H.R. 716, FREEDOM FROM GOVERNMENT COMPETITION ACT OF 1997

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

H.R. 716

TO REQUIRE THAT THE FEDERAL GOVERNMENT PROCURE FROM THE PRIVATE SECTOR THE GOODS AND SERVICES NECESSARY FOR THE OPERATIONS AND MANAGEMENT OF CERTAIN GOVERNMENT AGENCIES, AND FOR OTHER PURPOSES

SEPTEMBER 29, 1997

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H.R. 716, FREEDOM FROM GOVERNMENT COMPETITION ACT OF 1997

MONDAY, SEPTEMBER 29, 1997

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:35 a.m., in room 2154, Rayburn House Office Building, Hon. Stephen Horn (chairman of the subcommittee) presiding.

Present: Representatives Horn, Davis of Virginia, and Maloney.

Staff present: J. Russell George, staff director and chief counsel; Mark Brasher, senior policy director; John Hynes, professional staff member; Andrea Miller, clerk; Matthew Ebert, staff assistant; Mark Stephenson, minority professional staff member; and Ellen Rayner, minority chief clerk.

Mr. HORN. A quorum being present, the Subcommittee on Government Management, Information, and Technology will come to order.

Tomorrow, the Government Performance and Results Act requires agencies to submit strategic plans. This is one of the steps on the road to establishing performance-based government. Ultimately, Congress and the taxpayers of this Nation want to be able to hold agencies accountable for results. Already we have seen improvements in agency performance. For example, boating accidents have been dramatically reduced as the Coast Guard has begun to focus on reducing accidents rather than on counting the number of safety inspections performed.

Today, we are discussing H.R. 716, the Freedom From Government Competition Act. This bill and its Senate counterpart would impact every Federal agency. It holds the promise of changes for Federal employees, taxpayers, and citizens.

[The text of H.R. 716 follows:]

I

105TH CONGRESS
1ST SESSION

H. R. 716

To require that the Federal Government procure from the private sector the goods and services necessary for the operations and management of certain Government agencies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 1997

Mr. DUNCAN (for himself, Mr. SHAYS, Mr. HAYWORTH, Mr. ROHRABACHER, Mr. PORTER, Mr. STEARNS, Mr. CANADY of Florida, and Mr. HERGER) introduced the following bill; which was referred to the Committee on Government Reform and Oversight, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To require that the Federal Government procure from the private sector the goods and services necessary for the operations and management of certain Government agencies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Freedom From Government Competition Act of 1997".

SEC. 2. FINDINGS.

Congress finds and declares that—

(1) private sector business concerns, which are free to respond to the private or public demands of the marketplace, constitute the strength of the American economic system;

(2) competitive private sector enterprises are the most productive, efficient, and effective sources of goods and services;

(3) government competition with the private sector of the economy is detrimental to all businesses and the American economic system;

(4) government competition with the private sector of the economy is at an unacceptably high level, both in scope and in dollar volume;

(5) when a government engages in entrepreneurial activities that are beyond its core mission and compete with the private sector—

(A) the focus and attention of the government are diverted from executing the basic mission and work of that government; and

(B) those activities constitute unfair government competition with the private sector;

(6) current laws and policies have failed to address adequately the problem of government competition with the private sector of the economy;

(7) the level of government competition with the private sector, especially with small businesses, has been a priority issue of each White House Conference on Small Business;

(8) reliance on the private sector is consistent with the goals of the Government Performance and Results Act of 1993 (Public Law 103–62);

(9) reliance on the private sector is necessary and desirable for proper implementation of the Federal Workforce Restructuring Act of 1994 (Public Law 103–226);

(10) it is in the public interest that the Federal Government establish a consistent policy to rely on the private sector of the economy to provide goods and services that are necessary for or beneficial to the operation and management of Federal Government agencies and to avoid Federal Government competition with the private sector of the economy; and

(11) it is in the public interest for the private sector to utilize employees who are adversely affected by conversions to use of private sector entities for providing goods and services on behalf of the Federal Government.

SEC. 3. RELIANCE ON THE PRIVATE SECTOR.

(a) GENERAL POLICY.—Notwithstanding any other provision of law, except as provided in subsection (c), each agency shall procure from sources in the private sector all goods and services that are necessary for or beneficial to the accomplishment of authorized functions of the agency.

(b) PROHIBITIONS REGARDING TRANSACTIONS IN GOODS AND SERVICES.—

(1) PROVISION BY GOVERNMENT GENERALLY.—No agency may begin or carry out any activity to provide any products or services that can be provided by the private sector.

(2) TRANSACTIONS BETWEEN GOVERNMENTAL ENTITIES.—No agency may obtain any goods or services from or provide any goods or services to any other governmental entity.

(c) EXCEPTIONS.—Subsections (a) and (b) do not apply to goods or services necessary for or beneficial to the accomplishment of authorized functions of an agency under the following conditions:

(1) Either—

(A) the goods or services are inherently governmental in nature within the meaning of section 6(b); or

(B) the Director of the Office of Management and Budget determines that the provision

of the goods or services is otherwise an inherently governmental function.

(2) The head of the agency determines that the goods or services should be produced, provided, or manufactured by the Federal Government for reasons of national security.

(3) The Federal Government is determined to be the best value source of the goods or services in accordance with regulations prescribed pursuant to section 4(a)(2)(C).

(4) The private sector sources of the goods or services, or the practices of such sources, are not adequate to satisfy the agency's requirements.

SEC. 4. ADMINISTRATIVE PROVISIONS.

(a) REGULATIONS.—

(1) OMB RESPONSIBILITY.—The Director of the Office of Management and Budget shall prescribe regulations to carry out this Act.

(2) CONTENT.—

(A) PRIVATE SECTOR PREFERENCE.—Consistent with the policy and prohibitions set forth in section 3, the regulations shall emphasize a preference for the provision of goods and services by private sector sources.

(B) FAIRNESS FOR FEDERAL EMPLOYEES.—In order to ensure the fair treatment of Federal Government employees, the regulations—

(i) shall not contravene any law or regulation regarding Federal Government employees; and

(ii) shall provide for the Director of the Office of Management and Budget, in consultation with the Director of the Office of Personnel Management, to furnish information on relevant available benefits and assistance to Federal Government employees adversely affected by conversions to use of private sector entities for providing goods and services.

(C) BEST VALUE SOURCES.—

(i) STANDARDS AND PROCEDURES.—The regulations shall include standards and procedures for determining whether it is a private sector source or an agency that provides certain goods or services for the best value.

(ii) FACTORS CONSIDERED.—The standards and procedures shall include requirements for consideration of analyses of all direct and indirect costs (performed in a manner consistent with generally accepted cost-accounting principles), the qualifications of sources, the past performance of sources, and any other technical and noncost factors that are relevant.

(iii) CONSULTATION REQUIREMENT.—The Director shall consult with persons from the private sector and persons from the public sector in developing the standards and procedures.

(D) APPROPRIATE GOVERNMENTAL ACTIVITIES.—The regulations shall include a methodology for determining what types of activities performed by an agency should continue to be performed by the agency or any other agency.

(b) COMPLIANCE AND IMPLEMENTATION ASSISTANCE.—

(1) OMB CENTER FOR COMMERCIAL ACTIVITIES.—The Director of the Office of Management and Budget shall establish a Center for Commercial

Activities and Privatization within the Office of Management and Budget.

(2) RESPONSIBILITIES.—The Center—

(A) shall be responsible for the implementation of and compliance with the policies, standards, and procedures that are set forth in this Act or are prescribed to carry out this Act; and

(B) shall provide agencies and private sector entities with guidance, information, and other assistance appropriate for facilitating conversions to use of private sector entities for providing goods and services on behalf of the Federal Government.

SEC. 5. STUDY AND REPORT ON COMMERCIAL ACTIVITIES OF THE GOVERNMENT.

(a) ANNUAL PERFORMANCE PLAN.—Section 1115(a) of title 31, United States Code, is amended—

(1) by striking "and" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; and"; and

(3) by adding at the end the following:

"(7) include—

"(A) the identity of each program activity that is performed for the agency by a private sector entity in accordance with the Freedom From Government Competition Act of 1997; and

"(B) the identity of each program activity that is not subject to the Freedom From Government Competition Act of 1997 by reason of an exception set forth in that Act, together with a discussion specifying why the activity is determined to be covered by the exception.".

(b) ANNUAL PERFORMANCE REPORT.—Section 1116(d)(3) of title 31, United States Code, is amended—

(1) by striking "explain and describe," in the matter preceding subparagraph (A);

(2) in subparagraph (A), by inserting "explain and describe" after "(A)";

(3) in subparagraph (B)—

(A) by inserting "explain and describe" after "(B)"; and

(B) by striking "and" at the end;

(4) in subparagraph (C)—

(A) by inserting "explain and describe" after "infeasible,"; and

(B) by inserting "and" at the end; and

(5) by adding at the end the following:

"(D) in the case of an activity not performed by a private sector entity—

"(i) explain and describe whether the activity could be performed for the Federal Government by a private sector entity in accordance with the Freedom From Government Competition Act of 1997; and

"(ii) if the activity could be performed by a private sector entity, set forth a schedule for converting to performance of the activity by a private sector entity;".

SEC. 6. DEFINITIONS.

(a) AGENCY.—As used in this Act, the term "agency" means the following:

(1) EXECUTIVE DEPARTMENT.—An executive department as defined by section 101 of title 5, United States Code.

(2) MILITARY DEPARTMENT.—A military department as defined by section 102 of such title.

(3) INDEPENDENT ESTABLISHMENT.—An independent establishment as defined by section 104(1) of such title.

(b) INHERENTLY GOVERNMENTAL GOODS AND SERVICES.—

(1) PERFORMANCE OF INHERENTLY GOVERNMENTAL FUNCTIONS.—For the purposes of section 3(c)(1)(A), goods or services are inherently governmental in nature if the providing of such goods or services is an inherently governmental function.

(2) INHERENTLY GOVERNMENTAL FUNCTIONS DESCRIBED.—

(A) FUNCTIONS INCLUDED.—For the purposes of paragraph (1), a function shall be considered an inherently governmental function if the function is so intimately related to the public interest as to mandate performance by Federal Government employees. Such functions include activities that require either the exercise of discretion in applying Federal Government authority or the making of value judgments in making decisions for the Federal Government, including judgments relating to monetary transactions and entitlements. An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to—

(i) bind the United States to take or not to take some action by contract, policy,

regulation, authorization, order, or otherwise;

(ii) determine, protect, and advance its economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(iii) significantly affect the life, liberty, or property of private persons;

(iv) commission, appoint, direct, or control officers or employees of the United States; or

(v) exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the control or disbursement of appropriated and other Federal funds.

(B) FUNCTIONS EXCLUDED.—For the purposes of paragraph (1), inherently governmental functions do not normally include—

(i) gathering information for or providing advice, opinions, recommendations, or ideas to Federal Government officials;

(ii) any function that is primarily ministerial or internal in nature (such as building security, mail operations, operation of cafeterias, laundry and housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management and operations, or other routine electrical or mechanical services); or

(iii) any good or service which is currently or could reasonably be produced or performed, respectively, by an entity in the private sector.

○

Mr. HORN. H.R. 716 would codify existing administration policy embodied in OMB Circular A–76, which requires agencies to subject their commercial functions to cost comparison. H.R. 716 and its Senate counterpart authored by Senator Thomas of Wyoming, would go further, requiring agencies to determine the best value provider for commercial functions.

In the private sector, competition has reduced costs and improved performance and consumer choice. The most competitive sectors of the economy are also the most innovative. Federal antitrust policy is designed to ensure competition so that customers do not get gouged. H.R. 716 has the potential to be the antitrust policy of the Federal Government.

However, before the bill can become law, we need to examine several key issues: What are the benefits and costs to taxpayers? Should government perform commercial tasks when they are the most efficient provider? Should government perform commercial tasks when someone else could be doing the job at a much more reasonable price and better? And, what are the effects on employees of such competition and potential for outsourcing?

My own view is that some agencies have the most experienced people doing the job already. Some agencies do not, especially as buyouts have removed some of the most capable members of the civil service. Competition can be a spur to improved performance in either case. According to the Congressional Budget Office, competition can reduce the costs of Government by an average of 20 to 35 percent.

Today, we will hear from the authors of this legislation, Senator Craig Thomas, Republican of Wyoming, and Representative John J. Duncan, Jr., Republican of Tennessee. Mr. Duncan was delayed in his district, I believe, and we hope he will join us a little later in the hearing. Our witnesses represent some of the best minds in this area at the Federal, State, and local levels, and we look forward to their testimony.

I want to add that the subcommittee staff has received several unsolicited statements for the record of the hearing which we will put in the hearing at the appropriate place.

The subcommittee would like to encourage additional thoughts on this issue. We will hold open the testimony for 3 weeks for any person to provide a statement. We will post all testimony on our subcommittee Internet site. We do not mean to close the door to any point of view and we encourage a healthy debate on this controversial issue.

I now yield to the ranking minority member, Mrs. Maloney of New York, if she has an opening statement.

[The prepared statement of Hon. Stephen Horn follows:]

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"Legislative Hearing on H.R. 716, the Freedom from Government Competition Act of 1997"

September 29, 1997

OPENING STATEMENT
REPRESENTATIVE STEPHEN HORN (R-CA)

Chairman, Subcommittee on Government Management, Information, and Technology

A quorum being present, the Subcommittee on Government Management, Information, and Technology will come to order.

Tomorrow, the Government Performance and Results Act requires agencies to submit strategic plans. This is one of the steps on the road to establishing performance-based government. Ultimately, Congress, and the taxpayers of this nation, want to be able to hold agencies accountable for results. Already, we have seen improvements in agency performance. For example, boating accidents have been dramatically reduced, as the Coast Guard has begun to focus on reducing accidents rather than on counting the number of safety inspections performed.

Today, we are discussing H.R. 716, the Freedom from Government Competition Act of 1997. This bill, and its Senate counterpart, would impact every Federal agency. It holds the promise of changes for Federal employees, taxpayers and citizens.

H.R. 716 would codify existing administrative policy embodied in OMB

Circular A-76, which requires agencies to subject their commercial functions to cost comparison. H.R. 716 would go further, requiring agencies to determine the best value provider for commercial functions.

In the private sector, competition has reduced costs and improved performance and consumer choice. The most competitive sectors of the economy are also the most innovative. Federal anti-trust policy is designed to ensure competition, so that the customers do not get gouged. H.R. 716 has the potential to be the anti-trust policy of the Federal Government.

However, before the bill can become law, we need to examine several key issues:

-- what are the benefits and costs to taxpayers;
-- should government perform commercial tasks when they are the most efficient provider;
--should government perform commercial tasks when someone else could do so cheaper and better; and
-- what are the effects on employees of such competition and potential for outsourcing.

My own view is that some agencies have the most experienced people doing the job already. Some agencies do not, especially as buyouts have removed some of the most capable performers. Competition can be a spur to improve performance in either case. According to the Congressional Budget Office, competition can reduce the costs of government by an average of 20 to 35 percent.

Today, we will hear from the sponsors of the bill, Senator Thomas and Mr. Duncan. Mr. Duncan was delayed in his district, and we hope will join us in the latter half of the hearing. Our witnesses represent some of the best minds in this area at the Federal, State and Local levels, and we look forward to their testimony.

