration during its ambitious competitive contracting program in the early 1980's.

Beyond these two agencies, however, not a whole lot has happened at the Federal level, and the legislation introduced by Senator Thomas and Representative Duncan is designed to rectify that neglect by providing strong statutory encouragement to the Federal establishment. Their legislation is also designed to address another longstanding problem, and one that may have worsened in recent years—the proclivity of Federal departments to provide commercial-type services to third parties in direct competition with private businesses.

While such arrangements were permitted under limited circumstances by the Economy Act of 1932, new legislation enacted in the 103rd Congress has expanded that mandate by creating franchise funds within Federal departments. The law allows for the creation of six demonstration funds and encourages them to seek contracts from other departments in competition with the private sector.

Recently the private sector contracting community was outraged to discover that the Department of Agriculture won a contract with the Federal Aviation Administration for data processing services. In addition to private companies bidding on the contract, the Department of Transportation also submitted a bid.

These events raise fundamental questions about the proper role of the Federal Government and the core missions of our departments. Are we to believe that their core missions have been fully satisfied, thereby freeing up management and staff for entrepreneurial activities that replicate services widely available in the private sector? If that is the case, then perhaps further savings from these agencies are in order.

I suspect that some of our witnesses today will be commenting on this event, and I look forward to hearing these views. I think we will be joined later by other Members, as well. We have panels that will be making presentations, and we will have to take a break at 11 o'clock and reconvene, I believe, probably for the last panel at 12:30 p.m.

To open us up today, the first panel will be the Hon. Senator Craig Thomas, who is joining us, and the Hon. John Duncan, a Member of the U.S. House of Representatives. These are two gentlemen that have been leading figures in working with this privatization push and also the competitiveness within the Federal Government agencies competing with private sector, and taking a new look at that problem.

Gentlemen, rather than me talking longer, I want to turn it over to you, and we would be happy to take your testimony and comments. I don't know which of you would care to go first in your presentation, if you have——

Mr. DUNCAN. It makes no difference to me.

Senator BROWNBACK [continuing]. Made any distinction. Senator Thomas, I have you listed down on the panel first. If you make no distinction, I am going to go with the order on the list. Thanks for introducing this bill, thanks for being here, and we look forward to your testimony.

TESTIMONY OF HON. CRAIG THOMAS,[1] A U.S. SENATOR FROM THE STATE OF WYOMING

Senator THOMAS. Thank you, Mr. Chairman, and thank you for having this Subcommittee hearing to talk about this important issue. I am here to discuss a simple concept: The idea, and most people agree to the idea, that government ought to be as small and lean and efficient as possible.

Most people believe that, to the extent possible, we ought to take advantage of private sector expertise whenever that is appropriate. My bill simply identifies those areas that are commercial in nature, that would be applicable to contracting, and then choose whoever does it the best, the private sector or the Federal Government. That is not a new idea. That is not a new concept.

I am pleased to be joined by my colleague, John Duncan. He and I served together in the House, and I am delighted that he is here and pushing this issue in the U.S. House.

For the past 40 years, Mr. Chairman, it has been the administrative policy of the Federal Government to rely on the private sector for its commercial needs. The policy was issued in the Eisenhower Administration, in reaction to a bill very similar to what we are talking about here today, and the policy is now found in OMB Circular A–76. Unfortunately, it is routinely ignored.

Today there are an estimated 1.4 million Federal employees engaged in functions that are generally known as commercial activities, goods and services that often could be obtained more cost effectively from the private sector. The Federal Government performs many of these functions, from the mundane to the high tech, from laundry services to informational technology. Congress should question the practice of taxing private enterprise in order to maintain a similar, but often less efficient capability within the government. The bottom line is that government competition with the private sector costs taxpayers billions of dollars annually, stifles economic growth, kills private sector jobs, erodes the tax base and siphons off resources, as the Chairman mentioned, for the core mission of the government.

The primary point I want to make today is that there needs to be some statutory provisions to enforce the notion and indeed the policy that has been in existence for over 40 years. To inject competition into government monopolies, Congressman Duncan and I have introduced the Freedom From Government Competition Act, legislation based on the premise that the government should not unfairly compete with its citizens.

It codifies the 40-year-old policy that the government should rely on the private sector whenever possible for its commercial needs, giving some preference to the private sector. Of course there are exceptions to the policy: Functions that are inherently governmental; National security; if the government can provide a better value, if the private sector cannot provide the goods and services.

I recall last year when I testified before this Subcommittee, some had the notion, "Well, you want to do away with the government and have the private sector do everything." Obviously that is not

[1] The prepared statement of Senator Thomas appears on page 47.

the case, but there are many commercial functions which seem to be more appropriate for private sector performance.

This bill also establishes a process by which OMB will identify government functions that are commercial in nature and implement a plan to outsource those activities to the private sector. It also establishes an Office of Commercial Activities within OMB to implement the bill.

The problem partly has been that the fox has been in charge of the henhouse. I understand why that is—there is no real incentive for an agency head to outsource, and so it doesn't happen.

Federal agencies and the private sector will use the new office as a resource to facilitate transition to this system, and that is what we need, is to make a transition. The bill also establishes provisions to help the transition of Federal employees into the private sector.

Last year, as I mentioned, the Governmental Affairs Committee held a hearing on this bill. Based on the input of Senators Stevens and Glenn, OMB, GAO, private industry and labor unions, we have hopefully made this a better bill.

For example, we added a "best value comparison" which will allow Federal employees and the private sector to compete on a level playing field, based on several factors. One is a fair comparison of cost, which is a very important component; qualifications; and past performance. We've also added some "soft landing" provisions for Federal employees. In fact, 90 to 95 percent of Federal employees who are displaced move on into the private sector, retire, or get another government job, but we recognize that that is an important function.

Testimony later today will unequivocally demonstrate that outsourcing non-core functions works. It works in the private sector, it works at the State and local level, it works internationally, and it can work for the Federal Government. American taxpayers can reap the benefits not only from budget savings but also from government doing a better job. In fact, several studies have shown that we could save up to 30 percent by outsourcing, saving billions of dollars annually.

Mr. Chairman, we talk a lot about making changes around here, fundamental changes. We talk about reinventing government and see, frankly, relatively little change. I think this is an opportunity for us to make some fundamental reform. So I do appreciate the opportunity to be here.

In summary, outsourcing and privatization of commercial functions work. What we need is a statutory basis to make it work for the Federal Government. It creates jobs. It helps small business. I think I mentioned that in the last several meetings of the White House Conference on Small Business, this has been one of the issues that has been at the top of the agenda, to stop unfair government competition with the private sector.

So I thank you again, and certainly would look forward to answering any questions you might have.

Senator BROWNBACK. Thank you, Senator.

Representative Duncan, thank you very much for coming across the Capitol and joining us here today.

Mr. DUNCAN. Thank you.

Senator BROWNBACK. I enjoyed serving with you in Congress, and look forward to your comments.

TESTIMONY OF HON. JOHN J. DUNCAN, JR.,[1] A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. DUNCAN. Mr. Chairman, thank you very, very much. I would simply like to thank you and the Members of the Subcommittee for holding this hearing today. I would also like to thank Senator Thomas for his very hard work on this issue.

I have a full statement I would like to submit for the record. You and Senator Thomas have made outstanding statements and have adequately described this legislation.

As you know, in the House, I have introduced companion legislation to Senator Thomas's S. 317, the Freedom From Government Competition Act. This legislation has strong bipartisan support, with 46 cosponsors in the House and 13 cosponsors in the Senate.

It has been endorsed by a number of organizations, including the U.S. Chamber of Commerce, the National Federation of Independent Business, the Business Coalition for Fair Competition, the Contract Services Association, and at least 30 other major organizations. I have attached a list of these associations to my statement.

In addition, as Senator Thomas just mentioned, the last time the White House Conference on Small Business met, it listed unfair competition as its No. 1 concern. I think this legislation that I have introduced with Senator Thomas takes a very modest first step in helping alleviate this problem.

It does not require the Federal Government to contract everything out. We recognize that there are things that government does best, and that there are functions that only the government should do. This bill would not require agencies to contract out functions that are related to national security or those things that are related to the core mission of a particular agency.

It requires only that Federal agencies look at those things they do which are commercial in nature. As Senator Thomas mentioned, the CBO has estimated that 1.4 million Federal employees presently perform activities that are commercial in nature. If these commercial goods and services can be obtained from the private sector in a more efficient and cost-effective manner, then, and only then, would the agency be required to contract out that work.

Mr. Chairman, the history of government competition is a long one. It was described by President Bush's Administrator of the Office of Procurement Policy, Dr. Allan Burman, in 1990 when he testified before the House Post Office and Civil Service Committee he stated: "As far back as 1932, a Special Committee of the House of Representatives expressed concern over the extent to which the government engaged in activities that might be more appropriately performed by the private sector."

Since the Eisenhower Administration in 1955, it has been official U.S. policy that "the Federal Government will not start or carry on any commercial activity to provide a service or product for its own use if such product or service can be procured from private enterprise through ordinary business channels."

[1] The prepared statement of Mr. Duncan appears on page 49.

However, the problem is, as Senator Thomas has pointed out, we have really simply paid lip service to this policy instead of giving it practical effect. And I would say basically that the reason for this bill is that it is hard enough for small businesses to survive in this country today against ordinary competition, but when they have to take on the Federal Government to boot, it becomes an extremely difficult and sometimes an impossible task.

Every administration, Republican and Democrat, for the past 40 years has endorsed this policy, but unfortunately it has never really been implemented. A report released by the Commission on the Roles and Missions of the Armed Forces, known as the White Commission, stated that "at least 250,000 civilian employees of the Department of Defense are performing commercial-type activities that do not need to be performed by government personnel."

Numerous organizations have conducted studies on contracting out and have found that the Federal Government could save a huge amount of money by relying on the private sector. In fact, just last year the Defense Science Board found that $30 billion could be saved annually if the Department of Defense did more contracting out.

Mr. Chairman, in a free-market society businesses must compete with each other to provide the best possible product or service in a cost-efficient way. However, we only have one government, and it has no competition. Therefore, when it provides goods or services, it has no incentive to do so in a cost-effective manner. I believe the government should only provide those goods or services which private industry cannot provide.

I think all of us would agree that the American public wants the Federal Government to improve the services it provides without increasing taxes. I also think we would agree that almost everyone would like us to reduce the size of the Federal Government. This bill, if enacted, would help do that in a very efficient and cost-effective way.

I would like to close, Mr. Chairman, by quoting from a book that was written by a prominent Democratic Member of the House many years ago. He said this: "He says that that thin line wavering between liberty and despotism is surely crossed when government ceases to regulate and begins to manage, ceases to be an impartial umpire in the economic game and becomes a player; when government competes with its citizens in the production of wealth; when government becomes the untaxed donor of property not necessary for strictly governmental functions."

I think that pretty much sums up the reasons for mine and Senator Thomas's bill. I think it is a modest first step toward something that has been needed to be done for a long, long time. I appreciate your very fine statement at the start of this hearing, and I appreciate Senator Thomas for all he has done in regard to this. Thank you very much.

Senator BROWNBACK. Thank you both for coming forward and testifying. Just a couple of questions, if I could, and I think you probably have the information there. Maybe it is in the written statement.

Senator Thomas, you cited a 30 percent savings as a potential figure out there in some areas. Do you have any dollar figures of

what outside studies have said that we could potentially save by contracting out services?

Senator THOMAS. I think the figure that I mentioned was a $30 billion annual savings in the Defense Department. Some say, well, that is inflated. Say it is inflated; say it is only $20 billion a year. But there are obviously substantial savings, and I think CBO is doing a study now that it hasn't finished yet, that actually will come up with some figures which should be available to us soon.

Mr. DUNCAN. I might say in that regard, Senator, that the Coalition for Fair Competition has made an estimate of $40 billion government-wide, and they tell us that that is a very low-ball, conservative estimate. If the White Commission estimates that $30 billion could be saved in the——

Senator THOMAS. Department of Defense.

Mr. DUNCAN [continuing]. Defense Department alone, then the $40 billion I think is a very conservative figure.

Senator BROWNBACK. Let me ask you both, this is something that the private sector has engaged in broadly over the last 10 to 15 years, where they are contracting out everything. I mean, whether it is data processing or food services, anything that is outside of the core mission they seem to be willing to look at rapidly and say, "Can we contract this out?"

And they do it, and the incentive for them is clear. They save their money. They are able to put that towards the bottom line within the corporate profits or within other investments that are in the core function of the company.

Do we just not have the right incentives in the Federal Government to push this, and do you think we are going to get at those incentives with the bill that you are putting forward to stimulate this to happen? I mean, this needs to happen. The figures are there. It is occurring in the private sector in large organizations, but it is not occurring near to the necessary speed or amount in the Federal Government.

Mr. DUNCAN. Well, I think one of the reasons that it has not been carried out is because we haven't had legislation like Senator Thomas and I have introduced, and this bill would set up a specific office with the primary responsibility within OMB to make sure that these procedures and policies are carried out.

It is more than just contracting out. There are many ways every day that government agencies are competing with small businesses, and that is really what this bill is more aimed at. I mean, even just yesterday I had a call from a meat-packing company in Knoxville, and the Tennessee Valley Authority was running an ad in conjunction with another meat company and was doing more or less free advertising for this one company. You have got daily examples like that happening throughout the country.

I think that if this bill could be enacted, so it would set up a specific office to carry this out, that would provide some of the incentive that you are talking about, and we would see real action from this for the first time. It has just been words so far, but this would be action.

Senator THOMAS. Mr. Chairman, I think when you look at the whole issue, it is not some evil scheme on the part of the Federal Government or federal employees.

Say you are in charge of a forest, and you say, "Well, why don't we contract out the management of the campgrounds?" However, you can have more control over the campgrounds if you don't. You are accustomed to doing it. It is a habit not to do it. There is no real incentive to do it. In the private sector, if you do it, maybe you make some more profit or you get a bonus. That is not true in the government.

I think the Federal Government is different. The success in contracting we ought to do, but we are going to have to do it in a little different way because the incentives that are there in the private sector are not available, it seems to me, in this structure. Part of it is habit, part of it is lack of incentive.

Furthermore, it seems to me if we really want to enjoy the benefits of outsouring, you have to change the structure of Federal agencies. I happen to be chairman of the Parks Subcommittee, and we have got some real problems in our national parks. They have an $8 billion backlog in maintenance needs, and we are going to have to find some new ways to do things. I think it is an excellent example for this bill. You have park professionals whose real training and background is managing the resource, but they spend most of their time doing the commercial functions. That's the problem. We need to keep these people doing what they are trained to do.

I guess what I am leading up to saying is if you want to outsource these functions, efficiently, then the agency has to convert a little bit to be better at putting out the contract, overseeing the contracts to make sure they are done right, change their activity a little bit, doing it to be overseers of contracts, the same way you do it in the private sector.

I think we have to recognize that it doesn't happen as easily in the government, but I think once accomplished, the people then can divert themselves back to what they really want to do rather than the commercial things that they end up doing, and there would be a good deal of support for this concept.

Senator BROWNBACK. My question is born out of some experience when I ran a little State agency and we privatized several functions, and the only thing we got in the process was grief. Because you are cutting back on employees of the agency, and so that is not exactly enjoyable within the culture of the agency. You didn't get anything back in return. I mean, I wasn't able to give bonuses out to people. I wasn't creating opportunities internally.

And I was losing some control that I had as long as this was in my purview. Also, then, there is the common issue of a power base. I used to have X number of employees; now I have X minus 50 employees. All the incentives went the other way and said, "Well, why would I do this? Plus, if it doesn't work, I'm going to get hammered in this process."

So I have wondered if in looking at these things, I think the office is a good idea, but is there a way to incentivize the public sector? Can you give bonuses for savings, the way you give bonuses for increased earnings? Have you looked at—and I don't know if there is, that is why I am asking you gentlemen—is there a way of changing that?

Senator THOMAS. Have you ever tried politically to give a bonus in a government deal? It is hard, you know.

Senator BROWNBACK. Well, that is why I am asking you.

Senator THOMAS. It is hard, but we do need to find some more of an incentive to do it, because the concept will work if you want to make it work.

But you have just described exactly—and that is why I say it is not a Machiavellian scheme on the part of government managers to not do it. The incentives are to stay where you are. The incentives are not to take a risk. The incentives are to build up the number of people in your agency. That is the way it is, so——

Mr. DUNCAN. Senator, for years I have thought that we should at least try on an experimental basis with some agency, and tell this particular agency that if they can save X amount of dollars in the course of a year off their budget, that half of it would go to the employees in the form of a bonus and half of it would go back to the Treasury to apply toward the debt.

I really think that if we could try that on an experimental basis, I think something like that would work, and we might be able to work it in conjunction with this bill. We could change—we could make some additions to this bill to provide something like that, possibly.

Senator BROWNBACK. We may look at doing that with you if we could structure it right, because there are big political pitfalls, too, which is what Senator Thomas identified, and I am cognizant of those, too.

Mr. DUNCAN. Right.

Senator BROWNBACK. Thank you gentlemen both for taking your time and your interest and your focus on this. It is really appreciated.

Mr. DUNCAN. Thank you.

Senator THOMAS. Thank you very much.

Senator BROWNBACK. I call up the next panel, which is the Deputy Director of the Office of Management and Budget, John A. Kosiken. I don't know if I pronounced your name correctly—did I get that right?

Mr. KOSKINEN. Koskinen.

Senator BROWNBACK. Mr. Koskinen, I appreciate very much your willingness to join us today. As you could gather from the last panel, we want to be as informal and free-flowing as possible. OMB has a lot of interest in this particular issue, and I think has an extensive track record of looking at it.

So with that, appreciate your testimony. You can summarize if you would like, and handle it however you would like to. Thanks for coming.

TESTIMONY OF JOHN A. KOSKINEN, DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Mr. KOSKINEN. Thank you, Mr. Chairman. I am happy to be here today and have the opportunity to discuss with you the proposed Freedom from Government Competition Act. As you suggest, I will submit my full statement for the record and summarize it here.

Senator BROWNBACK. Without objection.

Mr. KOSKINEN. In light of our current budgetary restrictions and our move to implement the balanced budget agreement, all of us are anxious to ensure that the government operates as efficiently

as possible. Our guiding principle for determining when the government engages in commercial activities and when it considers outsourcing, privatization, or competition should be to ensure, as you all have just been discussing, that we get the best deal for the American taxpayer.

We need to bear in mind that the Federal Government has always obtained a vast array of products and services from the private sector and expects to continue that policy. In fiscal year 1996, for example, we spent over $114 billion on commercial support service contracts—contracts with the private sector.

In addition to the substantial volume of contracting out already taking place, we are currently engaged in the largest effort ever undertaken by the Federal Government to compete our in-house commercial support workload with the private sector. Over 40,000 full time equivalent positions are currently under OMB Circular A–76 review in the Defense Department alone.

Furthermore, pursuant to the implementation of the Government Performance and Results Act, we are holding managers more accountable for results. We are asking that managers justify their decisions to perform work by in-house, contract, or interservice support agreement through full and open competitions designed to achieve the best value and lowest cost to the taxpayer.

To achieve this new level of accountability, we are encouraging a broader range of competitions, and we favor encouraging new organizations to enter those competitions. As you noted, Congress authorized us to develop franchise fund pilots and to expand the competitive environment that exists for reimbursable activities government-wide.

The private sector is now being invited to participate in new markets and new levels of commercial workload that had previously been the province of simple cross-servicing arrangements between agencies. And I would note that under the revised OMB Circular A–76, an expanded cross-servicing activity by any franchise funds must be cost competitive with the private sector.

Finally, we do not believe that these competitions should be one-time events. To ensure that the taxpayer continues to get the best deal, we need to periodically re-examine our outsourcing, cross-servicing, and in-house performance decisions.

If the function was kept in-house, is the public sector continuing to provide the best deal? If the private sector is performing the service, is the current offeror the best one for the job, or has the government developed a competitive approach? Competition should be used on a regular basis to review the situation and to determine who can best provide required services.

Ultimately, our goal is to restore the public's faith in government by managing our resources more effectively, and by giving citizens and taxpayers more value for their dollar. By issuing the March 1996 OMB Circular A–76 Revised Supplemental Handbook, we have established a streamlined approach to permit full and open competition—on a level playing field—to determine who should do the work.

In this context, it is important to remember that, when faced with competition, Federal employees have been extremely cost-competitive. Approximately 50 percent of the competitions conducted to

date have been won by the government. At the same time, the private sector has won about 50 percent of the competitions, which is a strong indication that this process works.

While we are encouraging agencies to compete to provide services to other agencies, as Congress contemplated with the establishment of the franchise fund pilots, we also agree that unfair government competition, to the extent that it exists, should be identified and eliminated.

A clear distinction needs to be drawn, however, between the government's involvement in private sector or even State and local markets, and the need to manage our own resources on a cost-effective basis. A substantial statutory and policy framework already exists that carefully limits the Federal Government's involvement in the private economy and in State and local service markets. We continue to support those policies.

The possibility of legislation in this area needs to be viewed against ongoing reinvention efforts. Our concern with the legislative proposal embodied in S. 314 is that it mandates a particular approach to this situation, rather than letting customer agencies themselves examine their current in-house to contract mix, including the use of reimbursable support agreements with other agencies, to make the best management decision.

If we have a need for legislation, it is to remove existing barriers to competition. S. 314, for example, does not specifically repeal the restrictions imposed on the Defense Department in 10 U.S.C., sections 2461 to 2469.

Finally, we are concerned that S. 314 will result in a significant new level of litigation, caused by the conversion of what are essentially management implementation decisions into a statutory obligation that would be subject to judicial review.

The preamble to S. 314 states that the government's current mix of in-house and contract resources is "unacceptably high;" that the existence of reimbursable arrangements between agencies is inappropriate; that such consolidations divert the government's attention from its core mission; that small business is being hurt; and that current laws and regulations have proven ineffective in controlling govenrment's growth. While individual anecdotes can be offered to support these findings, there is no quantitative data to establish or support them.

In fact, as I noted earlier, the amount of outsourcing is now $114 billion a year and it has increased moderately over the last 4 years, as the government has downsized by 300,000 employees. So if anything, the ratio of the amount of work being done outside the government to the amount being done inside has increased.

S. 314 requires that certain information be made available to the public, including the development of inventories of commercial activities performed by the agencies. The March 1996 A–76 Revised Supplemental Handbook already requires that agencies conduct annual inventories of their commercial activities performed with in-house resources. The Federal Procurement Data System provides information regarding which work is now performed by contract. All of this information is available to the public upon request, and private sector companies are free to make offers to perform commercial work.

In contrast, and of major concern to us, S. 314 suggests that the private sector and employee unions may have a legal right to review these inventories and seek judicial review of agency determinations with respect to whether the function is inherently governmental, commercial, or has otherwise met the cost-effectiveness standards of the statute. Having these issues subjected to legal challenge will delay, not expedite, competition and contracting out.

We also should not view outsourcing narrowly. For example, the Treasury Department, the Internal Revenue Service and the Social Security Administration, along with the Labor Department, recently signed an agreement to collaborate on a streamlined wage and income reporting system. Agencies also cooperated in responding to the Oklahoma bombing, the crash of TWA Flight 800, Hurricane Hugo and other disasters.

These joint efforts include the provision of services that are generally considered commercial in nature and, in many cases, the work is being done directly by agency employees. In other cases, it is being accomplished through reimbursable agreements, contractors, or a mix of in-house and contract employees. If passed in its present form, this legislation will put in place additional legal and other administrative obstacles to our ability to respond to these kinds of situations.

Ultimately, the question is whether S. 314 provides anything better than that already provided by Circular A–76 and its Revised Supplemental Handbook. These documents provide a clear preference for private sector performance of new and expanded work requirements; require agencies to develop inventories of commercial activities; establish prohibitions against the government's entering into non-Federal support markets; restrict the development of new or expanded interagency support agreements to those justified by full and open competition; and provide for independent administrative oversight within the agencies. We believe that this process not only works, but is beginning to encourage real competition for government work.

In sum, it is full and open competition that has made the American economy the envy of the world. We support the provision of government services by those best able to do so, whether in the private sector or within the government.

Rather than opening up existing markets or enhancing the dynamics of competition, S. 314 may restrict the number of competitors. Trying to put existing agencies, franchise funds, and cross-servicing arrangements out of the market is likely to result in the enactment of many more agency-specific prohibitions against outsourcing and competition, such as those that now apply to the Defense Department.

The bill will also spawn a whole new level of compliance litigation, resulting in higher costs to the taxpayer.

Mr. Chairman, that concludes my summary. I would be happy to address any questions that you or Senator Thomas might have.

Senator BROWNBACK. Thank you very much for your testimony, and I would like to ask unanimous consent to allow Senator Thomas to join in and sit in on the Subcommittee today. I am certainly not going to object.

Mr. KOSKINEN. So it is unanimous.

Senator BROWNBACK. I appreciate your willingness to join us and sit in on this important topic, and thank you as well for your comments.

In looking at this overall Federal effort to privatize, I understand that you have some real questions with the bill. At the same time, I don't think you would say that we are near the level of contracting out of services that we ought to be within the Federal Government. Would that be a correct statement, or do you think we are where we ought to be?

Mr. KOSKINEN. I don't think there is a normative number that is an answer to that. As I noted in my testimony, we believe that issue continues to need examination on a service-by-service or contract-by-contract basis.

Our past experience has been that, when these issues are confronted, they are sort of once-in-a-lifetime decisions. There is either a decision to contract out or a decision to keep an issue in-house, and then no one revisits that issue. We think that across the board, we need to continue to review whether the entity providing the service now is doing it most effectively.

Senator BROWNBACK. Do you have any nominees, then, now? I am not getting a real clear answer from you whether you think we are really at about the right level of contracting out at the $114 billion figure. Are you thinking that there are other opportunities that are going to come up?

Mr. KOSKINEN. I think there are opportunities now. And I think there will continue to be opportunities. I think our goal is to, in fact, continue to challenge every commercial service in terms of whether it is being done by the most effective provider.

We have talked a lot about contracting out. Some of the government organizations reviewed by GAO discovered that after contracting out over a period of time, they contracted some of those same services back in. So again, these should not be viewed as once-in-a-lifetime decisions, but as ongoing reviews of the competitive nature of service providing.

Senator BROWNBACK. Do you have any nominees that should be contracted out, activities that are currently being done by the Federal Government?

Mr. KOSKINEN. As I noted, I think the Defense Department is trying to overcome a set of arbitrary statutory restraints on their ability to contract out. And, as I said, we have supported allowing the Defense Department to make decisions on the merits of whether to contract in or contract out certain functions. There are now statutory prohibitions against that.

Senator BROWNBACK. So yours would be exclusively in the Department of Defense. Is that where you are presently focused?

Mr. KOSKINEN. In terms of whether there are statutory prohibitions, right. We think——

Senator BROWNBACK. No, on contracting out, what I am asking you is whether you have any nominees you think ought to be contracted out presently? And what I am getting from you is that you think there may be, within the Department of Defense, if we could remove some of the statutory barriers.

Mr. KOSKINEN. We would do that, but again, part of my concern is that there is a presumption that the issue is contracting out. I

think there are nominees—across the board—for continual competition to find out how we get services provided best—whether it is contracting out, contracting in, or contracting across agency lines.

So I don't think you can say, "Here is a target and it should be contracted out as a matter of fact." I appreciate the changes the Senator has made in his legislation to ensure that the issue be decided on whether one agency or entity is the low-cost provider or the best-cost provider of that service.

So I don't think there are targets where you can say, "This automatically ought to be contracted out." There are clearly functions across the government where we ought to have people continue to review who can provide those services most effectively.

Senator BROWNBACK. Well, let me give you a nominee, then.

Mr. KOSKINEN. All right.

Senator BROWNBACK. Let's see how you would react. What about on the NOAA fleet? We have IG studies, GAO studies saying that these ships should be sold, and that we should contract for these services. Have you looked at any of that within OMB?

Mr. KOSKINEN. Yes. We have encouraged the department to take a strong look at the privatization of that fleet. As you noted, over the last 2 or 3 years we have looked very hard and pushed very hard, on a number of fronts, for the privatization and actual sale of government entities and functions. So that clearly is a target of opportunity that needs to be analyzed.

Senator BROWNBACK. Good answer. That is one that we have been looking at.

Let me ask one more question and then pass to Senator Thomas, because I don't want to take all the time here.

I note your opposition to various sections of the bill, and I will be interested to see what you think we ought to be doing about the Defense Department so that we can open it up to further contracting, because certainly that would be something that would seem a good opportunity to me. Do we have just the wrong incentives in place in the Federal Government to encourage privatizing out?

I think you were here earlier when I made my brief statement about running a small agency, and how I noted that all the incentives I had as a public sector employee encouraged me to leave the situation the way it was. I received no internal support for doing this. I received no monetary incentives to give the employees of the agency for doing this, and if it didn't work, I was going to get hammered in the press. Aren't all the incentives the wrong way?

Mr. KOSKINEN. Historically, that has been a problem. One of the things that has changed in the present is that budgetary resources are now increasingly constrained, and will be over the next 4 or 5 years as we work to achieve a balanced budget by the year 2002.

So in the past this was, in many ways, a more philosophical argument about where work could be done best. There was not an overriding incentive on agencies to, in fact, be constrained by their resources. Now, no matter what happens in the appropriations process this year, no program will be receiving the amount of money that it has requested or thinks it could use effectively.

Therefore, virtually all of the agencies, with a few exceptions, are now in a position where—if they want to expand the reach or impact of their programs—they are going to have to perform more ef-

ficiently with the dollars they have. And we are working with them, through their strategic planning processes and other avenues, to take a hard look not only at contracting out, but at reengineering their workforce and the way they do their work. In many cases, we're encouraging them to look at downsizing without necessarily having work done somewhere else, downsizing by stopping some work.

The other thing that is happening, and I encourage you to support it, is the implementation of the Government Performance and Results Act. The act will enable us to hold managers accountable for the effectiveness of their programs. What do managers achieve with the dollars we give them? And, how much does it cost?

Again, I think the proper discussion is, "All right, what were your goals? What have you actually accomplished with the resources we have given you, and how much more effective could you be in a context where resources are limited?"

So, I think we are beginning to provide agencies with fairly significant incentives for becoming more efficient. And I think that as we look at the pilot programs with franchise funds, we are going to learn a lot about whether agencies are encouraging each other to take a hard look at cross-servicing as we go forward.

But let me address your final point, and I think it is an interesting one, regarding agency-generated savings going off into the general fund. Even if you could use that money to save more money, the long-held theory—at all levels of government—was that any savings went to either reduce the deficit or into the general treasury, and the mayor, the governor, or the President or Congress reallocated those funds. That is not much of an incentive.

We have increasingly been trying to encourage gain-sharing. Roughly 2 years ago, Congress passed the Debt Collection Improvement Act, which—for the first time—said that for the amount of increased debt collection, you could keep 5 percent in the debt collection program.

In our 1998 budget discussions and reviews with the agencies, we have said, "Here are your targets. Here is the amount of resources you can have. If by procurement reform, if by contracting out, if by doing your services in another way you can save money under those numbers, those funds can be redeployed to increase the impact of your program."

And it is the first time we have really approached it that way. So we are trying to give program managers and agency managers the incentive to say, "Here is our balanced budget glide path. Here are the resources that your agency is going to have. If you can be more effective with those resources—however you do that—and provide more funds for your programs, we won't take that money away."

We won't say, "All right, if you can save 5 percent through procurement reform, we'll take the 5 percent and spend it somewhere else." We're trying to provide agencies with a tool kit for managing in a balanced budget world. We want to say, "Here is a set of reinvention opportunities, a way to operate more efficiently. To the extent you can take advantage of these opportunities, the funds you generate will be available for you, for the use of your programs."

Now it doesn't get down to the issue of personal incentives, where we could actually provide a bonus directly to an employee. But as we go forward, I think we need to look at our performance appraisal system and our performance compensation system; although my experience has been, within the private sector and in the government, that performance bonuses—particularly in the government—are the last incentive that people are looking for.

Most people have come to the government because they believe in the mission of their agency, and because they believe in government and public service. My experience has been that what energizes them most is (a) feeling that they are doing meaningful work and doing it more effectively and, (b) having more resources for the achievement of agency missions and goals.

Senator BROWNBACK. And, (c) they wouldn't mind a little more money in their pocket, too. [Laughter.]

Mr. KOSKINEN. They wouldn't mind a little more money. Nobody ever turned it down.

Senator BROWNBACK. It has been my experience in that system, as well. Senator Thomas.

Senator THOMAS. Thank you very much. Thank you for your enthusiasm for our bill. [Laughter.]

We were in the same situation last year, as a matter of fact. I asked you last year about section 3515 of the Government Management Reform Act. I still haven't received an answer, so I am going to ask again. It requires you to collect from each Federal agency information on the accounts of each agency which performs substantial commercial operations; to do it in 1995 and to do it again in 1996. Have you completed that?

Mr. KOSKINEN. We have just about completed it. We have gone——

Senator THOMAS. You have not completed it?

Mr. KOSKINEN. Well, I don't know today what the status is, but the information was due to us before the date of this hearing, actually some time ago.

Senator THOMAS. It was due to you in 1995, wasn't it?

Mr. KOSKINEN. Yes. The statute with that requirement came late in 1995. As I noted last year, we had sent out a request to the agencies, and that information is coming and will be available. And as soon as it is completed, I will make sure that——

Senator THOMAS. You will let me know, won't you? You see, you are just 2 years late.

Mr. KOSKINEN. I will let you know.

Senator THOMAS. It is so easy to talk about how you support reform, but it doesn't happen. You said Federal employees have been reduced by 300,000. How many of those came from base closures, Defense Department downsizing, and the savings and loan debacle?

Mr. KOSKINEN. The last time I looked, about 60 percent were from the Defense Department and 40 percent were from the non-defense agencies.

Senator THOMAS. So when we are talking about reinventing government, that really hasn't been the reason that we have fewer Federal employees.

Mr. KOSKINEN. One hundred and twenty thousand people from the non-defense agencies is a lot of people.

Senator THOMAS. How many of those came from savings and loan completion?

Mr. KOSKINEN. A relatively modest percentage of those.

Senator THOMAS. OK.

Mr. KOSKINEN. I would be happy to send you those numbers as well, Senator.

Senator THOMAS. I wish you would, please.

You talked about judicial review. Certainly I don't want any more litigation than possible, than necessary, but if you are going to hold a competition, then do you object to the private sector having some appeal?

Mr. KOSKINEN. No. My only point about that is, the moment we open up all of these decisions, the private sector will appeal. The Public Employee——

Senator THOMAS. Well, shouldn't they have a right to appeal?

Mr. KOSKINEN. You can do that. Right now, they have a right to appeal in an administrative process. If you want to give the employee unions and the private sector the right to take every one of these decisions into court, you can do that. I am in favor of——

Senator THOMAS. Now, that isn't the way it works, and you know that.

Mr. KOSKINEN. That is the way it works.

Senator THOMAS. There are lots of statutory provisions that have judicial review now, and you are not swamped. I just don't understand your argument.

Mr. KOSKINEN. I would say——

Senator THOMAS. You don't need to answer it because I know your answer.

Mr. KOSKINEN. Well, I would like to answer you. Our experience in procurement reform, for instance, was that given rights for statutory appeal, we clogged up the procurement process with a lot of appeals. When we did the Information Technology Management Reform Act, we abolished the General Service Administration's Board of Contract Appeals and moved appeals back to GAO. Now, the process is running much more smoothly.

Senator THOMAS. How many times have you gone back after an award and done the A–76 competition again? You said it shouldn't just be done once, you do it again. Do you go back and do it again?

Mr. KOSKINEN. I don't know, but one of our concerns has been that we don't.

Senator THOMAS. Mine, too. When are you going to do that? You indicated that you ought not to just make a one-time decision and then not go back and do it again.

Mr. KOSKINEN. That's right. What we are doing is—and I think this is one of the things franchise funds and increased interest in the private sector will do—to continue to provide agencies with people interested in challenging the way the work is presently done.

We don't view it as our responsibility to monitor the system across the whole government. As I said to Senator Brownback, our goal is basically to harness the present incentives that are building in terms of budgetary constraints and to focus the agencies' attention on the wide range of options we provided them, for lowering their costs. Certainly, changing the way agencies do the work and

changing who does the work is one of the significant ways in which agencies can reduce costs.

Senator THOMAS. I guess I just get a little frustrated that, whenever we seek to do something that might have some fundamental impact on how the Federal Government works, you come up with all of these reasons why we can't do it. Or else you are doing it, but we don't see the results. How many A–76 cost comparisons were conducted in 1996?

Mr. KOSKINEN. I don't know the number. I can get you that information. As I said, we have 40,000 FTEs under review right now in the Defense Department.

Senator THOMAS. But you don't have any idea how many A–76——

Mr. KOSKINEN. I don't carry that information——

Senator THOMAS. But don't you have any notion, any idea? Is it something that is done frequently? Is it done a lot? Is it done for lots of activities or is it something that is seldom done?

Mr. KOSKINEN. At this point, I don't know the answer to that, Senator.

Senator THOMAS. But you also indicated to us that we don't need this bill because the A–76 process is taking care of it.

Mr. KOSKINEN. I have indicated that our experience is that increasingly, across the board, with franchise funds, with——

Senator THOMAS. Franchise funds, what does franchise funds have to do with this particular issue?

Mr. KOSKINEN. With the franchise funds, Congress established six pilots to become competitors, in effect, marketers to agencies about their administrative support services—whether it is payroll, administrative, or financial systems.

Senator THOMAS. I understand.

Mr. KOSKINEN. And they are beginning to operate. They are opening those competitions, and our rules are that the competitions have to be cost-competitive with the public. And agencies, once they have gone to a cross-servicing arrangement, can in fact move that contract to the private sector without an A–76 comparison.

