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HEARING

BEFORE THE

SUBCOMMITTEE ON
GOVERNMENT OPERATIONS

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

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CONTRACTING FAIRNESS

Friday, July 8, 2016

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT OPERATIONS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:01 a.m., in Room 2154, Rayburn House Office Building, Hon. Mark Meadows [chairman of the subcommittee] presiding.

Present: Representatives Meadows, Mulvaney, Grothman, Chaffetz, Connolly, Maloney.

Also Present: Representatives Duncan and Sessions.

Mr. MEADOWS. The Subcommittee on Government Operations will come to order. And without objection, the chair is authorized to declare a recess at any time.

We're here today to discuss contracting fairness, in other words, when it is appropriate for the Federal Government to contract with the private sector and when it is not appropriate to do so. In making these decisions, it's critically important that the government focus on efficiencies and cost. And this is not about eliminating—and I want to stress—this is not about eliminating Federal employees. This is about ensuring we as a government are obtaining the most cost-efficient and cost-effective solutions when the Federal Government buys goods and services.

The private sector does a lot of things well. It is important that the government taps the private sector's expertise and efficiencies as appropriate. Obviously, there are certain things that only the government should do, such as making contract award decisions or granting a security clearance, et cetera. Finding the right balance and promoting public-private competition through the A–76 process to gather the data to support valid cost comparisons is the way we realize cost savings for the American taxpayer.

And one of the key areas where I think there are significant questions is how to make the cost-effective comparisons between the public and the private sector. For example, what are the appropriate cost elements needed to develop a valid cost comparison of Federal employees and contracting employees? I would welcome the witnesses' input, all of you, on this particular area.

And under existing law, the public-private competitions are prohibited, and early in this administration, there was a shift towards decreasing the government's reliance on contractors. Now, that may make sense as long as we're actually saving money. Former Secretary of Defense Gates said in 2010, "As we were reducing contractors, we were not seeing the savings that we had hoped for by

insourcing." And given where we are today, we're holding this hearing to learn from the past efforts in this area and hopefully to begin anew this discussion in the lead up to a new administration.

I want to thank Mr. Duncan for his leadership in this particular area, particularly for his bill, H.R. 2044, the Freedom from Government Competition Act. And as we look at that, looking at that particular bill further, this bill would make clear that the policy preference for obtaining goods and services from the private sector, and unless there is no private sector option for the goods or services or that they are inherently governmental, it addresses that issue.

I'd like to thank the witnesses here today.

And I'd like to now recognize the author of that particular bill, the esteemed gentleman from Tennessee, my good friend, Mr. Duncan.

Mr. DUNCAN. Well, thank you very much, Mr. Chairman, for calling this hearing.

As you mentioned, this is an issue I've been working on now for over 20 years. Government competition affects small businesses every day in every congressional district across the country. I've had just about every type of business you can think of come to my office and talk to me about government competition. These businesses range from high-tech companies like engineering firms and low-tech firms such as landscaping companies. This issue affects school bus drivers, truck stop operators, uniform companies, mapping companies, hearing aid dealers, and many, many, many others.

This bill proposes a very simple concept: If a Federal agency is providing a good or service that can be provided by the private sector more efficiently and cost effectively, we should contract out for that good or service. The activities that are inherently governmental, like national defense and others, are exempted from this process. If the Federal agency can provide that good or service at a lower cost, we should certainly allow that government agency to continue to do so.

In 1998, I worked with then-Senator Craig Thomas of Wyoming on this issue. We were able to get a limited version, a sort of watered-down version of this bill called the Federal Activities Inventory Reform Act. It was called the FAIR Act at that time. And that—we actually got that passed into law. This act requires every Federal agency to look at what goods and services they are providing and determine if those are inherently governmental or commercial in nature.

In October of 2014, I wrote to the director of the Office of Management and Budget and asked him how many Federal employees were engaged in commercial activities. In January of 2015, I received a letter back from OMB stating that 1.12 million—1.12 million full-time equivalent employees were engaged in activities that are commercial in nature. Let me repeat that: There were 1.12 million, 1.12 million Federal employees engaged in activities that could be provided by the private sector.

I would like to ask unanimous consent to submit a copy of that letter for the record.

This bill is——

Mr. MEADOWS. Without objection, so ordered.

Mr. DUNCAN. This bill is not about contracting out to the private sector just for the sake of contracting out. This bill is about getting the best service and at the lowest cost for the taxpayers. This bill is not about an attack—it is not certainly an attack on Federal employees. I'm a Federal employee, and I have many hardworking Federal employees in my district. It has been hard enough, though, for small businesses to survive over the past many years, and they should not have to compete against their own government to survive.

The problem of government competition is not a new one. In fact, during the Eisenhower administration in 1955, at the very first White House conference on small business, freedom from government competition was the number one issue. And that conference issued a report that said, quote, "The Federal Government will not start or carry on any commercial activity to provide a service or product for its own use if such a product or service can be procured from the private sector." And this has been one of the top three issues of every White House conference on small business since then.

I understand that Ranking Member Connolly is the cochair of the bipartisan Private-Public Partnership Caucus. I chaired the special panel on P3s in the Transportation and Infrastructure Committee in the last Congress. We had a number of hearings and heard from expert witnesses all across the country, and that is a movement that we need to really get more into as we proceed over these next few years.

All across the country, States and cities are seeing the advantages of the savings that can be made by taking advantage of the private sector. In fact, a friend of mine, Mayor Madeline Rogero of Knoxville, who really is one of the most liberal office holders in this country today, just announced that she is going to allow private company to manage three public properties in Knoxville that are used for concerts, fairs, and festivals. And she said that doing this will save over $500,000 for the city of Knoxville. If we can save money in Knoxville, Tennessee, by relying on the private sector, I think we can also do some of that—a little bit more of that here.

Thank you very much, Mr. Chairman.

Mr. MEADOWS. I thank the gentleman for his foresight and his leadership on this particular issue.

And, obviously, the chair notes the presence of not only the gentleman from Tennessee, Congressman Duncan, but my good friend, the gentleman from Texas, the chairman of the Rules Committee, Congressman Sessions. And we appreciate your interest in this topic and welcome your participation today.

And I ask unanimous consent that both Congressman Duncan and Sessions will be allowed to fully participate in today's hearing.

And without objection, it is so ordered.

I'm going to now recognize Mr. Connolly, the ranking member of the Subcommittee on Government Operations for his opening statement.

Mr. CONNOLLY. I thank the chair.

And I thank Mr. Duncan for his thoughtfulness and his legislation.

I also cochair the Smart Contracting Caucus, and Taiwan and Turkey and Korea and Morocco and Georgia, and vice chair of the New Dem Coalition, and cochair of the Sustainable Energy and Environmental Caucus. So I'm busy with a lot of caucuses, but none less important than this.

My view on this topic is forged in my experience in local government, 14 years in local government. I knew Mr. Palatiello then when he was on the Planning Commission in Fairfax County. And what I discovered, sometimes to my surprise, was that presuppositions on this subject are not always borne out.

I can remember one specific example. When I became chair of the county, I was looking for something to privatize. I said—I thought to myself, well, surely there are some functions better done in the private sector. And the one I kind of focused on was outsourcing the vehicle maintenance. We had a very big fleet, vehicle fleet. And I thought, well, surely the private sector can do at least mundane things, like oil changes and that sort of thing. Jiffy Lube for sure can do it cheaper than we can.

And I had the auditor look at it. I didn't just take the word of county employees. What surprised me, and I think a lot of my colleagues, was actually, no, we—empirically, we did it cheaper and the quality of care and service, because that was their mission in life, to make sure that vehicle fleet was always in tiptop shape. Couldn't be matched.

And it was a lesson. It wasn't that you're always better off insourcing, but it was a lesson in don't assume and approach this in a nontheological way. You shouldn't be looking at the whole issue of outsourcing, or insourcing for that matter, on an a priori basis. Look at it on a case-by-case merit basis. Does it make sense, does it meet certain criteria in terms of cost, as Mr. Duncan indicated, but also quality.

I remember John Glenn. I worked—when I first came to the U.S. Senate, I worked inter alia with Senator John Glenn. And the story was told that when he was in that capsule about to take off and circumnavigate the world, somebody asked him after he came back down to Earth, you know, what in the world—what must have been in your thought, this profound moment? He said, all I could think of was I'm sitting in 90,000 pounds of thrust on their little capsule provided by the Federal Government's lowest bidder.

So quality does matter and common sense matters. And I told Labor the same thing as I'm saying here, that we really need to not approach this as a theological issue. Insourcing is not better than outsourcing, and outsourcing isn't better than insourcing. There's nothing intrinsically preferable or good about one versus the other. And where there is domain expertise, where there is the ability to provide quality services at a cost-effective way, that always makes sense.

There are some inherently government functions that should never be, in my view, outsourced. Federal oversight of contracts that it lets, for example. Most people I know in the Federal contracting world think that would be highly inappropriate to outsource, that that ought to be managed by the government. And it puts them in an awkward position when it is outsourced, because they want to bid on contracts and sometimes it's the competition

or even the collaborator who they're evaluating or they're monitoring and managing.

So I'm glad for the hearing, but I'm always going to look askance at anything that smacks of theology on this subject.

And with that, Mr. Chairman, I yield back.

Mr. MEADOWS. I thank the gentleman.

I will hold the record open for 5 legislative days for any member who would like to submit a written statement.

We'll now recognize our panel of witnesses. And I'm pleased to welcome Mr. John Palatiello, president of the Business Coalition for Fair Contracting; Mr. Maurice McTigue, vice president of outreach at the Mercatus Center; and Mr. Donald Kettl, professor at the School of Public Policy at University of Maryland.

And I would like to now recognize the gentleman from Texas, chairman of the Rules Committee, Mr. Sessions, to introduce our last witness.

Mr. SESSIONS. Mr. Chairman, thank you very much. It's a great delight for me to be back with not only you but Chairman Duncan as he spoke very clearly about his work not only in this committee but across Congress for government efficiency.

I must say, I was delighted to hear Mr. Connolly speak very clearly about how important government efficiency and the people's money is.

Today, I show up really to introduce Mrs. Angela Styles. Mrs. Styles is a person who, like the other gentlemen who have been on this panel today, is a distinguished alumnus, not only of the United States Congress as a former staffer, but she worked at OMB, in the Office of Management and Budget, and served under a great Texan, George W. Bush, and served not only with distinction for the President to try and ensure government efficiency, but was there with a role to make sure that it was done for the benefit of the American people, and as Mr. Connolly said, in the none be it theological way.

The people of the United States want and need a government that works properly, that takes every dollar that it needs but not a penny more, and ensures that its services are second to none.

Angela not only served at OMB, but the General Services Administration. She is a graduate of the University of Virginia and the University of Texas Law School. She is a person who is a mom on the side, but more importantly, a dedicated public servant in her role as a partner with Crowell & Moring.

So I wanted to come here today when I knew that Angela would be here and to let her know that her words of wisdom, her insight from out in public service and in the private sector does matter to us.

Lastly, Mr. Chairman, I'd like to say that we are also passing on much of which we do to the next generation. And we have Meredith Milton, who is here from Parker County, Texas. She goes to the University of South Carolina. And she is one of our interns who came to Washington with the viewpoint of government efficiency and government oversight.

So I wanted you to know that, just as I was in your chair some 15 or 18 years ago trying to learn much about how we can make the government more efficient, you now are that person in the role,

along with Mr. Connolly, and Meredith is looking out at you and will learn much. And I hope that there are other students who go through our schools, who come to Washington to learn we have to have a government that can work effectively and efficiently to meet the needs of the American people.

Mr. Chairman, the last thing I'd like to say is I'd like to add to the record the statement that I brought and came with. And I want to thank you for allowing me to be here. And I yield back my time.

Mr. MEADOWS. Without objection, so ordered.

Mr. MEADOWS. I thank the gentleman for his remarks and his introduction, but his longstanding conservative passion to making sure that the government is accountable and efficient. And so with that——

Mr. CONNOLLY. Let the record show, Mr. Chairman, progressives care about it too.

Mr. MEADOWS. No, no, no. It was not meant to be a slight.

Mr. CONNOLLY. No, no, I know.

Mr. MEADOWS. If I said that you had a conservative bit, you might not get reelected, so——

Mr. CONNOLLY. Right. And by the way, I wanted to thank Mr. Sessions for his brilliant remarks, and I hope he'll approve my next amendment when I'm up in the Rules Committee.

Mr. SESSIONS. We'll do our best to hear you out fully, Mr. Connolly, and you know that.

Mr. MEADOWS. Well, welcome to all. Pursuant to committee rules, all witnesses will be sworn in before they testify, so I'd ask that you please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony that you are about to give will be the truth, the whole truth, and nothing but the truth?

Let the record reflect that all witnesses answered in the affirmative. Thank you so much.

In order to allow time for discussion, please limit your oral testimony to 5 minutes. Your entire written statement will be made part of the record. Many of our members will be coming and going today, but I can tell you that they have staff that will be following up on that.

And so at this point, I would like to recognize you, Ms. Styles, for 5 minutes.

WITNESS STATEMENTS

STATEMENT OF ANGELA STYLES

Ms. STYLES. Thank you very much. Chairman Meadows, Congressman Connolly, Chairman Duncan, members of the subcommittee, I really appreciate the opportunity to be here today, particularly, Chairman Sessions, for that very kind introduction. I have to say, he has been a friend and a mentor throughout my entire career, and I wouldn't be here today without him. And as a native of Dallas, I certainly know there are many issues on his mind today, so thank you very much for the kind introduction.

As a former administrator for Federal procurement policy at the Office of Management and Budget from 2001 to 2003, I had the unique opportunity to lead the most significant effort by the Fed-

eral Government to open commercial activities performed by the government to the dynamics of competition between the public and private sectors.

I applaud this subcommittee for shining a bright light on the commercial activities performed by public sector employees. These activities have long been insulated from competition or even, frankly, review at all.

In my written testimony, I tried to address the bipartisan history behind public-private competition and the demonstrated benefits of market-based government. It isn't just about saving money or moving jobs to the private sector, as you heard Congressman Connolly say; it's about improving the performance of our government for its citizens. It is a travesty, a true travesty of public governance that public-private competition has been stalled for 8 years, and every attempt to create a true infrastructure for competition has been struck down by special interests.