I want to add that the Subcommittee staff has received several unsolicited statements for the record of this hearing. The Subcommittee would like to encourage additional thoughts on this issue, and we will hold open the testimony for three weeks for any person to provide a statement. We do not mean to close the door to any point of view, and we encourage healthy debate.

Mrs. MALONEY. Thank you, Mr. Chairman.

First, I would like to welcome my former colleague, Senator Thomas, from the great State of Wyoming. I look forward to hearing his testimony today on H.R. 716, the Freedom from Government Competition Act. That legislation goes to the heart of the debate about the nature and proper role of government, determining which functions should be performed by Government and which by the private sector. It has been and will continue to be a central component of that debate.

Privatization, or contracting out, is not a cure-all for government problems, but if implemented wisely can be a useful tool in providing services for the American public more economically and efficiently. However, we must remember it is just one tool. Empowering workers through training, treating them as assets, and striving to improve management techniques all also have a place in creating a government for the next century.

Contracting out raises a number of difficult and contentious issues, which I am sure we will be discussing today. Cost accounting standards, contract management controls, job placement, and training for displaced workers are but a few. We must also be cautious that contracting out a service doesn't end up costing us more in the long run, because once turned over to the private sector, it is often difficult and expensive for the government to regain control.

Private hauling of sludge in New York City costs five times what it does in San Francisco and neighboring New Jersey, or used to before the contract was changed. The Los Angeles school district wound up a few years ago with a $3 million bill for deficits run up by a contractor hired to run the school food services. On the other hand, New York City gave park service workers greater control over their jobs and found they could operate more efficiently than private contractors. In a 1992 experiment, the cost of tree removal in Queens and the Bronx by city workers was thousands less than a contractor would have charged.

Contracting out is a process which needs to be carefully scrutinized. First, we need accurate and complete information on what is to be privatized and why. Second, we must insist on sound contracts that incorporate incentives for cost savings and severe penalties for failure to perform.

Finally, we should have a strong and effective job placement program for displaced workers. H.R. 716 would provide a legislative framework to analyze some of these issues, a framework currently provided by OMB Circular A–76.

I welcome Senator Thomas, and I look forward to your testimony. Thank you for coming.

Mr. HORN. We thank you.

[The prepared statement of Hon. Carolyn B. Maloney follows:]

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Rep. Carolyn Maloney -- Opening Statement
Hearing on HR 716, the "Freedom from Government Competition Act"

September 29, 1997

Thank you Mr. Chairman. And welcome Representative Duncan and Senator Thomas

I look forward to today's hearing on HR 716, the "Freedom from Government Competition Act." That legislation goes to the heart of the debate about the nature and proper role of government. Determining which functions should be performed by government, and which by the private sector, has been, and will continue to be, a central component of that debate.

Privatization, or contracting out, is not a cure-all for government problems. But if implemented wisely, can be a useful tool in providing services for the American public more economically and efficiently. However, we must remember that it is just one tool. Empowering workers through training, treating them as assets, and striving to improve management techniques all also have there place in creating a government for the next century.

Contracting out raises a number of difficult and contentious issues, which I'm sure we will be discussing today. Cost accounting standards, contract management controls and job placement and training for displaced workers are but a few. We must also be cautious that contracting out a service doesn't end up costing us more in the long run, because once turned over to the private sector, it is often difficult and expensive for the government to regain control. Private trash hauling in New York City costs five times what it does in San Francisco. The Los Angeles school district wound up a few years ago with a $3 million bill for deficits run up by a contractor hired to run the school food services. On the other hand, New York City gave park service workers greater control over their jobs and found that they could operate more efficiently than private contractors. In a 1992 experiment, the cost of tree removal in Queens and the Bronx by city workers was thousands less than a contractor would have charged.

Contracting out is a process which needs to be carefully scrutinized. First, we need accurate and complete information on what is to be privatized and why. Second, we must insist on sound contracts that incorporate incentives for cost savings can severe penalties for failure to perform. Finally, we should have a strong and effective job placement program for displaced workers. HR 716 would provide a legislative framework to analyze some of these issues, a framework currently provided by OMB Circular A-76.

Thank you Mr. Chairman, I look forward to hearing from our witnesses.

Mr. HORN. Does the gentleman from Virginia, Mr. Davis, have a statement?

Mr. DAVIS of Virginia. Let me be very brief.

Mr. Chairman, you spoke in your remarks about examining several key issues. Let me go through each of them.

First, what are the benefits and costs to the taxpayers. That should drive this situation. We sometimes get caught up in set-asides and protecting employees or privatizing that we forget the bottom line that should drive this, are the taxpayers for their money getting the best value at the cheapest cost? That is what we ought to be asking. If we move away from that criteria in determining how government operates, I think we really get lost.

Second, should the government perform commercial tasks when they are the most efficient provider. I think that goes back to the first question. As we ask government to be more like a business, we are finding more and more of these conflicts, where they start taking inherently private sector business practices, and the private sector says, gee, we can do that as well, that has to be sorted out.

Finally, I just want to say we are finding in an information age today that in my district and in others across the country, as the information age moves on, the largest asset and most important asset of major employers in this country is not the patents they hold, it is not the machinery or equipment, it is their people. We at the Federal level have to recognize the investment we have in our people, and the ying and yang that Federal Government workers have faced over the last decade as they take a look at the instability in terms of: Are they going to have a job, or if they have a job, what is the benefit structure going to be? The shutdowns and everything else, has made it very difficult to recruit and retain quality people. Whatever happens, we want to maintain a good solid professional work force to get the job done.

But as government needs change and as our mission needs, we need to look for partnerships with the private sector. I think we can have an interesting discussion with what H.R. 716 has suggested today, and I look forward to hearing from all parties. Thank you.

Mr. HORN. I thank the gentleman.

I welcome the Senator from Wyoming, who used to be my next door neighbor in Longworth. We are glad you went to a place where you can speak any time you want as long as you want. We will not impose the 5-minute rule on you, out of courtesy and deference for your position, but we probably should if one has had now 2 years' experience or so in the Senate. But welcome, Craig. We are delighted to have you.

Since I was in town all weekend, I read every word you said as well as every word everybody else is going to say around here.

STATEMENT OF HON. CRAIG THOMAS, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator THOMAS. Wonderful. Thank you, Mr. Chairman. It is a pleasure to be here. I will try to contain myself. We are, of course, going ahead at breakneck speed over in the Senate to try to stay ahead of you.

Mr. Chairman, members of the committee, thank you so much for the opportunity to testify today regarding the important issue of direct Federal Government competition with the private sector. As an alumnus of this committee, it is a pleasure to be back for a brief visit. I am the primary Senate sponsor of the Freedom from Government Competition Act and look forward to explaining why a statutory provision is needed for this problem. I also thank Congressman Duncan, I am sorry he isn't able to be here, the primary sponsor of the legislation in the House, for his hard work on that topic.

For the past four decades, it has been the administrative policy of the Federal Government to rely on the private sector for its commercial needs. This policy was originally issued in 1955 during the Eisenhower administration in reaction to a bill very similar to what Congressman Duncan and I have proposed. It was moving through the Congress at the time, however, Congress relented when President Eisenhower agreed to solve the problem administratively. This policy is now found in the Office of Management and Budget Circular A–76. Unfortunately, it is routinely ignored. For example, the Defense Department completed 325 comparisons in 1983 during the Reagan administration. None were completed in 1994. In addition, recompeting commercial functions rarely if ever happen. In fact, during a hearing on this issue in the U.S. Senate in June 1997, OMB was unable to document if any Federal agency had ever recompeted a commercial function.

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

Studies by OMB and the General Accounting Office show the government saves 30 percent or more when services are procured from the private sector. Similar savings were found when the private sector was utilized in several State and local governments in the United States and throughout the world. Later today, Mayor Goldsmith of Indianapolis will explain in detail the success he has had in providing his constituents with better service at lower cost by utilizing private sector expertise.

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

To inject market competition into government monopolies in Washington, I introduced the Senate version of the Freedom from

Government Competition Act. This legislation would establish a statutory basis for determining whether a good or service from the government could be provided more cost-effectively by the government or the private sector. It would establish a preference, as does the 1955 policy, for reliance on the private sector, but would provide for fundamental exceptions, inherently governmental functions, those critical to national security, those in which the private sector failed to meet government needs, and, finally, those which the government can provide at a better value than the taxpayer.

Let me emphasize that. If the government can show it can provide a better value, then it is exempted. An office of the commercial activities and privatization within OMB would be created to assist Federal agencies in carrying out the bill. This legislation is based on the premise that the government should not unfairly compete with its citizens. Congress should question the practice of taxing private enterprise so it can maintain a similar but often less efficient capability within the government. Furthermore, Congress should never allow the same Government agencies to compete in the marketplace to provide commercial services and services and goods to the private sector. Yet instead of focusing on its core mission, Government agencies are many times more concerned with providing payroll services, computer support, and helicopter rides.

A Government agency that competes with and duplicates activities in the private sector stifles economic growth by dominating certain markets, diverts certain needed technical personnel from the private sector, thwarts the efforts of U.S. firms to export their services, and erodes the tax base by securing work that could otherwise be accomplished by taxpaying entities.

At a time of continuing Federal deficits, it also siphons off precious resources from high priority core government functions or deficit reduction. But notwithstanding these specific benefits, it also appeals to those of us who would like to see a smaller government over time. We constantly talk about reducing the size of the Federal Government. Here is one way to seek to do it.

In the 104th Congress, the U.S. Senate Governmental Affairs Committee examined the Freedom from Competition Act. Based on input from several parties, including Senators Glenn and Stevens, OMB, GAO, private industry, labor unions, H.R. 716 and S. 314 are better bills. For example, a best value comparison has been added to the legislation. Instead of a one-sided cost comparison that favors government production of commercial goods and services now found in OMB Circular A–76, this legislation will allow Federal employees and the private sector to compete on a level playing field. The competition mechanism would take into account many factors such as qualifications, past performance, fair cost accounting system, in order to determine whether the private sector or the Federal Government provides the "best value" to the American taxpayer.

Another change would provide for the soft landing of Federal employees who may be displaced. It is important to note that most Government employees are not adversely affected by outsourcing and privatization. Several studies have found that 90 to 95 percent of displaced employees went to work for the private sector entity, transferred to other government jobs, or retired.

Employee transition has been a major factor of every major privatization and outsourcing determination. That is why the legislation recognizes its importance and encourages the Federal Government to support policies that will facilitate the employee transition. Wholesale displacement of government workers is neither the intent nor the possible outcome of this legislation.

Clearly, with their knowledge and skill base, the direct dismissal of Federal employees would be counterproductive. The bottom line, of course, is having said that, we have to understand that it is not the role of the Federal Government to provide jobs, but it is to provide efficient services and we ought to keep that in mind.

This past June the Subcommittee on Government Management of the U.S. Senate Governmental Affairs Committee held a hearing. It clearly demonstrated that outsourcing works at the State and local level; it can work for the Federal Government, too. I am hopeful the same full Senate committee will act on the bill in the near future.

I am certain we will hear today from OMB that this bill is not needed. However, a review of OMB's most recent A–76 commercial inventory reveals that many agencies don't take the A–76 process seriously. For example, the U.S. Environmental Protection Agency claims that all 18,000 of its employees are doing inherently government work. However, among the commercial activities EPA provides for itself include environmental laboratory testing, engineering, and mapping services.

Another problem with OMB's commercial inventory is that several major Departments are not included, such as the Commerce Department. It is obvious OMB does little oversight on this important issue and doesn't have any enforcement authority to make A–76 work. That is why statutory provision is necessary.

In fact, in the June hearings, Senator Brownback and I asked several questions of OMB Deputy Director John Koskinen that he was unable to answer. However, he said he would get the information for us quickly. After a month of receiving no answers, Senator Brownback followed up with a letter. As of yet, Senator Brownback and I have not received anything from OMB. If OMB's management of A–76 and outsourcing is as good as it is claimed to be, we would have had those answers in 24 hours.

Therefore, I suggest to this subcommittee, ask the same questions which I have attached to my testimony of OMB and perhaps we will get some answers. This lack of oversight and enforcement of A–76 is making unfair government competition with the private sector worse and leads me to the conclusion that a legislative solution is necessary.

Another objection OMB will make today is that passing the bill will invite lawsuits from the private sector business and labor unions that will tie up progress indefinitely. While I share the dislike for lawsuits, I don't share the belief that a taxpaying citizen should lose his job because the Federal Government ran him out of business without giving him the option of judicial recourse. The fact is that judicial review has been a part of several recently enacted laws like the Regulatory Flexibility Act, and there hasn't been great problems.

Mr. Chairman, this legislation will create jobs, help small businesses, save taxpayers' money, and bring about a Federal Government that works better and costs less. It will create a statutory provision to provide the best value commercial goods and service to the American taxpayers. It will ensure that the Federal Government utilizes the expertise available in the competitive private sector to provide for its commercial needs.

I look forward to working with this committee to enact this good government, commonsense reform. I thank you, Mr. Chairman, and the committee, for your time.

[The prepared statement of Hon. Craig Thomas follows:]

STATEMENT OF SENATOR CRAIG THOMAS
U.S. HOUSE COMMITTEE ON GOVERNMENTAL REFORM AND OVERSIGHT
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT
ON THE FREEDOM FROM GOVERNMENT COMPETITION ACT
SEPTEMBER 29, 1997

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

For the past four decades, it has been the administrative policy of the federal government to rely upon the private sector for its commercial needs. This policy was originally issued in 1955 during the Eisenhower Administration in reaction to a bill very similar to what Congressman Duncan and I proposing that was moving through Congress at the time. However, Congress relented when President Eisenhower agreed to solve the problem administratively. This policy is now found in Office of Management and Budget (OMB) Circular A-76. Unfortunately, it is routinely ignored. For example, the Defense Department completed 325 comparisons in 1983 during the Reagan Administration. None were completed in 1994. In addition, re-competing commercial functions rarely, if ever, happens. In fact, during a hearing on this issue in the U.S. Senate in June, 1997, OMB was unable to document if any federal agency has ever re-competed a commercial function.

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

Studies by OMB and the General Accounting Office show that the government saves 30 percent or more when services are procured from the private sector. Similar savings were found when the private sector was utilized in several state and local governments in the United States and through-out the world. Later today, Mayor Goldsmith of Indianapolis will explain in detail the success he has had in providing his constituents with better services at lower costs by utilizing private sector expertise.

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

government and government supported entities as one of the biggest concerns to small entrepreneurs.

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

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

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

In the 104th Congress, the Senate Governmental Affairs Committee examined the "Freedom from Government Competition Act." Based on input by several parties, including Senators Stevens and Glenn, OMB, GAO, private industry and labor unions, H.R. 716/S. 314 is a better bill. For example, a "best value" comparison mechanism has been added to the legislation. Instead of the one-sided cost comparison that favors government production of commercial goods and services now found in OMB Circular A-76, this legislation will allow federal employees and the private sector to compete on a level playing field. The comparison mechanism will take into account many factors, such as qualifications, past performance and a fair cost accounting system, to determine whether the private sector or the federal government will provide the "best value" to the American taxpayer.