Senator THOMAS. Last year you grandfathered existing services in order to avoid holding competitions.

Mr. KOSKINEN. No, what we did last year, as I thought I had explained, was to grandfather existing services.

Senator THOMAS. I understand that.

Mr. KOSKINEN. The National Finance Center at Agriculture now provides payroll services to a series of agencies. If they want to expand those, they have to cost compare——

Senator THOMAS. I know, and you will remember the Senate last year objected to the grandfathering and voted against it 59–39.

Mr. KOSKINEN. Voted against what?

Senator THOMAS. The grandfathering that you did last year. Now, my amendment was dropped from the omnibus appropriations bill, but I am just telling you that the Senate voted against that substantially. I guess my point is, it seems like instead of taking a look at and moving towards outsourcing, you seem to do everything you can to avoid it, and it puzzles me.

Mr. KOSKINEN. I don't think that is a fair characterization. We went to a lot of trouble, consulting with the private sector as well

as with the unions for about a year, to streamline and update the A–76 Circular for the first time in——

Senator THOMAS. And I am asking you if you use A–76 or not.

Mr. KOSKINEN. We have put it at the disposal of the agencies, we have required them to give us their material, and they are starting to take a look at this. You made a good point. As you say, we are concerned about exposing this to the legal process. We are concerned about arbitrarily, across the board, coming up with a conclusion.

Your point about the Park Service is a good one. As we look at agency strategic plans, as we look at the definition of their missions, and as we look at how are they organized, one of the things we are encouraging—and we would be delighted to encourage more—is for authorizing and appropriating committees to look at those areas and ask questions about them.

So when you had those questions of the Park Service, it seems to us perfectly appropriate to have the Park Service explain to you what their strategic plan is, what their goals are, and how they are managing themselves as we go forward. We are doing that in our budget reviews. We have told the agencies that, as they go forward, they have a set of tools and they have to begin to explain to us how they are using them.

Senator THOMAS. I guess that is really the basic reason for this legislation. We have had this policy in place for over 40 years, and there is nothing statutory to require it, so you don't really do it, and you ought to be doing it. Maybe you are right, maybe the Congress ought to be looking at it in the appropriations process, too. But since Eisenhower's time the Executive Branch has said, "Well, you don't need a statutory provision, we're going to do it."

The time is going to come when we have to decide, are we going to do it or not? Are we just going to talk about it or are we going to do it? Is there some evidence? Did you bring some evidence? Can you show it? How many A–76s are we doing?

But instead of that, frankly, and I don't mean to be unkind, but I am a little impatient with this going on year after year, the same thing.

Mr. KOSKINEN. Well, I don't think we should gloss over the facts and act as if nothing is being done by the private sector. It is instructive to me that we now contract out substantially more for services than our total Federal payroll. Our payroll costs are at less than $90 billion. We are now contracting out for services at $115 billion.

Senator THOMAS. Almost all in defense.

Mr. KOSKINEN. The $115 is almost all in defense?

Senator THOMAS. Much of it.

Mr. KOSKINEN. We will try to get you those figures.

Senator THOMAS. Do.

Mr. KOSKINEN. But you have to ask what the problem is. I understand the private sector would like more business. I am in favor of them getting business, to the extent that they are cost-competitive. But I don't think it is a fair characterization to say that the government is not contracting out, that it is not doing enough, and that it hasn't moved.

If you look at the growth of contracting out, there have been other hearings on the Hill focused on whether we are moving too fast. Can we service these contracts? Can we oversee them appropriately? At this point, we are contracting out a phenomenal volume of work. That doesn't mean we shouldn't contract out more, back to the Chairman's question in terms of I think we need to continue——

Senator THOMAS. Why don't you give us some numbers, over a period of time.

Mr. KOSKINEN. I would be delighted to give you the numbers.

Senator THOMAS. Five years, 4 years, you choose it. Give us the growth pattern in terms of the percentage of total expenditures that are contracted out.

Mr. KOSKINEN. Right. I will give you the numbers as to what the growth has been in contracting out and what the decline has been in Federal employees, both in numbers and in compensation.

Senator THOMAS. And tell us where they came from.

Mr. KOSKINEN. And I will tell you where they came from.

Senator THOMAS. OK.

Senator BROWNBACK. I think that would be helpful to have. We don't mean to be pressuring you, but we are.

Mr. KOSKINEN. No, that is all right. [Laughter.]

Senator BROWNBACK. And we want you to feel a little bit of that, because what you are seeing here from both of us expresses our perception that there isn't near the level of privatization taking place that clearly could take place. I gave you one example. We have a bunch of others that we could give to you, and maybe that is what I ought to run by you, just saying, "OK, what about this one and what about that one? What are you doing about those?"

Actually, why don't we submit a list of nominees, and would you mind reacting to those?

Mr. KOSKINEN. That would be fine.

Senator BROWNBACK. You are in the middle of the administration, and are supposed to be the bad guys and pushing all this stuff within the system of the Federal Government. We hope to create incentives within the agencies and overall in the administration for more of this to occur. But it is the perception amongst a lot of Members that there is just not enough happening, and what is happening is basically in the Department of Defense. This is fine and good, but it is one agency, and it ought to happen on a much broader basis.

Until we start seeing real things happening, you are going to continue to have this. You are going to continue to have this sort of pressure, and then we are going to start working at it through the appropriations process, we are going to go at it this way, and we will just be fighting back and forth. We would rather work with you. You are in the middle of the administration and can push those sort of things.

Mr. KOSKINEN. Right, and I think it is an important issue. We have supported it; we are behind it. But one of our concerns is that it ought not be our primary focus. It is ultimately a secondary measure of long-term effective performance.

We are not doing this for philosophical reasons, although there are some who are. Our goal is to provide taxpayers with the most

efficient operations for achieving agency missions. And I think we are all on the same page insofar as we want to determine what the agencies are trying to accomplish, their goals and objectives and their effectiveness, and the costs of getting desired results.

And as we continue to push on the broader issue, I think the way to get people's attention and to motivate the agencies is to say, "(a) we have fewer dollars than we would like, and (b) we are now being held accountable for the actual outcomes resulting from our activities. How can we increase that performance when we are not going to be able to do it through getting more money in appropriations?"

And we need to encourage managers to say, "One of the things we have got to do is become more efficient in the way we are organizing." One of the ways to become more efficient is to look at who is the best provider of commercial services——

Senator BROWNBACK. And actually make something happen.

Mr. KOSKINEN. Right. And another way is to look at restructuring, redoing the way we do the work. We have pushed on a lot of fronts in that regard. These things are all part of the package. They are all important elements, but we are not doing them as ends in and of themselves. We are doing them because we are ultimately trying to achieve the best possible performance for the public in terms of achieveing those missions. So the Park Service is a great question.

Senator THOMAS. Nobody can disagree with what you just said, but you talk about it in such a broad way. You have to finally break down into taking action, producing results. You talk about efficiency. Well, everyone wants that. Then, finally, you have to say, "Well, how do we do this? And here is an area we ought to be doing it in." Whatever the area is.

Mr. KOSKINEN. I am saying that if we could get, and actually you can tell I am lobbying to get as much congressional support as we can. We are working hard with the House and the Senate——

Senator BROWNBACK. You are not doing real well.

Mr. KOSKINEN. I think you are exactly right. We can be at a high level of abstraction and it doesn't make much sense.

Senator THOMAS. And I have noticed that some.

Mr. KOSKINEN. But ultimately what I would like to have people do is to ask harder questions as they go through the process—agency by agency—about what we are actually getting for our resources. And if you could start to focus on that as the incentive, as the outcome of the discussion and the outcome of their work, then you get greater leverage on people to participate with you in streamlining and restructuring their operations.

Senator BROWNBACK. We need to wrap this up. I am going to submit to you a list of nominees.

Mr. KOSKINEN. Good.

Senator BROWNBACK. I would appreciate it, if you would take a good look at those and see which ones you think we ought to go at. I would appreciate, if you would, answer Senator Thomas's question for him and for the Subcommittee——

Mr. KOSKINEN. We will provide——

Senator BROWNBACK [continuing]. Of looking at privatization over a 5-year time frame, if you would.

Mr. KOSKINEN. Sure.

Senator BROWNBACK. Let's just go back the past 5 years and you say, "Here is where we have privatized over the past 5 years." I think that would help me, I think that would help Senator Thomas, because we are both—I am feeling like how I treat my mother-in-law sometimes, which is I always go, "Yeah, yeah, yeah, yeah, I'll do it," and then nothing happens. [Laughter.]

And we got to see something happen here. So thank you. Sorry to give you a tough morning, but if you would react to those two things in particular and be specific, I would appreciate it. We will also look at your suggestions on the Department of Defense for changes in legislation to see if there are things we can help you out with there.

Mr. KOSKINEN. That would be great.

Senator BROWNBACK. Thank you very much.

Mr. KOSKINEN. Thank you both.

Senator BROWNBACK. For, the third panel we will be hearing from Dr. Samuel Kleinman, director of the Center for Naval Analysis. Next we have Captain Burton Streicher, CEC, USN, director of Navy Outsourcing Support Office; and Charles Davis, with Chamberlain, Davis, Rutan and Valk, formerly the associate administrator for operations, GSA.

And I would note, for the other Members present, Dr. Kleinman and Captain Streicher are Federal employees and don't want to comment on policy issues, or on the particular legislation appearing in front of us. They are here to talk about their own experiences, and so we will limit our questions to non-policy matters. That is pretty tough for a couple of people in the policy field, so if there are questions we ask you that you don't feel are appropriate, just tell us and don't respond to them.

If there is no problem with going with the order on the list, Dr. Kleinman, we would appreciate your statement. You can summarize and we can put the whole statement in the record and then have some good discussion.

TESTIMONY OF SAMUEL D. KLEINMAN,[1] DIRECTOR, CENTER FOR NAVAL ANALYSIS

Mr. KLEINMAN. Good morning, Mr. Chairman. Thank you for inviting me to testify before your Subcommittee. I apologize, but I am losing my voice and at some point I may ask my colleague Derek Trunkey to come forward and complete my statement.

I will be discussing our examination of competition in outsourcing. In the title of my talk, I put the word "competition" first. We believe that competition is what we have gained in DOD from our outsourcing program. The program is built on the premise that all providers of services, both in-house teams and private contractors, should be able to demonstrate that they provide the best value to DOD and government.

I will be talking about our examination of competitions governed by OMB Circular A–76. Under this circular, in-house teams are allowed to submit a bid and the incumbent team can bid below its current costs, which it often does. The private team must bid at

[1] The prepared statement of Mr. Kleinman appears on page 53.

least 10 percent below the public team's costs to win the competition.

Our initial work examined the U.S. Navy's competitions. Between 1979 and 1990 the Navy competed 25,000 positions, 80 percent civilian and 20 percent military. Overall, the savings were 30 percent. In these competitions the public team won half the time. There was a 20 percent saving when the in-house team won and 40 percent saving when a private firm won. The in-house savings appear low because when no bidder produced any savings, the competition was decided in favor of the in-house team, and those no-saving competitions are included in their average.

For about 30 of these competitions we went back to the bases to learn about quality and subsequent costs. Although there were a couple of defaults, in most cases costs were contained and quality maintained. We believe the reason is that when the contract ended, there were sufficient competitors out there to bid away the contract, so there were always competitive pressures controlling the contractors.

In one large competition, we were able to follow performance and labor productivity through two recompetitions. We found that performance remained high and the labor productivity continued to improve.

When contractors win, they have to offer any new jobs to the affected government workers. Only 3 percent of the affected workers joined the contractors in DOD. Most Federal workers prefer to continue employment with the government. However, our case studies did show that when a contractor loses a subsequent competition, most of the workers are rehired by the winning firm.

We believe that the source of the savings is competition. Both public activities and private teams come in with their best offers and, as I noted, the in-house team wins half the time, so outsourcing only occurs when a private firm offers to perform the function at lower cost.

Competition provides cost visibility and choice of suppliers. In many cases, for the first time, in-house teams constructed the full cost of what they were required to do, and they developed performance work statements. The government could then compare alternative sources for accomplishing the required work.

When private sector teams win, they appear to reduce costs by using fewer people, not by paying less per person. We believe they do this by moving people from one job to another, by giving employees a greater range of skills, by using more temporary workers, part-timers, overtime, and workers from other sites to meet peak work load demands.

There is a cost to competing and monitoring contracts. We estimated that the one-time cost to compete is about 10 percent of the annual value of the contract. The cost to monitor these contracts is 3 to 10 percent. The savings I reported to you are net of those monitoring costs.

After examining the Navy's experience, we extended our analysis to all of DOD's competitions. I am going to show you what the results are on this chart. There were 2,100 competitions, 80,000 positions——

Senator BROWNBACK. Would you mind moving that over to the other side? I hope that is not too inconvenient for you. We have more people on that side of the room, and Senator Thomas will be able to see it, too. Please proceed.

Mr. KLEINMAN. We looked at over 2,100 competitions, military and civilian combined. There were 80,000 positions. Again, about 80 percent were civilians.

Senator BROWNBACK. I'm sorry. Could you tilt it just a little bit this way, now? I would like to be able to see it, too. There you go. Thank you. Sorry about that.

Mr. KLEINMAN. We found that there were savings throughout DOD, across all the services and agencies, again about 30 percent, and again, half the competitions were won in-house. We estimated that the annual saving to DOD was $1.5 billion a year from these competitions.

We noticed that some competitions produced a great deal of savings and others produced no savings, and my second chart will show you the distribution we found. In about 22 percent we actually didn't have any savings. On the other hand, in 16 percent of the cases, we had savings of over 50 percent.

We saw that competitions for small activities were the most likely to produce no savings. In fact, close to 70 percent of the activities with no savings were competing only 10 or less positions. This is consistent with our observation that savings come from using fewer people. It is difficult to structure assignments for narrowly defined activities. This is an important point when considering how many activities to put into one competition. As I mentioned, smaller competitions provided less savings, yet many of the competitions are indeed small.

And that will be my third and last chart. It shows that 40 percent—857 of the 2,100 competitions—were for 10 or fewer positions. Those 40 percent of the competitions produced only 5 percent of the total savings. Savings were greatest for the largest, over 200 positions. Unfortunately, in the middle it is less clear what is going on, but you can see at the very bottom there is definitely a loss from using those smaller competitions.

Now, there are many challenges to successful competitions in outsourcing. As I noted before, the average cost to compete is 10 percent of the annual contract value. These costs are usually recovered quickly, usually within 4 months, but they can discourage regional offices that have to pay for the competitions out of their current budgets.

It can take a long time to complete a competition. The average is 2 years. A recent Rand report noted that while 5 percent were completed within 6 months, another 5 percent required 5 or more years. The lengthy competitions can be disruptive and costly. Workers, fearing that the work will go outside, start to look for other jobs, and no matter who wins, it takes time to recover from the disruption.

Many competitions were cancelled before they even went out for bid. Forty percent of those started were never completed. Our analysis suggested that those cancelled were as likely to produce savings as those completed.

Departments and agencies can take steps to meet these challenges. First, each department and agency should set up a competition and outsourcing office to serve as a central source of information and support. The offices would promote and arrange training, help structure and review performance work statements, provide templates for contracts, and send teams out to the local and regional offices to set up the competitions. We need to cut the cost and length of competitions, and the individual facilities and regions cannot be asked to do it alone.

Second, the incentives at local and regional offices should be improved, as you have noted before. Competitions are costly and disruptive to them, and headquarters often cuts the budgets by the amounts of the savings, leaving the local and regional offices no better off for their efforts. We believe that the local and regional offices should keep the savings for a couple of years. They could use the money on workplace improvements that didn't make it into their original budgets.

Third, the workers participating in the competition should be kept informed and supported throughout the process. They should know what is being competed, the schedule, and the rules governing the competition. They should be helped in reorganizing and preparing their own bid. Their objective should be to win, and we want them to take on the challenge of outside competitors. If they lose, they should be offered generous buy-outs and help in finding new positions.

Fourth, agencies and departments should look for opportunities to consolidate several activities into one contract. The small competitions are not producing the savings seen in the other competitions. One facility could consolidate different functions into one competition, or several facilities could merge a common function into a competition.

Finally, agencies and departments should use a selection process that allows them to pick the best value and not necessarily a sealed-bid, low-cost alternative. They are allowed to weigh past performance, management, and financial solvency of the bidders. In the past, the Department of Defense sometimes felt obligated to select low-cost bidders that they suspected could not perform.

In summary, competitions produce the best efforts in all participants and the best value for our agencies and departments. The end result would include more outsourcing but, more importantly, it would lead to more efficient government.

Thank you.

Senator BROWNBACK. Thank you, Dr. Kleinman. That was very illuminating, from your practice and what you have experienced. I will look forward to some good questioning.

Mr. Streicher, thank you for joining us today, and the microphone is yours.

TESTIMONY OF CAPTAIN BURTON STREICHER,[1] CEC, U.S. NAVY, DIRECTOR, NAVY OUTSOURCING SUPPORT OFFICE

Captain STREICHER. Good morning, Mr. Chairman, Senator Thomas. It is a pleasure to be with you here today and to discuss

[1] The prepared statement of Captain Streicher appears on page 60.

my experience when conducting OMB Circular A–76 competition studies within the Navy.

In my present position I am responsible for assisting Navy and Marine Corps field activities in conducting A–76 competition process by streamlining the process to a standardized notional 12 months, selecting and developing generic performance work statements, standard acquisition and source selection templates, new key process enablers, provide access to nationally based study support consultants, ensure lessons learned are quickly shared among the activities, and provide a single store-front point of service for local installation commanders.

In 1984 I was the functional head of two different successfully completed A–76 competitions for public works services and transportation operations and maintenance at the then-Naval Air Development Center, Warminster, Pennsylvania. Both studies were started in May of 1982. They were in progress when I reported in July of that year.

We studied about 78 full time equivalents or positions in both studies. The most efficient organization took us 4 months for each to do. The invitation for bid was released in May of 1983 for the public works services, and the transportation studies were released later that fall.

I spent most of my entire tour of 3 years to bring both to completion, as the public works services competition resulted in a lengthy 7-month appeal process which extended out the total study period. Both studies were retained in-house and they continued to be retained until the facility was closed under the BRAC process.

I would like to share with you some of the lessons I learned from these experiences. First, there were numerous barriers which made it difficult for us to conduct these studies. The study units were suboptimized and conducted at different times, two different studies, which resulted in fragmentation of our management effort and required a significant amount of additional coordination effort by my staff.

In accordance with the guidance at the time, we conducted the process in a serial manner, finishing one step before we commenced the next. If the product was not acceptable for the next portion of the process, I had to go back to the beginning of the previous step, with a commensurate loss of time and effort.

For example, when I first saw the public works study performance work statement, it was not in a contractible format. I had to appoint three people full time to work for 2 months just to convert it from what my shops and functional people had developed into something that we could put out on the street for advertisement.

The prescriptive statements of work and the data gathering efforts to develop them were exceptionally labor intensive and almost impossible to cover all aspects of the service performance. The resulting "how to do the work" performance work statements were huge in size—we weighed them in terms of pounds—and left many opportunities for misunderstanding the requirements.

In fact, I awarded a small consulting contract to provide an independent review of our final performance work statements just to determine where we had left holes in the requirements. The consultant found several, one of which hinged on the definition of a

word used to describe the intermittent operation of our heating boiler plant. If not corrected, this word interpretation could have resulted in a contract change worth several hundred thousands of dollars if it had been awarded to an outside service provider.

I also found that there was very little process technical experience located within the activity or the region. There were no user-friendly guides that could walk a functional manager through the process and explain what choices there were that could be made by the commanding officer or myself. Everything was done for the first time, with great uncertainty, whether it was done correctly or not.

In addition, there was no formal lessons learned sharing mechanism to find out what was happening in other activities. We pretty much had to use our own personal contacts to get that information.

The invitation for bids method of acquisition, which is a cost-only comparison, resulted in a decision for the bidder who interpreted the specifications to the minimum amount; this was whether they could actually do the work or not. This was commonly known at the time as an unlevel playing field.

It resulted in an initial decision on the public works services study to an outside provider who bid almost exactly half of the independent government estimate, the government bid and the other four industry bidders. The union appealed this initial decision, and after more than half a year and numerous discussions, the contractor withdrew his bid.

Despite the above barriers and the difficulties that I experienced, the process worked, and my activity was able to perform the same amount of service at a much-reduced cost. Competition vice the end nature of the service provider was the key to about a 20 percent savings for my command.

Since my experiences over 13 years ago are not unique to just me, to overcome these obstacles the Navy has reengineered and streamlined the process to become a better management tool for activities to use, namely, better up-front planning and coordination using acquisition plans and integrated process teams of all parties involved in the process, to give the local commander greater control of the whole process.

We have shifted to identifying minimum service required to support the mission and to define the requirements in performance outcome terms, which allows the service provider, whether it is outside or in-house, to determine how best to provide the service. We are holding industry forums to learn best business practices and adjusting performance work statements to allow better participation by industry and government providers.

We have also developed a way to compress the A–76 process to 12 months between announcement and decision, through parallel versus serial operations, process enablers and templates, and an extensive support effort which includes enhanced training opportunities for the people doing the studies, regional facilitators, electronic connectivity for the lessons learned, and outside consultants being available to provide specialized expert assistance.

Finally, we have shifted to a best value request for proposal vice lowest bidder invitation for bids acquisition process in order to balance the outcomes of the best contractor proposal and the government proposal prior to cost comparison. This new change corrects

the greatest previous complaint by both sides of a unlevel playing field for the competition.

These initiatives, along with the other aids that we have been developing, (such as a 1–800 outsourcing assistance number, an outsourcing home page on the Internet, a commander's handbook for successful competition, and electronically linked regional outsourcing support coordinators), we feel will go a long way in making the A–76 competition process a better management tool for the Navy, and it will provide another addition to the Navy commander's and the resource sponsor's tool kit to use, when appropriate, to reduce the cost of the Navy's infrastructure.

In conclusion, I hope that sharing my experiences will assist the Subcomittee in its future deliberations.

Senator BROWNBACK. It will, and I appreciate very much that testimony. We will look forward to some questioning.

Mr. Davis, thank you very much for joining us. The microphone and the floor is yours.

TESTIMONY OF CHARLES S. DAVIS III,[1] CHAMBERLAIN, DAVIS, RUTAN AND VALK, FORMER ASSOCIATE ADMINISTRATOR FOR OPERATIONS, GENERAL SERVICES ADMINISTRATION

Mr. DAVIS. Mr. Chairman, Senator Thomas, I appreciate the invitation and opportunity to discuss the Freedom From Government Competition Act, specifically in reference to my experiences and observations on the benefits and opportunities of competitive contracting. I have submitted my remarks for the record, and right now I would like to summarize those briefly——

Senator BROWNBACK. Please.

Mr. DAVIS [continuing]. And also add some additional observations.

Before getting into my experience in the government, I want to touch briefly on the fact that the private sector has begun to use outsourcing more than ever before. Perhaps the best example of this is the automotive industry. I am from Detroit, and for 10 years I was an executive with one of the major auto companies.

Since 1980, the revitalization of the American auto industry to a large part has depended upon outsourcing. This was not true from 1920 to 1978, where insourcing, in effect, was the mode of operation, bringing in parts suppliers and components suppliers. Ford used to make its own steel, its own glass for windshields, had its iron mines up in the Masabe Range, and had its own fleet of steamships. All these were considered inherently necessary to run the business.

As you know, Ford finally had to stop insourcing when it, through antitrust problems, was forced to spin off its Autolite Spark Plug Division, and that effectively put a stop to this great insourcing flood that was believed, in GM or Ford or Chrysler, to be the way to go. With the competition from the Japanese and the global economy, all three auto companies have been forced to rethink, and if you just survey what has happened since 1980, they have been selling off division after division after division, outsourcing whole activities of their operations.

[1] The prepared statement of Mr. Davis appears on page 64.

They have been doing it not only for cost, and this is the point I wanted to bring up that is not in my prepared remarks. They are mission-oriented, just like government agencies are, and they realize it is not just cost savings that you get from outsourcing. Management is better able to focus their attention on their mission. The mission of those auto companies is designing cars, making sure the cars can be assembled, and then marketing them.

But where the component parts come from, where the steel comes from, how it is manufactured, all the companies are interested in is the results of that; in other words, they are interested in the end product that is going to hit their assembly lines. They are not interested in being tied up in the management of all these component parts manufacturers and raw material manufacturers. It diverts their management attention.

Likewise, when I was in a government agency, we continually—on a day-to-day basis were worrying about personnel problems, worrying about reorganization problems, worrying about coming up and trying to get budget authorizations. If we are directly managing all those activities, we have many more things concerning us and we are not focused on our end mission, which is the program we are supposed to be delivering to the public or to the other government agencies.

So the reason I am adding this is, I heard earlier all the talk on outsourcing or competition is because of cost-effectiveness. Equally as important is the ability of government executives, career and non-career, to focus their attention on mission and not be sidetracked with trying to always manage all the parts of the process.

Now, speaking about my government experience, during the period from 1981 through 1985 GSA reduced its head count by over 9,000 FTE or by 25 percent. Over one-third of that reduction came through use of the A–76 process. The savings that we gained in GSA in 4 years was $120 million a year by the end of 1984.

We conducted 500 A–76 reviews covering over 45 percent of the agency's head count during that 4-year period. The $120 million in savings that occurred wouldn't have come had we not been able to fast track and to find ways around the normal impediments . . . impediments that I noticed was mentioned in the questioning coming from the Subcomittee today on the use of A–76.

When we first started to try to implement the process, it seemed like it would take years. Each study was defined as taking 8 months, others would take a year or more, before we would be able to get out and contract.

One of the things that we were able to do and one of the lessons we learned is to streamline the process by using standardized packages for both the analysis and standardized packages and standardized methodology in moving through the procurement process. We were aware that there were large savings to be made on large programs, but we were also aware that large programs bring large attention to them and are difficult and complex to manage.

So what we tried to do, and one of the ways that we were successful, is we broke down the programs that we were going to A–76 into chewable bites. We concentrated on the area of below 30 FTE and many times around 10 FTE. When we get into that size of procurement, you can speed it up, and our target that we

reached was a 3-month cycle from the time that we identified an area of needing an A–76 study until the time it was out on the street being contracted.

One of the other problems we had was the tendency in the government that to get ahead you have to go along if you are a career employee. It is very difficult to buck the agency. Career employees do not typically wish to see their operation reduced through the A–76 process. They don't understand they have as much authority under a contract as they would have with the FTE.

So there is a natural reluctance to contract out. We would not have been successful if we had not made the A–76 process itself what is called a "critical element" in every line manager's performance review. Now, the critical element wasn't just completing a study . . . the critical element was having the bid on the street. A critical element means that if you don't get a satisfactory grade on it, you can be demoted or discharged under the performance review system for career employees. So we made A–76 a "critical element" throughout the agency. We felt that that was one of the most important steps to making sure the process moved ahead.

Of course, we had to have support from the top. That was absolutely crucial, but the support wasn't just rhetoric. The top management in the agency had to take active support. For example, in one major A–76 program, we actually had to remove the top line manager out of the way. That is a drastic step, but that sent a signal to the whole agency that we were serious about completing the A–76 projects on time.

One of the elements that is important to the process, also, was the element of setting the performance standards from what the private sector can accomplish, not just accepting the present performance standard in the government. In this way, not only do you get the cost savings—you get the cost savings regardless—but you also get an improvement in the performance.

To give you one example, when we A–76'd the Franconia warehouse, the government performance standard was 29 days; this was from the time a warehouse order was received to the time the goods were shipped, out the door—1 month from the time the order was received to the time they had to have it shipped. In the private sector the standard was 72 hours, that was the maximum time period we could find.

We couldn't get the government career employees in that area to agree to 72 hours. We actually had to remove some government employees when they said the lowest they could go was 16 days. Finally, we found a manager who was willing to commit to 6 days. That was where the performance standard was set . . . a reduction from 29 days to 6 days in the service level.

When we bid the process, an outside contractor won that bid, and the performance was 6 days at 39 percent cost savings. So not only was the cost savings achieved, 39 percent lower than the prior year to operate that facility, but the performance went from 29 days to 6 days. So using outside performance standards is very necessary.

The other thing I do want to state, and I can do this being outside the government, that for a career employee participating in directing the A–76 process and pushing it in an agency is tantamount to watching your career reach a dead end. You will never

be promoted. I can't say that it happens in every government agency. I can say it happened in GSA.

The people who ran that program in my agency, GS–15s, saved $120 million. The average cost savings was 38 percent. They reduced head count by 3,000. As a result, for the rest of their career in the government, they were never promoted. We gave them outstanding performance reviews, and I think for the rest of their careers they had either excellent or outstanding reviews, but having the career people sit on the SES selection board meant that there was always a reason that these individuals were not selected for SES, and I attribute that directly to the fact that they took on the bureaucracy through the A–76 program. I don't know how to solve that through legislation, but it is a real problem.

As I said, I have submitted my remarks for the record. I would be glad to answer any questions you have.

Senator BROWNBACK. That last statement was particularly thoughtful and provocative. I wish you had proposed a solution to it, as well.

Do you have some questions, Senator Thomas? Would you like to ask one or two before you leave?

Senator THOMAS. Yes, sir. Thank you, and I appreciate your testimony and all of you being here. Captain.

Captain STREICHER. Yes, sir?

Senator THOMAS. You went through this thing. I guess this was fairly early on, the experience you talked about here?

Captain STREICHER. Yes, it was.

Senator THOMAS. So that you were sort of experimenting. Would it be useful to have some outside assistance in doing the specifications and setting up these kinds of things? Again, I go back to an agency manager who probably hasn't or may well not have done that, for instance in the military. Would it be useful to have some kind of professional help set up the criteria?

Captain STREICHER. Yes, it would. Actually, that is kind of what we have done in the Navy. We got five consultants and locked them up in a room with ourselves, and we produced this guide for activity commanders that really walks them through the process and gives them the kind of guidance I didn't get back in the 1980s.

Senator THOMAS. Yes.

Captain STREICHER. It tells them what the steps are. It tells them what should be produced, about the time it should take to do it, who the key players should be. It basically gives them a very basic guideline of how to go through the process and what decisions they can make as the Commander.

So I think we have met that need at this point. The 10,000 studies that the Navy announced in January, we are in the midst of doing the most effective organizations and the statements of work right now, so we are kind of in a trial and test right now to see how well it does work, but it seems to be so far.

Senator THOMAS. Yes. That is very interesting. Thank you, sir.

Senator BROWNBACK. Thank you, Senator Thomas.

I appreciate what you folks have done here. You have stepped up and done some of these privatizations, and have done so effectively. I found this instructive, especially where you are saying that the larger projects are the ones to concentrate on. These are going to

be difficult to do anyway, and you don't save much on the smaller positions. Has this been your clear experience?

Mr. KLEINMAN. Yes, sir.

Senator BROWNBACK. Are there particular legislative changes that we could make, if you can comment—I know you can't comment on policy. Are there particular legislative barriers you ran into, in trying to do the things you did on using this A–76 process?

Mr. KLEINMAN. I don't think that is a problem, sir. I am not speaking for the Navy here. The way A–76 is written now, you don't have to go through it for 10 or less people in the activity, yet we have chosen most of the time to do that.

I think that the people who did that, did it because they were very cautious and wanted to show everyone that they did this as a fair way of doing business, and to offer the in-house team an opportunity to bid on it. So they could have gone directly outside, and they chose not to.

This gets back to the whole issue of the incentives, how do you speed up the process, an issue that I believe is very important; cost visibility, that there is never really an appreciation of what it really costs to do things in-house, and it is never visible to them; and also the flexibility to make the right decisions. I think those are the issues here, and if we have those in place, we will see more competitons and we will see big savings.

Senator BROWNBACK. Dr. Kleinman, your statement on incentives, you believe that—I believe it was you that stated that—when you make these savings, make sure that the entity gets to keep the same amount of money coming to it for a year or two, as one of the incentives that you would cite. They could use this for equipment upgrades or whatever other things they might feel they need?

Mr. KLEINMAN. Yes, sir. It could be bonuses, like you discussed earlier. It is easy to say for DOD, because the big issue in DOD is meeting its budgets after the turn of the century. I mean, that is how they are looking at it, to increase modernization after the turn of the century. So allowing the competitors to keep some of the money in the first 2 years, will maximize the number of competitions and then get DOD to its end point, which is to free up some money after the turn of the century for the modernization that it needs.

Senator BROWNBACK. And that would be one of the key incentives that you would suggest would be useful in encouraging these?

Mr. KLEINMAN. That would be one. When I talked about the workers, I discussed minimizing the disincentives. You can help them compete.

I mentioned the buyout issue. I think that is very important. I believe that you can make it sufficiently attractive that people in activities who don't get it are disappointed, and look at those who have just gone through the competition as the people who have done the best, so I think that would help to incentivize the workers to work with the system.

Then there is another point here. Even if it only takes a year to complete, you want to hand over an activity that is running well to whoever wins. And if workers start leaving a year beforehand, by the time you get to selecting a winner, the actvity is already understaffed. Things aren't getting done, and it really does take

them time to get back up. So anything that you can do to keep the workers there up to the transition point, would minimize that disruption cost.

Senator BROWNBACK. Now, I want to say something here that I think doesn't get said enough, and it is that I and every Member of Congress appreciates the Federal employees. It is often seen as some sort of adversarial system, because we are passing the budgets, trying to balance the budget, and we are trying to make cost savings. But I just want to say, as a former Federal employee, that I appreciate Federal employees and what they do.

But what we are trying to get is an efficient operation, as effectively delivered, as we possibly can. This has created too much of an appearance of conflict, when all we are about is trying to have an efficient, effective type of system. I realize that there are people who respond to this and say, "I need to just dig in and fight this off, and soon this way, too, will pass," and there will be new Members of Congress and things will change.

But we are broke, guys. I mean, we are $5 trillion in the hole right now. We are still running deficits of about $67 billion, but it is probably really closer to $150 billion by the time you take the trust accounts and things like that out. We are not yet near the position we have to be, as we prepare for when the baby boomers start retiring.

And I do want to state to all the Federal employees who are here, and any that might be listening—we appreciate what you are doing. It is just we have a problem here, of trying to be able to get this figured out. Mr. Davis.

Mr. DAVIS. Mr. Chairman, from my experience in the civilian side, there were some legislative impediments that were put in the way after we started really rolling on this process and it was evident that we were going through almost half the agency.

In the 1984 continuing resolution, the House tied the reduction of any custodial guard, elevator maintenance, or messenger service to the Veterans Preference Act, which said you couldn't contract out if a veteran could fill the job, which basically stopped a major part of our effort for a while. Eventually we got some relief in 1985 when they allowed us to contract those positions out if they went to a sheltered workshop for the blind or seriously handicapped, but that was a strong limitation. If that is still in place, that would be an impediment.

The second comment I would make is that although it is nice to look at the larger projects, because you perhaps get proportionately greater cost savings, you also are taking on proportionately greater risk of the procurement getting blown up, of it getting delayed so it truly is a 2- or 3-year effort to get it through.

The larger the project, the more visible it is, and the more visible it is, the more the other forces that would rally around the flag against it.

Second, the smaller projects can move much more quickly and build momentum in the agency, so in our agency we opted to save in your case on the chart, the 28 percent or the 22 percent and get it in quickly rather than wait and take the risk of not ever getting to a 30 percent or a 31 percent savings.

Last, you asked for some recommendations. One of the problems we saw in our agency was the definition of "inherently governmental." Our general counsel inside the agency defined "inherently governmental" as almost everything except pushing a broom. We did not have that view, but once the general counsel of the agency defines "inherently governmental," you are stuck.

It would be very interesting to see what the Senate would think of what "inherently governmental" is. My own opinion is "inherently governmental" is the person that makes the decision, and not even the staff that necessarily analyzes the data. But in the government, anybody that touches policy, whether it is a secretary or an analyst or whatever, is "inherently governmental" . . . and that certainly does restrict the use of contracted employees and of contracting out.

Mr. KLEINMAN. I agree with Mr. Davis. In DOD, larger studies did take longer and were more likely to be canceled, but that again gets back to the problem that it is the up-front costs that determined what we did and what we did not do, as opposed to looking at the ones that would really give us the biggest payback. But he is right. They did take a lot longer and a lot more were canceled of the larger ones.

Senator BROWNBACK. What do you think of Dr. Kleinman's suggestion that the agency keep the amount of the savings for a year or two as an incentive to the system?

Mr. DAVIS. Well, I come at it in two aspects. As a taxpayer, I hate to reward somebody for doing what they should have done in the past simply because they did it now. But once you cross the Beltway and get into government, some of the rules change, and in government that might be a necessary incentive.

Senator BROWNBACK. And you do not have any suggestions on what we can do to civil service managers who willingly participate and are blackballed along the way for further rewards or advancement?

Mr. DAVIS. Well, I think you have the same problem here as you have with a whistle-blower in an agency. You cannot legislate against discrimination very well because it happens very quietly, discrimination for whatever reason—in this case, discrimination because somebody went against the system in a strong way. I think perhaps one thing you might do is set up a bonus program out of some of the savings to bonus those people who are successful in the process.

Senator BROWNBACK. It seems to me then we are back to having the division or the agency or the entity that saves the money keep some of it for a period of time. And maybe you do that for a year's period of time and give them wide discretion on how that money is spent then.

Mr. DAVIS. That is true, and one of the other problems you may get into is the determination by personnel of what the grades will be in that area after you have A–76'd all this FTE out. That is a great disincentive. The grades should go with the responsibility of the dollars, not necessarily the head count or the number of people who are reporting to you, and that can be a problem in the personnel system.

So one of the incentives maybe is to assure that the grades either stay the same or actually might justify an increase, but certainly at least stay the same for the people managing the process.

