

April 9, 2007

The Honorable Alan Mollohan
Chairman, House Appropriations
Subcommittee on Commerce, Justice
Science and Related Agencies
H-310 Capitol
Washington, DC 20515

The Honorable Barbara Mikulski
Chairwoman Senate Appropriations
Subcommittee on Commerce, Justice,
Science and Related Agencies
144 Dirksen Senate Office Building
Washington, DC 20510

Re: Providing Federal Employees with the Same Rights Long Enjoyed by Contractors to Appeal Agencies' Contracting Out-Related Decisions to GAO and the Court of Federal Claims

Dear Chairman and Chairwoman:

The undersigned organizations urge you to continue the important effort begun last year to at least provide federal employees in agencies funded by the FY08 Commerce-State-Justice Appropriations Bill with the same appeal rights long enjoyed by contractors to have agencies' botched and biased contracting out-related decisions reviewed by independent third parties at the Government Accountability Office (GAO) and the Court of Federal Claims.

The undersigned organizations believe that federal employees in all agencies should have the same appeal rights as contractors. However, we also recognize that an incremental strategy of securing appeal rights for federal employees in some agencies may be necessary, before such appeal rights can be secured for federal employees in all agencies, because of the stubborn opposition of Office of Management and Budget (OMB) officials.

Last year, the House passed a bipartisan amendment offered by Representatives Rob Andrews (D-NJ) and Walter Jones (R-NC) to the House F07 Commerce-State-Justice Appropriations Bill to prevent the use of the revised version of the OMB Circular A-76 until both contractors and federal employees had the same appeal rights. The Senate, however, never had a chance to vote on that chamber's version of the funding bill. And the necessity of wrapping up outstanding appropriations bills in a year-long continuing resolution forced lawmakers to abandon the appeal rights effort. Hence, our interest in building on last year's foundation of success for the FY08 funding measure.

Right now, contractors, but not federal employees, have the right to appeal agencies' contracting out-related decisions to independent third-parties at GAO and the Court of Federal Claims. No matter how conscientious a contracting officer tries to be, it can't help but influence her judgment that only contractors can hold her accountable. Moreover, there are specific instances in which contracting out-related decisions are biased or botched. The federal employees victimized by such bad decisions should have the same right to seek redress as a contractor would enjoy if the positions were reversed.

The Congress has tried to establish equitable appeal rights three different times. In the FY04 Treasury Appropriations Bill, the conferees agreed to include language that would give federal employees in all agencies the same appeal rights as contractors. However, several days after reaching the agreement, OMB officials were successful in forcing the appeal rights language to be dropped. Senate Governmental Affairs Committee Chairwoman Susan Collins included language that established government-wide appeal rights in the Senate FY05 and FY06 Defense Authorization Bills, and strong Sense-of-the-House language in favor of equitable appeal rights was included in the House FY05 and FY06 Defense Authorization Bills. However, those bipartisan efforts also met with failure.

The undersigned unions urge you to include language in the House and Senate versions of the FY08 funding measure that would allow for the establishment of equitable appeal rights so that both contractors and federal employees would have the same opportunities to appeal biased and botched contracting out-related decisions. Thank you for your consideration of our views.

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
SERVICE EMPLOYEES INTERNATIONAL UNION
TRANSPORT WORKERS UNION, AFL-CIO
UNITED AUTO WORKERS, AFL-CIO