The Bush administration competitive sourcing initiative forced Federal Government personnel to critically examine their processes and determine how they could improve the delivery of services to remain competitive. Not surprisingly, as the competition increased, so did the pressure to save Federal jobs.

A series of legislative actions resulted in a full moratorium on public-private competition by 2008. Once in office, the budget request from the Obama administration asked for the continuation of the prohibition. The legislative moratorium shunned market-based government, competition, innovation, and choice. Taxpayers and citizens were the losers. Not only are we paying more for Federal employees to perform commercial services, taxpayers are not benefiting from improved service delivery that derives directly from competition.

Second, anybody that questions the true benefits of competition is diluting themselves. The cost savings have been proven out over 40 years. My written testimony provides several real examples and citations to significant studies. There are thousands more examples to be studied if you need more evidence.

Most significantly, I'd like to point out testimony from 2002 given by Comptroller General David Walker. The testimony was given after studying public-private competition with a panel of experts for over a year, and this is what he said: "The panel concluded that the current A–76 process has been used to achieve significant savings and efficiencies for the government. Savings result regardless of whether the public or private sector wins the cost comparison. This is because competitive pressures have served to promote efficiency and improve the performance of the activity studied."

In standing up the Bush administration competitive sourcing initiative, we made great strides in creating infrastructure, people and processes for competition. Sadly, the people have moved on over the years. But on a positive note, the processes in place for competition remain. There is a place to start in the executive branch.

Now, H.R. 2044, the Freedom from Government Competition Act of 2015, would reverse the 8-year drought. The 8 years that not a single commercial activity performed by the Federal Government has faced an iota of scrutiny. But this moment, it's really only Con-

gress that has the ability to allow and then encourage the executive branch to take full advantage of the best capabilities that both sectors have to offer.

This concludes my prepared remarks.

[Prepared statement of Ms. Styles follows:]

STATEMENT OF ANGELA B. STYLES

CHAIR, CROWELL & MORING LLP

BEFORE THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

SUBCOMMITTEE ON GOVERNMENT OPERATIONS

JULY 8, 2016

CHAIRMAN MEADOWS, CONGRESSMAN CONNOLLY AND MEMBERS OF THE SUBCOMMITTEE, I appreciate the opportunity to appear before you today to discuss the impact on the private sector of commercial activities being performed by public sector employees. As the former Administrator for Federal Procurement Policy at the Office of Management and Budget from 2001 through most of 2003, I had the unique opportunity to lead a significant effort by the federal government to open commercial activities performed by the government to the dynamics of competition between the public and private sectors. I applaud this Subcommittee for having the courage to examine whether Congress should make the federal marketplace more competitive by shining a bright light on commercial activities performed by public sector employees – activities that have been insulated from scrutiny or competition for many years. History, common sense, and market principles demonstrate that the pressure of competition lowers costs for taxpayers and improves program performance for citizens.

Policy – No Government Competition with Private Enterprise

For more than seventy years, Congress and the Executive Branch have struggled with the role of public sector employees in performing commercial activities that may compete with private industry. Many administrations and many Congress' have considered whether commercial activities performed by the government could be provided by the private sector in a more cost effective manner. As the public sector grew in size and mission over seven decades, concerns about public agencies competing directly with private industry seeped into the political discourse. References date back as early as 1932 to House Committees reviewing "Government Competition with Private Enterprise" and signaling a cautionary note about the nature of the work being performed by the federal government. Not until 1955, however, did Rowland Hughes, President Eisenhower's Director of the Bureau of the Budget (the predecessor to the Office of Management and Budget) issue the first Executive Branch proclamation that the federal government should not be competing with private industry:

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

Bureau of the Budget Bulletin No. 55-4 to the Head of Executive Departments and Establishments: "Commercial-industrial activities of the Government providing products or services for governmental use." (Jan. 15, 1955). With very minor changes, the policy of reliance on the private sector was repeated in Bulletin 57-7 (April 1957) and Bulletin 60-2

(September 1959). In March 1976, Bulletin 60-2 was replaced with Bureau of the Budget Circular A-76 and the policy statement was bolstered:

> In the process of governing, the Government should not compete with its citizens. The competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services the Government needs.

While making bold statements, the Eisenhower Bulletin and its subsequent iterations appear to have done little to further the goal of reducing commercial work performed by the public sector. The federal bureaucracy continued to perform significant levels of commercial activities. A GAO Report from 1972 evidences some effort at performing public-private competitions in the late 1960s, but the report found that in the few cases where commercial activities had been reviewed, "there were no explanations supporting local recommendations that in-house performance of activities be continued." GAO Report B-158683, *Better Controls Needed in Reviewing Selection of In-House Or Contract Performance of Support Activities* (Mar. 17, 1972). The Bulletin and Circular A-76 created a process through which federal inventories of commercial activities were sometimes created and occasionally, but only occasionally, brave souls attempted to directly outsource commercial activities or compare the cost of public performance to potential private sector performance.

Resurgence of Competition

Not until 1995, under the leadership of the Clinton Department of Defense, did OMB Circular A-76 receive sustained focus. The Deputy Secretary of Defense directed the DoD services to make the outsourcing of support activities a priority, ultimately becoming a major Defense Reform Initiative. Over a five-year period, DoD reviewed and converted or competed thousands of positions performing commercial activities. *DoD Competitive Sourcing: Results of A-76 Studies Over the Past 5 Years,* GAO-10-20 (Dec. 2000).

In the spring of 2001, using the Clinton DoD experience as a model, the Bush Administration announced the President's Management Agenda: a major element of which was the expansion of OMB Circular A-76 competitions to the civilian agencies with a continued focus on DoD's efforts and results. Under my leadership, the initiative took a three-pronged approach:

1. The development of customized public-private competition plans for 26 federal agencies,
2. Building a dedicated infrastructure for competition, and
3. Improving the A-76 competition process to incorporate the federal acquisition processes and workforce.

At the time, 416,000 positions out of 1.6 million civilian jobs were selected as available for competition. We worked with the 26 federal agencies to develop tailored plans for competition,

designate an agency competitive sourcing official, and improve the process by issuing a significantly revised standard for public-private competition under OMB Circular A-76. To navigate the criticisms of the past, we focused on fair and transparent competition for commercial jobs performed by federal employees.

The Bush Competitive Sourcing Initiative forced federal government personnel to critically examine their processes and determine how they could improve the delivery of services to remain competitive. Not surprisingly, as the competition increased, so did the pressure to save federal jobs. A series of legislative actions resulted in a full moratorium on public-private competition by 2008. Once in office, the budget requests from the Obama Administration asked for the continuation of the prohibition on public-private competitions through A-76.

Cost Savings

Forty years of experience and research conclusively prove significant cost savings can be achieved through public-private competition. Reviews by GAO as early as March 1972 document the cost savings of public-private competition: "The few cost studies made showed that savings could be realized by converting activities either to in-house or to contract performance. GAO believes that these studies are indicative of signification potential savings available in activities not yet reviewed." GAO Report B-158683 at 2. The following chart was included to demonstrate DoD costs savings at the time:

The potential for savings is illustrated by the result of the military departments' cost studies of 18 functions summarized below.

Military department	Number of functions	Recommended conversion to	Annual savings (note a)
Army	7	Contract	$ 768,000
	1	In-house	157,000
Navy	6	Contract	960,000
	1	In-house	58,000
Air Force	3	In-house	127,000
			$2,070,000

In a 1998 report, GAO found that "savings achieved through the A-76 competitive process were largely personnel savings, the result of closely examining the work to be done and reengineering the activities in order to perform them with fewer personnel, whether in-house or by contractor." *OMB Circular A-76: Oversight and Implementation Issues,* GAO Report 98-146 at 3 (June 4, 1998). Further, GAO noted that "there appears to be a clear consensus, which we share, that savings are possible when agencies undertake a disciplined approach, such as that called for under A-76, to review their operations and implement the changes to become more efficient themselves or contract with the private sector." *Id.*

Over the years, numerous sources outside the executive branch verified the benefits (including cost savings) of public-private competition. To cite a few:

* *Long-Run Costs and Performance Effects of Competitive Sourcing*, Center for Naval Analysis, CRM D0002765.A2 (February 2001) - 16 competitions yielded estimated savings of 34 percent through the life of the contracts.

* *Personnel Savings in Competitive Sourced Activities: Are They Real? Will They Last*, National Defense Institute, RAND (2002) – expected savings for contractor wins ranged from 41-59 percent and 34-59 percent for government wins.

* *Moving Toward Market-Based Government: The Changing Role of Government as the Provider,* IBM Endowment for The Business of Government (June 2003) – finding that the presence of competition created the previously missing incentive for government providers to significantly improve processes that lower costs and increase performance.

Most significantly, however, the Fiscal Year 2001 Defense Authorization Act required the Comptroller General to convene a panel of experts to study, and make recommendations for improving the policies and procedures governing public-private competition. As explained by the Comptroller General:

> The Panel concluded that there are some advantages to the current system. . . [t]he current A-76 process has been used to achieve significant savings and efficiencies for the government. Savings result regardless of whether the public or the private sector wins the cost comparison. This is because competitive pressures have served to promote efficiency and improve the performance of the activity studied.

Testimony of David Walker, GAO 02-866T (June 26, 2002).

Indeed, even in the initial years of the Bush Competitive Sourcing Initiative the transformational cost and performance changes were evident. My favorites were always some of the smaller, more tangible examples:

* In 2002-2003, the Department of Energy ("DOE") competed the graphics function at DOE headquarters. Before the competition, it was a 13-person federal employee operation. Through the competitive process, the incumbent government provider determined it could do the same job with 6 people.

* In 2002, the Office of Management and Budget competed the printing of four of five volumes of the President's FY 2004 Budget Request to Congress. The pre-competition cost for printing by the Government Printing Office ("GPO") was $505,370. Through competition with private sector printers, GPO reduced the price to $387,000, a 23.4% savings.

Detailed information is available regarding the number of activities and positions studied and the initial and actual cost savings achieved during the Bush Competitive Sourcing Initiative. Indeed, Public Law 108-199 as passed in 2004 required detailed reporting to Congress on competition and savings. Unfortunately, these reports appear to have been largely removed from agency and

White House websites and are difficult to locate, making analysis and research nearly impossible. Even without the detailed reports in that period, there can be little doubt that true benefits derive from public-private competition both in terms of savings and the delivery of quality services to the taxpayer. Competitive sourcing laid the groundwork and created the infrastructure for improved mission performance through quality service at the lowest possible cost.

Conclusion

The legislative moratorium on public-private competition shunned market-based government, competition, innovation and choice. Taxpayers and citizens were the losers. Not only are they paying more for federal employees to perform commercial services, they are not benefitting from improved service delivery that derives from competition. H.R. 2044, the Freedom from Government Competition Act of 2015, would reverse the eight year drought – the eight years that not a single commercial activity performed by the federal government has faced an iota of scrutiny.

As you examine this issue, it is important to remember two items. First, public-private competition has been strongly supported by both political parties. To quote Clinton Administration OMB Director Alice Rivlin when issuing a revision to OMB Circular A-76 in 1996:

> Americans want to 'get their money's worth' and want a Government that is more businesslike and better managed. The reinvention of Government begins by focusing on core mission competencies and service requirements. Managers must begin by asking some fundamental questions, like: why are we in this business; has industry changed so that our involvement or level of involvement is no longer required; is our approach cost effective and, finally, assuming the Government has a legitimate continuing role to play, what is the proper mix of in-house, contract and interservice support agreement resources.

61 Fed. Reg. 14,399 (April 1, 1996).

Second, we should not forget that Federal employees are some of the Nation's most highly trained and dedicated employees. Public-private completion does not distract from the quality or dedication of these public servants. However, at this point, only Congress can allow and then encourage the Executive Branch to take full advantage of the best capabilities that each sector has to offer.

This concludes my prepared remarks. I am happy to answer any questions you may have.

Mr. MEADOWS. Thank you, Ms. Styles.

Mr. Palatiello, you're recognized for 5 minutes.

STATEMENT OF JOHN PALATIELLO

Mr. PALATIELLO. Thank you, Mr. Chairman. And I realize when I say "Mr. Chairman," that's inclusive of everyone on this panel who has at one time or another been a chairman.

I'm president of the Business Coalition for Fair Competition, and we support the yellow pages test. It's a very simple process that says if you can find firms in the yellow pages of the phone book that are providing a good or a service and a government agency that's providing that same good or service, then that government activity ought to be subjected to a review, a government—a private competition to break up what's, in effect, in in-house monopoly, subject it to market competition and get a better value for the taxpayer.

This is a test that has been successfully applied on a very bipartisan basis by mayors and governors and county executives across the country. Unfortunately, the Federal Government does not have such a process in place today, and that's for two reasons: First, Congress has failed for more than 80 years to enact legislation to codify such a process to set the ground rules. Additionally, Congress has imposed a very unfortunate moratorium on OMB Circular A–76, which has guided this process administratively since 1955.

As Mr. Duncan pointed out, the Federal Government today has a total workforce of 2.6 million employees, not including our men and women in uniform and the Postal Service. Of that, 1.2 million are in functions that are commercial in nature. This is the aggregate of all of the FAIR Act inventories. So in other words, 43 percent of the Federal workforce is in commercial positions, and only a handful of them have ever been studied to determine whether the in-house function is performing as efficiently as it could.

When these studies are conducted, the literature shows that the average saving is 30 percent, regardless of whether the activity stays in-house or gets contracted. When applied to all 1.12 million positions, the annual potential savings are as much as $35 billion.

You asked with regard to best practices, Mr. Chairman, and I would point to the 3DEP, or Three-Dimensional Elevation Program of the U.S. Geological Survey, in Reston, Virginia, in; Mr. Connolly's district. Over a period of some 20 years, USGS has successfully transitioned from being an in-house mapping production agency that, quite frankly, the private sector felt duplicated and competed with them, to where the USGS now uses the private sector for a majority of its mapping data acquisition and processing, and focuses its employees on standards, coordination, and other inherently governmental activities.

Perhaps the most successful thing the Federal Government has done in its 240-year history, in my view, was the original GI Bill. My late father was a D–Day veteran. He was a beneficiary of that program. After World War II, Congress provided every eligible veteran an opportunity to buy a home and get an education, but the government did not start in-house homebuilding and did not start

Federal schools. The GI Bill was essentially a voucher program, a contracting program.