Senator BROWNBACK. Very good. Gentlemen, I think this has been very illuminating from a practical standpoint since all of you have participated in this process. I very much appreciate your coming forward and testifying.

To those watching, we are going to take a recess from this hearing and reconvene at 12:30 for the final panel at that time, and you are certainly welcome to return. We will be in recess until 12:30.

[Recess.]

Senator BROWNBACK. We will reconvene the hearing. Thank you very much for accommodating me on breaking the hearing into two parts.

The final panel, panel 4, includes Nye Stevens, Director of Federal Management and Workforce Issues, U.S. General Accounting Office, and John N. Sturdivant, the National President for the American Federation of Government Employees.

Welcome, gentlemen, to the Subcomittee. You know the bill that we are looking at and the hearing that we are having in regard to it. I appreciate very much your willingness to come here and to testify for the record and in front of the Subcomittee.

Mr. Stevens, you are listed first on the program. We will go with you first. Thanks for joining us.

TESTIMONY OF L. NYE STEVENS,[1] DIRECTOR, FEDERAL MANAGEMENT AND WORKFORCE ISSUES, GENERAL GOVERNMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE

Mr. STEVENS. Thank you, Mr. Chairman. I would like to summarize my lengthy statement, Mr. Chairman, and have it submitted for the record and just hit the high points here.

The revisions in S. 314 which have been incorporated in the bill since the version we testified on last year we think have substantially improved it. They relate to the use of best value as a criterion for contracting decisions, a recognition that there are occasions when private sector sources are inadequate to meet the government's needs, and that the definition of inherently governmental functions is somewhat situational or dependent on the context.

We recently issued a report that we discussed with the Subcommittee on privatization experiences of five States that have had major initiatives in this area—Georgia, Massachusetts, Michigan, New York, and Virginia—as well as the city of Indianapolis, and from those emerge six lessons learned that were common to all of those and that we think might be useful to apply to the initiative in S. 314.

The first thing that these governments learned was that they needed to have committed political leaders to push a privatization or contracting initiative.

Second, there needed to be established an organizational and analytical structure to carry out and implement the initiative.

[1] The prepared statement of Mr. Stevens appears on page 74.

Third, there were legislative changes needed, often preceded by resource cuts to force the agencies to engage in greater contracting.

Fourth, they all perceived the need, certainly by the time they were done, to develop reliable and complete cost data on exactly what it cost the government to perform these functions in order to support informed decisions on what to contract out and also to defend those decisions to critics—and there are inevitably critics of the process.

Fifth, they needed strategies to assist the workforce in making a transition to what is a quite different privatized environment.

And then, finally, enhanced monitoring and oversight of the contracting process was the weakest link that most of them identified in the processes that they had undertaken.

Just very briefly, I would like to compare these to the provisions of S. 314. There is no political champion provided for in that bill. There probably cannot be one in a legislative measure like that. It does, however, provide a tool that a dedicated political implementer could use to carry out a privatization program. It provides a stronger foundation, but certainly not a substitute, for the political leadership that the other entities found was necessary.

The governments that we visited all did report the need to establish a dedicated organizational and analytical structure to carry out the privatization initiative, and S. 314 does that, in establishing in OMB a new center for commercial activities which has responsibility for issuing regulations, implementing requirements of the legislation, ensuring compliance, and providing guidance and information and assistance to agencies, to private sector entities, and to Federal employees themselves.

Since OMB is given very wide latitude in these regulations—and this is in some contrast to last year's version of the bill—there are going to be a number of issues arising in implementation that OMB is going to have to make choices on: For example, whether or not such entities as government corporations and government-sponsored enterprises, federally funded research and development centers, even the U.S. Postal Service can be eligible for contracting from the Federal Government, which would require them to be defined in some way as private sector sources, which are eligible; the role of public buildings, there would be a substantial question in here of whether public buildings could still house Federal employees or whether they would have to be transferred to the private sector and there would be rental and leasing agreements as the most common way to house Federal employees; how OMB would incorporate congressional views over sensitive conversions.

A number of questions like this lead us to suggest that perhaps OMB should have a strategic plan submitted to Congress as a means of getting agreement from Congress that the way it is going about this is indeed a sensible one that the legislative branch would agree to.

We also worry somewhat about OMB's resources in the management area. We have issued reports that question their ability to carry out even the management responsibilities they have today, much less the substantially augmented ones that this would require. And, of course, a strategic plan would help address that resource question.

In our State and local work, we found that all five of the States and the city of Indianapolis used some combination of legislative changes and mandatory resource cuts as part of their privatization initiatives to show they were serious and to really force agencies to make the tough choices that as previous witnesses testified are often very difficult because of the inherent bureaucratic dynamics. The balanced budget agreement may serve that same function in the Federal context, but this bill does not.

The bill does have implications, however, for a number of existing laws. It does not actually repeal any of them, and the status of some existing legislation would raise questions in our mind. For example, the Economy Act, which we have mentioned before, and particularly the status of the General Services Administration, which was created and exists precisely to provide services to other Federal agencies, conflicting with the prohibition in the bill against agencies providing goods or services to other governmental entities. So I think that probably needs clarification if there is a role foreseen for the General Services Administration, which, as you know, provides office space and consolidated purchasing and negotiates with airlines for government-wide air travel contracts and that sort of thing.

In the governments we visited, reliable and complete cost data on government activities was identified as something that was absolutely essentially in assessing the overall performance of activities that were targeted for privatization and in informing the decisions and in justifying those decisions. This is an area where the Federal Government is particularly weak. As others have testified and we testify in many other contexts, the ability of the government to determine what it costs to do anything is severely in question and will be until agencies meet—and they do not now meet—the Federal Accounting Standards Advisory Board standards requiring agencies to develop full measures of the costs of carrying out a mission or producing products and services. We do not have that capability now, and that would be a severe constraint on this bill.

We mentioned that workforce transition strategies had been identified as these other identities as very important. The bill's preamble, we note, states that it is in the public interest for the private sector to utilize government employees who are adversely affected by conversions, but there does not seem to be a provision for that in the actual legislation. There are not any new rights or privileges embodied in it.

It does, however, assign to OMB the function of providing information on available benefits and assistance directly to Federal employees. We would suggest that that would be a new role for OMB, such a small agency, probably one more appropriate for the Office of Personnel Management, which has current responsibilities and a good deal more experience in that area of dealing directly with Federal employees.

And then, finally, Mr. Chairman, when the government's direct role in the delivery of services is reduced through privatization, these governments identified a much greater need for aggressive monitoring and oversight of the contracting process. Most of the

governments said that this was the weakest point, the weakest link in their privatization processes.

And all of our indications are that this would also be a problem at the Federal level. The agencies that do depend most heavily on contracts—and some of the newer agencies do, NASA and Department of Energy, for example, both over 90 percent of their dollars go into contracts—these are commonly identified as high-risk areas by the government. Certainly the practices carried out in those agencies should not be emulated on a government-wide basis.

We can discuss any of these questions, Mr. Chairman, or others. We have done a great deal of work on the A–76 process in the past, and if you would like to go into matters that were discussed earlier, I can discuss that, too, after Mr. Sturdivant's statement.

Senator BROWNBACK. We will do so. Thank you for your testimony.

Mr. Sturdivant, thank you very much for coming in front of the Subcomittee. Before you start, I just wanted to say thanks to the Federal employees and the Federal workers for doing all that you do, because you guys work hard and do a lot of work. This is not a witch hunt to say that these guys are bad. It is a hunt to get to a balanced budget, and it is a hunt to start paying our debt down. And this is a key way we can look at the effort. So I hope we can work with you, and I also hope you can convey to your employees our thanks for all the work and the effort, and that this coming from a former Federal employee himself.

Thanks for joining us here today.

TESTIMONY OF JOHN N. STURDIVANT,[1] NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO

Mr. STURDIVANT. Thank you, Mr. Chairman. I am John Sturdivant, National President of the American Federation of Government Employees. AFGE represents more than 600,000 Federal workers in some 68 agencies. Approximately one-half of our membership is in the Department of Defense. And although this is my first appearance before your panel, I do look forward to working with you and your staff on other issues of concern to Federal and District of Columbia employees.

Let me now say a few words about Senator Craig Thomas, the sponsor of this legislation. We may disagree about contracting out generally, but I would be the first to say that the Senator listens to constructive criticism and learns from it as well. In other words, we can disagree without being disagreeable. Reasonable people can. And although this year's version of the Freedom from Government Competition is still, in our opinion, profoundly flawed legislation, the bill is at least an improvement over its predecessor.

While it is safe to say that AFGE is unlikely to agree to gutting or replacing OMB's Circular A–76, we would certainly approach with an open mind any suggestions Senator Thomas puts forward with the intent of making the circular even more equitable.

Mr. Chairman, AFGE is not reflexively opposed to each and every instance of contracting out. In these times, such a position

[1] The prepared statement of Mr. Sturdivant appears on page 90.

is as unrealistic as it is untenable. And because we are conscientious employees and also hard-working taxpayers, AFGE members are determined to see that the Federal Government's dollars are spent wisely. Quite simply, Federal employees should not perform work that is not inherently governmental if they cannot do it more effectively, more efficiently, and more reliably than contractors.

But we are also unreservedly pro-competition for work that is not inherently governmental, and it is competition that is good for the Nation's taxpayers and the government's customers.

As GAO concluded in a recent report, competition is the key to realizing some savings, whether the function is outsourced or remains in-house. Savings from completed functions occur regardless of whether the government or a private company was awarded the work. The government won about half of the time, and private industry won the other half. And that is why AFGE was the only Federal employee union to work with the administration last year to reform A–76. And in many instances, the reform of A–76 makes it easier for the govenrment to contract out. But it also provides—and we think that this is a bonus for the taxpayers—that when the work can be done, more effectively and more efficiently in-house, it provides for work to come back in-house, and we did not have that before.

This effort resulted in a revised supplement that, while permitting more flexibility to contract out, also ensures Federal employees greater involvement in the competitive process and makes contracting-out a two-way street by permitting work to return back in-house, as I mentioned earlier, when it is more cost-effective to do so. And you talk about a balanced budget. I think we all want a balanced budget. I want a balanced budget. So I think that the focus needs to be on what does it cost the government to get particular jobs done and whether or not they can get them done more effectively and more efficiently.

The fact that A–76 is now under continuous attack is implicitly a compliment to Federal employees and their work. Several years ago, Federal employees were losing 70 percent of all A–76 competitions. As you might expect, contractors had considerably fewer problems with the circular then. However, agencies, employees, and managers alike, often working through our labor-management partnerships, learned from their defeats, looked to the private sector for inspiration and guidance, and started to run their operations more like businesses.

I guess this would give me an opportunity to talk about one of my pet peeves. When you start talking about contracting, when you start talking about contracting studies, they always talk about going to the most efficient organization, or the MEO. And in AFGE, we believe that we should be working every day, whether our jobs are threatened to be outsourced or not, we should be working every day for the most efficient organization. And that is one of the reasons why we work with the administration and we embrace this whole concept of reinventing government, changing government, and making government work better, because we are the ones who come in contact with the taxpayers in areas like the Social Security Administration and the Veterans Administration. We are the ones who understand the importance of good customer service for our

taxpayers. And as we began to see that, as we began to realize that the American people want better, more effective, and, as you have indicated, smaller government, we recognized that we needed to be a part of that process.

We saw reform, we see government reform, we see changes in government kind of like a freight train coming down a track. A lot of my colleagues in the labor movement have taken the position to get in front of the freight train and do this [indicating with raised, open hand]. That is not my idea of protecting your members.

As a result of that, we decided to get on that train and to try to make our way to the engine to have some say as to how fast the train goes, where does the train stop, and what is its destination. Because, you see, our union is different from a lot of other private sector unions. Of course, we believe that pay, benefits, and a quality of life is important to the people that we represent. But we also have another role, and that is a policy role to point out to policymakers like yourself the impact of their policies not only on the constituents that we serve as government employees, but the impact upon the taxpayers and what it would cost. And we think that we are doing that, and we are going to continue to do that.

In doing so, we pulled even with the contractors, winning every other A–76 competition. Now, as you might expect, the contractors are not so happy with the circular, even though the Federal Government runs up service contracting bills of approximately $120 billion annually. So there is a lot of outsourcing going on somewhere.

Mr. Chairman, let me now express our concerns about S. 314. We believe that this bill is flawed for several reason. The first is that S. 314 is not needed. Last year, AFGE contractor representatives and officials from many Federal agencies worked with OMB officials to reform A–76. The resulting supplement provides Federal managers with unprecedented latitude and flexibility to outsource to the private sector. It requires agencies to annually determine which activities it will consider for conversion to contract, as well as which inherently governmental functions it will continue to perform in-house.

It mandates primary reliance on the private sector when it is shown to be cost-effective. It provides agencies with unprecedented flexibility to waive the circular's cost-comparison requirements in a wide variety of situations. Moreover, the Federal Government is engaged in the largest privatization and outsourcing effort ever undertaken. Currently, over 40,000 positions are being examined for contracting, and many thousands more are being identified for outright privatization.

The rationale for this bill is flawed. Senator Thomas claims that work currently performed by the Federal Government could be better done and could be more cheaply done through outsourcing. Since the notion that the private sector is always better and cheaper is false, legislation based on such a notion is clearly not in the best interest of the taxpayers.

For example, the GAO surveyed nine studies on service contracting and concluded that in each case substantial savings would have been realized if the work had been retained in-house. GAO also reported that even after years and years and billions of dollars in

contracting out, it could not convincingly prove nor disprove that the result of Federal agencies' contracting-out decisions had been beneficial or cost-effective.

Mr. Chairman, as you consider S. 314, I ask you to keep several principles in mind. Just because a service has always been provided by the Federal Government does not mean that Federal employees must do that work in perpetuity. Just because contractors are hard-working taxpayers, as Senator Thomas often reminds us, does not mean that they have some entitlement to funds in the public purse. After all, Federal employees are also hard-working taxpayers. And just because agencies with managers and rank-and-file employees, often working together in partnership, are more successful competitors in the A–76 process does not necessarily mean that the system has suddenly become defective. And just because contractors are not winning as many A–76 competitions now as they had in years past does not necessarily mean that they are being victimized by biased public-private competitions.

We would also ask you to seriously consider the suggestions we have made in our written statement for improving the competition process and generating savings for taxpayers. The bottom line, Mr. Chairman, is that although we have our own point of view, AFGE is ready to work with you to address the concerns that have been raised at today's hearing.

Thank you for the opportunity to testify this morning. I will attempt to answer any of your questions, and I would request that my more lengthy written statement be entered into the record.

Senator BROWNBACK. Without objection, we will do that.

Thank you both for testifying.

Let me start, Mr. Stevens, with you, if I could. You have studied a number of States, and the city of Indianapolis has gone through basically some iteration of what is starting in the Federal Government or has been going on for some period of time. You identified problems and incentives, basically, to make it take place. Where it has happened, you generally find a governmental entity that focuses on the area, and some political leadership that is committed to this taking place. There is also some pressure on the system, some budgetary pressure, something. All those are kind of the stick approach to this, if you will. There is always somebody beating on this.

Is there another incentive side to it? Has anybody tried the incentive that was talked about here earlier, about how you let an agency keep the same level of budget for a year after they have privatized a function? Have you studied that?

Mr. STEVENS. Yes. Certainly, I think the city of Indianapolis, which probably went farther along than the others on this, used that as a conscious strategy. The other thing they discovered was that the role of individual employees in their groups was extremely important here and that confronting them as automatic adversaries of the process was a mistake. Once they learned the lesson to bring them in, to get them to be part of the process—and to do that you almost have to offer them an opportunity to compete for the work—that, too, proved to be an incentive, a way to say, well, we can improve what we are doing. It did not become a confrontational ques-

tion as far as the employees were concerned. So that was yet another lesson that was learned.

Senator BROWNBACK. So Indianapolis tried the system of—I don't know if I want to call it bonuses—allowing them to just keep the money for another year and wide discretion on how you spend it.

Mr. STEVENS. Yes. It was not simply just turned back to the treasury. It was invested in agency operations.

Senator BROWNBACK. How did that work? You did not mention it.

Mr. STEVENS. Very favorably, yes. The whole operation in Indianapolis was very favorable, and still other governments are still visiting them monthly and learning lessons from their experience.

Senator BROWNBACK. So you would encourage that sort of approach yourself, or do you think it is not tested enough?

Mr. STEVENS. Certainly as a matter of principle we would encourage it. There should be some limitations on it. I heard a suggestion that perhaps bonuses to employees involved might be one way it was done, and I would be somewhat careful about that.

Senator BROWNBACK. That is a problem to me because we are not careful about that on the private side. They say, OK, you made more money for the company, you can keep more, because we are all benefiting from this. And I recognize the political realities on the other side of looking at that.

Mr. Sturdivant, you had a group of OPM employees that formed an ESOP and then bought their business from the government. You are familiar with that?

Mr. STURDIVANT. Yes, I am quite familiar with that.

Senator BROWNBACK. What do you think about that? What is your reaction to those employees doing that?

Mr. STURDIVANT. Basically, my understanding, in fact, that was kind of a piece out of one of our local unions. Presently those employees I do not believe are represented. But the employees had some concerns about that. They had some misgivings or what have you when OPM spun that off. But my understanding now is that basically it is working pretty well. I know that OPM is going to issue some type of a follow-up report on it, and I believe that some of the employees are probably making more money than they were when they were Federal workers doing that type of work.

So, once again, as I said earlier, all of these—we do not reflexively oppose all of these experiments, as long as the employees have a part of that process. I don't know that the employees are as involved in some of the decision-making as we would like to see if we were involved, if we represented them. But I do believe that the employees are generally—their morale is good and I think that the work is done.

What is interesting about Indianapolis, is that when the new mayor went in with an idea almost like Senator Thomas' bill, that we have to privatize as much as we can wherever we can. But once he got in there and once they began meeting with the employees and once the employees had an opportunity to compete for their own jobs, they found that a lot of the work that they thought they wanted to privatize, they got much more efficient themselves, and that work did stay in-house. I think that David Osborne in his book "Reinventing Government" talks about some cities and States

where the work was privatized, and then it was brought back in as the employees decided that they wanted to bid on the work.

It is not one-size-fits-all. Employees have to have an opportunity to compete for their jobs—we think they do—and, of course, the employees have to have an opportunity to bring their ideas to the table and to get down to the most efficient organization, which means getting rid of the mid-level managers and going toward some type of self-managed work teams which we have in the Federal Government, and I have talked about that in my written testimony. In a lot of instances, a lot of the changes have indicated that the work is much more effective and much more efficient.

I think the other piece which I think we all have a responsibility—and certainly those of us who are elected—is to customer service, the quality of the service and the customer services to the taxpayers who are our constituents. And that has been improved.

Senator BROWNBACK. Hopefully competition helps do that, whether it is public employees competing for a public service or private sector employees. Competition is such a mainstay in a capitalist society. I read Mr. Osborne's book "Reinventing Government," and that was one of his key points as well, that it is just that feature of competition that hones the skill and sharpens the edge.

Mr. STURDIVANT. And that is one of the things that we do, quite frankly, and you will see it all through my testimony, is that we are not saying that Federal employees should do the work no matter how ineffective or how inefficient they are. We are saying that we should have an opportunity to compete for our jobs, and as part of that, the reinventing government process, through the employee empowerment process, we want an opportunity to bring our ideas to the table so that we can say that what we are doing here and the way we are doing it there is not effective and is not efficient and is very costly to the taxpayers. And that is one of the reasons why we have increased the amount of A–76 competitions that we have been able to win, bringing it up to 50 percent. We spent a lot of time going out and training our local unions. We spent a lot of time—I spent a lot of time jawboning them, convincing them that it is more important to be at the table, to bring their ideas, to fight the real battles, which is what kind of government are we going to have, what kind of an operation are we going to have, rather than thinking that we are going to continue to go like we have been doing regardless of the cost to the taxpayers because the taxpayers simply are not going to tolerate it.

Senator BROWNBACK. They have just about had it. And while balancing the budget is important, to me it is step one. Step two is starting to pay the debt down so I do not pass it on to my kids at the same height and nature that it is currently, or that we are getting in a position to be able to deal with the baby-boomer generation that you gentlemen are a part of, and that is going to stop working here before too awful long.

Mr. STURDIVANT. Thanks for that compliment, but I am not part of that generation. [Laughter.]

Senator BROWNBACK. We will make you an honorary member, if that will help out. But we are just not anywhere near a position as a government for this massive wave of people to start retiring. We are nowhere close, not even with the suggestions of what we

are going to do on Medicare this time around or anything else. And then we have this mountain of debt, and we have these entitlement programs that are a demographic time bomb ready to go off in 15 years. We all know it. We all see it coming. And we are kind of twiddling our thumbs. That is why we have really got to work with you a lot in trying to get some of these things in a much better structure and make efficiencies everywhere we can go, entitlement programs and all.

I appreciate your demeanor and your nature and your testimony about being willing to work with us.

Mr. STURDIVANT. AFGE has published a document called "Government That Works," and I need to get a copy to you, where it talks about some success stories where we have really saved the taxpayers money, where we have provided good customer service. Remember, when we talk about customers in the Federal Government, we are talking about taxpayers, people who pay our salaries.

I need to get that over to you to read about some of the things that we are doing to improve quality, to improve effectiveness, and to improve efficiency in the Federal Government, because we know that unless we connect with the American people and unless we convince them that we are committed to providing good, effective, cost-conscious government services, then we are going to continue to have the anti-government, anti-Federal employee rhetoric. And we do not want that, but we know that in order to combat that, we have got to connect with the American people and convince them that we are doing a good job.

One of the interesting things I would like to point out to you, Senator, is that Dalbar Financial Services did a study and it looked at American Express, looked at Southwest Airlines, looked at a lot of other companies that do phone service, and in the efficacy and quickness of answering the phone, the quality of the service, and everything else that would go into a successful business running an 800 number, do you know who came out No. 1? Social Security Administration. Federal employees.

Senator BROWNBACK. Good. Glad to hear that.

Are there any changes that can be made in S. 314 that would improve the version enough that you and your union could support it, Mr. Sturdivant?

Mr. STURDIVANT. Well, off the top of my head, as I said before, we do not think that it is needed. But, obviously, if it is going to move, we would try to come forth with some recommendations to perfect it, and I believe those are in my written statement. I do not have them right off the top of my head. We would rather not see it, to be quite frank with you, but if it is going to be a fait accompli, then obviously we are going to try to come up and change it.

One of the things is that it provides no provisions to lessen the impact on the workers who might be displaced.

Senator BROWNBACK. And that needs to be done. Any major business that has gone through this—and I do not know about what the governments have done—but any major business that has gone through that, has taken care of the people. At some point you say, look, you have been a valuable employee, but we just cannot do this anymore. But you do take care of the people because they have been a valuable employee and they have given their life trying to

make the place better, trying to make the government operate. And I think we need to do those sorts of things.

Is that the experience that the States have had, Mr. Stevens?

Mr. STEVENS. Very much so, yes.

Senator BROWNBACK. The other thing I would like to see is some sort of incentivizing in the system, not just all sticks but some carrots in that as well. I think as we learn a little bit and transition from the era of big government to what I think is going to be smaller, more focused, and I hope believe—a better government, we will discover that you have to do these things over a period of time. It is not this year—or tomorrow—that we are going to close this one down, or whether it is a transition over a 2- to 3-year time period or things like that, those are important. Was that the experience in some of the States, or did they go rapidly through these sorts of processes?

Mr. STEVENS. Most of them came in with the agenda of moving quite rapidly, and as Mr. Sturdivant said, in Indianapolis, it changed somewhat. They learned some things as they went along, and I think most of the others did, too.

Senator BROWNBACK. Is that better because of employee morale? Anytime you are going through these transitions, you are hurting your morale, generally, within the workforce.

Mr. STEVENS. That is part of it. It was certainly more rapid than the A–76 program has been at the Federal level. We have looked at some studies there that have dragged on for 6, 8, and 10 years, and that is an extremely disruptive situation for agencies to be in. These governments worked much more quickly than that, and two of the keys to it were having a political leader in a position to make it a top priority and enforce that priority, and, second, having a structure, a commission, an agency, or an entity whose mission it was solely to implement the privatization initiative. Then if the agency's mission is to do that, you do not run into this bureaucratic question that came up earlier about individuals within the agency not being part of the old-boy network. If the whole agency is doing it, you are obviously not going to be ostracized for doing it yourself.

Senator BROWNBACK. So it actually works better by moving rapidly because you do not hurt your morale for as long a period of time?

Mr. STEVENS. Yes.

Senator BROWNBACK. I worry about that. I worry about it overall as we are going through this transition to a smaller, more focused, more limited government. If it hangs on too long, you just really beat down people because they do not have any certainty as to where things are going and where their job is, and then that just hurts you overall.

Mr. STEVENS. Absolutely. As soon as a study like that is announced, the good people that have alternatives often leave right away. The analytical work of doing these studies is something that the managers themselves are often not very studied in. They do not do it very often. They often do it as extra duties, and it can result in their jobs going away.

Senator BROWNBACK. Thank you. Been there, done that. I have been through those.

I appreciate both of your testimony and your comments. I hope we can work with you closely as we move this forward. I would like to see it move forward. I would like to see it moving forward together as much as possible. Mr. Sturdivant, I understand your position on this, and you would not be representing the folks that you were elected to represent if you did not. But I would hope you would be willing to look at some of the things we tried to do with this to see if it makes it any better, or if it makes it worse, and that you be candid with us on that even though at the end of the day you may look differently at it.

Mr. STURDIVANT. Oh, we are going to keep an open mind. As we said, we talked to Senator Thomas earlier this year, and as I said, we still do not think that the legislation is needed, but we are prepared to try to work with you. If it is going to move, then we want to try to perfect it as much as possible so that it does no harm, not only to Federal workers but to the taxpayers and to the country. We think we have a responsibility there to participate in the process. It is easy to stand outside and complain and to throw rocks, but we think it takes a lot more leadership and responsibility to participate in the process and to try—that is how things work in this country—and we are prepared to do that. We will be very forthcoming with you on suggestions and recommendations.

I need to get that book over to you, "Government That Works," because it tells a lot of success stories about how things have gone. We know things are moving slow, but you have to remember that there are a lot of Federal workers—people were in denial because they thought they had jobs for life; they thought they were going to have pension benefits. We think that folks are beyond that now. We think that people are starting to focus on the fact that—I believe that we are going to have a smaller government. I also believe that it is going to be a more dynamic government with the information age.

Interestingly enough, one of the charges that have been made against our union is, of course, we want bigger government because that means more members. Even though government has shrunk, our membership has gone up. We are one of the unions in the AFL–CIO that is growing, and that is because we have taken a lot of techniques that we learned in dealing with making more effective and more efficient government operations, and we have brought them home. We have applied them in our union, and our union is growing.

Senator BROWNBACK. Good. Thank you both very much for attending, and thank you all for your attendance.

We are adjourned.

[Whereupon, at 1:13 p.m., the Subcommittee was adjourned.]

APPENDIX

STATEMENT OF SENATOR CRAIG THOMAS
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT
JUNE 18, 1997

Mr. Chairman, members of the subcommittee, thank you for the opportunity to testify before you today regarding the important issue of direct federal government competition with the private sector. As the Senate sponsor of S. 314, the "Freedom from Government Competition Act" I look forward to explaining why a statutory provision is needed to solve this problem. I also thank Congressman Duncan, the primary sponsor of this legislation in the U.S. House, for his hard work on this topic.

For the past four decades, it has been the administrative policy of the federal government to rely upon the private sector for its commercial needs. This policy was originally issued in 1955 during the Eisenhower Administration in reaction to a bill very similar to S. 314 that was moving through Congress at the time. However, Congress relented when President Eisenhower agreed to solve the problem administratively. This policy is now found in Office of Management and Budget (OMB) Circular A-76. Unfortunately, it is routinely ignored. For example, the Defense Department completed 325 comparisons in 1983 during the Reagan Administration. None were completed in 1994.

Today, an estimated 1.4 million Federal employees are engaged in "commercial" activities -- goods and services that can be obtained from the private sector. The net effect to the taxpayer is tens of billions of dollars wasted each year. Activities ranging from the mundane to the high-tech, from laundry services to information technology are performed by government agencies, even when they can be obtained more cost effectively from the private sector at equal or higher quality.

Studies by OMB and the General Accounting Office show that the government saves 30 percent or more when services are procured from the private sector. Similar savings were found when the private sector was utilized in several state and local governments in the United States and through-out the world.

However, under the Clinton Administration's "reinventing" government initiatives, agencies not only engage in commercial activities for their own use (or so called in-sourcing), but have become entrepreneurial and are marketing their services to other government agencies and the commercial marketplace. In many cases, they are displacing private sector firms, a number of which are small businesses. In fact, the problem has become so pervasive that all three sessions of the White House Conference on Small Business ranked unfair competition from government and government supported entities as one of the biggest concerns to small entrepreneurs.

To inject market competition into government monopolies in Washington, I introduced S. 314, the "Freedom from Government Competition Act." This legislation would establish a statutory basis for determining whether a good or service for government use could be provided more cost effectively by the government or the private sector. It would establish a preference, as does the 1955 policy, for reliance on the private sector, but would provide four fundamental exceptions -- inherently governmental functions, those critical to national security, those in which private sector practices fail to meet government needs and those which the government can provide at the best value to the taxpayer. An Office of Commercial Activities and Privatization within OMB would be created to assist both Federal agencies and the private sector and to carry out the bill.

S. 314 is based upon the premise that government should not unfairly compete with its citizens. Congress should question the practice of taxing private enterprise so it can maintain a similar, but often less efficient capability within the government. Furthermore, Congress should never allow that same government agency to compete in the marketplace to provide commercial goods and services to the private sector. Yet, instead of focusing on its core missions, government agencies are more concerned with providing payroll services, computer support and helicopter rides.

A government agency that competes with and duplicates activities in the private sector stifles economic growth by dominating certain markets, diverts needed technical personnel from private sector employment, thwarts efforts by U.S. firms to export their services, and erodes the tax base by securing work that would otherwise be accomplished by tax paying entities. At a time of continuing Federal deficits it also siphons precious resources from higher priority, core governmental functions or deficit reduction efforts.

In the 104th Congress, the Senate Governmental Affairs Committee examined the "Freedom from Government Competition Act." Based on input by several parties, including Senators Stevens and Glenn, OMB, GAO, private industry and labor unions, S. 314 is a better bill. For example, a "best value" comparison mechanism has been added to the legislation. Instead of the one-sided cost comparison that favors government production of commercial goods and services now found in OMB Circular A-76, S. 314 will allow federal employees and the private sector to compete on a level playing field. The comparison mechanism will take into account many factors, such as qualifications, past performance and a fair cost accounting system, to determine whether the private sector or the federal government will provide the "best value" to the American taxpayer.

Another change to S. 314 would provide for the "soft landing" of federal employees who may be displaced by outsourcing. It is important to note that most government employees are not adversely affected by outsourcing and privatization. Several studies have found that 90-95 percent of displaced employees went to work for the private sector entity, transferred to other government jobs or retired. Employee transition has been a major facet of every successful privatization and outsourcing determination, both on the federal and state level. That is why S. 314 recognizes its importance and encourages the federal government to support policies that will facilitate employee transition. Wholesale displacement of government workers is neither the intent nor the possible outcome of my legislation. Clearly, given their knowledge and skill base, direct dismissal of federal employees would be counterproductive to successful transfer of commercial functions to the private sector.

Last year, the Senate passed an amendment that I offered to the Treasury/Postal Appropriations bill that would have prevented unfair government competition with the private sector. It would have made OMB comply with the "Economy Act" and prohibited an agency from obtaining goods or services from another agency unless they cannot be provided as conveniently or cheaply through the private sector.

Mr. Chairman, S. 314 builds on that successful effort. It will create jobs, help small businesses, save taxpayers' money and bring about a federal government that works better and costs less. It will create a statutory provision to provide the best value commercial goods and services to American taxpayers. It will ensure that the federal government utilizes the expertise available in the competitive private sector to provide for its commercial needs. I look forward to working with you and others to enact this good government, common sense reform.

Testimony of Congressman John J. Duncan, Jr.
Senate Committee on Governmental Affairs
Subcommittee on Government Management, Restructuring,
and the District of Columbia
June 18, 1997.

Mr. Chairman,

I would like to thank you and the Members of the Committee for giving me the opportunity to testify here today. I would also like to thank Senator Thomas for all his hard work on this issue.

As you may know, in the House, I have introduced companion legislation to Senator Thomas' S. 314, the Freedom From Government Competition Act.

This legislation has bipartisan support with 46 cosponsors in the House and 13 in the Senate.

It has been endorsed by a number of organizations including the U.S. Chamber of Commerce, the National Federation of Independent Business, the Business Coalition for Fair Competition, the Contract Services Association and thirty other organizations. I have attached a list of these associations to my statement.

In addition, the last time the White House Conference on Small Business met, it listed unfair competition with government agencies as one of its top concerns.

I think this legislation that I have introduced with Senator Thomas is a very modest proposal.

It does not require the federal government to contract everything out. We recognize that there are things that government does best and that there are functions that only government should do.

This bill would not require agencies to contract out functions that are related to national security or those things that are related to the core mission of an agency.

It requires only that federal agencies look at those things they do which are commercial in nature.

If these commercial goods and services can be obtained from the private sector in a more efficient and cost-effective manner, then, and only then, would the agency be required to contract out that work.

Mr. Chairman, the history of government competition is a long one. It was described by President Bush's Administrator of the Office of Procurement Policy, Dr. Allan Burman. In 1990, he testified before the House Post Office and Civil Service Committee. He stated that:

> "As far back as 1932, a Special Committee of the House of Representatives expressed concern over the extent to which the government engaged in activities that might be more appropriately performed by the private sector."

Since the Eisenhower Administration in 1955, it has been U.S. policy that:

> "the Federal Government will not start or carry on any commercial activity to provide a service or product for its own use if such product or service can be procured from private enterprise through ordinary business channels."

Every Administration, Republican and Democrat, for the past 40 years, has endorsed this policy, but unfortunately, it has never been implemented.

In fact, the Congressional Budget Office estimated that 1.4 million federal employees are now doing commercial activities that could and should be done by the private sector. For this reason, I believe we need a legislative solution to this problem.

A report released by the Commission on the Roles and Missions of the Armed Forces, known as the "White Commission," stated that in the Department of Defense:

> "at least 250,000 civilian employees are performing commercial-type activities that do not need to be performed by government personnel."

Numerous organizations have conducted studies on contracting out and have found that the federal government could save a huge amount of money by relying on the private sector.

In fact, just last year, the Defense Science Board found that $30 billion could be saved annually if the Department of Defense did more contracting out.

$30 billion a year is a lot of money even in Washington terms. This is $30 billion that we would not have to ask the American public to send to Washington every year.

Mr. Chairman, in a free-market society, businesses must compete with each other to provide the best possible product or service in a cost-efficient way. However, we only have one government, and it has no competition. Therefore, when it provides goods or services, it has no incentive to do so in a cost-effective manner. I believe the government should only provide those goods or services which private industry cannot.

I think all of us would agree that the American public wants the federal government to improve the services it provides without increasing taxes. I also think we would agree that almost everyone would like us to reduce the size of the federal government.

If this bill were enacted, I think we could do just that. In addition, I believe we would see small businesses continue to grow, and this would provide jobs to many more people.

Mr. Chairman, I want thank you again for giving me the opportunity to come here today to explain why I believe it is imperative that the Congress pass this legislation.

Organizations that support the Freedom From Government Competition Act

American Bus Association
American Consulting Engineers Council
American Council of Independent Laboratories
American Electronics Association
American Society of Travel Agents
Association of Management Consulting Firms
Building Services Contractors Association
Business Coalition for Fair Competition
Colorado Coalition for Fair Competition
Contract Services Association
Design Professionals Coalition
Dredging Contractors of America
Electronic Industries Association
Helicopter Association International
International Health, Racquet and Sportsclub Association
Indiana Chamber of Commerce
International Association of Environmental Testing Labs
International Hearing Society
Information Technology Association of America
Management Association for Private Photogrammetric Surveyors
National Association of RV Parks and Campgrounds
National Federation of Independent Business
National Burglar and Fire Alarm Association
National Child Care Association
National Community Pharmacy Association
National Tour Association
Professional Services Council
Small Business Legislative Council
Society of Travel Agents in Government
Society of Professional Engineers
Textile Rental Services Association
United Motor Coach Association
Untied States Chamber of Commerce

Statement of Samuel Kleinman
Director, Infrastructure and Readiness Team
Center for Naval Analyses

Competition and Outsourcing:[1] Opportunities to Reduce Support Costs

Good morning, Mr. Chairman. Thank you for inviting me to testify before the subcommittee. My name is Sam Kleinman and I am the Director of the Infrastructure and Readiness Team at the Center for Naval Analyses, a nonprofit Federally Funded Research and Development Center. I will be discussing our examination of competition and outsourcing. CNA has been looking at the merits of competition and outsourcing for six years. It is part of our overall effort to help the Department of the Navy and all of DoD make better use of their support resources. In the title of my talk, I put the word "competition" first. We believe that our results demonstrate, more than anything else, the value of competition, and this is what DoD has gained when it introduced its outsourcing program. The program is built on the premise that all providers of services, both in-house teams and private contractors, should be able to demonstrate that they provide the best value to DoD and the government.

I will be talking about our examination of competitions governed by OMB circular A-76. Under this circular, in-house teams are allowed to submit a bid. The incumbent government team can bid below its current costs, and it often does. The private team must bid at least 10 percent below the public team's cost to win the competition. There are many functions classified as "inherently governmental." They are not covered by the circular's rules, and our work did not examine them.

