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BALANCING ACT: EFFORTS TO RIGHT-SIZE THE FEDERAL EMPLOYER-TO-CONTRACTOR MIX

HEARING

BEFORE THE

OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

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CONTENTS

Opening statements: Page
Senator Akaka 1
Senator Voinovich 2

WITNESSES

THURSDAY, MAY 20, 2010

Hon. Daniel I. Gordon, Administrator, Office of Federal Procurement Policy, Office of Management and Budget 5
Jeffrey R. Neal, Chief Human Capital Officer, U.S. Department of Homeland Security 6
Charles D. Grimes III, Deputy Associate Director, Employee Services, U.S. Office of Personnel Management 8
John K. Needham, Director, Acquisition and Sourcing Management, U.S. Government Accountability Office 10
Mark Whetstone, President, National Citizenship and Immigration Services Council, American Federation of Governnment Employees, AFL-CIO 24
Alan Chvotkin, Executive Vice President and Counsel, Professional Services Council 25
Maureen Gilman, Legislative Director, National Treasury Employees Union ... 28

ALPHABETICAL LIST OF WITNESSES

Chvotkin, Alan:
Testimony 25
Prepared statement 103
Gilman, Maureen:
Testimony 28
Prepared statement of Colleen M. Kelley 112
Gordon, Hon. Daniel I.:
Testimony 5
Prepared statement 37
Grimes, Charles D. III:
Testimony 8
Prepared statement 52
Neal, Jeffrey R.:
Testimony 6
Prepared statement 47
Needham, John K.:
Testimony 10
Prepared statement 56
Whetstone, Mark:
Testimony 24
Prepared statement with attachments 71

APPENDIX

Background 120
Questions and responses for the Record from:
Mr. Gordon 127
Mr. Neal 136
Mr. Grimes 147

ph44585 on D330-44585-7600 with DISTILLER
VerDate Nov 24 2008 10:44 Oct 14, 2010 Jkt 057942 PO 00000 Frm 00003 Fmt 5904 Sfmt 5904 P:\DOCS\57942.TXT SAFFAIRS PsN: PAT

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BALANCING ACT: EFFORTS TO RIGHT-SIZE THE FEDERAL EMPLOYER-TO-CONTRACTOR MIX

THURSDAY, MAY 20, 2010

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

The Subcommittee met, pursuant to notice, at 2:53 p.m., in room 342, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Subcommittee, presiding.

Present: Senators Akaka and Voinovich.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Good afternoon. This hearing of the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of the Columbia is called to order.

Aloha and welcome to all of you, especially to our distinguished panelists and guests. I would like to thank you all for joining us for this hearing on the efforts to rebalance the work performed by Federal employees and contractors.

The government's workforce has long been made up of both Federal employees and service contractors, working side by side to provide services to the American people. Over the past decade, outsourcing increased significantly and management and oversight challenges have emerged. Federal agencies have begun to rely so heavily on contractors that agencies have lost the expertise needed to accomplish important parts of their missions. This is particularly troubling when agencies also lack the skilled staff needed to properly manage their contracts and oversee the contractor workforce.

Without question, contractors do provide vital services and expertise to the government. After the attacks of September 11, contractors helped the Federal Government quickly ramp up homeland security operations and stand up the Department of Homeland Security (DHS). However, more than 7 years after DHS was created, the Department remains too heavily reliant on contractors to provide services that are critical to the Agency's mission.

I have long been concerned that contractors at DHS and elsewhere are performing inherently governmental functions, work that should be done by Federal employees. The Government Ac-

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countability Office (GAO) has told us that the closer contractors come to supporting inherently governmental functions, the greater the risk of influencing the government's decisionmaking process. However, the line between inherently governmental activities and commercial activities has been blurred.

Recently, the Obama Administration directed the Office of Federal Procurement Policy (OFPP) to reexamine the definition of an inherently governmental function and what jobs or functions should be brought back in-house. I look forward to hearing from OFPP today on this matter.

Rebalancing the Federal workforce will not simply be a job conversion process. This effort will take considerable workforce planning to determine what Federal positions should be created and what contracting functions eliminated.

One issue that we must also address in this right-sizing effort is to reform the Federal hiring process. The long and complicated hiring process across the Federal Government may encourage agencies to use contractors rather than hiring permanent staff.

Senator Voinovich and I have been pressing for Federal hiring reform with our Federal Hiring Process Improvement Act, and I am pleased that the Senate passed our bill Tuesday night.

The American people expect strong leadership from the Federal Government. We must make sure the Federal Government has the people it needs to perform critical functions and to properly oversee the important work done by contractors. We need to hire the right people with the right skills to perform the right jobs; that is a statement that is often made by my friend, Senator Voinovich.

I will work with the Administration to address any potential barriers that may hinder insourcing efforts. I commend DHS for its efforts to develop and implement workforce plans to right-size its contractor mix. This is a big challenge, but I think it will finally reduce the Department's over-reliance on contractors.

With that, I look forward to hearing from our witnesses today, and I would like to call on Senator Voinovich for his opening remarks.

Senator Voinovich.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Thank you, Senator Akaka.

I was remarking to Senator Akaka at noon today that I admire him so much for his continuing to have hearings just about every week dealing with the issue of human capital, which has been something that we have been talking about now, I think, for about 10 years, and its impact on the delivery of services in the Federal Government, and also in regard to working harder and smarter and doing more with less.

I would like to join today's chorus in voicing my support for the congressionally mandated work currently underway at the Office of Management and Budget (OMB) that seeks to clarify the guidelines agencies may use when considering how best to accomplish the tasks assigned to them. We must ensure that Federal agencies remain in control of their missions, and I am hopeful that OMB's work will move us closer to that goal.

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I am also pleased to see the Administration embracing strategic human capital management for the multi-sector workforce. I have long sought to encourage greater use of this tool by Federal agencies. But as demonstrated by strategic human capital management's appearance on each of GAO's high-risk lists issued since 2001, the Federal Government needs improvement in this area. I look forward to hearing from today's witnesses on how this track record can be improved, especially within the context of the multi-sector workforce.

As today's hearing will demonstrate, bipartisan agreement appears to exist on the objectives of workforce balancing efforts, but the devil will be in the details, particularly in how general guidance issued by OMB is translated into action by front-line contracting officers and hiring managers. I am glad that today's hearing will allow the Subcommittee to begin an examination of this issue.

I just met with the new head of the Chief Human Capital Officer (CHCO) Council who said that if she can get the participation of all of the chief human capital officers of the various agencies, that will go a long way toward accomplishing what OMB wants to get done.

As agencies progress in workforce balancing efforts, they will be confronted with a variety of challenges. Congress and the Executive Branch must assist agencies when necessary to overcome these challenges.

First of all, we have got to recognize and address the hiring challenges posed by workforce balancing efforts, and I think most of us agree that the last Administration went too far the other direction. It was interesting though, when the A–76 procedure was used to decide whether something should be outsourced, in about 85 percent of A–76 cases the workers for the government won.

And I said to myself on so many occasions that Federal employees were the most efficient organizations, but the fact was they were not given a chance to be the most efficient organization until they were challenged by the prospect of moving work outside of the agency. I thought it was too bad that they could not have been challenged and given the right to, as I call it, engage in quality management—for the group to get together on their own and say, we can do a better job in this agency. But in too many cases they had to wait for somebody on the outside to compete with them, and then you finally got to the Tiger team or whatever new work arrangement it was that came up.

The current Federal hiring process we know will not be up to the task of workforce balancing, although, as Senator Akaka said, we are very pleased that by unanimous consent, S. 736, the Federal Hiring Process Improvement Act, passed the Senate Tuesday night. We are hoping we can get it through the House, and that the legislation will reinforce the President's Executive Order.

Indeed, the Department of Homeland Security has already requested direct hire authority from OPM as part of its workforce balancing efforts. We must ensure that the goals we are asking agencies to achieve with respect to insourcing can be achieved using current hiring tools. If not, the Administration or Congress

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must supply agencies with sufficient flexibilities to get the job done.

If we fail in this responsibility, we will see a past trend repeated. Agencies will turn to existing hiring authorities, like the Federal Career Intern Program (FCIP), to hire the personnel necessary to achieve the tasks assigned them by Congress and the Administration. By providing flexibilities specifically designed for the unique requirements of insourcing critical functions, we can avoid such practices and the concern they cause for some stakeholders. I am hopeful that the Federal Hiring Process Improvement Act will help in this matter.

I also want to direct attention and discussion to the impact proposed OMB guidance on workforce balancing will have on the acquisition workforce. A host of new actions will likely be required of acquisition professionals as part of the workforce balancing efforts. These tasks will be necessary to prevent key functions from being improperly outsourced, but new actions will only increase the burdens placed on the Federal acquisition workforce. And we have had hearing after hearing on that issue.

I would remind those present today that our acquisition workforce grew only 11 percent while contract spending increased almost 60 percent between fiscal year 2002 and 2008. Increased responsibilities for the acquisition workforce must be accompanied by increased funding and support for this critical group of Federal employees.

Finally, we must ensure that workforce balancing efforts do not override longstanding government practices of securing noncritical, commercially-available services from the private sector unless the performance of such tasks by Federal employees is the most cost effective option. Such decisions must be based on full and complete cost comparisons between the Federal and private sectors, particularly under current budget restraints.

Striking the right balance between Federal employees and contractors is going to be a difficult task, but a critical one. I look forward to today's discussion and to working to ensure the success of this effort.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much, Senator Voinovich.

On our first panel, it is my pleasure to welcome Daniel Gordon who is Administrator of the Office of Federal Procurement Policy at OMB; Jeff Neal who is the Chief Human Capital Officer for the Department of Homeland Security, Chuck Grimes, the Deputy Associate Director for Employee Services at the Office of Personnel Management; and John Needham, Director of Acquisition and Sourcing Management at the Government Accountability Office.

It is the custom of the Subcommittee to swear in the witnesses, and I ask you to stand and raise your right hands.

Do you swear that the testimony you are about to give this Subcommittee is the truth, the whole truth and nothing but the truth, so help you, God?

Mr. GORDON. I do.

Mr. NEAL. I do.

Mr. GRIMES. I do.

Mr. NEEDHAM. I do.

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Senator AKAKA. Thank you. Let the record show that the witnesses answered in the affirmative.

I want our witnesses to know that although your remarks are limited to 5 minutes, your full statements will be included in the record.

Mr. Gordon, please proceed with your statement.

TESTIMONY OF HON. DANIEL I. GORDON,[1] ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY, OFFICE OF MANAGEMENT AND BUDGET

Mr. GORDON. Good afternoon, Chairman Akaka and Ranking Member Voinovich. I welcome the opportunity to appear before you today to discuss the Administration's efforts to rebalance the mix of work performed by Federal employees and contractors.

As you noted, Chairman Akaka, I have submitted a written statement, and I appreciate your entering that into the record. I will speak very briefly in this oral statement.

In my former position at GAO where I worked for 17 years, as well as in my 6 months at OMB, I have heard again and again about situations where the mix of work performed by our Federal employees and contractors has gotten out of balance, where agencies have contracted out functions that should be performed by Federal employees, where agencies have lost control of critical functions. I am, therefore, especially appreciative of the demonstrated commitment on the part of this Subcommittee's leadership to addressing this important issue in general and, in particular, in holding this hearing today.

As you know, the office that I head within OMB, the Office of Federal Procurement Policy, issued a draft policy letter in the *Federal Register* on March 31. We are now in the public comment period which closes at the end of this month. The draft provides guidance about three kinds of functions:

First, with respect to inherently governmental functions, the draft policy letter would remind agencies to adhere to the statutory definition of that term in the Federal Activities Inventory Reform (FAIR) Act. If you will, it is the law, and it must be followed. That definition says that a function is inherently governmental if it is so intimately related to the public interest as to require performance by Federal Government employees. But beyond reminding agencies that they have to follow the statutory definition, the draft policy letter provides guidance. It provides tools to help agencies apply that definition to specific situations.

Second, with respect to functions that are closely associated with inherently governmental ones, where we do use contractors to perform that work, the draft policy letter reminds agencies that they must give heightened management attention to guard against what is sometimes called mission creep—expansion of contractors' work into what would be inherently governmental functions.

Third, the draft policy letter would require that agencies have the internal capacity to maintain control of critical functions, a new category. Those are functions which, although they are not inher-

[1] The prepared statement of Mr. Gordon appears in the Appendix on page 37.

ph44585 on D330-44585-7600 with DISTILLER

ently governmental, are needed for the agency to effectively perform its mission and operations.

Those are the key points in the draft policy letter. We are getting comments. We are looking forward to the comments, and we are going to consider them, of course, carefully as we put the policy letter in final form.

We recognize that the road ahead of us will be challenging. In many ways, implementation will be far more difficult than writing the policy letter. We are asking the agencies to take a hard and honest look, to see where they are overly reliant on contractors and to promptly take steps to correct imbalances that they identify.

It is worth underscoring, and I know both the Chairman and the Ranking Member are very much appreciative of this. It is worth underscoring that this will be a joint effort of agency leadership and those handling human capital, finance, performance, and acquisition in the agencies.

I believe that we are now on the path to better use of the talents of both our Federal employees and the contractors who support us. We are already working with the agencies, including with OPM and DHS who you will be hearing from shortly on this panel, and we are committed to continuing that collaboration.

I also very much look forward to working with this Subcommittee and with other Members of Congress and our other stakeholders as we move forward together on this important initiative. I am happy to answer any questions that you have. Thank you for letting me appear here today.

Senator AKAKA. Thank you very much, Mr. Gordon, for your statement.

And now we will receive a statement from Mr. Neal.

TESTIMONY OF JEFFREY R. NEAL,[1] CHIEF HUMAN CAPITAL OFFICER, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. NEAL. Chairman Akaka and Ranking Member Voinovich, thank you for the opportunity to speak to you today regarding the Department of Homeland Security's efforts to appropriately balance our Federal and contractor workforce.

My name is Jeff Neal. I am the Chief Human Capital Officer of DHS, and as a former career civil servant for more than 30 years I appreciate your leadership on Federal human capital issues.

In its initial standup of operations, the Department of Homeland Security relied heavily on industry to provide critical services. While such reliance on contractors made sense in a startup environment, operating in that manner today may not be the most efficient and effective way to carry out our homeland security mission. Since 2007, the U.S. Government Accountability Office has raised concerns regarding the Department's large number of contract services. The President's March 4, 2009 Memorandum on Government Contracting raised concern that agencies across the Federal Government may be contracting for work that should be performed by Federal employees. The Office of Management and Budget has provided further guidance on addressing over-reliance on contrac-

[1] The prepared statement of Mr. Neal appears in the Appendix on page 47.

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tors, including through the draft policy letter issued on March 31, 2010, by the Office of Federal Procurement Policy.

With Secretary Napolitano's leadership, we have been working to achieve the appropriate balance between Federal employees, military personnel and contract services in DHS. Our rationale for implementing the Balanced Workforce Strategy is clear-cut, and that is that we must ensure we have an appropriate balance between our personnel and contract services. We must also create a process that examines that balance immediately and ensures examination of it on a regular basis.

We recognize that this is an ongoing workforce planning need that requires integration of our human capital, financial and procurement planning processes. None of us can do it on our own.

We have begun the integration of these processes through our Balanced Workforce Strategy. Some of the elements of this are still in the final development and review stage, but we believe this strategy and the partnership between our financial management, procurement, and human capital offices will serve as a catalyst to achieve the more balanced multi-sector workforce that we are looking for.

Our Balanced Workforce Strategy consists of three parts: The first part is communication and change management. This is a complex and challenging effort that has the personal interest of the Secretary and Deputy Secretary. We will soon be issuing guidance and direction to component heads and to their staff who make decisions about hiring and procurement. I have also established a dedicated Balanced Workforce Program Management Office within my organization and hired an experienced career senior executive to lead this important effort.

The second part is developing and implementing a repeatable process to conduct risk analysis and make multi-sector workforce decisions. We are creating comprehensive, specific and clear guidance for components on how to make these decisions. We will also assist components in developing implementation road maps to aid in the transition as appropriate.

And finally, we must have adequate measurement and reporting. We cannot change what we cannot measure. Sustainable change will require metrics that tell us how we are doing, where we have to make course corrections and when we have achieved the balance we are seeking.

Our focus throughout this effort is going to be on our vital homeland security mission and having a Federal workforce that allows maximum flexibility to accomplish that mission.

Again, I thank you for the opportunity to appear before you today, and I welcome any questions you might have.

Senator AKAKA. Thank you very much, Mr. Neal, for your statement.

Mr. Grimes, will you please proceed with your statement?

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TESTIMONY OF CHARLES D. GRIMES III,[1] DEPUTY ASSOCIATE DIRECTOR FOR EMPLOYEE SERVICES, U.S. OFFICE OF PERSONNEL MANAGEMENT

Mr. GRIMES. Chairman Akaka, Ranking Member Voinovich, and Members of the Subcommittee, I appreciate the opportunity to represent the Office of Personnel Management and Director John Berry at this important hearing to examine the Administration's efforts to ensure that Federal agencies have the right mix of employees and contractors to carry out their missions.

The title of the hearing says it all. Right-sizing the Federal-to-contractor mix is indeed a balancing act of competing issues: The nature of the work, agency mission, acquisition, human resources, finance and budget, performance management, recruiting and hiring, training and development, and retention. And the appropriate balance will differ by agency and sometimes even within the agencies.

A common tool that agencies use to strike the right balance is workforce planning. Agencies will be in the best position to determine the appropriate Federal employee-to-contractor mix if they: Align workforce planning with strategic planning and budget formulation; involve managers, employees, and other stakeholders in planning; identify critical occupation skills and competencies, and analyze gaps; develop strategies to address those gaps; build capacity to support workforce strategies; and monitor and evaluate their progress.

The Administration started this process to describe the nature of work with regard to whether it must be performed in-house or whether it may be contracted. Soon after taking office, President Obama issued a memorandum for heads of agencies expressing concern that the line between inherently governmental activities and commercial activities that may be outsourced had become blurred.

After consulting with OPM and other agencies, OMB Director Peter Orszag issued a memorandum on July 29, 2009, which required agencies to begin developing and implementing policies, practices, and tools for managing the multi-sector workforce. Specifically, the OMB memorandum directed Federal agencies to adopt a framework for planning and managing the multi-sector workforce, conduct and report by April 30 of this year on a pilot analysis of at least one program or activity where the agency has a concern about an over-reliance on contractors, and use guidelines for insourcing that facilitate consistent and sound application of statutory requirements.

More recently, on March 31, OMB's Office of Federal Procurement Policy published a proposed policy letter for public comment on rules for when work must be reserved for performance by Federal employees. Of particular interest to OPM is a new category of "critical function," which focuses on functions that are core to an agency's mission. The draft policy holds agencies responsible for ensuring that a sufficient number of positions performing critical functions are filled by Federal employees having the appropriate

[1] The prepared statement of Mr. Grimes appears in the Appendix on page 52.

ph44585 on D330-44585-7600 with DISTILLER

training, experience, and expertise to understand the agency's requirement, formulate alternatives, and manage work products.

OPM has partnered with OMB to provide technical assistance and support specifically to the Federal human resources (HR) community in achieving the goals set forth in the President's memorandum and OMB directives. OPM's work with OMB has included facilitating discussions in which agencies can share their experiences and lessons learned; fostering collaboration across agencies' acquisition, HR, finance, budget, and performance areas; identifying and developing tools to assist agencies in complying with the OMB directives; and streamlining the Federal recruiting and hiring process.

One of the tools OPM has developed is an online community of practice at the OMB MAX Website to respond to agencies' inquiries. OPM has also briefed key stakeholders, such as agencies' Chief Human Capital Officers and Deputy CHCOs, in addition to hosting a CHCO academy session. To complement these efforts, OPM provided an in-person and webcast skill-based training class on the Federal Activities and Inventory Reform (FAIR) Act, for HR specialists. OPM continues to monitor the HR community's training needs, so that it can respond appropriately to those needs.

Another important tool for right-sizing is training. Any influx of new Federal employees, whether resulting from insourcing or other agency hiring initiatives, is likely to require planning for additional employee training. Most agency training departments are not able to offer increased training assistance without additional resources. Currently, OPM is working with the training community to look for ways to collaborate and offer training more efficiently.

Mr. Chairman, I would like to close by emphasizing that the effective management of a multi-sector workforce is fundamentally a workforce planning issue that must be carried out at the agency level. Effective workforce planning requires a sound governance structure within each agency that provides accountability for workforce planning and analysis. Although data collection and analysis may be shared by numerous organizations within the agency, there should be one office that is responsible for integrating and disseminating workforce planning information.

OPM can do, and has done, a great deal to assist and support agencies in developing the capacity to conduct the appropriate analyses on which "right-sizing" depends. OPM looks forward to continuing to work with agencies so they can implement appropriate recruiting and hiring strategies to achieve the optimal blend of Federal employees and contractors to carry out their missions.

Thank you again for the opportunity to discuss this important issue with you. I would be happy to respond to any questions you may have.

Senator AKAKA. Thank you very much, Mr. Grimes.

Now, Mr. Needham, please proceed with your statement.

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TESTIMONY OF JOHN K. NEEDHAM,[1] DIRECTOR, ACQUISITION AND SOURCING MANAGEMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. NEEDHAM. Thank you, Chairman Akaka and Senator Voinovich. I am pleased to be here today to discuss civilian agencies' development of insourcing guidelines, OMB's proposed policy on work reserved for Federal employees, the challenges agencies face in managing the Federal workforce and the tools that will be available for managing the insourcing process.

Federal agencies face a set of complicated decisions in finding the right mix of government and contractor personnel to conduct their missions. In choosing to use contractors, agencies must determine what activities ensure governmental control over policy and program decisions, and those that are critical for retaining long-term agency capacity.

Importantly, Congress and others have expressed concerns as to whether Federal agencies have become over-reliant on contractors and whether they have appropriately outsourced services. In March 2009, the President tasked the Office of Management and Budget to take several actions in response to these concerns.

Last July, OMB issued guidance for agencies to begin the process of developing and implementing policies and methods for managing the multi-sector workforce. Included in this guidance was guidance on insourcing which called for agencies to develop planning pilots to address the overuse of contractors.

Last summer, per congressional mandate, GAO reviewed the status of agency efforts to develop and implement insourcing guidance. In October 2009, we reported that none of the nine agencies, the civilian agencies, with whom we had met had met the statutory deadline for this guidance. This was due in part to the agencies awaiting OMB direction on the question of inherently governmental function, so as to ensure their agency guidance was consistent with OMB policy, and they wanted to use the results and lessons learned from the pilots to better inform their insourcing guidelines.

OMB reported in December 2009, on 24 Chief Financial Officers (CFO) agencies that had pilots underway in one or more of their organizations. However, the results of these pilots have not yet been released.

In addition to the insourcing guidance released last summer, OMB recently released a proposed policy which is now out for comment. The guidance for determining when work must be performed by Federal employees is notable in four ways:

First, it adopts a single governmentwide definition of inherently governmental functions in accordance with the definition in the FAIR Act.

Second, it retains the illustrative list of examples of closely associated with inherently governmental functions from the Federal Acquisition Regulations (FAR), such as preparing budgets and developing agency regulation, and it provides guidance to help agencies decide whether to use contractors to perform these functions.

[1] The prepared statement of Mr. Needham appears in the Appendix on page 56.

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Third, it introduces a category of critical functions as functions whose importance to the agency's mission and operation requires that at least a portion of the function should be reserved for Federal employees to ensure that the agency has sufficient internal control.

And last, it outlines a number of new management determinations and actions that Federal agencies should employ to avoid allowing contractor performance of inherently governmental functions.

Turning to the implementation challenges, once the decision to insource is made, the success of implementation will, in large part, depend on the ability of the agencies to translate mission and human capital requirements into executable plans that will assure agency workforces possess the necessary knowledge and skills to accomplish their mission, and also to oversee contractors.

This is not an easy task as they will need to align workforce planning with strategic planning and budget formulation, involve managers, employees and others such as financial and procurement offices in this planning process. They will need to identify the critical occupations, the skills, the competencies, determine what gaps they have in their current workforce as well as what contractors they have onboard. And last, they will need to develop strategies that can be able to be sustained over time, to address these gaps. Then most importantly, they will need to monitor and be able to adapt implementation as they learn.

Furthermore, in our 2009 review, we identified several challenges that agencies face in replacing contractor functions with government positions. Key among them will be limited budgets and resources that may constrain insourcing efforts.

Last, agency implementation of insourcing efforts can be facilitated by tools such as:

Inventories of civilian employees and service contracts to identify inherently governmental functions and the universe of the total workforce;

Business case analyses to facilitate agency decisions and determine which, when insourcing a particular function, has the potential to achieve mission requirements and effective control over contractors; and,

Last, human capital flexibilities to ensure to efficiently fill the positions that should be brought in-house.

In conclusion, Mr. Chairman, OMB's insourcing criteria provides a sound basis for agencies to develop their insourcing plans and will facilitate decisions on the proper mix of Federal employees and contractors to better reform government control over functions. However, it is in the formation and execution of agency plans and the individual sourcing decisions that will ultimate determine the success of this effort.

That concludes my statement, Mr. Chairman. I will be happy to answer any questions that the Subcommittee may have.

Senator AKAKA. Thank you very much, Mr. Needham.

Administrator Gordon, this Subcommittee has struggled to understand exactly how big the Federal contractor workforce is, especially those working side by side with Federal employees. DHS and the Department of Defense (DOD) have both taken the approach of

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estimating contractor work year equivalents, which are similar to a full-time equivalent position (FTE).

Do agencies need more reliable data on how many non-Federal employees they have, and is OMB helping them gather that data?

Mr. GORDON. Thank you for the question, Chairman Akaka.

The amount of money that agencies are spending on service contracts can be very helpful in giving a sense of where we are. That is to say, as was noted earlier, the increase in spending on service contracts has far outpaced the increase, for example, in our own acquisition workforce that handles those contracts.

Nonetheless, both DOD and the civilian agencies are carrying out their statutory mandate to create inventories of service contracts and service contractors. DOD's statutory mandate began earlier, so DOD is ahead of the civilian agencies down that path. But we will be having inventories for service contractors, which can be of further assistance in this effort.

Senator AKAKA. Mr. Needham, GAO has emphasized the importance of adequate workforce planning to promote efficient and cost effective efforts to achieve the right mix of Federal employees and contractors. Moving forward, what key characteristics of this planning will be the most challenging?

Mr. NEEDHAM. Mr. Chairman, GAO just completed a review of three agencies' workforce planning and strategic planning work that has been done at the Environmental Protection Agency (EPA), the Department of Interior and also the Forest Service, and we specifically looked at their workforce planning. What we found was that while they had many of the elements that are desirable, they were not integrating the workforce planning with the strategic planning and the budget formulation, which is critical to this effort succeeding. So that is probably one of the key challenges.

When they do this, they need to do a total workforce perspective. They need to look at all the players who are in the workforce, both contractors and civilian employees, and where you have uniform personnel, those as well.

And also, good data. There has been the development of the contractor inventories at DOD. We have found that those inventories are not consistent across the services. They count service contracts differently. They categorize the services that are provided within those contracts differently, and they also collect data on FTEs differently. So trying to meld those data together is going to be difficult.

So those are some of the challenges that they are likely to face, Mr. Chairman.

Senator AKAKA. Thank you very much, Mr. Needham.

Mr. Neal, earlier this month, some industry groups criticized the Department of Defense's insourcing efforts. They claimed that the process at DOD has been quota driven. Do you expect similar concerns over DHS insourcing, and what can be done to avoid such a perception?

Mr. NEAL. Chairman Akaka, I believe no matter what we do, there is going to be a lot of concern about it. This is a vital Department. Our mission is absolutely critical to this Nation's security, and there is also a lot of money involved in what we are doing. So I believe no matter what we do we are likely to face some criticism.

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When we do get our guidance out, what everyone will see is that we are going to be doing this in a deliberate way. We want to make certain that there is actually a process that we can use more than one time. As I said earlier, it needs to be a repeatable process. This is going to be an ongoing thing for this Department and really the entire Federal Government.

So we are going to have to have a process that allows us to look at these contracts, to look at this work and make intelligent decisions based on what kind of work is being done, what is the risk to our mission by having contractors versus Federal employees doing a particular function, and then make an informed decision based on the risk, based on the type of work and in some cases based on the cost of doing that.

Senator AKAKA. Yes. Mr. Gordon, many positions were contracted out over the past decade through a public-private competition under the A–76 process. Under clarified guidance, agencies may determine that some of these should not be contracted out. Are there additional hurdles to insource positions that were privatized through A–76?

Mr. GORDON. Thank you, Mr. Chairman.

I had the honor in years at GAO of spending a considerable amount of time working on issues related to Circular A–76. It was a very challenging process, one that was found to be difficult I think by all parties.

I would point out that A–76 was used, I think, for only a very small part of the outsourcing that took place over the past 10 or 15 years. As Senator Voinovich, I think, pointed out, the fact is that under A–76 in the competitions the Federal employees at the most efficient organization, as it was called, were usually winning. But in fact we all know that there was fairly massive outsourcing taking place. It was not running through the Circular A–76.

I am not aware of particular problems in terms of insourcing work, or unique problems in terms of insourcing work, that was outsourced under A–76, but we would be happy to look into that question if it would be useful for the Subcommittee.

Senator AKAKA. Thank you very much.

Mr. Grimes, coming back to a similar question that I asked Mr. Neal, how can agencies make sure that workforce planning for insourcing considers specific human capital needs and does not become driven by quotas?

Mr. GRIMES. I think the best way to do that is to employ good workforce planning processes. You look at the work, make a realistic determination of whether that work is inherently governmental, closely allied with inherently governmental work, or critical; and what portion of that critical work needs to be in-house in order to maintain control. Once you have made that kind of analysis, you can make a more rational decision on whether that work should be contracted out, based on costs or other things, but not driven by quotas.

Senator AKAKA. Thank you very much. Senator Voinovich, your questions?

Senator VOINOVICH. We are talking about a big picture here. It is interesting. We just had a discussion this afternoon at our Thursday lunch club about the EPA in regard to certifying contrac-

ph44585 on D330-44585-7600 with DISTILLER

tors that have to be certified to remove lead-based paint, and it is a fiasco throughout the Country. If they do not get certified and they do the work, they get fined $37,000 a day.

I just wonder if from a big picture, Mr. Neal, have DHS component agencies really been candid with you, or Mr. Gordon at OMB, about whether or not they have the capacity to get the job done that needs to be done. Now I do not know what oversight you have over Minerals Management Service (MMS). We had this terrible spill that has happened in the Gulf. My conclusion from a hearing on this topic that I was at is they did not have the people necessary to do the job that they were asked to do.

So you start out with that, about where are we. And we keep passing laws around here without any consideration to whether or not the agencies can get the job done. For example, when we did Part D of Medicare, I think that Administrator McClellan over at the Centers for Medicare and Medicaid Services (CMS) had to hire 500 people, and we had to give him some new flexibilities in order for him to move forward with the job. So that is the big picture.

You have the Government Performance Results Act (GPRA). Then you look at that, and you say what are the human capital challenges that we have, what is the succession plan that is in place, and then start to go from that.

It seems to me that you have to prioritize. Senator Akaka and I sent a letter off to OMB about the fact that Mr. Zients said to us that he was going to target jobs in the Federal Government where we really needed people with qualifications, to take advantage of the fact that right now there are a lot of people out there that are not working, that we can get in the Federal Government now, that we might not be able to get in.

So it seems to me—and the same way, Mr. Neal, in your shop—you have to figure out what are your priorities and how they fit with what you are going to ask your people to do on workforce balancing. There has got to be some planning of this.

The next question that you have to ask is we had this hearing on internship programs in the Federal Government, and the unions are complaining bitterly that DHS was using the Federal Career Intern Program (FCIP) to hire all those people. The question was whether they were not meeting veterans preferences and all the other merit sustem requirements.

I would like maybe Mr. Neal or Mr. Gordon to explain why it is that—Mr. Grimes, you might be involved too—why it is that you use the FCIP and not the normal process competitive hiring, to hire those people. So it really gets into the issue of if you are going to move people back in, how many of those people that are working for the contractor might come back?

In Cleveland we have the Defense Finance and Accounting Service (DFAS). They went to the private contractor now, but they are coming back into Federal service. That is going to take a while because how do you figure out the pay that they had with the schedule, and so forth.

Will you comment on that? Is the system that we have in place competent to do the job that is necessary on the workforce balancing front, or do we have to understand that you are going to have to have flexibilities to get the job done?

ph44585 on D330-44585-7600 with DISTILLER

Also, do you have sufficiant capacity to make the determination, of whether a certain contract should be insourced? And are you going to determine if they have the determination?

And Mr. Needham, how do you create metrics to make sure agencies strike the right balance between Federal employees and contractors?

Now I have raised a bunch of questions, but I think this is the big issue that we have to look at here.

Mr. GORDON. Senator Voinovich, I am happy to start, although my colleagues both from across the Executive Branch and my former colleague, John Needham from GAO, are welcome to chime in afterwards.

Looking at the big picture is extremely helpful here, and making priorities has to be done. There is a huge amount of work to do, but if we do not set priorities we could end up doing nothing at all.

Our priorities at OFPP are three, and they are related very much to the subject of this hearing today:

Number one, we have to strengthen the acquisition workforce. We are spending more than twice as much as we were spending 8 years ago, and yet, as was noted earlier, our acquisition workforce has barely grown 10 percent. We have got to increase the acquisition workforce. The President's budget include $158 million to invest in the civilian agencies' acquisition budget. That is a very high priority for us.

We need to improve hiring. We need to improve training. We are working with OPM to improve the hiring process, as you know, Senator. We are focused on both entry level hires and mid-career hires. We do have a once-in-a-generation opportunity to renew the acquisition workforce because now the Federal Government is for many reasons the employer of choice. So we are working very hard with OPM and the agencies to strengthen the acquisition workforce.

We need to show fiscal responsibility. We need to save money and reduce cost in acquisitions.

And our third priority is we have to rebalance our relationship with contractors, and the hearing today is a central part of our rebalancing that relationship.

When we asked agencies last summer in their pilots, where are you most concerned that you are out of balance between your contractors and your Federal workforce, the two top areas were IT and, very notably, acquisition. We have acquisition shops that are so short-staffed that they have contractors managing contractors, contractors writing statements of work. It is no wonder that we have had the challenge of organizational conflicts of interest showing up in our acquisition workforce.

Senator VOINOVICH. Let me just say this, what you are saying that has to be done will not happen that way.

Mr. GORDON. I will tell you, Senator, it took a long time for us to get into this hole. We will not get out of this hole overnight, but I do believe we are on the right path towards correcting these imbalances.

Senator VOINOVICH. Mr. Neal.

Mr. NEAL. The capacity issue is one that I am worried about when I look at what we have to do just in the Department of

ph44585 on D330-44585-7600 with DISTILLER

Homeland Security—the number of contracts we have, the number of contractors doing work, just the sheer magnitude of the Department with 188,000 civilian employees and 42,000 military. I am concerned about our capacity to be able to actually do all of the planning that needs to be done, to be able to do the reviews. So to try to mitigate that concern, what we are going to be doing is trying to set some priorities based on risk, looking at types of contracts, types of work, finding out which ones might pose the greatest risk to us and addressing that first. That will be the No. 1 issue.

The capacity of procurement staff, much like the capacity of the human capital staff, was reduced years ago. Not long before the number of contracts started going up, the number of human resources professionals in the Federal Government and the number of contracting professionals sort of took a nosedive. So the staff that we have in these offices to carry this stuff out in some cases may be lacking. So that is a real concern.

The other concern in looking at this tendency over the years to rely on outsourcing is that there is a form—I do not mean this term to be negative, but there is a form of bureaucratic inertia that keeps an organization, a large organization heading in the direction it is heading. Kickstarting it and getting it out of that pattern makes it a little bit more challenging.

On top of that, we are talking about having to make decisions that in some cases will cause us to ramp down a contractor workforce at the same time we have to ramp up a Federal workforce. And we have to do it exactly right. We do not have a big window where we can start hiring Federal staff and keep Federal staff on board for a year while we are downsizing a contract. We are going to have to be able to time those just right, to be able to make it work. That, to me, is also a significant concern.

So the execution of this will be difficult. I am not going to pretend that it would be easy.

You did ask about the Federal Career Intern Program. We have used the Federal Career Intern Program extensively in the Department of Homeland Security, most extensively in Customs and Border Protection. It was the way we doubled the size of the Border Patrol and the way we have done a lot of hiring of our Customs and Border Protection Officers (CBPO).

We have used the program extensively. There is some good news to report about that though.

Senator VOINOVICH. The point of this, and I have taken too much time, but the issue is how come you used FCIP and you did not use the regular system in order to hire new people?

Mr. NEAL. It was the most expeditious way to do the hiring. When they were trying to ramp up, this was before my tenure, but when they were trying to ramp up they decided that it was the easiest way to get it done.

There was some good news about it. The good news is that more than 20 percent of the people who were hired were veterans. More than 30 percent of the people who were hired were minorities. A substantial number, well over 1,000 of them, were current Federal employees from the Transportation Security Administration (TSA). So it provided a good career opportunity for our Transportation Se-

ph44585 on D330-44585-7600 with DISTILLER

curity Officers. So there was actually some good news out of that story, but it was the most expeditious way to get the hiring done.

As you know, the Federal hiring process is quite a challenge. It seems to be designed to see how desperately someone really does want to be a Federal employee.

Senator VOINOVICH. Any other comments?