Another change would provide for the "soft landing" of federal employees who may be displaced by outsourcing. It is important to note that most government employees are not adversely affected by outsourcing and privatization. Several studies have found that 90-95 percent of displaced employees went to work for the private sector entity, transferred to other government jobs or retired. Employee transition has been a major facet of every successful privatization and outsourcing determination, both on the federal and state level. That is why

the legislation recognizes its importance and encourages the federal government to support policies that will facilitate employee transition. Wholesale displacement of government workers is neither the intent nor the possible outcome of my legislation. Clearly, given their knowledge and skill base, direct dismissal of federal employees would be counterproductive to successful transfer of commercial functions to the private sector.

This June, the Subcommittee on Government Management of the U.S. Senate Governmental Affairs Committee held a hearing on this legislation. It clearly demonstrated that outsourcing works at the state and local level and it can work for the federal government too. I am hopeful the full Senate committee will act on the bill in the near future.

I am certain that we will hear from OMB today that this bill is not needed. However, a review of OMB's most recent A-76 commercial inventory reveals that many agencies don't take the A-76 process seriously. For example, the U.S. Environmental Protection Agency (EPA) claims that all 18,000 of its employees are doing inherently governmental work. Among the commercial activities EPA provides for itself include environmental laboratory testing, engineering and mapping services. Another problem with OMB's commercial inventory is that several major departments aren't included, such as the Commerce Department. It is obvious OMB does little oversight on this important issue and doesn't have any enforcement authority to make A-76 work. That is why a statutory provision is needed to solve this problem.

In fact, at the June hearing, Senator Brownback and I asked several questions of OMB Deputy Director John Koskinen that he was unable to answer. However, Mr. Koskinen said he would get that information to us quickly. After a month of receiving no answers, Senator Brownback followed up with a letter. As of yet, Senator Brownback and I have not received any information from OMB. If OMB's management of A-76 and outsourcing was as good as Mr. Koskinen claimed it was, we would have had those answers in 24 hours. Therefore I suggest this subcommittee ask the same questions, which I have attached to my testimony, of OMB and perhaps we will get some answers this time. This lack of oversight and enforcement of the A-76 process is making unfair government competition with the private sector worse and leads me to the conclusion that a legislative solution to this problem is necessary.

Another objection OMB will make today is that passing this legislation will invite lawsuits from private sector businesses and labor unions that will tie up the process indefinitely. While I share OMB's dislike for lawsuits, I do not share the belief that a tax paying citizen should lose his job because the federal government ran him out of business without the option of judicial recourse. The fact is that judicial review has been a part of several recently enacted laws like the Regulatory Flexibility Act and there haven't been any problems.

Mr. Chairman, this legislation will create jobs, help small businesses, save taxpayers' money and bring about a federal government that works better and costs less. It will create a statutory provision to provide the best value commercial goods and services to American taxpayers. It will ensure that the federal government utilizes the expertise available in the competitive private sector to provide for its commercial needs. I look forward to working

with you and this committee to enact this good government, common sense reform.

FRED THOMPSON, TENNESSEE, CHAIRMAN

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United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510–6250

August 21, 1997

Mr. G. Edward DeSeve
Acting Deputy Director
Office of Management and Budget
Old Executive Office Building
Washington, DC 20503

Dear Ed:

On June 18, 1997 Deputy Director John Koskinen testified before the Subcommittee on the Oversight of Government Management and provided us with the Administration's views on S. 314, The Freedom From Government Competition Act. During the question and answer period Deputy Director Koskinen promised to provide the committee with additional information on the federal government's recent experience with competitive contracting for services and agency use of the contracting process as described in OMB Circular A-76. Listed below are the questions asked at the hearing as well as a few others related to the subject.

1. During the question and answer period Deputy Director Koskinen agreed with me that the NOAA fleet offered a good opportunity for contracting out, a view that was confirmed at several earlier hearings by witnesses from Commerce. For example, Commerce CFO Ray Kammer stated that all NOAA charting activities in the lower 48 states could be contracted out, and NOAA Admiral William Stubblefield informed us that it was NOAA's intention to contract out 50 percent of NOAA's charting and mapping work by way of the A-76 process. What progress is being made in that area by Commerce, what milestones are scheduled and when will they be met?

2. Senator Thomas asked about OMB's failure to meet the reporting requirements of Section 3515 of the Government Management and Reform Act of 1994. Mr. Koskinen responded that those reports are nearly completed. Have they been completed? If not, when? Why the delay? The first series of required reports are now more than two years late.

3. In response to a question from Senator Thomas, Mr. Koskinen agreed to send him information on the agency composition of the estimated 300,000 reduction in FTE achieved by the Clinton administration. When will he receive this?

4. Senator Thomas asked Mr. Koskinen to provide him with the number of A-76 competitions conducted in 1996. Please provide us with that information, as well as the estimated number of FTE that these competitions covered, and the distribution of these studies (and FTE) among the agencies and departments.

5. Senator Thomas asked Mr. Koskinen to provide him with information on what portion of the $115 billion in services the federal government contracts out is accounted for by the Department of Defense, and he agreed to provide it. In response to a follow up question from Senator Thomas, Mr. Koskinen also agreed to provide such information for the past five years Please provide this information to the Subcommittee.

6. At the conclusion of the questioning period, Mr. Koskinen agreed to give me his reaction to a list of potential contracting candidates that I would provide. To keep it manageable and ensure an expeditious reply, I would like to have OMB's reaction to (1) the contracting potential of the many activities of the NOAA fleet and your plans to fulfill that potential and (2) the routine maintenance, janitorial, mapping, recreational oversight and management activities of the National Park Service (NPS). Related to that, please provide me with information on the number of A-76 competitions previously conducted by the NPS (including FTE involved), the number of such competitions currently underway (along with estimated FTE), and the number of such competitions (and FTE) that will be initiated in FY 1998.

7. Finally, OMB's June 24, 1996 memo to agencies (M-96-33) requested that they "...identify the approximate number of FTE they expect to submit to cost comparison (bid opening) in Fiscal years 1996, 1997 and 1998." This information was to be submitted to OMB by September 13, 1996. Please provide me with this information, arranged by year and by agency.

I look forward to you response to these questions, initially asked at our June 18, 1997 hearing. If you have any questions about this request, please do not hesitate to call the Subcommittee's staff director, Ron Utt, at 224-3682.

Sincerely,

Sam Brownback
Chairman
Subcommittee on
Oversight of Government Management,
Restructuring, and the District of Columbia

Mr. HORN. If you have some time for questions, there are a few things we would like to clarify for the record.

The first one you answered for me, but I am going to put it just to get it in the record. Your bill requires agencies to use the private sector unless best value is provided by a Federal agency source. This seems to establish a process to ensure public-private competition, rather than prohibiting. Is this characterization correct?

Senator THOMAS. Yes, sir, Mr. Chairman, it is correct. It is really the point. The point is not to ensure that the private sector gets it regardless of their performance, but to set up a system where you look not only at the cost, but in this case also prior experience, history, and what we are looking for is a better value for the taxpayers.

Mr. HORN. I am putting the light system on for me, not you.

Let me ask you. This is the hard question I think to illustrate a point. Currently, the Federal agencies purchase air fares through a central government contract negotiated by the General Services Administration, GSA. They are flexible, they are at a fixed price, and heaven knows they are cheap. Now, do you use those air travel contracts to get back to Wyoming, or do they have one for Wyoming?

Senator THOMAS. Well, I will tell you what, I am glad you mentioned that. I happen to be hung up about it at the moment. The contracts, yes, I do use them, and something I don't understand, which is irrelevant, is somehow I can't fly direct from Dulles to Denver. I have to go through Chicago in order to get the better price. Nevertheless, the answer to your question is yes.

Mr. HORN. Yes. The obvious question, then, is do these General Services Administration contracts compete with what a travel agent could provide?

Senator THOMAS. They do, of course. Travel agencies, travel, if there was ever a commercial enterprise, I should say that would certainly be it.

Mr. HORN. You admitted it is a good deal and we save the taxpayers money?

Senator THOMAS. But I don't say it couldn't be done better.

Mr. HORN. If somebody wants to try, great?

Senator THOMAS. Absolutely.

Mr. HORN. That is what your bill provides?

Senator THOMAS. Sure.

Mr. HORN. Take the best deal.

Senator THOMAS. If the way it is being done now is the better way to do it, all we are asking for is the private sector to have a chance on a fair, level playing field to compete.

Mr. DAVIS of Virginia. Could you yield on that? I think that the contract you are talking about, just like FTS 2000 and some of these, are governmentwide competitive contracts. Would they be exempted under your bill? FTS 2000 was competed governmentwide. It is a lot of private sector groups and GSA administering it. How would this legislation affect that?

Senator THOMAS. We don't go specifically into each of these situations, but we say there needs to be a process of competing them. You indicate they have already been through a competitive process

and already competed, certainly that would satisfy the bills requirements.

Mr. DAVIS of Virginia. The government is moving to more IDIQ contracts, administered by GSA as kind of the referee, but a lot of different private sector groups, sometimes dozens, into one area. We can talk about that later.

Mr. HORN. Should we exempt services that government agencies are unquestionably the cheapest provider. For example, the GSA-negotiated air fares from the process, as Mr. Davis asked you, or should we just leave it as it is and assume that whether it is governmentwide negotiated or piece-by-piece negotiated. If the private sector could work out, let's say, that the Dallas-Washington route was better than what they will give GSA, would that mean then let's use the private sector in the Dallas-Washington route, at least for that part, it is a better deal?

Senator THOMAS. It would seem to me that the bill is designed to say, let's take a look at the package and take those activities and give the private sector an opportunity to compete. Someone has to make some judgments along the line.

You know, the idea sometimes, and we will hear it from OMB and from the unions later on, is that contracting is such an unusual, tough thing. Yet, it is done all the time in the private sector. That is what it does, contract out. So I think this bill is designed, at least, and if it does not do that, we ought to make it do that, to give some flexibility to the agencies who are doing the contracting, but what we are asking for is to go through a competitive process and to have it made available. I am not particular about exactly how every detail of that works.

I do know, however, that to make it really work over time, particularly in some of the agencies, the agencies are going to have to reconform themselves to the idea of oversight of contracting. I am looking, for instance, at doing something with the National Park Service, and we are looking at getting an asset manager to do something with the concessions. Concessions are wholly commercial. We ought to get somebody from the private sector to do this.

Now, the Park Service will still have oversight in terms of how that impacts on their core function, which is to manage the resource. We are saying somebody ought to have a chance who is a professional to do asset management, to contribute to that. I think that concept applies on all the things the Federal Government does.

Mr. HORN. Certainly the Park Service has changed its attitude over the years, partly by congressional pressure, with some concessionaires who had a very good deal, but the government didn't have a very good deal. I think they are probably bidding it more appropriately for the taxpayers' standpoint.

Senator THOMAS. I think probably they haven't adapted themselves to being contract supervisors and managers and putting out prospectuses and so on. They do not do a very good job of managing what has become a very large commercial activity.

Mr. HORN. I yield 5 minutes to the gentlewoman from New York, Mrs. Maloney.

Mrs. MALONEY. Would your legislation allow the private sector to compete with the public sector? In other words, you were saying to

get the most cost-effective work done for the government, how do you know it is the most cost effective unless you set up a system where both the public and the private can compete together? In other words, how do you make the decision who will be able to do it in a more cost-effective way?

Senator THOMAS. Well, that is what the system would be designed to do, and we create an office within OMB called "commercial activities and privatization," and that would be its task: to set up a system where an agency would take a commercial activity and then review it on a level playing field to see who can provide better for the taxpayer.

Now, unfortunately in the past sometimes, I believe, there has been some competition, but if you do not compete fairly and if you do not have to take into account all the costs that go into it from the government side, then you do not come out with a fair competition. But what you say, Mrs. Maloney, is exactly what we ought to do, and that is why we call it competition. We do not say we are going to privatize it irrespective of what the government can do, but rather see which can do it and have the better value for taxpayers.

Mrs. MALONEY. That is the main point, is to get the best value and to allow the private sector to be part of the system, too.

Mr. THOMAS. Absolutely.

Mrs. MALONEY. Now, it is based on an OMB directive, I believe in your testimony you said it was an OMB directive, and then you legislated the OMB directive; is that correct?

Senator THOMAS. We have had an executive directive since President Eisenhower. What we are saying is it really hasn't been implemented and adhered to. It really hasn't been developed. That is why, if it had been, then there would be no need, I suppose, for a statutory action. But our best view is that it hasn't, A–76, OMB will not agree with me, but I think the evidence is there, has not been implemented and therefore we do need some statutory direction for it.

Mrs. MALONEY. Thank you very much. I yield back the balance of my time. I assume OMB is testifying later, right?

Mr. HORN. That is correct.

You have named it and Mr. Duncan has named it, the Freedom From Government Competition Act. Should it be really the "Freedom From Government Monopoly Act"?

Senator THOMAS. I suspect that comes closer to it. The reason it is named what it is, and the name is not vital to it, is that the Federal Government is increasingly competing with the private sector in some areas, basically forcing them out of business in those areas. So you are probably right.

Mr. HORN. I remember having that argument when I was on Capitol Hill on the Senate staff from 1960 to 1966, where I think the name was Judson or something in Denver, that was making maps, and there was no need for the government to make maps. They were simply getting into competition with an already established firm in the United States, on which the airlines depended for maps.

I think you are right on that, that we need to, where we have got private competition that is doing the job and doing it at a rea-

sonable cost, we should not be setting up or permitting it to go on, government monopolies.

Senator THOMAS. The map thing, Mr. Chairman, continues to be an issue. As a matter of fact, that is one of the very specific ones.

Mr. HORN. OK. Any other questions?

Mrs. MALONEY. Could I just bring up one related issue, Senator Thomas? I would like to send you a bill I am working on in banking which relates to the Federal Reserve. The Federal Reserve, according to the Monetary Control Act, is supposed to balance their costs and services so that there is no burden to the taxpayer, the private sector is able to compete on a level playing field, and moneys that are saved that would then be used to reduce the deficit.

It turns out that in the transportation of paper checks, they claimed they were following the Monetary Reserve Act, that it was totally balanced, but at the hearing, Mr. Greenspan sent a letter that said they were, in fact, operating at a loss, meaning it was being subsidized, money being shifted over which then had an unfair competition with the private sector. In any event, I would like to send you that information and see if that ties in to what you are trying to accomplish in this bill, and we are looking for a Senate sponsor.

Senator THOMAS. I have heard something about this issue, there is the airplane there that belongs to the Federal Reserve, and there are UPS and the others, Federal Express who could do it. A similar thing, I have heard, is happening also somewhere in the Forest Service, where they always have contracted with flying before in the commercial sector and are now doing some flying on their own. These are the kind of things we ought to look at.

As you pointed out, if that is the most efficient and effective way to do it, fine. We need to really look at it and make sure. I would be happy to look at your bill.

Mrs. MALONEY. I truly believe the best way is through competitive bidding. When you have these negotiated contracts, that is when the prices seem to go up.

Senator THOMAS. Sure. I agree with that. However, let me just say again that it is a little more difficult to put a public group on the same basis as a private business, they do not pay any taxes, and so on. They have some overhead they do not count into the costs. We just need to make sure that the competition is fair, and that is one of the things we need to do.

Mrs. MALONEY. With the Federal Reserve, they had a 17 percent difference, taking into account the points that you were talking about.

Senator THOMAS. I appreciate your time and look forward to working with you. Thank you, sir.

Mr. HORN. I am going to make sure you have an escort back to the Senate with my staff director and professional staff. They have a subject on my behalf to talk with you about that is coming up in the House. They want to protect you while you are in our territory. Thank you. They will meet you and walk with you a little while.