Our initial work examined the U.S. Navy's competitions. Between 1979 and 1990, the Navy competed 25,000 positions, of which 80 percent were held by civilians and 20 percent by military. We had sufficient data to analyze about 800 of these public-private

[1] The opinions are those of the author and do not necessarily represent those of the Department of the Navy.

competitions. Overall, savings were about 30 percent. In these competitions, the public team won half the time. There were 20-percent savings when the in-house team won and 40-percent savings when a private firm won. The in-house savings appear low because, when no bidder produces savings, the competition is decided in favor of the in-house team, and those no-saving competitions are included in their average.

For about thirty competitions, we went back to the bases to learn about the quality and subsequent costs. There were a couple of defaults, but in most cases, costs were contained and quality maintained. The reason, we believe, is that when the contract ended, there were sufficient competitors out there to bid away the contract. So, there were always competitive pressures controlling the contractors. In one large competition, we were able to follow performance and labor productivity through two recompetitions. We found that performance remained high and that labor productivity continued to improve.

When contractors win, they have to offer any new jobs to the affected government workers. Only 3 percent of the affected workers joined the contractors. Most federal workers prefer to continue employment with the government. However, our case studies show that when a contractor loses a subsequent competition, most of the workers are rehired by the winning firm.

We believe that the source of the savings is competition. Both the public activity and private teams come in with their best offers. As I noted, the in-house team wins half the time. So, outsourcing only occurs when a private firm offers to perform the function at lower costs.

Competition provides cost visibility and a choice of suppliers. In many cases, for the first time, in-house teams constructed the full cost of doing work internally and developed performance work statements

of what they were required to do. The government could then compare alternative sources for accomplishing the required work.

When private sector teams win, they appear to reduce costs by using fewer people, not by paying less per person. We believe that they do this by moving people from one job to another; by giving employees a greater range of skills; and by using more temporary workers, part-timers, overtime, and workers from other sites to meet peak workload demands.

There is a cost to competing and monitoring contracts. We estimated that the one-time cost to compete is 10 percent of the annual value of the contract. The cost to monitor these contracts is 3 to 10 percent of the contract cost. The savings I reported are net of the monitoring costs.

After examining the Navy's experience, we extended our analysis to all of DoD's competitions. My first chart summarizes the results. We looked at over 2,100 competitions, covering 80,000 positions. We found that there were savings throughout the Defense Department. Again, the savings were approximately 30 percent, and half the competitions were won by the in-house teams. We estimated an annual savings of $1.5 billion from these competitions.

We noticed that some competitions produced a great deal of savings and others produced no savings. My second chart shows the distribution. Twenty-two percent of the competitions led to no savings; on the other hand, 16 percent produced over 50-percent savings. We saw that competitions for small activities were the most likely to produce no savings. In fact, close to 70 percent of the competitions with no savings were competing ten or fewer positions. This is consistent with our observation that savings come from using fewer people. It is difficult to restructure assignments for narrowly defined activities. This is an important point when considering how many activities to put together in one competition.

As I mentioned, smaller competitions provided less savings. Yet, many of the competitions are for small activities. My third chart shows that 40 percent of the competed activities had ten or fewer people. They produced only 5 percent of the total savings. Savings were greatest for the largest competitions. The effect of size is less clear in the middle categories.

There are many challenges to successful competitions and outsourcing. As I noted before, the average cost to compete is 10 percent of the annual contract value. These costs are usually recovered quickly, within four months, but they can discourage regional offices that have to pay for the competitions out of their current budgets.

It can take a long time to complete a competition. The average is two years. A recent Rand report noted that while 5 percent were completed in six months, another 5 percent took over five years. The lengthy competitions can be disruptive and costly. Workers, fearing that the work will go outside, start to look for other jobs, and no matter who wins the competition, it takes time to recover from the disruption.

Many competitions were canceled before bids were requested. Forty percent of those started were never completed. Our analysis suggests that those canceled were as likely to produce savings as those completed.

Departments and agencies can take steps to meet these challenges.

First, each department and agency should set up a competition and outsourcing office to serve as a central source of information and support. This office would promote and arrange training, help structure and review performance work statements, provide templates for contracts, and send teams out to help local and regional offices set up competitions. We need to cut the cost and length of competitions, and individual facilities and regions cannot be asked to do it alone.

Second, the incentives at local and regional offices should be improved. Competitions are costly and disruptive to them, and headquarters often cuts budgets by the amount of the savings, leaving the local and regional offices no better off for their effort. We believe that local and regional offices should keep the savings for a couple of years. They could use the money on workplace improvements that didn't make it into their original budgets.

Third, the workers participating in a competition should be kept informed and supported throughout the process. They should know what is being competed, the schedule, and the rules governing the competition. They should be helped in reorganizing and preparing their bid. Their objective should be to win, and we want them to take on the challenge of outside competitors. If they lose, they should be offered generous buyouts and help in finding new positions.

Fourth, agencies and departments should look for opportunities to consolidate several activities into one contract. The small competitions are not producing the savings seen in the other competitions. One facility could consolidate different functions into one competition, or several facilities could merge a common function into a competition.

Finally, agencies and departments should use a selection process that allows them to pick the best value and not necessarily a sealed-bid low-cost alternative. They are allowed to weigh past performance, management, and financial solvency of the bidders. In the past, the Department of Defense sometimes felt obligated to select low-cost bidders that they suspected could not perform.

In summary, competitions produce the best efforts in all participants and the best value for our agencies and departments. The end result would include more outsourcing, but more importantly, it will lead to more efficient government.

References

CNA Research Memorandum 92-226.10, *Analysis of the Navy's Commercial Activities Program*, by Alan J. Marcus, July 1993

CNA Research Memorandum 95-224, *Outsourcing Opportunities for the Navy*, by Carla Tighe et al, April 1996

CNA Occasional Paper 23, *Outsourcing and Competition: Lessons Learned from DoD Commercial Activities Programs*, by Carla Tighe et al, October 1996

DoD A-76 Competitions, 1978 to 1992

Service/Agency	Completed Competitions	Baseline civilians	Baseline military	Annual savings (FY96 $m)	Percentage savings
DoD Agencies	54	1,566	5	17	22%
Army	466	21,530	3,728	443	28%
Air Force	760	18,147	8,633	571	36%
Marine Corps	44	1,291	157	25	31%
Navy	807	20,793	4,821	413	30%
Total	2,131	63,327	17,344	1,470	31%

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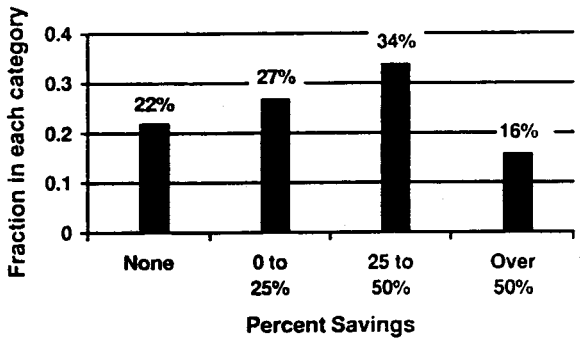
Distribution of DoD A-76 Competition Savings



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DoD A-76 Competition Savings by Size of Activity

Number of positions	Competitions	Percent savings
1 to 10	857	22%
11 to 30	728	28%
31 to 50	212	31%
51 to 75	115	27%
76 to 100	67	32%
101 to 200	88	29%
over 201	71	35%
Total	2,138	31%

STATEMENT OF CAPTAIN BURTON STREICHER, CEC, USN
DIRECTOR, NAVY OUTSOURCING SUPPORT OFFICE

Mr. Chairman and distinguished members of the Committee, I am Captain Burton Streicher, Civil Engineer Corps, United States Navy, Director of the Navy Outsourcing Support Office. I am pleased to appear before you today to discuss my experience with conducting OMB Circular A-76 competition studies within the Navy.

In my present position, I am responsible for assisting Navy and Marine Corps field activities in conducting the A-76 competition process by streamlining the A-76 process to a standardized notional 12 months, collecting and developing generic performance work statements, standard acquisition and source selection templates, new key process enablers, providing access to nationally based study support consultants, ensuring lessons learned are quickly shared, and providing single storefront point of service for local installation commanders.

In 1984, I was the functional head of two different successfully completed A-76 competitions for Public Works Services, and Transportation Operations and Maintenance at the then Naval Air Development Center, Warminster, PA. Both studies were started in May 1982 and in progress before I reported in July 1982. We studied about 78 full time equivalents, or positions, in both studies. The most efficient organization took about four months to develop for both studies. The invitation for bids was released in May 1983 for public works services and the transportation study was released later that fall. I spent almost my entire tour of three years to bring both to completion, as the public works services competition resulted in a lengthy 7 month appeal process. Both studies were retained in-house and continued to be retained until the facility was closed under the BRAC process.

I would like to share with you the lessons I learned from these experiences. First, there were numerous barriers which made it difficult to conduct the studies.

The study units were sub-optimized and conducted at different times which resulted in several studies going on at the same time but in different stages. This resulted in fragmentation of our management effort and required a significant amount of additional coordination.

In accordance with the guidance at the time we conducted the process in a serial manner by finishing one step before commencing the next. If the product was not acceptable to the next portion of the process, it had to go back to the beginning of the previous step with a commensurate loss of time and effort. For example, when I first read the Public Works study performance work statement, it was not in a contractable format. I had to appoint three people full time for two months just to convert the different sections of the performance work statement to a format acceptable to the contracting officer.

The prescriptive statements of work and the data gathering efforts to develop them were exceptionally labor intensive and I found it almost impossible to cover all aspects of service performance. The resulting "how to do the work" performance work statements were huge in size and left many opportunities for misunderstanding the requirements. I awarded a small consulting contract to provide an independent review of our final performance work statements just to determine where we may have left holes in the requirements. The consultant found several, one of which hinged on the definition of a word used to describe the intermittent operation of the heating boiler plant. If not corrected, this word interpretation could have resulted in a contract change order of several hundred thousands of dollars if the final outcome had been awarded to an outside firm.

I also found that there was very little process technical experience located within the activity or region. There was no user friendly guide that could walk a functional manager through the process and explain the choices available to the Commanding Officer. Everything was being done for the first time with great uncertainty whether is

was done correctly or not. In addition, there was no formal "lessons learned" sharing mechanism to find out what was happening at other activities.

The invitation for bids (IFB) method of acquisition, which is a cost only comparison, resulted in a decision for the bidder who interpreted the specifications to the minimum amount. This was whether they could actually do the work or not. This was commonly known at that time as an "unlevel playing field". It resulted in an initial decision on the Public Works study to an outside provider who bid almost exactly half the independent government estimate, the government bid, and the other four industry bidders. The union appealed this initial decision and after more than half a year and numerous discussions between the Small Business Administration, as it was a small business set aside solicitation, the contractor, and the contracting officer, the contractor withdrew his bid.

Despite the above barriers and the difficulties I experienced, the process worked and my activity was able to perform the same amount of service at a much reduced cost. Competition vice the end nature of the service provider was the key to about a 20% savings for my command.

Since my experiences of over 13 years ago were not unique, to overcome these obstacles the Navy has reengineered and streamlined the process to become a better management tool for activities to use. Namely, better upfront planning and coordination using acquisition plans and "integrated process teams" of all parties involved give the local Commander greater control of the whole process. We have shifted to identifying minimum service required to support the mission and to defining in performance outcome terms thereby allowing the service provider to determine how best to provide the service. We are holding industry forums to learn best business practices and adjust performance work statements to allow better participation by industry and government providers. We have also developed a way to compress the A-76 process to 12 months between announcement and decision through parallel verses serial operations, process enablers and

templates, and an extensive support effort which includes enhanced training opportunities, regional facilitators, electronic connectivity for lessons learned, and outside consultants for specialized expert assistance. Finally, we have shifted to a best value request for proposal vice the lowest bidder invitation for bids acquisition process in order to balance the outcomes of the best contractor proposal and the government proposal prior to cost comparison. This new change corrects the greatest previous complaint of an unlevel playing field for the competition.

These initiatives along with other aids which have been developed by the Navy such as, a 1-800 outsourcing assistance number, an outsourcing homepage on the internet, a commander's handbook for successful competition, and electronically linked regional outsourcing support coordinators, will go a long way in making the A-76 competition process a better management tool for the Navy. These reforms, in addition to the Navy Commander's and Resource Sponsor's tool kit, are available to help reduce the cost of the Navy's infrastructure.

In conclusion, I hope that sharing my experiences will assist the Committee with its future deliberations.

TESTIMONY OF CHARLES STROUT DAVIS III
ON S.314, "THE FREEDOM FROM GOVERNMENT COMPETITION ACT"

June 18, 1997

Mr. Chairman, Members of the Committee, thank you for the invitation and opportunity to discuss the "The Freedom from Government Competition Act" (S.314) and specifically in reference to my experiences and observations on the benefits and opportunities for competitive contracting in the federal government.

Introduction:

As all of you, I am well aware of the need to constantly improve the efficient use of the increasingly limited government resources with which the Executive Branch must perform its programs and services. I am also aware of the general public perception that government performs many of these activities poorly, both in terms of the level of service provided and in terms of their cost-effectiveness. To me, it would seem that legislation aimed to help improve this reality and perception must have two objectives:

- first, to create the structure and process that will enable and motivate more efficient practices within the Executive Branch; and

- second, to improve the public perception of the effectiveness in how government resources are expended.

By using the procurement process, government projects and programs will have to face the light of private sector competition which, by this very process itself, will create and motivate both improved service delivery and efficiency. In this manner, the government will:

1. Be motivated to organize itself in a more streamlined structure, eliminating unneeded levels of bureaucracy and overhead;

2. Be open to innovative methods and newer technologies that improve efficiency;

3. Be able to be measured on a "results basis" both for cost-effectiveness and for client satisfaction; and

4. Improve public perception as it becomes known that government is meeting the same competitive pressures as must private sector companies.

I am very familiar with the contribution that enlightened procurement policies and practices can have in improving cost-effectiveness of an organization, both in the private sector and in the federal government. I have personally seen them work in both.

Before discussing the use of these processes to dramatically improve the delivery and cost-effectiveness of services within government and, specifically, within the General Services Administration in which I served from 1981 to 1985, I believe it is beneficial to underscore the tremendous impact similar practices have had in making US industry more productive and cost-competitive.

Private Sector Use of "Out-Sourcing" for Improving delivery and Cost-Effectiveness:

Companies in the private sector have increasingly used "out-sourcing" as a major element in their efforts to improve productivity to meet the challenges of the global economy. "Outsourcing" studies in the private sector are the counterpart of the governmental actions of "A-76" (named after OMB Circular A-76). This private sector practice of "outsourcing" illustrates the potential benefits to be gained through introducing increased competition into any activity that is presently performed internally. I witnessed these benefits first-hand in the automotive industry, where I served as a consultant and financial executive for over 14 years.

In the automotive industry, the emphasis on outsourcing represents a major change in established thinking. From the 1900's through the mid-1970's, the major US automotive assemblers (General Motors, Ford, and Chrysler) all believed that it was more effective and efficient to "own" and "operate" the component parts plants in the automotive manufacturing process, as well as assemble and distribute the final product. It was thought that this would be more efficient because: (a) the profit to independent "parts suppliers" would be eliminated, (b) communication would be more streamlined, (c) synergisms would result from closer working relationships, (d) the cost of capital would be lower, and (e) in-house management was more knowledgeable about the products and customers.

Following this thinking, General Motors emphasized "horizontal integration" gradually "insourcing" most of its component parts manufacturing. In the 1930's, most component parts were produced by independent companies -- transmissions, engines, radios, just to name a few. By the late 1950's, General Motors owned and operated "parts divisions" that made most of these.

Ford, on the other hand, followed a path of "vertical integration", insourcing all the major basic elements required for vehicle manufacture; such as, ore mines, shipping, vast forests (for wooden car frames), steel mills, and glass plants. In the 1950s, it started to follow GM's example and "insourced" many component parts also until finally, for anti-trust purposes, it had to spin off its latest acquisition, the spark plug division, "Autolite".

However, with the advent of competition from Japanese car manufacturers, these monolithic corporations had to face a new reality. The supposed efficiencies of "integration" were either illusionary or had been overcome by creeping bureaucracy. In a review of component costing, the automotive companies found that outside suppliers were able to quote parts at substantial savings over the same parts produced internally -- ranges of 15% to 35% savings were common. By the

mid-to-late 1980's a major movement began to "out-source" component parts and shed the base resources. Ford no longer owns steel mills or glass plants. GM has already "out-sourced" or "spun off" many of its prior parts engineering and manufacturing functions. These activities are continuing today.

Out-sourcing is being done primarily for four reasons:

- the supplier organization typically has a lower fixed cost structure. This is a function of less bureaucracy in support staffs and unnecessary overhead that has been acquired over the years.

- the supplier organization is quicker to adopt "new ways of doing business" and try new technologies because it has a smaller and quicker chain of command, and lower level executives are given more authority.

- the supplier organization is "motivated through competition" to continually optimize its cost-efficiency, reducing costs or improving productivity.

- the end user is not wed to the technology or the fixed costs of the supplier -- as these are out-moded, a new supplier will win this next contracting round.

I state the reasons that "out-sourcing" works in private companies because too often the charge is made in both the private and public sector that the only reason "out-sourced" costs are lower is because wage rates are lower. At times, lower wage rates can be a major contributing factor, but it is not the only factor and, many times in unionized situations, it is not a factor at all. Also, the benefits of the application of "new ways of doing business" and the speedy adoption of new technologies not only reduces costs, but results in improved products and service.

Competition Within the Government Functions -- GSA as an Example:

In 1981, I left the private sector and was privileged to spend the next five years as a senior executive in the United States General Services Administration (GSA): first, as Associate Administrator for Policy & Management Systems and, then, as Associate Administrator for Operations. I found in many areas of activity the GSA was much less efficient than its private sector counterparts. For example:

- In providing service, it took the Public Buildings Service over 14 months on average to negotiate leases for new space (from the time the request was received to the time the lease was signed) -- the private sector average was about 60 days. In the Federal Supply Service, it took 29 days to process an order for supplies -- compared with 24 to 72 hours in the private sector.

- Costs were equally out-of-line. Costs for constructing new government-owned buildings were typically at least 130% higher than comparable privately-owned buildings. Studies of custodial, security and maintenance services should similar disparities.

- In the contracting process itself, computer procurements could take 3 to 5 years from the time specifications were developed to the time a contract was awarded. In effect, we were procuring as new, systems that were at least a generation out-of date -- the costs were low, but so was the comparative productivity of the system. This particular problem was documented in a 1984-85 study by the Computer Procurement and Information Technology Panel of the National Academy of Sciences, on which I served.

In GSA, one of the major tools for addressing certain of these problems was the process termed "A-76" which was a process that allowed us to "competitively bid" functions presently performed within the government. In this process, the government was compelled to study its functions and, then, "bid" against private sector companies to see if the function would "stay in house" or "be contracted out".

A GAO Study which reviewed the activities undertaken during this time period showed that 73% of the activities studied were contracted out, but 24% stayed "in-house" and 3% were terminated completely. When contracted out to the private sector, the average savings was 39%, compared with the prior year's level of expenditure when performed by governmental managers and employees. (Extent of Contracting Out for Real Property Management Services in the GSA, May 1994 - GAO/GGD-94-126BR).

A common criticism of the A-76 process is that is it allows private sector companies to "cream skim", only bidding on those activities it is sure it can win and be profitable, leaving the higher cost activities in the government. The GSA experience with A-76 belies this -- even in those the A-76 functions where the the government bid won the bid showed meaningful cost reductions. The process allowed the government to "bid" a reorganized and thrifted function and, in the main, the government managers were motivated to "win" the bid. As a result, 10% of all A-76 cost savings came from the government itself, stream-lining its management structure and proposing cost efficiencies that somehow had escaped the annual budget reviews. (Ibid)

During the period from 1981 through 1985, through various programs and methods, GSA reduced headcount by over 9,000 FTE or by 25%, while continuing to perform all it's functions in an improved manner. The A-76 process was a major contributor to this achievement. During this time, the agency conducted over 500 A-76 reviews, covering over 45 % of the agency's 35,800 employees. Through the A-76 process, the agency reduced over 3,000 FTE with savings of over $120 million per year. According to a GAO study of the 11 year period 1981-1992, over half of all savings from A-76 occurred during the first four years.

Why were the first four years so successful in reducing costs? Why did the A-76 program show a marked drop-off in success and cost savings after that period?

A popular answer is that "the easy functions were studied first, therefore, naturally the savings rate would decrease." That may be the popular answer, but it is the wrong answer!

The true answer is that the 1984 Continuing Resolution passed in the House of Representative (and was adopted by the Conference Committee) contained certain language that tied the A-76 program at GSA into the Veteran's Preference Act for certain job classifications. This meant that GSA was now prohibited from contracting out any guard, custodial, messenger or elevator operator positions. Since the vast majority of A-76 studies centered around buildings operations and maintenance in the Public Buildings Service, GSA was effectively stopped from continuing much of its A-76 program.

A slight window opened when a subsequent continuing resolution (1985) allowed GSA to use the A-76 process for these positions, if the private sector employer was a workshop for the blind or severely handicapped. Of course, the limitations of these events to the program are self-evident. Also, in this time period, Administrator Carmen left the agency to become Ambassador to the United Nations (Geneva) and the top-down support to keep the process moving rapidly forward within the agency was missing.

Why was the GSA effort from 1981-1985 so effective in obtaining the desired efficiencies?

I believe are effectiveness was a result of the following factors:

1. *Our efforts had the strong and visible support of the top management of the agency.*

   In GSA, the Administrator (Ambassador Gerald P. Carman) was firmly committed to improving the agency's efficiency and customer service. This was shown not just by rhetoric, but with very concrete actions. The A-76 review program was placed as a staff office under the Associate Administrator of Operations, who was the direct line supervisor of all GSA operating managers (initially, this was Mr. Steven Hammer from 1981-1983 and myself from 1983-1985). This placement was very important, since it gave visibility and access to the A-76 staff. Additionally, the staff was strategically housed on the same floor as the Administrator (a bureaucratic signal of importance).

   To assure that this process was implemented, each subordinate line manager throughout the entire agency had the timely implementation of A-76 included as a "critical element" in his or her performance review (critical elements are those which, if not performed adequately, can lead to demotion or dismissal).

2. *Individuals in the A-76 program had to be willing to risk their careers.*

GSA's A-76 staff office was led by and staffed with individuals who were not afraid to "take on" senior executives who were allowing A-76 reviews to drag out or functions to be incorrectly defined as "inherently governmental" and thereby be exempted from the process. President Reagan used to give his appointees a card to place on their desks that said: "To do your job, you must be willing to lose it!". Almost every A-76 action GSA took met with both negative media articles and Congressional pressure on behalf of government employees who were fearful of losing their jobs.

For career government employees, the task of running the A-76 program, if they were to do it correctly, placed them in opposition to higher level career executives who were, in the main, strongly opposed to "contracting out". To oppose these individuals meant jeopardizing potential career paths and future promotions.

A corollary to this problem is the fact that the negative career impact of such a program was well known to the brighter and goal oriented up and coming managers. Therefore, they avoid assignments to these areas, regardless of potential visibility or the fact that it may involve an initial promotion. The assignments are apt to go either to less able managers or those who will try to just "get along". At GSA, we were fortunate that our A-76 program had a number of very courageous and dedicated employees working in it.

One concrete example will point this out. The Program Director for A-76, a GS-15 who headed the staff from 1981-1986 and was directly responsible for its success, was never promoted into the Senior Executive Service (SES) through the remainder of her government career, even though she was the recipient of many "Outstanding" performance reviews and performance awards for her achievements during the period 1981-1986. This was the career civil servant who was instrumental in leading a program that achieved $120 million of cost savings and was accomplished with a speed not matched in any other civilian agency.

3. *Streamline the Process*

At GSA, the time line that was originally proposed to review each area, define functions, study each function and, then, process a competitively procurement took many months, if not years. Since historically the average tenure of the political leadership in GSA averaged 22 months, the GSA program was designed so it could be implemented and completed before the present political leadership became vacant through attrition. This was accomplished in two ways.

First of all, the GSA A-76 staff developed a standardized review package that had to be used in all areas. This prevented each area from spending time developing their own review criteria and allowed standard reporting and oversight. Secondly, the GSA A-76

instructions insisted that the review areas be defined into the smallest units possible. Many of the career line executives wanted to create a large, cumbersome combination of areas or functions. At GSA, that was not allowed if a function could be sub-divided easily.

4. *Breaking the Initial Effort Into "Chewable Bites"*

By defining the process into small areas, GSA created "chewable bites" which had the following benefits:

A. Each specific review and study could be conducted and completed within a matter 3 months, compared with the complexity of larger units which could have taken years.

B. If the procurement had not been divided into small units, it would have been overly complex -- leading to fewer private sector bidders. Imagine trying to find a number of bidders that had offices in a series of areas or cities -- this alone would restrict bidders to only the larger corporations.

C. A larger procurement would have required re-creating an internal bureaucracy within the contracting firm to manage the contract, therefore adding unnecessary levels of bureaucracy.

D. A larger, more complex procurement would have increased the potential for errors in the process and the potential for contracting appeals.

E. The small procurement was less visible. Therefore, the natural opposition that arose to "derail" the effort was less. Many of the A-76 reviews involved only two or three FTE -- the majority involved less than 10 FTE.

As the learning curve and successes built in these smaller procurements and the momentum was established, GSA began to take on those larger A-76 efforts that could not be easily sub-divided.

5. *Use Private Sector Performance Standards Whenever Possible*

A good example of this is the Franconia Warehouse A-76 procurement. Prior to starting the A-76 process, the average time through the GSA warehouse system (15 warehouses nationwide) to process an order from the time of receipt to the time of shipment was 29 days. The private sector operated on a 24-72 hour turnaround. Repeated attempts to study how to improve this process resulted in the government managers willing to accept a 16 day turnaround as a performance criteria -- 5 times as long as the longest private sector standard.

The Administrator (Ambassador Gerald Carmen), after reviewing private sector warehousing operations and providing ample time for GSA management to plead their case, set the performance criteria of 6 days -- twice as long as the longest private sector standard, but 60% less than the career management stated was possible. One career manager resigned in protest and others were re-assigned. Ninety days later and under new management, the Franconia warehouse achieved the target of six days.

At this point, the A-76 process began with the 6 day target as its performance criteria. The successful bidder's cost was 38% under the government's proposed budget to continue to operate the facility -- while meeting the performance criteria.

Had the private sector performance criteria not been selected, the cost savings would have been achieved, but the service delivery of the function would have been at 16 days or greater.

This example also serves to underscore the earlier point regarding strong and visible support of top management. The Franconia debate was so strongly felt that the Administrator had literally to change management. The Administrators' willingness to take this action in support of the "competitive contracting" process signaled the whole agency that this was a serious program. After this, the efforts in all areas of the agency received much more whole-hearted and serious consideration in a constructive and positive manner. For example, the Stockton (CA) warehouse completed their A-76 process the next year later remaining in-house, but at a 30% plus cost reduction. Additionally, in this and future procurement, there was an increase in the interest of private sector bidders who could see visibly that the GSA was serious regarding these efforts.

6. *Get the Career Management To "Buy Into the Process":*

Another card given by President Reagan to be placed on each appointees desk stated: "You can accomplish much, if you do not care who gets the credit." This was one of the keys used at GSA to assure that government career executives were bought into the A-76 process. Using Franconia again as an example, the career manager responsible for obtaining the reduction in turn-around time and completing the A-76 process received a Presidential award and maximum bonus. He received all the credit in GSA press releases regarding the savings and improvements -- the political appointees took a back seat.

Of course, this cannot just be window dressing. Career management must be involved and listened to during the whole process... to a large degree, it must be their program. The six day target at Franconia was agreed to and adopted by the new management in the Federal Supply Service -- it had to be or it would not have been achieved. Likewise, even though the private sector won the Franconia procurement, the on-going activity could have been sabotaged by career managers had they not bought into the program. By having the credit go to them (properly), they saw their careers improve and their image enhanced with their

peers. Their acceptance of the program was assured.

In a reverse but corollary practice, all major program initiatives were always approved in writing by career managers. Although the political appointees, many times, had authority to sign the approvals, it was felt that the career employees would not sign themselves unless they were convinced that it could and would be accomplished. The paper trail of signatures is what is important when something goes wrong -- in GSA, the A-76 process attempt to assure the career executives were integral to the paper trail. This would assure the program both was well-founded and that it would continue to be well-managed after the political managers had left the agency.

7. *View Roadblocks & Barriers as Opportunities:*

Early in the process, career managers would focus the discussions on all of the barriers and impediments to be faced in the A-76 process. This focus, if followed, would lead to inordinate delays and inaction. At GSA, we reversed this. We focused on the opportunity that was presented to career management had to find ways around the barriers. The watchword became "don't tell us what you can't do, tell us what you are going to do."

A good example was the shutdown of A-76 in custodial positions caused by the 1984 Continuing Resolution. Rather than just accepting this, the agency found a way within a year to use "sheltered workshops" to continue the process and over 1,000 custodial positions were eventually contracted out through this secondary method.

Other Competitive Contracting Examples:

GSA also undertook non-A-76 programs that did not involve directly employment reductions, but were functional policy changes in the method of provision of certain services, as follows:

1. *Travel Services & Bursars/Petty Cash Functions:*

Prior to 1981, the ticketing for airline travel, issuing of travelers checks and petty cash was totally performed by government employees in government office space. By 1985, most major departments and agencies in Washington DC had private ticket agencies located within their buildings, which issued tickets and travelers checks.

The procurement involved no cost to the government, since the private travel agency funded itself on the commissions it received from the airlines, hotels and rental car agencies. Although the government contributed the office space required, this was a trade-off with the office space previously used by government employees. Travel costs to government travelers stayed at the lower negotiated government rates. The competitive bid was awarded based upon levels of service offered and experience, since no costs were involved. In addition to reducing government FTE based on "out-sourcing" the ticketing

function, the switch to having the private agency issue travelers checks, reduced substantially the workload in the bursars/petty cash offices, allowing further headcount reductions.

2. *Payment methods for Government Travel:*

Prior to 1981, government travelers had to personally pay for all travel costs, other than airline tickets. This was achieved by government employees either obtaining travel advances in travelers checks, or by using their own personal checks and credit cards and filing for reimbursements when the travel was completed. By 1985, a competitive procurement among major credit card companies had resulted in most frequent travelers being issued government credit cards without any required credit analysis or check (however, the government was not liable for any balances on these cards). These cards were used to purchase airline tickets, travelers checks, and pay for major costs of lodging and meals. The government immediately benefitted from having to pay in advance for employee air tickets and travel advances to not having to reimburse travel for 15-30 days. The interest savings in the outlay of government funds was estimated to exceed $20 million per year. Additional, although non-quantified, savings were accruing to the accounting functions in each agency from less paperwork and record keeping. Lastly, the government employee no longer had to fund a large portion of his travel through use of his personal cash or credit. The procurement involved no cost to the government, and the award was based upon the level of service offered to the individual card holder and the government.

Thank you for your attention. I would be glad to answer any questions you may have.

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia Committee on Governmental Affairs
United States Senate

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PRIVATIZATION AND COMPETITION

Comments on S. 314, the Freedom From Government Competition Act

Statement of L. Nye Stevens, Director
Federal Management and Workforce Issues
General Government Division

GAO/T-GGD-97-134

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to assist the Subcommittee in its consideration of S. 314, the Freedom From Government Competition Act. The bill would require that the government procure from the private sector, with some exceptions, the goods and services it needs to carry out its functions. We testified in the 104th Congress on a predecessor to S. 314.[1] The revisions incorporated in this new bill respond to a number of our suggestions, including provisions relating to the use of best value as a criterion for contracting decisions, allowing for situations where private sector sources are inadequate to meet the government's needs, and recognizing that the identification of inherently governmental functions is somewhat situational. As you know, we recently had discussions with the Subcommittee staff on S. 314 and provided some suggestions and comments. The Subcommittee has asked that today we discuss the new bill as a potential vehicle for competitive contracting, using the results of our recent work on privatization initiatives at the state and local government levels.

We recently reported on the major lessons learned by, and the related experiences of, state and city governments in implementing privatization efforts.[2] Our report, done at the request of Representative Scott Klug, examined the privatization experiences and lessons learned by the states of Georgia, Massachusetts, Michigan, New York, and Virginia, as well as the city of Indianapolis. Each of these governments made extensive use of privatization--primarily contracting out governmental functions--over the last several years, tailoring their approaches to their particular political,

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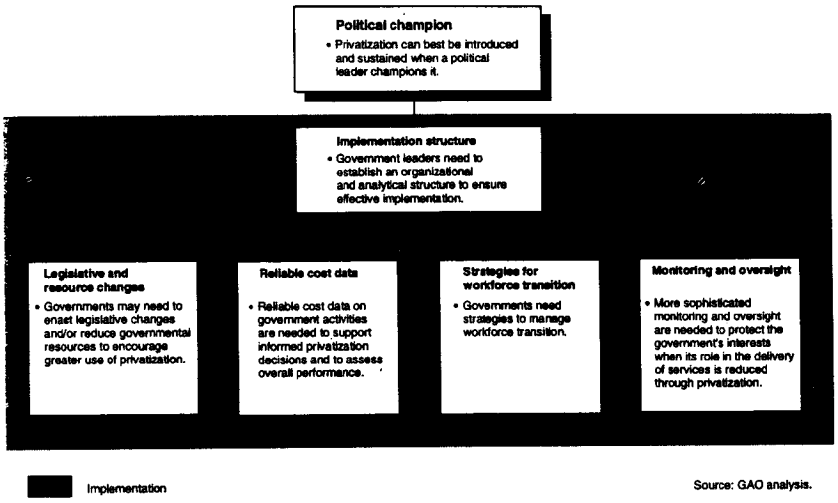
[1]Federal Contracting: Comments on S. 1724, The Freedom From Government Competition Act (GAO/T-GGD-96-169, Sept. 24, 1996).

[2]Privatization: Lessons Learned by State and Local Governments (GAO/GGD-97-48, Mar. 14, 1997).

economic, and labor environments. On the basis of our literature review, the views of a panel of privatization experts, and our work in the six governments, we identified six lessons that were generally common to all six governments. In general, the governments found they needed to

- have committed political leaders to champion the privatization initiative;
- establish an organizational and analytical structure to implement the initiative;
- enact legislative changes and/or reduce resources available to government agencies in order to encourage greater use of privatization;
- develop reliable and complete cost data on government activities to assess their performance, to support informed privatization decisions, and to make these decisions easier to implement and justify to potential critics;
- develop strategies to help their workforces make the transition to a private-sector environment; and lastly,
- enhance monitoring and oversight to evaluate compliance with the terms of the privatization agreement and evaluate performance in delivering services to ensure that the government's interests are fully protected.

Figure 1: Lessons Learned From Our Review of State and Local Privatization Efforts



S. 314 PROVIDES A TOOL, BUT NOT A SUBSTITUTE FOR A POLITICAL CHAMPION

The history of government reform has demonstrated that new policies, whether based in law or in administrative directives, are not self-implementing. In our work on state and local privatization initiatives, we reported that reforms such as privatization are most likely to be sustained when there is a committed political leader to champion the initiative. In the six governments we visited, a political leader (the governor or mayor), or in one case several leaders working in concert (state legislators and the governor), played a crucial role in fostering privatization.

These leaders built internal and external support for privatization, sustained momentum for their privatization initiatives, and adjusted implementation strategies when barriers to privatization arose.

S. 314 does not, and probably cannot, provide for effective political leadership. It has been executive branch policy for more than 30 years to encourage competition between the federal workforce and the private sector for providing commercial goods and services. However, this policy has been embodied only in an administrative directive, Office of Management and Budget (OMB) Circular A-76. While we have consistently endorsed the concept of encouraging such competition, its effectiveness in practice has been questioned both in the executive branch and in dozens of congressional hearings.

S. 314 would give the force of law to general reliance on the private sector for commercial goods and services, and thus would provide a stronger foundation, but not a substitute, for political leadership.

S. 314 WOULD ESTABLISH A FLEXIBLE IMPLEMENTATION STRUCTURE

To implement their privatization initiatives, the governments we visited reported the need to establish an organizational and analytical structure. A key aspect of this structure is an office to guide and support the privatization initiative and provide the analytical framework to evaluate the costs, benefits, and risks of privatizing a particular activity. Many of the frameworks established by the six governments shared common elements, such as criteria for selecting activities to privatize, methods for cost comparisons, and procedures for monitoring the performance of privatized activities.

Responding to the need for such a centralized structure, S. 314 requires OMB to issue regulations and to establish a new "Center for Commercial Activities," which is given responsibility for

- implementing the requirements of the legislation;
- ensuring compliance by agencies; and
- providing guidance, information, and assistance to both private and public sectors.

OMB is given wide latitude as to what regulations it will issue and what they will contain. This grant of broad authority affords OMB flexibility in implementing the legislation. However, given the wide latitude that OMB is afforded by the bill, issues will inevitably arise during implementation that will have to be dealt with by OMB. These issues could include such questions as:

- Whether or not government corporations, federally funded research and development centers, state governments, or even the U.S. Postal Service should be included within the definition of "private sector sources" and thus eligible to compete for the government's contracts.
- Whether public buildings would need to be sold to the private sector in order to house federal employees.
- How OMB will incorporate congressional views when significant or highly sensitive conversions are proposed.

Given concerns such as these, Congress may want a mechanism to hold OMB accountable for carrying out its responsibilities. Such a mechanism could require that OMB prepare a multiyear strategic plan for implementing the bill's requirements. The plan could be developed in consultation with Congress and could

describe major goals and priorities, as well as specific strategies and milestones for achieving the goals. In addition, the plan could provide an assessment of changes to current policies and systems that would be necessary to accomplish the bill's purposes. A strategic plan thus would provide greater direction for agencies as they go through the process of identifying potential activities to be included in their annual performance plans. It could also provide a tool for congressional oversight of OMB and agency activities as they relate to the bill's requirements.