Mr. NEEDHAM. Senator, you asked about metrics. Some of the work we did over at the Defense Department with their acquisition workforce was the problem of data, how much data do they have and what do they know about their workforce. Efforts are underway now to address that, but there are a lot of gaps, and agencies just do not have the kind of insight they need.

One of the issues that needs to be measured with the acquisition workforce is churn. We have repeatedly found when we are looking at contracts, when we go to talk to the contracting officer, they are gone. People come in; they go out.

I know the Federal agencies are using the career intern program to bring in new personnel into acquisitions. But will they stay? And how long will they stay? That is something that does need to be measured.

Senator VOINOVICH. I have taken too much time. Thank you.

Senator AKAKA. That is all right. Well, we will do a second round here.

Mr. Grimes, the difficult Federal hiring process can lead to overreliance on service contractors. As you know, Senator Voinovich and I have been working to streamline hiring through our Federal Hiring Process Improvement Act which passed the Senate on Tuesday night. OPM also recently issued guidance on implementing the President's hiring reform memorandum. How do you expect these efforts will assist agencies to address the challenges in hiring and retaining employees, particularly for hard-to-staff positions such as the acquisition workforce?

Mr. GRIMES. Thank you, Chairman Akaka.

We expect these hiring reforms will dramatically improve agencies' abilities to hire the right person into the right job at the right time. The goal is to reduce the length of the hiring process to an average of 80 days from the time the job is announced to when the person comes onboard. That is roughly the average in the private sector. It is about half of the time that it takes now, so it would be a dramatic improvement.

I realize that this does not seem very fast, but it is a lot faster than before, and it is an average.

Of course, we are very concerned about being respectful of merit system principles and veterans' preference, but I think that these reforms do respect those principles and that agencies will be able to get the folks in that they need to get in.

Senator AKAKA. Mr. Neal, to follow up, how will DHS make sure it does not slide back into contracting for services without first considering whether hiring is more appropriate and consulting with the human capital professionals?

Mr. NEAL. Mr. Chairman, that is one of the reasons, the primary reason that what we want is a repeatable process, so we can make these decisions on an ongoing basis in a way that does not look like it is the first time we have ever made a decision like that.

ph44585 on D330-44585-7600 with DISTILLER

So we want our managers to know that they do need to do the proper planning, that they do need to look at the type of work that is being done, they need to look at what kind of risk might be introduced by using a contractor to do the work, and that needs to be a routine part of any service contracting decision.

So we believe as we implement this process and refine the process, it will become something that just becomes a normal part of the way we conduct business. And we will not be just blindly making a contracting decision. It will be an informed decision based on a variety of considerations.

Senator AKAKA. Thank you.

Mr. Grimes, as a veteran and as the Chairman of the Veterans Affairs Committee, I am a strong supporter of veterans preference in Federal hiring. Some agencies, such as DHS, may seek to convert some contractors that already are working for the Department directly into Federal employees. How can agencies preserve veterans preference particularly if they want to directly convert certain contractors into Federal employees?

Mr. GRIMES. If we were to get such a suggestion, Chairman Akaka, we would like to work closely with the agency, and if any legislation were required, then work with you and the Subcommittee, to make it work. At this point in time, not having seen any particular proposal, I do not know how that would work, but we would need to make it work.

Senator AKAKA. What about veterans preference, Mr. Neal?

Mr. NEAL. Mr. Chairman, we are very strong supporters of veterans preference. As a matter of fact, at the American Legion Convention last year, Secretary Napolitano announced a goal of increasing the number of employees, of veterans employed in DHS to 50,000. Right now, about 25 percent of our workforce are veterans. Those men and women are throughout the Department, in every type of occupation. We have the fourth largest percentage of veterans in our workforce of any Federal department or agency. So we are very proud of our accomplishments in that area and what we believe is the respect we have shown for the service of the men and women who have served in the Armed Forces.

Senator AKAKA. Thank you for that.

Mr. Gordon, generally, a service contract is an agreement for a private firm to provide particular services to the government, not a contract to bring on a certain number of people. In reality, service contractors often work side by side with Federal employees. In your experience, as contracting has proliferated, has the role and use of service contractors changed?

Mr. GORDON. Mr. Chairman, I think that it has. You could see this in both the reports from GAO, which I highly value and not only because I used to work there, and I hear it all the time when I go out and listen to people. I go out and listen to our workforce every few days.

In these 6 months that I have been at OMB, I have been at dozens of meetings with the agencies, with Federal employees and their unions, with contractor associations, and what I hear is that contractors are being used today in ways that are dramatically different from the way they were used 15 years ago. Contractors are being used in ways that are much closer to policy decisions than

ph44585 on D330-44585-7600 with DISTILLER

would have been thought permissible 15 years ago. Contractors are much closer to the decisionmaking process.

I think it is noteworthy that the Acquisition Advisory Panel, the SARA panel, congressionally commissioned, in their final report, they talked about concern that contractors are getting closer and closer to the decisionmaking process in the agencies, so that you begin to have questions about whether the decisionmaking process is affected by the corporate interests of those contractors. We need to be sure that work that is inherently governmental is done by Federal employees 100 percent of the time and that closely associated work, which can be done by contractors, does not expand or preempt the ability of our Federal officials to carry out their public service.

Senator AKAKA. Thank you very much for that. Senator Voinovich, now for your further questions.

Senator VOINOVICH. Yes, I want to get back to the question that I asked of Mr. Neal. You just outlined how the intern program resulted in somethings that I think are very good. As a matter of fact, what you just said reflected a chart I had here at that hearing.[1]

The question though is if you are in the position where you are going to have to bring on people rather quickly, does the current system—we have the President's Executive Order out there and then our legislation. It is going to take a while to implement these new reforms. I mean the living process is going to be a whole new ball game for a lot of these agencies. You are going to have to change the system around and so on. How are you going to meet workforce balancing hiring targets amid these changes?

It might be interesting that you are talking about getting on some more procurement people, Mr. Gordon. But though your office is tasked with leading insourcing efforts, OFPP is relatively small. Is it 17 people? The question is how many people have you brought on to help you with your job?

You say that you do have enough, but I would be interested to know, have you brought any on? If you have, how did you get them?

I am trying to get at this issue of how do you make the change. Like the Department of Homeland Security, let's say to balance the Department's workforce you have to hire another 3,000 to conduct border security.

I think, Mr. Grimes, one of the things I am looking for from the Director is the answer to what people want to do there.

But let's imagine that you have to do that, Mr. Neal. How are you going to bring on those people in a short time? Or if you decide that you are going to go and say this is inherently governmental, and you are going to bring people from outside to do the job, how are you going to bring them on?

And then, Mr. Gordon, you tell me, how are you getting these people? Have you hired any? If you have, how did you hire them?

Mr. NEAL. In looking how to do this, it is clear that the Federal hiring process is one of the obstacles. We were very happy to see

[1] The chart referenced by Senator Voinovich appears on page 135 in the April 29, 2010 hearing titled "Developing Federal Employees and Supervisors: Mentoring, Internships, and Training in the Federal Government."

ph44585 on D330-44585-7600 with DISTILLER

the memo from President Obama. We are delighted to see a move away from a very cumbersome application process to the use of resumes, which certainly makes a lot of sense to us. That is an obstacle to people applying for Federal jobs. So those things, we see as very welcome improvements, and I do not think we can do that fast enough.

The other thing that we have been doing is we have been discussing with Director Berry some options to try to do a direct hire authority for contractor conversion. What we have been looking at is really a unique solution to this unique problem of how we can——

Senator VOINOVICH. But it gets to the point that OPM has the opportunity to grant flexibilities to shops. In my opinion, if you are going to do this thing rapidly, there is going to have to be a lot of creativity where you are going to have to look out. Mr. Gordon, my record says you have 17 people. I do not know how many you have now.

But how are you going to tailor these things in order to get the job done while the new hiring system gets into place and we get comfortable with it? That is the real issue.

Mr. NEAL. We believe we have actually come up with an innovative way of using direct hire authority. We recognize that there are concerns about direct hire authority. Every time an agency asks for it, there is interest in that. A lot of folks are concerned about whether or not it has an ongoing impact on the merit system and the Federal competitive process. So what we have been discussing is what we are calling a disposable direct hire authority, usable only once for each position that is converted from a contractor position to a Federal position.

So if you filled 3,000 positions, as each one is filled, the direct hire authority for that would go away. The next time that position is filled it would be through normal attrition, and it would be filled through the normal Federal competitive hiring process. That is a very different way of approaching direct hiring authority. We do not believe there is any regulatory or statutory bar to doing it that way. It is simply in the way it would be granted.

We have had a number of discussions with Director Berry about that. A member of my staff is going to be meeting with another member of his staff within the next couple of days to discuss it in much more detail.

But we believe that is an innovative approach that would allow us to address our immediate hiring needs and the needs that we will have as positions get converted, but not walking away from the merit system and just using direct hire as a normal way of doing business. We believe this would actually solve the problem and address the concerns about direct hire authority.

Senator VOINOVICH. It is good news to me. I think you understand that you are going to have to have some real flexibilities in the beginning as the thing starts to trickle down.

Mr. NEAL. Yes, Senator. Absolutely. And I love hearing someone talk about giving us flexibility. That is a very good thing for us.

Senator VOINOVICH. Mr. Gordon, have you hired anybody. You had 17 staffers at OPM. How many do you have now?

ph44585 on D330-44585-7600 with DISTILLER

Mr. GORDON. We have a very small shop, sir, although we are a policy shop. We are not the people that are carrying out the policy. We work very closely with our colleagues and friends across the agencies, but we can only do it by working together.

Senator VOINOVICH. So OMB has got a different hiring system than the other agencies?

Mr. GORDON. No, the hiring system is very similar. I was about to say I am pleased to tell you that we have actually just hired a senior level person, the Associate Administrator for Acquisition Workforce, a very important role in our office, to support the acquisition workforce.

Senator you are a longstanding supporter of improving our hiring process, and we very much appreciate that.

I would also say that it is not just a challenge of hiring. There is also the challenge of training. We need to be sure that we are providing the right training. Especially in the acquisition area, training needs to be a combination of book-learning and on the job training.

Senator VOINOVICH. Mr. Gordon, Senator Akaka has had a hearing on training.

Mr. GORDON. It is very much appreciated, sir. Thank you.

Senator VOINOVICH. The other question is the General Schedule (GS)——

Mr. GORDON. GS salaries, yes, sir.

Senator VOINOVICH [continuing]. In terms of its relevance to some of the challenges that you may have, to get the people that you would like, that you need to have to do some of these. I mean in some of these cases where you have outsourced, it is just a matter of finding the right people. With the IT field, it is tough—cyber security experts, for example.

Has anybody looked at general salary schedule, to determine whether or not it is competitive enough to draw these folks in? And if it is not, can you change that within an agency, on a temporary or limited basis, in order to get somebody that you really want?

Mr. NEAL. We do have a degree of flexibility within the general schedule by using recruitment bonuses, using retention allowances. Those are two tools we can use.

In some occupations, we are concerned about whether or not the general schedule provides the flexibility. You mentioned one that is very high on our priority list right now, and that is cyber security professionals. Everybody is looking for cyber security professionals right now because of the concerns about security in that environment. So that talent is going to get more and more expensive.

It is a simple supply and demand issue. As that talent gets in more and more demand, it is going to be more and more expensive. The most we can pay somebody as a GS–15 is in the high 150s. If you are looking at a true expert in cyber security, 150K is not impressive. So we are very concerned, particularly in cyber security, about our ability to recruit the right——

Senator VOINOVICH. The fact is if you have a cap on what you can do, the only choice in some instances is say we have to go to a contractor to get the help, right?

Mr. NEAL. Yes, Senator, because they can pay what they want.

ph44585 on D330-44585-7600 with DISTILLER

Senator VOINOVICH. The last thing I want to mention is one of the things that Senator Akaka and I did, and I really thought we were going to raise the profile of this function, is the human capital officers in the various agencies. I am very disappointed here with you, Mr. Neal. We had hoped that over this period of time there was going to be upgrading. In fact, I asked the previous Administration, have you done an analysis of the human capital people that you have? They said, "Oh, yes, we are getting it better."

Is that happening as you have looked at these DHS components?

Or, Mr. Needham, have you looked at agencies to see whether or not they have the people there, say in that human capital area?

And last, but not least, is we hoped the CHCO Council would upgrade the agency CHCOs and that they would get together and that with all these challenges facing Federal HR, maybe assign a couple with Ms. Medina, the new person.

Mr. NEAL. Kathryn Medina?

Senator VOINOVICH. Yes, to do that. And the thing that I was impressed with is that John Berry is going to the meetings.

But I am saying it seems to me that is an absolutely wonderful opportunity. When I was governor, that is what we did. We brought these people together, even in the information technology (IT) area, and started to have them talk to each other. It is amazing how you will find one or two places that really are doing the job, and then you can use those as models to help the other people.

But if they do not get together, if they do not have the leadership, then it does not accomplish what we want it to accomplish.

Mr. NEAL. As a chief human capital officer, I certainly appreciate the work that the two of you did since my position exists because of that work, and I think DHS is very fortunate that we have a Chief Human Capital Officer whose job is to be the Chief Human Capital Officer and nothing else. So that is all I do, which is more than enough, believe me. So I think that has been a real benefit for us.

We have had, as you know, an issue within DHS with turnover in Chief Human Capital Officers. I am number five. I have actually outlasted a couple already, and I intend to be around for quite a while.

Senator VOINOVICH. Good.

Mr. NEAL. So I do not plan to go anywhere anytime soon.

As a former career Federal employee, I actually am covered by the retirement system, and I am not even eligible to retire for another year and a half. So I think everybody is stuck with me for a while.

The Chief Human Capital Officers Council, I think, is an extremely important tool. I have been very pleased to see that. I have gone to every meeting since I was appointed to this position 11 months ago.

Director Berry has been at every meeting. He is very actively involved, and he has begun the process of turning that into a very deliberative body. He is putting larger issues on the table. Instead of going to a meeting where we just hear a bunch of reports about things that are going on, we are actually having real discussions about issues and debating some of those issues, and trying to iden-

ph44585 on D330-44585-7600 with DISTILLER

tify issues that need governmentwide solutions and where OPM and OMB can help us.

OMB is also attending all of those meetings. The last meeting was this week. Jeff Zients was participating in that meeting and has been in many of the meetings.

That partnership between OPM and OMB and the agencies, I think, is really vital. What I have seen so far is really encouraging, that we are actually able to talk about substantive issues.

Senator VOINOVICH. Thank you.

Mr. GORDON. If I could, just a word, Senator, to add to that. I will tell you that within OMB, under Jeff Zients's leadership—he is our Deputy Director for Management as you know—we have a team that is integrated in just the way you are talking about, Senator. That is the E–Government team, the controllers shop, the financial management shop, the personnel and performance team, and us in the Office of Federal Procurement Policy.

The leadership meets very regularly, very frequently. We talk constantly about issues. I could give you lots of examples, whether it is the challenge of insourcing at the Department of Defense where the performance and Federal procurement teams are working very closely together, the issue of hiring, especially veterans preferences where we meet and talk about it together. We are doing this in a coordinated fashion, so we are sharing information.

And I think it is fair to say that Jeff Zients's vision, and it is a vision that we share, is one of sharing lessons learned across the government. So when you have a success story at an agency that is integrating its approach properly, we share that with other agencies to show them a path forward. I think it is working, although we appreciate that we have a lot of work ahead of us.

Senator VOINOVICH. Thank you.

Senator AKAKA. Thank you very much, Senator Voinovich, for your questions.

I want to thank this wonderful panel and thank you especially for your responses to our questions. Without question, some things are changing, the culture is changing. To hear you say that you are talking to each other, breaking down barriers that separated us before and to begin to speak about issues that concern the people who work in the Federal Government is really wonderful to hear.

So I want to thank you so much for this. It will be valuable for what we are doing here legislatively, and hopefully we can continue to work together with you to improve the working conditions, the morale and all of that of our Federal employees.

So I just want you to know that you have been very helpful. Thank you very much.

Mr. GORDON. Thank you.

Mr. NEAL. Thank you.

Mr. GRIMES. Thank you.

Mr. NEEDHAM. Thank you.

Senator AKAKA. And now I call on the second panel to come forward. I would like to welcome our second panel. Good to have you here, Maureen Gilman, Legislative Director of the National Treasury Employees Union; Alan Chvotkin, Executive Vice President and Counsel at the Professional Services Council; and Mark Whet-

ph44585 on D330-44585-7600 with DISTILLER

stone, President of the National Citizenship and Immigration Services Council at the American Federation of Government Employees.

It is the custom of this Subcommittee to swear in all witnesses. So will you please stand and raise your right hand?

Do you swear that the testimony you will give before this Subcommittee is the truth, the whole truth and nothing but the truth, so help you, God?

Ms. GILMAN. I do.

Mr. CHVOTKIN. I do.

Mr. WHETSTONE. I do.

Senator AKAKA. Thank you. Let the record note that the witnesses answered in the affirmative.

As a reminder, although statements are limited to 5 minutes, your entire statements will be included in the record.

Mr. Whetstone, will you please begin with your statement?

TESTIMONY OF MARK WHETSTONE,[1] PRESIDENT, NATIONAL CITIZENSHIP AND IMMIGRATION SERVICES COUNCIL, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Mr. WHETSTONE. Thank you, Chairman Akaka and Ranking Member Voinovich. My name is Mark Whetstone, and I am the President of the American Federation of Government Employees' National Citizenship and Immigration Services Council. I greatly appreciate this opportunity to provide our union's input in today's hearing.

As an employee of the Citizenship and Immigration Service, I am regularly employed as an Immigration Services Officer at the Nebraska Service Center, where I adjudicate benefit applications and petitions. I hope that my own experiences will provide the Subcommittee with an important perspective that might otherwise be missed, that of rank and file Federal employees who work on the front lines in the Department of Homeland Security and are confronted every day with the consequences of wholesale privatization.

In fact, I used to work as an Immigration Information Officer (IIO), and the Members of this Subcommittee may remember that beginning in 2003 the previous Administration reviewed for privatization the work of several hundred IIOs in DHS who are responsible for the investigation and adjudication of applications for immigration benefits. If not for the extraordinary leadership of Chairman Joe Lieberman and the key support from Ranking Member Susan Collins for the amendment to stop the IIO privatization study, I would not be here today because my job and many other inherently governmental employees would have likely been privatized.

Please allow me to present AFGE's recommendations for rebalancing the Federal Government's civil service and contractor workforces:

First, expand, clarify and, above all, enforce the definition of inherently governmental. OMB's proposed definition of work that should be reserved for performance by Federal employees should abandon the implication that contractors should necessarily per-

[1] The prepared statement of Mr. Whetstone with attachments appears in the Appendix on page 71.

ph44585 on D330-44585-7600 with DISTILLER

form commercial functions, establish a rebuttable presumption that Federal employees should perform functions that are critical and closely associated with inherently governmental functions, should adequately protect the public from the contractor influence on agency decisionmaking, and should provide meaningful criteria to identify crucial functions and those positions necessary to develop, and maintain, sufficient organic expertise and technical capability.

Second, compile and review service contractor inventories, consistent with the law, and then integrate the results into the budget process. Although the definition of inherently governmental is important, the processes by which the agencies identify contracts that include functions that are inappropriate for contractor performance and then correct those contracts through insourcing or modification are even more important. If we are serious about ensuring in-house performance of functions that should be reversed for the Federal employee performance, then we must block attempts to gut the requirement that non-DOD agencies establish contractor inventories.

Third, correct through insourcing or modification contracts that include functions that should not be outsourced where inappropriately outsourced or inefficiently performed, consistent with the law. We have heard the DOD term "target-rich environment." Given the documented large number of contracts that were awarded during the previous two Administrations without competition, that include functions that are inappropriate for contractor performance and are being poorly performed, it is safe to say that we are in an obscenely wealthy target environment. Everywhere one turns, almost literally, there are opportunities to insource, consistent with both law and public interest.

Given its critical importance, I want to address the Transportation Security Administration, specifically the Screening Partnership Program (SPP). This is the system that converts the inherently governmental Federal screening duties performed by the Transportation Security Officers to private contractors. The SPP is contrary to the congressional intent to federalize the airport security and violates statutory prohibitions against the outsourcing of Federal jobs without allowing Federal employees to compete for those jobs.

Before privatizing work performed by Federal employees, agencies are generally required to demonstrate through a cost comparison study that a contractor is more efficient. The SPP includes none of the safeguards such as the cost comparison of the Federal employee performance to that of the contractor, risk analysis determination or any demonstration of savings.

This concludes my statement. I look forward to responding to your questions.

Senator AKAKA. Thank you very much, Mr. Whetstone.

Mr. Chvotkin, please begin with your statement.

ph44585 on D330-44585-7600 with DISTILLER

TESTIMONY OF ALAN CHVOTKIN,[1] EXECUTIVE VICE PRESIDENT AND COUNSEL, PROFESSIONAL SERVICES COUNCIL

Mr. CHVOTKIN. Mr. Chairman, thank you very much for the invitation and the opportunity to appear today before the Subcommittee.

As you well know, the debate about the right balance between Federal employees and Federal contractors to maximize the government's ability to meet its missions is not new. Although the size of the Federal workforce is growing, there has been too little attention to targeted hiring, to permit the Federal Government to restore core capabilities across a wide range of functions, with a special focus on the critical acquisition workforce.

Over the past several years, Congress has pushed Federal agencies to undertake comprehensive workforce skills competency analyses and strategic workforce planning. Senator Akaka, you and Senator Voinovich have reinforced the importance of that in the legislation which was passed just this past Tuesday. Regrettably, agency efforts have been far too ineffective in that regard.

An organization's primary workforce objective must be to have the right number of people at the right place, with the right skills at the right time, to fulfill its organization's current and future needs. There is no magic formula for determining the right mix of Federal employees and contractors to meet mission needs, but it is not about a fight between Federal employees and contractors.

An agency must assess the total resources available to it to execute its mission, whether Federal employees or contractors. That assessment should have but one goal: To ensure that the delivery of services in support of Federal missions is done in a manner that best serves the interests of the American taxpayer.

Regrettably, based on extensive examples we have collected, nonstrategic insource is occurring regularly, from Maine to Ohio, and from California to Hawaii.

As we consider the many aspects of workforce planning on the insourcing question, it is best to analyze these issues from two broad categories of work.

The first is work involving activities that must or should be performed by Federal employees, such as inherently governmental functions or those activities that are not inherently governmental per se but are critical to an agency's ability to maintain control and direction of its missions and operations. And I am staying away from code words like "closely associated" because these terms are rarely defined, and specifically using phrases like "functions critical to an agency's ability to maintain control and direction of its missions." Such work requires one set of strategic thinking and planning.

The second broader category involves all other types of functions not in the inherently governmental realm which require a different set of processes.

The Professional Services Council has been a strong supporter of initiatives such as that undertaken by the Secretary of Defense in April 2009, to focus on the hiring and development of thousands of professionals with those critical skills. In an April 2009 letter to

[1] The prepared statement of Mr. Chvotkin appears in the Appendix on page 103.

ph44585 on D330-44585-7600 with DISTILLER

Secretary Gates, we endorsed his initiative but raised concerns about the challenges of implementation.

Mr. Gordon already talked about the OFPP policy letter entitled "Work Reserved for Federal Employees." The policy letter is balanced. It is founded on sound management strategy rather than on ideology and provides a narrowly tailored single definition of inherently governmental functions as required by Congress and the White House.

It also offers meaningful and relevant guidance to agencies in making the determination of what work, other than inherently governmental functions, is best performed by Federal employees and what is appropriate for contractor performance.

Critically, the proposed policy letter requires agencies to develop a focused, strategic human capital plan to define those critical skills they need to meet their missions and ensure they have enough internal staff to maintain government control of operations.

We intend to comment by the June 1 deadline as he suggested.

While these agency workforce efforts are important, significant challenges and questions remain, and they need to be addressed continuously and immediately. Specifically, agencies should pay careful attention to the principles set forth in OMB's July 29, 2009 policy guidance as well as the proposed policy letter.

In these policy documents, OMB makes clear that the Agency's highest priority must be to bring in-house the inherently governmental activities that may have been outsourced, followed by addressing any residual core set of capabilities that are essential to enable the agency to manage and control its operation. But OMB explicitly states that not all activities or functions closely associated with inherently governmental activities must be performed by Federal employees.

We have witnessed thousands of contractor positions being insourced. The objectives of the Secretary's workforce remain both appropriate and important. But unfortunately they have, in the field, devolved increasingly into a numbers game to meet personnel and dollar value quotas that each of the military departments has been given. Indeed, the so-called savings from insourcings have already been baked into the current and future year budgets of the Department of Defense, without the benefit of real analytical rigor.

We are pleased that the House Armed Services Committee has taken another important step to prevent DOD from setting insourcing quotas and to provide greater transparency into DOD's current insourcing initiatives. That committee's action is a step in the right direction towards establishing an accountable process for how DOD implements its Strategic Workforce Initiative, and that prohibition should be made governmentwide.

Insourcing for the sake of insourcing is no more intelligent, no more effective and no more defensible than outsourcing for the sake of outsourcing, nor should government accept repeating the mistakes of past outsourcing efforts when implementing insourcing initiatives. OMB has taken strides to craft appropriate guidance to balance the workforce of Federal agencies, yet all the tools to conduct comprehensive insourcing decisions have not been established.

Where the guidance exists, we should demand that it be followed. And where the tools are insufficient or nonexistent, we should work

ph44585 on D330-44585-7600 with DISTILLER

expeditiously to repair or create them. As taxpayers, we deserve no less.

Thank you for the opportunity to provide this statement. I look forward to your questions.

Senator AKAKA. Thank you very much, Mr. Chvotkin.

Ms. Gilman, will you please proceed with your statement?

TESTIMONY OF MAUREEN GILMAN,[1] LEGISLATIVE DIRECTOR, NATIONAL TREASURY EMPLOYEES UNION

Ms. GILMAN. Chairman Akaka and Ranking Member Voinovich, I am pleased to be here today on behalf of the National Treasury Employees Union (NTEU), to provide comments on efforts to right-size the Federal employee-to-contractor mix.

The dramatic increase in Federal Government contracting over the last decade has resulted in contractors inappropriately performing inherently governmental functions and erosion of the in-house capacity of agencies to perform many critical functions central to their ability to accomplish their missions.

One example of over-reliance on contractors is the Department of Homeland Security. DHS has approximately 188,000 civilian employees and 200,000 contractors working for it. As Chairman Lieberman noted during a recent hearing, the sheer number of DHS contractors currently onboard again raises the question of whether DHS itself is in charge of its programs and policies or whether it inappropriately has ceded core decisions to contractors.

Concerned that the line between what is inherently governmental and what can properly be contracted out had become blurred, President Obama ordered OMB to undertake a comprehensive review of the Federal contracting process, including clarification of what constitutes inherently governmental functions.

NTEU believes that the term "inherently governmental" should be defined exclusively by the Federal Activities Inventory Reform Act. The Act defines inherently governmental as a function which is so intimately related to the public interest as to mandate performance by government employees. Examples include those activities that require either the exercise of discretion in applying government authority or the making of value judgments in making decisions for the government. This definition is longstanding and provides sufficient guidance and needed flexibility in determining which functions are best reserved for government workers.

NTEU is pleased that in late March, OMB's Office of Federal Procurement Policy issued a proposed policy letter on inherently governmental functions and other work reserved for performance by Federal Government employees that adopted this definition of inherently governmental.

Under the policy letter, OMB also provided guidance on two concepts related to inherently governmental functions: Those closely associated with inherently governmental and critical functions. NTEU believes that these types of functions should rarely, if ever, be contracted out, even under the circumstances outlined by OMB in the policy letter.

[1] The prepared statement of Colleen M. Kelley submitted by Ms. Gilman appears in the Appendix on page 112.

ph44585 on D330-44585-7600 with DISTILLER

NTEU also believes that in its final policy guidance OMB should expressly repudiate the presumption in the 2003 revisions to the A–76 Circular that a government function is commercial in nature unless affirmatively shown otherwise. The presumption is not only bad policy; it is at odds with the FAIR Act's definition that simply delineates between commercial and inherently governmental functions.

Because of the recent history of over-reliance on contractors, efforts to right-size the Federal employee-to-contractor mix will have to involve an increase in insourcing. In determining what criteria agencies should use in deciding whether an activity should be insourced, NTEU believes Congress has clearly indicated the direction that should be taken. Section 736 of the 2009 Omnibus Appropriations Act requires agencies subject to the FAIR Act to devise and implement guidelines and procedures, to ensure that consideration is given to using, on a regular basis, Federal employees to perform new functions and functions that are performed by contractors and could be performed by Federal employees.

Last July, OMB issued guidance providing agencies with criteria to facilitate consistent and sound application of insourcing requirements set forth in Section 736. The criteria consist of four sections that address different aspects of the statute, and describe circumstances and factors agencies should consider when identifying opportunities for insourcing.

Also, the 2010 Consolidated Appropriations Act requires agencies to create an annual inventory of all contractors providing services for the government and to review whether to return the work to government employees. By providing agencies with the necessary framework to better monitor and oversee the vast number of service contracts, they will be better able to determine if contractors are meeting their responsibilities or if the agency would be better served by having Federal employees perform that work.

In addition to the criteria outlined in these pieces of legislation, NTEU believes other criteria that agencies should consider, in identifying which functions should not have been outsourced and should be brought back in-house, include the following:

Has there been an actual monetary savings realized as a result of the contract?

Has the contractor defaulted on the statement of work?

Was the contract renewed without a recompetition?

And what other costs do agencies incur in the contracting-out process?

By clarifying the type of functions that should be restricted to performance by Federal employees and providing agencies with guidance on bringing contracted-out work back in-house, a more appropriate balance in Federal contracting can be achieved, resulting in more efficient and effective delivery of services to the public.

Thank you again for the opportunity to submit our views here today. I would be happy to answer any questions.

Senator AKAKA. Thank you very much, Ms. Gilman.

Ms. Gilman, as the government rebalances its workforce, an increase of thousands of Federal employees in an agency may bring about challenges in areas such as training, security clearances, and office and equipment needs. What challenges do you expect as the

ph44585 on D330-44585-7600 with DISTILLER

Federal workforce grows, and how can agencies best manage these challenges?

Ms. GILMAN. Well, I think, Mr. Chairman, as Mr. Neal said previously on behalf of DHS, and I believe OPM concurred, they need to be doing planning for that now. And I believe some agencies are doing a good job of planning for that. They need to make sure that they have the appropriate resources in place. They need to have processes in place to bring employees on in a fair manner.

Normally, NTEU is a big supporter of competitive hiring and thinks it should be used whenever possible. If there is a situation that is out of the ordinary, where there is a critical need, where contractors have been performing inherently governmental functions, for example, and that workforce needs to turn over quickly to Federal employees, we would support working with the agencies and OPM to find ways to make that happen quickly outside of the normal competitive process.

Senator AKAKA. Mr. Whetstone, new government employees may be hired to manage and oversee contractors. Federal managers also will need to supervise new Federal employees hired during insourcing efforts. It is important that agencies provide the right training for the employees. What can agencies do to ensure that supervising and nonsupervising employees receive the proper training?

Mr. WHETSTONE. Well, I think that Ms. Gilman hit it on the head as well when she said that they need to start planning now.

It would be very critical to have an extensive training program for just the matter that you are talking about. I think most of that training actually is in place now with the Department of Homeland Security. It would be a matter of ramping up the volume of training that you would need when you bring the accessions from the insourcing.

Senator AKAKA. Mr. Chvotkin, in theory, the Competitive Sourcing Initiative was supposed to push agencies to contract for services that the commercial sector could provide at a lower cost. This led to controversy on how to account for contract costs versus in-house costs.

In your testimony, you fault agencies for not performing in-depth cost analysis before insourcing. Often contracting involves different direct and indirect costs that are difficult to compare with the costs of hiring, and the data available may be inadequate for a sound comparison. The question is how do you recommend agencies address these challenges through in-depth cost analysis?

Mr. CHVOTKIN. Mr. Chairman, it goes to one of the very hearts of the whole issue. As you laid out earlier, cost is an element for those activities that are not inherently governmental and are not critical for an agency to perform its mission.

The mythology is that contractors are more expensive than Federal employees. What I suggested in the testimony and what some agencies have tried to do is to put a balance together, to try to identify cost comparability. It is impossible to have accurate costs on both sides. The contractor costs are pretty clear because that is what the government is paying. You would always know those kinds of costs. Federal employee costs are a lot more challenging

ph44585 on D330-44585-7600 with DISTILLER

and a lot more difficult to arrive at. But the inability to have a perfect answer does not mean we should have no answer.

So we have suggested a number of alternatives. The Defense Department has a rudimentary cost analysis memo out that we are going to be commenting on very shortly and raising some questions about it.

The A–76 model that you are so familiar with had a cost comparison tool that compared the most efficient organization on the government side against work to be performed by Federal contractors. It is not perfect by any means. I think we would all agree on this panel that the cost model was not perfect, but it was a model that agencies were familiar with and can use.

Right now, Federal agencies have no model that they can rely on. One of the gaps in the OFPP policy letter is they highlight the issue of cost and then do not give the tools to any of the agencies to provide that.

Senator AKAKA. Thank you.

The monetary costs and benefits of insourcing or outsourcing are frequently discussed but not as much as other costs and benefits. For example, I believe that every person who works for the Department of Veterans Affairs, no matter what their job, should feel that they are part of a critical mission, serving our Nation's veterans. I think contractors may not feel that as much. On the other hand, contractors can move quickly, and offer more flexibility and innovation.

I would like to hear your thoughts on how the nonmonetary costs and benefits of contracting decisions should be evaluated.

Ms. GILMAN. Mr. Chairman.

Senator AKAKA. Ms. Gilman.

Ms. GILMAN. If I could start, I think some of the issues that were outlined by the Office of Federal Procurement Policy are a good place to start. I think there are things that are inherently governmental and are critical to agency mission in a sense that can be defined.

I think you are right. I think all of the employees that we represent feel that they are critical to the agency and to the work that they do. But I think that there are definitions of critical in the sense of actually using discretion and judgment, binding the government in decisions, that should never be done by contractors. I think that area may be broader than OMB included in its initial draft of its policy letter.

Senator Voinovich alluded to the oil spill in the Gulf and the agency that is supposed to be overseeing that clearly not being up to the task to do that. That is the agency's responsibility, to put in place measures, so that the contractors that came in to do the drilling really did have the ability to prevent what is happening now. That was the agency's responsibility, whether it was done with Federal employees or contractors, to oversee that work, and it was not done.

And I think that is a legacy of some of the contracting that we have seen over the last 10 years, and I think it is a legacy that we need to turn away from. We appreciate the efforts of yourself and this Subcommittee and the Administration to do that.

Senator AKAKA. Thank you.

ph44585 on D330-44585-7600 with DISTILLER

Mr. CHVOTKIN. Mr. Chairman, again, I think you have put your finger on an important area. It is unquestionable that contractors performing work under a contract of the Federal Government are seeking to make a profit, and some of them do. Sometimes that profit is little, and sometimes others are better at it.

But the mythology that you touch on is that contractors do not feel aligned or supportive of a mission and that for some reason the work in those agencies is only driven by the profit motive. Having had the privilege of working with so many of our member companies, contractors who are supporting the Veterans Administration are veterans. Contractors who are supporting the Agency for International Development have spent their life in the community of international development, many of them having served in the Peace Corps and at the agency beforehand. So to simply dismiss that service as their being unsupportive of the mission or otherwise being only interested in a profit motive undervalues the contributions that so many of these individuals have made, as well as the companies.

There are truly noncost factors to be taken into account. Many of those are set by the agencies themselves in the contract. I think we ought to evaluate those, and I would be happy to work with you to identify some of those in greater detail.

Senator AKAKA. Thank you. Mr. Whetstone.

Mr. WHETSTONE. I think that you will find that in my particular agency we have currently some folks that were contracted to do investigation checks for the Interagency Border Inspection. This is what we have always felt to be an inherently governmental duty—look up databases, conduct national security checks.

There is a place for contractors, of course. This is not one of the areas. The Agency would let this vital duty that is done by adjudication officers, trained Federal employees be done by contractor staff who might not have the benefit of the extensive training of adjudication officers.

I think when you reach into the nonmonetary costs of this contracting, this is not an area, that should be allowed to occur, and I think that would be devastating. It could be a devastating cost in the end if somebody is ill trained or if corners were cut in any way.

Senator AKAKA. Thank you. Mr. Chvotkin, at the conclusion of your testimony, you said we should not repeat the same mistakes of past outsourcing efforts as we implement insourcing. As you know, I was critical of the conduct of outsourcing in A–76 competitions. What were the biggest lessons from outsourcing that we should apply now as we rebalance the workforce?

Mr. CHVOTKIN. Mr. Chairman, thank you for picking up on that conclusory statement. There were several lessons that we learned.

First of all, the process, to the extent that it was true or not, gave the impression that it was quota driven, that agencies had a specific number of employees that they should look to outsource. I do not believe the agencies ever had that, but the Congress was right in putting a limit, a freeze, and saying no quotas. It ought to be strategic. It ought to be looking to the right mix of employees.

Second, it took a long time to get the cost methodology correct.

ph44585 on D330-44585-7600 with DISTILLER

Third, there was no opportunity for the respective parties to challenge the agencies and Congress spent a lot of time looking at the roles and responsibilities and rights of various parties to the process. Remember the OMB Circular went through a number of changes itself over time, including with the 2003 revision.