The government used the private sector, let our veterans go out into the market and get what they needed to return to civilian life. That's a bipartisan best practices model I believe the government should emulate again today.

You also asked in your invitation, Mr. Chairman, to examine the impact on the private sector from decreased competition. In its last study of A–76, the Small Business Administration found that of companies that received these procurements, 71 percent were small business. So it is clear that the moratorium on A–76 harmfully and disproportionately impacts small and small disadvantaged businesses.

As has already been stated, this is not about eliminating Federal employees. Let's put that myth to rest here today. What this is about is lower cost, better service, but also access to expertise, better quality, improved risk management, innovation, better meeting of peak demand, and timeliness.

We have a couple of recommendations that we would like to share with the committee. First, we do support Mr. Duncan's bill, the Freedom from Government Competition Act. Second, the moratorium on A–76 should be repealed. Third, insourcing should be ended or at least there should be a requirement for a reverse A–76 to study whether it is more cost effective to bring something back in-house. We think the establishment of a Federal entity to review commercial activities.

Mr. Connolly will remember that for about 15 years, Virginia had the Commonwealth Competition Council; was very effective. And we believe that there needs to be an enhancement to Federal agency contract management and improvement of the acquisition workforce.

Mr. Chairman, today, the Federal Government has become too big to succeed. In an effort to be all things to all people, it cannot effectively provide its core services. The Federal Government is spread out too thin, carrying out too many activities best left to free enterprise. Using the private sector for commercially available products and services will help focus the government on its core inherently governmental activities, those things that the American people expect from Uncle Sam, and it will improve the effectiveness of those important government activities.

Thank you for the invitation. It's a pleasure to be here. I'll be happy to take your questions.

[Prepared statement of Mr. Palatiello follows:]

Testimony of John M. Palatiello
President, Business Coalition for Fair Competition (BCFC)
Before the
Subcommittee on Government Operations
Committee on Oversight and Government Reform
U.S. House of Representatives
Hearing on
Contracting Fairness
Friday, July 8, 2016

Mr. Chairman, members of the Subcommittee, I'm John Palatiello, President of the Business Coalition for Fair Competition. BCFC is an alliance of companies, associations, think tanks, and individuals who support the Yellow Pages Test – a simple and effective process that says if you can find firms in the Yellow Pages of the phone book providing products or services that the government is also providing, then the government service should be subject to market competition to break up the government monopoly and prove a better value to the taxpayer.

That is a test that has been successfully applied by Mayors and Governors, both Democrat and Republican, across the Nation.

Unfortunately, the Federal government does not have such a process in place today for two reasons. First, Congress has failed for more than 80 years to enact legislation to codify such a process. Additionally, Congress has imposed a very unfortunate moratorium on the relevant administrative process, found in Office of Management and Budget (OMB) Circular A-76, which has guided this matter since 1955.

Today, the Federal government has 2.6 million Executive Branch employees (excluding uniformed military and Postal Service). OMB estimates that among agencies covered by the Federal Activities Inventory Reform (FAIR) Act (PL 105-270), 1.12 million full-time equivalent (FTE) employees are engaged in performance of functions that are not inherently governmental. That is some 43% in jobs that are "commercial" in nature.

Federal employees are engaged in activities ranging from architecture to zoology and include scores of other activities including apparel, audits, buses, construction, debt and bill collections, campgrounds and concessions, engineering, equipment repair and maintenance depots, film studios and theater management, FOIA software, food service and security, furniture, graphics, hearing aid and medical supply distribution, information technology and data centers, insurance, laboratories, landscaping, laundry and dry cleaning, office products, pest management and wildlife control, manufacturing, mapping, meeting planning, marketing research, motorcoaches, printing and chart production, public storage, recycling and waste management, road signage, roofing, security technologies and products, simulation technology and services, surveying, tax preparation, transportation, travel planning, and utilities, and doing other tasks that have little to do with governing. The government is the nation's largest banker, insurer, homeowner, landlord, utility provider, and bus, transit, and passenger train operator.

Only a handful of the 1.1 million commercial positions have been studied to determine whether government employees or private sector workers can perform these activities more effectively.

Studies on the impact of public-private competitions in the Federal government have not been conducted in recent years. But the historic data is important to put on the record to understand the impact of the lack of a policy or process.

OMB estimated savings of 27 percent per full time equivalent (FTE) studied, while the Center for Naval Analysis found average savings of 30 percent.

A 30 percent savings applied to all 1.1 million commercial FTEs would amount to a total savings of as much as $35 billion annually – regardless of whether or not a function is contracted to the private sector.

Such "competitive sourcing" requires government agencies to establish a "most efficient organization" or MEO and compete its in-house MEO function against the private sector. The program was ***not*** directed toward privatization, but to government efficiency. Historic data showed regardless of whether the activity stayed in-house, or was contracted to the private sector, by first going through the MEO process, the taxpayer won regardless of the outcome.

Bureau of the Budget Bulletin 55-4 provided that

> in the process of governing, the Government should not compete with its citizens. The competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services the Government needs ... The Federal Government shall rely on commercially available sources to provide commercial products and services ... the Government shall not start or carry on any activity to provide a commercial product or service if the product or service can be procured more economically from a commercial source.

The 1955 policy that the government should not compete with its citizens was ***removed*** from OMB Circular A-76 when that directive was revised by the Bush Administration in 2003.

Congress has effectively halted "competitive sourcing" through earmarked restrictions. A listing and analysis of such restrictions is provided by the Congressional Research Service in its report, *Circular A-76 and the Moratorium on DOD Competitions: Background and Issues for Congress*

In the last year for which data is available, 2007, OMB reported that 73 percent of public-private competitions were won by government employees. From 2003-2007, only 50,989 federal employee FTE positions were subject to competitive sourcing public-private competitions. That is out of a total Federal workforce performing commercial activities of more than 1 million. Nevertheless, those competitions resulted in over $7 billion in savings.

That record should dispel one of the myths surrounding this issue – that competitive sourcing and OMB Circular A-76 is bounty hunting for Federal employees. In fact, a GAO study of the Labor Department found about 79 percent of affected employees (248 of 314) were reassigned to new positions at the same Federal grade and salary level. Only six workers (about 2 percent) were involuntarily separated, while 15 workers (almost 5 percent) were promoted -- i.e., more than twice the number involuntarily separated.

It should be noted that not only do Federal agencies duplicate the private business, but many engage in unfair government competition with the private sector.

In 1932, a Special Committee of the House of Representatives expressed concern over the extent to which the government engaged in activities which might be more appropriately performed by the private sector. The first and second Hoover Commissions expressed similar concern in the 1940's. The first (1947) and second (1953) Commission on Organization of the Executive Branch of the Government also recommended legislation to prohibit government competition with private enterprise. However, there was no formal policy until 1955, when the House passed and the Senate Committee reported legislation to require the Executive Branch to increase its reliance on the private sector. Final action was dropped only upon assurance from the Executive Branch that it would implement the policy administratively.

Bureau of the Budget Bulletin 55-4 was issued in 1955 prohibiting agencies from carrying on any commercial activities which could be provided by the private sector. That Federal policy, implemented by President Eisenhower said, "The Federal government will not start or carry on any commercial activity to provide a service or product for its own use if such product or service can be procured from private enterprise through ordinary business channels."

The Bureau of the Budget became the Office of Management and Budget and "bulletins" became "Circulars". OMB Circular A-76 succeeded Bureau of the Budget Bulletin 55-4, and the policy that the government should not compete with private enterprise remained through Democrat and Republican administrations until the provision was eliminated by George W. Bush in 2003.

The Reagan Administration's "Grace Commission", also known as the President's Private Sector Survey on Cost Control, recommended contracting out to private firms for certain support services in four separate reports, and the Clinton Administration's National Performance Review, or Reinventing Government, endorsed A-76 and urged Congress to lift restrictions on its application.

In 1988, the Commission on Privatization appointed by President Reagan recommended privatization of hundreds of federal programs, activities and even complete agencies. Most are still on the government's books today, not because privatization was a bad idea, but the commission's report was completed late in Reagan's second term and there has been no executive branch focus on shedding federal functions since.

Each time there has been a White House Conference on Small Business (1980, 1986, and 1995), one of the top issues identified by American entrepreneurs is unfair government-sponsored competition with the private sector.

In 1980, the first White House Conference on Small Business made unfair competition one of its highest-ranked issues. It said, "The Federal Government shall be required by statute to contract out to small business those supplies and services that the private sector can provide. The government should not compete with the private sector by accomplishing these efforts with its own or non-profit personnel and facilities."

In 1986, the second White House Conference made this one of its top three issues. It said, "Government at all levels has failed to protect small business from damaging levels of unfair competition. At the

federal, state and local levels, therefore, laws, regulations and policies should ... prohibit direct, government created competition in which government organizations perform commercial services ... New laws at all levels, particularly at the federal level, should require strict government reliance on the private sector for performance of commercial-type functions. When cost comparisons are necessary to accomplish conversion to private sector performance, laws must include provision for fair and equal cost comparisons. Funds controlled by a government entity must not be used to establish or conduct a commercial activity on U.S. property."

And the 1995 White House Conference again made this a priority issue when its plank read, "Congress should enact legislation that would prohibit government agencies and tax exempt and anti-trust exempt organizations from engaging in commercial activities in direct competition with small businesses." That was among the top 15 vote getters at the 1995 Conference and was number one among all the procurement-related issues in the final balloting.

In fact, BCFC estimates that more than $517 billion in spending, subsidies and other measures supporting government agencies and government-underwritten entities duplicate, are otherwise available from, or could be turned over to private, for-profit entities in the free enterprise system.

Mr. Chairman, in your invitation to testify, you indicated the hearing "will examine the impact on the private sector from the decreased use of public-private competition in sourcing government products and services. The hearing will also examine best practices for encouraging a more robust utilization of commercially available products and services to increase government efficiency while decreasing costs."

With regard to best practices, former President Bill Clinton—a Democrat—privatized more functions in the federal government than did the administration of President Ronald Reagan, a Republican.

Additionally, former Indianapolis Mayor Stephen Goldsmith, a Republican, identified $400 million in savings and opened up over five dozen city services— including trash collection, pothole repair and wastewater services—to competitive bidding.

Meanwhile, former Chicago Mayor Richard Daley, a Democrat, privatized more than 40 services and generated over $3 billion in privatization deals for the Chicago Skyway toll road, four downtown parking garages, and the city's downtown parking meter system. When former Pennsylvania Governor Ed Rendell, a Democrat, was mayor of Philadelphia, he saved $275 million by privatizing 49 city services, including golf courses, print shops, parking garages, and correctional facilities. Former Cleveland Mayor Michael White, a Democrat, launched the "Cleveland Competes" initiative to allow private vendors to bid on contracts for services like pothole repair, downtown trash collection and payroll services, resulting in millions of dollars in savings. Former Ohio State Treasurer Richard Cordray, now the Director of the Consumer Financial Protection Bureau (CFPB), set out to implement a robust real property inventory program that would compile a comprehensive on-line database of state-owned property and look for opportunities to put that property to more effective and efficient use. More recently, Chicago Mayor Rahm Emanuel has generated billions in savings and revenue through privatizations, public-private partnerships, and competitive contracting of Chicago assets or services. In Michigan, former Governor John Engler implemented a process known as PERM - Privatize, Eliminate, Retain, or Modify in his first term, which used sound methodology for determining whether or not a state activity should be privatized. Virginia's Commonwealth Competition Council was for more than a decade a trend-setter in policies and procedures for private sector utilization.

A current best practices example worthy of review is Utah's Free Market Protection and Privatization Policy Board. This body has conducted a state commercial activities inventory and reviewed privatization opportunities, including those suggested from outside of state government that agencies themselves may not promote or identify on their own.

Another best practices model is the 3DEP or 3-Dimentional Elevation Program of the U.S. Geological Survey (USGS) in Reston, VA. Over a period of some 20 years, USGS has successfully transitioned from an in-house mapping production agency that was viewed as duplicating and competing with private enterprise to the entity it is today that effectively utilizes the private sector for mapping data acquisition and production, while focusing government employees on standards and coordination. A positive public-private partnership model is needed so that there are clearly defined roles and responsibilities to provide synergy between the public and private sectors in the Federal level, and particularly with regard to geospatial activities. There is a need and role for government in surveying, mapping and geospatial activities. Agency personnel should be focused on inherently governmental activities such as enforcement of standards and specifications, development of requirements, coordination, and administering contracts. Commercial activities, including data acquisition, processing, applications, and value added services should be left to the qualified, competent and capable private sector in surveying and mapping.

With regard to the impact on the private sector, the SBA Office of Advocacy is designed to be the in-house advocate for small business within the Federal Government. It is an independent office within SBA that has the statutory authority to go to other agencies and advocate policies, changes in regulations, etc., when an agency is doing something harmful to small business. The office conducted a series of hearings and issued a report, "Government Competition: A Threat to Small Business", (March 1980), and "Unfair Competition by Nonprofit Organizations With Small Business: An Issue for the 1980s" (June, 1984). It offered testimony, when requested by the House and Senate Small Business Committees, in 1988 and 1996 and conducted some research on non-profit competition in 1999.

Its last study of OMB Circular A-76 showed of the 795 companies that received these procurements, 567 companies, or 71 percent, were small. Small businesses won 65 percent of the total number of A-76 contracts. It is clear that the moratorium on A-76 harmfully and disproportionately impacts small business.

Utilization of the private sector can take many different forms - direct conversion, contracting out, vouchers, asset sales and leases, privatization, divestiture, and other instruments to transfer activities from the government to the private sector. (For a comprehensive list of such strategies and instruments, see the General Accounting Office publication, "Terms Related to Privatization Activities and Processes", GAO/GGD-97-121, July 1997.) Another very effective tool is public-private partnerships, or P3s.

Congress has two internal groups that are advocates for these strategies. The "Yellow Pages" Caucus, of which Mr. Meadows is a member, is a group of members of Congress dedicated to reliance on the private sector, to the maximum extent possible, rather than government, to provide commercially available goods and services to the government and the American people. The Congressional Caucus on Public-Private Partnerships (P3s), co-chaired by Mr. Connolly and Mr. Rogers of Alabama, to focus on the nation's infrastructure and the growing use of public-private partnerships in building and maintaining it. BCFC recommends these groups actively seek legislative initiatives to assure the proper role of government and the private sector in the provision of services.