Now we have the next panel, which is Mayor Steve Goldsmith, mayor of Indianapolis, and Shirley Ybarra, the deputy secretary for transportation of the State of Virginia.

The tradition in the committee is to swear in all witnesses except Members of Congress. We assume they tell the truth automatically, or we shun them forever.

[Witnesses sworn.]

Mr. HORN. The clerk will note both have affirmed the oath.

We will begin, mayor, with you. Mr. Burton very much hoped to be here, the chairman of the full committee. He did not know if he could make it back by the time you were testifying, but he was delighted to see you on the witness list. I showed it to him last week. He wanted to welcome you if he could make it back from Indiana. I don't know if you flew in early this morning or came in last night.

Mr. GOLDSMITH. I came in last night and, with the committee's permission, will probably slip out shortly after my testimony and fly back.

Mr. HORN. We are glad you are here. You have quite a record in this area. Please proceed.

STATEMENTS OF STEVE GOLDSMITH, MAYOR, CITY OF INDIANAPOLIS; AND SHIRLEY J. YBARRA, DEPUTY SECRETARY FOR TRANSPORTATION, STATE OF VIRGINIA

Mr. GOLDSMITH. Thank you. Mr. Chairman, members, it is a pleasure to be able to participate in this important discussion. The stage has been well set by the Senator.

My remarks will be relatively brief. I am pleased that the committee is focusing attention on the fact that government often can procure services for the citizenry more effectively than it can produce those services itself. Distinguishing the procurement and production issues is terribly important.

As previous testimony reflected, government distorts this process in two ways: One, by insisting on a monopoly, Government is inherently unfair to its taxpayers, driving up the cost of services and driving down the quality at the same time. Second, by unfairly competing government obviously is intruding in the private marketplace.

Government monopoly is unfair to the small business or large business with which government competes, but, more importantly, it is unfair to the taxpayers for whom value is reduced.

Mr. Chairman, I appreciated your rephrasing of the title of the bill. I do think it is more appropriately called "Freedom from Government Monopoly." Our experience, in Indianapolis is that private monopolies are only marginally less inefficient than public monopolies. It is competition that drives value for the taxpayers. I think the reference to "Freedom from Government Monopoly" is an important one. If we look at that, it seems to me the great thing that this committee and the Congress could do is to remove the structural barriers that now unfairly enforce the monopoly, and, in so doing, intrude on the value equation.

Those structural barriers are that very few governments, whether they are Federal, State, or local, know the costs of a single activity. They know how much money they take in, they know how much money they spend, but they do not know how much it costs to do an activity. So one of the major structural barriers we have is on costing.

The second one is that government, whether it is internal or often even external, rarely measures itself in terms of quality. If we look at costs and we look at quality, then we will begin to have a formula.

Third, the Federal Government intrudes in several ways. First, obviously, you have the issues you are talking about today, which are the regulatory and legal environments that prevent the Federal Government from privately acquiring services; but also, with all due respect, you have the heavy hand in the local marketplace as well. A series of regulatory and legal barriers make it much more difficult for mayors, Governors, city council members, county commissioners, and others to privatize their services.

In fact, the current tax law favors socialism over capitalism, providing an incentive for government monopolies that is not available in the private sector. Section 13(c) of the Urban Mass Transit Act penalizes mayors if they compete out mass transit services, even if they help the poorest and most desperate people in our community.

As you look at these issues, I would encourage you to look at removing both the barriers that prevent the Federal Government from private procurement, but also the barriers that penalize local and State governments when they want to do private procurement as well.

Inevitably, I need to give a short commercial at this point on behalf of Indianapolis. We now have competed out 75 public services. We, at the end of this year, will have saved $400 million, real, accountable, measurable dollars as a result of this competitive process. We have dramatically reduced our overhead and yet, although our total nonpublic safety work force is down 45 percent, no union worker has been involuntarily displaced. They have worked with us in competing.

We have had the largest airport privatization in the country, the largest wastewater privatization in the country, the largest military base privatization in the history of the Department of Defense, and we probably have the 5 smallest privatizations as well in the midst of these 75. Inherent in all of this is that a simple process of competitive bidding produces the most value for our taxpayers.

In conclusion, I have half a dozen fairly straightforward recommendations, Mr. Chairman. First is that the process should be simple. The more it is burdened down by regulatory restrictions or specifications, the more likely it will be to get hung up along the way. I think A–76 is a good example of that. As people try to walk through these processes, they stumble. The simpler the process, the better.

Second, I think that this Congress, this committee, and this bill can remove the structural barriers to privatization and competition. The National Council on Public-Private Partnerships has a privatization task force that has submitted a series of recommendations that would help in this regard.

Third, I think we need to develop systems. These systems need to measure cost; they need to measure performance; they need to measure quality; and straightforward systems will move us along the way as well.

Fourth, sometimes this conversation starts as if competition is antagonistic to employees. I think we need to recognize existing

government employees as a valuable resource. When we moved from a privatization model to a competition model, we did it with our unions. We said no, we are not going to allow you to continue to have a monopoly, but we will be fair in allowing you to participate in competing. Many good ideas bubbled up through our union workers.

In fact, what happened is that our workers are now spending more time in the core activities of government where they are good and less time in areas of government where they are not good. Recognizing the power of their ideas and the need for them to be empowered in the work force has been very valuable as well.

Fifth, I think we should look at outcomes—not only measuring outcomes, but how we invest our dollars. For example, by privatizing our wastewater treatment plant on a long-term contract, we are going to end up saving approximately $250 million. Well, EPA is now in a complicated conversation about how much of that money would need to be repaid.

The question from the Federal Government ought to be, how should we use those dollars to maximize the mission of the agency involved? How can we have cleaner water? How can we have better roads? The benefits of privatization and competition need to have a face to them, and the face should be better infrastructure and better quality of services, for less in terms of tax dollars.

Finally, and let me close on this, Mr. Chairman, it seems in Washington the discussion ends up being the only way we can save money is by cutting somebody's service; the only way we save money is, some suggest, by hurting some constituent.

It is very important, I think, to point out that for every one of the activities that we have competed out, the price has gone down and the quality and quantity of the service has gone up. In fact, these are connected. By using the market force and the value of competition, we are able to save money and enhance services at the same time. Our water is cleaner; our roads are better; our parks are more neatly mowed; and the services put on at our community centers involve and benefit more people.

As you look at this piece of legislation, I think even more important than preventing the government from intruding in the private marketplace—even more important than saving money—is the fact that we are able to improve the quality of services for American taxpayers and reduce their bottom line at the same time.

Thank you very much, Mr. Chairman.

Mr. HORN. We thank you. That is an excellent statement that you have made. Do you have time to wait for the questions? I would like to get the State perspective here.

[The prepared statement of Mr. Goldsmith follows:]

H.R. 716 - The Freedom from Government Competition Act of 1997

Testimony of Mayor Stephen Goldsmith – City of Indianapolis, Indiana

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to assist the Subcommittee in its consideration of H.R. 716, the Freedom from Government Competition Act of 1997. As stated in the introductory language to the bill, the purpose of H.R. 716 is to cause the "Federal Government [to] procure from the private sector the goods and services necessary for the operations and management of certain Government agencies, . . ." While there are exceptions, the bill tilts the "make-or-buy" decision for goods and services in favor of buying goods and services in the private marketplace rather than having government produce them. This sentiment was expressed previously, albeit more concisely, by Thomas Jefferson who noted that "[i]t is better for the public to procure at the common market whatever the market can supply; because there it is by competition kept up in its quality, and reduced to its minimum price."

In Indianapolis, we appreciate the focus of the bill and the important issues that it addresses. It is clear that sometimes when government competes with the private sector, it does so to the detriment of not only private business but also to the detriment of taxpayers. More often than not, however, the process by which government produces goods and services itself rather than buying them has little to do with competition. Competition, in its truest sense, entails a free and open marketplace where producers

understand what it costs to produce a good as well as the prevailing market standards for quality. The majority of governmental entities, however, have no idea what it costs to produce a good or service. They also have little sense of the quality and performance standards that govern the production of the good or service and they rarely voluntarily subject themselves to the rigors of an open and competitive marketplace. The current system in government is generally one of monopoly control over production, performance standards, and purchasing. As such, I think that H.R. 716 may actually be misnamed. I think it might more accurately be called the "Freedom from Government Monopoly Act." This distinction between a government monopoly and true competition may at first appear to be semantic. I believe that it is important, however, particularly as I describe our efforts in Indianapolis with privatization and public-private competition.

I was elected Mayor of Indianapolis nearly six years ago. I ran on a platform of aggressive privatization and rigorous public-private competition. At that time, I was not alone in the privatization and competitive government effort. David Osborne and Ted Gaebler had just written Reinventing Government and a few other reform-minded leaders like Mayor Norquist and Mayor Rendell were beginning to use the specter of private sector competition to spur improvements in services then provided by government employees. It was clear at that time, and it remains clear today, that there are enormous barriers to any efforts to reform government. That is particularly true when discussing privatization, outsourcing, or even public-private competition. The federal barriers, which are too numerous to mention, include section 13(c), which effectively prohibits

cities from reforming urban mass transit into systems that can effectively serve low-income, transit-dependent citizens. Although there has been some improvement, we also ran into barriers with I.R.S. revenue rulings when we originally examined options for privatizing, selling, or contracting out the management of our wastewater treatment plants and our sewer collection system. At the same time that cities and states are being asked to spend billions of dollars on critical environmental and infrastructure needs, the existing rules retain strong structural incentives to use public capital rather than using available, plentiful, and oftentimes more effectively managed private capital.

Notwithstanding these barriers, as well as other state and local barriers, we have had some modest success in Indianapolis in moving government services into the competitive marketplace. In Indianapolis, our model actually mandated head-to-head competition between the public and the private sector. As part of that mandate, we created real competition with actual cost and performance data and open markets. In addition, we separated governmental production efforts from governmental procurement efforts. We also created real financial and career advancement incentives for employees to make sound business decisions and to find the highest quality and lowest priced goods and services. Finally, our starting point for head-to-head competition was not the range of services then provided by the private sector, but the services then provided by government employees. Services subjected to competition included the Indianapolis International Airport, wastewater treatment and collection systems, fleet service operations, printing, copying, pothole filling and solid waste collection. After nearly

eighty head-to-head competitions and six years of hard work, we have generated some positive results. To date, the City has saved nearly $250 million. By the end of 1997, that number will exceed $400 million. The number of City workers, excluding police officers and firefighters, has dropped by nearly 45%. Nonetheless, no union employee has lost a job as a result of our efforts. Moreover, employee grievances as well as workplace injuries have fallen dramatically. The City's fund balance has quadrupled, and our third property tax rate reduction currently awaits legislative approval.

Now, let me turn my attention directly to H.R. 716 and make several observations, comments, and recommendations. As noted above, I think this bill is probably misnamed. It appears to me that the bill is attempting to eliminate the federal government's monopoly power, rather than to prohibit it from competing with the private sector. In fact, the bill appears to exclude from its application a whole range of goods and services, including when it is determined that the federal government is the "best value source of the goods or services." That appears to specifically contemplate price competition between the government and the private sector. If the purpose of the H.R. 716 is to eliminate government's monopoly power and, where appropriate, facilitate competition, then it is closer to the Indianapolis model, described above, than the name of the bill would suggest. There are, however, a few areas of the bill that may be more cumbersome than needed.

-- First, I believe that government is full of great people who are caught in bad systems. As you analyze and review this bill, I would urge you to make it as simple and straightforward as possible. Public managers need to understand their goals clearly and then be given the freedom and flexibility necessary to achieve them. The regulations that will inevitably be promulgated to implement this bill need to be simple, concise, and focused on outputs and outcomes rather than processes. In Indianapolis, we believe that much of our success has been due to a simple system with clearly defined objectives and fully empowered employees.

-- Second, this bill and your efforts will likely be in vain unless their is a strong commitment at the top of the organization to reduce the cost of government services. In our study and analysis of reinventing government efforts around the world, we have never seen a successful initiative where there was not a political champion in a leadership role.

-- Third, you will need to develop systems that support the decision-making process contemplated in the bill. These systems will likely include activity based costing (or a similar cost accounting methodology) and a rigorous performance measurement system that focuses both on quality and quantity goals for goods and services. These cost accounting and performance measurement systems should have applicability both to existing governmental processes as well as any newly privatized functions. These systems need not be complex or cumbersome, however.

-- Fourth, recognize that your existing employees are a resource. You should work hard to smooth the transitions that will inevitably be necessary for your employees. At the same time, you should identify and pursue opportunities to use financial and career development incentives to drive performance. Work diligently to identify opportunities for creating goal congruence between the interests of taxpayers, employees, and managers.

-- Fifth, connect these efforts to positive outcomes. In Indianapolis, we used the savings from our privatization and competition efforts to reduce previously unfunded liabilities, lower the property tax rate, increase minority business contracting, complete the largest infrastructure program in the City's history, and put more police officers on the street. Connecting our reform efforts to these initiatives helped maintain support when it came time to make the more difficult decisions. I anticipate that you will find, as I did, that citizens care little about privatization or competition but they care a lot about safe streets, working sewers, low taxes, and well-maintained parks.

-- Finally, don't get caught in the intellectual trap that lowering the cost of goods and services will lead to lower quality. Our experience in Indianapolis has indicated, almost without exception, that the rigors of competition and the private sector marketplace not only drive down the cost of goods and services but also, at the same time, drive up the quality. Our initiative in Indianapolis has consistently shown that spending less can get you more.

H.R. 716 is a start in the process of improving the quality of government services while at the same time lowering the cost. As a companion effort, I suggest that it is important to identify the myriad legal, systemic, cultural, and organizational barriers that exist to improving further governmental efficiency. These barriers exist not only at the federal level, but also at many state and local levels. To that end, I have suggested to Speaker Gingrich that a commission be formed specifically to identify obstacles to real competition and, where appropriate, privatization. That commission would then recommend specific solutions to those barriers. I see that commission serving as a focal point for the good work that the caucus has already undertaken under the outstanding leadership of Congressman Klug.

Thank you for the opportunity to be here today.

Mr. HORN. Ms. Ybarra, if you will give your statement, we will then go to questions.

Ms. YBARRA. I am Shirley Ybarra, deputy secretary of transportation, and I also am a Governor's appointee to the Commonwealth Competition Council. I appear here really on behalf of both, and will try, instead of reading my statement, to fill in a few details about the experiences we have had.

I must say that I echo the mayor's statements in many of the things and virtually everything that he said, in particular where we see the price going down and the services going up. If you set the standards correctly, you would be surprised the private sector can even outdo those.

At the Commonwealth Competition Council, and I believe you will hear later from GAO, they have come to visit us, what we do is seek a number of ways and areas where we could privatize, work as a public-private competition, or compete the service. What we did in setting up this council, which is an independent agency, we asked the agencies to come in throughout government and tell us what they would be interested in working through, and it was surprising. I figured that we would just have a few things. They came in with a host of great ideas. They were looking for ways to step through the process.

We have developed at the council something called a cost analysis program, which we use and allowed the agencies, educated them in, and it is called COMPETE. It is really designed to capture all of the costs of a government service or function.

This program is essential in making the good decisions in our process. We also gave them a little bit of an incentive and said that the agency could keep whatever savings they got. It was amazing what they could come up with when they knew they might be able to keep the savings.