To effectively carry out the role envisioned for it under the bill, OMB will require additional resources or will need to reallocate existing resources from other mandated responsibilities. We reported in 1995 that we were concerned about OMB's capacity to carry out its already numerous management responsibilities, which have been expanded significantly in recent years.[3] Such a plan might be an appropriate vehicle for addressing such resource issues.

Implementation of S. 314 Would Be Helped by Integrating It With Agencies' Strategic and Performance Planning Activities

The experiences of other governments as well as of major private firms indicate that, when the outsourcing of functions is contemplated, answers to fundamental questions about the purpose and mission of an organization should precede any major outsourcing activities. The bill has significant implications for the ongoing implementation of the Government Performance and Results Act, often referred to as "GPRA" or "the Results Act," since it cuts to the very heart of questions on what activities the government should and should not be performing. Under the provisions

[3]Office of Management and Budget: Changes Resulting From the OMB 2000 Reorganization (GAO/GGD/AIMD-96-50, Dec. 29, 1995).

of GPRA, agencies are required to set their strategic direction through multiyear strategic plans, develop annual goals, and report on performance against those goals. Agency strategic plans and performance measures are intended to provide Congress with a vehicle for asking fundamental questions about federal functions and their performance. In our recent report on initial implementation of the act, we found that many agencies are not yet well positioned to specify their plans and strategies in terms of tangible results.[4]

If enacted, the bill's implementation will occur as agencies are going through their first cycle of planning, measuring, and reporting on program performance, as called for under the Results Act. The bill would amend the Results Act by requiring, among other things, that agencies include in the annual performance plans and reports that they submit to Congress (1) an inventory of functions that are subject to the Act's provisions, and (2) a schedule for converting the functions identified in the performance plan. Requiring agencies to specify the activities they would perform directly, and those they would convert to private sector performance, is consistent with the Act's strategic planning requirements.

If Congress chooses to enact S. 314, an opportunity exists to further integrate implementation of the bill's provisions with the Results Act. A key provision of S. 314 requires OMB to create a methodology for making determinations as to what activities should and should not remain in government. This provision, if integrated with the strategic planning and performance reporting requirements of the Results Act, could avoid the potential situation of agencies inadvertently replacing unneeded federal functions with unneeded private sector contractors--a concern we have

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[4]The Government Performance and Results Act: 1997 Governmentwide Implementation Will Be Uneven (GAO/GGD-97-109, Jun. 2, 1997).

expressed with regard to Department of Defense depots.[5] By making clear that, as part of their strategic planning and performance measurement activities, agencies should review potential outsourcing candidates in light of their contribution to mission accomplishment, the bill could reduce the possibility of such an outcome.

THE RELATIONSHIP OF S. 314 TO OTHER RELEVANT LAWS IS UNCLEAR

In our state and local work, we found that all five states and the city of Indianapolis used some combination of legislative changes and resource cuts as part of their privatization initiatives. These actions were taken to encourage greater use of privatization. Georgia, for example, enacted legislation to reform the state's civil service and to reduce the operating funds of state agencies. Virginia reduced the size of the state's workforce and enacted legislation to establish an independent state council to foster privatization efforts. These actions, officials told us, reduced obstacles to privatization and sent a signal to managers and employees that political leaders were serious about implementing it.

While providing a statutory basis for competitively contracting out government functions, S. 314 has implications for certain existing laws. As currently drafted, the bill is broad in its application, and how it will relate to existing laws and policies is not entirely clear. For example, S. 314 prohibits agencies from beginning or carrying out any activity to provide any products or services that can be provided by the private sector, and it prohibits agencies from providing any goods or services to any other governmental entity. This could conflict with the "Economy Act of 1932"

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[5]Defense Depot Maintenance: Privatization and the Debate Over the Public-Private Mix (GAO/NSIAD-96-148, Apr. 17, 1996).

(31 U.S. 1535-1536), which authorizes interagency orders for goods and services, as well as with the General Services Administration's (GSA) authority to provide agencies with goods and services. GSA was created, and still exists, to provide services to agencies, such as office space, consolidated purchasing, air fare contracts, and excess property disposal. Its role under S. 314 is unclear.

In addition, the bill does not contain language limiting judicial review of management actions taken under its provisions. The possibly unintended effect of subjecting management decisions to judicial review could slow implementation and increase costs due to litigation.

RELIABLE AND COMPLETE COST INFORMATION NEEDED FOR PRIVATIZATION DECISIONS

In the governments we visited, reliable and complete cost data on government activities were deemed essential in assessing the overall performance of activities targeted for privatization, in supporting informed privatization decisions, and in making these decisions easier to implement and justify to potential critics. Most of the governments we surveyed used estimated cost data because obtaining complete cost and performance data, by activity, from their accounting systems was difficult. However, Indianapolis, and more recently Virginia have used new techniques to obtain more precise and complete data on the cost of each separate program activity.

S. 314 Requires Cost and Past Performance Information in Making Privatization Decisions

A notable feature of the draft legislation is the provision describing the criteria that are to be used in contracting for goods and services. It requires OMB to prescribe

standards and procedures that are to include the analyses of all direct and indirect costs, to be performed in a manner consistent with generally accepted cost accounting principles as well as with past performance of sources. We have found in the past that the widespread absence of this type of information has compromised effective public-private comparisons. This provision of the bill is consistent with current efforts aimed at improving federal financial management.

When competitive contracting has been done at the federal level under the provisions of Circular A-76, the absence of workload data and adequate cost accounting systems has made the task all the more difficult. Given that most agencies do not have cost accounting systems in place at this point, the bill's requirement to use past performance and cost data will be difficult for many federal activities to meet.

Efforts are under way to develop the type of cost and performance data that would be necessary to compare public versus private proposals, as could occur under the provisions of S. 314. The Federal Accounting Standards Advisory Board (FASAB) has developed standards that are designed to provide information on the costs, management, and effectiveness of federal agencies. These standards require agencies to develop measures of the full costs of carrying out a mission or of producing products and services. Such information, when available, would allow for comparing the costs of various programs and activities with their performance outputs and results. To help agencies meet these standards, guidance has been issued to facilitate the acquisition and development of managerial cost accounting systems needed to accumulate and assign cost data consistent with governmentwide data.

S. 314 RECOGNIZES FEDERAL WORKFORCE TRANSITION NEEDS

We found that governments we visited needed to develop strategies to help their workforces make the transition to a private-sector environment. Such strategies, for example, might seek to involve employees in the privatization process, provide training to help prepare them for privatization, and create a safety net for displaced employees. Among the six governments we visited, four permitted at least some employee groups to submit bids along with private-sector bidders to provide public services. All six governments developed programs or policies to address employee concerns with privatization, such as the possibility of job loss and the need for retraining.

The bill's findings section states that it is in the public interest for the private sector to utilize government employees who are adversely affected by conversions of functions to the private sector. The legislation does not create any new benefit or competitive job right that does not already exist. It does, however, assign to the Director of OMB the function of providing information on available benefits and assistance directly to federal employees. This would be a new and possibly burdensome function for OMB--a function that probably could be better handled by the Office of Personnel Management, which already has responsibility and experience in this area.

Competitive Contracting Helped Attain Employee Cooperation

Involving employees in the privatization process by letting them compete for the right to provide the service was a strategy used by state and local governments to gain

employee cooperation during the privatization process. S. 314 neither encourages nor prohibits public-private competitions. However, it does give implicit authority to OMB to implement such a program, by requiring that the implementing regulations include standards and procedures for determining whether it is a private sector source or an agency that provides certain goods or services for the best value. While the question of how such determinations would be made is left up to OMB, competitive contracting has been the traditional method for making such determinations both at the federal level and the state and local level.[6]

EFFECTIVE MONITORING AND OVERSIGHT OF CONTRACTOR PERFORMANCE ARE ESSENTIAL

When a government's direct role in the delivery of services is reduced through privatization, we found that at least among the state and local governments we visited, the need for aggressive monitoring and oversight grew. Oversight was needed not only to evaluate compliance with the terms of the privatization agreement, but also to evaluate performance in delivering services in order to ensure that the government's interests were fully protected. Indianapolis officials said their efforts to develop performance measures for activities enhanced their monitoring efforts. However, officials from most governments said that monitoring contractors' performance was the weakest link in their privatization processes.

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[6]Under competitive contracting, also referred to as managed competition, a public-sector agency competes with private-sector firms to provide public-sector functions or services under a controlled or managed process. This process clearly defines the steps to be taken by government employees in preparing their own approach to performing an activity. The agency's proposal, which includes a bid proposal for cost-estimation purposes, is useful in competing directly with private-sector bids.

The essential foundation for effective oversight is good cost and performance data S. 314's analytical requirements call for the consideration of all direct and indirect costs, qualifications, and past performance, as well as other technical considerations. These requirements, along with the authority and flexibility given to OMB in implementing the legislation, provide the necessary foundation for effective performance monitoring and oversight, but they do not resolve capacity problems.

Converting government activities to private-sector performance will increase the contracting workload on federal agencies. Conversion to contract performance requires considerable contract management capability. An agency must have adequate capacity and expertise to successfully carry out the solicitation process and effectively administer, monitor, and audit contracts once they are awarded. In past reports on governmentwide contract management, we identified major problem areas, such as ineffective contract administration, insufficient oversight of contract auditing, and lack of high-level management attention to and accountability for contract management.[7] Some federal agencies have recognized the problem and have taken actions intended to improve their contract management capacity. The Department of Energy (DOE) and The National Aeronautics and Space Administration (NASA) provide examples of the challenges agencies face in overseeing contractors.

DOE --the largest civilian contracting agency in the federal government--contracted out about 91 percent of its $19.2 billion in fiscal year 1995 obligations. We designated DOE contracting in 1990 as a high-risk area, vulnerable to waste, fraud, abuse, and mismanagement, because DOE's missions rely heavily on contractors and

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[7]Government Earns Low Marks on Proper Use of Consultants (GAO/FPCD 80-48, June 16, 1980); Civilian Agency Procurement: Improvements Needed in Contracting and Contract Administration (GAO/GGD-89-109, Sept. 5, 1989); and Federal Contracting: Cost-Effective Contract Management Requires Sustained Commitment (GAO/T-RCED-93-2, Dec. 3, 1992).

DOE has a history of weak contractor oversight. DOE has been working to improve its contract management practices. As we recently reported in our high-risk report on DOE,[8] changing the way DOE does business has not come easily or quickly. DOE has taken various actions in the past to improve its contracting, and a recent contract reform effort that has received high priority and visibility appears promising; however, much remains to be done to ensure effective oversight of contractors.

NASA's contracting reforms demonstrate what can be accomplished when an agency places high priority on contractor oversight. NASA spends about 90 percent of its budget on contracts with businesses and other organizations. NASA's procurement budget is one of the largest among federal civilian agencies, totaling about $13 billion annually in recent years. NASA first identified its contract management as vulnerable to waste and mismanagement in the late 1980s. Since then, it has grappled with a variety of contract management problems. NASA has made considerable progress in developing ways to better influence contractors' performance and to improve oversight of field centers' procurement activities. It has, for example, established a process for collecting cost, schedule, and technical information for all major NASA contracts to assist management in the tracking of contractor performance, and it also has restructured its policy on award fees to emphasize contract cost control and the performance of contractors' end products.

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In conclusion, Mr. Chairman, striking a proper balance between the public- and private-sector provision of goods and services to the American people is among the most enduring issues in American politics and public policy. The Freedom From

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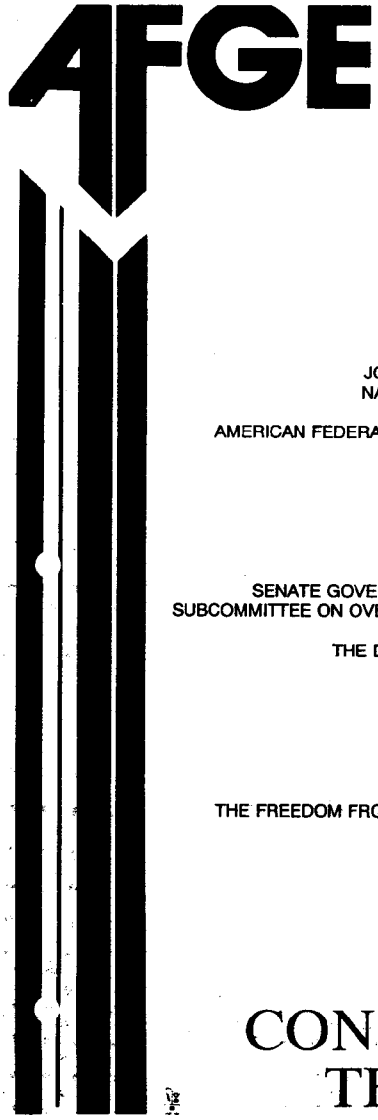
[8] Department of Energy Contract Management (GAO/HR-97-13 February 1997).

Government Competition Act would redirect current policy, which does not now have the weight of legislative authority, and significantly affect the operation and management of the federal government. We believe that Congress is the proper forum to address such fundamental questions, and we hope that our testimony today has been helpful by raising some issues for the subcommittee to consider in its deliberations on the proposed act.

That concludes my prepared statement. I would be pleased to answer any questions the subcommittee may have.

(410153)



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STATEMENT BY

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BEFORE THE

SENATE GOVERNMENTAL AFFAIRS COMMITTEE
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
AND
THE DISTRICT OF COLUMBIA

ON

THE FREEDOM FROM GOVERNMENT COMPETITION ACT

(S. 314)

JUNE 18, 1997

CONGRESSIONAL TESTIMONY

INTRODUCTION

Mr. Chairman and Subcommittee members, my name is John N. Sturdivant. I am the National President of the American Federation of Government Employees (AFGE)--the largest federal employee union, representing 600,000 government workers serving worldwide.

Although this is my first appearance before your panel, Mr. Chairman, I look forward to working with you and your staff on other issues of concern to federal and District of Columbia employees. I thank you and the Ranking Minority Member for allowing AFGE to represent federal employees at this important hearing. Although you are listed as a co-sponsor of the Freedom From Government Competition Act (S. 314), Mr. Chairman, I can tell just from the roster of witnesses at this hearing that you and your staff are approaching this legislation with open minds.

Yesterday, I testified before the House National Security Committee on the Defense Reform Act (H.R. 1778) which would, among other things, blindly mandate that one-third of all commercial and industrial activities in several key Defense Agencies be contracted out in little more than two years--without having to show that contractors could perform the work more effectively, more efficiently, and more reliably than federal employees. Just contract out the work--consequences be damned! Adding insult to injury, the bill had been marked up by the Committee last Wednesday. If not for the resulting uproar, even that too-late-the-horse's-out-the-door hearing would not have been held. The calm and careful way you and your staff are handling S. 314 is a very welcome contrast.

AFGE AND SENATOR CRAIG THOMAS

Let me now say a few words about Senator Craig Thomas (R-WY), the sponsor of this legislation. We may disagree about contracting out generally, but I would be the first to say that the Senator listens to constructive criticism--and learns from it as well. Last year's version of this bill was, to be candid, terrible. Essentially, it would have mandated that all of the federal government's commercial activities be contracted out or devolved to lower levels of government in five years--even if federal employees could have performed the work more effectively, more efficiently, and more reliably. S. 314 is still profoundly-flawed legislation, but the bill is an improvement on its predecessor. I also want to commend the Senator for keeping his door open to AFGE. His capable staffer has listened patiently to the constructive criticism we have offered of the legislation. It is my hope that this dialogue will induce the Senator to take a fresh look at the policies and procedures of OMB Circular A-76. While it's safe to say that AFGE is unlikely to agree to gutting or replacing OMB Circular A-76, we would certainly approach with an open mind any suggestions Senator Thomas puts forward with the intent of making the Circular even more equitable.

AFGE AND OMB CIRCULAR A-76

Since we just met, Mr. Chairman, permit me to say a few words about where AFGE stands on contracting out. Unlike some organizations in the federal employee community, AFGE is not reflexively opposed to each and every instance of contracting out. In these times, such a position is as unrealistic as it is untenable. Because we are conscientious employees, patriotic Americans, and hard-working taxpayers, AFGE

members are determined to see that the federal government's dollars are spent wisely. Quite simply, federal employees should not perform work that is not inherently governmental if they cannot do it more effectively, more efficiently, and more reliably than contractors.

In fact, AFGE is unreservedly pro-competition when it comes to work that is not inherently governmental. Full and fair competition for such work spurs federal employees and contractors to be more productive and ensures that taxpayers and customers receive high-quality services at low costs. As the General Accounting Office (GAO) concluded in a recent report,

> "...(C)ompetition is the key to realizing some savings, whether the function is outsourced or remains in-house. According to (Department of Defense) data on cost comparisons done between fiscal year 1978 and 1994, savings from competed functions occurred regardless of whether the government or a private company was awarded the work. DoD's data shows that the government won about half of the time and private industry won the other half."[1]

That's why AFGE was the only federal employee union to work with the Administration last year to reform OMB Circular A-76.[2] This effort resulted in a revised

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[1] General Accounting Office, BASE OPERATIONS: Challenges Confronting DoD as It Renews Emphasis on Outsourcing (March 1997), p. 8. Although this report discusses the Department of Defense, the agency responsible for most contracting out, its competition-friendly conclusion applies to all other federal agencies.

[2] AFGE is also working with Pentagon officials to develop equitable policies and procedures for competing non-core depot maintenance work as well as the workloads at the Kelly and McClellan Air Logistics Centers in the event the Congress does not force the Administration to finally close the facilities and transfer the work to other installations as was required by the 1995 Base Realignment and Closure Commission. We are also working with Pentagon officials on implementing instructions for the new A-76 supplement.

Supplement that, while permitting more flexibility to contract out, also ensures federal employees greater involvement in the competitive process, and makes contracting out a "two-way street" by permitting work to return back in-house when it is more cost-effective to do so.

The fact that OMB Circular A-76 is now under continuous attack is implicitly a compliment of federal employees and their work. Several years ago, federal employees were losing 70% of all A-76 competitions. As you might expect, contractors had considerably fewer problems with the Circular then. However, agencies--employees and managers alike, often working in partnership--learned from their defeats, looked to the private sector for inspiration and guidance, and started to run their operations more like businesses. In doing so, we pulled even with the contractors, winning every other A-76 competition. Now, as you might expect, the contractors aren't so happy with the Circular--even though the federal government runs up service contracting bills of approximately $120 billion annually.

However, instead of expressing admiration for this remarkable transformation in the federal workplace, some lawmakers can express only dismay. Instead of "Wow, they're good," it's "Wow, they're good, they're too good." After being bashed for so many years, usually very unfairly, for not measuring up to their private sector counterparts, Mr. Chairman, you can't begin to imagine how bewildering and discouraging these attacks on A-76 are for federal employees. Instead of giving us grudging credit for doing better work, our private-sector competitors and their friends in Congress say that the system has suddenly broken down. Just as good craftspersons whether in-house or contractor,

shouldn't blame their tools, contractors who are genuinely interested in real public–private competition shouldn't blame A–76.

Let me make one final remark with respect to AFGE and contracting out. Some lawmakers insist that AFGE's relentless determination to ensure full and fair public–private competition for work that is not inherently governmental is nothing but parochialism -- that we are only concerned about saving federal jobs. Even Senator Thomas, whom we have gotten to know, makes that mistake. AFGE has a long–standing policy to follow outsourced work into the private sector once a decision is made to contract out. We are adapting to the reality that the federal in–house bid may not win every competition. For example, earlier this year, we signed a contract with Hughes Aircraft, which allows AFGE to continue its representation of the employees at the recently privatized–in–place Naval Air Warfare Center, in Indianapolis, IN. The fact that AFGE will retain its vigor and vitality—even in this era in which privatization, often mindless, is all the rage—by organizing outsourced workers allows this union to be a calm and constructive player in the debate over public–private competitions.

AFGE'S CONCERNS ABOUT S. 314

Mr. Chairman, let me now express our concerns about the Freedom From Government Competition Act. This bill is flawed for several reasons:

- It's not even needed. The legislation fails to take into account the reforms and initiatives which are radically altering the way the federal government does

business, as well as the manner by which it obtains goods and services.

- It would result in consequences quite the opposite of those which it intended.

- Its underlying principles and rationale are not supported by the facts.

S. 314 IS NOT NEEDED

The legislation fails to take into consideration recent statutory and policy reforms which provide the government greater flexibility to privatize and outsource its work to the private sector. Nor does this bill acknowledge how downsizing is forcing federal agencies to rely increasingly on the private sector for the goods and services its needs.

Last year, AFGE, contractor representatives, and officials from many federal agencies worked with officials from the Office of Management and Budget (OMB) to reform the regulatory framework governing the competitive process contained in OMB Circular A-76's "Revised Supplemental Handbook." This Supplement, enacted in March 1996, provides federal managers with unprecedented latitude and flexibility to outsource to the private sector:

- It requires agencies to annually determine which activities it will consider for conversion to contract, as well as which inherently governmental functions it will continue to perform in-house.

•It mandates primary reliance on the private sector *when it is shown to be cost effective.*

•It provides agencies with unprecedented flexibility to waive the Circular's cost comparison requirements.

*For example, activities with 10 or fewer Full–Time Equivalent (FTE) employees may be directly converted to contract without a cost comparison.

*It allows waivers of cost comparisons for activities with 11 or more FTE's, if fair and reasonable costs can be obtained from the private sector and impacted workers are placed in comparable federal jobs.

*It allows agency heads to waive cost comparisons if, in their determination, the conversion to private performance will result in significant improvements in quality of service or cost savings, and the in–house bid has no opportunity of winning the cost comparison.

*For activities with 65 or fewer FTE's, agencies and departments may, under certain conditions, employ a "streamlined" cost comparison process which expands the opportunities to convert to private sector performance.

There are a few who might say:

> "So what? There are no incentives for federal managers to exercise this new flexibility to contract out. Unless prodded by a measure such as S.314, managers will always opt to maintain the *status quo.*"

This view ignores the realities and incentives imposed by government downsizing. The fact is, we are already engaged in the largest privatization and outsourcing effort ever undertaken by the federal government. Currently, over 40,000 FTE positions are being examined for contracting, and many thousands more are being identified for outright privatization as the government makes the decision to "get out of the business" of performing certain types of work. Since enactment of the Federal Workforce Restructuring Act of 1994 the federal workforce has been reduced by over 275,000 federal employees. Consequently, federal agencies have been forced into reexamining not only "what" or "how" they do a particular function, but whether or not performance, in light of a smaller workforce, should continue to remain in-house.

I might add that during this era of downsizing, the current A-76 framework helps the government to rightsize. Unlike S. 314, it requires the agency to reexamine the way it performs a function and how it configures itself into a Most Efficient Organization (MEO). This provision is the key to savings and efficiencies. It forces agencies into "being competitive" instead of just "competing." Through re-engineering into MEO's, agencies and departments are realizing savings of 21% or more if the work stays in-house. This creates a win-win situation for the taxpayer whether the work remains in-house or is converted to contract. S. 314 has no similar provision.

S. 314 WILL RESULT IN CONSEQUENCES OPPOSITE THOSE INTENDED

Senator Thomas, the bill's sponsor, has been very clear in saying that the purpose of the bill is to "change the role of government"; save money for the taxpayers; and ensure the federal government is not competing against the private sector, especially small businesses, in areas that are basically commercial in nature. I am concerned that, if enacted, this bill would have consequences quite the opposite of those intended by Senator Thomas. It would delay reform, result in a government less responsive and accountable to the needs of its citizens, cost taxpayers more, and restrict competition.

Let me begin by saying that the bill's provision for creating an "Outsourcing Czar" with a supporting bureaucracy within OMB moves individual agencies further away from their customers--the ordinary Americans who depend upon the federal government for important services. In criticizing this provision, I would ask the Subcommittee to keep in mind one of the most important lessons learned from the private sector: decentralization of decision-making, not centralization, is the key to efficiency. The Pentagon's almost irrational bias in favor of contracting out notwithstanding, it's better to charge those agencies actually required to provide particular services with the responsibility of making contracting out decisions, as A-76 does now. S. 314, however, would create an "OMBundsman" in the Center for Commercial Activities who would likely be far more attentive to the needs of the Executive Branch's political agenda than to the needs of agencies, their customers, and the nation's taxpayers.

Nor would the bill result in a windfall of opportunity for small business. Most small businesses are not capable of providing the vast majority of services now provided by

federal employees. If S. 314 is opening any door to the private sector, it would be for larger firms and corporations--with smaller businesses merely serving as support subcontractors through reimbursable agreements.

The bill would also result in serious delays, which would in turn result in lost savings and opportunities, because of the time unnecessarily consumed by the implementation of the less effective system mandated by S. 314. For example, the current round of public-private competitions would have to be halted until OMB's Center for Commercial Activities could be established. Given the nature of the legislative and regulatory processes, further delays would occur when various agencies and interest groups inevitably attempt to have site-specific, functional, or even agency-wide prohibitions enacted. In the meantime, needed efficiencies and cost savings would be permanently lost as the new, less responsive system is put in place. Never has the adage, "Nothing good comes from something poorly begun" been more applicable.

THE RATIONALE FOR THIS BILL IS FLAWED

Senator Thomas claims that work currently performed by the federal government could be "better done and could be more cheaply done through outsourcing." Since the notion that the private sector is always better and cheaper is false, legislation based on such a notion is clearly not in the best interest of the taxpayers. For example, the General Accounting Office (GAO) surveyed nine studies on service contracting and concluded that in each case, substantial savings would have realized if the work had

been retained in-house.[3] Another example comes from a GAO report of two years ago in which the investigative arm of the Congress said that even after years and years of billions and billions of dollars in contracting out, it could not "convincingly prove nor disprove that the result of federal agencies' contracting-out decisions have been beneficial and cost-effective."[4]

In a similar light, the proponents for this bill claim that $30 billion in annual savings could be achieved by outsourcing work. We have all heard similar claims used to justify other initiatives -- the so-called "Peace Dividend" at the end of the Cold War and the savings that were to result from base closures come to mind. In neither case was the promise of savings fulfilled.

AFGE'S SUGGESTIONS FOR IMPROVING THE COMPETITIVE PROCESS

Mr. Chairman, I welcome the Subcommittee's interest in the important issue of ensuring that the government's taxpayers and customers actually benefit from contracting out. Today's hearing has been an excellent beginning. Permit me now to make some suggestions for related issues to be discussed at future hearings of your panel.

Lifting Arbitrary Ceilings On Government Employees

Quite simply, Mr. Chairman, the federal government is contracting out work that

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[3] General Accounting Office, Government Contractors: Measuring Costs of Service Contractors Versus Federal Employees (March 1994), p.3.

[4] GAO, GOVERNMENT CONTRACTORS: An Overview of the Federal Contracting-Out Program (GAO/T-GGD-95-131) (March 29, 1995), p. 7.

could be performed more cheaply by federal employees because of the arbitrary ceilings on full-time employees (FTE's) imposed as part of the government's overall downsizing. That's not just what AFGE says. That's what independent observers, and, yes, even Administration officials say.

This problem is particularly acute in DoD--even though the Congress has explicitly prohibited management-by-FTE ceilings. GAO reported in a recent survey that a "senior command official in the Army stated that the need to reduce civilian positions is greater than the need to save money."[5] An earlier report by the DoD Inspector General noted that "the goal of downsizing the Federal workforce is widely perceived as placing DoD in a position of having to contract for services regardless of what is more desirable and cost-effective."

In 1995, the personnel directors of the four branches of the Armed Forces, told the Senate Armed Services Personnel Subcommittee that civilian ceilings--not workload, cost, or readiness concerns--are forcing them to send work to contractors that could be performed more cheaply in-house. The witnesses bemoaned the fact that their services' depots must turn away valid, funded workload requirements because of the FTE ceilings, thus limiting the flexibility of our depots to adjust to and to meet quickly the critical, unprogrammed, surge requirements of our Armed Forces.

Sadly, our concerns about this problem have been repeatedly dismissed by the Administration. Earlier this year, I was provided a copy of the attached correspondence

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[5] General Accounting Office, BASE OPERATIONS: Challenges Confronting DoD as It Renews Emphasis on Outsourcing (GAO/NSIAD-97-86) (March 1997), p. 11.

between General George Fisher, the Commander, Army Forces Command at Fort McPherson, GA, and the Commander, III Corps and Fort Hood, Killeen, TX. In his letter, General Fisher informs the Commander of Fort Hood that the installation's FTE elimination-in-favor-of-privatization quota has been increased from 645 to 767 spaces. To soften the blow a bit, General Fisher added a handwritten note at the bottom of the letter:

> "Tom, We're required to meet the Army's assigned requirement. For each function you select, a **study leading to a contract-out decision**. You're ahead of most everyone; just need a few more in '98. George"

Obviously, Mr. Chairman, the outcome of any competition at Fort Hood or elsewhere within Fort Hood or elsewhere within Forces Command for that matter has already been decided in advance. Contracts won't be awarded because contractors provided more effective, more efficient, and more reliable services. Rather, they will be awarded because there aren't enough federal employees available to do the work. Administration officials took a look at the same letter and said this wasn't a clear case of management-by-FTE ceilings; rather, the General simply wasn't a very artful writer. Mr. Chairman, you be the judge.

Here's another example. In this attached letter, a senior Defense Information Services Agency (DISA) manager clearly instructs his subordinates not to exceed established FTE ceilings. The manager also instructs his managers to back-fill positions at GS-12 and below with contractors, or re-engineer the positions in order to make up for FTE shortfalls. Again, this is a clear case of management-by-FTE ceilings, and then

contracting out work that might have been performed more cheaply by federal employees. Administration officials say I'm wrong; it's not that the DISA manager is a bad writer, it's that I'm a bad reader. Again, Mr. Chairman, you be the judge.

Moreover, a senior DoD official just admitted to me in writing in response to our concerns that he had discovered that "some managers have been establishing FTE bogeys on some depot maintenance activities." This official insisted that he was taking corrective action. I'd be happy to share this correspondence with you and your staff. I didn't include his letter in my testimony because his deviation from the Pentagon line that management-by-FTE's is never, ever practiced at DoD would surely invite retribution. And since he is one Pentagon political appointee who's trying to be part of the solution, I wouldn't want that to happen.

As bad as this problem is, Mr. Chairman, it's not limited to DoD. Actually, it's government-wide. As OMB reported three years ago, several agencies--including the Departments of Agriculture, Health & Human Services, Housing & Urban Development, State, Education, Treasury, as well as the Environmental Protection Agency--said that they each could have saved several million dollars by performing functions directly rather than having them performed by contractors but did not do so because either their requests to OMB to take on the necessary FTE's were refused or the agencies were so sure such requests would be refused that they were not even submitted.[6]

Mr. Chairman, I think you'd agree that even if the two of us, the Ranking Minority Member, OMB's Mr. Koskinen, and a representative from the contractor community

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[6] Office of Management and Budget, Summary Report of Agencies' Service Contracting Practices (January 1994), p. v.

locked ourselves in a room to think of ways that A-76 could be made even more fair to both contractors and federal employees, all of our work would be in vain. What's the point in coming up with a more equitable public-private competition system if federal employees aren't even allowed to compete because the in-house workforce has been so arbitrarily downsized?

I respectfully suggest, Mr. Chairman, that before we turn our attention to A-76, we must first lift the arbitrary in-house personnel ceilings. Quite simply, agencies must be allowed to manage by budgets. If agencies have the money to perform the work, they should be allowed to use either contractor employees or federal employees---depending on which provider gives the most efficient, most effective, and most reliable service to the nation's taxpayers and the government's customers.

OMB insists that to the extent management-by-FTE's occurs, it is perpetrated by managers who should know better. Regardless of whether one accepts that position, management-by-FTE's is happening. It's costing the taxpayers money. It's depriving federal employees of opportunities to compete. It's wrong---and the Congress and the Administration must become more aggressive in eliminating this pernicious practice.

Representative Eleanor Holmes Norton (D-DC) has introduced legislation (H.R. 888) which would prevent agencies from replacing downsized federal employees with contractor employees. Mr. Chairman, I urge you to consider introducing similar legislation in the Senate as the starting point for your own effort to address this problem.

With respect to Senator Thomas, S. 314 does not address management-by-FTE ceilings, arguably the worst defect in the A-76 process.

Developing A Better Understanding Of The Contractor Workforce

Many lawmakers have bragged to their constituents about how drastically they have reduced the federal workforce. But as we know, much of the work that used to be performed by federal employees has simply been transferred to the federal government's "shadow workforce" in the private sector. The federal government's actual workforce hasn't gotten any smaller. It's just that the people who now do the work are not directly on the public payroll—although their salaries are paid for out of the same revenues that pay the salaries of federal employees.

Taxpayers are still paying for the services now provided by contractors. Often, they are paying even more, based on the reports discussed elsewhere in my testimony. Just how big is the contractor workforce, Mr. Chairman? I wish I could tell you, sir, but such statistics aren't even kept. Strange, isn't it? We keep such meticulous statistics about the government's in-house workforce, but know so little about the government's contractor workforce. But if the federal government spends $120 billion annually on highly labor-intensive service contracting and the federal government's yearly in-house payroll is less than $80 billion, the contractor workforce must be quite large, indeed.

Clearly, lawmakers like yourself would benefit from knowing more about the federal government's shadow workforce, particularly its size. Such information would help you to better assess the Administration's claims for downsizing the federal workforce, public- and private- sector. It would also help you to better understand the growth in service contracting and better assess the claims made by some that A-76 is somehow biased against contractors.

Finally, such knowledge would help lawmakers make more informed decisions about how to achieve real and lasting deficit reduction. As I mentioned earlier, meticulous statistics are kept about federal employees. Thus, when Administration officials or lawmakers want to provide tax relief or ensure deficit reduction, they can help to generate the necessary savings by cutting the compensation of the federal government's in-house workforce and then by cutting the size of the federal government's in-house workforce.

As you may know, the Administration has consistently asked the Congress to provide federal employees with significantly smaller pay raises than those recommended by the Federal Employees Pay Comparability Act, thus causing them to fall farther and farther behind their counterparts in the private sector. The deficit reduction package currently being considered by the Congress would require federal employees to contribute even more towards their retirement plans. Since 1980, incidentally, federal employees and federal retirees have contributed more than $175 billion towards deficit reduction in the form of lost compensation. Further, the federal government's in-house workforce has been cut by more than 275,000 over the last four years, resulting in even more savings.

Clearly, lawmakers know where to look when savings are needed. If data similar to that compiled for the federal government's in-house workforce was kept for the federal government's contractor workforce, lawmakers would have more information available when they needed to make important decisions about how to spend precious taxpayer dollars. Representative Norton has introduced legislation (H.R. 887) which would require OMB to develop a government-wide system for determining and reporting the number

of non-federal employees engaged in service contracts. Mr. Chairman, I urge you to consider introducing similar legislation in the Senate.

With respect to Senator Thomas, S. 314 does not address the pressing need to develop more information about the federal government's "shadow workforce."

Requiring cost comparisons on all service contracting

Even though public-private competition has proven to save money for the taxpayers and spur providers, whether they be federal employees or contractor employees, to offer better service, much work is, incredibly, still contracted out without the benefit of cost comparisons. DoD officials, the same people who gave us prohibitively expensive toilet seats, are "considering the possibility of avoiding A-76 studies by eliminating a given function as a government activity and relying on the private sector for its provision (privatization)."[7]

Clearly, the A-76 process may not be the best for conducting every single type of public-private competition. And AFGE is always willing to consider changes that might expedite the public-private competition process. But at the same time we must impose some form of cost comparisons on all of the federal government's lucrative service contracting.

Representative Norton has introduced very sensible legislation (H.R. 885) which would require agencies to make cost comparisons before contracting out work and prevent agencies from contracting out that work if the cost comparisons show that the work could be performed less expensively by federal employees. Mr. Chairman, I urge

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[7] GAO, Ibid.

you to consider introducing similar legislation in the Senate.

Mr. Chairman, what do you think should happen when it is shown that a contractor has not lived up to the terms of the contract? I say that the work should be recompeted or brought back in-house—and I think you'd agree. There's no reason to let a sore fester, is there? The new supplement to A-76 already requires agencies to collect the information necessary to determine if satisfactory performance of a contract has been achieved. Now we need to charge agency managers with the responsibility of acting on well-informed determinations of poor performance by requiring them to correct the problem by either recompeting the work or bringing it back in-house. To ensure that all taxpayers and customers benefit from this important initiative, the post-contract audit should be required for all contracting out decisions, including those made outside of A-76.

Improving contract administration

In order to ensure that agency managers make well-informed contracting out decisions, we need to conduct a bottom-up review of the entire contract administration process. Problems from start to finish are unnecessarily increasing service contracting costs.

As OMB itself has reported, Statements of Work, the forms used to describe specifically the services to be contractually procured, are frequently so poorly-written that it is difficult to determine the agency's requirements or the standards against which the contractor's performance is to be measured.[8]

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[8] OMB, Ibid., p. v.

As OMB itself has reported, cost analyses and independent government estimates are not performed by many agencies prior to renewal, extension, or recompetition of existing contracts. And in far too many instances, OMB must admit, cost estimates are ot even prepared prior to entering into new contracts.[9]

As OMB itself has reported, agencies believe that they are contracting for mission-essential services; as a result of this haste-makes-waste approach, most contract administration efforts focus on ensuring that they receive the required services with costs often becoming peripheral.[10]

As OMB itself has reported, agencies do not always review the effectiveness and efficiency of the services performed by contractors prior to the issuance of making payments.[11]

As GAO has reported, agencies are bestowing "bonuses" on contractors who have only just met contractual requirements, and even to some who have fallen short, often grievously so.[12]

As GAO has also reported, "(i)ndependent audits show millions of dollars in unallowable and questionable costs have been charged that do not contribute directly to the agency's intended mission."[13]

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[9] Ibid.