Why use the private sector? Experience at all levels of government demonstrate the following benefits, as documented by the Reason Foundation:

- Cost Savings: A Reason Foundation review of more than 100 privatization studies found savings ranging from 20 percent to 50 percent.
- Access to Expertise: Contracting gives government access to expertise it does not have in-house on an as-needed basis. It is cheaper to retain architects, engineers, lawyers and other occupations on an as-needed basis than to hire them as full-time employees.
- Better Quality: Competition brings out the best in competitors, whether it is in sports or in the business of providing public services. Competitors have incentives to offer the best possible combination of price and service quality to beat their rivals.
- Improved Risk Management: Contractors, rather than the government, are responsible for cost overruns, strikes, delays, and other risks.
- Innovation: Competition to win and retain contracts spurs the discovery of new, cutting-edge solutions. Without competition, even top-notch employees may stop looking for ways to improve how they meet customers' needs.
- Meeting Peak Demand: The cost of providing a public service can be raised considerably by the capital and manpower needed to satisfy demand at peak periods, even though those peaks may last only for a few hours a day, a few days a week, or a few months a year. Contracting allows governments to obtain additional help when it is needed so that services are uninterrupted for residents.
- Timeliness: "Time is money" if you are a contractor footing the bill, or if your contract with the city or state includes penalties for delays. Contractors can recruit additional workers or provide performance bonuses to meet or beat deadlines, options that often are unavailable to in-house staff.

BCFC is pleased to recommend the following:

1. Congress should enact the "Freedom from Government Competition Act", H.R. 2044/S. 1116, introduced by Representative John J. "Jimmy" Duncan, Jr. (R-TN) and Senator John Thune (R-SD). This long-overdue legislation would establish a balanced and reasonable statutory process for review commercial activities in the Federal government. This bill does not mandate privatization. However, it does establish a process for agency review of in-house commercial activities.

2. Current law limitations, restrictions, prohibitions and moratoria on OMB Circular A-76 and other competitive sourcing or private sector utilization for commercial activities should be repealed.

3. End "insourcing", the practice of converting work currently performed by private sector contractor firms to performance by Federal government employees. This program has been a failure inasmuch as it has not proven to identify and reverse the alleged contracting out of inherently governmental activities, but rather has been applied to unequivocally commercial activities, without a "reverse A-76" or any demonstration of cost savings.

4. Establish a Federal entity similar to Utah's Free Market Protection and Privatization Policy Board or Virginia's former Commonwealth Competition Council.

5. Enhance Federal agency contract monitoring. This is an often neglected and necessary governmental skill and management capability that will hold the private sector's feet to the fire and ensure that taxpayers are realizing the full benefit of a private sector utilization program. Hand in hand with this requirement is an accelerated acquisition workforce improvement program. Agencies need to invest in procurement expertise to have the in-house expertise to evaluate, select, negotiate, award and manage contracts. This capability must work with program managers to assure a successful public-private partnership.

Mr. Chairman, the Federal government has become too big to succeed. The reason is government, in an effort to be all things to all people, cannot provide the basic services fundamental to its core mission and the Constitution. Above all, the Federal government is spread too thin, attempting to carry out activities best left to private enterprise.

Perhaps the most successful thing the Federal government has ever done was the original G.I. Bill. My late father, a D-Day veteran, was a beneficiary of that program. After World War II, the Federal government provided every eligible returning veteran an opportunity to buy a home and get an education. But the government did not start in-house home building capabilities or create government-run schools. The G.I. bill was essentially a voucher program. The government contracted with the private sector for these programs and let our veterans go into the private market to get what they needed to return to civilian life, revitalize post-war America, and began one of the largest economic expansions in human history. That's a bi-partisan best practices model we should review and emulate in America today.

America's first experience with privatization happened in 1492 when Queen Isabella hired an Italian contractor to explore the western ocean; she didn't turn to her foreign ministry or her ministry of war, noted Dr. E.S. Savas, a professor in the School of Public Affairs at New York's Baruch College, a former deputy city administrator and author of "Privatization: The Key to Better Government" (Chatham House, 1987). And America itself is named after a contract mapmaker – Amerigo Vespucci.

Private involvement in public works is as old as the Republic. George Washington was our first president, but his business interest, as well as his investment, was in the Potowmack Company, a for-profit firm created in 1785 to make improvements to the Potomac River and improve its navigability for commerce. That venture ultimately resulted in the Chesapeake and Ohio (C&O) Canal.

"It is not the role of government to provide services. It is the role of government to see to it that services are provided," New York governor Mario Cuomo once said. The late columnist David Broder once called privatization an idea "no politician – liberal or conservative – can ignore". When Sharon Pratt Dixon became mayor of Washington, DC, she sought advice from Chicago mayor Richard M. Daley. "Privatize everything you can" he said.

Mr. MEADOWS. Thank you for your testimony.

Mr. McTigue, you're recognized for 5 minutes.

STATEMENT OF MAURICE McTIGUE

Mr. MCTIGUE. Chairman Meadows, Ranking Member Connolly, I am honored to have been invited to present testimony in front of you today on the issue of competition in government operations.

Before I became a member of parliament in New Zealand, I was a farmer. Farmers really understand the value of competition. When you take your stock to market, if there are plenty of hot buyers, the prices are good. If there is only one buyer, you have a bad day. So I am an enthusiast for competition.

Competitive sourcing in government should really be based upon what delivers the best prices with the best goods and services from the best suppliers using the best technology. This is the only acceptable rationale, in my view, for competitive sourcing. I agree with Mr. Connolly, it should not be about ideology; it should be about what's going to provide the best services for the consuming public.

Governments have had mixed results with competitive sourcing. One of the reasons, in my view, is that the rules often don't allow the competition to occur, so the rules must be written in such a way that the competition can occur.

Some of the other things that have been failures in the process in the past, the first, not accurately defining what best means. Best does not mean cheapest. And best should be able to be defined for every competition, because best when you're delivering social services will require certain components that are very difficult to provide if you just use the normal commercial criteria. Not writing good specifications for the bidding process is often one of the failures in competitive sourcing. That's a professional contract management requirement, and agencies need to have that capability or they need to buy that capability if they're going to embark in competition.

No departures from the contract is a really important criteria, because competitive sourcing often gets a bad name by people being able to lowball their bid knowing full well that they'll get a departure from the contract, which will allow them to readjust the price at a later date. That discredits the whole of the process and makes everybody consider it to be unfair.

There should be fixed terms for the contracts, so no automatic renewals, so that the bidding process can be repeated over and over again. The competition has to be seen to be fair. It needs to be fair to the public sector bidders, and it needs to be fair to the private sector bidders.

When I arrived in the United States in 1997, Al Gore was in the middle of his reinventing government process, and I attended many forums on just exactly that. There were two outstanding mayors that presented at many of those forums: Mayor John Norquist from Milwaukee, a Democrat; and Mayor Stephen Goldsmith from Indianapolis, a Republican. Both of them used competitive sourcing to help rescue their city budgets.

Their experiences saw successful bidders come from the private sector and the public sector. Their experience showed that at the

next iteration of those contracts they often saw them turn around. What they got from that, though, was a big win for the citizens in that those cities received better services at better prices.

I just want to now quote an example from New Zealand, which is a variation on this process. One of the things that the New Zealand Government did was that it allowed governments—government departments to compete to provide goods and services with each other. We call it internal markets.

But a department that had a very high quality legal department could sell those services to another department or they could combine to buy payroll services or HR services, accounting, data collection. They might buy that from the private sector or the public sector, but they were looking at how you can utilize competition to improve the quality of those services. This needs to be a strictly contractual undertaking with legally enforceable contracts. It might surprise you, but when government departments deal with each other, they frequently cheat, so you need to be able to stop the cheating if the competition is going to remain fair.

In conclusion, the success with this process should be measured in terms of improved services, greater innovation, technological superiority. It shouldn't be measured in terms of this group got it or that group got it. I hope this initiative is adopted as part of cost efficiencies and service improvement.

Thank you for the chance to testify, and I'd be very happy to take your questions.

[Prepared statement of Maurice McTigue follows:]

Bridging the gap between academic ideas and real-world problems

TESTIMONY

COMPETITIVE SOURCING IN GOVERNMENT

HON. MAURICE P. MCTIGUE, QSO
Vice President for Outreach, Mercatus Center at George Mason University

House Committee on Oversight and Government Reform, Subcommittee on Government Operations
Hearing: Contracting Fairness

July 8, 2016

Chairman Meadows and Ranking Member Connolly: I am honored to have been invited to testify before you on the process of competitive sourcing as an initiative in government purchases of goods and services.

I am a vice president at the Mercatus Center at George Mason University, where my work over the past 15 years has focused on mechanisms that would improve the quality of governance in America. Before joining Mercatus, I served as an elected member of the New Zealand Parliament and a member of the Cabinet of New Zealand and was later appointed New Zealand's ambassador to Canada and the Caribbean. New Zealand implemented a series of reforms to budget procedures when I served as a legislator, and Canada made major changes to its budget processes during my tenure there.

My comments today will draw on my research, these experiences, and on research that we have done at the Mercatus Center on budget procedures throughout the United States.

COMPETITIVE SOURCING RATIONALE

Competitive sourcing is, in its broadest definition, about asking a wide selection of providers for a quote for particular goods and services. It is a valuable mechanism for identifying price improvements, efficiency gains, quality improvement, and improved public satisfaction. These benefits, in fact, provide the rationale for adopting competitive sourcing.

While competitive sourcing has been used in a variety of forms by many governments, it should not be confused with privatization, public-private partnerships, or other terms applied to the purchase of government goods and services.

For more information or to meet with the scholar, contact
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The ideas presented in this document do not represent official positions of the Mercatus Center or George Mason University.

For competitive sourcing to be appreciated and accepted by the public and the private sector, the intent of the initiative needs to be clearly spelled out at the beginning and observed throughout the competitive bidding process. The government should remain impartial with regard to the ultimate successful bidder, and its focus should remain on the purchase of the best goods and services for the task being subjected to competition.

THE BENEFITS OF COMPETITION

The economic literature here is clear: competition improves prices, captures best practices, encourages innovation, improves delivery, and increases customer satisfaction. The goal of competitive sourcing is to identify the *best goods and services* from the *best suppliers* using the *best technology* at the *best prices*.

At a time of significant federal resource constraints, Congress and presidential administrations cannot afford to lose the potential gains that competition would bring—both in improved quality of services and more effective use of scarce federal dollars. To settle for less than buying from the best providers of goods and services is a disservice to both the consuming public and taxpayers.

Best, however, doesn't necessarily mean cheapest. Before opening up the competition process, due consideration should be given to defining what is meant by "best." The definition should specify the desired quality of service, the desired result, the timing of delivery, and cost effectiveness. Any requirement to accept the lowest bid in a competition can be counterproductive, so lowest price criteria should be dropped in favor of a clear definition of "best." Accountability should be focused on the cost-efficient achievement of the best result.

The "Competitive Sourcing" initiative in the President's Management Agenda under President George W. Bush attempted to use competition as a means of identifying the best supplier of goods and services to the federal government.[1] Unfortunately, it was poorly managed from the beginning. The Office of Management and Budget (OMB) skewed the implementation of the "use of competition" by linking agency achievement on this initiative to competing public sector jobs. That linkage created the impression that the initiative was about privatizing public sector jobs rather than competition in sourcing—a fatal confusion.

If the policy intent is to privatize jobs, then have the courage and integrity to call it privatization—don't link it to the introduction of competitive sourcing. As I stated at the beginning of my testimony, competitive sourcing and privatization are different initiatives used for different purposes, and they produce different end results.

MODELS HERE AND ABROAD

There are a few historical examples of competitive sourcing to draw from in the United States and overseas. Outstanding examples come from two US cities. In Milwaukee, Mayor John Norquist (1988–2004) used creative approaches to competitive sourcing to help rescue the city from its budget problems. In Indianapolis, Mayor Steven Goldsmith (1992–2000) used imaginative approaches to the purchase of government goods and services. Under heavy fiscal pressure, he designed his competitive sourcing initiative so that the current public sector units delivering services could be part of the competition. This inclusion required the unit concerned to be organized as a stand-alone commercial operation with a full allocation of costs involved in providing the service under competitive challenge.

It is worth noting that, in Indianapolis, the successful bidders have oscillated between private sector providers and public sector providers. The big winner is, of course, the city of Indianapolis, which now receives better services at better prices as a result.

1. Office of Management and Budget, "Office of Federal Financial Management President's Management Agenda," accessed July 5, 2016, https://www.whitehouse.gov/omb/financial_fia_pma/.

A variation on competitive sourcing was introduced by New Zealand, which created internal markets inside government. Through this process, one agency could trade its superior services or excess capacity to other agencies or even within the bureaus of their own department. To work effectively, this process needs to be purely commercial in nature. The facility should be designed so that agencies formally contract with each other or the private sector for the goods and services that they need. The services traded could be as sophisticated as specialist skills, human resource management, accounting, payroll, data collection, data entry, and legal services or as mundane as building maintenance, cleaning, printing, and the supply of consumables.

THE MECHANICS OF SUCCESS

A competitive sourcing initiative will succeed or fail often on such mundane details as the mechanics of the process. The following are a number of principles that are essential to success:

- The process must be open, transparent, and fair, and the contracts enforceable.
- The writing of the bidding document and the subsequent contract management requires high-quality, commercial-practice legal skills.
- After the letting of the contract, contract management and enforcement require skilled legal and commercial-practice experience to ensure that the provider meets the contract obligations.
- Departures from the original contract should be exceedingly rare.
- Social and equity requirements should be explicit right from the beginning of the contract.
- The term of the contract should be explicit, and automatic right of renewal should be rare.
- It should be legally clear that nonperformance of the contract will lead to contract termination and that legal remedies against the nonperforming parties will be taken.
- The contract documents are the ideal place to spell out special requirements regarding workforce considerations, quality considerations, relationships with the public, and the protection of the reputation of the government.

CONCLUSION

The approach to competitive sourcing in the future should focus on measuring progress by agencies in outcome and efficiency terms rather than counting how many public sector jobs are facing competition. If, for instance, the OMB were to manage this process, it should remain impartial about the successful competitor for the supply of goods and services. The measure of appropriateness in the choice of supplier should be based entirely on the determination of "best."