The council recently contracted. We have just been reviewing what we have done. We recently considered 91 of the opportunities with the following disposition: 20 opportunities have already been privatized; 32 are not going to be recommended at this time; 16 are under current study; and 23 opportunities are being recommended to the Governor and his submission of his budget.

We are also, at the Competition Council, under the direction of the secretary of administration and with the council, and I am on one of the committees looking at ESOP's for certain functions. We are finding that there are, in fact, areas where the employees would be interested in taking, if you will, the one off, taking it out and being a private operation or a public-private operation.

Just a couple of things that we did in particular in the transportation arena. We probably have the unique act in the country called the Public-Private Transportation Act. It is unique because it allows both solicited and unsolicited proposals for construction as well as services in the transportation arena.

We felt that in enacting this that the market might tell us better what they would like to either construct or a service they could offer. The market would be better at it than us just saying, here, do this one, which would be a regular competitive procurement.

In order to ensure the competition when an unsolicited proposal comes in, we post it and allow anyone else to come in without see-

ing some of the details in the proposal. On a road construction project, if you had not been working on a proposal of this magnitude, the amount of time, you may not have time to go Xerox it and resubmit it and put your name on it.

The first contract that we signed was, in fact, was a service contract. It was a maintenance service, and it was awarded, negotiated with Virginia Maintenance Services. It is a Virginia company, and it sounds very easy, it is a takeover. It is an asset management maintenance contract for 250 miles of the interstate in Virginia. It is a fixed price. The Virginia Maintenance Services assumes part of the risk.

One of the issues that we had to work through was what it was costing us at a fixed price versus what our costs would be. So we were doing a 5-year pilot program on 250 miles of the interstate, and we, at this point, estimate we are going to save over $20 million in 5 years, or an estimated 18 percent.

I will say not one person from VDOT lost their job because of this. We have lots of places where we can use—in Virginia we maintain all of our roads. The interstate is the easiest kind of road to have contractors on, and so we can utilize our people on the primary and secondary roads in Virginia where it is more difficult to plow or maintain those roads.

At DMV, another one where you would think, gee, easy things to contract out or grounds maintenance and so on. But we passed a bill also in 1995 that authorized the department to use the driver improvement, to set up or contract for qualified driver improvement programs. Instead of the limited number of places that we could provide the service at DMV, we have 105 providers at 209 locations. We are saving about half a million dollars a year in net cost to Department of Motor Vehicles. It is amazing the kinds of ways that we have found to privatize.

I have noted in my testimony, and I will not go through these, Mr. Chairman, correction was, as well as the Department of Education, where we have privatized the Virginia Education Loan Authority. Not only did we get that privatized, we brought in $61 million in net revenues on that.

I think you really need the effort from the top. You need good analyses, you need to think about not only what the bottom line costs are, but what are the services you are going to get, and set what is the standard you are going to receive.

The legislation enacted in Virginia, I know that you have taken a look at that, and I would be happy to answer any questions on any of the privatization efforts in Virginia.

Mr. HORN. Well, thank you. I appreciate that helpful statement.

[The prepared statement of Ms. Ybarra follows:]

COMMONWEALTH of VIRGINIA
Commonwealth Competition Council

George Allen
Governor

REMARKS TO THE
HOUSE COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY
WASHINGTON, DC
SEPTEMBER 29, 1997

BY
SHIRLEY J. YBARRA
DEPUTY SECRETARY OF TRANSPORTATION
COMMONWEALTH OF VIRGINIA

Mr. Chairman and members of the of the subcommittee, my name is Shirley Ybarra. I am the Deputy Secretary of Transportation for the Commonwealth of Virginia and I am also a member of the Virginia Commonwealth Competition Council. I am pleased to be here today to briefly discuss with you the privatization/competition initiatives being pursued and implemented in the Commonwealth of Virginia. Virginia is in the forefront of the privatization/competition movement in state government and has been recognized as a leader in the March 1997 privatization report by the General Accounting Office.

When Governor Allen came into office in 1994, he set out to look for innovative ways to manage Virginia's state government, placing high priority on using privatization/competition efforts to streamline and reduce the costs of state

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government services while maintaining the quality of the services.

To date, over 700 state government functions have transferred to the private sector, saving the state millions of dollars in operational costs. Even greater savings are anticipated for the 1998-2000 biennium.

I will specifically address the aspects of four major privatization initiatives in Virginia - transportation, corrections, higher education, and the Virginia Government Competition Act.

Transportation

The Virginia Public-Private Transportation Act of 1995 authorized state and local agencies to enter into agreements allowing private entities to acquire, construct, improve, maintain, and/or operate qualifying transportation facilities.

Corrections

The Virginia Corrections Private Management Act allows use of private prisons only if it provides a cost-benefit to the Commonwealth. To date, Virginia has initiated two medium security prison projects utilizing private vendor initiatives. The Lawrenceville Correctional Center in Lawrenceville, Virginia will open in the spring of 1998 and the Drakes Branch Correctional Center in Charlotte County, Virginia will begin construction in the spring of 1998. In both facilities, it is estimated that after the first year of operations the annual private cost of operating these facilities will be over $2000 less per inmate than if operated by the state.

Education

The Virginia Education Loan Authority (VELA) was closed in 1995 and responsibilities transferred to the private sector. VELA's function was to sell tax-exempt bonds and use the proceeds to make student loans to Virginia residents. However, there are many private alternatives for the provision of student loans at

competitive rates. The sale of the VELA loan portfolio and facilities generated $61 million in net revenues for the General Fund. The Student Education Assistance Authority (SEAA) was also closed in 1995 and operations transferred to a private entity. SEAA operated as a contract loan servicing center for federally guaranteed student loans offered under several federal programs.

The Virginia Government Competition Act

The last point I want to discuss is the Virginia Government Competition Act of 1995. This Act created the Commonwealth Competition Council. The Council is a bipartisan, independent entity of state government consisting of ten members, six appointed by the Governor, and four appointed by the General Assembly. The members include legislators, executive branch and private citizens. The mission of the Council is to seek effective government solutions through the promotion of privatization/competition and the development of effective techniques, including outsourcing, managed competition, and public-private partnerships.

The Council has developed an automated comprehensive cost analysis program called "COMPETE" designed to capture the fully allocated costs associated with performing a service or function. This program is an essential decision-making tool in the Council's process and it is a necessary step in make a fair and objective evaluation when comparing government costs with a private sector cost.

In 1996 the Council developed an inventory of opportunities for privatization/competition through a state-wide survey of all state agencies and institutions. The Council recently considered 91 of these opportunities with the following disposition: 20 opportunities have been privatized; 32 are not being recommended at this time; 16 are currently under study; and 23 opportunities are being recommended to the Governor for consideration in Virginia's 1998-2000 budget.

One last point on the Council before I conclude: The Secretary of

Administration, in cooperation with the Commonwealth Competition Council, is currently studying employee stock ownership plans (ESOPs) as a potential method of privatization of selected state services. Our research indicates that we are the only state government entity that has undertaken a study of this nature. The final report on this study will be presented to the Governor and the General Assembly in December 1997.

Conclusion

There are many promising opportunities associated with privatization/competition and public-private partnerships. In Virginia, key legislators and the Governor have worked together to introduce new privatization initiatives. The legislation enacted in Virginia and the Commonwealth Competition Council will help ensure the continued successful applications of sound business decisions in the future.

Thank you for the opportunity to provide information on Virginia's program. I'll be happy to answer any questions that you may have.

Ybarra

Mr. HORN. I was impressed with the laws that Virginia has. Let me just ask a general question to get the mayor included, did each of you base your cost comparisons on a law, in the case of Indianapolis, an ordinance? Or was it merely executive policy as is currently the case in the Federal Government?

Now in Virginia you have cited about five different laws here, I take it, but is there an overarching law that the government has where they could authorize this type of cost comparison we are considering in Federal legislation? Or have you just done it piece by piece in the case of Virginia?

Ms. YBARRA. In Virginia, it really is sort of the policy, and it is in the Competition Council. We have developed this procession, and it is in the purview. It is not mandated by law. But we felt for our agencies to make good decisions, they needed to have the kinds of cost analysis. We have it on a disk and we have trained everyone so they can literally plug in figures and take in not only the costs, the direct costs for the ad, but the administrative costs, the costs of administering the contract.

Mr. HORN. But is that under this law that you cite here, the Virginia Public-Private Transportation Act of 1995?

Ms. YBARRA. No, sir. No, it is part of the policy in the act that set up the Competition Council.

Mr. HORN. I see. So it is the Virginia Government Competition Act.

Ms. YBARRA. Right.

Mr. HORN. That is overarching.

Then you have the Virginia Corrections Private Management Act allows use of private prisons only if it provides a cost-benefit to the Commonwealth.

Ms. YBARRA. That one required the cost-benefit analysis, although not detailed in the act.

Mr. HORN. That was a law passed by the legislation and signed by the Governor.

Then you have the Virginia Education Loan Authority, and that is strictly for student loans I take it, or does it include construction?

Ms. YBARRA. No, that is just student loans.

Mr. HORN. I was on such an authority for private universities in California as a public member, and as I recall, a few States had copied what was done. At least for 15 years now, where the private institution comes in and submits its bond proposal to us, the State doesn't issue the bonds, but it certifies there is enough there if a default occurs. Then the result is we save them a few points of interest. That was the attempt to help the private sector.

Then you had, as you say, the overarching one, if any, is the Virginia Government Competition Act. Conceivably, you can spread this around the rest of the government, the executive branch; is that correct?

Ms. YBARRA. The Competition Act was for all of government. The Public-Private Transportation Act is strictly for the transportation facilities and services. That was really slightly ahead, or actually about the same time, but it was really designed to help us analyze public-private partnerships in the road construction area.

Although it is totally contracted out in Virginia, there were those proposers who wanted to undertake a road that could bring it on line 10 to 15 years sooner. Yes, it may be a toll road or some other beneficial road. It would also eliminate, in terms of Virginia, using our bonding and not hit our debt capacity model in the States. So we had some real advantages with it. We have two of those under negotiation at the moment.

Mr. HORN. In the case of Indianapolis, was this an ordinance answer completely within the city of Indianapolis, or did you need a State law, also?

Mr. GOLDSMITH. I am not sure. I just did it.

Mr. HORN. In other words, this is an executive action of the mayor; is that it?

Mr. GOLDSMITH. Yes, sir. If you follow the progression, if you do privatization, you do not have to know how much your own costs are, because you just put out the bid—you buy outputs. The private sector bids, and they work out the cost accounting. If you move to competition, you need to know your costs.

Government inherently tricks itself on its costs. It does not really know its costs; it does not fully load its costs. So if you move from a privatization model to a competition model, you have to do activity-based costing in order to have your own numbers and have those numbers connected to outputs. So we did it.

Mr. HORN. Now, is this a one-time affair that once you have the contract, you don't worry about it, or who in your administration worries about this? Do you have a secretary of a particular department or a deputy city administrator or something? How is this thing administered? Or is the mayor everywhere in Indianapolis?

Mr. GOLDSMITH. Well, eventually when your trash does not get picked up, you lose an election, so to some extent I am kind of the arbiter in some ways.

But, first of all, the competition process will never be over with, and now we are recompeting contracts we did previously because long term, monopolistic private contracts are not necessarily the best transaction for the public either. At the same time, government employees need to be trained on how to be contract monitors. Some are so involved that they suffocate private management value, and others are so casual that they do not hold them accountable for quality.

We have tried to set up a separate contract monitoring group that understands it needs to be very flexible in terms of allowing the private sector, or even the Government employee, the maximum leverage in terms of how it does its work, but hold them very precisely to the quality that they promise, whether it is internal or external.

Mr. HORN. Does that group report to you as mayor?

Mr. GOLDSMITH. Yes, sir. The proposition I have taken to my taxpayers is, "Hold me responsible." If it is a private trash truck or a public trash truck, whatever the case may be, you should still have the right to hold your elected officials responsible. It is up to me to figure out whether I can produce that service better by buying it in the open market or doing it through my own employees. Regardless, I should be what the voters see, in terms of public services, as the person responsible.

Mr. HORN. I agree with you on that. I take it Indianapolis has what we would call a strong mayor government, as opposed to a weak mayor?

Mr. GOLDSMITH. Yes, sir.

Mr. HORN. Is there a city administrator anywhere in that group working directly with department heads, hiring them and firing them?

Mr. GOLDSMITH. Yes. I think your point is a very good one, though. Just as an aside for city officials, the cities that have had the most reform in terms of competition over the last 3 or 4 years have tended to be those with strong mayor forms of government. Where the mayor is able to get over the top of the kind of bureaucracy and put the issues out for competition.

Mr. HORN. Yes. I would think when you make the argument, hold me accountable, you have got to be the one that has the yes and no on what is accountability, because it is your hide that will suffer at the polls if it doesn't work. You are absolutely right. We haven't held a lot of mayors accountable.

I come from an area, Los Angeles and Long Beach, where you have weak mayors. They are wonderful people, but they do not have the power. It is either in a city administrator or a city manager, in the case of Long Beach, or it is in a series of city commissions in the city of Los Angeles, that once the mayor appoints people, they say, "Bye-bye, we don't need to listen to you, mayor, for another 4 years." If they want a renewal on the appointment, they will start currying favor.

But they hire the police chief, they fire the police chief. The mayor does not. Yet the voters think, hey, mayor, we sent you up there to run the city of Los Angeles. You know what that problem is. You are a lucky mayor to have that power.

I think that the Federal Government, we've got 40,000 full-time equivalent cases here studying under OMB certain A–76 out of the total of somewhere between 800,000 and 1.2 million individuals who are Federal employees and performing commercial functions. In other words, it's about 3 to 5 percent. What proportion of city employees are you having, or studying, to actually have their work competed by the private sector?

Mr. GOLDSMITH. Well, it is virtually everyone except police, fire, and land control zoning. If you really step back and look at it, at the Federal, State, and local levels, there are very few areas in which commercial enterprise is not already involved.

Second, as you know, Mr. Chairman, inside this bundle of activities—take a military base. There may be 400 different businesses on that base. Even within these umbrella areas, there are segments that can be competed out. We essentially have competed virtually all of our civil activities.

Mr. HORN. Do you have an overcrowed jail in Indianapolis?

Mr. GOLDSMITH. We will for another month, when the private jail opens at one-sixth the cost per prisoner of the public jail that was opened 10 years ago. And the jail is a good example because, instead of hiring a private company to design a jail, and a private company to build a jail, and a private company to manage a jail, we just decided we wanted to buy an output. And our output

should be, how much does it cost per prisoner per day to house a prisoner humanely? Why don't you all bid?

And so we have a private company building a jail, designing a jail, and managing the jail. Their job is to deliver prisoners to the courthouse and take them back to the jail—at a very substantially reduced cost.

Mr. HORN. Now, is that under your authority as mayor?

Mr. GOLDSMITH. Indirectly. The contract will be monitored by the sheriff, because he knows more about jails than I do. We are managing the contract. He has a public jail, and we will have a private jail. He will be responsible for the level of care. One, he'll be hiring his own correctional guards, and at the other, he will be managing the contracts. So the sheriff will be monitoring the contract.

Mr. HORN. Now, is he elected at large?

Mr. GOLDSMITH. Yes, sir.

Mr. HORN. In the same jurisdiction that you are?