So commenting on those to make sure that:

First of all, we do not have a quota driven process.

Second, that we have a transparent process so that everybody knows the rules of engagement. That A–76 went through a number of changes.

Third, that we have accountability for it. So much of what was taking place in the Executive Branch agencies at the time was invisible, and companies and Federal employee organizations had to use alternative means like protests to try to drill down into the agencies. We do not need to go back that way.

As I said in my statement, this is not a question of contractors versus Federal employees. There is a role and a responsibility for each. We ought to create a process that values that.

Senator AKAKA. Thank you very much.

Let me follow up with Mr. Whetstone and Ms. Gilman. What do you think are the lessons we should take from outsourcing efforts and apply that to insourcing?

Ms. GILMAN. Well, I think the No. 1 lesson is that agency heads need to be responsible for the mission of their agency, and that decisions need to be made based on having the agency currently and into the future be able to accomplish those missions. There have been a lot of questions raised here today about agencies losing capacity in critical areas because so much work has been contracted out.

I think that the A–76 process was actually used in a relatively small number of cases. Most of the contracting work was done outside of the A–76 process. Federal employees were not given an opportunity to compete for the work in a lot of instances.

There was no transparency; I agree on that. And there was not accountability for the questions about if you contract this work out today, how is your agency going to maintain capacity in the future on the critical missions that you are charged with delivering.

Senator AKAKA. Well, Mr. Whetstone?

Mr. WHETSTONE. I would say one of the critical lessons learned that we need to pay attention to is that the agencies need to find the balance in exactly where the line is drawn on what items are actually contracted out and what are not. If they take the approach like they did in the past decade, they will leave behind things that should rightly be brought back into the Federal service. Interagency border inspection checks were not identified as something to be brought back into the Federal service, and I think that is an error that DHS needs to look at.

So, when agencies are considering insourcing, everything needs to be on the table. They need to be able to review each and every item and determine what should be and what should not be, and not be so territorial as what should remain in the contracting realm.

Also, the transparency is a great point. Sometimes these decisions are made in the back room, and you never know how they

ph44585 on D330-44585-7600 with DISTILLER

came around to them. I think that transparency is a vital component to a lesson learned.

Senator AKAKA. Thank you.

Ms. Gilman, during these tough economic times, many people are looking for jobs. This presents the Federal Government with an opportunity to recruit top-notch employees. We need to ensure that government employment continues to be attractive enough that we retain new Federal employees once the economy gets better. What do agencies need to do to retain new hires?

Ms. GILMAN. Well, first of all, before they get to retaining them, they need to hire them. And I did want to congratulate you on getting your bill through the Senate this week, to improve the hiring processes, which I think will do a lot and is very important, especially at this time when as you say there are so many good people looking for work. We really need to get our hiring processes in order, so we can attract the best people into the Federal Government.

Once they are here, I think there are a number of things that can be done to try to retain them. Training, which you also have legislation on, that NTEU supports—providing adequate training and support is a very good way to keep people.

There are many flexibilities available to agencies: Retention bonuses, excuse me, awards and extra annual leave. All of these things can be given to good performers to give them incentives to stay.

But I think one of the most critical things that agencies can do is respect the employees, allow them to have a process for communication, to share ideas on how the work can be done better. Having them feel that they are really contributing to the mission of the agency, I think, is one of the best ways to keep them in the Federal workforce.

Senator AKAKA. Mr. Chvotkin, earlier this month the Professional Services Council (PSC) sent a letter to the Department of Defense, stating that its insourcing efforts are quota driven. Also, recent recommendations by the Acquisition Reform Working Group, which PSC is a member of, raised similar criticisms. Can an agency release human capital targets in a way that does not imply a quota?

Mr. CHVOTKIN. They can, Mr. Chairman. Our concern with the quota-driven approach taken by the Defense Department to date has been really on the budget side. Commands and activities have been given mandatory reductions in spending, as well as positions to achieve. We think those are quota driven.

It is rare, but if the process is strategic and if the process is transparent so that the agencies are identifying those functions that are inherently governmental, they ought to come back in-house without question and without regard to cost. That is not a quota.

If an agency is looking at its core capabilities—Senator Voinovich and you talked earlier about cyber security professionals—sufficient to maintain the agency's mission and operation, that is not a quota-driven approach. That is a strategic hiring approach and we fully support that.

ph44585 on D330-44585-7600 with DISTILLER

Senator AKAKA. Well, I want to thank you, this panel, very much, and also all of our witnesses.

As we have heard, insourcing is an important new issue that deserves close oversight. Many of the issues that this Subcommittee has examined, especially hiring reform, will play important roles in the insourcing process. Human capital planning is also important as agencies look at their current workforce needs and bring inherently governmental work back in-house.

As always, I want to thank Senator Voinovich who has been a partner on these issues, and I hope that in our time left here together we will continue this important work.

The hearing docket will be open for 2 weeks for additional statements or questions from other Members who may have some questions on anything pertaining to the hearing.

This hearing is adjourned.

[Whereupon, at 4:50 p.m., the Subcommittee was adjourned.]

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APPENDIX

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503
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STATEMENT OF
THE HONORABLE DANIEL I. GORDON
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,
THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

MAY 20, 2010

Chairman Akaka, Ranking Member Voinovich, and Members of the Subcommittee, I welcome the opportunity to appear before you today to discuss the Administration's efforts to rebalance the mix of work performed by Federal employees and contractors. As public stewards, we are entrusted to deliver the most effective and efficient government performance possible, and to do so we must recognize the proper role for each sector and draw on its skills appropriately. The civil service is the lifeblood of our Government, and, in many of their interactions with our citizens, Federal employees *are* the Government. We must make sure they have the capacity, skills, and resources to manage and carry out their agencies' missions and operations. For our Federal employees, contractors are an important resource. They offer expertise, innovation, and cost-effective performance to support a wide range of services that the Government provides to our citizens. While contractors play, and will continue to play,a vital role, there are situations where the mix of work performed by our Federal employees and

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contractors is out of balance – where agencies have contracted out functions that should be performed by Federal employees. As the President said in his March 4, 2009 Memorandum on Government Contracting, the line between work that may be contracted out and work that must be reserved for Federal employees has become blurred. We must clarify the rules and carefully consider the way we use contractors to ensure that we strike the right balance to both protect the public's interest and serve the American people in a cost-effective manner.

This afternoon, I would like to share with the Committee the steps the Office of Management and Budget (OMB) is taking to help agencies strike the best balance. Your letter of invitation asks, in particular, about efforts by the Office of Federal Procurement Policy (OFPP) to define, or redefine, inherently governmental functions, functions closely associated with inherently governmental ones, and critical functions. You also ask about challenges and associated actions with regard to right-sizing the Federal employee-to-contractor mix and the tools available or needed to facilitate in-sourcing. To address your questions, I would like to begin by discussing what we are doing to clarify the rules for when work must be reserved for performance by Federal employees. Then, I would like to describe some of the specific actions we are taking to address potential overreliance on contractors. In rebalancing our relationships with contractors, our goal is not to change the size of government but rather to ensure that government is effective in meeting the needs of the American people.

Establishing a clear and comprehensive policy framework

Both the President and Congress have directed OMB to improve the rules for determining when it is—and is not—appropriate for work to be performed by contractors. Unfortunately,

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many of the rules for drawing this line were written nearly two decades ago and do not always reflect the present-day challenges of managing the Government. In addition, the policies addressing these issues are scattered throughout the Federal Acquisition Regulation (FAR),a circular, and multiple OMB memoranda, which has further complicated the ability of our Federal managers to develop a clear and comprehensive understanding of what rules apply and their responsibilities for implementing them. Whether due to confusion about the rules or for other reasons, some work has been contracted out that needs to be performed by Federal employees.

To address these concerns, we published a draft OFPP policy letter in the *Federal Register* on March 31, 2010, to begin a process for reviewing and improving, with the public's input, the policies governing the reservation of work for performance by Federal employees. The policy letter is designed to clarify policies, as well as management responsibilities, for determining when functions must be carried out by Federal employees and when they may be performed by either Federal employees or contractors. The policy letter focuses on three types of functions: (1) inherently governmental functions, (2) functions closely associated with inherently governmental ones, and (3) functions that are "critical" to the agency's mission.

Here is what the draft policy letter would do in each of these areas:

- ***Establish a single definition for the term "inherently governmental function."*** The draft policy letter would establish a single definition by directing agencies to adhere to the single existing statutory definition, as set out in the Federal Activities Inventory Reform Act (FAIR Act). That definition states that a function is inherently governmental if it is "so intimately related to the public interest as to require performance by Federal Government employees," and the Act includes further clarifying language. We believe the FAIR Act definition is

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reasonable and that interested stakeholders have reached a similar conclusion -- based on what we heard at a public meeting held last summer in connection with the President's March 4, 2009 Memorandum on Government Contracting, our review of relevant reports (such as the report of the Congressionally-chartered Acquisition Advisory Panel), and other discussions. At the same time, confusion has arisen in the application of the FAIR Act definition, because there are currently multiple, and potentially inconsistent, tests to determine whether or not a function is inherently governmental. Elimination of these variations should help to address much of this confusion. The policy letter would preserve a long-standing list of examples – set out in the Federal Acquisition Regulation (FAR) – of the most common inherently governmental functions, such as the determination of agency policy, hiring of Federal employees, and awarding of Federal contracts. As part of the invitation to comment on the draft policy letter, we have solicited the public's views on whether the final policy letter should add any activities to the list. The draft policy letter would also refine existing criteria, provide new ones, and help an agency decide if a particular function that is not identified on the list is, nonetheless, inherently governmental.

- ***Clarify when work should be considered "closely associated" with inherently governmental functions.*** In order to help agencies comply with the FY 2009 Omnibus Appropriations Act, which requires agencies to give special consideration to Federal employee performance of functions closely associated with inherently governmental ones, the policy letter also would clarify when work should be considered to be in that category. Although contractors may continue to perform those functions, the draft policy letter states that, if contractors are used to perform such work,a gencies must give heightened management attention to the contractors' activities to guard against their expansion into

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inherently governmental functions. Steps might entail providing clearer prescriptions in the statement of work of what the contractor may and may not do, and ensuring adequate and adequately trained personnel to oversee the contractor's work. As with the coverage on inherently governmental functions, the draft would preserve a long-standing FAR list of examples of "closely associated" functions and solicit public comment on whether changes should be made to the list.

- ***Ensure that agencies have the internal capacity to perform their critical functions.*** Last year, Congress identified a new category of "critical functions," which are functions that, while not inherently governmental, are needed for an agency to effectively perform its mission and maintain control of its operations. The identification of this new category fills a void in current policy and gives us an important new concept to help agencies address functions that are at the core of an agency's mission and other important operational activities.

Unlike inherently governmental functions, which can only be performed by Federal employees, critical functions often can be performed by both Federal employees and contractors. Key, though, is that there always be a sufficient number of Federal employees performing, or managing, the function so that the agency can maintain control. For this reason, the draft policy letter would hold agencies responsible for ensuring that a sufficient number of positions performing critical functions are filled by Federal employees possessing the appropriate training, experience, and expertise to understand the agency's requirements, formulate alternatives, manage work product, and supervise any contractors used to support the Federal workforce. Federal officials would need to evaluate, on an

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agency-by-agency basis, whether they had sufficient internal capability, taking into account factors such as the agency's mission, the complexity of the function, the need for specialized staff, and the potential impact on mission performance if contractors were to default on their obligations. The draft policy letter makes clear that, so long as agencies have the internal capacity needed to maintain control over their operations, they are permitted to contract out positions within critical functions.

In addition to guidance on each type of function, OFPP's draft policy letter would require agencies to take specific actions, before and after contract award, to prevent contractor performance of inherently governmental functions and overreliance on contractors in the performance of "closely associated" and critical functions. Agencies would also be required to develop agency-level procedures, provide training, and designate senior officials to be responsible for implementation of these policies.

OFPP is encouraging commenters to offer their views on a series of questions focused on some of the more difficult or pressing policy challenges. For example, one question asks for input on the use of contractors in the performance of areas that have been the source of particular controversy or confusion – such as acquisition support, strategic planning, and security operations performed in direct support of combat. Another question invites commenters to offer their thoughts on the types of practical considerations that arise during the everyday management of a Federal organization, such as the circumstances under which a contractor may attend or represent an agency at a policy-making meeting, or the steps contractor employees should be required to take when working on a government site so that their status is clearly understood. Responses to the draft guidance will be posted on

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regulations.gov for review by the public and considered by OMB as we determine the shape of the final guidance.

Rebalancing the Federal employee-to-contractor mix

We do not anticipate that the content of the draft policy letter, if finalized in something like its current form, will lead to a widespread shift away from contractors. However, we do expect every agency to work actively to identify if and where rebalancing is needed and to take appropriate actions to fix any identified imbalances.

In many cases, overreliance on contractors may be corrected by allocating additional resources to contract management. In other words, rebalancing does not require an agency to in-source, that is, to convert work from contract to in-house performance, provided the agency can hire, retrain, or reassign sufficient Federal employees with the requisite skills at managing contractors to maintain control of their activities. In this regard, we are working to make sure agencies have the resources they need to manage and oversee their contractors and that they take steps to recruit and retain the necessary Federal talent where it is lacking. The President's FY 2011 Budget includes $158 million for civilian agencies to build the capacity and capability of their acquisition workforce. This small investment in our workforce will go a long way in making sure agencies are able to maintain control of their contractors and their operations – allowing them to watch more carefully for situations where contractor activity may be impinging on Federal officials' performance of inherently governmental functions and putting an end to the inappropriate, and risk-laden, practice of having contractors manage other contractors.

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In some cases in-sourcing may be the appropriate remedy. We are working with agencies to make sure that when in-sourcing is being considered, the agency's basis for taking action is well-grounded. Last summer, OMB issued criteria to facilitate the measured application of statutory requirements in the FY 2009 Omnibus Appropriations Act regarding the use of Federal employees to perform new work and work currently performed by contractors.

OMB's guidance provides specific bases for in-sourcing. For instance, one basis may be that the work is determined to be inherently governmental. In this case, the agency must act expeditiously to in-source by developing and executing, on an accelerated basis, a hiring plan to convert the work to performance by Federal employees. Another basis may be that the agency has determined that continued contractor performance puts the agency at risk of losing control of its operations. If the agency determines that hiring of Federal employees is needed to address this situation, the agency should also develop and execute a hiring plan and secure the necessary in-house capacity and expertise as promptly as possible. The Office of Personnel Management's ongoing initiative to streamline hiring rules should greatly assist agencies in more expeditiously bringing on board new employees to perform work that needs to be performed by Government personnel. Yet another basis for in-sourcing may be cost – that is, that public sector performance is more cost effective than private sector performance. If cost is the basis, officials need to ensure that the agency's analysis fairly takes into account the full cost of performance by both sectors to support a determination that insourcing will save money.

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Tools and techniques for rebalancing

Identifying the best remedy and taking effective action to achieve the right mix of Federal employees and contractors for a given organization requires certain skills and tools. To help agencies build these capabilities, OMB asked each major Department and agency to identify at least one of its organizations where there was concern about overreliance on contractors, and to use multi-disciplinary teams – with human capital, acquisition, and program officials – to develop plans for determining the best mix of skills and workforce size for the organization. More than half of the agencies identified acquisition and information technology organizations for their pilots. We will work with agencies in sharing experiences and processes they used to support their analyses. We will also review agency analyses of the historical drivers for using contractors – such as challenges related to recruiting Federal employees and resource considerations – when performance by Federal employees may have been more appropriate.

In addition, we are preparing guidance to support agencies' development of annual inventories of their service contracts in accordance with the FY 2010 Appropriations Act. A contractor inventory can be a beneficial tool to help agencies keep closer track of how contractors are being used to perform work that is closely associated with inherently governmental functions or other sensitive or mission-critical functions where there may be concerns about the balance of Federal employees and contracted resources and the government's ability to maintain control of its operations. Development of the inventory methodology is being closely coordinated with our draft policy letter so that the inventory can,

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among other things, help agencies meet their responsibilities under the draft policy letter when it is finalized.

Conclusion

As you can see, rebalancing the mix of work performed by Federal employees and contractors is a top management priority for OMB. There are a number of difficult questions yet to be answered, but we are optimistic that the draft policy letter and our measured approach to rebalancing, supported by appropriate implementation tools, will lead to meaningful and lasting improvements in the way we use the talents of our Federal employees and contractors to serve the American people. I look forward to working with the Committee, other members of Congress, and our other stakeholders as we move forward together on this important effort. I am happy to answer any questions you might have.

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TESTIMONY OF
JEFFREY R. NEAL, CHIEF HUMAN CAPITAL OFFICER
DEPARTMENT OF HOMELAND SECURITY
BEFORE
THE SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

MAY 20, 2010

Chairman Akaka, Ranking Member Voinovich, and Members of the Subcommittee, I appreciate the opportunity to speak to you on the Department of Homeland Security's (DHS) efforts to appropriately balance its federal and contractor workforce. As Congress and the Executive Branch take a new look at this issue, the Department of Homeland Security has devoted significant attention to achieving the right mix at our Department. My testimony today will provide details on our goals and our plans to attain them.

Background

In its initial stand-up of operations, the Department of Homeland Security significantly relied on industry to provide critical products and services. While such heavy reliance on contractors made sense in a start-up environment, it is unlikely that operating in that manner today is the most efficient and effective way to carry out our homeland security mission.

Since 2007, the U.S. Government Accountability Office (GAO) has raised concerns regarding the Department's large number of contract services. The President's March 4, 2009, memorandum on "Government Contracting" raised concern that agencies across the federal government may be contracting for work that should be reserved for performance by federal employees. The Office of Management and Budget (OMB) has provided further guidance on addressing overreliance on contractors, including through the draft policy letter issued March 31, 2010, by the Office of Federal Procurement Policy (OFPP). With Secretary Napolitano's leadership, we have been working to achieve the appropriate balance between federal employees and contract services in the Department.

Last year, we began the initial process through a three-pronged approach to ensure that the right workforce balance is achieved. First, we are taking steps to ensure that no inherently governmental functions are being contracted. In this regard, under the Department-wide Efficiency Review launched in 2009, all DHS professional services contracts exceeding one million dollars now undergo a mandatory review before a new contract is awarded or an existing contract is renewed. This is to ensure that proposed contract awards do not include inherently governmental functions or impact core functions that must be performed by federal employees. This additional review adds a new level of rigor to the DHS contracting process.

Second, we are assessing critical/core functions for possible conversion to federal performance, with emphasis on identifying any work that could potentially pose a mission risk.

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Finally,a s I will discuss further today, we are in the process of developing workforce assessments to achieve the optimal balance of employees based on current needs. Over the next three years, we anticipate making substantial reductions in our contractor positions as our Balanced Workforce Strategy is fully implemented.

We are seeing progress throughout the Department. In April, DHS concluded a pilot project in response to an OMB/OFPP requirement issued in Director Orszag's July 29, 2009, "Managing the Multi-Sector Workforce" memorandum. The pilot analyzed work functions and examined whether there was sufficient internal federal workforce capacity in the Office of the Chief Information Officer (OCIO). Through the analysis and planning, OCIO identified 158 Contractor Work-Year Equivalents to be converted to federal positions in fiscal years 2010 and 2011 to ensure that the Department maintains control of its mission and operations. As of April 30, 2010, OCIO has more than doubled its federal workforce from 91 to 208 federal FTEs, creating both a more balanced workforce, and a model to emulate in other offices and components. These initial actions were first steps in assessing our workforce needs and ensuring that DHS has the appropriate mix of in-house and contractor skills and experience; however, we have much more to accomplish.

Current State and Future State

Our primary concerns related to an overreliance on contractors are two-fold. First, contractors may be performing work that is closely associated with inherently governmental activities, or is critical/core. Second, the sheer number of contractors brings into question the ability of the federal workforce to properly oversee work performed by contractors. We are taking immediate steps to convert positions and provide more oversight of contractors; further, we are integrating our procurement, budget, and workforce planning efforts in our strategic planning in order to find the right balance in our workforce.

The inaugural Quadrennial Homeland Security Review (QHSR), completed earlier this year, outlined the strategic framework to guide the activities of participants in the homeland security enterprise toward a common end. Recently, we launched the Bottom-Up Review (BUR), which requires DHS components to complete a systematic inventory of their functions and activities, examine their linkage and contribution to the Department's priorities, and when appropriate, adjust planned activities to enhance the mission, goals, and structure as identified within the QHSR. The QHSR and BUR provide DHS leadership with necessary insight into the interdependencies that enable DHS to achieve its mission. These two strategic planning endeavors will be bolstered by the Balanced Workforce Strategy to ensure that DHS possesses the federal workforce capacity necessary to effectively perform our homeland security missions. We envision a DHS future state where:

- Federal workers perform appropriate mission work;
- Contractors provide suitable support services;
- Sound documentation and justification of multi-sector workforce decisions is ongoing;
- Balanced workforce processes are incorporated in annual planning processes (workforce, procurement, budget);

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- A repeatable process for analyzing work requirements and "make (federal employee) or buy (contract service)" decisions is occurring;
- Improved oversight of contractors by federal employees with procurement and technical expertise is ensured; and
- A data stream of contractor and federal workforce information is available.

Strategy

Our rationale for implementing the Balanced Workforce Strategy is clear-cut, and we have identified three objectives:

1. **Ensure we have an appropriate balance between federal employees and contract services.** Both OMB and GAO have identified possible loss of mission control as a potential risk of overreliance on contractors. GAO has indicated it believes that DHS may be at "risk that government decisions may be influenced by, rather than independent from, contractor judgments." In addition to the issue raised by GAO, there may be an impact on in-house capability to carry out the mission (not having a core federal workforce that can ensure mission delivery); or inadequate oversight of contractor performance, which could also have an impact on mission delivery. Given our critical homeland security mission, such risks are not acceptable. We must carefully analyze our apparent dependence on industry to carry out our mission, determine the risk, and correct problems that are identified. This analysis will include: (a) the identification of work that is inherently governmental and therefore must be reserved for government employees; (b) the review of work that is closely associated with inherently governmental functions to make sure that contractor performance of such functions is not expanding to include inherently governmental functions; and (c) the review of critical functions to make sure that the government has sufficient internal capability to control its mission and operations.

2. **Create a process that examines the multi-sector workforce balance immediately and ensures examination of the balance on a regular basis.** This objective has two aspects. First, within the acquisition process, adherence to Section 736 of the Omnibus Appropriations Act of 2009 requires, among other things, that the heads of executive agencies, subject to the Federal Activities Inventory Reform Act, devise and implement guidelines and procedures to ensure that consideration is given to using, on a regular basis, federal employees to perform new functions; further, functions performed by contractors that could be performed by federal employees should result in ongoing examinations of pre-contracting requirements in the early stage of acquisition planning to determine if the work should be performed by federal employees (insourcing). Second, in implementing the Balanced Workforce Strategy, we must identify means for ensuring a smooth transition to a more balanced workforce. We are exploring with the U.S. Office of Personnel Management an innovative approach to use a one-time Direct Hire Authority in order to allow a more seamless transition as contracts end and federal employees need to be brought onboard.

3. **Achieve integrated financial, human capital, and procurement planning**, based on the defined DHS mission, component functions, and work activities produced in the

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QHSR and BUR. As is the case with most federal agencies, DHS and its components have a variety of independent planning processes. My organization, for example, prepares Departmental guidance on human capital and multi-year workforce planning. The Chief Financial Officer prepares budget development and execution guidance, as well as the multi-year Resource Allocation Plan. The Chief Procurement Officer prepares guidance and manages the Department's multi-year Advance Acquisition Plan. Each of these planning processes directly relates to achieving a strong, mission-oriented balanced workforce. However, these planning processes have generally been handled independently by the respective specializations in Headquarters and DHS components. To attain and sustain a balanced multi-sector workforce in coming years, these processes must be integrated and managed by senior Departmental and component leadership.

To achieve these objectives, we have begun to implement our Balanced Workforce Strategy. Some elements of the strategy are still in the final development and review stage, but the strategy in its current form will serve as the catalyst for change to a more balanced multi-sector workforce. We envision the strategy in three parts:

1. **Communications and change management.** The Deputy Secretary will shortly issue guidance on the Balanced Workforce Strategy emphasizing the importance of the effort and directing support and cooperation of program managers who ultimately make decisions about procurement and hiring. Within the Office of the Chief Human Capital Officer, and under my leadership, I have established the Balanced Workforce Program Management Office (PMO). This PMO will focus exclusively and intently on communications and change management, issuing direction and guidance to DHS components, and in tracking and reporting results. I have hired a senior executive with extensive HR experience in several agencies, including service as the senior HR executive in both the Justice and Commerce Departments. In the few brief weeks she has been onboard, we have developed a strategy to drive the needed change. We have formed a senior-level working group to close internal gaps in communication and understanding. We are widely communicating the vision, importance, and details of the Balanced Workforce Strategy to the Department's senior leaders, and we have held a series of briefings with intra-Departmental groups and committees.

2. **A repeatable process to guide organizations in conducting risk analysis and making multi-sector workforce decisions.** Since the PMO was established, we have reviewed numerous source materials, have spoken with the Department of Defense regarding its experience, and have met several times with the DHS senior-level working group to design and coordinate instructions for the components. The guidance will be comprehensive, specific, and clear. It will produce information that can be documented and discussed. It will also create a framework to simplify multi-sector workforce sourcing decisions. Senior leadership will make final decisions on the proper workforce balance based on the organization's functions and activities, applying the provided guidance and developing workforce and acquisition implementation plans. These workforce and acquisition plans will become the basis for restructured and reallocated resources, and serve as roadmaps for implementing the multi-sector workforce changes.

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3. **Measurement and reporting.** As components' multi-sector workforce proposals and implementation plans are submitted to Headquarters, we will review them for technical soundness, establish appropriate implementation goals, and track and report on goal attainment. Since our three key objectives are reducing mission risk, analyzing and instituting a balanced multi-sector workforce, and achieving greater management integration of planning processes, we must determine how best to measure our success in reaching these goals. Our preliminary thinking is that we need to address measurement in several ways, using both summative and formative evaluation perspectives.

As we consult with other DHS organizations on forming these measures, initial questions include:

Tactical Implementation. Are we meeting established goals? Are contracts being decreased? Are new federal employees onboarding? Is documentation available, accurate, valid, and reliable? Are budget and timelines being met?

Integration Implementation. Are planning processes being integrated? Are new processes promoting clearer alignment? Are processes repeatable? What technical rules or approaches create barriers for integrated planning?

Impact of Multi-Sector Workforce Balance Shift on Mission Delivery. Are important performance measures improving in relation to the future workforce state, compared to performance measure accomplishment in the current workforce state? To what extent can it be determined that these changes are attributable to improvements in the balanced multi-sector workforce? Is there documented evidence that risk has decreased as a result of multi-sector workforce changes?

Governance. As mentioned, implementation of the Balanced Workforce Strategy will be successful only with collaboration and shared responsibility across organizational lines. Therefore, the Department is establishing the Balanced Workforce Strategy Executive Steering Group. The Steering Group will be responsible for addressing cross-functional issues and providing comprehensive leadership to the Department and components for planning and executing the Balanced Workforce Strategy.

Conclusion

Our focus must and will be on our homeland security mission, and having a federal workforce that allows maximum flexibility to accomplish our mission. We will conduct a rapid and in-depth review of our current workforce needs and existing contracts. Success in ensuring a balanced workforce is a critical driver of efficiency and promotes One DHS. Again, I thank you for the opportunity to appear before you today, and I welcome any questions you might have.

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UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

STATEMENT OF
CHARLES D. GRIMES III
DEPUTY ASSOCIATE DIRECTOR FOR EMPLOYEE SERVICES
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE AND THE DISTRICT OF COLUMBIA
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

on

"RIGHT-SIZING" THE FEDERAL EMPLOYEE-TO-CONTRACTOR MIX

May 20, 2010

Chairman Akaka, Ranking Member Voinovich, and Members of the Subcommittee:

I appreciate the opportunity to represent the Office of Personnel Management (OPM) and Director John Berry at this important hearing to examine the Administration's efforts to ensure that Federal agencies have the right mix of employees and contractors to carry out their missions.

Background

Soon after taking office, President Obama issued a memorandum for heads of Federal agencies expressing concern that the line between activities that are inherently governmental and commercial activities that may be outsourced had become blurred. The President directed the Office of Management and Budget (OMB) to collaborate with agencies, including OPM, to

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develop Governmentwide guidance on the appropriate use and oversight of all contracts, in accordance with section 321 of the National Defense Authorization Act for Fiscal Year 2009. Section 321 directed OMB to create a single, consistent definition of "inherently governmental function" and develop criteria for identifying positions that should be reserved for Federal employees to ensure agencies maintain control over their missions and operations.

After consulting with OPM and other agencies, OMB Director Peter Orszag issued OMB Memorandum M-09-26 on July 29, 2009, which required agencies to begin the process of developing and implementing policies, practices, and tools for managing the multi-sector workforce. Specifically, the OMB memorandum directed Federal agencies to (1) adopt a framework for planning and managing the multi-sector workforce that is built on strong human capital planning; (2) conduct and report by April 30, 2010, on a pilot analysis of at least one program or activity where the agency has a concern about its reliance on contractors; and (3) use guidelines for in-sourcing that facilitate consistent and sound application of statutory requirements.

More recently, on March 31 of this year, OMB's Office of Federal Procurement Policy (OFPP) published a proposed policy letter for public comment on rules for when work must be reserved for performance by Federal employees. Of particular interest to OPM is the new category of "critical function," which focuses on functions that are core to an agency's mission. The draft policy holds agencies responsible for ensuring that a sufficient number of positions performing critical functions are filled by Federal employees having the appropriate training, experience, and expertise to understand the agency's requirements, formulate alternatives, and manage work products. As the policy letter notes, human resources (HR) offices will need to play a role in helping to make these determinations.

Implementation Efforts

OPM has partnered with OMB to provide technical assistance and support specifically to the Federal HR community in achieving the goals set forth in the President's Memorandum and the OMB directives. OPM has taken a leadership role in providing guidance to agencies on personnel issues associated with potential sourcing determinations and subsequent recruiting and hiring needs.

OPM's work with OMB has included:

- Facilitating discussions in which agencies can share their experiences and lessons learned;
- Fostering collaboration across agencies' acquisition, HR, finance/budget, and performance areas;
- Identifying and developing tools to assist agencies in complying with the OMB directives; and
- Streamlining the Federal recruiting and hiring process.

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One of the tools OPM has developed is an on-line community of practice on the OMB MAX website to respond to agency inquiries and provide appropriate resources. OPM also delivered several briefings to key stakeholders, such as agencies' Chief Human Capital Officers (CHCOs) and Deputy CHCOs, in addition to hosting a CHCO Academy session. To complement these efforts, OPM provided an in-person and webcast skill-based training class on the Federal Activities Inventory Reform Act, also known as the "FAIR Act", for HR specialists. OPM continues to monitor the HR community's training needs so that it can respond appropriately to those needs.

OPM is working with OMB to review the agency reports on their workforce "rebalancing" pilots. The information gleaned from this review will help OPM develop additional tools and guidance for agencies to utilize in addressing the multiple aspects of "right-sizing" the Federal workforce.

In addition, OPM intends to work closely with OFPP and CHCOs in considering appropriate tools that can help agencies in meeting the rebalancing responsibilities outlined in the draft policy letter on reserving work for Federal employees. For example, as the OFPP Administrator notes in his testimony, OPM's ongoing initiative to streamline recruiting and hiring rules should provide important assistance to agencies in expeditiously bringing on board new employees to perform work where the agency identifies that contractor performance is inappropriate, such as where the work is inherently governmental or where the government risks losing control of work that is critical in nature.

Overall Workforce Planning

OPM's guidance and collaboration with agencies has emphasized the importance of workforce planning. Sound workforce planning is essential for agencies to achieve the appropriate balance in a multi-sector workforce and to address other pressing staffing issues they face. Agencies need to have a systematic, holistic process in place to accomplish effective workforce planning that includes the use of workforce analytic tools. Many agencies do not have this kind of process in place and depend upon fragmented data collection efforts, or do not consistently use the data from workforce analyses to inform their planning.

Effective workforce planning requires a sound governance structure within each agency that provides accountability for workforce planning and analysis. Although data collection and analysis may be shared by numerous organizations within an agency, there should be one office that is responsible for integrating and disseminating workforce planning information. OPM encourages agencies to designate an appropriate senior official within that office who will be responsible for addressing in-sourcing and related issues.

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OPM is continuing to provide guidance to assist agencies in identifying the optimal workforce configuration of employees and contractors and developing plans to close any workforce gaps. The means of closing such gaps could involve devoting additional resources to contract management, in-sourcing, developing a plan to recruit and hire employees with the needed skills, or a combination of such measures. To the extent that an agency decides it needs to increase its hiring, there is a wide array of hiring tools and flexibilities that can be used, in addition to the competitive hiring process. These hiring tools include special appointing authorities for veterans, people with disabilities, and students, as well as direct hire authority. Not all of these authorities will be appropriate for every situation, but OPM will work with agencies to help them identify the most effective and expeditious way to recruit and hire qualified candidates to meet their particular needs.

Another important element of "right-sizing" is training. Any influx of new Federal employees, whether resulting from in-sourcing or other agency hiring initiatives, is likely to require planning for additional employee training. Most agency training departments are not able to offer increased training assistance without additional resources. Currently, OPM is working with the training community to look for ways to collaborate and offer training more efficiently. For example, OPM is developing "wiki pages" for the Federal learning and development community. These pages can be useful to agencies in meeting the workforce challenges associated with in-sourcing and other hiring initiatives. They include links to low-cost training options and examples of new technologies for training, such as webcasting. Furthermore, the wiki pages will serve as a knowledge management repository of new and existing agency training efforts. All of these tools will help agencies better manage scarce training resources as they develop and implement their "right-sizing" initiatives.

Conclusion

Mr. Chairman, I would like to close by emphasizing that the effective management of a multi-sector workforce is fundamentally a workforce planning issue that must be carried out at the agency level. OPM can do – and has done – a great deal to assist and support agencies in developing the capacity to conduct the appropriate analyses on which "right-sizing" depends. OPM looks forward to continuing to work with agencies so they can implement appropriate recruiting and hiring strategies to achieve the optimal blend of Federal employees and contractors to carry out their missions.

Thank you again for the opportunity to discuss this important issue with you. I would be happy to respond to any questions you may have.

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United States Government Accountability Office

GAO

Testimony before the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs, U.S. Senate

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SOURCING POLICY

Initial Agency Efforts to Balance the Government to Contractor Mix in the Multisector Workforce

Statement of John K. Needham
Director, Acquisition and Sourcing Management

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GAO-10-744T

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May 20, 2010

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Highlights

Highlights of GAO-10-744T, a testimony before the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs, U.S. Senate

SOURCING POLICY

Initial Agency Efforts to Balance the Government to Contractor Mix in the Multisector Workforce

Why GAO Did This Study

Federal agencies face a complicated set of decisions in finding the right mix of government and contractor personnel to conduct their missions. While contractors, when properly used, can play an important role in helping agencies accomplish their missions, GAO has found that agencies face challenges with increased reliance on contractors to perform core agency missions. Congress and the Executive branch also have expressed concern as to whether federal agencies have become over-reliant on contractors and have appropriately outsourced services. A March 2009 Presidential memorandum tasked the Office of Management and Budget (OMB) to take several actions in response to this concern.

Based on GAO's prior work, this statement discusses (1) civilian agencies' development and implementation of guidelines to consider whether contracted functions should be brought in-house —a process known as insourcing; (2) OMB's proposed policy on work reserved for federal employees; (3) challenges agencies face in managing the federal workforce; and (4) key tools available for insourcing and related efforts.

What GAO Recommends

GAO has made numerous recommendations in recent years to help ensure better management of the multisector workforce, and agencies are in the process of addressing them.

View GAO-10-744T or key components. For more information, contact John Needham at (202) 512-4841 or needhamjk1@gao.gov.

What GAO Found

GAO reviewed the status of civilian agencies efforts to develop and implement insourcing guidance and reported in October 2009 that none of the nine civilian agencies with whom we met had met the statutory deadline to produce insourcing guidance. Primarily, they were waiting to ensure their guidance was consistent with or receive additional OMB guidance, and to use the results, best practices, and lessons learned from their multisector workforce pilots to better inform their insourcing guidelines. Since the time of our review, OMB reported in December 2009 that 24 agencies had launched pilots to address overuse of contractors in one or more of their organizations. Agencies were due to report the results of their pilots to OMB by May 1, 2010.

In response to a congressional mandate, OMB recently issued a public notice that provides proposed policy for determining when work must be performed by federal employees. Comments on the policy are due from federal agencies and the public by June 1, 2010. The proposed policy provides the following guidance to executive branch agencies: it adopts a single, governmentwide definition of inherently governmental functions in accordance with the definition in the Federal Activities Inventory Reform Act of 1998, which classifies an activity as inherently governmental when it is so intimately related to the public interest that it must be performed by federal employees; it provides guidance for determining functions "closely associated with inherently governmental;" and it introduces the category of "critical functions," as work that must be reserved for federal employees in order to ensure the agency has the internal capability to maintain control of its missions and operations.

Agency efforts to effectively insource functions performed by contractors will in large part depend on the ability to assess mission and human capital requirements and develop and execute plans to fulfill those requirements so agencies have a workforce that possesses the necessary knowledge, skills, and competencies to accomplish their mission. Furthermore, GAO's 2009 review of civilian agency insourcing efforts identified operational and administrative challenges agencies face with respect to implementing the conversion of contractor personnel to government positions. For example, agencies face difficulties in gathering and analyzing certain types of service contracting data needed for making insourcing decisions.