I hope that Congress finds a way to use competition as a means of encouraging innovation in the provision of goods and services and getting the budget benefits that flow from innovation and cost competition.

Thank you again for the opportunity to testify today. I look forward to your questions.

Mr. MEADOWS. Thank you for your testimony.

Professor Kettl, you are now recognized for 5 minutes.

STATEMENT OF DONALD KETTL

Mr. KETTL. Thank you very much, Mr. Chairman and Mr. Meadows and Ranking Member Connolly. It's a great pleasure to have a chance to be able to appear before you this morning.

And it's also a great privilege to have a chance to continue the conversations with Mr. Grothman. For years in Wisconsin, we worked hard to try to improve government performance, and it's just such a great privilege and opportunity to be able to continue that conversation here today.

The primary point of my testimony is to focus on the best lessons for procurement and acquisitions from the private sector. And what the private sector teaches us is that effective procurement and contracting requires a smart buyer, a buyer that, first, knows what it is that the buyer wants to buy; second, that the buyer knows how to try to choose a good supplier and providing the highest quality of goods and services at the lowest and best prices; and finally, making sure that the supplier provides what it is that, in fact, the buyer wants to go out and purchase.

Those are the important lessons of the private sector, and those are the things that government needs to do and do even better. And what I want to suggest, there are five ways of going about doing that. First is to recognize that contracts for commercial products are an essential part of this and have become, in fact, a more important part of government's strategy; that, at this point, contracting represents two-fifths of all Federal discretionary spending. And commercial items, as a percentage of all contracting, has actually gone up significantly in the last 5 years from 21.3 percent of all Federal contracts to 25.2 percent in the last figures in 2015. So that, in fact, we have an increasing trend of more commercial products being part of government contracting, even though government contract spending as a whole has declined for a variety of reasons. But it's clear that we are, in fact, focusing significant attention on the purchase of commercial products.

The second item, though, is that we need to focus, essentially, on the management of contracts and contractors, because contracts—and we learned this from the private sector—do not manage themselves. We can look over a series of issues in the last few years, whether it's the Office of Personnel Management's challenges in trying to manage the employee background checks, problems in Medicare where about one out of every $10 spent on Medicare is spent on programs that—and on payments that are judged improper, where a company, in the last year, paid a $146 million fine for false claims filed for supplies to—for our troops in Afghanistan. It's clear that contracts don't manage themselves, and good Federal management is essential to ensure that we get our money's worth for the money that we spend.

The third point is that, in fact, strong contract management can reap big success. I've recently completed a study of GAO's high risk list of the programs in the Federal Government most prone to fraud, waste, abuse, and mismanagement. And there are two things that are important coming out of that study. The first is

that half of all the programs in the high risk list have been identified as having problems in contract management. That's the bad news. The good news is that over the last 25 years, 24 areas have been taken off that list, and of the 24 areas, half of them have been taken off because of improvements in contract management, so that effective contract management is essential to try to deal with the underlying problems.

There are several issues and examples throughout the Federal Government where that's, in fact, happened. NASA is a premier example, as is the DOD's effort in improving supply chain management, and I'd be happy to discuss that more in the question period as well.

The fourth point is that all of this depends on an effective cost comparison system; that is, if we want to try to buy from the best and the cheapest supplier, we need to know who that is. And the problem, unfortunately at this point, is that, as GAO has shown in a series of studies, our current cost comparison systems are simply inadequate. We do not have a good methodology for making good, sustained, effective comparisons about who it is who's cheaper.

The problems are many in part trying to assess the relative value of the salaries, assessing fringe benefits, looking at overhead rates, total life-cycle costs, capacity, transparency, flexibility questions. These are all eminently solvable problems, but at this point we're handicapped in making comparisons because we do not have a common and accepted methodology for how to go about doing that.

What we most need if we're going to try to advance our efforts to try to improve increased contracting out for commercially available products is to have a system where we know and can have confidence in the cost comparisons that we're making. And one suggestion that I would make, in fact, is the Federal Advisory Committee that would look carefully into this question so that we know that, in fact, we're getting our money's worth.

The fifth point is that new and enhanced strategies for improving the effectiveness of contract management could vastly improve our ability to be able to get our money's worth. And that means, in particular, focusing on human capital inside government and improved category management to try to improve the government's ability to be able to buy as one and reduce the level of duplication and to improve relationships with those who supply goods and services to government.

So, Mr. Chairman, that concludes my remarks, and I'd be very happy to try to answer any questions that the committee may have. Thanks so much.

[Prepared statement of Mr. Kettl follows:]

Contracting Fairness

Subcommittee on Government Operations
Committee on Oversight and Government Reform
U.S. House of Representatives

June 9, 2016

Statement of

Donald F. Kettl
Professor of Public Policy
University of Maryland

Mr. Chairman and members of Subcommittee: It is a great privilege to appear before you today to testify on how to improve fairness in federal government contracting, especially for goods and services that are available on commercial markets. The government owes its citizens—and taxpayers—the highest possible value for the money they send to Washington, and there is no doubt that effective contracting for commercially available services can save money.

In pursuing this strategy, it is essential that the government keep in mind an important lesson. All large private companies rely heavily on buying goods and services, just as the federal government does. The federal government can benefit from the lessons taught by the best-run private companies. These companies know that good contracting can save them money. They also know that ensuring these savings requires strong and effective contract management, by acting as a ***smart buyer***:

- Specifying clearly what they want to buy
- Making good choices of suppliers who can provide the highest quality of products
- Keeping a watchful eye on the quality of products to make sure they get what they pay for

As the government seeks to increase its purchase of commercially available products, it needs to follow these steps carefully. To do otherwise risks increasing fraud, waste, abuse, and mismanagement.

1. Contracts for Commercial Products Are Becoming a More Important Part of the Federal Government's Strategy

The federal government has a long-standing policy, wherever possible, of purchasing commercially available goods and services. The practice has great potential for saving taxpayer dollars. In fact, the U.S. Government Accountability Office has found that leading private companies have been able to save between 4 and 15 percent in strategic sourcing of the services that they buy.[1] Contracting out represents a large share of the federal government's discretionary spending—nearly 2/5 of the all discretionary spending. Purchase of commercial items accounts for almost 1 of every 10 federal discretionary dollars.

In the last five years, total federal spending for contracts has declined, as a result of two intersecting forces: the tough sequestration targets in the federal budgetary process; and uncertainty about the amount of money available for contracts. The former has made less money available; the latter has made it harder to make longer-term contractual commitments in spending it. From Fiscal Year 2011 to 2015, total government spending on contracts has declined 18.6 percent, to $439 billion in FY2015 (37.6 percent of federal discretionary spending). Federal spending for commercially available products, however, fell much less: a decline of 3.6 percent, to $111 billion (9.5 percent of federal discretionary spending). Over this period, contracts for commercially available products increased as a share of federal contract spending, to 25.2 percent.

Federal Contract Spending on Commercial Items

Fiscal year	Contracts for commercial items	Total contract spending	Commercial items as percentage of all contracting	Total contracting as percentage of discretionary outlays	Commercial items as percentage of discretionary outlays
2011	$114.7	$539.5	21.3%	40.0%	8.5%
2012	$119.0	$519.2	22.9%	40.4%	9.3%
2013	$107.3	$462.9	23.2%	38.5%	8.9%
2014	$110.2	$445.2	24.8%	37.8%	9.3%
2015	$110.5	$439.1	25.2%	37.6%	9.5%

Dollar amounts in billions
Source: Federal Procurement Data System; Congressional Budget Office

[1] U.S. Government Accountability Office, *Strategic Sourcing: Leading Commercial Practices Can Help Federal Agencies Increase Savings When Acquiring Services,* GAO-13-417 (April 2013), at http://www.gao.gov/assets/660/653770.pdf

In brief:

- Contracts represent a substantial share of federal discretionary spending
- Contracts for commercial products represent a big share of federal contracts
- Contract spending, both in total and for commercial products, have been declining in recent years. This is a direct product of caps on federal discretionary spending and uncertainty in the budget process.
- Despite these budget pressures, contracts for commercial products are increasing substantially as a share of total contract spending and discretionary spending.

Contracts for commercial products are a large and important part of the federal government's strategy. More stability in the federal budget process will likely lead to increases in such spending.

2. Inadequate Management of Contracts and Contractors Can Bring Big Risks

We can—should—and must rely on contacts and contractors to support the federal government's work. Indeed, since the days of George Washington, the federal government has relied on contractors. In the 21st century, agile organizations in both the public and private sectors rely on the strategic and carefully managed use of partnerships with contractors to best achieve their mission at the lowest possible costs.

Reliance on contractors, however, is no panacea. Contracting out brings its own collection of potential problems, for private companies as well as government. Nearly 30 auto manufacturers have recalled their vehicles because of problems in airbags they purchased from Takata, one of their suppliers.

Waste, fraud, abuse, and mismanagement are not the province just of government. They are the product of organizations that fail to manage themselves—and their supply chain—well.

Failures to manage contracts well have plagued federal programs as well. Consider the following:

- The Office of Personnel Management has relied on private companies, including U.S. Investigative Services, to conduct employee background checks. Part of the company's payments were calculated by the number of security clearances it approved, and that created strong incentives to rush the investigation process. Subsequent investigations found that some of the company's employees had falsified records, and that the company had engaged in a long-standing process of "flushing"—certifying investigations as complete when, in fact, they were not. The company had investigated

and cleared both Aaron Alexis, the shooter who killed 12 people at the Washington Navy Yard, and Edward Snowden, the former National Security Agency employee who leaked classified documents.

- Fraud and improper payments plague contractors' supply of goods and services to Medicare, to the tune of about $60 billion a year—one of every ten dollars spent on the program.

- Supreme Group B.V., a Dutch company with offices in the United States, paid a $146 million in 2105 for false claims filed by its subsidiaries for supplies—food, water, cargo, and food—for troops stationed in Afghanistan.

Inadequate management of contracts can bring big risks.

3. Strong Contract Management Can Reap Big Success

For 25 years, GAO has identified the 32 areas of the federal government most prone to fraud, waste, abuse, and mismanagement—it's "high-risk list."[2] The list is a wide-ranging collection of the federal government's most-difficult problems.

My analysis of this list produces an important finding: *half of the areas on the high-risk list suffer from problems of ineffective contract management.*

On the other hand, over the high-risk list's 25-year history, 24 areas have been taken off the list. *Stronger contract management was essential for half of these cases.*[3]

Consider several federal programs:

- The IRS revolutionized its information systems, shifting from outdated batch-processing of returns to a modern database, by relying on expert contractors carefully managed by the agency's top information technology officials.

- NASA has developed stronger contract management systems to ensure that more of its missions are launched on time and within budget.

- In improving the sharing and management of terrorism-related information, the Department of Homeland Security has worked to align its mission to improve

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[2] U.S. Government Accountability Office, *High-Risk List* (2015), at http://www.gao.gov/highrisk/overview

[3] Donald F. Kettl, *Managing Risk, Improving Results: Lessons for Improving Government Management from GAO's High-Risk List* (Washington: IBM Center for the Business of

interoperability* of the nation's system, through close partnerships with contractors supplying cutting-edge equipment.

Fraud, waste, and abuse are not government-only problems. The problems flow from the failure to follow the basic rules of buying smart: know what you want to buy, find a supplier who can provide high-quality goods and services, and check what you bought to ensure you got what you paid for. The federal government has demonstrated that good contract management can be effective in resolving some of the toughest problems it faces. Here's an excellent example of where running the government more like the private sector—paying attention to contract management—is precisely the right step to follow.

4. An Effective Cost Comparison System Is Essential to the Contracting Process

Most observers agree on two things. First, the government ought to contract out for goods and services, especially products that are commercially available, when they're cheaper than the government's cost of producing them. Second, there is no consensus on the methodology for making such comparisons.

The federal government ought to use the option that's cheapest. We don't have agreement on a methodology to determine a program's cost. As a result, cost comparisons are often inconsistent and, sometimes, are driven more by ideology than economic assessment.

OMB Circular A-76 creates the basic structure for addressing this problem, but at this point, there is no consistent methodology by which to make effective cost comparisons between public and private provision of government's work. Among the key issues are:

- *Employee costs*. In 2012, GAO produced a study that looked at existing analyses of pay across sectors. In its report, GAO concluded, "The findings of the selected studies comparing federal and private sector pay and total compensation varied because they used different approaches, methods, and data."[4] The Project on Government Oversight conducted its own survey and found that government employees were less expensive on 33 of the 35 occupational classifications it surveyed. Contracting out, therefore, might be more expensive in some cases. But contracting out unquestionably saves

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Government, 2016), at http://www.businessofgovernment.org/sites/default/files/Managing%20Risk%20Improving%20Results.pdf

[4] U.S. Government Accountability Office, *Federal Workers: Results of Studies on Federal Pay Varied Due to Differing Methodologies,* Report GAO-12-564 (June 2012), p. 31, at http://www.gao.gov/assets/600/591817.pdf

money in other cases.[5] Because methodologies of studies have varied so greatly, it is impossible to make good comparisons of whether public or private employees are cheaper.

- *Benefits.* Important to the cost comparison is the value of fringe benefits. Public employee groups often complain that they are disadvantaged in cost comparisons because of the value of benefits that the federal government pays its permanent employees.

- *Overhead rates.* A critical point of cost comparison is the calculation of the overhead rate. Relying on project-based overhead rates, of course, runs the risk of making arbitrary (or skewed) assumptions; relying on a standard rate risks making comparisons that don't fit the actual performance of a mission. This is an area that needs more work.

- *Life-cycle costs.* Cost comparisons sometimes look only at the initial launch and short- to medium costs. Cost comparisons need to include the full cost, over the life cycle of a program.

- *Non-cost considerations.* In addition to the cost comparisons, other factors are important, including:

    - *Capacity.* The government's ongoing capacity to achieve its mission. If the government becomes too heavily reliant on external contractors for long-term missions, its capacity to support those missions could erode.
    - *Transparency.* The more the government relies on third parties to perform its work, the harder it can be to be clear on who is responsible for doing what.
    - *Flexibility.* Reliance on contractors can increase government's flexibility in adapting to new problems, gaining additional expertise, and building needed short-term capacity.

The central argument for increased use of contractors to provide government's goods and services rests on making cost comparisons. There is a strong need for a federal advisory committee to create a more-effective methodology for making these cost comparisons.