Mr. GOLDSMITH. Yes, sir.

Mr. HORN. What is it, a city and county arrangement?

Mr. GOLDSMITH. Yes. It is a consolidated city and county arrangement.

Mr. HORN. Because I was going to say, I was one of the founders of the National Institute of Corrections, and I also chaired the jails committee for a while. But I made the mistake, as chairman, of putting sheriffs on the jails committee and then raising the question of privatization of jails.

Mr. GOLDSMITH. Yes.

Mr. HORN. Sheriffs do not like to part with their jail.

Mr. GOLDSMITH. Yes, sir.

Mr. HORN. But you're absolutely correct. It is idiotic what happens in some—well, Dade County, good example. They listened to our experts, and they were so impressed with what Nelson, a former warden in a Federal prison—in fact, in Chicago he built that metropolitan correctional center. And he went down and showed Dade County how they could save millions of dollars.

They were so impressed, they named a day after him, junked their plans, and saved millions of dollars, because we don't need to build jails the way we build them. It's 19th century the way they do it. And you can save a lot of money.

And that is certainly one thing you shouldn't privatize, except the sheriff hates to part with anything, and that's one of the problems. But we've got jails overcrowded all over America. If we can, you know, classify the population, get the violent ones, put them in the old clinker, assuming the doors do lock, and get the others out where you can deal with them.

Mr. GOLDSMITH. Yes, sir.

Mr. HORN. I commend you on that. That's a very interesting experiment.

What other things are going on in Indianapolis that are exciting and the world should know?

Mr. GOLDSMITH. I would just conclude, Mr. Chairman, in response to your challenge, by saying that I do not think a mayor, Governor, Congressman, or President can really determine the value until an activity is nominated for competition. There is no way to study it.

We had the best accounting firms in the country study our waste water treatment plant and they determined it was one of the most efficient in the country. Then, when it was privatized, we saved 44 percent off our operating costs and what will be $250 million.

I would encourage the committee, as it considers this, to suggest that there are billions of dollars at your level available out there that can be reinvested. But you do not know about them until you nominate Services for competition. To the extent that we study them and try to determine the conclusion inherently does not take advantage of the free market.

Mr. HORN. Let me ask you a few questions. And you mentioned, Secretary Ybarra, about one employee. I'm interested in the question of separation packages if part of a governmental group is disbanded when it goes into the private sector. And what about pension portability, and how the workers in general responded to these efforts? I would just be curious, wanting to hear from both of you since you're a little different in what you're doing.

Ms. YBARRA. We, in Virginia in 1995, also had an incentive for early retirement that was passed by the general assembly. In doing so, we had just within the Virginia Department of Transportation, for example, nearly 1,400 employees elected to choose that package, and that was about 8 percent.

When you have that kind of change going on, you now need to find efficient ways to manage. And we were not unusual across Virginia. I mean, we had one of the higher percentages, but we now need to find ways to manage a streamlined work force.

And so when I say, not one lost their job because of the maintenance contract, it is because we had taken a hit in that. This was an opportunity to bring in a contractor who is an asset manager, who would utilize the small businesses and effectively provide the maintenance where I could then utilize the people in the maintenance area without moving them, but utilize them in areas nearby, and use them in the maintenance that they did best. So for us, that all worked out about the same time.

Now, in the ESOP study that we're looking at, that is something totally different, but we have not finalized it. But we are looking at some opportunities where there would be opportunities for the State employees to take something out private, and what we need to do to support that. We're still drawing those conclusions.

Mr. HORN. In other words, that would be the pension situation. How about the health care?

Ms. YBARRA. Yes.

Mr. HORN. How about the health care plan?

Ms. YBARRA. In terms of——

Mr. HORN. You've got an operation that's been in government. And you've contracted it out now to a private sector. It seems to me that two things that disturb most people, including me, are, one, what happens to the pension rights? Can you follow them? Or can they continue to buy into a pension plan and get the same benefits?

No. 2 is the health care coverage. If there's something set up, so they can buy into that if they want to go with the operation, and you don't have another place in the State of Virginia or the city of

Indianapolis to place people where they can usefully do work, what's the thinking of how you can solve that problem?

Mr. GOLDSMITH. That——

Mr. HORN. Both of you, I'm interested, Virginia and Indianapolis.

Mr. GOLDSMITH. Well, health care is actually easier, because the private sector health care is generally acceptable, and the barriers to transferring are not that significant to employees; especially if the employees go from public to private, they pick up health care.

The portability issue, I think, is a very significant one, and I would encourage the committee to spend considerable time on this. When we privatized the Naval Air War Center in Indianapolis, some of the better, more senior employees, who really wanted to stay with the private operator, were penalized substantially because of the difficulty of taking their pensions with them.

What we have done is set up a system that is not only unfair to the employee, it's unfair to the taxpayer, because it actually would have reduced long-term costs to the taxpayer if the pension had been portable. But the way it is scored, it is very difficult for that to occur. I would encourage portability of the pension.

We have been able to buy out most of those. But in the long run, some of the most valuable employees are prohibited from participating in the private enterprise because of the difficulty and expense of potentially losing their pensions.

Mr. HORN. How about Virginia?

Ms. YBARRA. Well, over in the buyout that was done governmentwide, or the incentive, they remained in the pension and kept their health care.

Now, in the case of ESOP, where we are still working through what really—and you're right, the health care is the easy one. It's the pension and what you do with it, whether you allow them somehow to stay with the State pension; and that really doesn't work either. Those are the issues that—and what we're struggling with and hopefully we will have some answers presented to the council next month.

So on the governmentwide one, that was all taken care of by the general assembly on that. We have not found that to be a difficult issue.

I will also—but let me come back at it another way.

In setting up some private child support offices in the health and human services area, we found that the area had grown so fast in Chesapeake and the Hampton Roads area that we needed two new offices if you just looked at the number of people we were serving. So we contracted for the construction and the operation of these facilities.

In doing so—and everyone told us it was going to be very difficult; I mean, the employees were going to be concerned and so on—one of our biggest problems right now is keeping the employees in the government, because they want to go work for the private operator because they know that they have just great opportunities over there.

So it almost worked the opposite way. They really didn't want to stay with State government once they figured out a way to take their pension, or they'd see that they would have another one just as good.

Mr. HORN. I yield to Mrs. Maloney.

Mrs. MALONEY. Just very briefly, I would like to ask the mayor: You state in your testimony that the number of city workers, excluding police officers and fire fighters, has dropped by nearly 45 percent in Indianapolis. And just two brief questions: What is the percentage, including police and fire fighters? Have you ever considered privatizing police and fire fighters? If you haven't, why not? Just your comments.

Mr. GOLDSMITH. I have considered it momentarily.

Let me first put in context the 45 percent reduction. We have had no involuntary layoffs of union workers. Our unions have been willing to participate and compete. We have had attrition, some moderate layoffs, and some outplacement of middle managers.

And what's happened, in government in particular, is that managers tend to make the workers less efficient, not more efficient. So you are not only raising their cost, you are reducing their productivity.

As we have been able to attrit and outplace the managers, the union workers have more empowerment, more pay, better performance, and lower costs at the same time. So the figure is a bit misleading, although it is true.

As for police and fire, because they inherently affect the public safety, we have turned to outsourcing their support services, rather than the police officer on the street. Now, as a practical matter, as you know, whether it is in Indianapolis or New York City, there are tens of thousands of private police officers just hired by private companies. But our perspective has been to outsource the support services. The good news has been that it has allowed us to drive more money into street officers because we are more efficient in the noncore activities.

Mrs. MALONEY. Very briefly, Ms. Ybarra, you mentioned that Virginia is studying employee stock ownership plans as a potential way of privatizing selected State services. Could you give us a preview of the study's results? And I would love to see a copy of it or maybe submit it to the committee when it's completed in December.

Ms. YBARRA. It's very close to being complete. I would be delighted to submit it to the committee. It will be formally presented in about 2 weeks. So I think the record will still be open.

[NOTE.—The information referred to may be found in subcommittee files.]

Mrs. MALONEY. And could you give us a preview of what the results are in the study?

Ms. YBARRA. I think I would rather hold on to that.

Mrs. MALONEY. Thank you.

Mr. Chairman, I have no further questions. I yield back the balance of my time.

Mr. HORN. I thank you very much. I have a few more questions to go here.

You've answered the one on the absorption of union employees. Now, Virginia is a right-to-work State; is that correct?

Ms. YBARRA. That's correct.

Mr. HORN. Do you have any unionized State employees?

Ms. YBARRA. Not "union" as you would use it. They do have an association.

Mr. HORN. Uh-huh.

Ms. YBARRA. And we have worked very closely with that group.

Mr. HORN. Let me ask you, Mayor Goldsmith, I'm curious whether Indianapolis saved the money by reducing salaries or reducing overstaffing. When you hit that middle-level staff group, I would think every corporation I know and every university and city I know that's been successful, that's where they've taken out the fat, because that's grown over the years.

The Federal Government is a prime example where there were two of us that were assistants to the Secretary of Labor 35 years ago. Why they've got enough to fill this room that are assistants now. I mean, it's unbelievable the way the bureaucracy just sort of, on the staff side, people signing initials and not really producing too much, maybe slowing things down.

And I think that's what you sort of suggested, union members got empowered when you got a few of those staff people out of the way. So I would be curious just how you dealt with that. Was it the savings from getting rid of overstaffing, not just competition?

Mr. GOLDSMITH. It is part and parcel of the same, Mr. Chairman. The process of competition drove the workers to find better ways of increasing their productivity, and that often led the unions to bid without their managers. So I would say, here is how we want to do our bidding; we actually gave them some consulting services.

I think the other very important point that you just made in your question, Mr. Chairman—very important—is that our savings have not come from reducing the salaries of the employees, whether they were kept inside or outsourced. In fact, in most circumstances, the salaries have actually gone up as have the career opportunities. As the secretary mentioned, people have a larger base from which to move.

The salaries of our inside workers have benefited the salaries of people going out. The savings have come from buying somebody else's management talent, removing middle layers of bureaucracy, and better use of technology.

Mr. HORN. I was going to ask you, have you studied the average wages of your contractor operations? And I gather you have to make those statements. Is that sort of a regular look at what the contractor operations are paying with the—say, the comparison with the city worker on the one hand and then the contractor operations full-time equivalent, however figured, on the other. Have you made those comparisons?

Mr. GOLDSMITH. Well, indirectly. But inherently, this is a very difficult question, because there are some services the government is in that it just cannot afford to be in. My street workers came to me and said, essentially,

> We do not think you can afford to have us pick up litter because our wages are too high. We do not want to be competitive in that business. We want to take all of our extra workers and do road construction instead, where the wages in the marketplace are higher.

Generally where we win or where we watch the outside contractor, the salaries are about the same. But there are some activities where government wage rates, frankly, are way above the market.

And then you have to ask yourself, as a mayor particularly, is it fair to tax your poorest residents and accumulate their tax dollars in order to pay someone way above the market; or is it better to rearrange your labor force so that you have your workers in areas where they are competitive?

Generally, the private sector has not cut wages when they have won. But there are some areas—mowing grass on the medians, picking up litter—where our wage rates are too high and we have outsourced them, taken the money we have saved, and have done more of the core businesses along the way.

Mr. HORN. How about Virginia?

Ms. YBARRA. It's very similar. Just going back again to the maintenance contract, while this sounds all very easy, but it is an asset management contract, that what the contractor can now do is go and hire individuals or smaller firms on a completely different, flexible schedule. They are the ones that do all of the bonding for all of their workers; they do provide health care. But they can use these people on a much more flexible schedule than the State can.

So what we're seeing is a safe—you can't compare, you know, this maintenance worker with that one, because they can hire people. And they may be just the people picking up litter. It may be just the people that go and do all the trimming around the fences. I would have a maintenance worker at level Z doing any number of those, where they may be able to use someone once a week to do, you know, that. That works for them.

Mr. HORN. Well, we thank you on that.

The gentleman from Virginia, Mr. Davis.

Mr. DAVIS. Let me be brief. I know you have to move on to other things.

I always looked at government jobs—you know, I was the head of the county government in Fairfax, and we were county and city, so we were about the size of Indianapolis. We had some great examples where privatization saved money.

We had one notable failure when it came to school bus repairs. And we hired a company I wouldn't recommend to anybody, Johnson Controls. I'll say that name again if anybody is listening. They're awful. The out-of-commission rate for school buses was usually 2 to 3 percent; occasionally we go as high as 5 percent. It went up to 25 percent when this company came in, because there's a whole special rule for school buses that don't apply to other buses, which they had done before.

You can imagine, with these kids sitting there at the bus stop for 2 hours, how our phones were ringing back and forth and it didn't work. I think we finally—I said, and over the objection of some of our Members, this didn't work, and we're going to go back and fold it back in.

So it doesn't always work, but you have to be willing to take chances and try new things and I think the voters recognize that. Have you had any notable failures in Indianapolis where you can look back and say, gee, you know, in retrospect, we tried this, or we should have tried this, and it didn't work?

Mr. GOLDSMITH. Sure, and I will disclose them. Let me——

Mr. DAVIS. We all understand this introduction, though.

Mr. GOLDSMITH. The great thing about competition, as illustrated by your question, is that it tends to measure performance and outcomes. And until you compete internally in government, you do not recognize your failures, because you are not measuring outcomes. The process of competition is one where you buy outcomes.

We have had a bus contract that has been terrible. We outsourced part of our bus system, not maintenance side, but some of the delivery system—and it was not done very well.

Generally, when we find a failure, the failure is related to lack of clarity in terms of what the outcomes would be and lack of vigilence in terms of our monitoring those outcomes. I think if we have done 75 competitions; we have had a handful of failures. The more we do, the more failures we are going to have, but also the more successes. But we are able to do that on the public and the private side.

Mr. DAVIS. We ended up savings millions of private taxes with bus service instead of going to Metro, which was sold, and could get more routes covered. And we would have done more except for some sections in Federal labor law that made it difficult for us to do that, and we would have had better outcomes for the taxpayers. So it's a mix, back and forth.

But government's bottom line, it seems to me, should be to get for our taxpayers the best value for their tax dollars. And when you move away from that as your objective, when you look at protecting jobs, or privatizing, as objectives in themselves, you lose focus of what it's all about.

Shirley, let me just ask you—in Virginia, we've had a number of successes. Do our State's process-for-privatization efforts allow private sector and public input? I mean, how does that work as you're making those kinds of decisions?

Ms. YBARRA. On the transportation side of it, we have a whole set of guidelines. And we had the process set up so that we would have both the public and the private input. And certainly being able to take unsolicited proposals, I mean, basically the private sector can come in and say, here is an idea we would like to suggest to you, and submit a proposal. Frankly, again on the maintenance contract, I don't know that we could have ever written it the way; on the asset management, outcome-based, or performance-based.

Mr. DAVIS. The way the proposal came in.

Ms. YBARRA. I don't know how we would have done it.

On the competition council, yes. We have not only had the public hearings, but as we begin to focus on the specific areas of potential, either contracting out—public-private partnership, or whatever, we focus a lot more in getting both, the private sector coming in and discussing and how to go about it, whether it be on the—if we're going to do it as a contractor, as an RFP. So we've spent a lot of time in the dialog on both sides.