Agency implementation of insourcing efforts could be facilitated by tools that GAO has previously identified, including:

- Inventories to identify inherently governmental functions;
- Business case analysis to facilitate agency decisions in determining whether insourcing a particular function has potential to achieve mission requirements; and
- Human-capital flexibilities to efficiently fill positions that should be brought in-house.

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here to discuss current insourcing efforts, consideration of work that should be performed only by federal employees, and related workforce planning challenges—all issues needing consideration from the broader perspective of managing the multisector workforce. To carry out their missions agencies rely on an increasing complex workforce composed of federal employees, contractor personnel, and in the case of the Department of Defense (DOD), military personnel. Determining whether to obtain services with current or new federal employees, private sector contractors, or a combination of the two is an important economic and strategic decision critical to the federal government's effective and efficient use of taxpayer dollars. Such decisions may have critical implications for government control and accountability for policy and program decisions.

The executive branch has encouraged federal agencies since the mid-1950s to obtain commercially available services from the private sector when doing so is cost-effective. However, federal agencies face a complicated set of decisions in finding the right mix of government and contractor personnel to conduct their missions. While contractors, when properly used, can play an important role in helping agencies accomplish their missions, our prior work has shown that agencies face challenges with increased reliance on contractors to perform core agency missions[1]. Congress and the Executive branch also expressed concern as to whether federal agencies have become overreliant on contractors and have appropriately outsourced services. A March 2009 Presidential memorandum tasked the Office of Management and Budget (OMB) with issuing guidance in a number of areas related to addressing challenges in the federal contracting environment, including when it is appropriate for the government to outsource services and when it is not.[2]

Over the years, we have found that in choosing to use contractors, the decisions agencies need to make involve determining which functions and

[1]See for example, GAO, *Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services*, GAO -07-990 (Washington, D.C.: Sep. 17, 2007), and GAO, *Defense Management: DOD Needs to Reexamine Its Extensive Reliance on Contractors and Continue to Improve Management and Oversight*, GAO-08-572T (Washington, D.C.: Mar. 11, 2008).

[2]74 Fed. Reg. 9755 (Mar. 6, 2009).

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activities should be contracted out and which should not to ensure institutional capacity, as well as identifying and distinguishing the roles and responsibilities of contractors and civilian and military personnel. In addition, they must develop a total workforce strategy to address the extent of contractor use and the appropriate mix of contractor and government personnel. In response to your interest in the government's use of contractors and related workforce issues, I will draw primarily on our prior work to discuss (1) civilian agencies' development and implementation of insourcing guidelines; (2) the proposed policy on work that should be performed only by, or reserved for, federal employees; (3) challenges agencies face in managing the federal workforce; and (4) key tools available for insourcing and related efforts. The reports which form the basis for this statement were prepared in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Since 1955, the executive branch has encouraged federal agencies to obtain commercially available goods and services from the private sector when the agency determines it is cost-effective. However, in the past, both the private and public sectors expressed concern about the fairness with which these sourcing decisions were made. In response, Congress in 2000 mandated a study of government sourcing conducted by the Commercial Activities Panel and chaired by the Comptroller General.[3] In April 2002, the panel released its report with recommendations that stressed the importance of linking sourcing policy with agency missions, promoting sourcing decisions that provide value to the taxpayer regardless of the service provider selected, and ensuring greater accountability for performance. For example, the panel found that federal sourcing policy should:

- support agency missions, goals, and objectives;
- be consistent with human-capital practices designed to attract, motivate, retain, and reward a high-performing federal workforce;

[3]The panel included representatives from OMB, DOD, the Office of Personnel Management, private industry, academia, a trade association, and unions.

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- recognize that inherently governmental functions and certain others should be performed by federal workers;
- avoid arbitrary full-time equivalent or other arbitrary numerical goals; and
- provide for accountability in all sourcing decisions.

Government contracting has more than doubled to reach over $500 billion annually since the panel issued its report. This increased reliance on contractors to perform agency missions increases the risk that government decisions can be influenced by contractor employees, which can result in a loss of control and accountability. Agencies buy services that range from basic operational support, such as custodial and landscaping, to more complex professional and management support services, which may closely support inherently governmental functions. Such services include acquisition support, budget preparation, and intelligence services. Our work at DOD and the Department of Homeland Security (DHS) has found that it is now commonplace for agencies to use contractors to perform activities historically performed by government employees.[4] Inherently governmental functions require discretion in applying government authority or value judgments in making decisions for the government, and as such they should be performed by government employees, not private contractors. The closer contractor services come to supporting inherently governmental functions, the greater this risk of influencing the government's control over and accountability for decisions that may be based, in part, on contractor work.

In part to address the increased reliance on contractors, the Fiscal Year 2008 National Defense Authorization Act[5] required DOD to develop and implement insourcing guidelines. In April 2008, DOD issued its initial insourcing guidelines, and on May 28, 2009, DOD issued implementing guidance for the insourcing of contracted services.[6] The guidance is

[4]GAO, *Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services*, GAO -07-990 (Washington, D.C.: Sep. 17, 2007); GAO, *Defense Management: DOD Needs to Reexamine Its Extensive Reliance on Contractors and Continue to Improve Management and Oversight*, GAO-08-572T (Washington, D.C.: Mar. 11, 2008); and GAO, *Intelligence Reform: GAO Can Assist the Congress and the Intelligence Community on Management Reform Initiatives*, GAO-08-413T (Washington, D.C.: Feb. 29, 2008).

[5]National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181 § 324. *See also* 10 U.S.C. § 2463.

[6]DOD Memorandum, *In-sourcing Contracted Services – Implementation Guidance* (May 28, 2009).

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designed to assist DOD components as they develop and execute plans to decrease funding for contractor support and increase funding for new civilian manpower authorizations.

Similarly, the Omnibus Appropriations Act of 2009,[7] required the heads of executive branch agencies to devise and implement insourcing guidelines and procedures. The guidelines and procedures were to ensure that "consideration" was given to using, on a regular basis, federal employees to perform new functions and functions that are performed by contractors and could be performed by federal employees.

In July 2009, OMB issued guidance for agencies to begin the process of developing and implementing policies, practices, and tools for managing the multisector workforce.[8] This guidance included insourcing criteria intended to provide the civilian agencies with a framework for consistent and sound application of insourcing guidance, in accordance with statutory requirements. The criteria consisted of four sections: (1) general management responsibilities; (2) general consideration of federal employee performance; (3) special consideration of federal employee performance; and (4) restriction on the use of public-private competition. Each criterion addresses different aspects of the mandate for insourcing guidelines and procedures and describes circumstances and factors agencies should consider when identifying opportunities for insourcing. (See app. I for a more detailed description of OMB's insourcing criteria.) Additionally, the guidance, as part of a planning pilot, requires each agency to conduct a multisector human-capital analysis of an organization, program, project, or activity where there are concerns about reliance on contractors and report on the pilot by May 1, 2010.

[7]Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, Div. D, § 736.

[8]Office of Management and Budget, M-09-26, *Managing the Multi-Sector Workforce* (Jul. 29, 2009).

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Civilian Agencies' Efforts to Develop Insourcing Requirements

In response to the mandate in the 2009 Omnibus Appropriations Act, we reviewed the status of civilian agencies' efforts to develop and implement insourcing guidance. We reported in October 2009 that none of the nine civilian agencies we met with between July and October 2009 had met the statutory deadline to produce insourcing guidance.[9] One agency had issued preliminary guidelines, and two others had drafted but not issued their guidelines as of our review, but most of the agencies' efforts were still in the early stages.[10] For example, two of the nine agencies reviewed at the time had designated the offices responsible for leading the effort to develop the guidelines and were in the process of deciding what approach they would take. In contrast, two other agencies had drafted guidelines, with one waiting on management approval to issue them and the other planning to finalize its guidelines once OMB issued additional guidance regarding outsourcing and inherently governmental functions. Agency officials cited a number of reasons as to why they did not meet the statutory deadline and had not issued final insourcing guidelines. The reasons included, but were not limited to the following:

- Wanting to ensure their guidelines were consistent with OMB's guidance, issued in July 2009, which caused them to delay finalizing or drafting their guidelines.
- Waiting for additional OMB guidance and clarification regarding outsourcing and inherently governmental functions. Several officials stated that they anticipated this guidance would have a significant effect on their development and implementation of insourcing guidelines. Similarly, OMB indicated when it provided the insourcing criteria in July 2009 that it expected to refine the criteria as it developed guidance on when outsourcing is and is not appropriate.
- Intending to use the results, best practices, and lessons learned from the multisector workforce planning pilots to better inform their insourcing guidelines and procedures. For example, one agency told us it planned to use its experience with its planning pilot as the basis for its final guidelines, while another planned to issue initial guidelines to

[9]DOD, however, issued implementation guidance for insourcing efforts on May 28, 2009. The guidance explains that it is designed to assist DOD components as the develop and execute plans to decrease funding for contract support and increase funding for approximately 33,400 new civilian manpower authorizations. Among other matters, the guidance provides a process components are to follow in prioritizing and reviewing contracted services for possible insourcing and the steps they are to follow once the decision is made to insource a function.

[10]GAO, *Civilian Agencies' Development and Implementation of Insourcing Guidelines*, GAO-10-58R (Washington, D.C.: Oct. 6, 2009).

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be used during the pilot and then revise the guidelines as appropriate based on the experiences during the pilot.
- Stressing that developing effective insourcing guidelines is complex and involves many agency functions, including human capital, acquisition, and finance and budget, all of which requires a great deal of coordination and takes time. They added that their ability to focus on the development of the guidelines has been constrained by their capacity to deal with multiple management initiatives in addition to their regular core duties.

Although OMB and agencies have yet to issue insourcing guidance, OMB reported in December 2009 that 24 agencies had launched planning pilots to address the use of contractors in one or more of their organizations. Agencies were due to report the results of their pilots to OMB by May 1, 2010.

Proposed OMB Policy on Work Reserved for Federal Employees

Following the initiative of the March 2009 Presidential memo on government contracting and in response to a congressional mandate, OMB's Office of Federal Procurement Policy issued a public notice on March 31, 2010 that provides proposed policy for determining when work must be performed by, or reserved for, federal employees.[11] The proposal provides the following guidance to executive branch agencies:

- Adopts the statutory definition in the Federal Activities Inventory Reform (FAIR) Act of 1998 as a single, governmentwide definition of inherently governmental functions. This definition classifies an activity as inherently governmental when it is so intimately related to the public interest that it must be performed by federal employees. Such activities include determining budget priorities and awarding and administering contracts, which are reserved exclusively for federal employees.
- Retains the illustrative list of examples of "closely associated with inherently governmental functions" from the Federal Acquisition Regulation, such as preparing budgets and developing agency regulations, and provides guidance to help agencies decide whether to use contractors to perform these functions. Unlike inherently governmental functions, agencies can determine whether contractor performance of these functions is appropriate. The proposed policy

[11] 75 Fed. Reg. 16188 (Mar. 31 2010).

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lays out the responsibilities agencies must perform, such as ensuring sufficient government capacity for oversight during the contract award and administration process, if they decide to use a contractor for these services.

- Introduces the category of "critical functions," as functions whose importance to the agency's mission and operation requires that at least a portion of the function must be reserved for federal employees to ensure the agency has sufficient internal capability to effectively perform and maintain control.
- Outlines a number of new management determinations and actions that federal agencies should employ to avoid allowing contractor performance of inherently governmental functions, including developing agency procedures, providing training and designating senior officials responsible for implementation of the proposed policy. Comments from agencies and the public on the proposed policy are due to OMB by June 1, 2010.

Effective Implementation of Insourcing Policies Will Depend on Agencies' Ability to Address Workforce Planning and Other Challenges

Agency efforts to effectively insource certain functions now performed by contractors will in large part depend on their ability to assess their human-capital and mission requirements and develop and execute plans to fulfill those requirements so they have a workforce that possesses the necessary education, knowledge, skills, and competencies to accomplish their mission. We and others have shown that successful public and private organizations use strategic management approaches to prepare their workforces to meet present and future mission requirements. Strategic human-capital management—which includes workforce planning—helps ensure that agencies have the talent and skill mix they need to address their current and emerging human-capital and other challenges, such as long-term fiscal constraints and changing demographics.[12]

A strategic human-capital plan helps agency managers and stakeholders to systematically consider what is to be done, how it will be done, and how to gauge progress and results. Our prior work has identified workforce planning challenges that can affect an agency's ability to obtain the right mix of federal employees and contractor personnel. Strategic workforce planning is an iterative, systematic process that addresses two critical needs: (1) aligning an organization's human-capital program with its current and emerging mission and programmatic goals and (2) developing

[12]GAO, *Workforce Planning: Interior, EPA, and the Forest Service Should Strengthen Linkages to Their Strategic Plans and Improves Evaluation*, GAO-10-413 (Washington, D.C.: Mar. 31, 2010).

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long-term strategies for acquiring, developing, and retaining an organization's workforce to achieve programmatic goals.[13] These strategies should include contractor as well as federal personnel and link to the knowledge, skills, and abilities agencies need. As agencies develop workforce strategies, they also need to consider the extent to which contractors should be used and the appropriate mix of contractor and federal personnel. With the increased reliance on contractors, there has been an increased concern about the ability of agencies to ensure sufficient numbers of staff to perform some functions that should only be performed by government employees. Strategic workforce planning can position federal agencies to meet such workforce challenges. However, our prior work has found that the increased reliance on contractors to perform the work of government is in part attributed to difficulties in hiring for certain hard-to-staff positions, training and retaining government employees. For example, we have previously reported that federal agencies have relied increasingly on contractors to support the acquisition function due to the fact that the capacity and the capability of the federal government's acquisition workforce to oversee and manage contracts have not kept pace with increased spending for increasingly complex purchases.[14] This pattern can also be found in other functions such as information technology and intelligence activities. Importantly, federal agencies also face competition in hiring and retaining government employees as contractors can offer higher salaries in some cases.[15]

In 2001, we first identified strategic human-capital management as a high-risk area because of the federal government's long-standing lack of a consistent approach to human-capital management. In 2010, while agencies and Congress have taken steps to address the federal

[13]GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, GAO-04-39 (Washington, D.C.: Dec. 11, 2003).

[14]GAO, *The Office of Management and Budget's Acquisition Workforce Development Strategic Plan for Civilian Agencies*, GAO-10-459R (Washington, D.C.: Apr. 23, 2010); *Acquisition Workforce: DOD Can Improve Its Management and Oversight by Tracking Data on Contractor Personnel and Taking Additional Actions*, GAO-09-616T (Washington, D.C.: Apr. 28, 2009); *Department of Homeland Security: A Strategic Approach Is Needed to Better Ensure the Acquisition Workforce Can Meet Mission Needs*, GAO-09-30 (Washington, D.C.: Nov. 19, 2008); and *Defense Management: DOD Needs to Reexamine Its Extensive Reliance on Contractors and Continue to Improve Management Oversight*, GAO-08-572T (Washington, D.C.: Mar. 11, 2008).

[15]GAO, *DOD's High Risk Areas: Actions Needed to Reduce Vulnerabilities and Improve Business Outcomes*, GAO-09-460T (Washington, D.C.: Mar. 12, 2009).

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government's human-capital shortfalls, strategic human-capital management remains a high-risk area because of the continuing need for a governmentwide framework to advance human-capital reform. We have reported that federal agencies have used varying approaches to develop their strategic workforce plans, depending on their particular circumstances.[16] For example, an agency with a future workload that could rise or fall sharply may focus on identifying skills to manage a combined workforce of federal employees and contractors. We and the Office of Personnel Management (OPM) have identified the following six leading principles that agencies should incorporate in their workforce planning efforts:[17]

- Align workforce planning with strategic planning and budget formulation;
- Involve managers, employees, and other stakeholders in planning;
- Identify critical occupations, skills, and competencies and analyze workforce gaps;
- Develop strategies to address workforce gaps;
- Build capability to support workforce strategies; and
- Monitor and evaluate progress.

Furthermore agencies face other operational and administrative challenges as our 2009 review of civilian agency insourcing efforts[18] identified with respect to implementing guidance to facilitate the conversion of contractor personnel to government positions, including the following:

- Infrastructure. The complex nature of insourcing and the many functional parts of an agency involved in the hiring process require managers to share responsibility and coordinate activities. The various functions involved in an agency's insourcing efforts—such as human capital, acquisition, finance and budget—must be identified, as well as the roles each will play.

[16]GAO-10-413

[17]GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, GAO-04-39 (Washington, D.C.: Dec. 11, 2003). OPM, which developed its *Human Capital Assessment and Accountability Framework* in conjunction with the Office of Management and Budget and GAO, issued the final regulations for this framework in April 2008. 73 Fed. Reg. 23012 (Apr. 28, 2008).

[18]GAO-10-58R

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- Culture. Insourcing represents a major shift in the focus and culture of the multisector workforce. Established processes and procedures are geared toward outsourcing and shifting to insourcing and a "total workforce" approach—that considers both contractors and federal employees—will take time and requires flexibility to meet the needs of an agency within an ever-changing environment.
- Data. Agencies face difficulties in gathering and analyzing certain types of service contracting data needed for making insourcing decisions. For example, information on the type of service contracts and the number of contractor-equivalent personnel may not be readily available, even though some officials indicated that such information may be needed to review contracted-out services and make insourcing decisions. The lack of reliable data on contractors has been a recurrent theme in our work over the past several years. For example, we have reported that agencies faced challenges with developing workforce inventories under the FAIR Act of 1998, especially as it relates to the classification of positions as inherently governmental or commercial.[19] Our work on the acquisition workforces at DHS and DOD reported that the departments lacked sufficient data to fully assess total acquisition workforce needs including the use of contractors. And, more recently, our review of DOD service contractor inventories for fiscal year 2008 found that each of the military departments used different approaches and data sources to compile their inventory data and, as a result, DOD data on service contracts are inconsistent and incomplete.[20]
- Resources. Limited budgets and resources may constrain insourcing efforts. For example, if after applying its guidelines, an agency determines that a function should be insourced and additional government employees need to be hired, the agency must ensure the funds are available to pay for them.

Tools Available for Agencies' Insourcing Efforts

Agency implementation of insourcing efforts could be facilitated by tools that we identified in prior work. These tools will allow agencies to capture information, make strategic decisions and implement those decisions for their multisector workforce. They include: inventories, business case analysis, and human capital flexibilities.

[19]GAO, *Competitive Sourcing: Greater Emphasis Needed on Increasing Efficiency and Improving Performance,* GAO-04-367 (Washington, D.C.: Feb. 27, 2004).

[20]GAO, *Defense Acquisitions: Observations on the Department of Defense Service Contract Inventories for Fiscal Year 2008,* GAO-10-350R (Washington, D.C.: Jan. 29, 2010).

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- Inventories. The inventories that federal agencies are required to develop under congressional mandate will be used to inform a variety of workforce decisions.[21] For example, at DOD, the inventories are to contain a number of different elements for service contracts, including information on the functions and missions performed by the contractor, the funding source for the contract, and the number of contractor full-time equivalents working under the contract. Once compiled, the inventories may be used to inform a variety of workforce decisions, including how various agency functions should be sourced.[22]
- Business Case Analysis. A balanced analytical approach, used by some agencies when deciding to outsource functions, could facilitate agency decisions in determining whether insourcing a particular function has the potential to achieve mission requirements. Such an analysis may consider questions such as the following:
    - How critical is the function's role in relationship to the agency's mission?
    - What is the risk to program integrity and control of sensitive information if the function is not insourced?
    - What is the long-term trend of demand for the function; is there periodic fluctuation in demand for the function (i.e. stability of demand)?
    - What is the current state of technology used by the function and what is the likelihood of the agency being able to acquire and sustain the technology if the function is brought in-house?
    - What are the number of staff and skill level of staff needed to perform the function?
    - What is the ability of the agency to recruit the workforce with the appropriate skills to continue to provide services the contractor currently provides?
    - What is the likelihood of contractor staff in the function applying to work for the agency?
    - What is the estimated cost to maintain an acceptable level of performance if the function is brought in-house?
- Human Capital Flexibilities. Once agencies determine which functions they want to have provided by federal employees, taking advantage of the variety of human-capital flexibilities is crucial to making

[21]Pub. L. No. 111-117, Division C, Title VII, Section 743 contains civilian agency requirement. Pub. L. No. 110-181, Division A, Title VIII, Section 803 contains the requirement for DOD.

[22]GAO has been congressionally mandated to review the status of development of inventories at executive branch agencies.

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improvements in agencies' efforts to recruit, hire, and manage their workforces. For example, monetary recruitment and retention incentives and special hiring authorities provide agencies with flexibility in helping them manage their human-capital strategically to fulfill insourcing needs.[23]

Concluding Observations

OMB's criteria for insourcing decisions provide a basis for agencies in establishing their insourcing plans and can be used to facilitate balancing the mix of federal employees and contractors to better assure government control over critical functions. However, it will be in the implementation of agency plans and in the individual sourcing decisions that federal agencies make that will determine the ultimate success of this effort. Making use of the full range of information and human-capital tools available to implement these plans will be important to assuring effective government control of critical functions, mitigating risks, and providing value to the taxpayer.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions you or the other members of the subcommittee may have at this time.

Contacts and Staff Acknowledgments

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[23]GAO, *Human Capital: Transforming Federal Recruiting and Hiring Efforts*, GAO-08-762T (Washington, D.C.: May 8, 2008).

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Appendix I

Table 1: OMB's Criteria for Insourcing under Section 736

Key sections	Agency responsibilities/actions and factors to consider
General Management Responsibilities	• review contractor performance on an ongoing basis and where a determination is made that contractors are performing inherently governmental responsibilities, insource such work on an accelerated basis • monitor internal human-capital capacity to minimize the risks associated with overreliance or improper reliance on contractors • ensure that there are sufficient resources to manage and oversee contractors
General Consideration of Federal Employee Performance	• augment existing management reviews when appropriate, to consider and evaluate opportunities to improve performance with the use of federal employees o evaluations should • consider opportunities for new and already-contracted work • generally include a cost analysis that addresses the full cost of performance and provides "like comparisons" of relevant costs to determine the most cost-effective source of support • situations when insourcing may be justified without a full cost analysis: o to establish or build internal capacity or maintain control of an agency's mission and operations; o to perform a function that is closely associated with an inherently governmental function and in-house performance is necessary for an agency to maintain control of its mission and operations; or o to avoid the compromise of a critical agency or administration policy
Special Consideration of Federal Employee	• go beyond existing agency management reviews and evaluate the specific function to be performed prior to the pursuit or nonpursuit of a contract action o key issues and actions for evaluations • if an agency determines that contractor performance causes the agency to lack sufficient internal expertise to maintain control of its mission and operations, then the agency is to take actions to obtain needed in-house capacity • if a preliminary analysis suggests that public-sector performance is more cost-effective and it is feasible to hire federal employees for a particular function, the agency is to initiate a more-detailed analysis of insourcing options • extent of analysis should generally be commensurate with the size and complexity of the function in question and its importance to the agency's mission • cost analysis should address the full costs of government and private-sector performance • insourcing should not be used unless performance and risk considerations in favor of federal employee performance will clearly outweigh cost considerations
Competition Restrictions	• reiterates restriction in section 736 from conducting public-private competitions under OMB Circular A-76 as a prerequisite to federal performance of certain functions

Source: OMB.

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STATEMENT BY

MARK WHETSTONE, PRESIDENT
NATIONAL CITIZENSHIP AND IMMIGRATION SERVICES COUNCIL
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,
THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

OF THE

SENATE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS

ON

BALANCING ACT: EFFORTS TO RIGHT-SIZE THE
FEDERAL EMPLOYEE-TO-CONTRACTOR MIX

MAY 20, 2010

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Introduction

Chairman Akaka, Ranking Member Voinovich, and other distinguished members of the Senate Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, my name is Mark Whetstone, and I am President of the American Federation of Government Employee's National Citizenship and Immigration Services Council. I greatly appreciate this opportunity to provide our union's input at today's hearing. The many issues within your subcommittee's jurisdiction may not generate the most attention, but there's no denying their vital importance to all Americans who depend on the federal government for efficient, effective, and reliable services. On a personal note, let me just say that it is a real thrill for me to discuss these issues with you this afternoon after following your work over the years with considerable interest.

As an employee of the Citizenship and Immigration Service, I served as an Immigration Services Officer at the Nebraska Service Center, where I adjudicated benefit applications and petitions. I hope that my own experiences will provide the subcommittee with an important perspective that might otherwise be missed—that of rank-and-file federal employees who work on the front-lines at the Department of Homeland Security (DHS) and are confronted every day with the consequences of wholesale privatization.

In fact, I used to work as an Immigration Information Officer (IIO). The members of this Subcommittee may recall that, beginning in 2003, the previous Administration reviewed for privatization the work of several hundred IIOs, DHS employees who are responsible for the investigation and adjudication of applications for immigration rights and benefits. IIOs must interpret and execute complex and frequently-changing immigration and naturalization laws and exercise discretion, often to promote public safety. There was no question that we performed functions that should have been unambiguously reserved for federal employee performance. Moreover, according to internal documents, program managers opposed the privatization effort because the study wouldn't have generated efficiencies. Nevertheless, the OMB Circular A-76 privatization study went forward. Why? Because the Office of Management and Budget (OMB) had imposed a numerical quota on all agencies, including DHS, that compelled them to study large numbers of federal employees for privatization within certain periods of time. In fact, according to internal DHS documents uncovered by this Committee, the A-76 quota was nakedly political: "Pressure exists by the Administration to conduct studies. Cabinet requests studies to be completed by elections in November". Thanks to successful floor amendments to the House and Senate versions of the FY05 Homeland Security Appropriations Bill, the privatization study of IIOs was scrapped. However, if not for the dogged leadership of Chairman Joe Lieberman (I-CT) and key support from Ranking Member Susan Collins (R-ME) for the Senate amendment to stop the IIO privatization study, I would not be here today because I and many other inherently governmental employees would likely have been privatized. I should also say that AFGE's ultimately successful effort to stop the privatization of IIOs inspired me to become a union leader.

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DHS Overview

No department has a mission more important than that of DHS. Although the department depends on Coast Guard personnel, civilian personnel, and contractors, DHS has become one of the most heavily-outsourced in the federal government. An imprecise, but first of its kind, contractor inventory carried out in February 2010 by DHS found that the department employed 210,000 contractors and 188,000 federal employees.

Many DHS contractors have been assigned functions that should only be performed by federal employees—including making policy and managing acquisition, the consequences of which AFGE members understand all too well. A 2007 GAO study found that the Coast Guard had hired a contractor to manage the agency's OMB Circular A-76 activity. Because the contractor was being paid for each federal employee subjected to an A-76 study, you will not find it hard to believe that the number of my Coast Guard colleagues who were reviewed for privatization shot up dramatically.

A 2008 GAO report concluded that DHS did not assess the risks of hiring contractors to perform contract management and support services that had the potential to allow contractors to make decisions best left to government officials. Poor oversight at DHS has led to catastrophic failure in major contracts, such as the $2 billion "virtual border fence" along the US-Mexico border. In April 2010, a DHS official described the so-called SBInet border project as a "complete failure." The project was proceeding so slowly that, in March 2010, one House lawmaker estimated that it would take DHS 320 years – or until the year 2330 – to fully deploy SBInet along the Southwest border.

In other cases, DHS dispensed with the pretense of oversight , and contractors were assigned to manage their own work. A DHS Inspector General (IG) report in April 2010 found that contractors determined if their own invoices were "reasonable." And DHS is so heavily dependent on contractors that it has problems finding government employees to oversee contracts. This was the case with a $40 million information technology program contracted by the Federal Emergency Management Agency (FEMA). The DHS IG further reported that FEMA had chosen a former contractor employee to oversee that contractor's performance and had more than a dozen former contractor employees working in FEMA's Mitigation Directorate. "The misplaced allegiances of key directorate employees hampered the performance of (the contract)," the IG reported.

It is often said that DHS was forced to use contractors because it was set up in a hurry and it takes too long to hire federal employees. Unfortunately, that explanation doesn't jibe with reality. While TSA did have to be established after 9/11, the other agencies that Congress combined to create DHS were longstanding entities. And while contractor employees may have been initially necessary to perform some functions that should normally have been reserved for federal employees, more than sufficient time has elapsed to bring those functions back in-house. Indeed, as GAO points out, DHS officials regularly renewed contracts for functions that should have been reserved for federal employees without even considering in-house performance.

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Focus On TSA

Since its creation by the Aviation and Transportation Security Act (ATSA), TSA has been transformed from an agency quickly established to address grave public concerns in the wake of the deadly attacks of September 11, 2001, to one of many federal agencies with the important mission of protecting the country from threats and attacks. Because the urgency of events required a rapid establishment of TSA, ATSA allowed the agency exceptions to standard federal sourcing as well as personnel laws and regulations. Yet almost a decade later, the agency continues to use these exceptions. With little analysis of efficiency, security, fairness to federal employees or prudent use of taxpayer money, TSA has outsourced federal worker duties at the agency. GAO and IG reports have chronicled wasteful spending. News reports and Congressional investigations have documented compromises of security by contract employees who edited the Transportation Security Officer (TSO) checkpoint procedures in such a way that redacted portions were posted online and circulated around the world by bloggers, necessitating changes in screening procedures. Last week a Massachusetts couple was arrested on charges of using information they received from a contract employee in TSA's human resources office to steal the identities of dozens of TSOs at Boston Logan International Airport. These outcomes could have easily been avoided by applying the same contracting rules to TSA as other federal agencies. AFGE strongly urges TSA to conform its contract procedures to those of the federal government, and for Congress to make those requirements law, in addition to granting TSOs the same collective bargaining rights and workplace protections of other federal employees.

The most egregious of TSA's outsourcing effort is the Screening Partnership Program (SPP), a system that converts the inherently governmental federal screening duties performed by TSOs to private contractors without evidence that they provide the same level of security as federal employees at lower costs. The SPP is contrary to Congressional intent to federalize airport security and violates statutory prohibitions against the outsourcing of federal jobs without allowing federal employees to compete for those jobs. Before privatizing work performed by federal employees, agencies are generally required to demonstrate through a cost comparison study (under the rules of OMB Circular A-76) that a contractor is more efficient. The SPP includes none of the safeguards such as a cost comparison of federal employee performance to that of the contractor, risk analysis determination or any demonstration of savings. If the A-76 rules that govern outsourcing in the rest of the federal government were applied to the SPP, TSA screening jobs would be kept in-house if for no other reason than the costs of extra oversight needed for contractor employees would make contracting too expensive. Although the SPP gives laid-off TSOs a qualified and unenforceable right to a job with the contractor, the SPP does not remove federal screener managers. Instead, it adds contractor managers, creating another layer of overhead and expense. AFGE firmly believes the duties of screening passengers and baggage at U.S. airports is best performed by cost-effective, highly-trained federal employees.

On March 30, 2010, OMB issued a proposed Policy Letter on the Work Reserved for Performance by Federal Government Employees providing guidance regarding three categories of federal work that are generally reserved for federal employees: inherently governmental functions, critical functions, and functions that are closely associated with the performance of inherently governmental work. The proposed policy letter includes an Appendix with an illustrative list of functions closely associated with

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the performance of inherently governmental work. That list includes the function described as "Provision of special non-law enforcement security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details". The work of TSOs clearly falls into this category, making the SPP contrary to OMB's own concept of work that must be performed by federal employees.

AFGE is particularly concerned about the advancement of the SPP in the border state of Montana. TSA recently awarded private security contracts under the SPP for seven airports and is considering the applications of seven additional airports to use private contractors. AFGE TSO members in Montana report they have faced retaliation and intimidation from TSA management and airport authority officials for actively opposing the program. These actions by TSA management directly contradict the agency's policy prohibiting TSA managers and supervisors from making "remarks that directly or indirectly threaten an employee with the loss of any benefit such as promotion or leave approval, or threaten to take action against an employee engaging in protected activities". The allegations are serious and should be investigated by TSA management and the TSO workforce assured they will be treated fairly. TSA should be required to follow the same rules for outsourcing as the rest of federal government and Congress should close the loopholes in ATSA that allow the agency to circumvent standard federal sourcing rules.

How We Got Here

I am proud to be a DHS employee. And I am proud of the work performed by the department's Coast Guard personnel, civilian employees, and contractors. But DHS has swung dangerously out of balance in its overreliance on contractors—to the detriment of both our mission and the nation's taxpayers. DHS employees are grateful that the Senate Homeland Security and Governmental Affairs Committee, in bipartisan fashion, has historically taken the lead in drawing attention to the consequences of the department's out-of-balance workforce. The department's new management shows a commendable determination to restore DHS' accountability, but there's no question this committee's continued bipartisan leadership is necessary to ensure that good intentions are translated into actual results.

I know that there are some who would prefer to keep history out of our discussion, perhaps because they don't want others to be reminded of the roles they played in the wholesale privatization that made insourcing and expansion of the definition of inherently governmental so imperative, but we will never be able to create lasting and meaningful reforms until we have learned from history. This wholesale privatization occurred during the two previous Administrations, one Democratic and one Republican. Thus, it would be a mistake to assign responsibility for wholesale privatization to one political party. However, there is no reason why the effort underway to rebalance the federal government's civil service and contractor workforces in DHS specifically, and the federal government generally, should not be more bipartisan than the ignoble effort that created such a terrible imbalance.

We didn't get here by accident. We got here because of politics and the resulting policy choices.

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In the Clinton Administration, the mantra was "steer, don't row"—that federal employees should do nothing more than supervise contractors, even if outsourcing cost more or resulted in inferior service. As it turned out, federal employees were often prevented from steering as well as rowing, so contractors began to supervise other contractors or even to supervise themselves. During the Bush Administration, the philosophy could best be summed up by the now infamous "Yellow Pages" test: if there's a function a contractor wants to perform, then we should contract it out.

- It was not an accident that inflexible personnel ceilings were imposed on the federal civil service which forced agencies to contract out work which either should have been performed in-house because of its sensitive nature or could have been performed more efficiently by federal employees. If only I had a dollar for every time I have heard a manager say that for policy reasons work should be performed by civil servants but they had to outsource because while there is always money to hire a contractor there is rarely authority to hire a federal employee.

- It was not an accident that the Bush Administration implemented a "competitive (sic) sourcing" initiative that required all agencies to conduct privatization studies of hundreds of thousands of federal employees or risk having their budgets cut, using an OMB Circular A-76 process that, according to the GAO and the DoD IG, overstated savings and understated costs. In fairness to the Bush Administration, it must be pointed out that the Clinton Administration had earlier launched its own quota-driven "competitive (sic) sourcing" effort in DoD, which also ended in failure.

- It was not an accident that, despite all of the doubletalk about the value of public-private competition, the vast majority of work that was contracted out during the previous two Administrations occurred through direct conversions (i.e., without any public-private competition—indeed, usually without even consideration of in-house performance).

- It is not an accident that agencies keep meticulous records about federal employees—where they work, how many there are, how much they cost—but that contractor inventories are still under construction. It is not an accident that controls are still imposed on the numbers of federal employees on agencies' payrolls—but that we don't even know how many contractor employees there actually are. It is not an accident that agencies must justify in the budget process any increase in their in-house workforce, but that new and sometimes even unrelated functions can be added to existing contracts with mere keystrokes.

- It is not an accident that acquisition personnel were instructed to consider contractors to be their partners, rather than profit-seeking firms that should be held at arm's length. It is not an accident that, as a result, conflicts of interest occurred more frequently, rather than exceptionally, with senior acquisition personnel taking lucrative positions with the contractors that they had ostensibly been regulating and former senior officials cashing in on inside knowledge by helping their new private sector employers to take over their old programs.

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- It is not an accident that until the end of the Bush Administration sourcing went one way—out—despite the seemingly endless number of contracts that are poorly performed, were awarded without competition, or include functions too important or sensitive to be privatized.

- And it is not an accident that agencies, as reported by GAO, are either defiant or ignorant of requirements that they give careful consideration before contracting out important or sensitive work that arguably should be reserved for federal employee performance or subject that work to more searching scrutiny after it has been outsourced.

While costing taxpayers and undermining services, the excesses of wholesale privatization have inspired promising reforms. There are some who believe that contractor inventories and insourcing are creations of the Obama Administration. Not true. Those reforms were established for the Department of Defense through the FY08 National Defense Authorization Act—which was signed into law by President Bush—thanks to Representative Ike Skelton (D-MO) and Senator Carl Levin (D-MI), the Chairs of the House and Senate Armed Services Committees, as well as Representative Jim Langevin (D-RI), Senator Barbara Mikulski (D-MD), and Senator Edward Kennedy (D-MA).

With respect to the non-DoD agencies, Senator Dick Durbin (D-IL) and Representative Jose Serrano (D-NY), as Chairs of the Senate and House Financial Services Appropriations Subcommittees, have taken the lead, working with Senator Mikulski, including provisions in recent bills to prohibit direct conversions, to require the development of an insourcing policy for commercial work as well as work that should be reserved for federal employee performance, and to establish inventories of service contractors. No discussion of right-sizing the federal employee and contractor workforces would be complete without extensive reference to the landmark laws enacted because of courageous Congressional leadership.

Summary

Here is AFGE's checklist for rightsizing the federal workforce:

1. Expand, clarify, and—above all—enforce the definition of inherently governmental.

2. Compile and review service contractor inventories, consistent with the law, and then integrate the results into the budget process.