[10] Ibid.

[11] Ibid.

[12] GAO, FEDERAL CONTRACTING: Cost-Effective Contract Management Requires Sustained Commitment (GAO/T-RCED-93-2) (December 1992), p. 8.

[13] GAO, Ibid., p. 11.

Mr. Chairman, I think you'd agree that gutting A-76's firm but fair requirement for vigorous public-private competition would be ill-advised. But to do so when our existing contract administration system is in need of significant repairs would be nothing short of irresponsible. We would be committing a profound disservice to the nation's taxpayers and the federal government's customers. AFGE represents many hard-working federal employees who perform contract administration work—from the Pentagon to the Government Printing Office—who have many good ideas for saving precious tax dollars. Please permit us to help you to address this problem.

S. 314 does not address the issue of contract administration. Of course, if Senator Thomas achieves his objective of privatizing much of the federal government, then an already problematic contract administration system would be hopelessly overloaded, costing the taxpayers even more money.

Making contracting out decisions for the right reasons

Mr. Chairman, you and many of your colleagues have spoken eloquently about the economic difficulties confronting working- and middle-class Americans. While all of us can't agree on explanations and solutions, all of us would accept the simple principle that the federal government should not exacerbate those difficulties.

That's why when we contract out we must do it for the right reasons. If a contractor can do work more cost-effectively than federal employees because she has devised a better system, employs better managers, or has done a better job inspiring her workforce, then that work should be contracted out. But what happens if a contractor can do the work more cost-effectively than federal employees merely because he pays his

employees inadequate salaries or provides few if any health care and retirement benefits?

Mr. Chairman, contrary to a lot of propaganda, pay and benefits for federal employees are not extravagant. It's well-documented that our pay lags behind employees in the private sector who perform comparable work by anywhere from 13% to 43%. Further, federal employees pay more than almost all of their counterparts in the private sector for their health care and retirement benefits. Over 400,000 full-time federal employees don't have health insurance because the premiums are prohibitively expensive--even though our health care system, the Federal Employees Health Benefit Plan, is often cited as a model for some form of national health care. And the average before tax income of all U.S. retirees of $19,371 is in excess of the average before tax annual annuity of federal retirees. Quite simply, federal employees are not living high off the hog. Consequently, if work is being contracted out to firms that provide the government with savings simply because they provide their employees with compensation that is even more inadequate than that provided to federal employees, then I think lawmakers like yourself need to look at this phenomenon very carefully.

It is undeniable that the federal government is not an employment agency and that lawmakers are obligated to ensure that taxpayer dollars are spent wisely. But, at the same time, the federal government, ostensibly the nation's model employer, should not be providing incentives to contractors to provide their employees with inadequate compensation.

This is an emotional issue for both unions and contractors--and the absence of comprehensive and reliable information invariably leads to fiery debates that shed far

more heat than light. Therefore, Mr. Chairman, I suggest that you ask GAO to compare the compensation--pay, health care benefits, and retirement benefits--of the federal employees who have been downsized in favor of contractors with that of the contractor employees who have assumed their work. If it appears that significant savings from contracting out are being generated simply because the contractor workforce is poorly-compensated, then lawmakers like yourself need to consider the necessity of corrective measures to ensure that some basic floors exist for the pay, and health care and retirement benefits for contractor employees.

Encouraging managers to work with rank-and-file federal employees to make the government even more competitive

Taking a lesson from the private sector, the Administration issued an executive order in 1993 that established labor-management partnerships in agencies throughout the federal government. It hasn't been easy to change the hostile climate of labor-management relations in the federal sector, but we're making great strides. And that progress is paying dividends for the taxpayers.

*Before partnership at the Naval Warfare Center, in Crane, IN, it took two years for the parties to cobble together a collective bargaining agreement. After partnership, the parties finished their negotiations in less than two months. And by jointly designing new work systems and using self-directed work teams, the union and management were able to eliminate 150 front-line supervisor and mid-level positions, resulting in substantial savings to the taxpayers.

*At Anniston Army Depot, AL, the base Commander warned that if productivity problems could not be solved in the small arms facility, it would be necessary to bring in forty-five new contract employees. A partnership studied the problem and began to make changes in manufacturing and supply; and now the facility is working better, more economically, and faster.

*At the Department of Veterans Affairs (DVA) Medical Center, in Des Moines, IA, self-managed work teams established through partnership have cut overtime costs from thousands of dollars every year to zero. These teams have also cut by more than one-half the amount of time that veterans have to wait for treatment at the hospital's clinic. One of the team members said that she used to work for a supervisor; now she works for her real customers: the nation's veterans.

*At another DVA hospital, in Albuquerque, NM, AFGE and management have jointly designed several new clinical programs to help care for veterans, including a women's clinic, a new drug rehabilitation center, and a pain-management clinic. Other quality improvements designed in partnership by the union and management have reduced the waiting time for patients from four hours to thirty minutes.

*At the Department of Labor headquarters, here in Washington, DC, AFGE and management developed a program called "Serving Our Customer." Teams of supervisors and employees were brought together to identify customer

improvement opportunities. The teams were empowered to implement their ideas without further review by any management official. When it was all over, this innovative program produced almost 10,000 decisions--not recommendations, but decisions--for improving service to the agency's internal and external customers.

Mr. Chairman, it would have been easy for a federal employee union like AFGE, during a time of unprecedented downsizing, to do nothing more than fuss and fight. But we didn't. Our members are striving every day to make the federal government the world's best service provider. Until I have an opportunity to discuss with you personally labor-management partnerships in the federal sector, I hope that you will take the time to review a copy of Partnership That Works that I am submitting under separate cover. This AFGE publication discusses in detail almost 30 different partnership success stories.

CONCLUSION

Again, Mr. Chairman, thank you for inviting me to testify at today's hearing. AFGE is ready to work with you to ensure that non-inherently governmental work remains subject to strong public-private competition before it can be contracted out.

As you consider S. 314, I ask you to keep several principles in mind:

Just because a service has always been provided by the federal government doesn't mean that federal employees must do that work in perpetuity.

Just because contractors are hard-working taxpayers, as Senator Thomas often reminds us, doesn't mean that they have some entitlement to funds in the public purse. After all, federal employees are also hard-working taxpayers.

Just because agencies--with managers and rank-and-file employees often working together in partnership--are more successful competitors in the A-76 process doesn't necessarily mean that the system has suddenly become defective.

And just because contractors aren't winning as many A-76 competitions now as they had in years past doesn't necessarily mean that they are being victimized by biased public-private competitions.

We also ask you to seriously consider the suggestions we have made for improving the competition process and generating savings for taxpayers.

The bottom line, Mr. Chairman, is that although we have our own point of view, AFGE is ready to work with you to address the concerns that have been raised at today's hearing.

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY FORCES COMMAND
FORT MCPHERSON, GEORGIA 30330-6000

REPLY TO ATTENTION OF

AFPI-IMP

S: 26 June 1996
31 MAY 1996

Show me answer!

MEMORANDUM FOR Commander, III Corps and Fort Hood, Fort Hood, TX 76544-5000

SUBJECT: Commercial Activities (CA) Program

1. Privatization is receiving increased emphasis as the Army moves to streamline support activities and achieve cost savings while maintaining services in an environment of greatly reduced resources. The CA program provides an approach to achieve these savings whether the work remains in-house or is contracted.

2. The Army has been tasked to study CA functions totaling 16,000 spaces. Forces Command's share (DA directed) is 4700 spaces (1500 in FY 96 and a total of 3200 in FYs 97 and 98). Installation input to date is only 33 percent of our share.

3. To ensure support of the Army's privatization effort, we have established installation quotas. Based on a review of the FY 95 CA inventory, your fair share is 767 spaces. You have currently identified 645 spaces for study. We need you to increase the number of spaces identified for study by 122 in FY 98 (encl). Submit the functions you select and associated spaces to this headquarters, ATTN: AFPI-IMP, by 26 June 1996.

4. The DOD has informed the services and agencies that "seed money" will become available beginning in FY 97. These funds will be distributed in the amount of $1000 per space based on official notification of FY 96 studies.

5. For more information, contact Mr. David Mayes, DSN 367-6254.

FOR THE COMMANDER:

Tom,

We're required to meet the Army's assigned requirement for each function you select, a study leading to a contract-out decision. You're ahead of most everyone; just need a few more in '98.

George

George Fisher

GEORGE A. FISHER, JR.
Lieutenant General, USA
Chief of Staff

Encl

received
APR 14 1997

DEFENSE INFORMATION SYSTEMS AGENCY
701 S. COURTHOUSE ROAD
ARLINGTON, VIRGINIA 22204-2199

IN REPLY REFER TO: DISA WESTHEM (WE04)

12 February 1997

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Results of the DMCs' Revenue Based Staffing Plans

1. The outstanding effort you put forth in developing your staffing plan is appreciated. The results show the bottom-line objective was achieved to attain the targets for FY98: 2,116 A-Goal staffing and an A-Goal Revenue per FTE of greater than $230,000. Enclosure 1 contains the narrative results of each DMC's submission and the Resource Management Advisory Group (RMAG) approved A- and C-Goal staffing levels for FY98. Enclosure 2 is a spreadsheet synopsis showing the following staffing breakouts: the original FY98 Staffing Projections from the June 1996 model, the DMC requested staffing from their plans, the RMAG approved staffing levels, and the DMC onboard staffing as of 31 December 1996.

2. The attachment identifies each DMC's RMAG approved strength for civilians, military, and contractor personnel. That strength is your new ceiling and is not to be exceeded without exception approval. These numbers will be used by RM during the build for the FY99 budget. In order to assist you in implementing your plans, the following guidance is provided.

a. If your site is below target and you require filling a position at the GS-12 and below level, you may utilize contractors or reengineer the position for filling under the DISA Bridge Position Program to meet your need. However, you are not authorized to increase your civilian end strength.

b. Due to the variety of versions and overall age of many of the exception requests currently submitted to WE1 and the RMAG, ALL pending requests for hiring exceptions are canceled effective with receipt of this memo. If you determine that you have a critical position that performs an inherently governmental function such as supervision, technical COTR, senior security specialist, contract management, senior financial management, etc., a new request for exception hiring should be prepared and forwarded to WE1.

DISA WESTHEM Memo, WE04, Results of the DMCs' Revenue Based Staffing Plans

c. We are still working several issues relating to filling vacancies from within the WESTHEM "family" and will update you as decisions and solutions are achieved.

3. Quarterly, we will be reviewing with you your staffing plan revisions. The next review will occur in May 1997. Details will be provided to you under separate cover.

4. Points of contact for staffing plan guidance are staff members of WE04 at DSN 869-9600 or commercial (614) 693-9600. Points of contact for personnel actions are WE1 staff members at DSN 761-2284.

2 Enclosures a/s

for JOHN W. MEINCKE
Brigadier General, USAF
Commander

Distribution:
WE0, WE0CS, WE01, WE02, WE04, WE05, WE06, WE1, WE2, WE3, WE4, WE5, WEA, WEB, WED, WEE, WEG, WEH, WEJ, WEK, WEL, WEM, WEP, WER, WES, WET, WEW, WEY

DMC STAFF MODEL SYNOPSIS

Jan '97

	A-GOAL	C-GOAL	TOTAL	A-GOAL	C-GOAL	TOTAL	A-GOAL	C-GOAL	TOTAL	A-GOAL	C-GOAL	TOTAL
CHAM	106	9	115	115	28	143	115	28	143	149	8	157
COLS	230	150	380	195	284	469	195	275	460	266	133	399
DAY	41	26	67	81	79	160	81	70	151	118	33	151
DEN	118	76	194	121	91	212	121	91	212	149	78	227
HUNT	105	2	107	114	56	170	94	52	146	133	4	137
JAX	42	25	67	67	77	144	67	77	144	93	50	143
MECH	240	10	250	265	57	322	265	57	322	284	42	306
MONT	95	1	96	68	74	142	68	71	139	139	0	139
OGDEN	227	106	333	205	177	382	205	177	382	243	118	361
OKC	143	69	212	121	129	250	121	129	250	145	106	251
ROCK	75	7	82	139	32	171	139	32	171	180	5	185
SAC	25	18	43	37	43	80	37	43	80	65	26	91
SANT	157	52	209	173	121	294	173	121	294	224	70	294
SAND	26	40	66	55	77	132	55	77	132	74	109	183
STL	157	26	183	117	120	237	117	93	210	193	17	210
WARN	119	28	147	114	97	211	114	82	196	185	20	195
CMDR'S DISC*	135											
SUB TOTAL	2041	644		1975	1542		1957	1475		2589	830	
A to C Shift**		845										
TOTAL (A&C)			3530			3518			3432			3419

NOTE: Manpower includes civilian, military and contractor personnel at DMCs only. Storefronts, headquarters and other overhead organizations are not included.

*NOTE: Commander's discretion derived from model generated increases to current DMC end-strength. Model is restricted from allowing end-strength increases. The model will not produce A-Goal strength greater than 2116 or an aggregate greater than 3530.

**NOTE: "A to C Shift" identifies the number of A-Goal personnel needing to move to C-Goal lines of business by FY98 in order for us to meet rate reduction goals. Original estimate of 770 increased due to model re-run and one formula change.

PROUD TO MAKE AMERICA WORK

AFGE PEOPLE

John N. Sturdivant

National President of the American Federation of Government Employees

Shaping a New Vision for the Federal Workplace

Through all the Congressional debate about the role and responsibilities of the federal government, one person is making sure U.S. tax dollars aren't wasted and that vital public services aren't lost. John N. Sturdivant, president of the American Federation of Government Employees (AFGE), which represents over 700,000 workers in 1,200 Locals throughout the U.S., its territories and the District of Columbia, is a watchdog against inefficiency and a champion of worker and human rights.

Sturdivant, a full partner in President Clinton's efforts to reinvent government, knows Americans want a more effective government. He has made AFGE a leader in moving the federal workplace from red tape to results.

AFGE combats the notion that workers are part of the problem when it comes to increasing government efficiency. Thanks to leaders like Sturdivant, frontline workers are perceived as the solution and AFGE members are bringing about important changes in the way the federal government operates. Sturdivant wants to ensure that government employees are a part of the debate on what kind of America people want.

During the 1995 and 1996 government shutdowns, intensive work by AFGE secured important public support for the hundreds of thousands of government employees who were locked out of their jobs or forced to work without pay. As a result of AFGE's comprehensive campaign, strong public pressure was brought to bear on an intractable Congress, ending the shutdowns and returning federal employees to work with the guarantee of back pay.

As a key member of the National Partnership Council led by Vice President Al Gore, Sturdivant has helped agencies like Veterans Affairs and Social Security, once plagued with adversarial labor relations, improve customer service and save taxpayers' money. It is these improvements that led the editor of *Quality Progress* magazine to write, "I have seen the future of quality in America and it is the government worker."

The changes Sturdivant's leadership brings to the federal workplace have not only given workers a greater voice on the job, but also removed the roadblocks which prevented them from taking

more

American Federation of Government Employees, AFL-CIO

80 F Street, N.W., Washington, D.C. 20001 • 202/639-6419 or 6423 • Fax 202/639-6441

part in the political process. A familiar face on Capitol Hill, Sturdivant helped AFGE achieve its 20-year legislative initiative with the passage of Hatch Act Reform, legislation that allows federal employees to become politically active without undue restrictions.

The new political activism shared by so many AFGE members is a reflection of Sturdivant's passion for politics. He is an at-large member of the Democratic National Committee of the Commonwealth of Virginia. A former ten-year Democratic State Central Committee member, he presently serves on the Fairfax County Democratic Committee.

Sturdivant has not only turned up the volume on the chorus of federal workers and their issues, he has also been a new voice for America's minorities. One of *Ebony Magazine's* 100 Most Influential Blacks in America, Sturdivant is the first black to head AFGE and first to serve as president of a major AFL-CIO union. Elected in 1988, Sturdivant also serves as a vice-president of the AFL-CIO.

Born in Philadelphia on June 30, 1938, Sturdivant was raised in Bridgeport, Connecticut. In 1956, he enlisted in the Air Force where he was an electronics technician until 1960. He began his civilian career in 1961 as an employee of the United States Army Interagency Communications Agency in Winchester, Virginia.

An AFGE activist for over 30 years, Sturdivant rose through the leadership ranks of Local 1754 in Winchester, serving as Local president from 1968 to 1976. Since his early days, Sturdivant has focused on the vital role organizing plays in building a successful union. In 1976, he accepted a staff position with the AFGE National Office in Washington, D.C. Prior to his 1982 election as Executive Vice President, Sturdivant served as Director of Organization and Administrative Assistant to his two immediate predecessors.

In addition to his work on behalf of government employees, Sturdivant is a leader in the national AFL-CIO. He was elected vice president on the AFL-CIO Executive Council in 1989 and serves on many key committees.

Sturdivant's studies continued while he was working on AFGE's staff. He received his Bachelor of Arts degree in Labor Studies from Antioch University in 1980 and completed two years of evening law school at George Washington University. He also serves as a trustee of the George Meany Center for Labor Studies.

ACSM

American Congress on Surveying and Mapping
5410 Grosvenor Lane, Bethesda, Maryland 20814
Phone: (301) 493-0200; Fax: (301) 493-8245

Statement of the American Congress on Surveying and Mapping to the Senate Governmental Affairs Committee's Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia on S. 314, Freedom From Government Competition Act

June 18, 1997

The American Congress on Surveying and Mapping (ACSM) is pleased to submit its views on S. 314, the proposed Freedom From Government Competition Act. ACSM is an individual membership society that represents more than 7,500 professionals in the fields of surveying, cartography, geodesy, and geographic information systems technology who work in both the public and private sectors throughout the world. ACSM is made up of four member organizations that serve as special interest groups. ACSM's member organizations are the American Association for Geodetic Surveying, the Cartography and Geographic Information Society, the Geographic and Land Information Society, and the National Society of Professional Surveyors.

In commenting on S. 314, ACSM seeks to represent the interests of its private- and public-based members, the surveying and mapping profession as a whole, and the nation's long-term interest in ensuring the availability of comprehensive, timely, accurate, and useful geospatial information.

General Comments on S. 314

ACSM commends Senator Thomas, Chairman Brownback, and the other Senate sponsors of the Freedom From Government Competition Act for introducing the bill. S. 314 makes an important contribution to the ongoing debate over the appropriate roles of government agencies and the private sector in providing needed services. Whether, and to what degree, services provided by agency staff should be outsourced to private firms is an important part of that debate.

ACSM believes it can look at outsourcing objectively because its membership includes surveying and mapping professionals who work in private firms as well as government

agencies. ACSM also can contribute to the debate from its experience over the past two years in generating a nonpartisan study of the appropriate future roles of government and the private sector in surveying and mapping. Scheduled for completion this fall, the study on "U.S. Geographic Information Resources" is being conducted by the National Academy of Public Administration (NAPA), a policy analysis organization chartered by Congress. The study will include a discussion of outsourcing that ACSM believes will prove helpful to the subcommittee as it examines S. 314.

S. 314 provides a framework for determining whether a given service or product should be supplied by agency staff or outsourced to a private firm. Essentially, all goods and services are to be outsourced unless they are inherently governmental or should be provided in-house for reasons of national security, best value, or because private sector sources are inadequate to satisfy an agency's requirements. While the bill's framework is helpful, ACSM believes it is impossible to determine S. 314's real-world impact, particularly on services provided to the public by technical professions such as surveying and mapping. For technical fields, S. 314 raises important questions about agencies' roles as providers of base data, ownership of data, maintenance of agencies' core capabilities, and other issues.

ACSM Opposes Enactment of S. 314

ACSM supports having increased opportunities for its private sector members to contract with government agencies to perform surveying and mapping. ACSM opposes enactment of S. 314, however, because the potential impact of the measure is largely unknown. We are concerned that enactment of S. 314, without further assessment of its potential impact, could disturb the interdependent relationship that exists between government surveying and mapping agencies and private sector professionals, perhaps disrupting the nation's access to timely, accurate geospatial data. We also believe that S. 314 proposes a broad-based solution to procurement situations that are best addressed on a targeted basis.

Before enactment of S. 314 is pursued, ACSM believes Congress needs:

- More information on the appropriate roles of government and the private sector in technical fields such as surveying and mapping;

- A better understanding of procurement decisions at the individual agency level. If agencies are inappropriately competing with the private sector, whether through interservice support agreements (ISSAs) or in-house procurements, ACSM believes those practices should be examined on an agency-by-agency basis.

On April 10, 1997, ACSM's Board of Direction adopted a position statement expressing

opposition to the Freedom From Government Competition Act as currently drafted. A copy of that statement is appended to our testimony.

Surveying and Mapping Agencies and Private Firms Are Interdependent

As a national society with both public- and private-based members, ACSM believes it can take a balanced view of the issue of government competition. On the one hand, we strongly support an outcome that provides increased opportunities for our private sector members to contract with government agencies. Technological advances in the last twenty years have given private firms the ability to perform surveying and mapping tasks that previously only government agencies could complete. It is also true that many of the technical advances in the profession, particularly in the field of GIS, or geographic information systems, are occurring in the private sector. There is no question that private surveying and mapping firms can complete many tasks that government agencies traditionally have performed in-house.

On the other hand, ACSM members who work in surveying and mapping agencies such as the Bureau of Land Management, the U.S. Forest Service, the U.S. Geological Survey, and the National Ocean Service raise important cautions about the need to retain core capabilities. Private firms may be able to perform most production under contract, but agencies must retain in-house technical expertise and some production to ensure that contractors' products meet quality standards. In-house staff also are needed for contract negotiation and administration, preparation of government-supplied materials, and quality assurance.

ACSM does not know how other professions or industries view their relationship with government agencies, but for the surveying and mapping profession, the operative word is "interdependence."

Looking first at the private side, it is clear that private sector surveying and mapping professionals depend on government agencies for accurate base data that serve as the foundation for geospatial products. For example:

- Professional land surveyors depend on the National Geodetic Survey (NGS) for accurate, consistent positioning data (coordinates and elevations) upon which a variety of surveying products and services are based, including property surveys that are part of GIS mapping projects based on a common coordinate system, and engineering projects such as the placement of highways and the construction of bridges and water delivery systems. NGS develops survey standards and specifications and provides local baseline standards by which professional surveyors check or calibrate electronic distance measuring equipment. NGS also transfers new technical developments, such as

the Global Positioning System (GPS) to the private sector. GPS is increasingly being used by professional land surveyors for efficient, accurate measurements.

Land surveyors also depend on the U.S. Geological Survey in their work. USGS provides (1) basic geospatial data to which cadastral (i.e., property boundary) information can be related, (2) mapping requirements for map revision, orthoimagery, and so forth, and (3) a nationally consistent, accurate map series that depicts the Public Land Survey System.

- Geographic Information Systems/Land Information Systems (GIS/LIS) specialists depend on government agencies to provide the base mapping and earth science layers for GIS/LIS projects. Agencies provide reliable, standard, multi-scale base cartographic data such as digital elevation models, digital line graphs, digital raster graphics, digital land use/land cover, and digital orthophotoquads, as well as various specialized data sets covering geologic, hydrologic, and biologic phenomena on the land surface that GIS/LIS specialists employ in creating their products.

- Private-based cartographers and academics depend on agencies for (1) establishing map standards, (2) base maps from which enhanced or value-added maps can be produced and resold or onto which research is plotted, and (3) digital orthophotographs for compilation of map features.

On the public side, there is interdependence between federal agencies, and between federal agencies and other levels of government. For example:

- Other federal agencies depend on USGS to coordinate the collection of a broad suite of geospatial data and research, including providing GIS support, applications development, and orthophotographic base data. ISSAs are one mechanism used to provide this information.

- Other agencies depend on NGS for positioning data for applications ranging from defining political boundaries, to national defense, to communications systems. Agencies use these data to make decisions on placement of highways, fuel storage sites, geothermal energy development, and other structures in areas prone to earthquakes, subsidence, and fault zones. The data are also essential to the development of precision agriculture, "smart" highways, and other leading-edge transportation systems. For example, the National Ocean Services is currently conducting a pilot project in San Francisco Bay to determine accurate, real-time positions and clearances for large container ships and other ocean-going vessels. Findings from the project will help make the U.S. more competitive in commercial shipping by enabling shipping companies to increase the capacity of their vessels.

- State and local governments use USGS base data for GIS and other applications; base data are also used as an unbiased, accurate basis to which more detailed information is added, such as for legal, tax, and other official purposes. Many state governments cooperatively produce maps and digital geospatial data in conjunction with USGS.

Finally, it is clear that agencies are increasingly dependent on the private sector:

- In response to personnel cuts and direction from Congress, federal surveying and mapping agencies increasingly are turning to private firms for surveying and mapping products. Our members at USGS, for example, report that approximately 50 percent of their map production in FY 1997 (ca. $40 million) will be done in conjunction with the private sector.

- Of course, agencies need to maintain enough technical staff who are current in their knowledge in order to oversee the work of contractors. It is also clear that private firms will continue to depend on agencies to perform surveying and mapping of areas that are not commercially attractive. For example, private firms would not routinely update base maps of federal lands, rural areas, or forests. Ownership of geospatial data is another concern that has arisen as outsourcing increases. However, S. 314's potential impact in this area is completely unknown.

The foregoing analysis illustrates the interdependence that characterizes relations between surveying and mapping professionals in the public and private sectors. Other technical professions may evince a similar relationship between agencies and private firms. ACSM believes Congress needs more information on the impact of S. 314 on surveying and mapping and other technical goods and services before it moves the bill toward enactment.

Study of U.S. Geographic Information Resources Will Provide Valuable Information

Since 1995, ACSM has played a leading role in generating a nonpartisan study of the appropriate future roles of government and the private sector in surveying and mapping. The study, "U.S. Geographic Information Resources," began in October 1996 and will be completed this fall. Conducted by the National Academy of Public Administration (NAPA), the study examines options for reducing duplication in the surveying and mapping activities of federal agencies or for increasing the amount of surveying and mapping done by private firms. The study will look at outsourcing, the specific focus of S. 314, as well as broader options such as privatization, consolidation, downsizing, or elimination of certain agency functions. Other issues covered by the study include public purpose; the policy bases of surveying and mapping; leadership, coordination, and standards; structure and organization; intellectual property rights; pricing; partnerships; technology; and domestic-national security relationships.

ACSM identified the need for a study in 1995 when Congress considered three different proposals that had major implications for both public- and private-based survey and mapping professionals. One proposal would have abolished the U.S. Geological Survey. Another proposal would have abolished the Commerce Department and moved certain functions, including surveying and mapping activities, to other federal departments. A third proposal would have required the Department of the Interior to contract out all of its surveying and mapping activities within six months.

Although none of these proposals became law, their consideration by Congress provided a wake-up call to our profession. We concluded that any decisions Congress and the administration make to alter the balance between public and private sector responsibility for surveying and mapping should be guided by current, comprehensive information about the profession and the respective capabilities of public and private entities. ACSM identified NAPA, a nonpartisan, Congressionally chartered policy analysis organization, as the appropriate entity to conduct the study. Four federal agencies that play major roles in surveying and mapping agreed to sponsor the study. The sponsoring agencies are the Bureau of Land Management, the National Ocean Service, the U.S. Forest Service, and the U.S. Geological Survey.

NAPA's study will be completed this fall. ACSM believes the study's findings will prove helpful as the subcommittee considers S. 314's potential impact on technical professions such as surveying and mapping. We recommend that the subcommittee not approve S. 314 until it examines the findings of the forthcoming study, "U.S. Geographic Information Resources." Background materials on the study are appended to our statement for the subcommittee's information.

ISSAs Create Work for Private Firms

ACSM also urges the subcommittee to carefully consider the impact of S. 314 on interservice support agreements (ISSAs). Subsection 3(b)(2) of the bill would prohibit agencies from obtaining goods or services from, or providing goods and services to, any other government entity. Although interagency arrangements are allowed under the exceptions contained in Section 3(c), some supporters of S. 314 have made it clear that they would like to completely prohibit ISSAs.

Opposition to ISSAs is based on the assumption that agencies that perform work for other agencies clearly are competing inappropriately with the private sector. ACSM cannot speak to the government-wide impact of ISSAs on private firms, but in surveying and mapping the reality is that ISSAs frequently create opportunities for private firms to contract with agencies for the production of surveys or maps. Examples include the National Aerial Photography Program, Digital Orthophoto Quadrangles, Department of the

Interior High Priority Program, and the National Digital Orthophoto Program.

ACSM supports the use of ISSAs that provide opportunities for its private sector members to contract with government agencies. In surveying and mapping ISSAs can provide effective, cooperative funding mechanisms and often are the most cost effective approach through which agencies can obtain base data and related services needed to carry out their missions. For example, development of the GPS Continuously Operating Reference Stations (CORS) network would not have been possible without interagency agreements. Development of CORS involved the cooperation of five federal and seven state and local agencies that pooled their resources and avoided duplication of activities.

Elimination of ISSAs would force Federal agencies to create redundancies and incur increased costs, thereby reducing opportunities for outsourcing. S. 314 would force data users to become, in effect, data producers. Agencies that currently use data provided by other agencies would have to develop in-house expertise on the production of data. They would have to conduct studies of the production methodologies of their sister agencies and of the private sector firms that claim to be able to produce the same data. To conduct an effective and accurate study, every requesting agency would have to become as knowledgeable about the data as those agencies and firms they would be comparing. This would require additional effort and personnel on the part of the requesting agencies, most likely outside of their missions. If the studies found that private sector contracts are more cost effective than obtaining the data from producing federal agencies, the requesting agencies would incur significant additional costs to manage and operate a contracting process.

Before the subcommittee approves a blanket prohibition on ISSAs, we recommend that the panel examine ISSAs on an agency-by-agency basis to determine the extent to which such arrangements inhibit contracting or, in fact, create work for private firms.

Congress Needs More Information Before S. 314 Becomes Law

ACSM commends the sponsors of S. 314 for throwing a spotlight on the important issue of government competition and for revising the proposal in response to concerns raised at hearings in 1996. We oppose enactment of S. 314, however, because the bill's impact on the provision of technical goods and services remains unknown. Before the bill moves forward, ACSM believes Congress needs more information on the appropriate roles of government and the private sector in technical fields such as surveying and mapping. The forthcoming NAPA study, "U.S. Geographic Resources" will provide information that will help the subcommittee understand the pros and cons of outsourcing for surveying and mapping. The study's general findings may have application to other technical professions that would be affected by S. 314. ACSM recommends that Congress take no action on

S.314 until it has examined the findings of the NAPA study.

ACSM also recommends that the subcommittee gather more information on individual agencies' procurement decisions before moving to approve S. 314. Examination of a representative sample of agencies that have elected to perform services in-house, or that perform work for other agencies, could provide helpful information on the procurement issues addressed by S. 314.

ACSM appreciates this opportunity to present its views on the proposed Freedom From Government Competition Act and will be pleased to provide additional information on any point in our statement. Please contact Joseph Kuchler, ACSM Government Affairs Director, at 301-493-0200.

Adopted by ACSM's Board of Direction: April 10, 1997

The Freedom From Government Competition Act
(S. 314, H.R. 716)

Background
The Freedom From Government Competition Act (FFGCA) has been reintroduced in the 105th Congress as S. 314 by Sen. Craig Thomas (R-WY) and as H.R. 716 by Rep. John Duncan, Jr. (R-TN). Although some exceptions are provided, the proposal would require the federal government to procure from the private sector most of the goods and services it needs to carry out its functions. The legislation also would restrict agencies' ability to provide goods and services to other agencies through Interservice Support Agreements (ISSAs).

The bill is supported by a coalition of small business organizations. The FFGCA is controversial because the long-term consequences of the government-wide reorganization and downsizing of agencies it would require are unclear. For the surveying and mapping profession, the issues raised by FFGCA are closely related to those generated by the contracting out debate, and the findings of the NAPA study will be applicable to Congress' 1997 debate on this proposal as well as to discussions of contracting out that will arise during consideration of the FY98 budget.

ACSM Position Statement

ACSM is a professional society with members working in private surveying and mapping firms as well as government agencies. In this position statement on the Freedom From Government Competition Act (FFGCA), ACSM strives to represent the interests of public and private members, the profession as a whole, and long-term national interests.

ACSM supports having increased opportunities for its private firm members to contract with government agencies to perform surveying and mapping. However, ACSM is very concerned that FFGCA proposes a broad-based solution to situations that are best addressed on a targeted basis. If agencies are inappropriately competing with the private sector, ACSM believes those practices should be addressed on an agency-by-agency basis.

The FFGCA's approach of requiring that all government functions that are not "inherently governmental" be outsourced to the private sector would produce long-term effects that are largely unknown and potentially disruptive to the nation's need for accurate, accessible geospatial data. FFGCA's impact on the ownership (public or private) of geospatial base data is unclear, but the proposal's potential effect on this area is of great concern to ACSM.

FFGCA also would sharply curtail the use of Interservice Support Agreements (ISSAs). In surveying and mapping, ISSAs can provide effective, cooperative funding mechanisms and often are the most cost effective approach through which agencies can obtain base data and related services needed to carry out their missions. ISSAs frequently create opportunities for private firms to contract with agencies for the actual production of surveys or maps. Elimination of ISSAs would force Federal agencies to create redundancies and incur increased costs, thereby reducing opportunities for outsourcing. ACSM supports the use of ISSAs that provide opportunities for its members to contract with government agencies.

RESOLVED,
For the reasons outlined above, ACSM opposes the Freedom from Government Competition Act as currently drafted. ACSM further recommends that Congress take no action on this proposal until it has information from the National Academy of Public Administration study of geospatial information that will help lawmakers make sound public policy with respect to FFGCA's impact on surveying and mapping.

WORK-IN-PROGRESS

NATIONAL ACADEMY of PUBLIC ADMINISTRATION

STUDY OF U.S. GEOGRAPHIC INFORMATION RESOURCES

Project description

Advances in surveying, mapping and other geographic information* technologies, the trend toward devolution of federal programs and activities toward state and local governments, and the impact of U.S. budget deficits on economic growth over the past decade precipitate the need for a comprehensive examination by a non-partisan, unbiased, respected organization of current geographic information functions and how these functions can be most effectively structured and performed. The American Congress on Surveying and Mapping (ACSM) and representatives of four federal agencies involved in geographic information asked the Academy to undertake this study. The Academy will address the following questions:

1. Is geographic information acquisition, analysis and distribution critical to keeping the United States competitive in a global economy? What are the most important uses of this information on a national scale?

2. What is the appropriate role of the federal government in civilian surveying, mapping and other geographic information given recent technological and sociological trends? What functions are largely federal as contrasted with state and local and the private sector and academe?

3. If some functions are deemed suitable to be commercialized, privatized, or transferred to non-federal governments, what would be the effectiveness and economic impact of those transfers?

4. Are there opportunities to consolidate or otherwise restructure federal surveying, mapping and other geographic information functions to achieve greater economy and performance? If so, which functions should be brought together and how should they be structured?

* Surveying, mapping and other geographic information describe the broad field of activities, technologies and science including geodesy, land and cadastral surveying, land records, cartography, charting, remote sensing, photogrammetry, image processing, geographic information systems, and generally all geospatial data.

About the Academy

The Academy was established in 1967 as a source of independent advice and counsel on making government work. By seeking the very best management practices in both the public and private sector, NAPA studies have helped federal, state, and local agencies achieve new levels of effectiveness. The unique resource of the Academy is its membership, composed of more than 400 Fellows who represent a diversity of backgrounds and experience at every level of government. The Academy maintains a core professional staff that is regularly augmented by study teams recruited for their superior qualifications to contribute to specific projects. Panels composed of Fellows and invited experts direct project and study activities.

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Statement of the
International Association of Environmental
Testing Laboratories

For the

Committee on Governmental Affairs
Subcommittee on Oversight
of Government Management, Restructuring
and the District of Columbia

June 18, 1997, Hearing

The International Association of Environmental Testing Laboratories (IAETL) has more than 150 member environmental testing laboratories located throughout the United States and Canada dedicated to environmental testing analysis related to programs such as Superfund, the Clean Water Act, and RCRA. IAETL supports the Subcommittee's efforts to increase Federal reliance on the private sector for all commercial activities and particularly environmental testing analysis.

IAETL member laboratories have established world class quality and service benchmarks. They can reliably and accurately perform the majority of the environmental testing analysis now performed by government laboratories. IAETL member professionals receive rigorous cross-training to analyze samples for a wide variety of target analyses. In addition, IAETL member laboratories are equipped with state-of-the-art analytical instrumentation and are subject to stringent quality assurance and quality control programs. IAETL member laboratories are also certified and/or regularly audited by external federal and state regulatory agencies including the U.S. Departments of Defense and Energy, and the U.S. Environmental Protection Agency.

In recent months, IAETL has tracked and analyzed data on the growth of government laboratories' competition with commercial environmental testing laboratories. These figures clearly show that such competition has been growing, even at a time of governmental cutbacks. This unfair competition is causing substantial job losses in the private sector. In 1993, environmental testing was a $1.4 billion industry. As a result of government laboratory competition, as well as a number of other factors, environmental testing is now only a $600 million industry.

The most evident and rapid change in recent years involved the Department of Energy's competition with the private sector. The Department's quarterly Utilization Management Reports show that the percentage of analytical testing which was outsourced (done by

commercial laboratories) has dropped from around three-fourths to about one-half in just on year. During that period, commercial laboratories' analytical testing business with DOE was cut from $16.2 million to $7.7 million. At the same time, DOE's in-house laboratories' budgets rose from $6.5 million to $7.4 million.

In its June 20, 1995, quarterly report, DOE recognized that the decrease in outsourcing was "an unfavorable direction". In its September 29, 1995, report, DOE recognized that there was an inverse relationship between the average cost per analysis and the decrease in outsourcing stating that "cost increases coincide with reductions in commercial laboratory use."