For off-the-shelf products, the job is easier. Both the products and their prices are more transparent. In these cases, the key is in maximizing the government's buying power.

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[5] Project on Government Accountability, "Feds vs. Contractors: Federal Employees Often Save Money, But an Advisory Panel is Needed to Create a Cost Comparison Model" (April 15, 2013), at http://www.pogo.org/our-work/letters/2013/20130415-feds-vs-contractors-cost-comparison.html

5. *New and Enhanced Strategies Can Improve the Effectiveness of Contracts*

To work through these important issues, several challenges are especially important.

- *Human capital.* For government to realize the advantages of contracting, it needs to be a smart buyer—and being a smart buyer requires smart employees. However, OMB has identified the need for the acquisitions workers as one of the government's most critical skill gaps.[6] Increasing government's use of contractors demands closing this skill gap--first.

- *Category management.* The Office of Federal Procurement Policy has been working aggressively to increase the government's use of category management, in which the government is breaking down its purchase of goods and services into discrete categories (for example, computers or travel) across the entire enterprise; managing the purchase of these products to get the best price; and developing the relationship with suppliers to enhance the quality of the result. For commercially available products, category management, which focuses on common spending that can largely be met with commercial solutions, represents one of the most important opportunities that the federal government has to increase government efficiency while reducing costs. By buying as one and reducing the level of duplicative actions across thousands of buying offices, category managers can help drive agencies to best-in-class contract vehicles or other solutions that take greater advantage of customary commercial terms and conditions and standard commercial configurations in lieu of more costly customized solutions.

The federal government has always relied on contracts with private suppliers. It will undoubtedly continue to do so. It could benefit from expanding its partnerships with private suppliers.

The key is strengthening its ability to be a smart buyer in the broader marketplace, to get the best deals for taxpayers and the best results for the country.

Thank you very much for the opportunity to appear before you today. I'd be happy to answer questions from the members of the subcommittee.

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[6] U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2017: Analytical Perspectives* (Washington: GPO, 2016), p. 92, at https://www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/ap_8_strengthening.pdf

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name: DONALD F. KETTL

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2012. Include the source and amount of each grant or contract.

NONE

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

NONE. TESTIFYING PERSONALLY.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2012, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

NONE

I certify that the above information is true and correct.
Signature: Donald F. Kettl Date: 6 JULY 2016

Donald F. Kettl

Donald F. Kettl is professor and former dean in the School of Public Policy at the University of Maryland. He is also a nonresident senior fellow at the Volcker Alliance and at the Brookings Institution.

Kettl is the author or editor of a many books and monographs, including *Escaping Jurassic Government: Restoring America's Lost Commitment to Competence* (2016), *System under Stress: The Challenge to 21st Century American Democracy Homeland Security and American Politics* (2014), *The Politics of the Administrative Process* (2015), *The Next Government of the United States: Why Our Institutions Fail Us and How to Fix Them* (2008), and *The Global Public Management Revolution* (2005). He has twice won the Louis Brownlow Book Award of the National Academy of Public Administration for the best book published in public administration. In 2008, Kettl won the American Political Science's John Gaus Award for a lifetime of exemplary scholarship in political science and public administration. He was awarded the Warner W. Stockberger Achievement Award of the International Public Management Association for Human Resources in 2007 for outstanding contributions in the field of public sector personnel management.

He holds a PhD in political science from Yale University. Prior to his appointment at the University of Maryland, he taught at the University of Pennsylvania, Columbia University, the University of Virginia, Vanderbilt University, and the University of Wisconsin-Madison. He is a fellow of Phi Beta Kappa and the National Academy of Public Administration.

Kettl has consulted broadly for government organizations at all levels, in the United States and abroad. He has appeared frequently in national and international media, including National Public Radio, *Good Morning America,* the *ABC World News Tonight,* the *NBC Nightly News,* the *CBS Evening News,* CNN's *"Anderson Cooper 360"* and *"The Situation Room,"* the Fox News Channel, the Huffington Post, Al Jazeera, as well as public television's *News Hour* and the BBC. He is a regular columnist for *Governing* magazine, which is read by state and local government officials around the country. He chaired two gubernatorial blue-ribbon commissions for the Wisconsin state government, one on campaign finance reform and the other on government structure and finance. Kettl is a co-shareholder of the Green Bay Packers, along with his wife, Sue.

Mr. MEADOWS. Thank you, Professor Kettl.

The chair recognizes the gentleman from South Carolina, Mr. Mulvaney, for 5 minutes.

Mr. MULVANEY. I thank the chairman.

I thank everybody for participating. Reminds me of my days on Small Business, which I miss from time to time.

Ms. Styles, let's start with you and we'll just go down the aisle. I want to talk with you a little bit about the history, because I was not aware until recently of the demise of the A–76 competition program. Tell me, why did the administration say they wanted to discontinue or suspend this program?

Ms. STYLES. Well, I mean, it's largely about Federal jobs. It's protecting the Federal jobs. It's the labor unions, the Federal employee labor unions protecting those jobs. It's as simple as that.

Mr. MULVANEY. But the argument was made, right, it was supposed to save money? Correct?

Ms. STYLES. Yes.

Mr. MULVANEY. How did that work out?

Ms. STYLES. Not so well.

Mr. MULVANEY. Tell me about that.

Ms. STYLES. Well, it's very clear from history, and it's very clear from 40 years of history and studying A–76 and studying the competition, there are cost savings. Could there be better ways to measure, as Professor Kettl pointed out? Absolutely. But there's just a lot of—there have been dynamics for 40 years about the politics of this and whether you want the Federal jobs to stay in place or whether you want those jobs to go to the private sector.

And so you see, you know, it's back and forth or it's a pendulum, however you want to describe it. Sometimes we look at it and say, we really need to examine these commercial activities; and other times we say, oh, we've examined them, we know we need to protect the Federal employees. So it's been back and forth, even though it's very, very clear when you subject these jobs to the pressures of competition, whether the private sector wins, the public sector wins, you get cost savings and you get better service.

Mr. MULVANEY. Mr. Palatiello, is the private sector ready to step up and have these competitions again? Are there businesses that are prepared to provide the same services that the government does?

Mr. PALATIELLO. Oh, absolutely. Absolutely. They're providing it in a marketplace today. You have examples where you have one Federal agency, for example, that considers something inherently governmental and another is successfully contracting for that service. So you have firms—for example, I'll use the mapping example that I mentioned in my testimony.

You have the geological survey that has demonstrated very successfully how to use the private sector in this field, but then you have, for example, NOAA that still does a significant amount of its hydrographic surveying and mapping in-house.

I got an email the other day from a company—and this is not unusual. I get these every couple of months—companies that have indefinite delivery, indefinite quantity contracts for surveying and mapping with the Corps of Engineers and then don't get task orders, don't get any work out of the contract. And then they go on

FedBizOpps and that same office with the Corps of Engineers is spending millions of dollars to buy equipment to beef up its in-house capability, but yet they're telling the firm we don't have any requirements, we don't have any money.

Mr. MULVANEY. Is the Federal Government still in the pest extermination business?

Mr. PALATIELLO. It is to a certain degree, and we applaud your efforts in that regard. There is a negotiated settlement between USDA and the pest management industry, but that's an example. This is a little bit of a dated example, but there was a—this is no disrespect to the dais, but there was a pest problem here on the Hill. Did the Congress contract out to a private company? No, they brought in the Department of Agriculture. No competitive bidding.

Mr. MULVANEY. And I still have the mice traps in my office.

Mr. McTigue, thank you. But you mentioned something I never even considered before, which is competition and intragovernment competition. Could you tell us very briefly about—more details about that, what you guys did in New Zealand? I've never heard of such a thing, never even occurred to me.

Mr. MCTIGUE. One of the things that happens inside government is that you often have to build a capability for a pretty small operation. So a relatively small agency has to build legal services, accounting services, payroll services, HR services. It's just smart to say, hey, not everybody has to do that. So-and-so next door has excess capacity there, we will buy it from them. In some cases, they will actually buy that, get together and buy it from the private sector.

Mr. MULVANEY. I'm sorry to interrupt you, but you've just—something just popped into my head, because we've had similar hearings on this exact topic, or something similar, I think, in this room, which is computer security; that certain agencies within the government have—do a tremendous job of protecting their computer systems and others do a really, really lousy job and don't even use some of the same systems.

Would that be—could you do the same type of competition in that service area?

Mr. MCTIGUE. Certainly. But one of the experiences of the New Zealand Government, after having made huge mistakes in technology purchases, was to actually start contracting for capabilities. So what kind of capability do we want on people's desks, and we would buy those services?

So instead of buying computers and servers, you bought that capability, and the provider made certain that you had that capability there all the time and it was continually renewed. It also means that you didn't have to go through dealing with the problem of getting capital for new purchases because you were now buying a service that was outside the capital budget.

Mr. MULVANEY. Thank you. That's very helpful.

Professor Kettl, I don't have any time left, but I have—you said something, sir, that stunned me, in fact, shocked me. You said you had pleasant conversations with Mr. Grothman.

Mr. KETTL. That's actually true, sir.

Mr. MULVANEY. Can you—afterwards, can you teach us how to do that because we're——

I yield back the balance of my time that I don't have.

Mr. MEADOWS. I thank the gentleman.

The chair recognizes the ranking member, Mr. Connolly, for 5 minutes.

Mr. CONNOLLY. I thank the chair.

And it may come as a further shock to my friend from South Carolina, I remember we had one vote—I can't remember when, though. It's a number of years ago—on the floor, and I was the only Democrat at that time who supported A–76. I mean, it was a lonely place. But I have been consistent in my position.

Mr. MULVANEY. Have you figured out the Grothman thing yet?

Mr. CONNOLLY. And I'm working on that one.

Mr. MULVANEY. Okay. All right.

Mr. CONNOLLY. I'm working on that one. We're working through a dictionary and the whole thing.

I will say, sometimes people are consistent and inconsistent. Secretary Gates, when he was Secretary of Defense, of all people, a Bush holdover, announced that there was too much outsourcing and we needed to just put an artificial limit on it. And it reminded me of the scene in Amadeus where, you know, the emperor is saying to Mozart, you know, your music is beautiful but there are just too many notes. Cut out a few, it'd be perfect. And Mozart says, well, which notes did his majesty have in mind?

How does one in a—is this some platonic ideal of what constitutes just the right percentage of outsourcing or just the right percentage of insourcing? And so I've tried to be consistent. I took on Secretary Gates, and we won that battle, actually, in the—in Virginia, about, no, we're not going to have artificial limits and there is no such thing as too much or too little.

And I'm, you know, I'm going to be boringly consistent that it may not always make you happy because probably your prejudice on this side of the table tilts toward the private sector can always do it better. That's actually not always true, just factually not always true, as I discovered in running a local government. On the other hand, there are some things that absolutely the expertise is there, the management and expertise and so forth.

Ms. Styles, I took your point about wanting to expand the outsourcing of services, which really began in bulk under Ronald Reagan and, maybe to the surprise of some, actually expanded under Bill Clinton and sustained under George W. Bush and expanded.

But one of the things I think would be a fair criticism—and my guess is Professor Kettl would agree—during those years of growth and outsourcing in the Bush years, what we did not do was keep up with quality contract management. We actually—the ratio changed lower and the risk of that is bad project management, losses, waste, and sometimes fraud. You agree?

If you look back on in terms of area of self-criticism, would that be a fair criticism from your point of view?

Ms. STYLES. Well, I do agree, but I think there were a number of things going on. So you were in a post-2000 9/11 environment, right. And so the Federal Government spending with the private sector went from $200 billion to $600 billion, and that's right after we'd gotten through Clinton administration cuts to the Federal

workforce and to the Federal contracting workforce. Honestly, it was too much for them to handle all together at that time.

Mr. CONNOLLY. Professor Kettl, do you want to comment on that?

Mr. KETTL. Sure. There are a couple of points that are worth making. The first is that whoever it is who can do the job best and most cheaply ought to do the job, and we have a hard time trying to make those comparisons. But the other thing—and this is a lesson the private sector teaches us—contracts don't manage themselves. And one of our real problems, and if you look at sustained studies from OMB and GAO over the years, is that our acquisitions workforce is not strong enough and is not capable enough to be able to do the jobs that we're asking it to do.

Mr. CONNOLLY. Yeah.

Mr. KETTL. The same things would be true for the private sector as well. And the costs of that are everything from the fact that $1 out of every $10 spent on Medicare through contracts is subject to improper payments and is a major problem. If you look at GAO's high risk list, we have a huge number of programs that are on the list because of inadequate contract management.

So contracting, that makes great sense, but only makes sense if we have the capacity to be able to manage the contracts well.

Mr. CONNOLLY. Yeah. I think that's really key. If we're going to expand on outsourcing, we've got to have the contract management capability, the procurement and management capability. And as contracts get more technical, more technically detailed and complex, that becomes even more of a challenge because, quite frankly—I mean, I worked in the private sector for 20 years with two IT companies. The Federal Government has difficulty just matching the expertise of the private sector on the other side of the contract table, even when both parties mean well and want to make sure it works, let alone—you know, but the Federal—increasingly, the Federal manager on the other side is older and less skilled technically, if we're talking about IT contracts, big systems integration contracts, for example.

And what can go wrong when you don't really have the expertise to manage a multibillion dollar, multiyear complex—even—you need help from the outside in even determining the terms of reference to the contract, because you may know in laymen's terms what you want to accomplish but translating that technically into a contract so that the specified services are matched against your objectives, actually even that requires increasingly private sector expertise to help. And what can go wrong with that? Well, self-dealing, conflicts of interest, and so forth.

Mr. Palatiello, you look like you want to comment on that.

Mr. PALATIELLO. I do, Mr. Connolly, my Congressman. You make an excellent point, but I would place a caveat. If a Federal agency doesn't have the expertise because it's an aging population, it's not current with technology, that it can't write specifications and can't write a contract, you cannot then conclude that that agency has the capability to actually do that technology work in-house. And if you're not smart enough to go out and buy it—it's like the experience I once had.

You know, I walked into the kitchen one day and Sally says to me, the garbage disposal is broken. I have a decision to make. Do

I try to replace it myself or do I call the plumber and have him come in? Well, I tried to fix it myself.

Mr. CONNOLLY. Yeah.

