

**PLEASE SUPPORT CONTRACTING OUT REFORM AMENDMENT
TO BE OFFERED AT THE FULL COMMITTEE MARK UP.**

May 4, 2007

The Honorable Ike Skelton
Chair, House Armed Services Committee
2120 Rayburn House Office Building
Washington, DC 20515

The Honorable Carl Levin
Chair, Senate Armed Services Committee
228 Russell Senate Office Building
Washington, DC 20510

Dear Chairmen:

The undersigned labor unions appreciate your support for federal employees and your leadership in the fight against the Bush Administration's policy of wholesale privatization. We ask for your leadership on eight important privatization-related items of concern to federal employees, as you and your colleagues mark up the House and Senate versions of the FY08 Defense Authorization Bill. We urge you to support an amendment at the full committee mark up that will address the first six items of this list.

1. We ask that you include language to prevent the Office of Management and Budget (OMB) from telling the Department of Defense (DoD) how many civilian employees to review for privatization, which civilian employees to review for privatization, and when to do so, so that DoD career managers can instead make such decisions. OMB is telling all agencies, including DoD, how many jobs to review for privatization and which jobs to review for privatization—and when to do so—even though Congress prohibited the use of numerical privatization quotas in February 2003 and OMB subsequently repudiated the use of such quotas in July 2003. The result is that civilian employee jobs are being reviewed for privatization for the worst of reasons—because it promotes the White House's political agenda—rather than because DoD career managers think such privatization reviews would reduce costs to taxpayers or meet the needs of warfighters.
2. We also ask that federal employees finally be allowed to have the same appeal rights long enjoyed by contractors to have agencies' botched and biased contracting out decisions reviewed by independent third-parties. Across the federal government, tens of thousands of federal employees are being reviewed for privatization in hundreds and hundreds of OMB Circular A-76 privatization reviews. However, federal employees in none of those privatization reviews will have the same rights that are already enjoyed by contractors to appeal privatization decisions to independent third parties at the Government Accountability Office (GAO) and the Court of Federal Claims (CFC). In other words, the contractors trying to take the jobs of federal employees can appeal contracting officers' adverse decisions to GAO and CFC. But no matter how botched or biased those contracting out decisions might be, federal employees have no recourse. This fundamental inequity undermines the integrity of the entire privatization process. No matter how conscientious a contracting officer is it can't help but influence her judgment that only contractors can hold her accountable.
3. We ask you to neutralize for DoD the impact of the costs of health care and retirement benefits on the contracting out cost comparison process. Defense contractors can sometimes obtain an unfair advantage in the contracting out cost comparison process by providing their employees with inadequate health care and retirement benefits, or even none at all. The cost of health care and retirement benefits should be excluded from the contracting out cost comparison process so that contractors cannot gain an unfair advantage from short-changing their employees. Instead of rewarding contractors for providing inferior health care and retirement benefits, the contracting out cost comparison process should focus on delivering services more efficiently. In fact, health care costs are already excluded from DoD's contracting out cost comparison process, pursuant to a provision first included in the Defense Appropriations in FY05. At the same time, this approach would not require defense contractors to provide health care and retirement benefits for their employees, or to improve those benefits; nor would it penalize contractors for using alternatives, whether health savings accounts, 401(k) plans, individual savings accounts, or profit sharing plans.

4. We ask that you nullify a one-sided and wasteful provision in the OMB Circular A-76 privatization process that requires work performed by civilian employees to be automatically recompeted at the end of performance periods (or five years when there are no performance periods)—except in very narrow circumstances. The A-76 circular imposes no such requirement on contractors; instead, the Federal Acquisition Regulation (FAR) applies to contractors in such situations, but the FAR includes no automatic recompetition requirement. While the FAR's official policy is one of "Full and Open Competition", the FAR also includes numerous escape clauses that allow for "Other Than Full and Open Competition". Automatic recompetitions are starting to occur throughout DoD for functions that were first competed in the latter part of the Clinton Administration and the early years of the Bush Administration. DoD should not be forced to automatically recompete in-house functions because of a one-sided provision in the OMB Circular A-76. Contracting officers have discretion with respect to whether to recompete contractors. They should be able to use their discretion with respect to recompeting civilian employees.
5. We ask that you reaffirm the requirement included in Section 343 of the FY06 Defense Authorization Bill (P.L. 109-163) that DoD develop and implement guidance to ensure that civilian employees have opportunities to perform outsourced work, without using the OMB Circular A-76 process. Such guidance, due January 6, 2007, should focus in particular on activities which are associated with the performance of inherently governmental functions; were not awarded on a competitive basis; or have been determined by a contracting officer to be poorly performed due to excessive costs or inferior quality.
6. We ask that you to include as permanent law a requirement that there be a public-private competition before work performed by federal employees in agencies other than DoD can be converted to contractor performance, which would be similar to the one that was established for DoD pursuant to Section 341 of the FY06 Defense Authorization Bill (P.L. 109-163). The essence of Section 341—a requirement that there be a competition before work performed by federal employees can be converted to contractor performance and that such a competition must include both a most efficient organization process and a minimum cost differential—has been the law for non-DoD agencies, pursuant to Section 842 of the FY06 Transportation-Treasury-HUD Appropriations Bill (P.L. 109-115), which was then retained in Sections 939 and 840 of the House and Senate versions, respectively, of the FY07 Transportation-Treasury-HUD Appropriations Bill.
7. We urge you not to include Pentagon proposals for contracting out fire fighters and security guards. If anything, we urge you to accelerate the insourcing program for security guards established in Section 333 the FY07 Defense Authorization Bill (P.L. 109-364), especially given recent reports about the high costs and low quality of contractor rent-a-cops.
8. We urge you to include a Pentagon proposal that would mitigate against a headquarters headcount. S. 567's Section 902 would reduce costs for DoD by allowing the hiring of civilian employees to perform contracted functions and eliminate contracts associated with inherently governmental functions.

Thank you for your consideration of our views as you and your colleagues mark up the House and Senate versions of the FY08 Defense Authorization Bill.

Sincerely,

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO
AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO
AMERICAN FEDERATION OF TEACHERS, AFL-CIO
DEPARTMENT FOR PROFESSIONAL EMPLOYEES, AFL-CIO
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL-CIO
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO
INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, AFL-CIO
NATIONAL FEDERATION OF FEDERAL EMPLOYEES, AFL-CIO
PROFESSIONAL AIRWAYS SYSTEMS SPECIALISTS, AFL-CIO
TRANSPORT WORKERS UNION, AFL-CIO
UNITED AUTO WORKERS, AFL-CIO