Mr. DAVIS. Now, in either case, did you have a significant dropoff of public sector jobs, of people being laid off or——

Ms. YBARRA. No. But we had had the general assembly pass the—I can't think of the name of it—act which allowed for the Virginia Government employees to take their early outs, early buyouts, if they met certain criteria. So we have not had anything after that.

Mr. DAVIS. You've not had any RIF's as a result of this?

Ms. YBARRA. No.

Mr. DAVIS. Mayor, how about you?

Mr. GOLDSMITH. We have had some moderate RIFs of mid-managers. But generally we have had public employees going to the private employer, public employees going to other public organizations, people deciding to retire or, in pretty robust economies, some people deciding that they would like to take their incentives and get a private job.

In the last several years, we have had virtually no involuntary layoffs as part of this process. Yet, accommodation of the other activities has given us this 45 percent reduction in nonpublic safety employees.

Mr. DAVIS. I like the way you have done it, as opposed to the way Federal Government did it, Mr. Chairman, where they said, we're going to cut so many Federal employees. That doesn't affect the bottom line necessarily. That drives the process, we're going to get rid of so many employees or whatever. That's when you lose sight of the bottom line, you lose the efficiencies that we're trying to get.

So I congratulate you both. Thank you.

Mr. HORN. Let me just ask one question here and put two things on the record.

One, those guidelines you mentioned, Madam Secretary, if you wouldn't mind giving them, we'll at this point, without objection, put them in the record. I think that would be most helpful to us in trying to develop legislation and see what makes sense ahead of time. Because otherwise we never see the regulations made by various agencies.

[NOTE.—A copy of the Commonwealth of Virginia's "Public-Private Transportation Act of 1995, Implementation Guidelines," dated July 1, 1995, may be found in subcommittee files.]

Mr. HORN. And then I would also like to put in the record the article in the Washington Post, Sunday, September 21, 1997, headlined, "A Winning Combination in Indianapolis: Competitive Bidding For City Services Creates Public-Private Success Story." And they have a picture of the mayor, which unfortunately our people can't reproduce, because it looks even younger than you look, as I look at you.

Usually we kid our Members around here that we put our high school pictures in the Congressional Directory, but you truly would look like you were just getting out of high school.

Now, let me ask one last question of the secretary. Does the Department of Transportation of Virginia have any authority over the 14th Street Bridge that connects to Virginia and District of Columbia?

Ms. YBARRA. Actually, no. It is the District of Columbia's bridge. However——

Mr. HORN. You aren't to the halfway mark of the Potomac? It's your side that I'm getting to.

Ms. YBARRA. No. It is the mean high watermark of 1928, which happens to be over on the shore of Virginia. And with Congressmen Davis, Wolf, and Moran, the Virginia Department of Transportation has recently completed a study which we presented to them

last—I don't know, what was it—Wednesday, with the District manager up here, of things that Virginia could do to improve access, egress, and movement to the 14th Street Bridge, and some suggestions that we would make in working with the District, of things we could do. We understand the issue very well.

Mr. HORN. Well, just let me repeat the issue to make sure we understand it, because I think I mentioned this a year ago in the Committee on Transportation, on which I serve, when you appeared, or the Secretary, at the time. And it is that connection between the George Washington Memorial Parkway and that bridge is a killer connection. I don't know how many have died there already. But it isn't for anything that we did to prevent it, because those cars are coming 55 miles an hour down that hill across that bridge, and here comes the George Washington Parkway lane when you're going toward Mount Vernon, and you want to connect to the District of Columbia. Try it sometime; I think you——

Ms. YBARRA. I know exactly.

Mr. HORN [continuing]. You or the Governor would authorize it if you had to drive it 10 times a day or whatever. That needs fixing. I say to my colleague and we get the lousy tea, whatever, ISTEA, we're going to get that in if I have anything to say to it.

Mr. DAVIS. Since the gentleman is on the Transportation Committee with me——

Mr. HORN. I am.

Mr. DAVIS [continuing]. He will work with me.

Mr. HORN. And I'm on the right subcommittee, too.

Ms. YBARRA. And, Congressman Davis, we might want to provide the chairman with a copy of that report that we presented to you.

Mr. DAVIS. He's also on our District Subcommittee, as well.

Mr. HORN. I'll get you one way or the other to get that bridge built, or that link; it's a link there. Sorry to get parochial, but I want to save a few lives here, including my own.

Now, that would be the last point I have on that. And I just want to thank you both, because you both have given a terrific perspective here as to what can be done in State government and what can be done in the city of Indianapolis.

I'm delighted to see you, mayor. You're a dynamic person, and the previous mayor, that I thought 30 years ago should have been a national figure, was one, Richard Lugar, who President Nixon kept saying was his favorite mayor. And if he had put him on the ticket, history would have been different.

Mr. GOLDSMITH. Thank you very much.

Mr. HORN. Hang in there.

Mr. GOLDSMITH. Thanks for your courtesy.

Mr. HORN. You're welcome.

Ms. YBARRA. Thank you.

Mr. HORN. OK.

What we're going to do now is combine the last two panels—the GAO, OMB, and the employee union.

OK, gentlemen, as you know, if you'll stand and raise your right hands.

[Witnesses sworn.]

Mr. HORN. All three affirm, the clerk will note.

We will begin this with Mr. Stevens, the Director of the Federal Management—well, I think what we want to do is get a dialog here, No. 1. And I would like the General Accounting Office to lay out what they have found, and then we will have Mr. DeSeve, or OMB, and we will also have then Mr. Harnage for the American Federation of Government Employees. At that point, we should have most of the issues on the table and be able to deal with them in a dialog, which is what I would like to do.

I want to say to Mr. DeSeve, I thank you in advance for your testimony next Monday on the Results Act and your help in securing Director Raines's participation. So thank you.

Mr. DESEVE. Thank you, Mr. Chairman.

Mr. HORN. Now, Mr. Stevens is the Director for Federal Management and Workforce Issues in the U.S. General Accounting Office, which, as most of you know, is the audit arm programmatically, as well as fiscally, for the legislative branch to look at the executive branch. So what good tidings do you have today?

STATEMENTS OF L. NYE STEVENS, DIRECTOR, FEDERAL MANAGEMENT AND WORKFORCE, U.S. GENERAL ACCOUNTING OFFICE; G. EDWARD DeSEVE, ACTING DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET; AND BOBBY L. HARNAGE, SR., NATIONAL SECRETARY-TREASURER, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO

Mr. STEVENS. I'll be very brief, Mr. Chairman, in part because two of the six entities that we looked at in Virginia and Indianapolis you have discussed at some length here already.

Congressman Klug asked us a couple of years ago to look at the privatization experiences of State and local governments, and we zeroed in on five States—Georgia, Massachusetts, Michigan, New York, and Virginia—as well as the city of Indianapolis, which really, in our consultations, turned out to be No. 1 in the estimation of most of the analysts throughout the country. In general, we found that those entities had learned six fairly common lessons to all of them in their privatization initiatives or in the competition initiatives that many of them turned into.

First, that they needed to have committed political leaders to champion the initiative, and you saw Mayor Goldsmith here was certainly one of those. They needed to establish an organizational and analytical structure to implement the initiative, as you saw in the example of Virginia and their competition council. They needed to enact legislative changes or to reduce the resources that are available to government agencies in order to encourage the greater use of privatization. They needed to develop reliable and complete cost data on government activities to support informed decisions and to make these decisions both easier to implement and to justify for potential critics—and there are critics out there.

They needed to develop strategies to help their work forces make a transition to the private sector environment. And last, and perhaps very importantly from GAO's point of view, they found they needed to enhance the monitoring and the oversight and the auditing of these functions once they were privatized or contracted out to ensure that the government's interests were fully protected.

I would like to apply just a couple of these lessons to the bill that you have in front of you, if I may. The statement does so at some length. I'll be very brief.

The bill does not and it probably cannot provide for the effective political leadership that the entities found that they needed, but it does provide a tool that a committed political champion could use.

OMB Circular A–76, as you know, has never been enacted into a law. And its effectiveness in practice has been questioned both in the executive branch and in dozens of congressional hearings. The bill, H.R. 716, would give the force of law to general reliance on the private sector for commercial goods and services and, thus, would provide a stronger foundation but not a substitute for political leadership. I must also mention the possible downside of subjecting some of these decisions that are now made purely on administrative authority to greater judicial scrutiny.

To implement the privatization issues, I mentioned that most of these entities needed to establish a dedicated organizational and analytical structure to carry it out. H.R. 716 does this by establishing a new center for commercial activities in OMB to implement the requirements of the legislation and ensure compliance and so forth.

Given the wide latitude that the current bill allows OMB, and it's in some contrast to the first version of this bill, by the way, but the current bill does give OMB a great deal of latitude. And there will be a number of questions that will come up, such as whether government corporations and the Postal Service, the State governments, would qualify as private sector entities, for example, or whether public buildings would have to be sold to the private sector in order to house public employees. Many questions like that OMB would have to answer and we would raise the question of how is Congress going to hold OMB accountable for this.

The short answer is that the Government Performance and Results Act provides an ideal mechanism we believe, and I can go into that in more length if you would like. We would also point out, however, that this would add a lot of resource burden on OMB, and their resources are already strained, I believe, particularly on the management side. That is something that would have to be addressed.

I mentioned the need for reliable and complete cost data on government activities that these entities we examined felt were essential in assessing the overall performance of the activities that are designated for privatization and in making these decisions easier to implement and to justify to potential critics. Mayor Goldsmith noted the difficulty, and it is certainly true of the Federal Government, of determining what all of the costs, both direct and indirect, are. The ABC program that he mentioned was probably one of the most innovative approaches to this.

The fifth major lesson that was learned was that these entities needed to develop strategies for work force transition. One that was used in dealing with employees in Virginia, for example, was to provide an incentive for them to embrace privatization in the form of allowing them to retain some of the savings from that.

Then, as I mentioned, the weakest link that most of these entities identified was in their oversight of the process. You, Congress-

man Davis, mentioned this as something that in Fairfax you had learned through experience was necessary as well. Contract administration has been an endemic problem for the Federal Government for many years. It's nowhere more severe than in those agencies that are very heavily dependent on contractors already, DOE and NASA for example.

So, in conclusion, Mr. Chairman, we believe that striking a proper balance between the public and private sector provision of goods and services to the American people, is one of the most enduring issues in American politics. The Freedom From Government Competition Act would be a clearer statement of congressional policy on this question than now exists anywhere, certainly in law. We believe that Congress is the appropriate forum to address such a fundamental question. I hope our dialog can contribute to that.

Mr. HORN. Very good.

[The prepared statement of Mr. Stevens follows:]

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to assist the Subcommittee in its consideration of H.R. 716, the Freedom From Government Competition Act. The bill would require that the government procure from the private sector, with some exceptions, the goods and services it needs to carry out its functions. As you know, we testified in June on S. 314, the Senate companion bill to H.R. 716, and my remarks today closely parallel our statement before the Senate Committee on Governmental Affairs.[1] Specifically, I will discuss H.R. 716 as a potential vehicle for competitive contracting, using the results of our recent work on privatization initiatives at the state and local government levels.

We reported in March 1997 on the major lessons learned by, and the related experiences of, state and city governments in implementing privatization efforts.[2] Our report, done at the request of Representative Scott Klug, examined the privatization experiences and lessons learned by the states of Georgia, Massachusetts, Michigan, New York, and Virginia, as well as the city of Indianapolis. While not done across the board each of these governments made extensive use of privatization--primarily contracting out governmental functions--over the last several years, tailoring their approaches to their particular political, economic, and labor environments. On the basis of our literature review, the views of a panel of privatization experts, and our work in the six governments, we identified six lessons that were generally common to all six governments. In general, the governments found that they needed to

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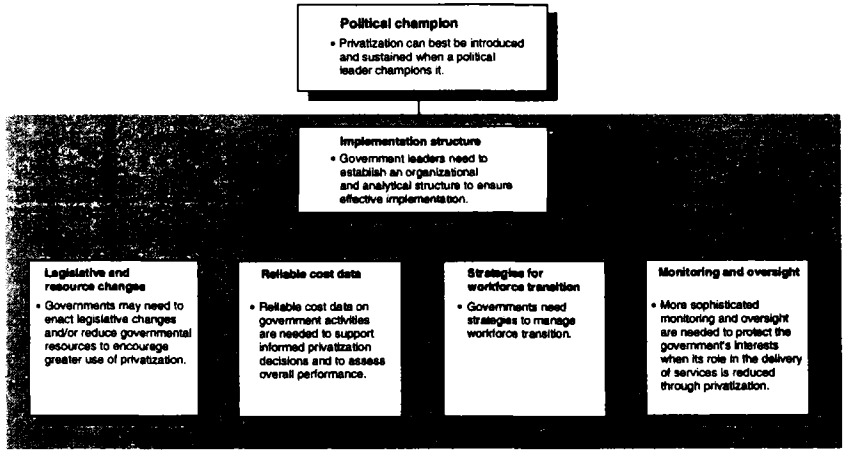
[1]Privatization and Competition: Comments on S. 314, the Freedom From Government Competition Act (GAO/T-GGD-97-134, June 18, 1997).

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

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

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



H.R. 716 PROVIDES A TOOL BUT NOT A SUBSTITUTE FOR A POLITICAL CHAMPION

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

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

H.R. 716 does not, and probably cannot, provide for effective political leadership. It has been executive branch policy for more than 30 years to encourage competition between the federal workforce and the private sector for providing commercial goods and services. However, this policy has been embodied only in an administrative directive, Office of Management and Budget (OMB) Circular A-76. While we have consistently endorsed the concept of encouraging such competition, its effectiveness in practice has been questioned both in the executive branch and in dozens of congressional hearings.

H.R. 716 would give the force of law to general reliance on the private sector for commercial goods and services, and thus would provide a stronger foundation, but not a substitute, for political leadership.

H.R. 716 WOULD ESTABLISH A FLEXIBLE IMPLEMENTATION STRUCTURE

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

Responding to the need for such a centralized structure, H.R. 716 requires OMB to issue regulations and to establish a new "Center for Commercial Activities," which is given responsibility for

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

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

- Whether government corporations, federally funded research and development centers, state governments, or even the U.S. Postal Service should be included within the definition of "private sector sources" and thus eligible to compete for the government's contracts.
- Whether public buildings would need to be sold to the private sector in order to house federal employees.
- How OMB will incorporate congressional views when significant or highly sensitive conversions are proposed.

Given concerns such as these, Congress will need to oversee OMB's performance of its responsibilities. The strategic and annual performance plans and annual report that OMB is to produce under the Government Performance and Results Act, provide a mechanism for such accountability. OMB could include in its strategic plan an

objective and strategy for implementing the bill's requirements.[3] The strategy could be developed in consultation with Congress and could describe major priorities as well as specific milestones for implementing the bill's provisions. In addition, OMB through its annual performance plan could provide a schedule for changing current policies and systems that would be necessary to accomplish the bill's purposes. Such a schedule would provide greater direction for agencies as they go through the process of identifying potential activities to be included in their annual performance plans. It could also provide a firm basis for Congress to assess OMB and agency activities as they relate to the bill's requirements.

To effectively carry out the role envisioned for it under the bill, OMB will require additional resources or will need to reallocate existing resources from other mandated responsibilities. We reported in 1995 that we were concerned about OMB's capacity to carry out its already numerous management responsibilities, which have been expanded significantly in recent years.[4] Such a plan might be an appropriate vehicle for addressing such resource issues.