Mr. PALATIELLO. In a couple of days and several——

Mr. CONNOLLY. But in this case, there's no question about that. They are outsourcing, but they're having—I'm getting at the contract management piece, and it starts with how you write the terms of reference for what you think you need. You know——

Mr. PALATIELLO. And we need the workforce to do that.

Mr. CONNOLLY. Yes. Yeah, because——

Mr. PALATIELLO. I stated that in my testimony as well.

Mr. CONNOLLY. Absolutely.

Mr. PALATIELLO. And that's an inherently governmental function, that is right. You don't want contractors hiring contractors on behalf of the government. That is a very important function, and it's a question of priorities. We need to have a good, strong acquisition—a stronger acquisition workforce in the government, absolutely essential.

Mr. CONNOLLY. Absolutely. And I just stand on this, because I can tell—you know this, but, I mean, the private sector doesn't want to be in that position. The private sector doesn't want to be in the position of substituting itself for contract management because it creates—well, it can sometimes eliminate them from competing. Because if you're going to do that, you can't compete for the actual work. And the government has kind of sometimes strict and funny conflict-of-interest rules that preclude the ability of companies, even pro bono, to provide expertise that we sometimes need.

My time is up, Mr. Chairman. Thank you for indulging me.

Mr. MEADOWS. I thank the gentleman.

The chair recognizes the gentleman from Wisconsin, Mr. Grothman, for 5 minutes.

Mr. GROTHMAN. Thanks much.

Professor, first of all, for Professor Kettl, how did you wind up over here?

Mr. KETTL. I'm here—actually, I've—in what may have been a mistake in judgment, I left Wisconsin, and I'm now at the University of Maryland, where I actually served as dean for 5 years, and I'm now a professor of public policy.

Mr. GROTHMAN. Okay. Very good. Now I got that.

Mr. KETTL. But I still want to, for the record, assert the fact that I remain a shareholder of the Green Bay Packers.

Mr. GROTHMAN. Very good. Very good.

Okay. I have questions for Ms. Styles or Mr. McTigue. The competitive sourcing critics say that any cost savings is eaten up by the cost of administering the competition. Is there any truth to that charge? Do you want to respond to that charge?

Ms. STYLES. So, of course, there's a cost to administering it. There's an infrastructure of people that actually have to run the competitions and then have to manage the contracts. But the cost savings are so significant, whether it stays in-house or whether it goes out to the private sector, it is not wholly eaten up. There are still cost savings, and frankly, there are still tremendous benefits of simply the pressure of competition giving us better performance and better service.

Mr. GROTHMAN. Is there any way we can measure, you know, the savings we had last time, the last time we used A–76 competition?

Ms. STYLES. Well, what I was fascinated by, as I left the government at the end of 2003, and competitive sourcing continued to build—you know, a lot of the infrastructure for the civilian agencies, built on what had been done by the Clinton administration at DOD and pushing out the civilian agencies—I've been really stunned by the lack of data and information from those competitions that used to be out there. There was a law that required the information to be out there about the cost savings. It has almost entirely been taken down from the White House Web sites and the agency Web sites. The data should be there. It was reported to Congress. But it's there, there's just very, very little analysis of the most recent iteration.

Mr. GROTHMAN. So if I want to be a little bit jaded, I might wonder if there is a lot of cost savings, but for political reasons you want to hide the savings. Do you think that's what's going on here?

Ms. STYLES. I am really worried about that, because I was stunned. Professor Kettl actually mentioned the Federal Advisory Committee panel. There was one led by David Walker in 2002. This is the report that they came out with. It cannot be found on the Internet. It literally—like how is that possible that a year's worth of efforts with a panel of ten experts is not available on the Internet? And this talks about the savings.

Mr. GROTHMAN. Hmm. Can you extrapolate from that report on the savings that you think we might have today if——

Ms. STYLES. Absolutely. I went back—and this was only, you know, a few days' effort, because Mr. Palatiello and I have lots of old files that we don't rely on the Internet necessarily to keep. And I went back through GAO reports, the Center for Naval Analyses, and I just scratched the surface of the ones that are available that demonstrate the cost savings. They're really hard to find now, though.

Mr. GROTHMAN. Okay.

Mr. PALATIELLO. Mr. Grothman?

Mr. GROTHMAN. Yes.

Mr. PALATIELLO. If I may, after Ms. Styles left the Office of Federal Procurement Policy, the program continued and OMB—OFPP was issuing annual reports. The last one was in May of 2008, reported on the competitive sourcing results for fiscal year 2007, and it documented the 2003 to 2007 savings at $7.2 billion, with the majority of the savings to be realized over the next 5 years, and the annualized expected savings of over $1 billion. I have the full report. It is rather lengthy. Whether you want to enter it into the record or not——

Ms. STYLES. And it's not on the Internet. I looked for it. I could not—you may have been able to more easily.

Mr. PALATIELLO. I think it could be found in some back archive someplace. It is not on the White House Web site any longer. But that is the most recent report that actually documents the savings that were achieved.

Mr. GROTHMAN. Professor Kettl, you must do research all the time. Do you find this is sometimes something you deal with in

government; if the results are not what they want, it kind of gets hidden and you can't find the results?

Mr. KETTL. In terms of trying to track down, especially old documents, things from the late 1990s and early 2000s are sometimes refugees from the Internet. And these are—this is information we need to try to recapture. But the broader point is that it is undoubtedly the case that we can save money by effective contracting. It's also undoubtedly the case that we can lose substantial money from ineffective contracting.

We can create fraud, waste, and abuse by contracting managed poorly, and we can improve government performance by managing it well. And what we really need to do is to make sure we do more of the good stuff and less of the bad stuff. And our problem is creating the capacity for being able to do that and making the cost comparisons to make sure that we're making the smart decisions. And that's where the really difficult problems are.

Mr. GROTHMAN. You just think it's coincidence that that stuff is not on the Internet, of all the things that are on the Internet?

Mr. KETTL. I think it probably—I can point to lots of stuff from back in the late 1990s and early 2000s that I have been looking for and just can't find anymore either. So it may very well be, especially if it's not the product of a particular agency that didn't have archival policies at that point.

Mr. GROTHMAN. We will give you one more question, and this is for Ms. Styles again. Are there any limitations we should place on the A–76 competitions? Either you or any one of the folks.

Ms. STYLES. Sure. I mean, there are inherently governmental functions, and that's a public policy decision to make. I mean, there were times after 2011 that we thought screening at airports was an inherently governmental function. And so there are some things that should be off limits, but saying that nothing should happen, that there should be zero examination of commercial activities, is not the right response.

Mr. GROTHMAN. It seems the answer should be obvious. Thanks much and I'll——

Mr. MEADOWS. I thank the gentleman.

Ms. Styles, if you will get the report to this committee, we will make sure that it's on the Internet in short order, and I can assure you that it will not disappear.

Ms. STYLES. Thank you.

Mr. MEADOWS. And, Mr. Palatiello, if you've got something that you think would be prudent, and I think Professor Kettl makes a good point, is we need to look at the balance. Good data always makes for at least informed decisions. And so, in doing that, it doesn't always make for good decisions, but it makes for informed decisions. And so, as we do that, we will do that.

The chair recognizes the gentleman from Tennessee, Mr. Duncan, for 5 minutes.

Mr. DUNCAN. Well, thank you, Mr. Chairman, and I want to thank all of the witnesses for what I think has been very interesting and informative testimony.

I tell people in my district all the time that we all don't hate each other up here, though some people out in the country seem to think that's the case and that everything is so partisan and divi-

sive. I think I get along with almost all the Democrats in the Congress, but at the same time, I will say that, in this committee, we have had many fairly contentious hearings.

This has been about the most pleasant hearing I think we've ever had in this committee, because I think I agree with about everything that everybody said here today.

And Mr. Connolly talked about outsourcing the oil change functions and so forth. And I can tell you, I said in my statement, I said: This bill is not about contracting out to the private sector for the sake of just contracting things out; this bill is about getting the best service and at the lowest cost for the taxpayers.

And Professor Kettl talked about how we need to manage these contracts better, and I agree with that, because I can tell you I am horrified when I read about some Federal contractor who is ripping the taxpayers off. That's not what this is about at all.

Mr. Connolly talked about all the caucuses that he chairs, and he is a very hardworking and effective Member. I will tell you that, in this Congress—of course, in the Congress, to have an official caucus, you have to have a Republican co-chair and a Democratic co-chair. I'm the Republican chair of the Clean Water Caucus, because that is a special interest of mine.

But I think it was about 12 years ago, the British Embassy called up and said they had run a genealogy and found out that I had more Scottish heritage than just about anybody in the Congress, and they asked me would I form a Friends of Scotland Caucus. And I was a little surprised at that, but I did that, and I still co-chair that caucus, and I really enjoy that. And I get teased all the time about being too tight, and maybe it's because of that Scottish heritage. But I remember I was told that they had two thick notebooks in one department that had biographical sketches of all the Members of Congress, and at the bottom, it had questions commonly asked at hearings. And they said, on most Members, it didn't have many questions listed, but under mine, it said: How much does it cost?

And I thought, well, they've gotten me pretty accurately, but I think that we haven't had enough Members who have asked that question as much as we should have.

And Mr. Connolly is correct also in saying that I guess most of us on this side do generally favor the private sector.

Professor Kettl, what would you say to this: As a general rule, do you think the private sector does things more economically and efficiently than the public sector, or would you disagree with that?

Mr. KETTL. I think it's a question that needs to be examined. Sometimes the answer is yes; sometimes the answer is no. Sometimes what government seeks to buy is not the kind of stuff that the private sector supplies. Sometimes when it comes to a lot of commercial activities, it does.

And I think, as Mr. Connolly pointed out earlier, what's essential is to try to figure out what we want to buy, who can supply it best, and how the government can make sure it gets its money's worth. And that is the set of core questions that we have to examine, and there isn't I think a black or a white question on this. And we've sometimes gotten ourselves into the biggest problems by assuming we know the answers to the questions before we start looking at

the evidence. I think we need just a much more careful examination of cost comparisons to be able to do this, and that I think is the key to unlocking the A–76 question.

Mr. DUNCAN. Well, I think that's exactly right, what you've just said. And I also have read about the 10 percent of improper payments in the Medicare program, and that's something that we all want to fight and do as much as we can about.

I guess another thing, I always usually root for the underdog in sports, and I usually almost always root for the small business against the big business. So one reason I've worked with Mr. Palatiello for so many years is that, you know, he's testified here today that 71 percent of the businesses that would benefit from this primarily are small businesses.

And do any of you question or doubt this when he said that the potential savings here are probably $35 billion or more? Would any of you question that? In other words, do all of you agree that there can be substantial savings——

Ms. STYLES. I certainly agree, yes.

Mr. DUNCAN. —if we expand this?

Mr. McTigue?

Mr. MCTIGUE. I just want to make two comments there, Mr. Duncan, that I think are important. The first is, one of my jobs in government was controlling government spending. You can save all of the money if you stop doing everything. So there's a tradeoff. You're going to spend some money, but what you really need to measure is what you get in return. So sometimes the lowest price is not necessarily the best deal. I think that's very important.

The second thing is, unrelated to this, please don't think that A–76 is a miraculous, perfect document. I would start off with a big red pencil and get rid of three-quarters of it. It tries to micromanage the process too much. And if you were just judging the end result, you would get a much better result than you would by using all of that micromanagement, because a lot of the accountability is for complying with the process rather than getting the best result.

Mr. DUNCAN. Right. Mr. Palatiello, this isn't all just about savings, saving money, though, is it? Aren't there other potential benefits?

Mr. PALATIELLO. Well, yes, and I spelled them out in my testimony, in terms of bringing in innovation, being able to manage the workforce for peak loads, things of that nature.

But two other points. One is I think all the Kumbaya has just gone out, because Mr. McTigue would take a red pen to A–76, and he's sitting here with the author of the last version of A–76. So I think Angela may be a little offended by that.

Let me point out something that we really haven't discussed in detail this morning and the reason why I stand behind my $35 billion figure. The way A–76 works is an agency says: Okay. We have a widget-making function that we have in our agency, and we are using government employees, and we have 100 Federal employees involved in making widgets, and we are going to compete that against the private sector.

Well, the first thing that occurs is that 100-person widget-making function goes through what is called an MEO, a most efficient organization reengineering. And they may determine that they can

make widgets with 75 people. Well, it's that 75-person function that then gets competed against the private sector, and the better provider wins.

So, in terms of cost saving, the taxpayer saves regardless of whether the activity gets contracted out or stays in-house, because then that 75-person MEO gets implemented and the savings are achieved.

I would point out in the study that—or the report from OMB that I cited earlier, in fiscal year 2007, this was not something that was applauded by the private sector. Seventy-three percent of the A–76s that were conducted in fiscal year 2007 stayed in-house, but there were still savings.

So your bill, for example, Mr. Duncan, doesn't mandate contracting out; it mandates some type of review. Do something with that commercial activity so a saving and an efficiency will be achieved, regardless of whether the work gets contracted or not.

So, to Mr. Connolly's point, no, our position is not that the private sector is always more efficient than the government. We think things always ought to be studied and competed to make the determination as to who should be the better provider.

Mr. DUNCAN. Well, I've gone way over on my time, and I apologize, but let me say this. We were able to pass this earlier bill out of this committee, and it's in law, and I am very pleased about that. But what we're trying to do is go a little bit further, expand on that. And I think that it would be a good thing if we could do that, and that's what this is about. Anyway, I will stop.

I will say this, Mr. McTigue. I came to New Zealand many years ago. It's a beautiful country, and they actually had me shear a sheep on a sheep farm there. And my dad told me many years ago, he said, everything looks easy from a distance. And I can tell you there's a lot of truth in that, because that is a very difficult thing. The professionals make it look pretty easy, but it's not.

Mr. MCTIGUE. Every Scotsperson should be able to shear a sheep.

Mr. DUNCAN. Thank you.

Mr. MEADOWS. I thank the gentleman for his questions and his interest in this topic.

The chair recognizes himself for a series of questions, and so I just want to try to bring some of this into focus in two ways. One is I want to thank all of you for being here today and, actually, for the genteel way that we have had differing opinions bantered back and forth. I think I would agree with Mr. Duncan that it's refreshing.

I would be remiss, however, if I would suggest that we're all on the same sheet of music at this particular point, because this is the start—and I would like to reemphasize—the start of really looking at procurement overall and how we do it and how it should be done, what are best practices.