On November 3, 1994, the DOE Inspector General issued a report on the "Effectiveness and Efficiency of the Rocky Flats Analytical Service Program" finding that **in-house DOE laboratories had a 24% average** sample analysis **failure rate** as compared to a 3% rate in private laboratories. The Inspector General also found that in-house laboratories were less efficient than private laboratories and that Rocky Flats' preference for in-house laboratories had increased program costs by $2.9 million.

On average, the private sector realizes savings between 10 and 30% when they outsource commercial activities. The Chrysler Corporation, for example, saved $2.6 billion by outsourcing the construction and manufacturing of major automotive components and accessories. A recent study by the Defense Science Board estimated an annual savings of $12 to $16 billion if only half of the commercial functions performed in-house by the Department were offered to the private sector. Savings government-wide could be as high as $30 billion annually.

In addition to directly saving taxpayers $30 billion annually, outsourcing commercial functions would also result in increased tax revenues for state and local governments throughout the United States. Private sector contractors would pay property taxes on their facilities and equipment and income taxes on their profits. More jobs would be created and tax rates at all levels could be reduced.

IAETL urges the Subcommittee to consider favorably and report the provisions of *S. 314*. The mechanisms established in *S. 314* are needed to move the federal government forward and to encourage federal managers to finally get on with identifying the commercial functions required to perform their missions and to offer those functions to the private sector. True reform will not take place until Congress makes it clear that it will not continue to tolerate inefficiency and waste.

For further information please contact Linda E. Christenson, Esq., IAETL Executive Director, at (703) 739-2188.

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STATEMENT

OF

EDWARD O. GROFF, P.E.

PRESIDENT

AMERICAN SOCIETY OF CIVIL ENGINEERS

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING AND THE DISTRICT OF COLUMBIA

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

ON

THE FREEDOM FROM GOVERNMENT COMPETITION ACT (S. 314/H.R. 716)

JUNE 18, 1997

Members of the Subcommittee:

On behalf of the more than 120,000 members of the American Society of Civil Engineers (ASCE), I am pleased to have the opportunity to comment on The Freedom From Government Competition Act (S.314/H.R.716) introduced by Senator Craig Thomas (R-WY) and Congressman John J. Duncan, Jr. (R-TN).

ASCE, founded in 1852, is the oldest national engineering society in the United States. Membership is equally divided among engineers in private practice; engineers working for federal, state and local governments; and, those employed in research and academia.

While ASCE commends the Administration and Congress for their leadership in trying to make the federal government more efficient and less costly for American taxpayers, we are concerned that this legislation, as currently written, could be interpreted as mandating the federal government to procure all goods and services from the private sector.

ASCE believes that the unequivocal preference for contracting out all goods and services to the private sector would not be in the best interests of the government. As a civil engineer who was employed by the U.S. Army Corps of Engineers for more than two decades, I understand the need to have a core staff of qualified, technical engineers working in the government to properly manage engineering contracts and to maintain long-range programs effectively.

ASCE believes it is desirable for both federal employees and private firms to perform a variety of professional services for government agencies. It is in the best public interest for every federal agency to maintain relatively constant levels of qualified staff rather than to vary employee levels as workloads change.

Government agencies need to contract out enough work to the private sector so that a qualified private work force is able to respond to changing government workloads.

Work which can be accomplished more effectively on a contract basis with private firms should be contracted out with proper management by the public agency. The resulting ratio of in-house to contracted professional services should be based upon the agency's on-going project and policy requirements rather than rigid rules or percentages fixed by regulation or legislation. The government should avoid establishing an inflexible, fixed percentage for the acquisition of professional services, relying instead on the relatively dynamic needs of the government.

The General Accounting Office has noted in the past that it is unwise for the government to rely extensively, not to say exclusively, on the private sector.

> Every administration since 1955 has endorsed the general policy of relying on the private sector to support government operations. While this policy was designed, in part, to ensure that federal agencies do not compete with private enterprise, problems of overreliance on contractors for key functions have occurred.

Federal Contracting: Cost-Effective Contract Management Requires Sustained Commitment, Before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, 102nd Cong., 2nd Sess. (1992) (statement of J. Dexter Peach, Assistant Comptroller General, GAO) (emphasis added)

With respect to professional engineering services, we believe that during the process of authorizing, funding and administering federal engineering projects, issues often arise concerning (1) the appropriate levels of in-house engineering staff for the government agencies; (2) the optimum level of involvement by private engineering firms; and, (3) whether executive or administrative controls should be established setting a fixed percentage of an agency's work to be contracted out to private engineering firms.

Government agencies need a staff of experienced and highly qualified engineers to maintain long-range programs effectively, to perform in-house engineering and to manage work contracted out to private engineering firms. Long-range programs are unique to each agency and require continuity of agency engineers. The extensive contracting out of these services would, over time, result in the loss of skilled government employees with the technical knowledge to manage billions of dollars in contracts.

We believe that consideration of the public interest is of foremost importance in decisions regarding the use of in-house governmental or private engineering firms, and the public is best served by an effective blending of in-house government engineers and private engineering firms appropriate for the mission and the demands upon each public agency.

For these reasons, ASCE believes that under no circumstances should the Freedom From Government Competition Act be interpreted as advocating total abolishment of all agency engineering functions. Government agencies need to maintain core capacities for research and development, *engineering and design services*, emergency response, oversight and enforcement.

Thank you for considering our views. We look forward to working with Congress to find a balanced solution to address the concerns of private-sector businesses facing unfair competition from federal government agencies.

STATEMENT

OF

ROBERT M. TOBIAS

NATIONAL PRESIDENT

BEFORE THE

SENATE GOVERNMENTAL AFFAIRS COMMITTEE
SUBCOMMITTEE ON OVERSIGHT OF
GOVERNMENT MANAGEMENT, RESTRUCTURING
AND
THE DISTRICT OF COLUMBIA

ON

THE FREEDOM FROM GOVERNMENT COMPETITION ACT

(S. 314)

JUNE 18, 1997

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Mr. Chairman, Members of the Subcommittee, on behalf of the more than 150,000 federal employees represented by the National Treasury Employees Union (NTEU), I appreciate the opportunity to submit testimony on 314, "The Freedom from Government Competition Act of 1997."

In the last Congress, Senator Thomas (R-WY.) introduced a similar piece of legislation, S. 1724. NTEU vehemently opposed S. 1724 because it required the federal government to purchase goods and services from the private sector even if the product or services could be obtained at a lesser cost, with greater efficiency and of a higher quality using federal resources. S. 314 currently provides for competition between the private and public sector, eliminates the transfer of federal government functions to state governments and does not require the contracting out process to be completed in a specified period of time. NTEU appreciates many of the changes made to S. 1724 but continues to have grave concerns over the bill.

First and foremost, NTEU strenuously objects to the underlying premise in the bill that private enterprise is always the most productive, efficient and effective source of goods and services. NTEU finds absolutely no justification for S. 314's mandate for the Office of Management and Budget to produce regulations that "emphasize a preference for the provision of goods and services by private sector sources." Numerous GAO Reports over the years have cited contract cost overruns, poor or nonexistent oversight and lax management of contracts as rational reasons why their use must be tightly controlled. GAO studies have detailed contract abuses where the federal government has

been charged millions of dollars worth of unallowable or questionable expenses by contractors.

In March 1994, GAO issued a report entitled Measuring Costs of Advisory and Assistance Service Contractors Versus Federal Employees. GAO found that the federal government could save millions of dollars by performing functions directly rather than allowing them to be performed by private contractors. GAO reviewed nine previous studies comparing the cost of using contractors rather than federal employees to perform necessary government functions. The findings were alarming. For example, an audit of Air Force service contracts disclosed that the Air Force paid $4.7 million in additional costs for certain contractor work in fiscal year 1990, and could have saved up to $6.2 million if the work to be performed under the optional years of the contracts were performed in-house.

A Department of Defense Inspector General report on certain consulting services contracts estimated that DOD agencies could have saved about $26 million from fiscal year 1992 to 1996, by gradually reducing their service contracts by 60 percent. The report further estimated that contracting costs were between 21 and 40 percent higher than in-house performance. Another study of 11 Department of Energy service contracts estimated that the Department could have achieved savings ranging from 3.1 to 55.4 percent, with an average of 25.4 percent if the work were done in-house.

These and other GAO studies highlight contracting-out abuses where the federal government could have saved millions of dollars by performing functions directly rather than paying for them to be performed by private contractors who charged millions of dollars worth of questionable expenses to the Federal Government. Despite the alarm over contracting out practices in the federal

government, expenditures for contracting out are on the rise and expenditures for government employees are on the decline. The Washington Post (9/23/95) reports that while government spending declined nationwide, local businesses reaped $20 billion in federal contracts -- a 10% increase over the previous year. According to the Administration, the Federal Government's personnel costs stands at approximately $90 billion dollars annually compared to $115 billion dollars for service contracts.

In recent years, Congress has spoken at great length about deficit reduction. NTEU strongly supports the concept of deficit reduction and is ready and willing to work with Members of Congress on this pressing problem. Federal agency budgets are being slashed daily. However, we fool no one when we simply slash personnel costs and pass on the costs to less experienced and more costly contractors.

The Federal workforce today stands below 2 million employees; this is a reduction of over 275,000 federal employees since the enactment of the Federal Workforce Restructuring Act. While Congress has mandated dramatic federal agency downsizing in the name of deficit reduction, private sector procurement contracts, have been the fastest growing area of federal spending. It is ironic that tighter restrictions on hiring federal employees have led to more expensive contracting out of services and increased federal spending. Although there is no room in their personnel budgets, agency procurement budgets are open ended.

OMB should review the cost effectiveness of bringing contracted work in-house when there aren't sufficient FTEs to perform the work. NTEU recommends that the Committee seriously consider the

fact that more budget flexibility on FTEs is necessary when it can be demonstrated through studies that it would be less expensive to perform the work in-house. Government personnel ceilings prevent that decision from being made. NTEU strongly believes that agencies should be given the flexibility to use their budgetary resources to hire additional FTEs rather than conracting out the work if a cost analysis indicates that it would be more efficient to conduct a particular service in-house.

In short, NTEU is bewildered by this Committee's passion to contract out when volumes of documentation have demonstrated the ills of privatizing and outsourcing and agencies already are acting on their broad authority to contract out.

NTEU is concerned that S. 314 will eliminate many important provisions contained in OMB Circular A-76 and its March 1996 Supplement. This circular is the directive that governs all contracting out by federal agencies. The circular, issued under authority of the Budget and Accounting Act of 1921 and the Office of Federal Procurement Policy Act Amendments of 1979, bars agencies from farming out " inherently governmental functions." (OMB Circ. A-76 # 5.b.) The A-76 Circular defines such functions as those "so intimately related to the public interest as to mandate performance by Government employees". (Id. at e.) Furthermore, the Circular gives specific examples of functions that would be considered inherently governmental. For further clarification OMB, Office of Federal Procurement Policy issued a policy letter in 1992 giving guidance on functions which must be performed by government officials and employees and what kinds of functions may be performed by private sector.

Although S. 314 does include some of the A-76 Circular language defining "inherently governmental functions, " it fails to provide the supporting explanations and examples provided by the Circular and the policy letter. NTEU strongly advocates that S.314's definition of "inherently governmental" include the examples and explanations provided in the Circular and policy letter in order to better clarify the bill's intent.

As stated earlier, A-76 was revised in early 1996. Among the changes in the Supplement was a provision to allow the Government the opportunity to win back a contract after it has been contracted out if the service can be performed at less cost in-house. S. 314 fails to provide for this process. In the absence of this healthy process, the incentives necessary for a contractor to provide timely and effective service are greatly diminished. Often, more efficient ways of delivering services can be developed over time. If a service contractor knows that his or her contract will receive no further review, the federal government loses the competitive edge and the incentive for the contractor to reduce or eliminate the unnecessary expenses he or she may charge to the federal government. NTEU strongly believes that contracts should not be lost to contractors if federal employees can show that they can do it more effectively.

Another area of large concern to NTEU is the treatment of federal employees under S. 314. The bill appears to recognize that federal employees will be adversely affected by this legislation but fails to provide any substantive solutions to the problem. The bill's preamble states: "it is in the public interest for the private sector to utilize employees who are adversely affected by conversions to use of private sector entities for providing goods and services on behalf of the Federal Government." Yet, the bill offers no new substantive rights to displaced federal employees. It merely restates a

right that federal employees already enjoy which is the availability of information on relevant available benefits and assistance to Federal Government employees adversely affected by conversions.

OMB Circular A.-76 currently provides far more protections for federal employees. We would urge at a minimum that these protections be included in any legislation pertaining to contracting out. Some of the main provisions include: right of first refusal for the new contract work, priority consideration for available positions within the agency, payment of reasonable costs for training and relocation and an internal appeals process after the contract announcement. NTEU believes that other important protections, in addition to those listed in A-76, would need to be provided if this legislation is to move forward.

NTEU is concerned with the provision in S. 314 that would delegate to OMB the respsonbility for determining what functions should be contracted out. We strongly believe that these decisions should be left in the hands of the people who know best - the employees who perform the jobs. Agency officials are in the best position to determine which functions are truly commercial and which functions are inherently governmental. OMB simply does not have the same knowledge base as agency officials who are intimately involved in the work place on a daily basis. The reinventing government initiative has consistently demonstrated that it is the employees who are best equipped to make meaningful decisions about their work product.

Finally, I must point out that S. 314 fails to address the problem of lax management and ineffective oversight of contracts. Concerns have continuously been raised about contract oversight, especially

since once a function goes to contract there is little oversight on the contractor's performance or cost overruns. In testimony entitled "Federal contracting - Cost- effective Contract Management Requires Sustained Commitment" GAO concluded the following:

> With the budget deficit and other financial commitments that the federal government faces, it cannot afford to ignore the potential cost of poor contractor oversight. For many years federal agencies have increasingly relied on contractors to carry out needed activities. Unfortunately, in all too many instances, federal agencies have abdicated to their contractors the responsibilities for ensuring that contractors perform quality work cost effectively. (GAO/T-RCED-93-2).

Unfortunately service contracting personnel continue to concentrate their efforts on the awarding of contracts and the obligation of contractor performance becomes a peripheral concern. If S. 314's goal is to increase the contracting out practices in the Federal Government, as a means of reducing federal expenditures, it must provide for effective oversight of these contracts.

Thank you for allowing me the opportunity to present NTEU's views. We look forward to working with this Committee on this important issue.

Management Association
for Private
Photogrammetric Surveyors

Statement of the Management Association for Private Photogrammetric Surveyors (MAPPS)

Before the Senate Committee on Governmental Affairs Subcommittee on Oversight of Government Management

Hearing on S. 314 Freedom from Government Competition Act

June 18, 1997

Mr. Chairman, members of the Subcommittee, the Management Association for Private Photogrammetric Surveyors, MAPPS, is a national association of more than 100 private sector mapping firms from throughout the United States.

Background

The Federal government currently employs nearly 7,000 individuals in professional and technician level positions in surveying, cartography and geodesy. Most are in the Departments of Defense, Interior, Commerce and Agriculture, while others are scattered among more than 20 departments and agencies that generate or use surveying and mapping data. While most Federal agencies do not have a line item for its surveying and mapping budget and it is difficult to dissect such expenditures by activity, a conservative OMB estimate puts annual Federal spending on surveying, mapping and geodesy at $1 billion. Of that amount, only $58.1 million, or 5.8 percent could be accounted for in contracts to the private sector in fiscal year 1996.

There are more than 6,000 surveying and 250 mapping firms in the United States. These healthy, dynamic and qualified companies employ more than 40,000 persons.

John M. Palatiello, Executive Director
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History of Government Competition

For more than 60 years, Congress has expressed concern about the pervasive extent to which government agencies compete with the private sector. As described by Dr. Allan V. Berman, President Bush's Administrator of the Office of Federal Procurement Policy, in testimony before a House Subcommittee in 1990,

> "As far back as 1932, a Special Committee of the House of Representatives expressed concern over the extent to which the government engaged in activities which might be more appropriately performed by the private sector. The first and second Hoover Commissions expressed similar concern in the 1940's and recommended legislation to prohibit government competition with private enterprise. However, there was no formal policy until 1955, when Congress introduced legislation to require the Executive Branch to increase its reliance on the private sector. Finally action was dropped only upon assurance from the Executive Branch that it would implement the policy administratively. Bureau of the Budget Bulletin 55-4 ... was issued in 1955 prohibiting agencies from carrying on any commercial activities which could be provided by the private sector. Exceptions were permitted only when it could be clearly demonstrated in specific cases that the use of the private sector would not be in the public interest."

On January 15, 1955, the policy directive issued by President Eisenhower stated: "the Federal Government will not start or carry on any commercial activity to provide a service or product for its own use if such product or service can be procured from private enterprise through ordinary business channels"

It is time to recognize that President Eisenhower's policy, though still on the books today, (now found in Office of Management Budget Circular A-76) has not worked, and for Congress to rededicate itself to the long overdue task of enacting legislation establishing a contracting out system that works. Such a bill is H.R. 716/S. 314, the Freedom from Government Competition Act, introduced by Rep. John J. Duncan, Jr. (R-TN) and Senator Craig Thomas (R-WY). It establishes a process by which the Office of Management and Budget will identify government activities that are commercial in nature and implement a plan to contract those activities to the private sector. Its benefits include:

o refocusing Federal agencies on their core missions and inherently governmental activities that only government can perform;

o creating more private sector jobs;

o generating more taxable revenue by private, for-profit firms, thus expanding the Federal, State and local tax base;

o helping to balance the budget by eliminating government activities that duplicate the private sector;

o allaying the fears of Federal employees about downsizing by establishing a "soft landing" for those affected by the transition of activities from the government to the private sector;

o creating a government that works better and costs less by determining whether a government agency or private firm can provide a good or service at the best value to the taxpayer; and

○ eliminating a major impediment to small business growth and expansion by curbing government competition -- an issue in the 1980, 1986 and 1994 White House Conference on Small Business platforms;

Mapping

One needs to look no further than surveying and mapping to find a major area where the Federal government has dominated, duplicated and unfairly competed with a field that can and should be left to the private sector.

MAPPS, and the private surveying and mapping profession, has good reason to be frustrated with competition from the government. Dozens of Federal agencies have in-house surveying and mapping capabilities that duplicate and are competitive with private, for-profit, tax paying entities, most of which are small businesses. Not only do these agencies perform surveying and mapping services for themselves, but they aggressively market these services to other agencies, to state and local government, and to foreign countries, in direct and unfair competition with private business.

Mapping is an activity in which the government not only fails to procure from private enterprise, but government agencies providing surveying and mapping services compete with private firms, stifle growth in private industry by dominating certain markets, divert needed technical personnel from private sector employment, thwart efforts by U.S. firms to export their services and erode the tax base by securing work that would otherwise be accomplished by tax paying entities.

The ability of the private sector to provide quality professional services at a fair and reasonable price has been repeatedly demonstrated. The U.S. Army Corps of Engineers, for example, annually contracts for 75 percent of its surveying and mapping requirements. It uses the time tested Brooks Act qualifications based selection process to choose its contractors. The Corps has high praise for the quality of the services it receives from the private sector. In testimony before a House Subcommittee in September, 1990, Mr. Herbert Kennon, Deputy Director of Civil Works, said, "Over the years, the Corps has developed working relationships with hundreds of private firms and considers them an extension of our capability."

Other military services, such as the Navy and Air Force, contract for virtually all their requirements. They, too, find the private sector highly qualified and capable of meeting the agencies' needs. Congress, through the appropriations process, has mandated that the National Mapping Division of the U.S. Geological Survey "to increase its contracting of map and digital data production, with a goal of no less than 50 percent contacting by the end of fiscal year 1997 and no less than 60 percent contracting by the end of fiscal year 1999." This program has been an unqualified success.

During the past year, as a result of pressure from Congress, particularly through the appropriations process, some agencies have begun to increasing contracting. This has been particularly true of the USGS and NOAA. However, their progress is far too slow. Each day the government continues its in-house mapping production activity it puts the taxpayers and private mapping firms at a disadvantage.

OMB Circular A-76

OMB Circular A-76 is the Federal directive that requires agencies to identify "commercial activities" being performed in-house, conduct detailed comparisons of the cost of performing the function in-house with government employees versus the cost of contracting to the private sector, and contract-out the function if the private sector can perform the work for at least 10 percent less than the government.

The A-76 program has been a colossal failure. Most heads of Federal agencies with surveying and mapping activities have refused to conduct A-76 studies on these functions. Some simply do not want to go through the burdensome process. Others claim that only the government can capably map. In truth, they all want to protect statist empires. Since a mapping contracting initiative was included in the FY90 budget, not a single Federal agency has conducted an A-76 review of a surveying or mapping activity.

A provision formerly in OMB Circular A-76 limited agencies from doing work for other Federal agencies. It required

> If, by September 30, 1987, the activity has not been justified for continued in-house performance, user agencies shall obtain the required services directly from a commercial source.

This did not, in all instances, prevent agencies from performing mapping work for other Federal agencies, even when A-76 reviews had not been conducted. Now the Clinton Administration has even eliminated this protection in their recent revision to the A-76 manual. The new policy says:

> Effective October 1, 1997, the cost comparison requirements of this Supplemental handbook will not apply to existing or renewed ISSAs or to the consolidation of commercial or other services within a Department or agency.

We believe OMB's new rules violate Federal law. In particular, the Economy in Government Act (31 U.S.C. 1535(a)(4)) permits agencies to work for other agencies if

> the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

Moreover, a 1982 law prevented Federal agencies from unfairly competing with the private sector when providing technical and specialized services to State and local government. The Intergovernmental Cooperation Act authorized Federal agencies to provide services to State and local government, but required that

> the services prescribed must be consistent with and further the policy of the United States Government of relying on the private enterprise system to provide services reasonably and quickly available through ordinary business channels.
> (31 USC 6505(a))

The law is implemented by OMB Circular A-97. It sets conditions under which Federal agencies can provide services to State of local government, including

> Such services will not be provided unless the agency providing the services is providing similar services for its own use under the policies set forth in Circular No. A-76. In addition, in accordance with the policies set forth in Circular No. A-76, the requesting entity must certify that such services cannot be procured reasonably and expeditiously by it through ordinary business channels.

Despite this requirement, numerous Federal agencies provide surveying, mapping and aerial photography services to State and local government. No certification that such services are not available from the private sector has ever been filed with OMB. Among the agencies that violate this Circular are NASA (aerial photography), NOS (geodetic surveys), and USGS (mapping).

The current practice is unwise from a public policy perspective. The resources now expended to support the Federal surveying and mapping establishment could otherwise be allocated toward more pressing national priorities, or used for deficit reduction. Moreover, the practice is counterproductive from an economic viewpoint. What is the logic, Mr. Chairman, for the Federal government to collect taxes from private mapping firms in order to spend those tax dollars buying equipment, hiring people, and starting a government mapping business?

Our great free enterprise system is based on the laws of supply and demand. The Federal Government should not be the supply for mapping, it should be the demand for mapping when there is a public interest to be served.

With specific regard to surveying and mapping --

- evaluate all Federal programs in order to determine mapping that can be commercially provided. Spending on these programs should be eliminated in order to empower market forces to provide this mapping; and

- redirect Federal agencies to those aspects of mapping to those functions and responsibilities that are more appropriate for the government, such as standards setting, coordination of user agency requirements and dissemination of government data to user agencies.

We would urge the enactment of S. 314 in this session to provide a long over-due remedy to the problem of government duplication of and competition with the private sector. We believe Congress should focus government agencies on those inherently governmental activities that only government can perform, while relying on the private sector for those activities that are commercial in nature.

PREPARED STATEMENT OF CAREERWARE, BOULDER CO

FOR THE ATTENTION OF SENATOR SAM BROWNBACK
Chairman, Subcommittee on Oversight of Government Management

FOR THE RECORD

Information to be included in hearings on Freedom of Competition Act scheduled for June 18, 1997.

The Career Development Alliance has been severely hurt by the expanding actions of the Department of Labor (DOL). As discussed in the attached material, DOL has recently moved into an area which has traditionally been provided by the private sector. Recent actions by the DOL are endangering an entire industry with the loss of hundreds of jobs while costing the American taxpayer millions.

Our Alliance has attempted to deal directly with DOL through meetings and through congressional inquiries made by legislative offices throughout the country to make them understand the seriousness of their actions. (Samples of the responses to Sen. Trent Lott and Rep. David Skaggs are attached.) As can be seen, DOL's responses to our congressional inquiries have been non-substantive and often patronizing, contending that with just a small expenditure, a few million a year, they will be able to provide the service "free" on-line to customers. DOL seems to be incapable of grasping the fact that "free" still means someone pays for it - and, that someone is the American taxpayer. The only apparent reason for their action appears to be a desire to expand into the career exploration area rather than, as they have in the past, to simply provide the traditional labor exchange information. There is no reason or rationale for this intrusion into the private sector, except to provide additional work for bureaucrats.

Information provided by the Career Development Alliance, an alliance formed specifically to deal with these DOL actions. Questions can be directed to: Ms. Sherrie Wolff, 303-494-2191, Mr. Gerry Biladeau, Careerware, Maine 207-942-9554, Mr. Steve Thompson. Chronicle Guidance Publications, NY, 315-497-0330.

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210

JUN 4 1997

The Honorable Trent Lott
United States Senate
Washington, D.C. 20510

Dear Senator Lott:

Thank you for your letter of May 14 to Assistant Secretary Palast, requesting that we review concerns expressed by regarding the relationship of America's Labor Market Information System (ALMIS) and Career Information Delivery Systems (CIDS). Your correspondence was referred to this office for a reply.

The Department of Labor (DOL) is committed to providing world class services to the customers of the nation's workforce development system through ALMIS and the One-Stop workforce development system it supports. The achievement of this goal inevitably requires a new commitment to excellence and value throughout the workforce development system. For example, as America's Job Bank (AJB) has become the leading Internet job listing service, the public employment service and private placement agencies alike are challenged to create additional value for their employer and job seeker customers.

The private businesses that provide CIDS have a well deserved reputation for excellence and value in the markets they serve. Relying on basic data collections developed through the public labor exchange and other information sources, they have provided substantial value, especially to the public education community. The DOL is extending data collections and is improving access to information through the ALMIS and through the emerging One-Stop workforce development system. We recognize that such change is not without impact on the CIDS.

We continue to be available to a dialogue with the CIDS community. A shared commitment to excellence affords the opportunity to realize their goals and ours. We believe our experience with AJB provides the pattern for the general progress of ALMIS. The success of these information services and products challenges everyone in the marketplaces to create new value for their customers.

Sincerely,

Richard C. Hastings for
JAMES W. VOLLMAN
Associate Assistant Secretary

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210

The Honorable David E. Skaggs
Member, United States
House of Representatives
9101 Harlan Street, Suite 130
Westminster, Colorado 80030

Dear Congressman Skaggs:

Thank you for your letter of April 3 to Assistant Secretary Palast, requesting that we review concerns expressed by regarding the relationship of America's Labor Market Information System (ALMIS) and Career Information Delivery Systems (CIDS). Your correspondence was referred to this office for a reply.

The Department of Labor (DOL) is committed to providing world class services to the customers of the nation's workforce development system through ALMIS and the One-Stop workforce development system it supports. The achievement of this goal inevitably requires a new commitment to excellence and value throughout the workforce development system. For example, as America's Job Bank (AJB) has become the leading Internet job listing service, the public employment service and private placement agencies alike are challenged to create additional value for their employer and job seeker customers.

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Sincerely,

JAMES V. VOLLMAN
Associate Assistant Secretary

INFORMATION FOR CONGRESSIONAL INQUIRY CONTACTS

I. Background Information - for Congressional Representatives

The Department of Labor (DOL) issued the American Labor Market Information System (ALMIS) Grant and O*NET project to the State of New Jersey to incorporate the development of career and vocational assessment components by that state. The project is designed to develop a library of motion video, still video and other multi-media occupational information segments which can then be incorporated into any type of multi-media application in any state and provided, without cost to the user, through the Internet. This project places the Department of Labor in direct competition with our industry.

Reasons Against:

DOL is responsible for the exchange of labor market information in order to increase the workforce and move toward a full employment goal. The ALMIS grant, however, takes DOL from that basic research foundation to the next step, i.e., one of providing free a Career Information Delivery System (CIDS). Private business has been delivering CIDS effectively for the past 25 years. Our industry has taken the lead in providing state of the art technology. Members of our Alliance already provide a wide range of services and structures from which clients can choose. Listed below is an examination of the services and products the ALMIS grant proposes and those services already provided by our industry:

A. Grant proposes: To provide One-Stop, technology-based, delivery systems first in New Jersey and then provided to other states.

Already Provided: Duplication. Members of the industry also provide one-stop, technology-based, delivery systems in virtually every state! Why is there a need for the government to fund a pilot program in New Jersey when it is already available in more advanced technology in other states? In addition, there is a Center for the Study of Technology and Guidance, located at Florida State University where any person or company can freely examine offerings and the latest state-of-the-art technology thereby allowing each vendor to improve services in a timely manner to meet market competition.

B. Grant proposes: To develop a library of 50-75 occupations on motion video, still video and other multi-media occupational information segments.

Already Provided: At drastically less cost, industry members already provide libraries of motion and still video as well as other multi-media occupational segments.

These have been on the market for several years. The occupations number pver 150, as opposed to the 50-75 proposed in the New Jersey grant. Unlike the proposed 30-90 second vocational videos which New Jersey will produce, current, on-the market, videos are at least 3-4 minutes on each occupation, interviews with traditional and non-traditional job holders and a view of the future market potential for these careers. These are created by the industry, funded by the companies'investments, unlike the New Jersey model which depends on government, tax-payer funds to attempt to duplicate the product.

C. Grant proposes: That a consortium of states, New Jersey, Connecticut, Maryland and Missouri, will work together to implement the proposed activities. The proposal states that it is appropriate because all three states have a non-proprietary CIDS.

Incorrect Information: The information in the grant is incorrect. Missouri adopted Choices in 1987, Maryland has used Discover/Visions since 1990 and Connecticut uses a combination of Choices, Discover, GIS, and SIGI as well as other proprietary systems. Connecticut has already planned to discontinue its state-owned proprietary system. New Jersey is a proprietary state, and that is the reason they can provide it to other states free.

D. Grant proposes: To deliver the system, when complete, on Internet.

Already Provided: Links to the Internet have already been provided by proprietary CIDS. The industry is already heavily engaged in creating links to the Internet, as well as exploring marketing and pricing strategies which will generate the revenue to justify the investments. One of the links was developed through the Iowa Job Service, a DOL-funded agency, to create internet linkage to America's Job Bank (ATB) and has already contracted to be available in every state. There is already direct access, or plans to access all colleges with Website addresses on the part of, at least, three of the proprietary systems. Students can make direct application to colleges through multimedia electronic applications to over 2,000 colleges across the United States.

E. Grant proposes: ALMIS plans to include a Career Exploration component including: Ability Profiler, Interest Profiler, Work Values Profiler, Workplace Literacy Test and an Occupational Classification System.

Unnecessary Duplication: This duplicates a private vendor program which is already provided throughout the country by this industry. There are companies that have been in the "Assessment business" for over 25 years. There are many high-quality, valid, reliable and well-normed instruments in the market. Why are they re-inventing the wheel and costing the industry at least $30-$40 million a year?

F. Grant proposes: To develop a cross-platform integrated suite of ALEX, CIDS, Jobs Plus and Workforce, N.J. Public Information Network Worldwide Website accessible on an Oracle database.

Already Provided: This is an unnecessary duplication in all other states outside of New Jersey. Proprietary CIDS are linking these public systems via the Internet.

G. Grant was sole sourced: The standard process (RFP) was not followed by the NJ Department of Labor. It went sole source to Midi, Inc, in Princeton, New Jersey without putting the contract out to bid. The industry would like to see the bid and the material explaining the process. This no-bid process is contrary to the U.S. Department of Labor's regulations and should be revoked.

Results if Grant Continues:

A. COMPETITION. If this grant and project continues, it could drive the industry out of business. There will be no customers for the industry. If the government can provide the service free on the internet, with no cost to the user, even though it will not be as complete or up-to-date as the services they now contract for, there will be little market for our industry within the next two years.

B. COST. Private business has invested its money into research and development of the products it markets. The government now proposes to use tax-payer dollars to duplicate and compete with private business. How can this be justified? $400,000 has already been received by New Jersey to create the same products which are already on the market. What is the reason for putting up an old out-moded system and providing $400,000 to create duplicate products to work on it. Our industry is already providing everything that the grant proposes to provide. It is a duplication of small business products, with no demonstrated need and with vastly inferior products. In addition, the initial grant is but one step! In order to update and maintain the system, additional tax dollars must be allotted. It is not a one-time cost! It will be an on-going budget item. Where is the money to come from to update and maintain a national CIDS? There is no possible way that Congress or the grantee can provide the same service or the same investment in research and technology as has the industry.

C. STILL ANOTHER BUREAUCRACY. Government will have created yet another bureaucrary and will have to continue to pay for that new bureaucracy to maintain and update the products. Are we creating a government welfare program? Is this a make work project for bureaucrats?

D. COOPERATION WITH PRIVATE SECTOR. The DOL states in their letter of November 6, 1996, that an effective working relationship with industry is one of their best avenues for success. In this ALMIS and O*NET grant program there is simply no cooperative approach intended or displayed.

SELECTED LAWS WHICH DICTATE NON-GOVERNMENTAL INTERFERENCE

The following laws relate directly to the issue of non-governmental interference with private business, and, in fact, dictate that government will do everything possible to ensure that competition is open and available for private business. The laws quoted are from Title 15, Sections 631-639 on the U.S. Code.

1. Title 15, Commerce and Trade, Section 631(a) declares that: "The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation....**It is the declared policy of the Congress that the Government should aid, counsel, assist and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise,** to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government be placed with small-business enterprises....

Section 631a. (a)..."Congress hereby declares that it is the continuing policy and responsibility of the Federal Government to use all practical means and to take such actions as are necessary, consistent with its needs and obligations and other essential considerations of national policy, **TO COMPLEMENT AND COORDINATE ALL FEDERAL DEPARTMENT AGENCY, AND INSTRUMENTALITY POLICIES, PROGRAMS AND ACTIVITIES IN ORDER TO: FOSTER THE ECONOMIC INTERESTS OF SMALL BUSINESSES; INSURE A COMPETITIVE ECONOMIC CLIMATE CONDUCIVE TO THE DEVELOPMENT, GROWTH AND EXPANSION OF SMALL BUSINESSES; ...AND PROVIDE AN OPPORTUNITY FOR ENTREPRENEURSHIP, INVENTIVENESS, AND THE CREATION AND GROWTH OF SMALL BUSINESSES."**

There are several sections of the law , specifically provided by Congress, which deal with oversight of these stated purposes and to which business can resort if needed. One is the report of the President to the Congress on the role of small business; the Office of Advocacy within the Small Business Administration; Research and Development Assistance; and the Attorney General's report to the President on activities which inhibit competition within an industry.

Section 631b. (a) "The President shall transmit to the Congress not later than January 20 of each year a Report on Small Business and Competition which shall---

(1) examine the current role of small business in the economy on an industry-by industry basis;

(4) **examine the effects on small business and competition of policies, programs, and activities, including, BUT NOT LIMITED TO the Internal Revenue Code...**

(c) The President may transmit from time to time to the Congress reports supplementary ...**which shall include such supplementary or revised recommendations as he may deem necessary or desirable to achieve the policy declared in section 631(a) of this title.**

(d) The Report ...and all supplementary reports ...shall be referred to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives.

634a. Establishes the Office of Advocacy within Small Business Administration Office.

634b. The primary functions of the Office of Advocacy:

(9) **recommend specific measures for creating an environment in which all businesses will have the opportunity to compete effectively and expand to their full potential, and to ascertain the common reasons, if any, for small business successes and failures.**

and, in Section 638(a) "Research and development are major factors in the growth and progress of industry and the national economy. **The expense of carrying on research and development programs is beyond the means of many small-business concerns, and such concerns ARE HANDICAPPED IN OBTAINING THE BENEFITS OF RESEARCH AND DEVELOPMENT PROGRAMS CONDUCTED AT GOVERNMENT EXPENSE. These small-business concerns are thereby placed at a competitive disadvantage. THIS WEAKENS THE COMPETITIVE FREE ENTERPRISE SYSTEM AND PREVENTS THE ORDERLY DEVELOPMENT OF THE NATIONAL ECONOMY. It is the policy of the Congress that assistance be given to small-business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy."**

THE CASE IS ALREADY MADE FOR OUR INDUSTRY BY SIMPLY QUOTING THE LAWS PASSED BY CONGRESS AND SIGNED BY THE PRESIDENT WHICH STATE THAT THE ADMINISTRATION SHALL NOT INTERFERE IN THE COMPETITION OF PRIVATE BUSINESS, AND IT SHALL DO WHATEVER IT CAN TO BE OF ASSISTANCE. (CLEARLY, THE RECENT ACTIONS OF THE DEPARTMENT OF LABOR DO NOT COMPLY WITH THE WISHES OF CONGRESS OR THE PRESIDENCY.)

Business Coalition For Fair Competition

Statement of the
Business Coalition for Fair Competition
to the Senate Committee on Governmental Affairs
Subcommittee on Oversight of Government Management
June 18, 1997

Mr. Chairman, members of the Committee, the Business Coalition for Fair Competition, an organization of more than 20 national trade and professional associations, commends you for holding this hearing on the issue of unfair competition with private business.

BCFC was formed to promote government policies that permit our member companies to participate in our great free enterprise system without special tax preferences, mandatory monopolies, subsidies, or taxpayer financing. Today, small business confronts various forms of unfair competition, a problem that has continued for far too long.