3. Correct, through insourcing or modification, contracts that include functions that should not be outsourced, were inappropriately outsourced, or are inefficiently performed, consistent with the law.

4. Eliminate abuse of personal services and advisory and assistance contracts.

5. Enforce prohibitions against direct conversions.

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6. Free agencies from in-house personnel ceilings.

7. Fund existing human resources flexibilities.

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1. EXPAND, CLARIFY, AND ENFORCE THE DEFINITION OF INHERENTLY GOVERNMENTAL.

Significant amounts of work that should be reserved for federal employee performance are now performed by contractors because the current definition of inherently governmental is narrow, unclear, and unenforced. Desperately striving to retain in their agencies important and sensitive functions, some managers have tried to compensate for the narrowness of the existing definition by employing weaker designations—closely associated with inherently governmental, critical, core, etc.—to protect from outsourcing pressures functions that may not meet the statutory definition but should still be performed in-house. However, these efforts have left the definition even more unclear. And, of course, even a robust and crystal-clear definition is meaningless if it is not enforced. AFGE is submitting detailed comments to OMB later this month in response to the draft proposal for a new definition of inherently governmental. However, although the effort to redefine the term is important, it is only one part of the overall effort to rebalance the federal workforce.

a. OMB's proposed definition of work that should be reserved for performance by federal government employees should abandon the implication that contractors should necessarily perform "commercial" functions.

In the "Purpose" section, the policy letter extols the virtues of contractors and makes it executive policy that reliance on contractors is "not a cause for concern" as long as the work is commercial and not critical and is appropriately managed by federal officials. There is no requirement that use of contractors in such situations be cost effective. Moreover, there is no mention that federal employees should also be considered for commercial functions. The guidance should extol the virtues of federal employees and their indispensable contributions to federal agencies, including expertise, flexibility, innovation, cost-effectiveness, and dedication to mission.

The guidance should also explicitly state that the use of federal employees for commercial functions is not a cause for concern, and thus those commercial functions performed by federal employees should not be targeted for outsourcing, as they were in the two previous Administrations. Internal reengineering of commercial functions currently performed by federal employees is far more likely to generate real efficiencies because such an approach avoids the costs and controversies of outsourcing.

Moreover, there are many reasons, other than cost effectiveness, why agency managers might need to use federal employees to perform commercial functions. Agencies may want to avoid conflicts of interest that would allow contractors to substitute private interests for the public interest. Agencies may want to avoid the risk of a contractor monopoly on the expertise to perform a particular function. Agencies may want to ensure that the public is confident that government officials are performing certain government actions instead of contractors. Certain functions may be so intertwined with other functions that it is more effective to have multi-tasking federal employees performing those functions than separate them for contracting. Some functions require detailed knowledge of complicated rules and are best performed by long-term federal employees rather than temporary contractors. And, of course, agencies often want to retain institutional knowledge of certain functions.

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b. OMB's proposed definition should establish a rebuttable presumption that federal employees should perform functions that are critical or closely associated with inherently governmental functions.

It is imperative that there be a rebuttable presumption in favor of federal employee performance of "closely associated" and critical functions. The reservation of functions for performance by federal employees is to protect the public interest. An agency should be required to determine whether that public interest would be harmed before such functions can be outsourced. Presumptions could be rebutted when agencies examine individual functions in depth during reviews of the contractor and in-house inventories.

During the two previous Administrations, there was a prejudice in favor of contractor performance of not just "closely associated" and critical functions, but of inherently governmental functions as well because of a toxic combination of politics, conflicts of interest, and human capital issues (both real and imagined). There must be a rebuttable presumption in favor of federal employee performance of "closely associated" and critical functions – if only to counteract the real-world prejudices that conspire to drive such functions into the private sector.

c. OMB's proposed definition of inherently governmental should adequately protect the public from contractor influence on agency decision-making.

The definition of inherently governmental should better insulate agency decision-making from private interests. The guidance notes that contractor performance should not preempt federal officials' decision-making processes, discretion or authority. However, the draft guidance is not clear regarding the situations in which contractor performance could lead to such preemption.

Final decisions must be made by agency officials, and those decisions must be based on informed, independent judgments made by knowledgeable agency officials. Agency decisions can be preempted by contractors not only when contractors make the final decisions in lieu of agency officials but also when contractors make recommendations that contribute significantly to agencies' final decisions, and agency officials do not have the time and resources to independently review and evaluate contractor recommendations. Thus, it is vital that the redefinition of inherently governmental specifies that agencies must retain sufficient in-house staff and expertise to thoroughly vet contractor recommendations and make independent judgments.

It is also inappropriate for contractors to contribute significantly to a determination about government benefits where there is little or no oversight by agency officials. For example, the draft guidance states, in (5-1(a)(2)(i)), that a function may be performed by a contractor if the decision making is limited by guidance that identifies specified ranges of acceptable decisions and subjects the discretionary authority to final approval or regular oversight by agency officials.

However, many government functions, e.g., benefits determinations, are subject to oversight by agency officials in only a small fraction of cases, which, effectively, renders the initial determination final in all other cases. Because each benefits determination results in the granting or denial of a benefit, only those determinations that are substantively reviewed by federal employees should be made available for contractor performance.

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Finally, the proposed redefinition oversimplifies the concept of discretion by stating that a function may be performed by a contractor if the decision-making is limited by guidance that identifies specified ranges of acceptable decisions. Many subject areas are quite sophisticated and require years of experience and the knowledge and use of numerous statutes, regulations, procedures, policies, and other federal guidelines, some of which are broad, unspecific and/or poorly written. The fact patterns presented can be unique and may not lend themselves to easy resolution. While in some cases a decision can be appealed, approvals are rarely appealed and thus rarely reviewed.

The redefinition of inherently governmental should be clarified so that only those individual exercises of discretion that are actually substantively reviewed by federal employees and based upon simple, straightforward guidance can be determined to not be inherently governmental.

When I review OMB's draft guidance, I can't help but think about my experience as an IIO, and I ask myself this question: would the functions performed by an IIO be reserved for federal employee performance under this new definition of inherently governmental? Unfortunately, the answer is almost surely no. DHS management, if so inclined, could simply insist, as it did under the previous Administration, that an IIO is making decisions "in accordance with pre-established guidelines or in accordance with the proper oversight of higher ranking officers. As a result, these actions are not discretionary decisions...", even though IIOs, according to their job descriptions, must "use on-the-spot judgment" in conducting background investigations; must interpret and execute "a dynamic body of law that is constantly being changed and updated"; and must exercise discretion, usually without management review, that significantly affect(s) the life (and) liberty of private persons.

d. OMB's proposed guidance should provide meaningful criteria to identify critical functions.

OMB's draft guidance includes two apparently contradictory definitions for critical function:

1. a function that is necessary to effectively perform and maintain control of agency mission and operations, and

2. a function that would expose the agency to risk of mission failure if performed entirely by contractors.

The first definition would allow agency managers to define critical function based on their agency's particular circumstances, while the second definition requires a much higher threshold of mission failure. The second definition should be eliminated. Agency managers should not be hamstrung in reserving functions for federal employee performance by requirements for finding threats of mission failure. Public service is not a pass/fail system where the only goal is providing some level of service to taxpayers. The mission of government is to provide effective service to taxpayers, and failure to do so is mission failure. Taxpayers expect agency managers to step in long before the government fails to defend the country, provide medical care to veterans, or contain oil spills in the ocean.

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In addition, agency managers must be able to classify fundamental functions as critical in order to maintain control of their organizations, such as communications (information technology), capital assets (finance, accounting, building maintenance) and human capital (personnel, security). Without the ability to freely make decisions about the extent to which these functions should be reserved for federal employees, agency officials will not be able to run their organizations, no matter what the mission.

e. OMB's proposed guidance should provide clear criteria for identifying positions necessary to develop and maintain sufficient organic expertise and technical capability.

The statute requires OMB to provide criteria to identify positions necessary to develop and maintain sufficient organic expertise and technical capability separate and apart from the determination of critical functions. OMB failed to do this by reserving the analysis of organic expertise/technical capability only for positions performing functions already deemed to be critical. Under OMB's proposed framework, a function isn't critical unless contractor performance would lead to mission failure, and an agency can't reserve performance for federal employees unless a function is critical.

OMB should add a fourth category to the guidance that provides criteria for identifying positions that are necessary for developing and maintaining sufficient organic expertise and technical capability in any function now and in the future. Those criteria should include the expertise and capability needed to oversee contractors and reconstitute a function in-house in the event of contractor failure. In addition, positions should be reserved that provide unique experience that can only be acquired by performing the function or is necessary for other federal employee positions.

2. COMPILE AND REVIEW SERVICE CONTRACTOR INVENTORIES, AND THEN INTEGRATE THE RESULTS INTO THE BUDGET PROCESS

Although the definition of "inherently governmental" is important, the processes by which agencies identify contracts that include functions that are inappropriate for contractor performance and then correct those contracts through insourcing or modification are even more important.

a. COMPILE INVENTORIES OF SERVICE CONTRACTS

No effort to ensure federal employee performance of functions that are critical, closely associated with inherently governmental functions, and inherently governmental can be taken seriously without comprehensive and expeditious compliance with laws enacted that require all agencies to establish and then review inventories of their service contracts.

Per Section 743 of the FY10 Financial Services Appropriations Bill, non-DoD agencies are required to identify for each service contract a description of the services purchased, the overseeing and requiring components, the total dollar amount obligated and funding source, the total dollar amount invoiced, the contract type and date of award, the name of the contractor and place of performance, the number and work location of contractor and subcontractor employees, whether it is a personal services contract, and whether it was awarded non-competitively. A very similar contractor inventory requirement was established for DoD in the FY08 Defense Authorization Act.

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If we are serious about ensuring in-house performance of functions that should be reserved for federal employee performance, then we must block attempts to gut the requirement that non-DoD agencies establish contractor inventories. I will now address four OMB proposals that would dramatically reduce the scope of the inventories for non-DoD agencies and explain why these proposals are bad policy, inequitable, and unnecessary.

1. *limit the non-DoD inventories to only new contracts*

Bad policy: As most contracts are not new, but simply rolled over again and again, this would exclude a huge number of contracts, because most service "contract actions" are awarded through the execution of task orders under previously awarded contracts. The reporting of service contracts awarded as task orders would not occur for many years into to the future. Indeed, because some indefinite delivery, indefinite quantity contracts contain "evergreen" clauses that allow contracts to extend for 20 years, the reporting on these contracts will not occur for almost two decades. This limitation means that agencies would be deprived of the ability to identify all of the current contracts that include functions that should be reserved for performance by federal employees.

OMB's position is contrary to its aggressive effort to implement a Federal Awardee Performance and Integrity Information System (FAPIIS). In October 2008, pursuant to Section 872 of the FY2009 National Defense Authorization Act, Congress enacted a statutory requirement for the Office of Management and Budget to create and "maintain a database of information regarding the integrity and performance of certain persons awarded Federal agency contracts and grants..." OMB has moved aggressively to implement this law, requiring current federal contractors to enter extensive information on legal and administrative proceedings as well as settlements into an on-line government maintained database. Federal contractors are required to provide extensive information on legal proceedings and settlements related to all federal and state contracts (including current contracts) over the preceding five years. Information must be provided before a contractor can receive an additional federal contract or grant. Current federal contractors have spent considerable sums to accurately input this data in order to be eligible to receive future contract awards. The time and money spent by contractors collecting, inputting, and updating data is not reimbursed by the federal government. The mechanism through which OMB has chosen to implement this legislation subjects contractors to significant monetary liability under the False Claims and False Statements Acts if the legal proceedings and settlements are improperly or not fully disclosed. It is unclear why OMB can require this level of detail to comply with the FAPIIS inventory but not the even more important Section 743 inventory.

Not necessary: The DoD contractor inventory includes no such exclusion. Indeed, experts point out that it is just as easy to include an existing contract in the inventory when it is renewed as it is a wholly new contract.

Inequitable: The analogous Federal Activities Inventory Review (FAIR) Act inventory includes functions currently performed by federal employees, not just work assigned to in-house personnel after the law's enactment.

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2. *allow OMB to determine which contracts and categories of contracts should be covered*:

Bad policy: Even if OMB really does eventually include acquisition and information technology contracts in the non-DoD contractor inventories, as has been suggested, this exclusion by itself guts the inventory. The same problems found in acquisition and information technology contracts can be identified across the government—from safety inspections to eligibility determinations. Allowing OMB to exclude the rest of the government from the non-DoD inventories means those problems will become even worse because of continued ignorance and inattention.

Indeed, this exclusion would undermine the ostensible rationale of identifying only acquisition and information technology contracts. As borne out by the experience of the Department of the Army, the label given to a contract can be very misleading. Until the contents of an inventory are actually reviewed, an agency does not know which functions are actually being performed—whether they are or are not, say, acquisition—and whether the functions include some that should be performed by federal employees.

Not necessary: The DoD contractor inventory includes no such exclusion. If DoD, which will have the largest and most complicated inventory, can cover all functions, it is not unreasonable to expect non-DoD agencies to do the same.

Inequitable: The analogous FAIR Act inventory includes all functions performed by federal employees, not just acquisition and information technology.

3. *exclude from coverage significant numbers of contracts through excessive minimum thresholds*

Not necessary: DoD has no minimum threshold for its inventory.

Bad policy: This particular exclusion means that large numbers of contracts for specialized management services, e.g., policy and planning, which often include functions that should be reserved for federal employee performance, will not be part of the inventory. The numbers of contracts and contract dollars that would be excluded are significant.

Inequitable: The analogous FAIR Act inventory covers all functions performed by federal employees, regardless of size.

4. *exclude from coverage entirely all agencies which don't have Chief Financial Officers (CFO's)*

Bad policy: That agencies are small doesn't mean they don't have the same needs as large agencies to identify inherently governmental functions inappropriately outsourced and then to insource or modify those contracts. Indeed, given that smaller agencies receive less oversight and surveillance, their need for inventories may actually be greater.

Not necessary: DoD includes several smaller agencies, but they will still be compiling contractor inventories.

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Inequitable: The analogous FAIR Act requirement covers many agencies that don't have CFO's. The absence of inventories means that these agencies will be unable to identify functions contracted out that should be reserved for federal employee performance and make more difficult any insourcing. In order to promote equity, agencies that don't have CFO's should also be prohibited from complying with the FAIR Act and conducting A-76 studies, if OMB insists on this change.

b. REVIEW THOSE INVENTORIES TO DETERMINE WHICH CONTRACTS NEED TO BE MODIFIED OR INSOURCED

Compilation of the contractor inventories is only the first step. The contractor inventory laws require agencies to review those contracts to, among other things, determine if personal services contracts have been authorized; ensure that contractors are not performing inherently governmental contracts; and determine whether contracts that include closely associated with inherently governmental functions should be corrected or insourced, consistent with the law.

If an agency does not know what functions are being performed under a contract and how they are being performed by that contractor, then it does not know whether that contract includes functions that should be reserved for performance by federal employees. The contracts in the inventory must be reviewed individually because an examination of the written terms of a contract at the time it is awarded is insufficient. Contracting officers are unlikely to acknowledge that the contracts they write include inappropriate functions. Moreover, contracts change over time, and informal adaptations are often not reflected in writing.

The Department of the Army has already developed a process that allows for accurate determinations of whether contracts include functions that should actually be performed by federal employees—the Panel for Documenting Contractors (PDC). According to the Army, the PDC reviews descriptions of how a function is performed by a contractor, taking into account oversight staffing levels and other relevant facts. The panel includes programmatic experts as well as procurement personnel and is advised by the General Counsel. While most familiar with how a function is being performed, the requiring activity may not understand how to apply the law to ensure that the function is not being inappropriately performed by contractors. The PDC corrects or corroborates the requiring activity's determination. The results of the PDC process are linked into the Army's insourcing plan or for projections of contractor requirements by function for proposed programming and budgeting.

According to the Army, of the 95,000 contractor employees accounted for in its inventory, 2,000 perform inherently governmental functions, 41,000 perform closely associated with governmental functions, 1,500 are performing unauthorized personal services contracts, while another 50,000 are deemed appropriately contracted.

c. INTEGRATE THE RESULTS OF THOSE REVIEWS INTO THE BUDGET PROCESS

The contractor inventory will not be taken seriously if reviews are not used to inform budget decisions, as Congress has required for the Department of Defense through Section 803 of the FY2010 National Defense Authorization Act, which requires the department to display annual budget requirements for procurement of contract services.

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As report language noted: "(I)ncluding in the annual budget submission the total amounts for the procurement of services and the number of full-time equivalents requested by each (DoD) component, installation, or activity should provide greater clarity on amounts proposed to be spent annually on contract services. In addition, specific break-outs of how the money is obligated for each type of service should be reflected in annual contract inventories compiled by the military departments and defense agencies. The information in the budget submission, together with the detail provided in the annual inventories, should provide the information needed for improved oversight by (DoD) of the procurement of contract services."

3. CORRECT, THROUGH INSOURING OR MODIFICATION, CONTRACTS THAT INCLUDE FUNCTIONS THAT SHOULD NOT BE OUTSOURCED, WERE INAPPROPRIATELY OUTSOURCED, OR ARE INEFFICIENTLY PERFORMED, CONSISTENT WITH THE LAW.

We've all heard the DoD term "target-rich environment". Given the documented large numbers of contracts that were awarded during the previous two Administrations without competition that include functions that are inappropriate for contractor performance, and that are being poorly performed, it is safe to say that we are in a "target-obscenely wealthy environment". Everywhere one turns, almost literally, there are opportunities to insource, consistent with both law and the public interest. OMB's December 2009 report on pilot projects appears to include few if any instances of agencies even considering insourcing work that has been poorly performed or was contracted out without competition, raising questions about whether the Administration is in compliance with the legal requirement to give such functions "special consideration" in the insourcing context.

We understand the interest in focusing on insourcing inherently governmental, "closely associated", and critical functions. However, even that effort is proceeding slowly, given the myriad of possibilities. With respect to insourcing "closely associated" functions, there are so many targets that even our contractor friends lament they are performing work they shouldn't.

Here are case studies for insourcing that aren't being widely discussed but that ought to be placed "at the top of the pile". The diversity—of agencies, of functions, and of rationales for insourcing—is impressive.

Case Study #1
Agency: Department of Housing and Urban Development (HUD).

Function: Administration and oversight of the Section 8 Housing Program.

Rationales: Save money and restore public control of functions that are both inherently governmental and "closely associated".

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HUD should insource the day-to-day administration and oversight of the Section 8 housing program that subsidizes the rent of low-income Americans living in privately-owned housing developments. This oversight work was outsourced in 1999 to state housing agencies, some of which subcontracted the work to private companies. The contractors are known as Performance-based Section 8 Contract Administrators (PBCA).

In 2009, HUD's Office of Inspector General (OIG) issued a critical report on the contracts for PBCAs. The OIG reported that HUD "did not always ensure accountability" for results and said that HUD "did not obtain the best value for the $291 million spent in 2008" on PBCA services. As a first option for HUD, the OIG suggested that the agency should increase its staffing levels and "bring all of the contract administration functions back in-house" – i.e., insource. That option, the OIG said, "eliminates layers of management and profit that are inherent" in obtaining the services under contract.

Case Study #2
Agency: Department of Veterans Affairs (DVA).

Functions: Cemetery Caretaking and Medical Facility Maintenance.

Rationale: Restore public control of critical functions that historically have been poorly performed by contractors, ensure performance by a particularly qualified workforce, and fulfill a sacred obligation to our nation's veterans.

The National Cemetery Administration's cemetery caretaking—mowing, trimming, headstone setting and interment—becomes a critical function because of its importance to the department's mission to care for and honor veterans. DVA's in-house cemetery caretakers, most of whom are veterans themselves, are particularly qualified to conscientiously carry out their responsibilities and to comfort and support grieving families. Although DVA boasts publicly that its cemeteries are unique because caretakers bring a "personal commitment" to the job, these functions are being increasingly transferred to private contractors in violation of the law and with no regard for the impact on agency operations and mission.

The Veterans Health Administration's (VHA) medical facility support services—including grounds keeping, housekeeping and environmental engineering—have traditionally been performed largely by disabled veterans recovering from post-traumatic stress disorder, substance abuse, and homelessness. In-house personnel have traditionally performed better than their contractor counterparts because, as veterans, they take more pride in maintaining the facilities (which they also use as patients). Moreover, contractors, who juggle multiple contracts, are frequently not on-site to take care of emergency situations such as snowstorms. Despite the department's obligations to its employees and veterans, VHA is also directly converting these functions to contractor performance in violation of the law.

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Case Study #3
Agency: Citizenship and Immigration Services (CIS), DHS.

Function: Background investigations of immigrants in order to determine eligibility for legal immigrant status and eventual citizenship.

Rationale: Restore public control of a critical function.

CIS should insource the function, currently outsourced, in which contractors search the documentation and records of immigrants for names and aliases for input into government databases for further analysis. It is vital that the search for names and aliases be thorough and complete, because those intelligence and law enforcement databases provide information that allows federal adjudication officers to ensure that legal immigrants are who they say they are, have proper documentation, and have not been convicted of any crime that would prevent them from earning legal immigrant status and / or eventually becoming full citizens. Moreover, once an individual obtains a legal immigration document as a result of this process (including a work permit or a green card), that document can be used to obtain other benefits such as a driver's license.

This function is currently performed by 750 employees of a foreign-owned contractor. DHS also uses 400 federal adjudication officers who are ultimately responsible for the alias computer checks but have no control over how they are performed. The selection of names and aliases, and alternative spellings, to be inputted into the databases is critical to the federal adjudication officers' decisions, and thus the agency's mission, but it is performed by contractors; that function should be insourced.

Case Study #4
Agency: Federal Protective Service (FPS), DHS.

Function: Security.

Rationale: Restore public control of a critical function that historically has been poorly performed by contractors.

The excessive use of contractor rent-a-cops to protect federal facilities and personnel across the nation has left the American public and federal employees at risk, as documented in a recent GAO report. Contractors have historically lacked sufficient training and authority, which is determined by relevant states and municipalities rather than the federal government, to accomplish this important work.

Instead, FPS should insource the functions performed by private security guards, using the model developed by the U.S. Capitol Police and the U.S. Secret Service Uniformed Division. The officers that provide security at the Capitol and Congressional office buildings are federal employees. They are

ph44585 on D330-44585-7600 with DISTILLER
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trained at the Federal Law Enforcement Training Center and possess the authority of arrest on federal property. FPS should also hire civilian security specialists to provide oversight of any remaining contracts, thereby allowing federal police officers to focus on law enforcement response and physical security duties.

Case Study #5
Agency: Social Security Administration (SSA).

Function: Adjudication of disability claims.

Rationales: Reduce costs and restore public control of a critical function that historically has not been uniformly performed.

SSA should insource disability claims adjudication functions that are currently performed by state Disability Determination Services (DDS) because the disability approval rate shows unacceptable variance among states. For instance, a 2009 study revealed that a claimant who applies for social security disability payments in New Hampshire has a 53% chance of being approved at the initial level. However, a claimant applying in Mississippi has only a 26% chance of being approved at the initial level.

The disparate treatment is not difficult to explain. Each state has different criteria for hiring disability examiners, and each state provides them with different pay and benefits packages. Training is different and inconsistent across state lines as well. In effect, because of outsourcing there are 50 different disability programs instead of one.

By insourcing the DDS functions, SSA could address the inconsistent decisions at the initial claims level, diminish the number of appeals, and decrease the SSA's appeals hearing backlog. Addressing these problems would dramatically help SSA perform its mission to serve the elderly and disabled.

Case Study #6
Agency: US Marshals Service, Department of Justice.

Function: Security at federal courthouses; protection of federal judges; transportation of federal prisoners and detainees.

Rationale: Restore public control of critical and inherently governmental functions.

Excessive use of contractors as deputy U.S. Marshals at the United States Marshals Service (USMS), guarding federal courthouse and transporting federal prisoners, has undermined the agency's mission to ensure public and judicial safety. The USMS workforce includes approximately 5,000 federal employees and 8,000 contractors.

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In 2005, the DoJ's Office of Inspector General reported that USMS contractors were performing inherently government work and found that some contractors were unqualified for their positions. USMS should insource a significant portion of the work currently performed by contractors so that the agency can regain control of its mission.

4. ELIMINATE ABUSE OF PERSONAL SERVICES AND ADVISORY AND ASSISTANCE CONTRACTS

Personal services and advisory and assistance contracts in agencies' inventories should be rigorously reviewed for modification or insourcing, consistent with the law.

Unauthorized personal service contracting is widespread. Such contracts are regularly undertaken with limited if any competition, public-private or private-private. Personal services contracts are often entered into in order for cronies to be hired without going through the regular civil service process. Moreover, personal services contractors often perform functions that should be reserved for federal employee performance.

The laws that established the inventories for DoD and the non-DoD agencies both require that personal services contracts be reviewed to determine if they have been entered into and are being performed in accordance with applicable laws and regulations. OMB's guidance on work reserved for federal employee performance should require agencies to review contracts to determine if personal services contracts are authorized. When such contracts are not authorized, the guidance should require agencies to either insource the functions wrongly outsourced or modify the contracts.

Advisory and assistance service contracts are easily abused and often include functions that are inappropriate for contractor performance, e.g., planning and budgeting. Contracts for advisory and assistance services should only be undertaken if the agency does not possess the necessary in-house expertise. In the event this expertise is needed for more than one year, then the capability should be established in-house. Advisory and assistance contracts should receive special attention in the inventory review and correction process.

When it is necessary to undertake advisory and assistance contracts, DoD Instruction 1100.22, Policies and Procedures for Determining Workforce Mix, includes helpful caveats and guidance:

> "Discretionary decisions made by government officials must be based on informed, independent judgments, and must not be unduly influenced or controlled by private contractors who are beyond management controls applicable to public employees and who might not have objectives in concert with the public's best interests. Although a DoD official may consider a contractor's advice when making a decision, the official may not rely solely or so extensively on a contractor's recommendations that, by so doing, the decision no longer reflects an independent judgment...
>
> "(DoD should) (e)nsure contract advisory assistance is not used to support a government decision without thorough knowledge and understanding of the work submitted by the contractor and recognition of the need to apply independent judgment in the use of the work products; take

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VerDate Nov 24 2008 10:44 Oct 14, 2010 Jkt 057942 PO 00000 Frm 00094 Fmt 6601 Sfmt 6601 P:\DOCS\57942.TXT SAFFAIRS PsN: PAT

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steps to ensure that a contractor's involvement on a project is not so extensive or so far advanced that the government does not have the ability (sufficient time, information, or resources) to develop and consider options other than those provided by the contractor (such as during staff coordination of products developed by contractors) and ensure that contractors do not have undue influence in the final decision to include determining which, and how, options or recommendations are provided to Defense officials for a final decision; or why an option is recommended to the deciding official as the government's preferred alternative."

5. ENFORCE PROHIBITIONS AGAINST DIRECT CONVERSIONS

The Congress, on a bipartisan basis, has, repeatedly, attempted to prohibit agencies from perpetrating "direct conversions"—the term used to describe instances in which agencies give work performed by federal employees to contractors without first conducting full cost comparisons.

Although laws were enacted—more than one year ago in non-DoD agencies and more than six months ago in DoD—to prohibit any direct conversions, no guidance has ever been issued to ensure that agencies are in compliance.[i] From human resources in DHS to cemetery caretaking in DVA, functions last performed by federal employees continue to be contracted out in defiance of the law, the circular, common sense, and basic notions of fairness.

In fact, some agencies believe that there is a "no harm, no foul" exception to the prohibition against direct conversions, i.e., if no actual federal employee is adversely affected, then a direct conversion is not covered by the prohibition. That is why agencies routinely replace with contractors federal employees who retire from federal service or are reassigned to other functions, without any consideration of the costs let alone whether the functions formerly performed by federal employees should be reserved for in-house performance. Please see Attachment 1 to this testimony for a documented example of a DoD installation that regularly contracts out functions performed by federal employees when they retire or are reassigned. The use of direct conversions by the installation discussed in the attachment blocks promotional opportunities for actual civil servants—which in turn induces other federal employees to retire or be reassigned, who are replaced by contractors through more direct conversions, which in turn induces more retirements and reassignments.

No single factor is more responsible than direct conversions for the hollowing out in all agencies of the federal civil service and the substitution of a myriad of private interests for the public interest. Functions that meet the definition of inherently governmental, closely associated with inherently governmental, or critical, are more likely to be retained in-house if agencies are at least required to conduct cost comparisons prior to conversion to contractor performance. When the in-house workforces do not prevail, then the paper trails created by cost comparisons, particularly the descriptions of the functions being reviewed, can give conscientious managers opportunities to draw attention to schemes to outsource functions that should be reserved for federal employee performance.

Even if the functions involved are not normally reserved for federal employee performance, they may become critical or even closely associated with inherently governmental either because of the agency's special circumstances or a need to right-size the human capital mix. For example, as discussed earlier, the functions performed as part of cemetery caretaking may be considered commercial in most agencies. However, because of its importance to the agency's mission and the sensitivity of the function to the families of veterans, cemetery caretaking in the DVA is clearly not a commercial function.

ph44585 on D330-44585-7600 with DISTILLER
VerDate Nov 24 2008 10:44 Oct 14, 2010 Jkt 057942 PO 00000 Frm 00095 Fmt 6601 Sfmt 6601 P:\DOCS\57942.TXT SAFFAIRS PsN: PAT
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Enforcement of the statutory prohibitions against direct conversions would be a significant safeguard against contracting out functions that should be reserved for federal employee performance. A new definition of "inherently governmental" should include guidance to agencies so that they can become compliant with the laws against direct conversions.

6. FREE AGENCIES FROM IN-HOUSE PERSONNEL CEILINGS

The most daunting human capital-related challenge to insourcing is the inequitable and sometimes onerous constraint imposed on agencies by OMB in the budget process in the form of in-house personnel authorization requirements.

OMB authorizes the number of federal positions in each agency through the budget process. Annually, agencies submit to OMB the number of Full Time Equivalent (FTE) positions they need. If OMB approves the number, it is included in the budget authority numbers OMB sends to Congress for its approval and grant of appropriations. The requirement to submit FTE numbers to Congress is set forth in OMB Circular A-11. In addition, each agency is required to report monthly to the Office of Personnel Management (OPM) that they are in compliance with the number of FTEs that has been approved by Congress for that fiscal year.

The costs for both federal FTEs and contractors are paid out of agencies' Salaries and Expenses accounts (except at the Department of Defense, where contractors are paid, in part, out of an Operations and Maintenance account). However, agencies lack sufficient flexibility to shift funds in their Salaries and Expenses accounts to pay salaries to federal employees rather than to contractors for government work that should be performed by federal employees or could be performed more efficiently by federal employees.

The need for such flexibility arises in two scenarios: when an agency submits to OMB its annual request for authorization of a particular number of FTEs to be included in its budget authority before the beginning of a fiscal year, and in the midst of a fiscal year when an agency seeks to shift funds away from paying for contractors towards paying for FTEs. Prior to the fiscal year, the agency would have to justify the shifting composition of its workforce by reference to the requirement established in law to give "special consideration" to insourcing certain functions. During a fiscal year, the situation is more complicated. Because there is no counting of the number of contractors, no legal or budgetary limit on the number of contractors hired, and therefore no negative consequence for agencies if they shift monies in the Salaries and Expenses accounts from FTEs to contractors, it is easy for agencies to decide to contract out. Insourcing, however, is another story. Because federal FTEs are counted, and exceeding the approved ceiling is forbidden, agencies must gain explicit permission to replace contractors with federal FTEs if doing so would violate the approved limit on FTEs, even if doing so saves money or at least does not exceed the agency's budget authority.

AFGE believes that OMB's guidance on work reserved for federal employee performance should grant agencies broad flexibility within the limits of their budget authority to hire federal FTEs for insourcing initiatives. Agencies should still be required to report monthly to the Treasury Department that they are operating within the limits of their budget authority. However, agencies should clearly be permitted to exercise the same degree of flexibility with regard to allocations from Salaries and Expenses accounts between contractors and federal FTEs. The decision whether to hire federal employees or contractors to perform government work should no longer be decided by FTE ceilings.

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This OMB deserves credit for being less restrictive in its management of the federal employee workforce. However, because of the long custom of having OMB enforce FTE ceilings through the budget process, it will be necessary for OMB to be extremely clear in its instructions regarding this matter. If agencies are not made aware that carrying out OMB guidance with respect to insourcing may require shifting allocations within Salaries and Expenses accounts, agencies will be reluctant to do so. Thus the guidance should be disseminated widely to both human resources *and* budget offices, because granting equivalent flexibility toward federal employees and contractors will upset years of established processes related to budgeting and FTE ceilings. Compliance with budget authority limits can be achieved without FTE ceilings, but compliance with any definition of work reserved for federal employee performance as well as the insourcing law cannot be achieved with FTE ceilings.

7. FUND EXISTING HUMAN RESOURCES FLEXIBILITIES[8]

Largely thanks to the fine, bipartisan work of this subcommittee, particularly Chairman Akaka and Ranking Member Voinovich, agencies already have several tools available to promote insourcing. The Federal Employees Pay Comparability Act and subsequent laws such as the Federal Workforce Flexibility Act allow numerous avenues for raising salaries in order to recruit and retain federal employees for positions deemed "hard to fill" or critical to an agency's mission. The idea that the federal pay system is too inflexible to attract people with the kind of "cutting edge" skills and expertise needed in federal agencies is based largely on myth, and is propagated mostly by those with a political agenda of privatization and/or pay-for-performance. To the extent there are limitations, they exist not because the pay system is limited or inflexible, but because agencies lack the funding to exercise authorized flexibilities.

For critical or "hard to fill" positions, the Federal Workforce Flexibility Act allows agencies to pay up to the rate of level 1 of the Executive Schedule--the same pay level received by members of the President's cabinet, which was $196,700 in 2009. In addition, with the President's approval, even higher rates of pay can be established for such positions. This authority is reserved for positions that require an extremely high level of scientific, professional, or technical expertise. Prospective federal employees can also be attracted to government service through recruitment bonuses of up to 100% of salary, payable over four years, plus annual bonuses. OPM can certify that a position is "hard to fill" and thereby authorize special higher rates of pay for that occupation in a particular locality or nationwide. Once hired, prospective employees can also receive quality step increases and paid time off awards for extraordinary service. They receive employer-subsidized health insurance, a modest defined benefit retirement benefit, and a retirement-savings program with a generous employer-matching subsidy. While federal salaries, on average, continue to lag behind those in the private sector by more than 20%, there is ample flexibility authorized in the law to increase salaries for those in hard to fill positions.

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Conclusion

1. The establishment of a schedule for agencies to achieve milestones of reform:

OMB should establish a schedule by which non-DoD agencies

a. develop contractor inventories, consistent with Section 743 of the FY10 Financial Services Appropriations Bill;

b. review all contracts compiled in these inventories, consistent with Section 736 of the FY09 Financial Services Appropriations Bill;

c. correct those contracts through modification or insourcing, consistent with Section 736 of the FY09 Financial Services Appropriations Bill, giving "special consideration" to contracts that include closely associated with inherently governmental functions, poorly performed work, or were awarded without competition—particularly personal services as well as advisory and assistance contracts;

d. integrate the results of those reviews in the budget process in order to promote greater oversight of procurement costs;

e. comply with the prohibition against direct conversions, consistent with Section 735 of the FY09 Financial Services Appropriations Bill; and

f. manage their federal employee workforces without regard to personnel ceilings and implement human resources policies that accommodate insourcing imperatives.

A senior agency official, preferably the Chief Human Resources Officer or another human resources expert, should be assigned responsibility for coordinating an agency's expeditious achievement of these milestones. Compliance with this schedule should be enforced through the budget and management processes of both OMB and the non-DoD agencies. OMB should publicly grade agencies on their progress towards achievement of these reform milestones on a quarterly basis. Federal employees who faced the "competitive (sic) sourcing" onslaught understand how successful OMB can be in getting agencies to buy into its sourcing agenda. Although the Office of Federal Procurement Policy coordinated the effort, agencies complied with, however much against their better judgment, the "competitive (sic) sourcing" mandate because it was integrated into OMB's management and budget processes during the Bush Administration.

2. And those who are determined to distract us from reform:

I think a good rule-of-thumb would be that we know an agency is conscientiously striving to rebalance its civil service and contractor workforces, pursuant to the insourcing and inventory laws, when contractors are the most aggrieved and indignant. Conversely, when contractors are quiet and

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contented, then we know that nothing's happening, i.e., that the agency is conducting business as usual. We have reason to believe that DHS' own rebalancing effort is promising because of the predictable hullabaloo that it has generated, even before it has really started.[iii] And we know that DoD is at least striving to do the right thing because the usual suspects are raising a racket.

Nevertheless, the recent ruckus raised by contractors about DoD's fledgling insourcing effort did surprise me, given the discredited policies for which they advocated during the two previous Administrations:

- Contractors opposed efforts to free agencies from "competitive (sic) sourcing" quotas.[iv]
- Contractors opposed efforts to require that federal employees lose cost comparisons before their work could be converted to contractor performance.
- Contractors opposed efforts to inventory service contracts so that agencies could identify contracts that include functions poorly performed or that should be reserved for federal employee performance.
- And contractors opposed efforts to empower agencies to restore outsourced functions to in-house performance.

Other than officials in the two previous Administrations, nobody did more than contractors to wrong-size the federal employee-to-contractor mix. I would have thought that the predictably disastrous results of contractors emphasizing their own interests at the expense of the public interest for sixteen years would have eventually induced in them a feeling of humility. Quite the contrary. They've actually become even more shameless.