Mr. Connolly and I have really agreed to start to lay the foundation for real reform. It will not happen this year. And so that foundation will start to be laid, hopefully, again, in the spring of the next term, provided that both of our constituencies believe that we should return, and then, from there, start to make real progress on how we look at procurement overall, whether it is the public/pri-

vate side of things, whether it is procurement overall, whether it is best practices. And this is much larger than just this particular contracting issue.

With that being said, it is incumbent on all of you, all four of you, to get us real details on what you see are the problems associated with this. Mr. Connolly actually has two very tough constituencies. He has Federal contractors and Federal workforce, of which those have at times competing interests with regard to this particular issue that he has articulated. He has also been one who has been very transparent in saying he wants to make sure that we do the best thing at the right time at no expense to the American taxpayer, and I'm taking him at his word. We've been able to work in a real bipartisan way there.

So, with that being said, here's what I would like each one of you to comment on. As we start to look at the procurement process and if we are going to go from less insourcing to more outsourcing, one of the troubling things—and I see some of our Federal contractors here—that I get, it gets to be we have an outside firm who is going to do some Federal work, but we put so many parameters on it that we don't actually allow the outside firms to come forward with a proposal that will actually be implemented in an effective way.

So then the finger-pointing starts. I used to have general contractors that worked for me. So you had a general contractor say: Well, it wasn't my fault. It was the subcontractor over here, or it was this person.

What I need from each one of you for you to comment on is where you get that conflict, where you have a Federal agency that puts out an RFP that is maybe too ambiguous, and so everybody is bidding on this, and then all of a sudden, we try to work it out later on in the process.

And, Mr. McTigue, have you ever seen that happen in the public arena?

Mr. MCTIGUE. Absolutely. I also had the task of stopping it from happening. And one of the things is what I mentioned in my testimony, allowing, readily allowing departures from the signed contract, because around that, you get changes to terms and conditions and changes to payments, and then it's not fair to all of those who failed in the bid.

The second thing I would say about that is that there's too much focus on how many jobs are being contracted. I think that it's the task that you are contracting that is more important and whether or not you can get better outcomes from putting that out to competition.

And part of it is not just about price; it's about, how can we do it better? That might be better technology. It might just be better empathy with the subject groups that you're going to deal with. Also, sometimes, it means that the best bid is one you have to turn down. I got a bid once, we were putting—contracting out debt collection. And that was very effective. We were getting a lot of debts that previously were hard to collect. One of the bidders was actually the Road Knights motorcycle gang, and they theoretically had a very good record of collecting money, but we had to say: No, you are not a satisfactory bidder.

So those things have to be taken into account in the process.

Mr. MEADOWS. Point well taken.

Ms. Styles, in that Mr. McTigue would like to redline most of your proprietary work, how would you take some of that and streamline it so that we can be more efficient and effective as it relates to the contracting and procurement process?

Ms. STYLES. Well, what I really appreciate about this hearing is, I will tell you, in my 3 years at OMB—and I must have testified like more than 20 times on this issue while I was in the government—is that rarely do people understand that public-private competition wasn't going to be effective unless our procurement system was really effective.

And I think what you're finding today is that, as the dollars increase going out the door to Federal contractors—and it wasn't just public-private competition; it was just because we were spending more to fight terrorism, really—is that the oversight increases.

So what you see today is you've got the Department of Justice, DCAA. You've got the IGs. You've got AUSAs. You've got the press that all look at contractors, and what has happened is there has been this extraordinary chill in the discussions between them.

So when you describe the situation where, you know, the government comes out because nobody will talk to them about what their requirement is, they don't really have enough information from the private sector to really put together a good RFP. And then when things start going bad, they're even scared to talk to the government about it, just because, are we going to be investigated? Is my contracting officer going to be investigated? Is my company going to be investigated? So it's created a real chill in the procurement system in terms of providing the best service, I think, for the taxpayer.

I will say, though, in the A–76 process and in rewriting it, like anything else, it's a compromise. We worked extremely closely, believe it or not, with the AFGE on rewriting that. You know, the door was very open. They commented on many versions of it. I'm not going to say that it was always friendly, but the door was always open, and we worked really hard on that.

I think, after I left, it became just more, you know, difficult between the administration and the AFGE. And it's really critically important, whether you rewrite A–76 or not, that you really have both parties at the table to compromise. And it's going to be a compromise. And sometimes that means that compromise on how you do the process is pretty complicated.

But I will say my mantra in running my law firm is that you should never let the perfect be the enemy of the good enough. And here you see $1.2 million commercial activities that aren't being competed. Do something. You know, actually, take a look at some of these things as opposed to waiting for the perfect process or the perfect cost comparison. That will never exist.

Mr. MEADOWS. Professor Kettl, obviously, as you've looked at this, you can see a number of the cost issues. Have you seen there being a very difficult time to determine that real cost comparison?

So you have public sector, private sector. I was in the private sector all my life, and I put everything in there, because, I mean, whether it was the gas to get vehicles there, I had to figure it, because if I made a mistake, it meant that I had to declare bank-

ruptcy. And so it was accounting for all those costs. And at times, in the public sector, we don't necessarily do that.

So would you suggest that the current cost analysis at times is ambiguous or—and I don't want to put words in your mouth, but you've looked at that and testified to that.

Mr. KETTL. Sure. You can look at whether it's ambiguous, whether it's uncertain. At the very least, it's contentious. The basic problem is we just don't have an agreed-upon methodology for making the cost comparisons. If the basic point is, whoever it is who can do the job best and cheapest ought to get the work, we need to be able to figure out how to do that and how to have some consensus on agreeing on what that looks like. And we have no consensus on how to do that.

My suggestion is to circle back, perhaps, to this idea of creating an advisory committee to establish a methodology that creates a level playing field. This is a set of rules by which everybody will agree to play, and it's something that, in the coming year, may be something—can be the foundation for both trying to reinvigorate A–76 and being able to establish the goal of giving the work to whoever it is who can do it best and cheapest.

Mr. MEADOWS. All right.

Mr. PALATIELLO. Mr. Chairman, there are three things that I would add. First of all, the FAIR Act was a compromise. As Mr. Duncan indicated, he had an earlier version of the Freedom from Government Competition Act. There was a negotiation between the private sector—I was chairing the Procurement and Privatization Council of the U.S. Chamber at the time, so I was very much involved in those discussions—AFGE and the Clinton administration, and what we all could agree to was the FAIR Act.

I would agree with Mr. Duncan that the shortcoming and one thing we had to give in that was the FAIR Act said: Do the inventory and then review everything on the inventory. We could not reach agreement as to what constituted that review. The term was not defined. And his current bill tries to establish what that review process is.

I would agree that the—you know, when I cited before, when in the last year where there's a report from the Bush administration, that 73 percent of the competition went to the government, the private sector was saying: Well, we don't have a good methodology for calculating the in-house government cost; there's no way they could be winning that percentage. So I would agree that revisiting that issue is probably worthwhile.

Three things that I think are absolutely essential: One, as I think many of us have said, is training and rebuilding that acquisition workforce.

The second is communication, and Ms. Styles mentioned that. It is amazing today, when a government agency puts out an RFP, the communication shuts down. "Oh, I can't talk to you about this because we have to preserve procurement integrity. If I tell you something, I'm afraid I won't tell one of your competitors." So the communication just gets shut down, and that's not good for the process. So I think that is another thing we have to review.

And the third is, surprisingly, the communication within the government. Often, whether this is a regular procurement or an A–76,

the program manager often doesn't see the RFP until it's out in the—I am dating myself, Commerce Business Daily—FedBizOpps. So there's this lack of communication between the contracting officers and the program people that actually have to use the service or product once it's purchased. So I think enhancing that communication would really improve the process all the way around, communication within the government and communication between government and the firms that are seeking to compete for the contract.

Mr. MEADOWS. All right. Well, thank you all.

I'm going to recognize the ranking member, Mr. Connolly, for his closing remarks.

Mr. CONNOLLY. Thank you, Mr. Chairman.

And thank you to the panel.

And good luck with that apples-to-apples thing. I mean, we have that problem even within the private sector, because there are people who come in and low bid and win contracts. And I can remember arguing about whether they had fully loaded costs in their proposal and so forth and accurate overhead and administrative costs and so forth.

So, at the end of the day, this happens all the time, but, I mean, for various and sundry reasons, sometimes because of set-asides or whatever, but somebody who wins the contract obviously patently does not have the capacity to undertake the contract and then has to subcontract with the people who do have the expertise. And it's a bit of a shell game, so that we meet check boxes or meet certain statistical goals. And I am not sure the public is well-served by that, or the private sector, frankly, is well-served by that, but that is a different issue.

I just want to point out in context and to end, Mr. Chairman—because one would not want the impression left from this hearing that somehow we're starving the private sector of Federal Government business—we spend over a half a trillion dollars a year on outside products and services. And that's a pretty big increase from where we started, say, at the beginning of the Bush administration, 2000. We grew 87 percent in that time period. It's growing at a rate of about 5 percent a year.

Contracting also grew as a percentage of total Federal spending during that time. So it's not like, "Well, yeah, but if you look at the total pie, it shrunk." No. Actually, contracting grew from 11 percent to 15 percent.

And then a final point that the GAO presented to us: The Federal Government spends more on contract employees—your point when you were talking about my district—than it does on public employees. GAO pointed out that non-DOD agencies spent $126 billion on service contractors, and DOD spent $184 billion, for a total of $310 billion. The total cost of Federal civilian employees, excluding Postal Service—they are not exactly Federal employees—by way of contrast, was $240 billion.

So, you know, again, for me, it's not theology, but I did want to put it in context. Actually, contracting has grown. Non-Federal employment in this context has also grown. And the Federal workforce, as a percentage or in a ratio to U.S. population, has actually shrunk.

Thank you, Mr. Chairman.

Mr. MEADOWS. I thank the gentleman.

I'd like to thank all of our witnesses for being here, and so let me just close by saying this. It is not my policy nor my desire to hold hearings just to hold hearings. And I think you will find the ranking member and I have been committed to not only hold hearings but to follow up on those things. So, whether it's input from stakeholders, whether it's input from you, as witnesses and experts in this field, if you will get it to this committee. This fits into really a painting that we've started to paint on a canvas that, when we came in, really was blank. We said: We're going to take a blank canvas, make no assumptions, and then start to put the different images on a canvas. And by that, whether it is this, whether it is job sharing, whether it is FITARA, whether it is the DATA Act, a number of these areas that start to bring in different parameters on what we do well and what we don't do well, we are in that information-gathering process, but it is one that we will be tenacious and diligent on until, ultimately, we come up with a product that incorporates something like Mr. Duncan has in his and a number of other legislative remedies and then working with whatever administration is there to hopefully look at the procurement process that advances the efficiency and accountability that we all want.

So I want to thank you, look forward to your continued input.

And, with that, if there is no further business, without objection, the subcommittee stands adjourned.

[Whereupon, at 10:29 a.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

OFFICE OF FEDERAL
PROCUREMENT POLICY

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 28, 2015

The Honorable John J. Duncan, Jr.
U. S. House of Representatives
Washington, DC 20515-4202

Dear Congressman Duncan:

Thank you for your letter of October 8, 2014, to the Director of the Office of Management and Budget (OMB), regarding the Federal Activities Inventory Reform (FAIR) Act of 1998. Your letter requests information from agency inventories regarding the number of Federal employees performing non-inherently governmental work. I am responding on the Director's behalf.

As your letter states, the FAIR Act requires executive agencies to annually develop an inventory of activities performed by Federal employees that are not inherently governmental functions. The requirement applies to all agencies listed in the Chief Financial Officers (CFO) Act as well as non-CFO Act agencies with 100 or more full-time employees (Section 840 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and the Independent Agencies Appropriations Act of 2006 provided an exemption for small executive agencies with fewer than 100 full-time employees). In fiscal year 2013, all covered agencies reported inventory information to OMB which identified 1.12 million full-time-equivalent employees performing functions that are not inherently governmental functions. The availability of the inventories was announced in the *Federal Register* on December 16, 2014. The link to the announcement is https://www.federalregister.gov/articles/2014/12/16/2014-29387/public-availability-of-fiscal-year-2012-and-2013-agency-inventories-under-the-federal-activities.

Thank you for your inquiry. Should your staff have any questions, please contact the Office of Legislative Affairs at (202) 395-4790.

Sincerely,

Anne E. Rung
Administrator

Congressman Pete Sessions (TX-32)
Introduction of Angela B. Styles
House Oversight and Government Reform Committee
Hearing on Contracting Fairness
July 8, 2016

Thank you Chairman Meadows. As a former member of this Committee, I'm pleased to be afforded the opportunity to introduce a witness on this distinguished panel that I formerly engaged with on this very Committee in the 105th Congress. I have the utmost respect for the work of the Oversight and Government Reform Committee.

This Committee plays a critical role in ensuring we are faithful stewards of the responsibilities given to us by the Constitution and the American people.

Angela B. Styles is chair of Crowell & Moring and a partner in the Government Contracts Group. Prior to joining the firm, Angela served in the federal government as Administrator for Federal Procurement Policy within the Office of Management and Budget at the White House, a position that required confirmation by the United States Senate.

Angela also served in the General Services Administration Public Buildings Service in a Senior

Executive Service appointment where she was responsible for the policies and regulations governing all purchases by the federal government.

Angela has led numerous presidential initiatives on federal contracting and worked on a wide variety of legal, legislative and policy issues associated with contractor ethics, federal contracts compliance, homeland security, and labor management relations, just to name a few.

Angela is no stranger to Capitol Hill. In addition to being a former congressional staff member, for a fellow Texan I might add, Angela has testified about complex government contracting issues at more than 30 hearings before the United States Senate and the House of Representatives.

She also worked for the State of Texas as a program manager in the Office of State-Federal Relations in Washington, D.C.

Angela received her Bachelor of Arts degree from the University of Virginia and her law degree from the University of Texas.

She has received countless honors and sits on numerous boards including the Chief Judge's Advisory Council for the Court of Federal Claims, the University of Chicago Argonne National Labratories, and, near and dear to my heart, is a Board member for the Texas Historical Foundation.

Angela, I'm pleased to welcome you and appreciate you lending your invaluable expertise and perspective to this important hearing.

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