In 1980, the first White House Conference on Small Business made unfair competition one of its top issues. It said

> The Federal Government shall be required by statute to contract out to small business those supplies and services that the private sector can provide. The government should not compete with the private sector by accomplishing these efforts with its own or non-profit personnel and facilities.

In 1986, the second White House Conference made this one of its top three issues. It said,

> Government at all levels has failed to protect small business from damaging levels of unfair competition. At the federal, state and local levels, therefore, laws, regulations and policies should ... prohibit direct, government created competition in which government organizations perform commercial services ... New laws at all levels, particularly at the federal level, should require strict government reliance on the private sector for performance of commercial-type functions. When cost comparisons are necessary to accomplish conversion to private sector performance, laws must include provision for fair and equal cost comparisons. Funds controlled by a government entity must not be used to establish or conduct a commercial activity on U.S. property.

And the 1995 White House Conference again made this a top issue. Its plank read

> Congress should enact legislation that would prohibit government agencies and tax exempt and anti-trust exempt organizations from engaging in commercial activities in direct competition with small businesses.

reply to: 12020 Sunrise Valley Drive, Suite 100, Reston, VA 20191 tel. (703) 391-2739 fax. (703) 476-2217

That was among the top 15 vote getters at the 1995 Conference and was number one among all the procurement-related issues in the final balloting.

Our members, a great many of which are small businesses, face unfair competition in a variety of sources. More than 1 million Federal employees are in occupations that are commercial in nature. In other words, they are doing things that can be done by the private sector.

There are three ways in which Federal agencies compete. First, agencies use appropriated funds to perform in-house, activities that are commercial in nature and can be performed by the private sector.

Second, Federal agencies market their services to other Federal agencies, to State and local government, and even to the private sector and the general public. And, third, Federal agencies provide funding to State and local government through grants and other financial assistance which are then used to carry out commercial activities.

The following are examples:

1. As mentioned earlier, studies estimate that as many as 1.4 million Federal employees are engaged in commercial activities. This is dramatic evidence that the 40+ year old Federal policy that "the Federal Government will not start or carry on any commercial activity to provide a service or product for its own use if such product or service can be procured from private enterprise through ordinary business channels" has been grossly inadequate.

2. Recently, the Federal Aviation Administration awarded a $250 million computer services and information technology contract to the U.S. Department of Agriculture! This is not an isolated incident. In fact, the Administration has changed the rules to encourage agencies to seek other Federal agencies' work. The U.S. Geological Survey performs mapping and water resource engineering work for State and local government, NASA flies aerial photography for entire States, and NOAA performs geodetic surveys for States. In each instance, the State and local government reimburses the Federal government, in some cases for 100% of the cost of the service.

3. Between 1979 and 1989, States spent an average of only 37 percent of their Federal Highway funds for preliminary engineering activities for contracts with the private sector. Only 23 states contracted out more than 1/3 of their preliminary engineering funds. California, for example, the largest recipient of Federal Highway funds, was at the bottom of the list in private sector utilization, contracting just $70,000 of the $54.8 million (less than 1/10th of 1 percent) of its average annual Federal funding for preliminary engineering. In some years, California did not contract out any of its Federal funding for preliminary engineering services. In many transit programs, including bus service, Federal funds are used by local grant recipients to operate systems that duplicate and compete with the private sector.

Mr. Chairman, we are saddened to say that despite the recommendations from the 3 White House Conferences, the Clinton Administration is enhancing government competition, not eliminating it.

The current method for studying conversion of activities from in-house to contractor performance is OMB Circular A-76. In 1983, more than 300 A-76 reviews were conducted by the Department of Defense. In 1995, there were none.

Also, the Administration has revised the implementation of A-76. The old Circular required an agency to study an activity and justify it for continued in-house performance before it could provide a service to another government agency. It said:

> If, by September 30, 1987, the activity has not been justified for continued in-house performance, user agencies shall obtain the required services directly from a commercial source.

Even this provision did not eliminate agency performance of work for other Federal agencies, however, this protection was in place and could be used by the private sector to police abuses by agencies. Rather than strengthening that requirement, which was designed to be one of the fundamental protections for small business from unfair government competition, OMB has hoisted a white flag and adopted a new policy that condones what are now called Interservice Support Agreements, or ISSA's.

The new policy says:

> Effective October 1, 1997, the cost comparison requirements of this Supplemental handbook will not apply to existing or renewed ISSAs or to the consolidation of commercial or other services within a Department or agency.

The private sector generally, and the small business community in particular, have no place to go in the Federal Government to seek relief. There is no office and no agency with the mission or eliminating unfair competition. There is virtually no law, and no enforcement of current policy, that protects small business.

In these times of limited Federal resources, reinventing government, and a desire to balance the budget, we believe every Federal activity should be forced to undergo a two-pronged test -- 1) Is it imperative that the government get involved in this activity? If the answer is no, the government should stay out. If the answer is yes, the second test should be: 2) is it imperative that this activity be performed by government employees?

What can this Committee do to remedy this serious problem? We would recommend the following:

o Enact legislation that imposes strict limitations on agencies' ability to pursue business with other Federal agencies and with State and local government. This is exactly what the Senate voted to do last year with the adoption of Senator Thomas' amendment to the Treasury Appropriations bill.

o Enact legislation that imposes strict limitations on agencies' ability to contract with non-profit organizations. We are deeply concerned that President Clinton issued an Executive Order on "Empowerment Contracting" that puts non-profits on an equal footing with for profit firms in contracting. Because of their tax status, this is not in reality an equal footing, but a distinct advantage.

o Enact legislation that prohibits Federal agencies from launching new commercial ventures or expanding existing commercial ventures. Although this is current Federal policy by an Executive Order issued by President Reagan, and by A-76, it is not enforced.

o Enact S. 314, the Freedom from Government Competition Act, introduced by Senator Thomas. This bill, based on similar legislation considered in the Senate in 1955, would finally put statutory teeth into the 40 year policy of reliance on the private sector.

It is clear, Mr. Chairman, that administrative solutions to this problem do not work. Legislation is necessary.

We look forward to working with you to enact reforms to protect small business from unfair government competition in this Congress.

STATEMENT
on
S. 314, THE FREEDOM FROM GOVERNMENT COMPETITION ACT
before the
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING AND THE DISTRICT OF COLUMBIA
of the
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
by
R. Bruce Josten
June 18, 1997

My name is R. Bruce Josten. I am Senior Vice President of Membership and Policy at the U.S. Chamber of Commerce. The U.S. Chamber of Commerce is a business federation representing an underlying membership of more than three million businesses and organizations of every size, sector, and region. We appreciate the opportunity to lend our enthusiastic support for S. 314, *The Freedom From Government Competition Act* (FFGCA). Mr. Chairman, we request that these remarks be included in the record of testimony for the June 18, 1997 hearing *The Freedom From Government Competition Act*.

The Chamber believes that because of Senator Thomas's careful redrafting, this year's version of the *Freedom From Government Competition Act* is more practical than previous versions. The Chamber believes earlier objections have been addressed and this bill should be given serious consideration. The bill's implementation provisions strike a balance between private and public sector interests and outsourcing decisions are based upon statutory requirements for managed competition.

This bill accomplishes three very important objectives: (1) it reduces the size of the federal government bureaucracy by limiting it to performing its core mission functions, (2) it saves

billions of federal budget dollars without reducing services, and (3) it prohibits government competition with the private sector.

LESS BUREAUCRACY

The FFGCA establishes a consistent government policy that relies upon the private sector to provide goods and services necessary for the operation and management of federal agencies and departments. The exceptions to this policy are for goods or services that are (1) inherently governmental, (2) those that are necessary for national security, or (3) those so unique or of such a nature that they must be performed by the government. The bill also requires activity-based cost comparisons between public and private entities and exempts goods and services performed by the government if the production or manufacture by a government source represents the best overall value. The very nature of this bill will reduce the size of the federal bureaucracy and improves government performance.

A 1987 study from the Congressional Budget Office (CBO) estimated that 1.4 million federal workers are engaged in "commercial activity." Similarly, the Office of Management and Budget (OMB) estimated that 800,000 federal workers could be working in the private sector rather than in the public sector if many of these activities were outsourced.

Claims of massive unemployment of federal workers as a result of privatization have been historically disproven. The most comprehensive evaluation of the effect of privatization on government workers was conducted in 1989 by the National Commission of Employment Policy (NCEP), a research arm of the Department of Labor. The study, entitled "The Long-Term Employment Implications of Privatization," examined 34 privatized city and county services in a variety of jurisdictions around the country. The study found that of the 2,213 government

workers affected over a five-year period by the privatizations, only 7 percent were laid off. Over half of the workers (58 percent) went to work for the private contractor; 24 percent of the workers were transferred to other government jobs; and 7 percent of workers retired.

These findings are similar to those of other studies examining job displacement from privatization. A 1985 General Accounting Office (GAO) study found that of the 9,650 defense employees affected by contracting out, 94 percent were placed in other government jobs or retired voluntarily from their positions. Of the 6 percent of displaced employees, half obtained jobs with the private contractor.

COST SAVINGS

Outsourcing by the private sector has proven to be successful. On average, the private sector records savings between 10-30% when it outsources commercial activities. Data illustrates similar savings potential within the Federal government. In fact, the Office of Management and Budget, the Grace Commission and the President's Council on Management Improvement all indicate that current government service contracting is already saving the American taxpayer $3-5 billion annually, with the potential savings of $15 billion, or more, per year.

1. Conservative Extrapolation of OMB Numbers Reveals S. 314 Saves Approximately $10.4 Billion

A 1987 report by the Office of Management and Budget (OMB) estimated that approximately forty percent of the two million full time employee (FTE) positions in the government could be candidates for outsourcing or reengineering. OMB estimated savings of $9,700 per FTE when studied, regardless if the function was reengineered and remained in-house or was outsourced.

Assuming a conservative 3.0% average annual inflation rate over the past ten years, a simple annual compounding of the $9,700 figure would yield a 1997 inflation adjusted figure of $13,035.99 for FTE savings. If we round the 1997 figure to $13,000 and apply it to the 800,000 FTE's identified by OMB, approximately $10.4 billion of savings would accrue from the implementation of this legislation. Even with the recent government downsizing, the OMB's 800,000 FTE figure is a conservative benchmark since the latest data from the 1996 Defense Science Board (DSB) Report identified 640,000 FTE's for outsourcing within the Department of Defense (DoD) alone.

2. The Defense Science Board Estimates $24-32 Billion of Savings in DoD Alone

Looking at only DoD, billions of dollars could be saved. A 1996 report by the DSB identified 640,000 DoD workers whose jobs have private sector equivalents. DoD spends between $120-160 billion annually on these support functions. The DSB estimated $12-16 billion in savings annually if a 20% rate (the midpoint derived from the 10-30% private sector savings from outsourcing) were applied to <u>just half</u> of the Department's $120-160 billion in support expenditures (i.e. $60-80 billion). Using the same assumptions, the savings would be between $24-32 billion annually if applied to all of the support services at DoD. At a minimum, applying a 10% figure to only half of the $120-160 billion in annual support expenditures, the DoD would realize savings between $3-8 billion annually. Even the minimal savings are comparable to annual budgets for the Environmental Protection Agency ($7.1 billion) and the Department of Commerce ($4.3 billion).

3. Historical Data from the A-76 Proves that Outsourcing Saves 30%

Opponents of privatization claim that the savings from privatization are inflated. Historical data, however, disproves their assertion. For instance, the data from the implementation of the OMB's Circular A-76 indicates that when public-private competitions are conducted, savings from the original in-house government cost are approximately 30%. The OMB found that 40% of competitions resulted in the government retaining the work in-house. A 20% savings resulted when the government won the A-76 competition. A 35% savings was achieved when the private sector won the competition.

In 1987, OMB reported that the federal government spent more than $21 billion on commercial services, such as automated data processing, aircraft repair, and food preparation. Based upon the limited number of A-76 competitions performed between 1981 and 1986, OMB reported $2.8 billion in cumulative savings and annual savings for the federal agencies of $696 million. The $2.8 billion in savings represents approximately 13% of the total $21 billion spent on commercial services in 1987. The $696 million in annual savings was derived from A-76 studies conducted on approximately 72,000 positions. The savings were achieved by studying only 9% of the 800,000 FTE positions targeted by the agency for review under A-76.

Opponents of privatization may criticize the data from the A-76 studies, however, most of the problems have been attributed to an agency's inability to collect or analyze cost information. Recent testimony by the GAO cited improper contract administration, including poorly worded performance work statements, as reasons leading to unnecessary cost escalations. Improper contract management negatively impacts the cost savings achieved via outsourcing.

It should also be noted that while the data from the A-76 studies is helpful as background for cost savings, the U.S. Chamber disagrees with individuals who contend that *The Freedom From Government Competition Act* is not needed because A-76 achieves the same purpose. The Freedom From Government Competition Act is better than A-76 for at least two reasons: (1) The FFGCA is mandatory for agencies, while A-76 is voluntary and (2) the FFGCA requires the use of generally accepted accounting principles that force agencies to perform cost competitions based upon the same costs that the private sector has to account for. A-76 has no such requirement, thus tilting the playing field and skewing the results.

STOP UNFAIR GOVERNMENT COMPETITION

The FFGCA also prevents the proliferation of the widespread abuse of unfair government competition with the private sector by precluding federal offices from starting or carrying on new activities if those products or services can be provided by commercial sources.

The Act precludes the contracting of agency functions to other government entities. A recent example of this unfair government competition involves the renewal of an information technology contract between a private sector firm and the Federal Aviation Administration (FAA). The new contract was not awarded to another private sector firm, but to a public sector bidder--the Department of Agriculture (USDA). Interestingly, the cost information from the USDA for this contract has not been revealed and the USDA is under investigation by GAO for poor internal information technology management. The private sector questions why an agency can bid on contracts that are unrelated to its core mission especially when it does not have to consider cost and past performance.

Because of the prevalence of unfair competition, all three sessions of the White House Conference on Small Business (1980, 1986, and 1994) have identified unfair government competition as one of the top issues impacting small business. The commercial activities of the federal government that are in direct competition with the private sector run from the mundane to very hi-tech. Some of the industry examples where government competition is occurring include: training and education, office supply sales, laboratory testing and analysis, motels, campgrounds, janitorial services, landscaping, flag making, furniture making, architecture-engineering, helicopter and fixed-wing aircraft operation, campgrounds, audio/visual services, golf courses, laundry services, printing, data processing, motor pool and vehicle maintenance, food preparation and serving, real estate appraisals, bill collection, photo processing and warehousing. The list of examples of government competition with private firms goes on.

IMPROVEMENTS IN THIS VERSION

This year's version of the Freedom From Government Competition Act is practical and adequately addresses previous concerns. The major changes include the following: (1) The creation of a Center for Commercial Activities under OMB; (2) The addition of managed competition through "best value" language; and (3) The inclusion of the outsourcing reporting requirements under the Government Performance and Results Act (GPRA).

The creation of the Center for Commercial Activities was an important addition to this year's legislation because it provides information to agencies and the private sector entities and facilitates conversions from the federal government to the private sector. The addition of managed competition language removes objections by federal employees who wanted an opportunity to compete for work currently performed by the public sector designated as

"commercial," rather than automatically giving the work to the private sector. The inclusion of agency reporting requirements under GPRA is a critical mechanism for Congressional oversight of the conversion process.

Mr. Chairman, on behalf of the U.S. Chamber of Commerce and its underlying membership of more than three million businesses of every size and sector, I urge the Committee's favorable consideration of this important legislation that will reduce the size of our government's bureaucracy and save American taxpayers billions of dollars annually. I thank you for allowing us to submit these comments on this very important budget and small business issue.

ACIL

June 18, 1997

The Honorable Sam Brownback
Chairman
Oversight of Government Management, Restructuring,
and the District of Columbia Subcommittee
U.S. Senate
Washington, DC 20510

Dear Mr. Chairman:

We request this letter be submitted for the record of testimony in conjunction with the June 18, 1997 hearing on S. 314, "The Freedom from Government Competition Act."

ACIL is a leading national trade association representing the commercial laboratory industry. Our members provide scientific and engineering testing services for construction materials, pharmaceuticals, food, product safety, and the environment. The vast majority of testing laboratories (approximately 80%) are small businesses with annual revenues of $5 million or less.

ACIL supports the rededication of the federal laboratories to Research and Development (R&D) that the private sector is either unwilling or incapable of providing. These facilities, in particular the Defense and Energy laboratories, have unique capabilities that further the technology, economy, and national security of the United States. ACIL supports Congressional efforts to preserve these laboratories unique capabilities.

However, federal laboratories are also performing non-R&D work that duplicates existing commercial laboratory capabilities. Often, this government-subsidized capacity is used to compete against commercial laboratories for government and private sector clients. Federal laboratory competition with the private sector is an inappropriate and inefficient use of these unique R&D facilities.

Commercial testing is a professional service. It covers the testing of water, food, and soil for hazardous constituents as well as materials and mechanical hardware to ensure conformity to specifications. This testing is conducted to well-established commercial and/or government standards. These testing services are strictly commercial activities and do not involve R&D work. When the Federal laboratories engage in commercial services, they are pulling valuable assets from core R&D projects.

Federal laboratory competition with the private sector is not conducted on a level playing field. Federal facilities are free from the same costs of doing business as their commercial counterparts. Government funding heavily subsidizes their commercial operations and assets. Data from the U.S. General Accounting Office and the DOE Inspector General show that when federal laboratories perform commercial analytical

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services, they are twice as costly as private sector laboratories.

Preservation of a national laboratory infrastructure has been cited as justification for these subsidies and continued competition with the private sector. However, it is poor public policy to utilize equipment and personnel paid for by the taxpayer to compete directly with taxpaying companies.

Instead, ACIL believes the national laboratory infrastructure should be preserved through a combination of privatization, commercialization, and outsourcing. We define privatization as the outright transfer of an enterprise or asset to the private sector. Commercialization is a hybrid form of privatization. Public facilities, or a portion thereof, would be opened up to private sector investment and management. The goal would be to reduce overall infrastructure cost by allowing the private sector to generate revenue from the marketing of these assets to a broader constituency. Outsourcing is defined as retaining a private sector firm to perform services on your behalf through a contracting relationship.

The eventual savings from outsourcing and privatizing commercial analytical services can be directed, if Congress so desires, to core R&D needs. Furthermore, the private sector, working in conjunction with the government laboratories, can commercialize a number of assets. These assets can be marketed to a larger community, thus increasing utilization rates and reducing facility overhead. Jobs, both private and public, will be preserved.

The Federal laboratories have up to 35% overcapacity. Given current budgetary pressures and priorities, it is difficult to continue supporting such overhead costs. Since these facilities are captive providers, they are unable to fully utilize their assets, and thereby reduce overhead rates by spreading costs over greater market share.

Past attempts to address this overcapacity have been unsuccessful. These experiments included technology transfer, providing commercial services, and trying to establish new missions for each of these facilities. Privatization and commercialization of Federal testing laboratory assets and functions are the only viable alternatives.

Privatization and commercialization of Federal laboratory assets would require cooperation between the government and the private sector. This is very different from previous attempts when the government tried to identify and create new markets for these assets without a knowledge or experience of the commercial marketplace.

There are many advantages for allowing private sector partnership and investment. From a budgetary standpoint, a significant portion of capital costs -- infrastructure, maintenance, and improvement costs -- could be shifted to the private sector. The equipment utilization rates will increase as the private sector finds markets for excess testing capacity, or adjusts capacity (both public and private) to meet true market demand.

The other advantage resulting from privatization and commercialization is its positive impacts on the local community. With privatization and commercialization, there will be some opportunities for the transfer of Federal employees to the private sector employers, as opposed to being downsized out of existence. In addition, because of savings through privatization, more scientific and engineering resources could be devoted to R&D functions.

In addition, the private sector would be investing in the local communities, not taking away from them. The infrastructure is already in place at the federal laboratory sites. It would be cost efficient to locate private sector operations at these sites to support commercialization and privatization activities.

ACIL supports S. 314, "The Freedom from Government Competition Act," because it would achieve two very important objectives. The bill sets an overarching federal policy that allows best value approach to outsourcing and privatization. It will also curb agencies from utilizing their excess capacity to compete against the private sector.

S. 314 will not hamper the government's ability to perform key functions for public health and safety, nor does it stop the government from performing basic science and high technology functions that further our nation's economic competitiveness. S. 314 will also result in more funding for core agency missions, including infrastructure and transportation projects, environmental protection, social programs, military readiness, and education.

Most important, S. 314 will set the stage for more public/private cooperation. Only through public/private cooperation can we find a reasonable and cost-effective solution to preserve Federal laboratory assets and covert unfair government competition practices to constructive purposes that will benefit our national welfare.

Thank you for allowing us to submit these comments.

Sincerely,

Tony Pagliaro
Director, Government Relations

CONTRACT SERVICES ASSOCIATION OF AMERICA
1200 G STREET, N.W. SUITE 750 WASHINGTON, D.C. 20005
Ph: (202) 347-0600 Fax: (202) 347-0608

Putting the private sector to work...
for the public good.

18 June 1997

The Hon. Sam Brownback, Chairman
Subcommittee on Oversight of Government Management,
Restructuring and the District of Columbia
601 Hart Senate Office Bldg.
Washington, DC 205 1 0

Dear Chairman Brownback:

On behalf of the Contract Services Association's 240 member companies and their hundreds of thousands of employees, I am writing today to commend you for this important hearing on the "Freedom From Government Competition Act of 1997" and to express our strong support for the legislation. I would also ask that this letter be included in the record of today's hearing.

As you may know, CSA is the nation's oldest and largest association of government service contractors and has long been an outspoken advocate of rational, common-sense management of government activities. We believe the FFGCA can go a long way in moving the government toward that goal.

By requiring federal agencies to aggressively--and objectively--identify their commercial activities and outsource those commercial activities for which private sector performance offers the government the best value, the FFGCA simply puts into statute a federal policy of some 40 years. That policy, developed during the Eisenhower Administration, simply states that the government should procure its commercial products and services from the private sector, wherever possible. Unfortunately, outside of the Department of Defense, this policy has been applied only to a minimal degree. Moreover, the legislation will, once and for all, overcome those many obstacles to rational management and outsourcing that have, over the years, been erected by opponents of outsourcing. These obstacles, many of which are designed to protect narrow special interests, serve only to make it even more difficult for agencies to make the kinds of important and thoughtful management decisions that the times demand.

As well, the FFGCA is certain to produce real and significant budgetary savings for the government. We have a long history of outsourcing commercial services and that history has taught us clearly that outsourcing saves an average of 20%-30% per contract. Moreover, when once considers that there are some 750,000 or more federal employees performing what are essentially commercial activities, and that the record shows that the government saves an average of nearly $10,000 per position converted, it is clear that we can achieve savings of billions of dollars a year.

Senator Brownback
Page 2

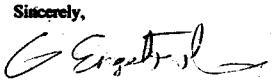
Finally, this legislation is important because it approaches the issue of outsourcing in a fair manner. It makes clear that outsourcing is not to be an arbitrary process but, rather, that appropriate processes must be put in place in order to ascertain the best value sourcing of the work for the government.

In addition, the legislation clearly recognizes that there is a quality, hard-working government workforce which could be effected by decisions to convert work to private sector performance. As such, OMB is directed to create 'soft landing' and other policies which will help the effected workforce with the full range of transition related issues. Of course, it is important to keep in mind that, today, large percentages of government workers whose positions are converted to contract, 'follow the work" and accept positions with the contractor involved. This is a 'win-win" for all. For the worker, it offers an opportunity to move into the private sector where opportunities for growth are generally greater than within the government. And for the contractor, it offers access to a trained workforce that brings institutional memory and working knowledge of the functions involved. There is every reason to believe that this dynamic will continue.

Mr. Chairman, the members of CSA strongly urge passage of the Freedom from Government Competition Act of 1997. In this era of tight budgets and of reinventing and re-engineering both corporate America and the government, the legislation offers an essential link from the art of the possible to reality. We hope that you and the Committee will take all due action to see that it moves quickly through the legislative process.

My thanks for your time and consideration. If you have any questions or need more information, please do not hesitate to call me.

Sincerely,



Gary D. Engebretson
President

STATEMENT OF SENATOR JOSEPH I. LIEBERMAN
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING AND THE DISTRICT OF COLUMBIA
JUNE 18, 1997, 9:00 A.M.

Thank you Mr. Chairman. I know we have a large number of witnesses to hear from, so I'll be brief. The bill we are going to be discussing today addresses an issue I have been interested in for a long time: the extent to which we can make the federal government do its job more efficiently and in a more cost effective manner. It is an issue the Clinton Administration, and particularly Vice-President Gore, have worked long and hard on, most prominently through Vice-President Gore's National Performance Review, and through the National Performance Review, the Administration has made significant advances in this area.

Today, we will be hearing about one particular area of improving government efficiency -- that is, the extent to which the government should rely on the private sector to provide goods and services. I think it would be hard not to be open to the idea of having the private sector do some of the work the government now does, if the private sector can do it more cheaply and efficiently than the government now does it. I must say, however, that I have questions whether this proposal is the best way of going about achieving this, and I have concerns that the proposal may go much farther than is necessary to achieve these laudable goals. Just as I think we

all can agree that the private sector sometimes can get a job done most efficiently and cost-effectively, I think we also *must* agree that it sometimes is *the government* that can do a job most efficiently and cost-effectively. I am concerned that, by requiring a preference for the private sector in virtually all cases, this bill would have the unintended effect of actually introducing new inefficiencies and costs into the system.

I think we also need to be concerned about this bill's potential for creating a slew of new litigation. Like other Members here today, I am working hard in other contexts to reign in a litigation system that has gone wild. I would hate to see us pass a bill that, in effect, would subject every government decision to outsource or not to outsource to a challenge in court. That, in and of itself, not only would introduce tremendous new costs to the system; it also have the unfortunate effect of casting great uncertainty over government contracts and jobs.

Finally, I am concerned about this bill's impact on the National Performance Review. As I mentioned earlier, I think the Administration has made great improvement in the way our government operates over the past few years, and I fear that some provisions of this bill would be at odds with those advances.

Let me just conclude by emphasizing that although I have concerns about the bill, I share many of its sponsors' goals. I look forward to hearing the views of our witnesses today on whether this bill or some other proposal would help us make government work better and more efficiently.

II

105TH CONGRESS
1ST SESSION

S. 314

To require that the Federal Government procure from the private sector the goods and services necessary for the operations and management of certain Government agencies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 1997

Mr. THOMAS (for himself, Mr. HAGEL, Mr. KYL, Mr. ENZI, Mr. BROWNBACK, and Mr. CRAIG) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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A BILL

To require that the Federal Government procure from the private sector the goods and services necessary for the operations and management of certain Government agencies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Freedom From Government Competition Act of 1997".

SEC. 2. FINDINGS.

Congress finds and declares that—

1 (1) private sector business concerns, which are
2 free to respond to the private or public demands of
3 the marketplace, constitute the strength of the
4 American economic system;
5 (2) competitive private sector enterprises are
6 the most productive, efficient, and effective sources
7 of goods and services;
8 (3) government competition with the private
9 sector of the economy is detrimental to all busi-
10 nesses and the American economic system;
11 (4) government competition with the private
12 sector of the economy is at an unacceptably high
13 level, both in scope and in dollar volume;
14 (5) when a government engages in entre-
15 preneurial activities that are beyond its core mission
16 and compete with the private sector—
17 (A) the focus and attention of the govern-
18 ment are diverted from executing the basic mis-
19 sion and work of that government; and
20 (B) those activities constitute unfair gov-
21 ernment competition with the private sector;
22 (6) current laws and policies have failed to ad-
23 dress adequately the problem of government com-
24 petition with the private sector of the economy;

1 (7) the level of government competition with the
2 private sector, especially with small businesses, has
3 been a priority issue of each White House Con-
4 ference on Small Business;
5 (8) reliance on the private sector is consistent
6 with the goals of the Government Performance and
7 Results Act of 1993 (Public Law 103–62);
8 (9) reliance on the private sector is necessary
9 and desirable for proper implementation of the Fed-
10 eral Workforce Restructuring Act of 1994 (Public
11 Law 103–226);
12 (10) it is in the public interest that the Federal
13 Government establish a consistent policy to rely on
14 the private sector of the economy to provide goods
15 and services that are necessary for or beneficial to
16 the operation and management of Federal Govern-
17 ment agencies and to avoid Federal Government
18 competition with the private sector of the economy;
19 and
20 (11) it is in the public interest for the private
21 sector to utilize employees who are adversely af-
22 fected by conversions to use of private sector entities
23 for providing goods and services on behalf of the
24 Federal Government.

1 **SEC. 3. RELIANCE ON THE PRIVATE SECTOR.**

2 (a) GENERAL POLICY.—Notwithstanding any other
3 provision of law, except as provided in subsection (c), each
4 agency shall procure from sources in the private sector all
5 goods and services that are necessary for or beneficial to
6 the accomplishment of authorized functions of the agency.

7 (b) PROHIBITIONS REGARDING TRANSACTIONS IN
8 GOODS AND SERVICES.—

9 (1) PROVISION BY GOVERNMENT GEN-
10 ERALLY.—No agency may begin or carry out any ac-
11 tivity to provide any products or services that can be
12 provided by the private sector.

13 (2) TRANSACTIONS BETWEEN GOVERNMENTAL
14 ENTITIES.—No agency may obtain any goods or
15 services from or provide any goods or services to any
16 other governmental entity.

17 (c) EXCEPTIONS.—Subsections (a) and (b) do not
18 apply to goods or services necessary for or beneficial to
19 the accomplishment of authorized functions of an agency
20 under the following conditions:

21 (1) Either—

22 (A) the goods or services are inherently
23 governmental in nature within the meaning of
24 section 6(b); or

25 (B) the Director of the Office of Manage-
26 ment and Budget determines that the provision

of the goods or services is otherwise an inherently governmental function.

(2) The head of the agency determines that the goods or services should be produced, provided, or manufactured by the Federal Government for reasons of national security.

(3) The Federal Government is determined to be the best value source of the goods or services in accordance with regulations prescribed pursuant to section 4(a)(2)(C).

(4) The private sector sources of the goods or services, or the practices of such sources, are not adequate to satisfy the agency's requirements.

SEC. 4. ADMINISTRATIVE PROVISIONS.

(a) REGULATIONS.—

(1) OMB RESPONSIBILITY.—The Director of the Office of Management and Budget shall prescribe regulations to carry out this Act.

(2) CONTENT.—

(A) PRIVATE SECTOR PREFERENCE.—Consistent with the policy and prohibitions set forth in section 3, the regulations shall emphasize a preference for the provision of goods and services by private sector sources.

1 (B) FAIRNESS FOR FEDERAL EMPLOY-
2 EES..—In order to ensure the fair treatment of
3 Federal Government employees, the regula-
4 tions—
5 (i) shall not contravene any law or
6 regulation regarding Federal Government
7 employees; and
8 (ii) shall provide for the Director of
9 the Office of Management and Budget, in
10 consultation with the Director of the Office
11 of Personnel Management, to furnish in-
12 formation on relevant available benefits
13 and assistance to Federal Government em-
14 ployees adversely affected by conversions to
15 use of private sector entities for providing
16 goods and services.
17 (C) BEST VALUE SOURCES.—
18 (i) STANDARDS AND PROCEDURES.—
19 The regulations shall include standards
20 and procedures for determining whether it
21 is a private sector source or an agency that
22 provides certain goods or services for the
23 best value.

1 (ii) FACTORS CONSIDERED.—The
2 standards and procedures shall include re-
3 quirements for consideration of analyses of
4 all direct and indirect costs (performed in
5 a manner consistent with generally accept-
6 ed cost-accounting principles), the quali-
7 fications of sources, the past performance
8 of sources, and any other technical and
9 noncost factors that are relevant.
10 (iii) CONSULTATION REQUIREMENT.—
11 The Director shall consult with persons
12 from the private sector and persons from
13 the public sector in developing the stand-
14 ards and procedures.
15 (D) APPROPRIATE GOVERNMENTAL ACTIVI-
16 TIES.—The regulations shall include a meth-
17 odology for determining what types of activities
18 performed by an agency should continue to be
19 performed by the agency or any other agency.
20 (b) COMPLIANCE AND IMPLEMENTATION ASSIST-
21 ANCE.—
22 (1) OMB CENTER FOR COMMERCIAL ACTIVI-
23 TIES.—The Director of the Office of Management
24 and Budget shall establish a Center for Commercial

1 Activities within the Office of Management and
2 Budget.
3 (2) RESPONSIBILITIES.—The Center—
4 (A) shall be responsible for the implemen-
5 tation of and compliance with the policies,
6 standards, and procedures that are set forth in
7 this Act or are prescribed to carry out this Act;
8 and
9 (B) shall provide agencies and private sec-
10 tor entities with guidance, information, and
11 other assistance appropriate for facilitating con-
12 versions to use of private sector entities for pro-
13 viding goods and services on behalf of the Fed-
14 eral Government.

15 **SEC. 5. STUDY AND REPORT ON COMMERCIAL ACTIVITIES**
16 **OF THE GOVERNMENT.**

17 (a) ANNUAL PERFORMANCE PLAN.—Section 1115(a)
18 of title 31, United States Code, is amended—
19 (1) by striking "and" at the end of paragraph
20 (5);
21 (2) by striking the period at the end of para-
22 graph (6) and inserting "; and"; and
23 (3) by adding at the end the following:
24 "(7) include—

1 "(A) the identity of each program activity
2 that is performed for the agency by a private
3 sector entity in accordance with the Freedom
4 From Government Competition Act of 1997;
5 and
6 "(B) the identity of each program activity
7 that is not subject to the Freedom From Gov-
8 ernment Competition Act of 1997 by reason of
9 an exception set forth in that Act, together with
10 a discussion specifying why the activity is deter-
11 mined to be covered by the exception.".
12 (b) ANNUAL PERFORMANCE REPORT.—Section
13 1116(d)(3) of title 31, United States Code, is amended—
14 (1) by striking "explain and describe," in the
15 matter preceding subparagraph (A);
16 (2) in subparagraph (A), by inserting "explain
17 and describe" after "(A)";
18 (3) in subparagraph (B)—
19 (A) by inserting "explain and describe"
20 after "(B)"; and
21 (B) by striking "and" at the end;
22 (4) in subparagraph (C)—
23 (A) by inserting "explain and describe"
24 after "infeasible,"; and
25 (B) by inserting "and" at the end; and

1 (5) by adding at the end the following:

2 "(D) in the case of an activity not performed

3 by a private sector entity—

4 "(i) explain and describe whether the activ-

5 ity could be performed for the Federal Govern-

6 ment by a private sector entity in accordance

7 with the Freedom From Government Competi-

8 tion Act of 1997; and

9 "(ii) if the activity could be performed by

10 a private sector entity, set forth a schedule for

11 converting to performance of the activity by a

12 private sector entity;".

13 **SEC. 6. DEFINITIONS.**

14 (a) AGENCY.—As used in this Act, the term "agency"

15 means the following:

16 (1) EXECUTIVE DEPARTMENT.—An executive

17 department as defined by section 101 of title 5,

18 United States Code.

19 (2) MILITARY DEPARTMENT.—A military de-

20 partment as defined by section 102 of such title.

21 (3) INDEPENDENT ESTABLISHMENT.—An inde-

22 pendent establishment as defined by section 104(1)

23 of such title.

24 (b) INHERENTLY GOVERNMENTAL GOODS AND

25 SERVICES.—

1 (1) PERFORMANCE OF INHERENTLY GOVERN-
2 MENTAL FUNCTIONS.—For the purposes of section
3 3(c)(1)(A), goods or services are inherently govern-
4 mental in nature if the providing of such goods or
5 services is an inherently governmental function.
6 (2) INHERENTLY GOVERNMENTAL FUNCTIONS
7 DESCRIBED.—
8 (A) FUNCTIONS INCLUDED.—For the pur-
9 poses of paragraph (1), a function shall be con-
10 sidered an inherently governmental function if
11 the function is so intimately related to the pub-
12 lic interest as to mandate performance by Fed-
13 eral Government employees. Such functions in-
14 clude activities that require either the exercise
15 of discretion in applying Federal Government
16 authority or the making of value judgments in
17 making decisions for the Federal Government,
18 including judgments relating to monetary trans-
19 actions and entitlements. An inherently govern-
20 mental function involves, among other things,
21 the interpretation and execution of the laws of
22 the United States so as to—
23 (i) bind the United States to take or
24 not to take some action by contract, policy,

1 regulation, authorization, order, or other-
2 wise;
3 (ii) determine, protect, and advance
4 its economic, political, territorial, property,
5 or other interests by military or diplomatic
6 action, civil or criminal judicial proceed-
7 ings, contract management, or otherwise;
8 (iii) significantly affect the life, lib-
9 erty, or property of private persons;
10 (iv) commission, appoint, direct, or
11 control officers or employees of the United
12 States; or
13 (v) exert ultimate control over the ac-
14 quisition, use, or disposition of the prop-
15 erty, real or personal, tangible or intangi-
16 ble, of the United States, including the
17 control or disbursement of appropriated
18 and other Federal funds.
19 (B) FUNCTIONS EXCLUDED.—For the pur-
20 poses of paragraph (1), inherently governmental
21 functions do not normally include—
22 (i) gathering information for or pro-
23 viding advice, opinions, recommendations,
24 or ideas to Federal Government officials;

1 (ii) any function that is primarily
2 ministerial or internal in nature (such as
3 building security, mail operations, oper-
4 ation of cafeterias, laundry and house-
5 keeping, facilities operations and mainte-
6 nance, warehouse operations, motor vehicle
7 fleet management and operations, or other
8 routine electrical or mechanical services);
9 or
10 (iii) any good or service which is cur-
11 rently or could reasonably be produced or
12 performed, respectively, by an entity in the
13 private sector.

o