- Contractors loved quotas when they were used to promote outsourcing. Now, they insist that any insourcing is somehow based on quotas—which they breathlessly denounce.
- Contractors regularly recruited senior federal officials to work as contractor executives. Now, when agencies make job offers to rank-and-file contractor employees, contractor bosses call that "poaching" and insist that the practice be forbidden.
- Contractors, without complaint, took tens of thousands of federal employee jobs during the previous two Administrations, without ever having to compete for our work. Now, they roar with rage at the detailed costing methodology used for insourcing.[v] Because of sole-sourcing, contractors infrequently compete with one another for work, and agencies have always been able to terminate contracts for convenience with few restrictions and to not renew contracts without any restrictions. Now, however, contractors want to impose unprecedented restrictions on the ability of agencies to insource.

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- Contractors used to brag about their flexibility. Now, they insist on retaining contracts merely because they've held the contracts for several years.

- When federal employees lost their jobs because the competition process was flawed or wasn't even used, or when they were veterans in work-therapy or even disabled, contractors said, "It's business". Now, when contractors are losing their contracts, it has suddenly become personal.

While federal employees are surprised that contractors take no responsibility for their actions during the two previous Administrations, and while federal employees are surprised that contractors now oppose ideas they once supported and support ideas they once opposed, what's most surprising to federal employees is contractors' hysterical reaction to insourcing.

DoD is striving to reduce its reliance on contractors to pre-Bush Administration levels in order to cut costs and reassert government control over work that is best performed by federal employees because of its importance or sensitivity. (Contractors insist that this target is arbitrary and wrong. They're right, of course. DoD should have tried to reduce its reliance on contractors to pre-Clinton Administration levels.) This means that DoD is attempting to reduce its contractor workforce by 41,000 jobs over five years. Let's put that into perspective so we can show you why we characterize contractors' reaction as hysterical.

According to DoD, there were 732,000 contractor employees in the department's workforce in FY2000. In the last report of its kind filed during the Bush Administration, at the end of calendar year 2006, there were 1,300,000 contractor employees in the department's workforce. The size of DoD's contractor workforce had almost doubled in that relatively short period of time, and the number of contractor employees has likely increased since the last report was filed. According to budget documents, the number of active duty military personnel increased by 2% from FY2000 to FY2010. The number of civilian employees increased by 7% during that same period. Contracts for services, however, grew over that time from $86 billion in FY2000 to $195 billion in FY2009, using data from the Federal Procurement Data System. Please see Attachment 2.

Thanks very much for asking AFGE to provide its views at today's hearing. I look forward to responding to your questions.

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[i] As a point of reference, the Bush Administration issued guidance for the exclusion in certain circumstances of health care and retirement costs from the contracting out cost comparison process two months after the law was changed. Given the intellectual simplicity of prohibitions on direct conversions and the consistency with the May 2003 A-76 circular, federal employees are not unreasonable in expecting that guidance to end this abhorrent practice would have been issued by now.

[ii] It is actually the contractors who are now experiencing a "human capital crisis"—or, more accurately, what feels to them like a "human capital crisis"—because, thanks to insourcing and the possibility of

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recruitment into the civil service, there is now much greater demand for contractor employees, which translates into better pay and benefits for them. Obviously, to contractor employees, their increased marketability is anything but a "crisis". However, that hasn't stopped contractor bosses from claiming However, that hasn't stopped contractor bosses from claiming that insourcing has incentivized agencies to "poach" from their workforces—a term which implies that contractor employees are the property of their employers and even that contractor employees are being abducted against their will by roving that insourcing has incentivized agencies to "poach" from their workforces—a term which implies that contractor employees are the property of their employers and even that contractor employees are being abducted against their will by roving gangs of muscle-bound federal human resources specialists.

As a longtime federal employee, I was naturally surprised to hear contractor bosses, of all people, complain about contractor employees being recruited to join the civil service. After all, how many federal employees had contractors recruited over the years? Indeed, how could contractors even operate without recruiting federal employees? Now, contractors are suddenly insisting that there be a formal agreement between agencies and contractors not to recruit from one another. And how long would contractors adhere to such an agreement? Until the possibility of insourcing had subsided?

Absent the imposition of a "no-compete" agreement that would arbitrarily make their employees less marketable, contractors are insisting that agencies compensate them for the costs of training their employees. Maybe we should simply deduct those costs from the huge bill that contractors owe the taxpayers for the costs incurred by agencies in training federal employees who were subsequently induced by contractors to leave the civil service?

However, the most unexpected argument made by the contractors against "poaching" is that it would hurt the merit process! [(Professional Services Council President and CEO Stan "Soloway cites a recent example: a contractor, 18 months out of college, who was given a GS-14 level to enter government. 'What does that say to all of the people under GS-14 level in that department who've been spending 10 or 15 years building their capabilities to get to that level?' asks Soloway. 'Clearly,' he adds, 'it's going to have a morale impact internally.' Such recruitment practices also run counter to the government's 'merit systems hiring process'; grievances have been filed by federal employees as a result. 'That's a real issue that the government has to be sensitive to,' he adds." ExecutiveBiz, "Is insourcing a mandate? Does it rest on 'fuzzy math'?" November 17, 2009]

Let's put to one side that the same contractors heap scorn on the merit process and use the hiring requirements of the civil service process as a rationale for outsourcing. Clearly, the best way to strengthen the merit process and the civil service is to ensure that federal employees perform inherently governmental, "closely associated", and critical functions; that any work they perform that does not come under those categories cannot be contracted out without first conducting a cost comparison consistent with the law; and that they have opportunities to perform federal work currently outsourced, particularly if it is poorly performed or was contracted out without competition.

[iii] Contractors have complained that DHS has imposed insourcing quotas. During the Bush Administration, Congress enacted two laws to prevent the use of outsourcing quotas. The first, included

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in Section 647 of Division J of the FY2003 Consolidated Appropriations Act prohibited the use of an outsourcing goal, target, or quota—unless it is "based on considered research and sound analysis of past activities and is consistent with the stated mission of the executive agency." The second, Section 325 of the FY08 National Defense Authorization Act, prohibited OMB from directing or requiring DoD "to prepare for, undertake, continue, or complete a public-private competition or direct conversion of a Department of Defense function to performance by a contractor under Office of Management and Budget Circular A-76." We have no reason to disbelieve DHS' confident assurances that the department is not using insourcing quotas. However, assuming only for the sake of argument that was not the case, DHS would not be in violation of either law if they are applied in the insourcing context. With respect to the first law, DHS could easily show that its notional use of quotas is in fact "based on considered research and sound analysis of past activities and is consistent with the stated mission of the executive agency." And the second law is not relevant as even contractors have not alleged that this insourcing-averse OMB is pressuring DHS to bring work in-house.

[iv] There has been an alarming amount of historical revisionism over the Bush Administration's use of "competitive (sic) sourcing" quotas. Specifically, some contractors have tried to make it seem as if they at least had qualms with quotas or even opposed them. Here is an excerpt from a contractor coalition letter in 2002 against an anti-quotas House floor amendment: "The amendment strikes at the heart of the President's ability—any President—to manage the Federal government. It is directly counter to efforts by the Bush Administration aimed at increasing Government efficiency through COMPETITION between the public and private sectors. And, if it were enacted during the last Administration, the amendment would have paralyzed former President Clinton's 'reinventing Government initiative,' which also established goals for outsourcing, and other procurement and acquisition workforce initiatives." Among the signatories to the letter: Aerospace Industries Association Airport Consultants Council, American Congress on Surveying and Mapping, American Council of Independent Laboratories, American Council of Engineering Companies, American Electronics Association, American Institute of Architects, Associated General Contractors of America, Business Executives for National Security, Contract Services Association of America, Design Professionals Coalition, Electronic Industries Alliance, Information Technology Association of America, Management Association for Private Photogrammetric Surveyors, National Association of RV Parks and Campgrounds, National Defense Industrial Association, National Society of Professional Engineers, Professional Services Council, Small Business Legislative Council, Textile Rental Services Association of America, The National Auctioneers Association, and United States Chamber of Commerce.

In an early 2003 floor statement during consideration of an anti-quotas amendment, Senator George Allen (R-VA) identified a wide range of contractor groups in support of quotas: "(L)et me share with my colleagues the views of people who would be affected by this in the private sector. The Information Technology Association of America recognizes that as a result of this amendment, rather than promote competition and better management of the Federal Government, the Bush administration would face restrictions. There are many companies in the ITAA. There are large companies, some small startups, as well as industry leaders in software and the Internet. All of these companies would be denied opportunities or hampered by this amendment and therefore urge us to vote no. Other associations, such as the Northern Virginia Technology Council, which consists of 1,600 members and 180,000 employees, urge us to vote no as well. Bobbie Kilberg, the president, says this amendment would

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significantly limit private sector involvement and discourage competition vital to the technology community. The Contract Services Association of America, an industry representative for private sector companies that provide services to the Federal, State, and local governments--they include small disadvantaged businesses, Native American-owned businesses, section 8(a)-certified companies--wants to have those folks working for the public good. The Professional Services Council recognizes that we want to hold the executive branch responsible for efficient management of services and looks at this amendment as one that would harm the ability of the administration to do so. The Chamber of Commerce of the United States looks at this issue in a way with which I agree, and that is, that this is the time to create more efficient and effective partnerships between the public and private sectors, not to restrict policies that limit funding or flexibility in sourcing and decision making processes."

[v] Recent contractor correspondence insists that DoD "is not considering the broad scope of other costs, borne by the taxpayer, and which are ineffably associated with the federal employee infrastructure (overhead, lifetime benefits, personnel support and systems, pay support, and systems, management/oversight, training, etc.)." Professional Services Council Letter to Secretary of Defense Robert Gates of May 3, 2010. AFGE understandably approaches contractor claims of inadequate in-house overhead with a great deal of skepticism. It is not an exaggeration to say that many contractors would like to charge every in-house workforce involved in a sourcing decision with a fraction of the cost of running Air Force One. The DoD IG has pointed out that a significant amount of the overhead contractors have tried to attribute to federal employees in OMB Circular A-76 privatization studies is unjustified. DoD should be prepared to defend the costing methodology generally as well as its use in specific situations. However, let the record show that, contrary to contractor assertions, DoD's costing methodology does indeed take into account "Recruitment, Advertising, Etc.", "Training", "Unfunded Civilian Retirement", "Postretirement Health Benefit", and "Post Retirement Life Insurance". Directive-Type Memorandum (DTM) 09-007, "Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contract Support", page 20.

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DEPARTMENT OF THE NAVY
CRANE DIVISION
NAVAL SURFACE WARFARE CENTER
300 HIGHWAY 361
CRANE INDIANA 47522-5001

IN REPLY REFER TO

12711
Ser 00/9001
23 JUN 2009

Mr. Dave Holtsclaw
AFGE Local 1415
Bldg 39
Crane, IN 47522

Dear Mr. Holtsclaw,

1. In response to your inquiry dated 16 June 2009 regarding future plans by Crane Division, Naval Surface Warfare Center (NSWC Crane) for the calibration facility, the following are NSWC Crane's response (in bold) to your specific questions.

a. "Is NSWC Crane planning, or considering a plan, to move the calibration function currently performed on base to a facility outside the base?" **NSWC Crane is currently evaluating the solutions for moving the calibration facility out of B-39. One of those solutions does include a facility outside of NSWC Crane.**

"If so, what role will contractors play in this move and/or at the new facility?" **That role is not determined at this time. The option for an off base facility could be a government facility that is leased via NAVFAC.**

b. "Is NSWC Crane planning, or considering a plan, to have contractor employees perform any of the functions, or part of the functions, currently performed by federal employees?" **There are no plans for a contractor to displace any government employee. As the government workforce retires, the replacement of the government worker is subject to hiring constraints and government workforce priorities.**

c. "Is NSWC Crane planning, or considering a plan, to have contractor employees perform a greater portion of the calibration work than they currently perform?"
There are no plans for a contractor to displace any current government employee. As the government workforce retires, the replacement of the government worker is subject to hiring constraints and government workforce priorities.

ATTACHMENT 1

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d. "Is NSWC Crane planning to issue a solicitation in relation to the calibration function?" **No, though a SEAPORT task order was awarded to CSC on 12 June 2009.**

e. "Is NSWC Crane planning to accomplish any objective in relation to the calibration function via a current contract, such as the SEAPORT contract?" **The SEAPORT task order was awarded to CSC on 12 June, 2009 with similar scope to the previous SEAPORT contract activity.**

f. "Please identify the contractors NSWC Crane has contacted about this issue." **The Contracting Division performed a full and open competition for the SEAPORT task order. As such, any contractor certified on the SEAPORT contract was eligible to bid on this solicitation.**

2. Thank you for your inquiry. Feel free to contact my office or the Mission Support Services Department, Mr. Matt Craig or Mr. Andy Brough, with any additional questions.

Sincerely,

C. S. LASOTA
Captain, U. S. Navy
Commander, NSWC Crane

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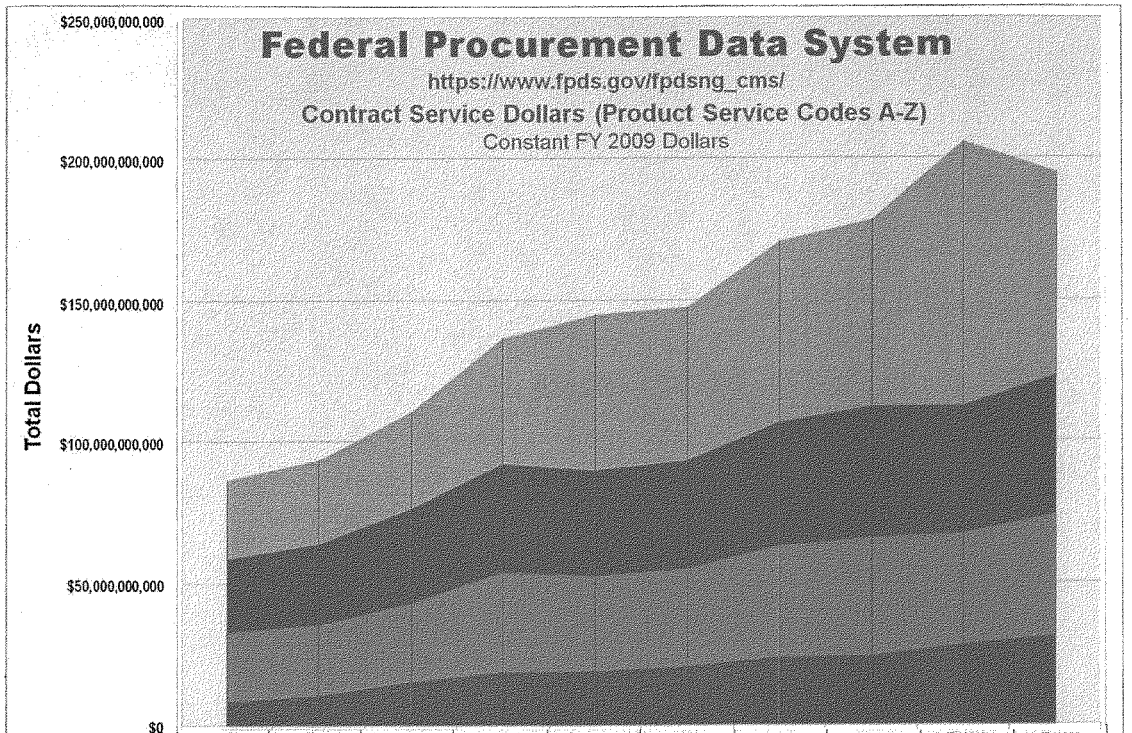
ATTACHMENT 2



	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009
Department of the Army	$27,679,824,801	$29,557,304,015	$34,296,885,463	$44,767,596,254	$55,363,117,234	$54,521,198,384	$63,978,556,788	$65,735,849,512	$93,117,017,847	$71,536,762,596
Department of the Navy	$25,655,313,851	$28,147,376,875	$32,965,560,568	$38,037,893,286	$37,151,713,850	$37,978,085,509	$43,838,830,748	$46,597,886,360	$45,419,718,924	$49,348,437,827
Department of the Air Force	$24,321,961,225	$24,889,999,950	$27,513,130,514	$34,791,735,382	$33,216,546,578	$34,132,840,472	$38,631,185,335	$41,123,285,881	$38,639,088,799	$42,353,952,089
Defense Agencies	$8,685,833,520	$10,806,985,658	$15,644,337,157	$19,183,866,045	$19,235,037,976	$20,944,000,619	$24,164,336,827	$24,577,252,773	$28,410,659,004	$31,529,445,384

TESTIMONY OF

ALAN CHVOTKIN

EXECUTIVE VICE PRESIDENT & COUNSEL

PROFESSIONAL SERVICES COUNCIL

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE

UNITED STATES SENATE

"BALANCING ACT:
EFFORTS TO RIGHT-SIZE THE FEDERAL EMPLOYEE-TO-CONTRACTOR MIX"

MAY 20, 2010

4401 Wilson Boulevard, Suite 1110, Arlington, Virginia 22203 P: 703-875-8059 F: 703-875-8922 www.pscouncil.org

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Introduction
Chairman Akaka and Ranking Member Voinovich, thank you for the invitation and the opportunity to appear before you today to share our perspective on one of the most important and misunderstood issues facing the federal government—balancing the multi-sector federal workforce. This hearing is both timely and welcomed.

My name is Alan Chvotkin and I am the Executive Vice President and Counsel at the Professional Services Council (PSC), the nation's largest organization of firms providing professional and technical services to the federal government. Our nearly 350 member companies are among the leading providers of information technology, engineering, scientific, social, international development, operations and maintenance and other services to virtually every agency of the federal government. Our membership is also uniquely diverse—more than 60 percent of our member firms are small- or smaller mid-tier companies and many are veteran-, woman-, and/or minority-owned firms.

Overview
As you well know, the debate about the right balance between federal employees and federal contractors to maximize the government's ability to meet its missions is not new. But, over the past 18 months, the issue has received a great deal of attention as the new administration has undertaken significant efforts to insource work, particularly, but not exclusively, at DoD. These issues also received a great deal of executive branch and congressional attention under Presidents Bill Clinton and George W. Bush, as those administrations sought to outsource more government functions for private-sector performance.

Although the size of the federal workforce is growing, there has been too little attention to targeted hiring to permit the federal government to restore core capabilities across a wide range of functions, with a special emphasis on the critical acquisition workforce. Over the past several years, Congress has pushed federal agencies to undertake comprehensive workforce skills competency analyses and strategic workforce planning. Regrettably, agency efforts have been far too ineffective.

Agency Workforce Planning
An organization's primary workforce objective must be to have the right number of people at the right place with the right skills at the right time to fulfill the organization's current and future missions. Effective human capital planning requires three basic elements. The first element, and by far the easiest to execute, is "knowing where we are." Agencies must have a thorough understanding of the current skills requirements for existing positions, and a thorough understanding of how the skills and capabilities of the current workforce match those required skill sets. To its credit, the Defense Department three years ago undertook a detailed competency survey for selected members of its acquisition workforce. OMB's Office of Federal Procurement Policy conducted a government-wide, self-assessed, competency survey of the federal acquisition workforce in 2008.

The second element, and by far the most difficult to execute, is "knowing where we're going." This involves knowing what skills an agency needs in the future to meet its mission-essential requirements. This is not primarily a human resources issue, but an agency leadership issue. It

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takes coordination with the White House and the Congress. I particularly commend the Federal Chief Information Officers Council's May 12, 2010 report titled "Net Generation: Preparing for Change in the Federal Information Technology Workforce."[1] This report captures extensive data on the current major federal information technology population and highlights the institutional changes that are resulting from both a changing workforce and rapidly evolving technology. The Department of Homeland Security's first ever Quadrennial Homeland Security Review (QHSR) identified five critical missions that the department must perform and offers a reasonable starting point for DHS to translate those priorities into specific skills requirements. As a result, the Homeland Security has acknowledged that it will need more than 1,000 cyber-security trained employees over the next three years. However, we know too little about other critical positions at other government agencies. For example, the Navy has a critical need for skilled marine engineers, but it has not disclosed the size of that skills gap. Similarly, USAID has identified a shortage of employees with skills in food security, an area vital to the agency's future mission focus. Although many federal agencies published strategic plans to provide a mission perspective that can serve as a foundation for such a workforce analysis, they often fail to identify the critical skills needed to execute the plans successfully.

If an agency doesn't "know where it is" with its workforce and skills, and doesn't "know where it is going" in terms of missions and workforce needs, then it is not possible to meaningfully execute the third element of workforce planning: "knowing how to get there!" As a result, what we often see is hiring for the sake of hiring and backfilling vacant positions without regard for whether the agency has a continuing need for those skills or that number of employees. It is possible that federal agencies have enough employee positions, but too many employees with the wrong skills and not enough employees with the right skills for the current and future missions of the agency.

There is no magic formula for determining the right mix of federal employees and contractors to meet mission needs. An agency must assess the total resources available to it to execute its mission, whether federal employees or contractors. That assessment should have but one goal: to ensure that the delivery of services and support of federal operations is done in a manner that best serves the interests of the American taxpayer. To be sure, certain skills – sometimes referred to as "inherently governmental functions" – should always only be performed by federal employees regardless of where those tasks are being performed government-wide. Other skills, sometimes referred to as "mission critical functions" – should ideally be performed by federal employees based on the agency's mission. For all other skills, the agency should carefully evaluate how to most efficiently and cost-effectively execute its work. Insourcing is merely one of several techniques an agency has available to meet its workforce needs – but it is not an end in itself. Regrettably, based on extensive examples we've collected, non-strategic insourcing is occurring regularly, from Maine to Ohio to California to Hawaii.

Inherently Governmental vs. Non-Inherently Governmental

As we consider the many aspects of workforce planning and the insourcing question, it is best to analyze the issues from two broad categories of work. The first category is work involving activities that must or should be performed by federal employees—such as inherently

[1] Available at: http://www.cio.gov/documents_details.cfm/uid/3F8464AE-BDBE-6B59-F19260278C0C2402/structure/IT%20Workforce/category/IT%20Workforce

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governmental functions or those activities that are not inherently governmental per se, but are critical to an agency's ability to maintain control and direction of its missions and operations. Such work requires one set of strategic thinking and planning. The second, broader, category involves all other types of functions not in the inherently governmental realm, which requires a different set of process rules and strategic planning.

With respect to the first category, the rebuilding of critical federal workforce capabilities, in acquisition, program management, systems engineering and other vital functions is clearly needed. For a variety of reasons—including demographics, a cumbersome federal personnel system and the private sector's dominance of technological innovation—the government today does not have the requisite capabilities to effectively direct and manage its operations whether those operations are outsourced or performed inside the government.

As such, PSC has been a strong supporter of initiatives, such as that undertaken by the Secretary of Defense in April 2009, to focus on the hiring and development of thousands of professionals with those critical skills. In an April 2009 letter to Secretary Gates, we endorsed his initiative, but raised concerns about the challenges of implementation.[2] The Secretary set a goal of adding more than 35,000 professionals to the DoD workforce, most, but not all, of them in the acquisition field, including insourcing approximately 17,000 to 20,000 currently contracted jobs. Although this initiative will have, and is having, an impact on a number of our member companies, and although its effects are particularly difficult for small and mid-tier firms, we remain supportive of the Secretary's objectives.

Other agencies, including the Homeland Security, State and the US Agency for International Development are in the early stages of similar efforts and we have been working with them on their initiatives while raising cautions about their implementation.[3] As you know, on March 31, 2010, the Office of Federal Procurement Policy published their proposed Policy Letter titled "Work Reserved for Performance by Federal Government Employees"[4] The proposed policy is balanced, founded in sound management strategy rather than ideology, and provides a narrowly tailored single definition of "inherently governmental functions" as required by Congress and the White House. It also offers meaningful and relevant guidance to agencies in making the determination of what work, other than "inherently governmental functions," is best performed by federal employees and what is appropriate for contract performance. Crucially, the proposed policy requires agencies to develop a focused, strategic human capital plan to define the critical skills they need to meet their missions and ensure they have enough internal staff to maintain

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[2] April 7, 2009 PSC letter to Secretary of Defense Robert Gates, available at: http://www.pscouncil.org/AM/Template.cfm?Section=Insourcing1&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=2322

[3] May 6, 2010 PSC letter to USAID Administrator Rajiv Shah, available at: http://www.pscouncil.org/AM/Template.cfm?Section=International_Development1&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=5197;
March 9, 2010 PSC letter to Senators Lieberman and Collins, available at: http://www.pscouncil.org/AM/Template.cfm?Section=Insourcing1&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=4787

[4] 75 Fed. Reg., 16188-16196, 3/31/10, available at: http://edocket.access.gpo.gov/2010/pdf/2010-7329.pdf

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government control of operations—a challenge of equal importance whether work is performed in house or under contract. We are still carefully analyzing the policy letter and collecting comments from our member companies. We intend to submit our comments to OFPP by their June 1, 2010 deadline.

Challenges Facing the Agencies

While these agency workforce efforts are important, significant challenges and questions remain and they need to be addressed immediately and continuously. Specifically, agencies should pay careful attention to the principles set forth in OMB's July 29, 2009 policy guidance[5] as well as the March 31, 2010 proposed policy letter. In these policy documents, OMB makes clear that the agencies' highest priority must be to bring in-house any inherently governmental activities that may have been outsourced, followed by addressing any residual core set of capabilities that are essential to enable an agency to manage and control its operations effectively.

But OMB also explicitly states that not ALL critical activities, or functions closely associated with inherently governmental activities, must be performed by federal employees. Rather, OMB makes clear that once an agency is performing internally all of its inherently governmental functions and has adequate management capabilities to ensure control and direction over its missions and operations, the decision as to whether to perform the work inside or by contract becomes, in effect, a sourcing decision.

Despite being a valuable document for assisting agencies in identifying critical needs and achieving an accurately blended workforce, the OMB guidance failed to appropriately drive agencies to consider a wide range of factors in making their sourcing decisions for these activities, such as:

- What are the TOTAL costs to the taxpayer that will accrue from an insourcing or outsourcing decision?
- What is the likelihood that the government can not only hire the requisite skills but keep those skills current and retain them over time and what are the costs associated with doing so?

To date, we have not seen a single case of insourcing where the government has even attempted to truly capture the total cost implications of its decisions. In fact, except for a January 29, 2010 initiative by the Defense Department to develop a rudimentary cost comparison methodology process,[6] few other cost comparison models exist or have been publicly released.[7] Furthermore, there are a number of other factors that agencies must consider, including, but not limited to, the extent to which the work itself might change and evolve over time, thus requiring slightly or very

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[5] July 29, 2009 OMB Memorandum for the Heads of Departments and Agencies, "Managing the Multi-Sector Workforce," available at: http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m-09-26.pdf

[6] January 29, 2010 DoD Directive-Type Memorandum (DTM) 09-007, "Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contract Support," available at: http://www.dtic.mil/whs/directives/corres/pdf/DTM-09-007.pdf. The DTM provides no systemic process to capture and accurately compare public and private sector costs. Rather, the DTM is an aggregated set of cost elements that does not provide a cogent methodology to enable appropriate and consistent implementation.

[7] For example, the Army's AMCOS Lite model is restricted.

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different skills. This is an important element in the decision process because one of the advantages of contracted work is the ability to continually adjust and evolve the specific capabilities brought to bear under the contract. If the work were being performed internally, the only answer would be to hire more people with those evolving and changing skills.

Finally, the government needs to assess the current status of the organization involved. What are the organizational demographics and what will its hiring needs be five or ten years from now—above and beyond the positions being considered for either insourcing or outsourcing? What are the agency's current vacancy rates and why have they not been able to fill already existent, funded, positions?

All of these questions are key elements to strategic human capital planning and smart management. And all must be addressed once an agency has completed its initial higher level workforce and mission reviews and assessments.

Department of Defense Insourcing Efforts

As I noted earlier, those principles are key to success in current and future efforts to most effectively balance and align federal agency workforce capabilities. But when it comes to considering insourcing or outsourcing the remaining activities of government, there are other considerations that must be, but routinely are not, considered.

To date, the Department of Defense has had the most robust insourcing activities of any agency in government. And thus, while this hearing is properly focused across the entire government, it is important and helpful to review what we know today about the Defense Department's efforts and what lessons we can and should draw from them.

First, according to DoD officials, as of March 2010, only 1/3 of the positions identified for insourcing in DoD fall into the "inherently governmental" or "critical skills" categories that are the focus of the defense secretary's initiative. The remaining 2/3 are positions for which cost assessments and other considerations are supposedly required – meaning that, by definition, DoD has identified them as positions for which the department has the option of performing them by contract or in-house.

Second, as documented by various sources, including the Air Force Materiel Command's January 2010 internal guidance[8] after the secretary April 2009 workforce initiative, each of the military departments and some key defense agencies were given specific quotas to meet.

Third, regardless of the nature of the work being performed, and regardless of whether an insourcing involves individual positions or entire contracts with defined deliverables, the military services have been told that for each position insourced, the department has already taken a 40% savings. Although the DoD Comptroller's fiscal year 2009 Resource Management Decision (RMD) that established this astounding figure remains classified, and although DoD has not been willing

[8] Air Force Materiel Command (AFMC) Resource Management Decision (RMD) 802, "In-Sourcing Implementation Guidance," January 2010, available at: http://www.peer.org/docs/dod/4_13_10_USAF_Materiel_Command_In-Sourcing_Implementation_Guidance.pdf

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to share the analysis that led to it, the RMD is the primary driver behind almost all insourcing activity to date at DoD. This, too, is clearly documented in, among other things, the AFMC guidance.

Fourth, it is increasingly clear that the alleged savings resulting from insourcing are being determined solely by replacing fully burdened contract costs—which include salaries, benefits, overhead, profit, any and all equipment, travel or other expenses associated with the work being done—with nothing more than immediate personnel costs, including some limited benefits costs. As noted in the Frequently Asked Questions portion of the AFMC guidance:

> *Question: Did you consider any non pay tail costs?*
> *Answer: No.*

In short, while the objectives of the secretary's workforce initiative remain both appropriate and important, implementation in the field has been far from disciplined and has increasingly turned into a numbers game to meet the personnel and dollar value quotas each service has been given. Indeed, the so-called savings from this insourcing have already been baked into the current and future year budgets of the department without benefit of real analytical rigor. For positions that really must be performed by federal employees, cost is not and should not be a primary concern. But for all other positions, cost, performance, and more must be at the core of the decision process. Yet today, at DoD, that does not seem to be the case.

As a result, we have witnessed thousands of contractor positions being insourced, resulting in potentially thousands of contractor employees losing their jobs, the very survival of some small businesses threatened, and perhaps worst of all, for the taxpayer an all but certain increase in costs to DoD.

For example, the Air Force has decided to insource simulator and instructor work at six of seven training bases. Since no one suggests this work falls within the secretary's workforce goals, the decision has been based on cost. Yet the Air Force's own documents show that the savings they expect are approximately POINT TWO PERCENT—a little over $400,000 against a total five year contract cost of over $220 million dollars—and that does not include key overhead, training, and other costs the government will incur. Worse, the cost assigned to the contract includes contract elements that were never executed—those elements alone greatly exceed any cost savings the Air Force has estimated will result. Finally, even though the Air Force is not projecting any real cost savings, they are planning to do the work with ten to fifteen percent fewer people, which by definition means the per person costs of doing the work inside the government are substantially higher than they are when the work is being done under contract.

Here are a few of the scores of examples of the current trend we have collected:

- A small woman-owned business in New York State saw its only federal government contract (for food services at the NY State Militia's Camp Smith) insourced on the basis that doing so would result in savings of fifty percent. In fact, the "savings" are being achieved by having active duty guardsmen do all of the cooking (a cost borne by DoD but not allocated to the base's operating budget and that does not even account for the recruiting, training

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and retention costs associated with Guard duty) and overseen through a new management contract with two individuals (but the contract, although funded by DoD is run through the NY State Militia) that does not get "charged" to the Camp Smith budget and are thus excluded from the cost comparison.

- A small business saw both of its routine base operating support services contracts insourced in the Fall of 2009, again with the claimed justification of substantial cost savings, although there was no cost analysis we are aware of and/or on the basis that some positions (including routine administrative and other support) were "reclassified" to "critical" for government performance. As a result, after 17 years of service, the company has gone out of business. All twelve of the 28 employees who converted to government employment did so at higher wages and benefits than what the contractor was obligated to pay under the Labor Department's Service Contract Act prevailing wage determinations. Despite the low margins associated with such work, and the generally common overhead expenses incurred whether the work is performed in-house or by contract, the command continued to assert that it received substantial cost savings. The employment future of the remaining 16 employees remains in question.
- A woman-owned small business operating in ten states and on bases overseas has had positions targeted for insourcing at a number of installations. None of the work being performed was identified as "inherently governmental" at the time of its award, and in many cases, work was awarded to the firm on the basis of significant cost savings to the government. Yet, the government is now asserting that it can perform the same work at less cost but has offered no complete cost comparison evidence to back up its claims. As a result, the small business could lose as much as 1/3 of its workforce. And in a final, cruel, irony, those American employees who were working for the company at U.S. military facilities in Europe are now unemployed since international agreements disqualify them from immediately converting to U.S. government-employment status.

Finally, at a time when the President and Congress have appropriately focused on ways to drive more competition as the key to improving efficiency and performance, in federal procurement, health care and more, it is remarkable that, within DoD, competition is not even being considered, even though the primary goals of much of the insourcing is to save money and improve performance. In other words, good paying private sector jobs as well as the proven and widely accepted benefits of the competitive marketplace are being almost entirely eschewed in favor of an insourcing mythology.

OMB Can Steer the Ship Back On Course

Mr. Chairman, I realize that my examples have been heavily focused on DoD but DoD is doing the most insourcing. There is much to be learned, and improved upon, from DOD's current efforts so that the civilian agencies do not make similar mistakes.

To its credit, OMB has taken a different tack. In addition to providing the beginnings of a helpful and strategically thought out human capital policy, OMB has made clear that for those positions that could be performed by government or private sector personnel, competition is a vital option to be considered.

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This is particularly important as we work with agencies that are struggling with defining their appropriate workforce balances and the relative costs of performing work organically or by contract. We are concerned that a mythology has been allowed to blossom unchecked that the use of contractors is more expensive than hiring government employees or that insourcing work will automatically improve performance. We are concerned that, in several agencies, prominently including State and USAID, these mythologies may be turning into policy. However, the objective evidence strongly suggests otherwise. From the examples at DoD that I cited, to the GAO and CBO reports on the cost of certain contractors performing work in Iraq and Afghanistan—reports that concluded that it was sometimes an order of magnitude less expensive to perform that work under contracts—it is eminently clear that the presumption is indeed a myth. Moreover, as we have seen at DoD, the means by which agencies are determining relative costs are incomplete, inaccurate and almost always far too limited.

Recommendations

As such, for work that is being considered for insourcing and which does not involve inherently governmental functions or residual core skills such as those referenced in the most recent proposed OMB policy, ***far greater analytical rigor is needed.*** That rigor should require agencies to perform in- depth cost analyses that assess all identifiable costs associated with the work and positions involved. That rigor should also require agencies to use competitive procedures to ensure that, before making a precipitous decision, they have full knowledge of what would be possible to achieve under contract. In addition, that rigor should require that agencies do all of this in a completely transparent and accountable way. To date, in DoD, any analyses behind the Resource Management Decision remain hidden, and we are unaware of any process being developed or being used in the civilian agencies to make these determinations. It is easy enough to determine the true, total cost of contracted work by looking at the invoices and by assessing the government man hours that go into managing and overseeing a specific contract. However, for work performed inside the government, those costs are often scattered across an agency's accounts, often difficult to quantify and allocate, and sometimes prove to be the responsibility of an entirely different agency, such as is the case with OPM and their responsibility for post-retirement benefits and programs.

Conclusion

Insourcing for the sake of insourcing is no more intelligent, no more effective, and no more defensible than outsourcing for the sake of outsourcing. Nor should government accept repeating the mistakes of past outsourcing efforts when implementing insourcing efforts. OMB has taken strides to craft appropriate guidance to balance the workforce at federal agencies, yet all the tools to conduct comprehensive insourcing decisions have not been established. Where the guidance exists, we should demand that it be followed, and where the tools are insufficient or non-existent, we should work expeditiously to repair or create them. As taxpayers, we deserve no less.

That concludes my statement. I look forward to answer any questions you may have.

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Statement of Colleen M. Kelley

National President

National Treasury Employees Union

on

"Efforts to Right-Size the Federal Employee to Contractor Mix"

Submitted to

Senate Committee on Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

May 20, 2010

1750 H Street, N.W. • Washington, D.C. 20006 • (202) 572-5500

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Chairman Akaka, Ranking Member Voinovich, and distinguished members of the Subcommittee, I would like to thank you for allowing me to provide comments on efforts to right size the Federal employee to contractor mix. As President of the National Treasury Employees Union (NTEU), I have the honor of representing over 150,000 federal workers in 31 federal agencies and departments.

Mr. Chairman, NTEU has long maintained that federal employees, given the appropriate tools and resources, do the work of the federal government better and more efficiently than any private entity. The prior administration, however, pursued an unwavering agenda of targeting federal employee jobs for public-private competition. Competitive sourcing was one of its top initiatives. As part of that Administration's efforts, we saw the rules of competition overhauled, quotas set for competed jobs, and grades given to agencies on their efforts in conducting competitions. The changes undoubtedly had the desired effect: since 2001, spending on Government contracts has more than doubled, reaching over $500 billion in 2008.

The explosion in contract spending has also led to a drastic increase in the size of the contract workforce. According to the Office of Management and Budget (OMB), this excessive reliance on contractors has eroded the in-house capacity of agencies to perform many critical functions and has undermined their ability to accomplish their missions.

One such example is the Department of Homeland Security, which now has more contractors than federal employees. According to DHS estimates, the Department has 188,000 civilian employees and 200,000 contractors working for it. As Senator Lieberman noted during a recent hearing on the DHS FY '11 budget request, "the sheer number of DHS contractors currently on board again raises the question of whether DHS itself is in charge of its programs and policies, or whether it inappropriately has ceded core decisions to contractors."

A prime example of how an agency's overreliance on contractors has undermined its ability to accomplish its mission by ceding core agency functions is the Department of Homeland Security's recent eight year, $1.2 billion contract with Lockheed Martin to manage the Transportation Security Administration's (TSA) human resources. Under the TSA contract, Lockheed Martin is put in a position of supporting core TSA functions including recruitment and hiring; handling employee records; processing paychecks, and health and retirement benefits; and providing research into strategic workforce planning.

The dangers associated with ceding such important functions such as these were highlighted recently when a contractor working for TSA's human resources department in Boston was charged with stealing the identities of dozens of TSA officers who screen passengers and baggage at U.S. airports.

I would note that DHS has stated it is aware of the problems associated with such a large contract workforce and has set a goal of converting 3,300 contractor positions to DHS positions by the end of the year. While this is a good start, the sheer size of the 200,000 plus contract workforce requires additional conversions to ensure DHS does not become over-reliant on contractors.

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The previous administration's policies resulted in contractors performing functions that are clearly inherently governmental or closely associated to inherently governmental functions. In agencies delivering vital services, contractors perform critical and sensitive work such as law enforcement, government facility security, prisoner detention, budget planning, acquisition, labor-management relations, hiring, and security clearances. According to the Government Accountability Office (GAO), the Department of Homeland Security uses contractors to prepare budgets, develop policy, support acquisition, develop and interpret regulations, reorganize and plan, and administer A-76 efforts.

We have all witnessed the dangers associated with such an aggressive outsourcing agenda. Examples range from the Mellon Bank fiasco in 2001 involving the deliberate destruction of tax returns and checks to the debacle at Walter Reed Army Medical Center involving the systematic replacement of federal workers with private companies charged with facilities management, patient care and guard duty. When privatization fails, millions of tax dollars are wasted on inefficiencies and damage control, and federal workers are expected to pick up the pieces and complete the jobs that private contractors abandon.

One of the most egregious examples of misguided outsourcing is the tax privatization effort pursued by the IRS even over the objections of the National Taxpayer Advocate (who is appointed by the Secretary of the Treasury and charged with representing taxpayer interests before the IRS and Congress). It was not cost-effective, it lacked customer service for multilingual taxpayers, it was secretive (private collection agencies refused to disclose operational plans), and it proved unfair to taxpayers. Further, the IRS had to assign 65 of its own employees to oversee the work of just 75 private collection agency employees. Given the obvious failures of this undertaking, and in the face of strong opposition by NTEU and a broad range of consumer and public interest groups, and the IRS ending the program and congress voted to cut off funding for it.

ADMINISTRATION REVIEW OF FEDERAL CONTRACTING PROCESS

We are very pleased to see that the Obama Administration is focused on leveling the playing field and ensuring accountability of contractors within the federal contracting system. NTEU firmly believes that federal employees are the best value for taxpayers' dollars and welcome the opportunity for them to demonstrate their effectiveness and efficiency.

On March 4, 2009 President Obama issued a Memorandum on Government Contracting ordering the Office of Management and Budget (OMB) to undertake a comprehensive review of the federal contracting process. The Memorandum raised the concern that the proportion of contracts awarded without full and open competition has become too high, and the line between what is "inherently governmental" and what can properly be contracted out has become blurred, with contractors performing inappropriate tasks. To address these concerns, the memo directed OMB, among other things, to clarify when governmental outsourcing of services is, and is not, appropriate, consistent with section 321 of the National Defense Authorization Act (NDAA) for FY 2009. Section 321 requires OMB to (i) create a single definition for the term ''inherently governmental function'' that addresses any deficiencies in the existing definitions and reasonably applies to all agencies; (ii) establish criteria to be used by agencies to identify ''critical'' functions and positions that should only be performed by federal employees; and (iii)

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provide guidance to improve internal agency management of functions that are inherently governmental or critical.

Last July, in response to an OMB solicitation for input from interested parties, NTEU provided comments on various key outsourcing issues. In particular, our comments focused on how the current definition of "inherently governmental" should be clarified to improve management of the multi-sector workforce; what criteria might help agencies to identify non-inherently governmental functions that are critical to an agency, with respect to its unique missions and structure, and need to be performed by federal employees in order for the agency to maintain control of its mission and operations; and what criteria agencies should use in deciding whether an activity should be in-sourced. A summary of NTEU's comments is below.

How might the current definition of inherently governmental be clarified to improve management of the multi-sector workforce?

NTEU believes that OMB need only clarify that the term "inherently governmental" is defined exclusively by the Federal Activities Inventory Reform (FAIR) Act. The FAIR Act defines "inherently governmental" as "a function which is so intimately related to the public interest as to mandate performance by Government employees." Listed functions include "those activities that require either the exercise of discretion in applying Government authority or the making of value judgments in making decisions for the Government." This definition is long-standing and provides both sufficient guidance and needed flexibility in determining which functions are best reserved for government workers.

Over the years, problems in the application of this definition have arisen from inconsistencies in internal government directives, rather than from the statutory definition itself. NTEU believes that by unequivocally reaffirming the FAIR Act definition and expressly repudiating any inconsistencies, OMB will restore a workable construct of inherently governmental and level the playing field. The specific inconsistencies that we believe OMB should address in the final policy letter are discussed below.

First, OMB should clarify that an inherently governmental function requires the exercise of "discretion," without any qualifiers. This clarification would eliminate the confusion stemming from the 2003 revisions to the A-76 Circular, which referred to "substantial official discretion" and the 1992 Office of Federal Procurement Policy (OFPP) letter, which referred to "substantial discretion." These additional modifiers inappropriately elevate the level of discretion needed to show that a position is inherently governmental and insulate only the highest agency positions from outsourcing.

Second, OMB should expressly repudiate the presumption in the 2003 revisions to the A-76 Circular that a government function is commercial in nature unless affirmatively shown otherwise. This presumption is not only bad policy, but it is at odds with the FAIR Act's definition that simply delineates between commercial and inherently governmental functions. Each function must be evaluated on its own merits. In fact, if the FAIR Act includes any presumption at all, it presumes the opposite--namely, that a function is inherently governmental (because it is performed by the government) unless a contrary showing is made. A function is only designated commercial (and therefore subject to performance by a private contractor) if the

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agency head determines that the function does not satisfy the definition of an inherently governmental function. The 2003 revisions have caused confusion among agency personnel charged with making this decision, and they should therefore be repudiated as inconsistent with the FAIR Act.

In short, NTEU believes that the FAIR Act's current definition of "inherently governmental" provides the needed flexibility to determine when federal employees should perform the work of the federal government. It is not the definition that has proven difficult to administer. The difficulties and confusion arose from limiting interpretations in the A-76 Circular and other policies promulgated by a contractor-friendly administration. OMB can simply reaffirm the FAIR Act's definition of inherently governmental, thereby eliminating confusion and restoring uniformity in the contracting out process.

NTEU was happy to see that in late March, OMB's Office of Federal Procurement Policy (OFPP) issued a proposed policy letter on inherently governmental functions and other "work reserved for performance by federal government employees" that adopted the definition of "inherently governmental" in the FAIR Act as advocated by NTEU.

However, we believe that the policy letter could better ensure that we avoid reverting to a system of contracting out that, by all accounts, has gone too far. Under the policy letter, OMB has created comprehensive and thoughtful guidance on two concepts related to inherently governmental--functions closely associated to inherently governmental and critical functions. These two constructs, we believe, are inextricably linked to inherently governmental and cannot be responsibly subject to performance by private contractors.

In addition, we believe that the "nature of the function" and "exercise of discretion" tests for determining whether a function is inherently governmental are too restrictive and should be revised. As drafted, the "nature of the function" test narrowly reserves only those functions that involve "the exercise of sovereign powers" and contemplates ambassadors, judges and police officers. This view is entirely too limited and only insulates a handful of positions from potential outsourcing abuses.

The "exercise of discretion" test is similarly too limited, allowing an agency to determine that a function is not inherently governmental, and therefore appropriate for outsourcing, unless the contractor's work would "preempt the federal officials' decision-making process, discretion or authority." It would be an extremely rare circumstance that an official's authority would actually be pre-empted, which means that very few (if any) functions will satisfy the "exercise of discretion" test.

Accordingly, we respectfully suggest that OMB, in issuing a final policy letter, consider whether the discussion and guidance concerning "closely associated" and "critical" are more appropriately folded into the general category of functions federal employees must perform. In collapsing these concepts into a single, comprehensive analysis, NTEU believes that OMB will create a sound policy that, first and foremost, protects the government's interest in having a workforce of federal employees performing the functions that are best reserved for in-house performance. The policy would also allow agencies to explore proper outsourcing alternatives

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while safeguarding against potential abuses. Further, we recommend that OMB refine its "nature of the function" and "exercise of discretion" tests.

What criteria might help agencies to identify non-inherently governmental functions that are critical to an agency, with respect to its unique missions and structure, and need to be performed by federal employees in order for the agency to maintain control of its mission and operations?

We have learned from the public-private competition process over the years that there are certain functions performed by federal workers that arguably fall short of satisfying the definition of inherently governmental but must, nonetheless, be performed in-house. This realization has begun to gain traction as the Congress considers legislation such as S.924, the "Correction of Long-standing Errors in Agencies Unsustainable Procurement Act" (CLEAN UP Act), which refers to "mission-essential functions" in addition to inherently governmental functions. We are pleased that there is recognition that some work should be performed in-house because of its close association with an agency's mission or its inextricable connection to inherently governmental functions.

NTEU believes the unique mission of each agency will dictate the factors that an agency should consider in determining if an activity is so closely related to inherently governmental work that it should be performed in-house, even if it does not satisfy the definition of inherently governmental. For example, the IRS's mission is to administer the tax laws effectively and efficiently, which necessarily involves the handling of sensitive tax return information, including social security numbers. In light of this unique mission, the IRS should consider whether certain supporting functions, while perhaps not technically satisfying the FAIR Act's definition of inherently governmental, are nonetheless so critical to the IRS that they need to be performed by federal employees so that the IRS can maintain control of its mission and operations.

Further, because the discussion of inherently governmental involves functions (as opposed to positions), a single employee might perform both inherently governmental and commercial work. Instances where an employee performs "mixed" work seem particularly appropriate for designation as functions that are critical to an agency and need to be performed by a federal employee.

What criteria should agencies use in deciding whether an activity should be insourced?

Congress has clearly indicated the direction that should be taken in evaluating the insourcing of new and contracted out functions. Section 736 of Division D of the Omnibus Appropriations Act, 2009, P.L. 111-8, requires agencies subject to the FAIR Act to "devise and implement guidelines and procedures to ensure that consideration is given to using, on a regular basis, Federal employees to perform new functions and functions that are performed by contractors and could be performed by Federal employees." The statute further requires that the guidelines provide for "special consideration" to be given for using federal employees to perform any function that is:

Performed by a contractor and:

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- has been performed by federal employees at any time during the previous 10 years;
- is a function closely associated with the performance of an inherently governmental function;
- has been performed pursuant to a contract awarded on a noncompetitive basis; or
- has been performed poorly, as determined by a contracting officer during the 5 years preceding the date of such determination, because of excessive costs or inferior quality; or:
- a new requirement, with particular emphasis given to a new requirement that is similar to a function previously performed by federal employees or is a function closely associated with the performance of an inherently governmental function.

In addition, the statute provides that the guidelines and procedures may not include any specific limitation on the number of functions or activities that may be converted to performance by federal employees and excludes certain functions from public-private competition until certain conditions are met.

In July 2009, OMB issued guidance providing agencies with criteria to "facilitate consistent and sound application of the insourcing requirements" set forth in section 736. The criteria consist of four sections that address different aspects of the statute and describe circumstances and factors agencies should consider when identifying opportunities for insourcing. The guidance noted that agencies subject to section 736 should reflect these criteria in their guidelines to implement section 736.

Inventory of Service Contracts

NTEU believes that complete, accurate and timely government contracting information is essential for tracking how public funds are being spent government-wide, as well as how well contractors are performing their responsibilities. Unfortunately, the proliferation of service contracts in recent years has eroded the ability of agencies to effectively monitor contractor performance and has hampered efforts to eliminate waste, fraud and abuse in the federal contracting system.

That is why NTEU was happy to see the FY 2010 Consolidated Appropriations Act requires agencies to create an annual inventory of all contractors providing services for the government. By the end of 2010, agencies would be required to submit to OMB a list that includes a description and cost for the services; the contractor's name and place of performance; and whether the contract was awarded competitively. Agencies are instructed to look for services that are inherently governmental or for poorly performing contracts and to evaluate whether it makes sense to bring the work performed by the contractor "in house".

By providing agencies with the necessary framework to better monitor and oversee the vast number of service contracts, they will be better able to determine if contractors are meeting their responsibilities or if the agency would be better served by having federal employees perform that work.

In addition to the efforts outlined in the various pieces of proposed legislation, NTEU believes that OMB can further advance the government's interest in assisting agencies to identify

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which functions should not have been outsourced. Other criteria that agencies should consider include the following:

- Has there been an actual monetary savings realized as a result of the contract? Agencies should document the actual costs associated with each of the contracts listed in their inventory and determine whether that figure is consistent with the contractor's bid. If--as we suspect is often the case--the documented expenses exceed the bid, the work should be re-examined for in-sourcing.

- Has the contractor defaulted on the statement of work? Agencies should examine their list of contracts to determine whether, in fact, federal employees are performing outsourced activities rather than contractors. We are aware of several examples of failed contractor performance that have led to certain outsourced activity being performed by federal workers. The IRS mailroom contractor, for instance, was unable to deliver the same level of service that agency employees had performed prior to a reduction in force, and other IRS employees were required to perform work that the contractor had promised in its statement of work. Further, a contractor that was to provide toll-free services of the IRS's Area Distribution Centers informed the IRS--after the contract was awarded--that it could not fulfill the requirements of the contract and IRS employees were called in to complete the work.

- Was the contract renewed without a re-competition? Agencies should be required to examine their contract services to determine whether work was re-competed once a contract term had run. Contracts have often been automatically renewed without any scrutiny.

- What other costs do agencies incur during the contracting out process? OMB should ask agencies to begin to document all associated costs of outsourcing to determine whether there is a savings to taxpayers. For example, agencies should consider average costs associated with the public announcement of competition, including time spent in preparing for the announcement, litigation costs, oversight costs (such as the time and expense of dedicating 65 IRS employees to oversee the work of 75 contractor employees), and all other expenses.

CONCLUSION

Mr. Chairman, thank you, again, for the opportunity to submit our views on right-sizing the Federal employee to contractor mix. Overreliance on contractors can increase cost and jeopardize mission accomplishment. Ensuring that only appropriate functions are open to contracting will save money and provide taxpayers with the most effective government services.

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BACKGROUND
BALANCING ACT: EFFORTS TO RIGHT-SIZE THE FEDERAL EMPLOYEE-TO-CONTRACTOR MIX
MAY 20, 2010

BACKGROUND

For decades the federal government has relied on the private sector for necessary commercial services. In recent years, the extent of contracting, including for services that may be inherently governmental functions, and oversight of contractors have been widely criticized. Efforts are underway to have federal agencies re-balance their federal employee-to-contractor workforce. To assist in this process, the administration is reexamining the definition of an "inherently governmental function" and what jobs or functions should be insourced.

OMB Circular A-76 established the federal government's policy for determining whether government employees or contractors should perform certain functions. The Circular states that, whenever possible, and to achieve greater efficiency and productivity, the federal government shall identify commercial activities and determine whether these activities are best provided by the private sector or by government employees.[1] This latter became known as "competitive sourcing" and was one of five major initiatives of the Bush Administration's Presidential Management Agenda.[2]

The Obama Administration has announced plans to shift away from public-private competitions and rely more on federal employees.[3] In a March 2009 Presidential Memorandum on Government Contracting, President Obama stated that government outsourcing for services was a concern and that the line between inherently governmental activities and commercial activities has been blurred and not adequately defined.[4] As a result, private contractors may be performing inherently governmental functions. An inherently governmental activity is defined as an activity that is so intimately related to the public interest as to mandate performance by government personnel.[5]

POLICY GUIDANCE

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[1] OMB Circular No. A-76 (Revised), May 29, 2003, available at: http://www.whitehouse.gov/omb/circulars_a076_a76_incl_tech_correction; *see also* Congressional Research Service, *Office of Management and Budget Circular A-76 and the Proposed Moratorium on Future DOD Competitions,* CRS-R40854, Oct. 9, 2009, p.1.

[2] Congressional Research Service, *Competitive Sourcing Statutes and Statutory Provisions,* CRS-RL32833, Feb. 22, 2010, p.1.

[3] Ibid., p. 1.

[4] Memorandum from President Obama to Heads of Executive Departments and Agencies on *Government Contracting,* Mar. 4, 2009, available at: http://www.whitehouse.gov/the-press-office/memorandum-heads-executive-departments-and-agencies-subject-government-contracting.

[5] OMB Circular No. A-76, *supra* note 1, p. A-2.

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The Fiscal Year (FY) 2008 National Defense Authorization Act (NDAA) required DoD to devise and implement insourcing guidelines for new and contracted-out functions by late-March 2008.[6] The Omnibus Appropriations Act for FY 2009 extended this requirement to other agencies, with a mid-July 2009 deadline.[7] The insourcing guidelines were to ensure that consideration was given to using federal employee to perform new functions and inherently governmental functions that were being performed by contractors.

Despite the longstanding policy that an "inherently governmental function" should be performed by a federal government employee, what is an inherently governmental function is not clearly defined and has been interpreted in a variety of ways. In an effort to reconcile the definitions and examples of inherently governmental functions, the FY 2009 NDAA directed OMB to, among other things, (i) develop a single consistent definition of an "inherently governmental function", (ii) establish criteria for agencies to identify critical functions, and (iii) provide guidance to improve internal agency staffing decisions to ensure that federal employees are filling critical management roles.[8]

In response, OMB's Office of Federal Procurement Policy issued proposed policy guidance on March 31, 2010, inviting interested parties from the public and private sectors to comment before June 1, 2010.[9] The draft guidance proposes that federal agencies adopt the 1998 Federal Activities Inventory Reform (FAIR) Act[10] definition of "inherently governmental function" as the single government-wide definition. OFPP also proposes that officials avoid an overreliance on contractors for functions that are "closely associated with inherently governmental" or that are "critical" for the agency's mission. The proposed policy guidance provides a list of inherently governmental functions and functions closely associated with the performance of inherently governmental functions.

CONSIDERATIONS FOR INSOURCING

Inventories: The FAIR Act requires federal agencies to compile and submit inventories of their contracted services to OMB by June 30 of each year.[11] Additionally, starting in 2001 OMB also required agencies to submit inventories of their inherently governmental activities.[12] Agencies will use these inventories to decide which contracted services should be insourced. A methodology used by the Department of Defense (DoD) includes a "decision-tree" diagram, which can be found in the Appendix, which details the steps in the process for reviewing contracted services for insourcing.

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[6] National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181 § 324.

[7] Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, Division D, Title VII, § 736.

[8] Pub. Law No. 110-417, § 321.

[9] OMB OFPP, *Work Reserved for Performance by Federal Government Employees – Notice of proposed policy letter*, 75 Federal Register 61 (Mar. 31, 2009), pp. 16188-16189, available at: http://edocket.access.gpo.gov/2010/2010-7329.htm.

[10] Pub. L. No. 105-270.

[11] Congressional Research Service, *The Federal Activities Inventory Reform Act and Circular A-76*, CRS-RL31024, Apr. 6, 2007, p. 11.

[12] Ibid., p.13.

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Risks associated with outsourcing: In 2007, GAO reviewed DHS's use of contracts that closely supported inherently governmental functions and identified more than half of the 117 Statements of Work included professional and management services that closely supported inherently governmental functions according to federal acquisition guidance.[13] These services included reorganization and planning activities, policy development, and acquisition support. Decisions to contract for these services were largely driven by the need to get programs up and running quickly. GAO found that the closer contractor services come to supporting inherently governmental functions, the greater the risk of their influencing the government decision-making process.[14]

Workforce planning: Insourcing will not simply be a job conversion process. As positions are identified for conversion, it is important that adequate workforce planning be done to ensure a smooth and effective transition. Agency management practices will need to recognize the proper role of each sector's labor force and draw on the respective skills to help the government operate at its best.[15] Within each agency, the human capital, acquisition, finance and budget functions must all work together to identify and resolve matters such as the types of services and number of positions to be insourced; the hiring timeline for federal employees; training and security clearance needs; budget needs for additional resources; facilities and equipment needs; and oversight needs and capacity.[16]

DHS AND DOD EFFORTS IN BALANCING THE WORKFORCE

DHS: In March 2009, DHS launched the Workforce Assessment Efficiency Review Initiative, a strategic review of the federal/contractor balance supporting the Department's overall mission. The review identified the number of federal employees (approximately 230,000), number of contractors (estimated at 210,000), and the initial contractor conversions (3,500 positions).[17] DHS is focusing on conversions in Professional Support Services, which likely includes services that are closely related to inherently governmental functions.[18] DHS is emphasizing the need to have federal employees perform inherently governmental and critical/core functions and has established the Balanced Workforce Program Management Office to lead and implement the Department's balanced workforce strategy.[19]

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[13] Government Accountability Office, *Department of Homeland Security: Risk Assessment and Enhanced Oversight Needed to Manage Reliance on Contractors*, GAO-08-142T, Oct. 17, 2007, p.2.

[14] Ibid., p. 3.

[15] Memorandum from the U.S. Office of Management and Budget Director Peter R. Orszag to Heads of Departments and Agencies on *Managing the Multi-Sector Workforce*, July 29, 2009, available at: http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m-09-26.pdf.

[16] Government Accountability Office, *Civilian Agencies' Development and Implementation of Insourcing Guidelines*, GAO-10-58R, Oct. 6, 2009, p. 7.

[17] DHS CHCO informational briefing to the Homeland Security and Governmental Affairs Committee May 11, 2010.

[18] Ibid.

[19] Ibid.

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DoD: In April 2008, DoD issued its initial insourcing guidelines[20] and in May 2009, issued implementing guidance for the insourcing of contracted services.[21] The guidance is designed to assist DoD components for FY 2010-2014 as they develop and execute plans to decrease funding for contract support and increase funding for approximately 33,400 new civilian employees.[22] DoD has also set a short-term goal of hiring 4,100 contracting employees in 2010, essential to restoring accountability to the DoD procurement process.[23] There is concern that the guidance may be too limited in how it addresses the workforce balance, the role of competition, the government's ability to hire and retain people for work being considered for insourcing, and the importance of considering total costs in making sourcing decisions.[24]

OTHER EFFORTS THAT SUPPORT INSOURCING

Direct-Hire Authority (DHA) allows agencies to fill vacancies with directly appointed candidates when public notice is given and OPM determines a critical hiring need or severe shortage of candidates exists.[25] The DHA expedites hiring by eliminating competitive service hiring procedures.[26] In November 2009, OPM finalized a regulation extending direct hiring authority for certain acquisition jobs.[27] The authority allows heads of civilian agencies to hire directly if they can demonstrate a shortage of certain federal acquisition positions.[28] The authority expires on September 30, 2012.[29]

Efforts to improve the federal hiring process will aid the insourcing effort. On March 30, 2009, Senators Akaka and Voinovich introduced the 2009 Federal Hiring Process Improvement Act (S. 736), which has been reported out of the Committee on Homeland Security and

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[20] Memorandum from the Deputy Secretary of Defense Gordon R. England to the Secretaries of the Military Departments on, *Implementation of Section 324 of the National Defense Authorization Act for Fiscal Year 2008 (FY 2008 NDAA) – Guidelines and Procedures on In-sourcing New and Contracted Out Functions,* Apr. 4, 2008, available at: http://prhome.defense.gov/PDUSD/REQUIREMENTS/docs/OSD%20In-sourcing%20Guidance%2004184-08.pdf.

[21] Memorandum from the Deputy Secretary of Defense William J. Lynn to the Secretaries of the Military Departments on, *In-sourcing Contracted Services – Implementation Guidance,* May 28, 2009, available at: http://www.peer.org/docs/dod/4_13_10_DepSecDef_Memo_In-sourcing.pdf.

[22] Ibid.

[23] Newell, Elizabeth, *Defense shapes savvier shoppers,* Government Executive Magazine, Apr. 16, 2010, available at: www.govexec.com/story_page.cfm?articleid=45050&dcn=e_gvet

[24] Soloway, Stan, *Strong guidance needed for insourcing,* Washington Technology, July 2, 2009, available at: http://washingtontechnology.com/Articles/2009/07/06/Insights-Soloway-Insourcing.aspx.

[25] OPM Direct-Hire Authority (DHA) Fact Sheet available at: http://opm.gov/DirectHire/factsheet.asp. *See also* 5. U.S.C. §3304(a)(3), which provides authority for direct appointments where public notice is provided and either (1) OPM has determined that there is a severe shortage of candidates and a critical hiring need, or (2) the candidate is a participant in the Science, Mathematics, and Research for Transformation (SMART) Defense Education Program.

[26] 5. U.S.C. §3304(a)(3)

[27] 74 Federal Register 225 (Nov. 24, 2009), p. 61263, available at: http://edocket.access.gpo.gov/2009/pdf/E9-28209.pdf; *see also* Rosenberg, Alyssa, *OPM extends direct hire authority for acquisition jobs,* Government Executive Magazine, Nov. 24, 2009, available at: http://www.govexec.com/dailyfed/1109/112409ar1.htm.

[28] 5 C.F.R. 337, available at: http://edocket.access.gpo.gov/2009/pdf/E9-28209.pdf

[29] Ibid.

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Governmental Affairs. This bill would eliminate the knowledge, skills and abilities essays for initial federal job applications and allow resumes and cover letters. It will require clearer job announcements, a shorter hiring time frame, better communication with applicants, more hiring manager involvement in the process, and other improvements that will make applying for federal employment more attractive and easier for potential employees. Additionally, on May 11, 2010, President Obama issued a memorandum to federal agencies directing them to overhaul their hiring procedures by November 1, 2010.[30]

RELEVANT LEGISLATION

- Omnibus Appropriations Act for FY 2009, Pub. L. No. 111-8, Division D, Title VII, Section 736.
- National Defense Authorization Act (NDAA) for FY 2008, Pub. L. No. 110-181, Section 324.
- NDAA for FY 2009, Pub. L. No. 110-417, Section 321.
- Federal Activities Inventory Reform Act, Pub. L. No. 105-270.
- Federal Hiring Process Improvement Act of 2009, S. 736, 111th Congress.

ADDITIONAL INFORMATION

- Congressional Research Service, *Office of Management and Budget Circular A-76 and the Proposed Moratorium on Future DOD Competitions,* CRS-R40854, Oct 9, 2009.
- Congressional Research Service, *Competitive Sourcing Statutes and Statutory Provisions,* CRS-RL32833, Feb 22, 2010.
- U.S. Office of Management and Budget, Circular No. A-76 (Revised), May 29 available at: http://www.whitehouse.gov/omb/circulars/a076/a76_incl_tech_correction.pdf.
- Memorandum from President Obama to Heads of Executive Departments and Agencies on *Government Contracting*, Mar. 4, 2009, available at: http://www.whitehouse.gov/the-press-office/memorandum-heads-executive-departments-and-agencies-subject-government-contracting.
- Federal Register Notice, Vol. 75, No. 61, OMB OFPP, *Work Reserved for Performance by Federal Government Employees – Notice of proposed policy letter*, Mar. 31, 2009, available at: http://edocket.access.gpo.gov/2010/2010-7329.htm.
- Congressional Research Service, *The Federal Activities Inventory Reform Act and Circular A-76,* CRS-RL31024, Apr. 6, 2007.

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[30] Memorandum from President Obama to Heads of Executive Departments and Agencies on *Improving the Federal Recruitment and Hiring Process*, May 11, 2010, available at: http://www.whitehouse.gov/the-press-office/presidential-memorandum-improving-federal-recruitment-and-hiring-process.

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- Memorandum from the U.S. Office of Management and Budget Director Peter R. Orszag to Heads of Departments and Agencies on *Managing the Multi-Sector Workforce*, July 29, 2009, available at: http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m-09-26.pdf.
- Government Accountability Office, *DHS Risk Assessment and Enhanced Oversight Needed to Manage Reliance on Contractors*, GAO-08-142T, Oct. 17, 2007.
- Government Accountability Office, *Civilian Agencies' Development and Insourcing Guidelines*, GAO-10-58R, Oct. 6, 2009.
- Memorandum from the Deputy Secretary of Defense William J. Lynn to the Secretaries of the Military Departments on, *In-sourcing Contracting Services – Implementation Guidance,* May 28, 2009, available at: http://www.peer.org/docs/dod/4_13_10_DepSecDef_Memo_In-sourcing.pdf.
- Memorandum from the Deputy Secretary of Defense Gordon R. England to the Secretaries of the Military Departments on, *Implementation of Section 324 of the National Defense Authorization Act for Fiscal Year 2008 (FY 2008 NDAA) – Guidelines and Procedures on In-sourcing New and Contracted Out Functions, Apr. 4, 2008, available at: http://prhome.defense.gov/PDUSD/REQUIREMENTS/docs/OSD%20In-sourcing%20Guidance%2004184-08.pdf.*
- OPM Press release, *OPM & OMB Announce Unprecedented Hiring Reforms*, May 11, 2010, available at: http://www.opm.gov/news/opm-omb-announce-unprecedented-hiring-reforms,1562.aspx.
- Memorandum from President Obama to Heads of Executive Departments and Agencies on *Improving the Federal Recruitment and Hiring Process*, May 11, 2010, available at: http://www.whitehouse.gov/the-press-office/presidential-memorandum-improving-federal-recruitment-and-hiring-process.

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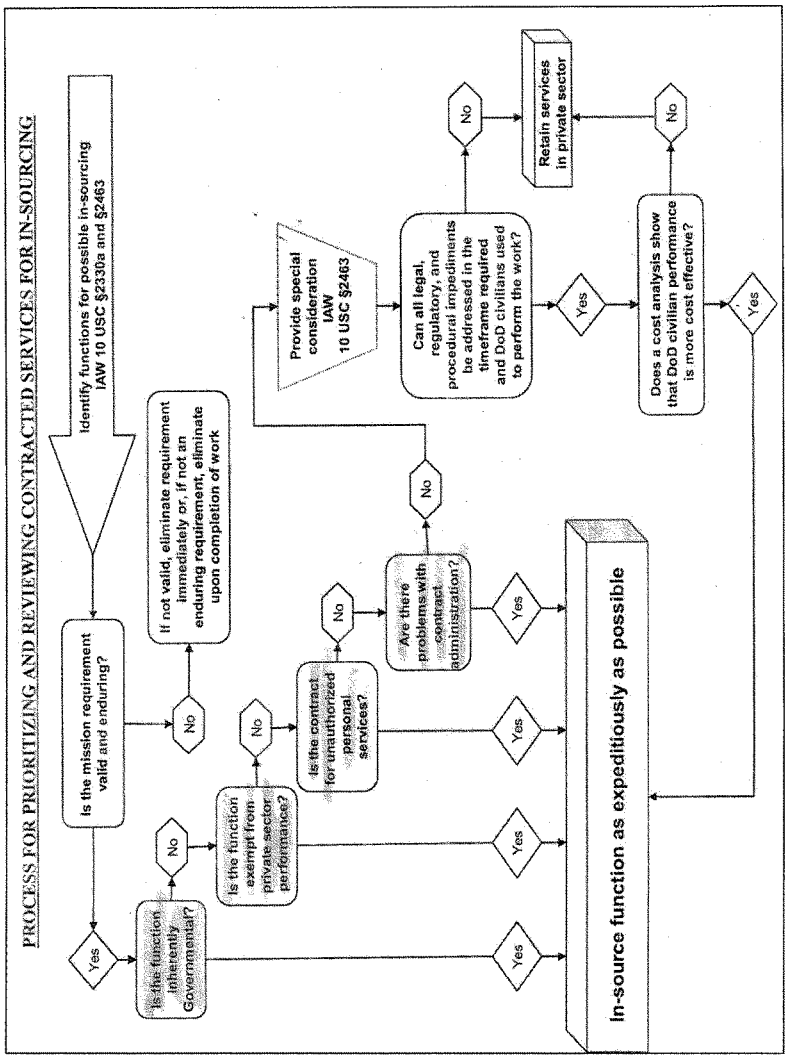
APPENDIX



Decision Tree Diagram provided during a GAO briefing for the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia on May 6, 2010.

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Post-Hearing Questions for the Record
Submitted to the Honorable Daniel I. Gordon
From Senator Daniel K. Akaka

"Balancing Act: Efforts to Right-Size the Federal Employee-to-Contractor Mix"
May 20, 2010

1. **Achieving the right mix of federal employees and contractors may require an agency to conduct a thorough and in-depth cost analysis. How is the Office of Management and Budget (OMB) ensuring agencies make insourcing decisions in a systematic manner, including the use of appropriate cost comparisons?**

OMB's July 2009 memorandum, *Managing the Multi-Sector Workforce*[1], provides agencies guidance on how to appropriately consider insourcing decisions and the extent to which cost should be considered when weighing alternative sources of support. As the guidance explains, when performance of a function is suitable for either federal employees or contractors, agencies should perform a cost analysis that addresses the full costs of government and private sector performance and that provides "like comparisons" of costs that are of a sufficient magnitude to influence the final decision regarding the most effective solution. When performance of a function needs to be conducted by federal employees to retain mission control or for another policy reason, a full cost analysis is not necessary. As OFPP considers further the issue of cost comparisons, we will use the agencies' experience to inform any additional guidance or direction.

2. **In some cases, rebalancing the workforce could involve allocating additional resources to contract management, rather than insourcing. What is the Office of Federal Procurement Policy (OFPP) doing to assist federal agencies in improving contract management and to hire and develop acquisition professionals?**

Contract management is a critical function that requires agencies have the right people with the right skills overseeing their acquisitions. The President's FY2012 Budget requested $158 million to support the hiring and development of the civilian agencies' acquisition workforce. Of this request, $133 million supports a 5% increase in the number of contracting officers, program managers (PMs), and contracting officers' technical representatives (COTRs) - all of whom are critical to managing contracts and overseeing contractor performance. An additional $25 million supports central workforce efforts, such as common recruitment initiatives, improved workforce data management, and other training and development activities.

To further support hiring and development, OFPP now leads an annual acquisition human capital planning process for civilian agencies that requires agencies to identify and plan for the needs of their workforce. This will include improving training for COTRs and hiring more experienced

[1] http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m-09-26.pdf.

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PMs, in order to ensure that agencies are devoting adequate resources to the important task of contract management.

3. **The OFPP draft policy letter is a major step in the right direction to help clarify inherently governmental functions that must be carried out by federal employees.**

   a. **What other policies will need to be put in place to further support the OFPP's draft guidance?**

   The OFPP policy letter will be the principal guidance for clarifying when work should be reserved for federal employees. OFPP plans to work with the agencies to ensure that the policy letter, once finalized, is appropriately implemented. OFPP is also developing guidance to help agencies prepare annual contractor inventories so they can better understand how contractor labor is being used, determine if contractor performance is appropriate and, if so, if it is being properly managed.

   OFPP will also work with the agencies to assess their progress in developing internal procedures for insourcing, as required by section 736 of the Omnibus Appropriations Act of 2009, P.L. 111-8, and to determine if additional guidance beyond OMB's July 29, 2009, memorandum is necessary.

   b. **What additional steps can OFPP take to assist agencies in determining whether a function is inherently governmental, closely associated with inherently governmental, or critical?**

   OFPP intends to work with the Chief Acquisition Officers Council, the Federal Acquisition Institute and the Defense Acquisition University to ensure appropriate training is provided to the acquisition workforce. We will also collaborate with the Office of Personnel Management on appropriate training for the human capital community, program offices, and the financial management communities, as all of these communities have important roles in decisions to rebalance the mix of federal employees and contractors. Communicating best practices and lessons learned from workforce pilots that agencies undertook last fall to study organizations that may be over-reliant on contractors will also help agencies build the capacity to refine their planning processes.

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Post-Hearing Questions for the Record
Submitted to the Honorable Daniel I. Gordon
From Senator Claire McCaskill

"Balancing Act: Efforts to Right-Size the Federal Employee-to-Contractor Mix" May 20, 2010

1. **I understand that OMB's Office of Federal Procurement Policy issued proposed policy guidance for defining "inherently governmental positions" on March 31, 2010, inviting interested parties from the public and private sectors to comment before June 1, 2010. We had previously anticipated OMBs guidance at the end of 2009. What was the delay? When do you anticipate issuing final guidance? Prior to issuing the final guidance will you be providing the committee with draft guidance?**

   Defining what work should be reserved for federal employees is a challenging effort that requires careful consideration by multiple stakeholders. The OFPP draft policy letter is a major step forward, and OMB spent time ensuring that the draft clearly and appropriately addressed this important topic. We anticipate issuing final guidance this fall and look forward to working with the committee as we finalize this policy.

2. **Agencies have been required to submit inventory data on the services that are contracted out government-wide on an annual basis to OMB since 2001. Are all agencies complying with this requirement? If not, which agencies are non-compliant?**

   The Federal Acquisition Inventory Reform (FAIR) Act of 1998, P.L. 105-270, requires federal agencies to prepare and submit to OMB inventories of commercial activities performed by federal employees, as opposed to those services performed under contract. Agencies provide this data to OMB annually, and we are not aware of any non-compliant agencies.

3. **In your testimony you stated that OMB will be issuing guidance to agencies on how to better inventory service contracts. What issues do you plan to address with this new guidance? When do you anticipate this guidance to be complete?**

   OMB will provide guidance to agencies on: (1) the structure of the inventory, so there is consistency across agencies in how inventories are presented; (2) management responsibilities, including issues that should be considered in reviewing inventories (such as whether functions that are closely associated with inherently governmental functions are being properly administered to make sure they do not impinge on inherently governmental responsibilities); and (3) reporting requirements to OMB. We expect the guidance to be issued later this summer. This guidance will be supplemented with a change to the Federal

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Acquisition Regulation, which is under development, to collect information from contractors, such as on the number of contractor employees used to perform on a government contract.

4. **On October 28, 2009, OMB testified to the HSGAC Subcommittee on Contracting Oversight that one of the broad goals under the OMB Guidance to Combat Waste, Inefficiency, and Misuse in Federal Government Contracting was to find annual savings of $40B through acquisition program practices. In order to do this OMB directed agencies to develop acquisition savings plans, which were to save 7% of baseline contract spending by the end of FY 2011, and to reduce the use of high risk contracting authorities for new contract actions, which are noncompetitive and cost reimbursement type contracts. What is the status across the agencies on meeting the savings goal?**

Agencies submitted savings plans to OMB in November 2009 that outlined their initiatives to save money and reduce the use of high-risk contracting authorities. Agencies identified more than $19 billion in savings for 2010 through a combination of strategies, including program terminations and reductions, improved strategic sourcing, and more effective use of competition. Agencies remain on pace to meet their targets. They also are making progress in reducing their use of high-risk authorities and move to contract types and strategies that reduce the risk to the government.

5. **The total goal is to save 7% of baseline contracting. What are the interim percentage savings across the agencies?**

The FY2010 savings identified in agencies' plans meet or exceed the required 3.5 percent reduction in federal contract spending. Early analysis of these plans shows savings totaling more than $19 billion for the year and initial feedback from agencies indicates that they are on pace to meet this target. Most of the first-year savings efforts will have recurring benefits that contribute to agencies' ability to save $40 billion or more annually, starting in FY2011.

6. **What are the metrics and targets for tracking agencies use of noncompetitive and cost-reimbursement contracting? What is the status?**

In July, OMB directed agencies to reduce by at least 10% the combined share of dollars obligated through new contracts in FY 2010 that are: 1) awarded noncompetitively; 2) received only one bid; 3) cost-reimbursement contracts; or 4) time-and-material/labor-hour contracts. Based on an analysis of data in the Federal Procurement Data System (FPDS), agencies have made good initial progress in reducing all four types of risk. These efforts are only the beginning. Those agencies that are meeting their high risk reduction targets must sustain and build on these results. We will share best practices – such as use of contract

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review boards and peer reviews – to help agencies that are not meeting their goals to improve their results.

7. **Are we on track to meet the goal of saving $40 billion this year through better acquisition program practices? Please explain.**

Based on the information provided by the agencies, we are on track to meet the interim goal of reducing contract spending by 3.5% in FY 2010. Agencies are doing this through a combination of strategies, such as program terminations and reductions, internal spending limits, and more effective use of competition. We have received a number of stories from agencies explaining how efforts to secure competition where it was lacking in the past or award a fixed-price contract instead of a time-and-materials or cost-reimbursement contract has not only reduced risk but also produced savings. Innovative techniques and approaches, such as online reverse auctions and electronic-sealed bids, are becoming more common to help generate greater competition and larger cost savings. Agencies are reviewing their internal buying practices to identify where they might appropriately combine contracts to achieve significant savings for recurring requirements. OMB is building on these efforts by pulling agencies together to identify opportunities for government-wide strategic sourcing. Recent actions to negotiate government-wide agreements for office supplies that offer low prices, point of sale discounts, increased small business participation, and other benefits is just one example of how agencies are working together to achieve significant savings for our taxpayers.

8. **It is my understanding that the State Department is currently the only agency that has the authority to use Personal Service Contractors (PSCs), but it has been my experience that there are a lot of contractors sitting side-by-side a federal employee doing the exact same job as a federal employee. Has this been your experience as well?**

Federal employees often work "side-by-side" with contractors, and this raises specific management challenges that agencies must address. Congress has authorized personal services contracting for a number of agencies or organizations within agencies (including, but not limited to, the Departments of Commerce, Defense, Health and Human Services and Homeland Security, State, and the Agency for International Development) so that they may fill skills gaps under certain circumstances, such as where the agency is having difficulty hiring employees but needs work performed using an employer-employee relationship. Agencies also contract for non-personal support services, and many of these contractors also work alongside federal employees, but they take direction from their companies in accordance with the terms of the contract. Both situations require increased management attention to protect the government's interests by making sure the contractor is not performing inherently governmental functions or otherwise interfering with federal employees' performance of their responsibilities.

ph44585 on D330-44585-7600 with DISTILLER
VerDate Nov 24 2008 10:44 Oct 14, 2010 Jkt 057942 PO 00000 Frm 00135 Fmt 6601 Sfmt 6601 P:\DOCS\57942.TXT SAFFAIRS PsN: PAT
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9. Does the Administration believe PSCs are appropriate and if so, in what instances?

Personal service contracts can provide agencies with critical skills when used in accordance with each agency's specific statutory authority and in compliance with applicable regulations and agency requirements. PSCs should not be used to avoid competition in contracting, compensation ceilings, conflict of interest provisions, or the civil service hiring system. Where authorized, PSCs offer agencies important flexibility in meeting their needs, but agencies must take additional management steps to ensure the authority is used properly.

The Government Accountability Office (GAO) recently issued a report on the use of both PSCs and non-PSC contractors to support contingency contracting in Iraq and Afghanistan by the Department of Defense, USAID, and the State Department[1]. The GAO found that using contractors can provide needed mission support if risks are recognized and properly managed.

10. Does the Administration support expanding PSCs beyond the State Department to other agencies? Please explain.

A number of agencies, in addition to the State Department, have PSC authority, which allows them to meet specific mission needs. PSC authority can be beneficial in helping agencies address workforce gaps where it may be difficult to hire federal employees, such as to support for overseas operations or to obtain critical skills that are in high demand. Expansion of PSC authority should be carefully considered.

11. It is my understanding that some Inspectors Generals are looking for the authority to hire PSCs to help them perform their oversight function. Is this something you would support? Please explain.

Similar to other organizations that have PSC authority, the Inspectors General would need to first examine the nature of the oversight work, the unique challenges with hiring federal employees or awarding a support contract that would call for the use of PSCs, and determine if this authority is appropriate and necessary. The use of PSCs requires additional safeguards, such as increased supervision and avoidance of personal conflicts of interest, which should be addressed before PSC authority is used. Agencies should also consider filling certain critical needs by rehiring annuitants, who often have significant experience and can be hired under special authority.

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[1] Contingency Contracting: Improvements needed in Management of Contractors Supporting Contract and Grant Administration in Iraq and Afghanistan, GAO-10-357, http://www.gao.gov/new.items/d10357.pdf

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VerDate Nov 24 2008 10:44 Oct 14, 2010 Jkt 057942 PO 00000 Frm 00136 Fmt 6601 Sfmt 6601 P:\DOCS\57942.TXT SAFFAIRS PsN: PAT
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12. I recently chaired a hearing for the Homeland Security and Governmental Affairs Subcommittee on Contracting Oversight on Counternarcotics Contracts in Latin America. In preparation for this hearing I had requested documents from the Defense Department (DoD) and in order to respond DoD hired a contractor to respond to our request. They paid the contractor almost $50,000 to respond to a request from Congress; the contract ceiling was for $150,000. Do you believe that responding to Congressional requests should be considered inherently governmental? Please explain.

While I am not familiar with the circumstances of this particular situation or the nature of the tasks that the contractor performed, agencies must take affirmative steps, in accordance with OMB's July 2009 guidance[2], to review, on an ongoing basis, the activities of their contractors to ensure they are not performing inherently governmental activities. The Federal Acquisition Regulation identifies the drafting of Congressional testimony and responding to Congressional correspondence as inherently governmental functions. That said, there is a distinction that may be drawn between gathering data to help an agency respond to a request for information and authoring a statement conveying a policy position on behalf of the agency. It is for these reasons that agencies must carefully manage and monitor the work of their contractors and why both the July 2009 OMB guidance and the March 2010 draft OFPP policy letter emphasize the importance of sound contract management practices.

[2] http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m-09-26.pdf

ph44585 on D330-44585-7600 with DISTILLER

VerDate Nov 24 2008 10:44 Oct 14, 2010 Jkt 057942 PO 00000 Frm 00137 Fmt 6601 Sfmt 6601 P:\DOCS\57942.TXT SAFFAIRS PsN: PAT

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Post-Hearing Questions for the Record
Submitted to the Honorable Daniel Gordon
From Senator Lindsey O. Graham

"Balancing Act: Efforts to Right-Size the Federal Employee-to-Contractor Mix"
May 20, 2010

Supporters of competitive sourcing have long believed that this practice encourages the maximum efficiency and effectiveness of the federal government. In a policy shift, the current Administration is supporting movement away from competitive sourcing and towards the insourcing of certain activities within the federal government.

1. What is the process for determining what jobs are insourced and how can the federal government assure that skill levels are equivalent to what industry is capable of providing?

OMB's July 2009 memorandum, *Managing the Multi-Sector Workforce*[1], provides guidance on how to appropriately consider insourcing decisions. Agencies must (1) conduct meaningful workforce planning to determine performance goals and labor requirements; (2) ensure inherently governmental functions are performed only by federal employees and critical functions are reserved for performance by federal employees to the extent necessary to retain control over their missions; (3) consider cost where work can be performed by either federal employees or contractors; and (4) maintain appropriate management controls to support effective decision-making.

As agencies consider insourcing, they must identify the skills needed to achieve established mission goals and develop an effective performance management plan. For example, if an organization determines that its information technology support office is overreliant on contractors and decides to insource, the hiring manager will need to partner closely with the human capital office to identify the needed skills, target recruitment efforts accordingly, and implement appropriate management controls to ensure organizational and employee performance goals are met.

2. How is the federal government determining the risk associated with insourcing regarding ability of the relevant department/service to execute their mission?

Overreliance on contractors can erode in-house capacity that is essential to effective government performance. This loss of mission control increases the risk that the government will be unable to define its requirements, negotiate in the government's best interest, or oversee its contractors appropriately. OMB's insourcing guidance, as described above, requires agencies to conduct comprehensive workforce planning, which increases the agency's understanding of its mission, operations, workload, and desired performance goals. With this information, the agency is better

[1] http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m-09-26.pdf.

ph44585 on D330-44585-7600 with DISTILLER
VerDate Nov 24 2008 10:44 Oct 14, 2010 Jkt 057942 PO 00000 Frm 00138 Fmt 6601 Sfmt 6601 P:\DOCS\57942.TXT SAFFAIRS PsN: PAT
57942.098

positioned to determine the appropriate mix and source of labor to efficiently and effectively execute its mission.

3. How is the federal government determining and monitoring the cost savings associated with insourcing?

OMB's July 2009 guidance states that agencies should perform a cost analysis that addresses the full costs of government and private sector performance and provides "like comparisons" of costs that are of a sufficient magnitude to influence the final decision on the most effective source of support. Further, agencies should ensure that any claims of cost savings related to insourcing are supported by this full cost comparison. We intend to work with agencies to assess their progress in developing internal procedures for insourcing, as required by section 736 of the Omnibus Appropriations Act of 2009, P.L. 111-8.

ph44585 on D330-44585-7600 with DISTILLER

VerDate Nov 24 2008 10:44 Oct 14, 2010 Jkt 057942 PO 00000 Frm 00139 Fmt 6601 Sfmt 6601 P:\DOCS\57942.TXT SAFFAIRS PsN: PAT

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Post-Hearing Questions for the Record
Submitted to Mr. Jeff Neal
From Senator Daniel K. Akaka

"Balancing Act: Efforts to Right-Size the Federal Employee-to-Contractor Mix"
May 20, 2010

1. The FAIR Act requires federal agencies to compile inventories of contracted services and submit them to the Office of Management and Budget each year. How will the Department of Homeland Security (DHS) use the inventory to identify positions for insourcing? Please explain the process.

   Response: The Federal Activities Inventory Reform (FAIR) Act of 1998, P. L. 105-270, requires Federal agencies to prepare and submit to the Office of Management and Budget (OMB), by June 30th of each year, inventories of commercial activities performed by federal employees. OMB Circular A-76, Performance of Commercial Activities, further requires agencies to submit inventories of their inherently governmental activities to OMB. However, the FAIR Act does not require federal agencies to compile inventories of contracted services.

   DHS is developing comprehensive guidance on the process to determine whether specific work should be accomplished by federal employees and whether current contracts contain work that should be performed by federal workers. Future FAIR Act inventories will reflect any new or changed federal employee work identified through the Balanced Workforce Strategy.

2. In October 2009, the Government Accountability Office (GAO) reported that DHS had drafted initial incremental insourcing guidelines but had not yet officially issued them. What is the cause of this delay and when does DHS expect to issue the guidelines?

   Response: The initial incremental insourcing guidlines were issued in October 2009 as part of the Department's initial guidance on the Balanced Workforce Strategy.

   Following the issuance of OMB's proposed policy letter, *Work Reserved for Performance by Federal Government Employees*, DHS is now preparing to issue comprehensive guidance on the Multi-sector Workforce, which will include plans to incorporate detailed instructions fully implementing Section 736 of Division D of the Omnibus Appropriations Act, 2009 (P.L. 111-8). Although developing a Balanced Workforce Strategy is primarily a workforce analysis and planning activity, run by the Chief Human Capital Officer, a working group comprised of human capital, procurement, finance, and general counsel staff are finalizing DHS's comprehensive guidance.

3. Under the DHS Efficiency Review, all professional services contracts exceeding one $1 million must undergo a review before a contract is awarded or renewed. Please elaborate

ph44585 on D330-44585-7600 with DISTILLER

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on why DHS is only reviewing professional services contracts over $1 million when making such decisions?

Response: DHS now requires a new senior and independent level of review of professional services contracts. This review, which is conducted by the component Head of Contracts and Acquisitions (HCA) for contracts between $1 million and $50 million annually and by the DHS Chief Procurement Office for contracts over $50 million annually, is designed to ensure that no inherently governmental, personal services or other work that should be reserved for federal employees is included in the scope of any such contract at award or at contract renewal. Professional services contracts were chosen for four important reasons; first, as a test case to see how the reviews worked before expanding the scope of such reviews to other types of service contracts; second, because we felt and continue to expect that the professional type services are the most likely to have included inappropriate inherently governmental, personal services or other work that, upon review, should probably be reserved for federal employees; third, we felt that the greatest risk to the Department's ability to oversee its operations and ensure independent policy analysis would be in the professional services area; and fourth, the reestablishment of the $1 million threshold was a materiality/significance determination made based on a risk analysis of professional services contracts. This analysis determined the threshold at which the Department could cover almost all of the dollars expended while also assuring department resources are prudently expended. The DHS risk analysis disclosed that, for Fiscal Year (FY) 2009, the $1 million threshold enables the Department to review 97 percent of the dollars awarded for professional services contracts. For FY 2010 year to date (thru June 8, 2010), the risk analysis discloses that the $1 million threshold has resulted in the Department reviewing 95 percent of the total dollars awarded for professional services contracts. If there was no threshold, the Department would be required to expend a very large amount of resources reviewing a very small percentage of the dollars awarded.

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Post-Hearing Questions for the Record
Submitted to Mr. Jeff Neal
From Senator Claire McCaskill

"Balancing Act: Efforts to Right-Size the Federal Employee-to-Contractor Mix"
May 20, 2010

1. I submitted a Question For the Record (QFR) to Secretary Napolitano's February 2010 FY11 DHS Budget Hearing asking about the conversion status of the previously identified 3,500 contractors who are performing inherently governmental work. Originally, DHS stated that these positions would be converted by the end of FY2010, but the response I received stated that "Some conversions may carry over into FY2011." How many of these positions have been converted so far? How many are you projected to carry over into FY2011? What are the reasons for the delay? Have other positions been identified for transition since the 3,500 figure was first announced? If so, how many have been identified?

Response: As a threshold matter, it is important to point out that DHS did not "previously identif[y] 3,500 contractors who [were] performing inherently governmental work." What is true is that DHS is continuing to insource approximately 3,500 full time equivalent ("FTE") contractors more appropriately reserved for performance by Federal employees.

As of March 31, 2010, DHS components reported that 434 Federal positions have been created, and 350 positions have been filled with Federal employees. This number is based on one half-year, accordingly the Department estimates that up to 700 new federal employees may be on-board by the close of FY 2010. Factors that have contributed to a delay include, but are not limited to, the following:

- Some contracts are not at the point of expiration; therefore, functions and activities currently performed by contractor employees will extend beyond FY 2010. To terminate these contracts prematurely could result in substantial cost to the Department.
- Some of the functions and activities previously performed by contractors were absorbed by existing Federal employees, a result not anticipated by the Components when they identified the 3,500 positions.
- Functions and activities previously identified for conversion that were performed by contractor support on a part time basis were transitioned as full time Federal positions. As a result, fewer full time positions were identified for conversion.
- Components have been awaiting more detailed, comprehensive guidance on how to conduct the transition between contract services and federal employee hiring.

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2. The FY 2011 DHS Budget requests $900,000 for the Office of the Chief Human Capital Officer to support efforts to reduce the Department's reliance on contractors. Specifically, the funds will support a program management office focused on balanced workforce matters. If appropriated, how does the office envision spending this money to reduce reliance on contractors?

Response: The FY 2011 DHS Budget requests $900,000 for an additional four positions in the Office of the Chief Human Capital Officer (OCHCO) to support efforts to evaluate the balance of the Department's work force between contracts and federal employees. Specifically, those funds will support a program management office focused on balanced workforce matters and insourcing positions in accordance with applicable law and Executive Branch policy. The executive for this office will work closely with key stakeholders in developing a long-term comprehensive strategy for the Department. The Balanced Workforce Program Office will provide the oversight necessary to ensure the Department develops a systematic approach to finding the appropriate balance in its Multi-sector Workforce.

3. Independent from the $900,000 FY11 request, this office was also established with existing resources to establish the long-term budgetary needs for the balanced workforce initiative. What was the amount of the existing resources used to establish this office? What is the combined annual estimated cost to maintain this new program office?

Response: Thus far in FY 2010, OCHCO has used $86,000 of existing resources to fund two positions (one Senior Executive and one GS-15) for a portion of the fiscal year, in establishing the Balanced Workforce Program Management Office (PMO). If the Department's FY 2011 request of $900,000 is approved, there will be four additional full time employees (FTE) in the Balanced Workforce PMO costing $1.38 million. The total amount includes the full-year costs (salaries, benefits, and shared services) for six resources; one Senior Executive and one GS-15 funded with existing resources, and the four additional FY 2011 FTE positions. In the near term, the balanced workforce strategy will address pressing issues related to the appropriate balance of federal staff to contractors. Over time, the balanced workforce strategy will evolve into the department's overall workforce planning model.

4. In FY2009, DHS spent $10.5 billion on service contract support. Do you have this number broken down into what services were provided? Please provide a breakout of the services and per component. What is the anticipated expenditure for FY2010? What is the reason for the increase or decrease?

Response: A breakdown of the services provided to DHS Headquarters and components in FY 2009 is listed below. This information was extracted from the Federal

ph44585 on D330-44585-7600 with DISTILLER
VerDate Nov 24 2008 10:44 Oct 14, 2010 Jkt 057942 PO 00000 Frm 00143 Fmt 6601 Sfmt 6601 P:\DOCS\57942.TXT SAFFAIRS PsN: PAT
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Procurement Data System (FPDS). Based on the information extracted, the three categories with the highest dollar volume are:

Support Services (Professional, Administrative, Management):	$3,683,085,383.83
ADP & Telecommunications:	$2,224,269,041.38
Utilities & Housekeeping:	$1,512,537,224.98

We are not aware of any significant increase or decrease in the amount of service dollars expended by the Department between FY 2009 and FY 2010. Through June 9, 2010, the dollars spent on services contracts are 12 percent less than they were at this same time in FY 2009 ($7.29 billion for FY 2010 compared to $8.27 billion at this same time in FY 2009).

FY 2009 Product Service Code (PSC) Categories by Component

PSC: Description DHS Component	Total Dollars*
A: RESEARCH AND DEVELOPMENT	
CBP	$246,922,531.66
DHS OPO	$184,859,436.19
DHS OPO CIS	$0.00
FEMA	$49,536,230.95
FLETC	$3,457,048.25
ICE	$2,099,229.02
TSA	$48,834,527.67
USCG	$79,978,663.81
USSS	$2,289,472.72
DHS Total	**$617,977,140.27**
B: SPECIAL STUDIES/ANALYSIS, NOT RESEARCH & DEVELOPMENT	
CBP	$2,028,995.33
DHS OPO	$38,577,315.43
FEMA	$9,510,816.29
FLETC	$9,294.99
ICE	$16,590,362.16
TSA	$15,898,888.00
USCG	$29,918,778.09
USSS	$377,831.77
DHS Total	**$112,912,282.06**
C: ARCHITECT/ENGINEER SERVICES	
CBP	$40,524,289.17
DHS OPO	$57,969,348.26
FEMA	$595,671,061.73

ph44585 on D330-44585-7600 with DISTILLER
VerDate Nov 24 2008 10:44 Oct 14, 2010 Jkt 057942 PO 00000 Frm 00144 Fmt 6601 Sfmt 6601 P:\DOCS\57942.TXT SAFFAIRS PsN: PAT
57942.104

FLETC	$54,638,735.08
ICE	$417,389.08
TSA	$5,455,357.50
USCG	$36,917,284.61
USSS	$468,184.25
DHS Total	**$792,061,649.68**

D: ADP AND TELECOMMUNICATIONS	
CBP	$736,386,420.09
DHS OPO	$411,333,396.66
DHS OPO CIS	$208,136,437.66
FEMA	$116,359,616.89
FLETC	$10,932,060.46
ICE	$254,916,036.04
TSA	$303,584,867.18
USCG	$168,727,170.98
USSS	$13,893,035.42
DHS Total	**$2,224,269,041.38**

E: PURCHASE OF STRUCTURES/FACILITIES	
CBP	$669,299.76
DHS OPO CIS	$34,440.00
FEMA	$223,381.10
TSA	$10,359.00
USCG	$99,529.97
USSS	$103,495.00
DHS Total	**$1,140,504.83**

F: NATURAL RESOURCES MANAGEMENT	
CBP	$234,819.79
DHS OPO	$7,791.02
DHS OPO CIS	$329,864.86
FEMA	-$56,986.85
FLETC	$421,517.99
ICE	$12,957.92
TSA	$1,141,154.56
USCG	$31,768,905.98
USSS	$18,107.09
DHS Total	**$33,878,132.36**

G: SOCIAL SERVICES	
CBP	$20,352.60
DHS OPO CIS	$100.00
FEMA	$12,307,728.76

ph:44585 on D330-44585-7600 with DISTILLER
VerDate Nov 24 2008 10:44 Oct 14, 2010 Jkt 057942 PO 00000 Frm 00145 Fmt 6601 Sfmt 6601 P:\DOCS\57942.TXT SAFFAIRS PsN: PAT
57942.105

FLETC	$57,269.70
ICE	$38,493,375.49
USCG	$326,427.23
USSS	$4,810.00
DHS Total	**$51,210,063.78**

H: QUALITY CONTROL, TEST, INSPECTION	
CBP	$27,065,713.86
DHS OPO	$926,814.96
DHS OPO CIS	$1,800,990.31
FEMA	$61,531,820.41
FLETC	$17,423.57
ICE	$12,913.00
TSA	$127,289,301.82
USCG	$4,061,196.41
USSS	$188,782.67
DHS Total	**$222,894,957.01**

J: MAINT, REPAIR, REBUILD EQUIPMENT	
CBP	$157,917,496.20
DHS OPO	$9,247,747.13
DHS OPO CIS	$1,397,296.86
FEMA	$14,572,955.69
FLETC	$468,351.44
ICE	$13,082,834.05
TSA	$23,530,479.19
USCG	$202,857,669.64
USSS	$3,600,601.76
DHS Total	**$426,675,431.96**

K: MODIFICATION OF EQUIPMENT	
CBP	$2,191,263.77
FEMA	$1,552,026.87
FLETC	$15,000.00
ICE	$417,151.14
TSA	$0.00
USCG	$3,823,514.04
USSS	$425,747.00
DHS Total	**$8,424,702.82**

L: TECHNICAL REPRESENTATIVE SVCS.	
CBP	$4,348,701.59
DHS OPO	-$94,562.68

ph:44585 on D330-44585-7600 with DISTILLER
VerDate Nov 24 2008 10:44 Oct 14, 2010 Jkt 057942 PO 00000 Frm 00146 Fmt 6601 Sfmt 6601 P:\DOCS\57942.TXT SAFFAIRS PsN: PAT
57942.106

DHS OPO CIS	$410.00
FEMA	$1,921,086.95
FLETC	$36,109.00
ICE	$2,141,017.15
TSA	$1,002,943.02
USCG	$3,148,831.71
USSS	$63,474.88
DHS Total	**$12,568,011.62**

M: OPERATION OF GOVT OWNED FACILITY

CBP	$306,381.60
DHS OPO	$50,000.00
DHS OPO CIS	$354,936.00
FEMA	$3,079,134.10
FLETC	$2,084,064.40
ICE	$79,719,589.97
TSA	$179,994.76
USCG	$3,006,970.68
USSS	$72,524.64
DHS Total	**$88,853,596.15**

N: INSTALLATION OF EQUIPMENT

CBP	$95,259,741.84
DHS OPO	$175,448.37
DHS OPO CIS	$487,930.18
FEMA	$228,142.80
FLETC	$280,854.29
ICE	$2,426,730.07
TSA	$743,125.90
USCG	$7,996,843.23
USSS	$1,708,244.46
DHS Total	**$109,307,061.14**

P: SALVAGE SERVICES

CBP	$1,787,929.11
FEMA	$8,732.58
FLETC	$3,182,702.00
ICE	$9,384.02
USCG	$1,368,239.07
DHS Total	**$6,356,986.78**

Q: MEDICAL SERVICES

CBP	$22,820,414.20
DHS OPO	$10,539,929.52
FEMA	$24,126,887.48

ph44585 on D330-44585-7600 with DISTILLER
VerDate Nov 24 2008 10:44 Oct 14, 2010 Jkt 057942 PO 00000 Frm 00147 Fmt 6601 Sfmt 6601 P:\DOCS\57942.TXT SAFFAIRS PsN: PAT
57942.107

FLETC	$3,115,026.41
ICE	$364,579.36
TSA	$0.00
USCG	$20,030,071.72
USSS	$327,966.38
DHS Total	**$81,324,875.07**

R: SUPPORT SVCS (PROF, ADMIN, MGMT)

CBP	$439,947,962.35
DHS OPO	$939,833,130.52
DHS OPO CIS	$347,660,005.61
FEMA	$532,961,735.02
FLETC	$11,090,068.25
ICE	$406,472,135.70
TSA	$588,428,770.45
USCG	$392,787,048.84
USSS	$23,904,527.09
DHS Total	**$3,683,085,383.83**

S: UTILITIES AND HOUSEKEEPING

CBP	$76,971,744.47
DHS OPO	$20,768,979.21
DHS OPO CIS	$1,859,680.97
FEMA	$28,078,620.55
FLETC	$67,344,735.43
ICE	$1,071,341,069.80
TSA	$158,536,250.67
USCG	$82,022,135.10
USSS	$5,614,008.78
DHS Total	**$1,512,537,224.98**

T: PHOTO, MAP, PRINT, PUBLICATION

CBP	-$15,816.21
DHS OPO	$145,403.32
DHS OPO CIS	$1,674,967.72
FEMA	$3,371,992.49
FLETC	$188,303.63
ICE	$422,531.05
TSA	$365,720.92
USCG	$898,736.12
USSS	$140,693.94
DHS Total	**$7,192,532.98**

U: EDUCATION AND TRAINING

ph44585 on D330-44585-7600 with DISTILLER
VerDate Nov 24 2008 10:44 Oct 14, 2010 Jkt 057942 PO 00000 Frm 00148 Fmt 6601 Sfmt 6601 P:\DOCS\57942.TXT SAFFAIRS PsN: PAT
57942.108

CBP	$21,457,565.60
DHS OPO	$7,404,153.61
DHS OPO CIS	$2,486,160.71
FEMA	$43,056,843.11
FLETC	$15,685,395.22
ICE	$4,887,265.84
TSA	$75,010,465.71
USCG	$44,897,936.45
USSS	$1,777,635.34
DHS Total	**$216,663,421.59**

V: TRANSPORT, TRAVEL, RELOCATION

CBP	$34,109,335.71
DHS OPO	$6,550,211.56
DHS OPO CIS	$6,281,793.74
FEMA	$9,185,133.04
FLETC	$11,513,110.01
ICE	$28,535,820.00
TSA	$9,886,936.17
USCG	$8,212,513.94
USSS	$21,828,709.28
DHS Total	**$136,103,563.45**

W: LEASE/RENT EQUIPMENT

CBP	$3,877,811.46
DHS OPO	$709,871.53
DHS OPO CIS	$2,624,261.95
FEMA	-$471,759.24
FLETC	$270,275.67
ICE	$27,054,445.26
TSA	$6,429.00
USCG	$5,906,963.08
USSS	$8,387,709.47
DHS Total	**$48,366,008.18**

X: LEASE/RENT FACILITIES

CBP	$3,067,506.66
DHS OPO	$4,171,517.79
DHS OPO CIS	$8,213,444.56
FEMA	$6,987,885.24
FLETC	$168,695.00
ICE	$8,443,113.87
TSA	$35,745,954.39
USCG	$1,809,601.63
USSS	$1,893,735.58

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DHS Total	**$70,501,454.72**
Y: CONSTRUCT OF STRUCTURES/FACILITIES	
CBP	$25,608,894.59
DHS OPO	$1,486,174.25
FEMA	$29,550,728.97
FLETC	$25,134,220.78
ICE	$0.00
TSA	$3,377,956.99
USCG	$212,946,370.71
USSS	$18,783.24
DHS Total	**$298,123,129.53**
Z: MAINT, REPAIR, ALTER REAL PROPERTY	
CBP	$1,288,279.67
DHS OPO	$11,605,783.80
DHS OPO CIS	$19,314.36
FEMA	$5,447,187.86
FLETC	$6,210,431.75
ICE	$4,341,666.75
TSA	$2,287,097.08
USCG	$178,361,474.53
USSS	$4,870,313.59
DHS Total	**$214,431,549.39**
Grand Total	**$10,976,858,705.56**

*Note: Negative dollar amounts can occur when a deobligation is completed in the current fiscal year for a contract awarded in a previous FY.

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Post-Hearing Questions for the Record
Submitted to Mr. Chuck Grimes
From Senator Daniel K. Akaka

"Balancing Act: Efforts to Right-Size the Federal Employee-to-Contractor Mix"
May 20, 2010

Q. In some cases, rebalancing the workforce mix could involve allocating additional resources to contract management, rather than insourcing. However, there is a government-wide shortage of acquisition professionals. Is the Office of Personnel Management (OPM) working with educational institutions to promote careers in the acquisition field and to develop appropriate courses of study?

A. The Office of Personnel Management (OPM) has worked with the Office of Management and Budget's (OMB's) Office of Federal Procurement Policy (OFPP) since 2007 to promote careers in the acquisition field, create more effective partnerships with educational institutions, and coordinate recruiting efforts among Federal agencies for these critical positions.

Specifically, OPM has worked with the Federal Acquisition Institute (FAI), the OFPP's acquisition workforce development agent, to raise the visibility of the acquisition career field – particularly contracting professionals – on behalf of the entire Federal government. One of the results of this effort was the creation of the Federal Acquisition Fellows Coalition (FAFC) (formerly the Fellows Acquisition Intern Coalition (FAIC)) to support the OFPP's high prioritization of succession planning. The FAFC coordinates recruitment and career development strategies and activities for entry-level and mid-level acquisition professionals.

In addition, the FAFC provides access to other valuable career tools to assist job seekers to find the best place to begin their careers in the acquisition field. OPM provided support to FAI in the following areas:

- Program management;
- FAI and FAIC branding strategy;
- FAI and FAIC brand identity and message;
- Recruitment materials for acquisition positions;
- An FAIC website containing the following features:
    - Links to Federal government agencies with vacancies in the acquisition area;
    - Links to on-campus information seminars conducted by agencies;
    - Automatic job searching of acquisition positions on USAJOBS;
    - Tools and articles designed to meet the needs of educational institutions.
- Centralized candidate inventories for rapid hiring into entry and mid-level acquisition positions; and

ph44585 on D330-44585-7600 with DISTILLER

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- Series of workshops and webcasts related to recruiting, hiring, and retaining acquisition talent in Federal government, including:
    - Hiring flexibilities;
    - Veteran hiring initiatives and leveraging their skills in the acquisition field; and
    - Connecting with colleges and building candidate networks.

The FAFC includes job positions at every stage of an acquisition career across multiple Federal government agencies. College graduates and experienced professionals that are interested in career changes can find opportunities through FAFC. In addition, relationships and candidate networks from educational institutions have been enhanced through the initiative.

Information about FAIC is available at http://www.fai.gov/FAIC/Default.asp.

ph44585 on D330-44585-7600 with DISTILLER

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Post-Hearing Questions for the Record
Submitted to Mr. Chuck Grimes
From Senator Claire McCaskill

"Balancing Act: Efforts to Right-Size the Federal Employee-to-Contractor Mix"
May 20, 2010

1. **It is my understanding that the State Department is currently the only agency that has the authority to use Personal Service Contractors (PSCs), but it has been my experience that there are a number of contractors sitting side-by-side a federal employee doing the exact same job as a federal employee. Has this been your experience as well?**

   The Departments of State, Agriculture, Defense, and Health and Human Services (HHS), as well as the Federal Bureau of Investigation and the U.S. Geological Survey, are among the agencies that have limited statutory authority to use personal service contractors (PSCs). During Congress' consideration of these statutory provisions, OPM raised questions as to whether and how laws and rules affecting Federal employees should be applied to PSCs. OPM encourages agencies to ensure that the rules and protections applicable to their PSCs are as clear as possible, consistent with the relevant statutory authority.

2. **Do you believe PSCs are appropriate and if so, in what instances?**

   PSCs should be used consistent with relevant statutory authorities and should not be used to circumvent statutory employment protections and benefits that apply to Federal employees.

3. **Would you support expanding PSCs beyond the State Department to other agencies?**

   Please refer to the answer to question number 1.

4. **It is my understanding that some Inspectors Generals are looking for the authority to hire PSCs to help them perform their oversight function. Is this something you would support? Why or why not?**

   OPM does not have a position on this in the absence of a specific proposal. If legislation were drafted to accomplish this and a clear explanation of the purpose and reasons for it were provided, OPM would be happy to consider it at that time. Furthermore, OPM is happy to assist the Committee in any way that it can.

5. **I recently chaired a hearing for the Homeland Security and Governmental Affairs Subcommittee on Contracting Oversight on Counternarcotics Contracts in Latin America. In preparation for this hearing I had requested documents from the Defense Department (DoD) and in order to respond DoD hired a**

ph44585 on D330-44585-7600 with DISTILLER

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contractor to respond to our request. They paid the contractor almost $50,000 to respond to a request from Congress; the contract ceiling was for $150,000. Do you believe that responding to Congressional requests should be considered inherently governmental? Please explain.

It is difficult to say as OPM does not know the specific circumstances of this contract. In general, however, OPM believes, consistent with guidance provided by the Office of Management and Budget (OMB), that agencies should review contractor taskings to ensure that they are not providing inherently governmental services.

6. **In your testimony you stated that there should be one office that is responsible for integrating and disseminating workforce planning information, and that OPM encourages agencies to designate an appropriate senior official within that office who will be responsible for addressing in-sourcing and related issues. How many agencies have a designated position and office, such as DHS's new Program Management Office for Workforce Balance? Are you aware of any administration plans requiring agencies to have this type of designee or office? What would be the anticipated costs associated with your recommendation?**

Most agencies do not have a designated office and position dedicated to in-sourcing and related issues. In nearly all agencies, in-sourcing issues are embedded in organizations dedicated to contract management. OMB has suggested that all agencies designate a senior manager to be in charge of in-sourcing issues. OPM has suggested that large agencies should establish workforce planning offices that could include a component dedicated to in-sourcing issues. The staffing for a strategic workforce planning office ideally would include individuals with a mix of expertise, such as management analysts (workforce planning and manpower planning expertise), statisticians (staffing and forecasting analyses), human resources specialists, and administrative support.

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