Implementation of H.R. 716 Would Be Helped by Integrating It With Agencies' Strategic and Performance Planning Activities

The experiences of other governments as well as of major private firms indicate that, when the outsourcing of functions is contemplated, answers to fundamental questions about the purpose and mission of an organization should precede any major outsourcing activities. The bill has significant implications for the ongoing

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[3]The Results Act: Observations on the Office of Management and Budget's July 1997 Draft Strategic Plan (GAO/AIMD/GGD-97-169R, Aug. 21, 1997).

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

implementation of the Results Act; the Act focuses on what activities the government should or should not be performing from the perspective of overall contributions to missions and goals, while the bill addresses how and by whom those activites should be performed. Under the provisions of the Results Act, agencies are required to set their strategic direction through multiyear strategic plans, develop annual goals, and report on performance against those goals. Agency strategic plans and performance measures are intended to provide Congress with a vehicle for asking fundamental questions about federal functions and their performance. In our recent reports on the implementation of the act, we have found that many agencies are not yet well positioned to specify their plans and strategies in terms of tangible results.[5]

If enacted, the bill's implementation will occur as agencies are going through their first cycle of planning, measuring, and reporting on program performance, as called for under the Results Act. The bill would amend the Results Act by requiring, among other things, that agencies include in the annual performance plans and reports that they submit to Congress (1) inventories of functions that are and are not subject to the Freedom From Government Competition Act's provisions and (2) a schedule for converting to private sector performance those functions capable of, but not currently, being performed by the private sector. Requiring agencies to specify the activities they would perform directly, and those they would convert to private sector performance, is consistent with the Result Act's strategic planning requirements.

If Congress chooses to enact H.R. 716, an opportunity exists to further integrate implementation of the bill's provisions with the Results Act. A key provision of H.R. 716 requires OMB to create a methodology for making determinations on what types

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[5]Managing For Results: Critical Issues for Improving Federal Agencies' Strategic Plans (GAO/GGD-97-180, Sept. 16, 1997); The Government Performance and Results Act: 1997 Governmentwide Implementation Will Be Uneven (GAO/GGD-97-109, Jun. 2, 1997).

of activities should and should not remain in government. This provision, if integrated with the strategic planning and annual performance planning requirements of the Results Act, could avoid the potential situation of agencies inadvertently replacing unneeded federal functions with unneeded private sector contractors--a concern we have expressed regarding Department of Defense depots.[6] By making clear that, as part of their strategic planning and performance measurement activities, agencies should review potential outsourcing candidates in light of their contribution to mission accomplishment, the bill could reduce the possibility of such an outcome.

Incentives May Be Needed for Implementing Change

Encouraging the magnitude of change that this bill contemplates will require incentives if it is to be effective. We believe that integrating the bill's requirements with those of the Results Act is one of the best incentives Congress could use to ensure successful implementation. The Act should, if successfully implemented, expand opportunities for congressional oversight of agency performance, including, for example, closer scrutiny of agency budget requests for specific activities in the context of expectations about program performance. Another incentive could be to allow government agencies to use savings gained from eliminating duplication and unnecessary non-core functions to further improve operations or satisfy other priorities such as modernization.[7] However, such proposals need to be carefully examined as they raise questions of congressional oversight and the allocation of scarce financial resources.

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

[7]See for example: DOD High-Risk Areas: Eliminating Underlying Causes Will Avoid Billions of Dollars in Waste (GAO/T-NSIAD/AIMD-97-143).

State and local governments that we reviewed used incentives to accomplish their goals. In Virginia, officials said department managers were allowed to retain savings garnered through privatization and restructuring for use in productivity and technology improvements.[8] This practice, according to the Director of Virginia's Commonwealth Competition Council, provided the incentive needed and helped solve the question often asked by managers of "what's in it for me"? In Indianapolis' managed competition process, if the public sector won a competition and the union-management team performed the activity at the desired level of performance for less than it had bid, the team would receive a share of the savings at the end of the year. The city, after tracking performance over a period of years, could place a moratorium on bidding for areas for which city employees had demonstrated performance excellence and in which they had consistently outbid private competitors. In addition, Indianapolis built community support by taking some cost savings achieved through outsourcing and managed competitions and allocated it to hiring additional police, lowering tax rates, and increasing infrastructure projects. According to the Deputy Mayor, this approach built community support and provided further incentives for managed competition and outsourcing.

In contrast, Georgia's Governor instituted a budget redirection program that required all agencies to prioritize their current programs and activities and identify those programs that could be eliminated or streamlined. The agencies were required to make at least 5 percent of their total state-funded budgets available for redirection to higher priorities. According to a Georgia Privatization Commission official, agencies were given a 6-month notice that their budgets would be cut by 5 percent. State

[8]S. 959, Workforce Transition Act of 1995, Chapter 811 of the Acts of Assembly, Commonwealth of Virginia.

officials said these budget cuts required managers to rethink how they could perform the same activities for a lower cost. This action provided the incentive for agencies to contract out more activities, such as vehicle maintenance and management services for a war veterans facility.

THE RELATIONSHIP OF H.R. 716 TO OTHER RELEVANT LAWS IS UNCLEAR

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

While providing a statutory basis for competitively contracting out government functions, H.R. 716 has implications for certain existing laws. As currently drafted, the bill is broad in its application, and how it will relate to existing laws and policies is not entirely clear. For example, H.R. 716 prohibits agencies from beginning or carrying out any activity to provide any products or services that can be provided by the private sector, and it prohibits agencies from providing any goods or services to any other governmental entity. This could conflict with the "Economy Act of 1932" (31 U.S. 1535-1536), which authorizes interagency orders for goods and services, as well as with the General Services Administration's (GSA) authority to provide agencies with goods and services. GSA was created, and still exists, to provide goods

and services to agencies, such as office space, consolidated purchasing, air fare contracts, and excess property disposal. Its role under H.R. 716 is unclear.

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

RELIABLE AND COMPLETE COST INFORMATION NEEDED FOR PRIVATIZATION DECISIONS

In the governments we visited, reliable and complete cost data on government activities were deemed essential in assessing the overall performance of activities targeted for privatization, in supporting informed privatization decisions, and in making these decisions easier to implement and justify to potential critics. Most of the governments we surveyed used estimated cost data because obtaining complete cost and performance data, by activity, from their accounting systems was difficult. However, Indianapolis, and more recently Virginia have used activity based costing (ABC)[9] to obtain more precise and complete data on the cost of each separate program activity.

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[9]ABC is a methodology that assigns costs to products or services based on the resources they consume. It assigns functional costs, direct and indirect, to the activities of an organization and then traces activities to the product or service that caused the activity to be performed. ABC gives visibility to how effectively resources are being used and how all relevant activities contribute to the cost of a product or service. Such information may be key to making decisions about whether to restructure or privatize an activity. See Glossary: Terms Related to Privatization Activities and Processes (GAO/GGD-97-121, July, 1997).

H.R. 716 Requires Cost and Past Performance Information in Making Privatization Decisions

A notable feature of the draft legislation is the provision describing the criteria that are to be used in contracting for goods and services. The legislation requires OMB to prescribe standards and procedures that are to include the analyses of all direct and indirect costs, and to be performed in a manner consistent with generally accepted cost accounting principles as well as with past performance of sources. We have found in the past that the widespread absence of this type of information has compromised effective public-private comparisons. This provision of the bill is consistent with current efforts aimed at improving federal financial management.

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

Efforts are under way to develop the type of cost and performance data that would be necessary to compare public versus private proposals, as could occur under the provisions of H.R. 716. The Federal Accounting Standards Advisory Board (FASAB) has developed standards that are designed to provide information on the costs, management, and effectiveness of federal agencies. These standards require agencies to develop measures of the full costs of carrying out a mission or of producing products and services. Such information, when available, would allow for comparing the costs of various programs and activities with their performance outputs and results. To help agencies meet these standards, the Joint Financial Management

Improvement Program (JFMIP) plans to issue guidance to facilitate the acquisition and development of managerial cost accounting systems needed to accumulate and assign cost data consistent with governmentwide data.[10]

H.R. 716 RECOGNIZES FEDERAL WORKFORCE TRANSITION NEEDS

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

The bill's findings section states that it is in the public interest for the private sector to utilize government employees who are adversely affected by conversions of functions to the private sector. The legislation does not create any new benefit or competitive job right that does not already exist. It does, however, assign to the Director of OMB the function of providing information on available benefits and

[10]The JFMIP is a joint cooperative undertaking of the Office of Management and Budget, the General Accounting Office, the Department of the Treasury, and the Office of Personnel Management, working in cooperation with each other and with operating agencies to improve financial management practices throughout the government. An exposure draft of the system requirement was issued in April 1997, and final issuance is projected for later this calendar year.

assistance directly to federal employees. This would be a new and possibly burdensome function for OMB--a function that probably could be better handled by the Office of Personnel Management, which already has responsibility and experience in this area.

Competitive Contracting Helped Attain Employee Cooperation

Involving employees in the privatization process by letting them compete for the right to provide the service was a strategy used by state and local governments to gain employee cooperation during the privatization process. H.R. 716 neither encourages nor prohibits public-private competitions. However, it does give implicit authority to OMB to implement such a program, by requiring that the implementing regulations include standards and procedures for determining whether it is a private sector source or an agency that provides certain goods or services for the best value. While the question of how such determinations would be made is left up to OMB, competitive contracting has been the traditional method for making such determinations both at the federal level and the state and local level.[11]

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

EFFECTIVE MONITORING AND OVERSIGHT
OF CONTRACTOR PERFORMANCE ARE ESSENTIAL

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

The essential foundation for effective oversight is good cost and performance data. H.R. 716's analytical requirements call for the consideration of all direct and indirect costs, qualifications, and past performance as well as other technical considerations. These requirements, along with the authority and flexibility given to OMB in implementing the legislation, provide the necessary foundation for effective performance monitoring and oversight, but they do not resolve capacity problems.

Converting government activities to private-sector performance will increase the contracting workload on federal agencies. Conversion to contract performance requires considerable contract management capability. An agency must have adequate capacity and expertise to successfully carry out the solicitation process and effectively administer, monitor, and audit contracts once they are awarded. In past reports on governmentwide contract management, we identified major problem areas, such as ineffective contract administration, insufficient oversight of contract auditing, and lack of high-level management attention to and accountability for contract

management.[12] Some federal agencies have recognized the problem and have taken actions intended to improve their contract management capacity. The Department of Energy (DOE) and The National Aeronautics and Space Administration (NASA) provide examples of the challenges agencies face in overseeing contractors.

DOE--the largest civilian contracting agency in the federal government--contracted out about 91 percent of its $19.2 billion in fiscal year 1995 obligations. We designated DOE contracting in 1990 as a high-risk area, vulnerable to waste, fraud, abuse, and mismanagement, because DOE's missions rely heavily on contractors and DOE has a history of weak contractor oversight; however, it has been working to improve its contract management practices. As we recently reported in our high-risk report on DOE,[13] changing the way DOE does business has not come easily or quickly. DOE has taken various actions in the past to improve its contracting, and a recent contract reform effort that has received high priority and visibility appears promising; however, much remains to be done to ensure effective oversight of contractors.

NASA's contracting reforms demonstrate what can be accomplished when an agency places high priority on contractor oversight. NASA spends about 90 percent of its budget on contracts with businesses and other organizations. NASA's procurement budget is one of the largest among federal civilian agencies, totaling about $13 billion annually in recent years. NASA first identified its contract management as vulnerable to waste and mismanagement in the late 1980s. Since then, it has

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

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

grappled with a variety of contract management problems. NASA has made considerable progress in developing ways to better influence contractors' performance and to improve oversight of field centers' procurement activities. It has, for example, established a process for collecting cost, schedule, and technical information for all major NASA contracts to assist management in the tracking of contractor performance, and it also has restructured its policy on award fees to emphasize contract cost control and the performance of contractors' end products.

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In conclusion, Mr. Chairman, striking a proper balance between the public- and private-sector provision of goods and services to the American people is among the most enduring issues in American politics and public policy. The Freedom From Government Competition Act would redirect current policy, which does not now have the weight of legislative authority and significantly affect the operation and management of the federal government. We believe that Congress is the proper forum to address such fundamental questions, and we hope that our testimony today has been helpful by raising some issues for the Subcommittee to consider in its deliberations on the proposed act.

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

(410189)

Mr. HORN. We now ask Mr. Ed DeSeve, the Acting Director—Deputy Director for Management, Office of Management and Budget. Thank you.

Mr. DESEVE. Thank you very much, Mr. Chairman, for inviting me to appear before you today to discuss the provisions of the proposed Freedom From Government Competition Act of 1997. With your permission, I'll make a few summary remarks and ask that my full statement be included in the record.

Mr. HORN. Without objection, they're automatically included for everybody once we introduce you.

Mr. DESEVE. Thank you very much.

Today we face the challenge of managing in the new balanced budget environment. The challenge is to provide a Government that empowers its employees, adopts better business practices, and costs less. The National Performance Review [NPR] has laid the necessary groundwork for bringing the Federal Government into this new era.

Over the last 4 years, the NPR has encouraged agencies to develop a range of management tools—techniques and strategies that agencies have been encouraged to use to redirect and extend budgetary resources.

In addition to outsourcing, which is what we're really talking about today, we're encouraging agencies to examine privatization and exiting business lines. We're downsizing, consolidating, and taking advantage of new technologies. We're incorporating competition into our budgets, into our financial and accounting systems, and into our other management approaches. Governmentwide acquisition reform initiatives are enabling us to take more effective advantage of competition among private sector offerers and to better leverage the Government's buying power.

In fact, I think you and Mr. Davis were referring to that earlier in terms of GWAC contracts, delivery in indefinite quantity contracts. We don't believe those contracts are affected by this legislation, but we do think they're an important tool for better management.

We support outsourcing. We also believe in reinvention, in competition, and in the ability to choose the alternative that is the most cost-effective and in the best interest of the taxpayers. By issuing the March 1996 OMB Circular A–76 Revised Supplemental Handbook, we have committed to a broader range of competition and encouraged new public and private sector competitors to enter these competitions. The revised handbook provides the needed organizational and analytic structure, such as the one Mr. Nye Stevens referred to earlier.

Under this structure, new opportunities, including certain interagency agreements that were not previously subject to competition, we made available to both public and private sector offerers. Mandates such as those found in H.R. 716, that require performance by in-house or contract employees, are not helpful. Having said that, we certainly appreciate that public offerers should not be receiving work in instances where they would not provide a cost-effective alternative to the private sector.

But such a result need not and should not, as suggested in H.R. 716, be achieved by prohibiting viable public offerers the right to

compete in appropriate circumstances. Eliminating viable public offerers through legislative prohibitions is the worst kind of unfair competition.

For these and other reasons detailed in my statement, the administration opposes H.R. 716. In our view, H.R. 716 undermines the principles of competition on a level playing field. It does so by restricting the consideration of competitive public offerers and by inserting provisions that affect the structure of the level playing field, including the establishment of a new bureaucracy at OMB.

The issue here is not about jobs, contractors, or employee rights. It is not even about the fundamental question of whether or not to outsource. The issue here is when and where to outsource in the taxpayer's best interest.

We are concerned that H.R. 716 may give the private sector and the employee unions new statutory rights to review agency inventories, schedules, and other information and to seek judicial or other review of agency determinations. These reviews will delay, not expedite, the needed competitions.

We're concerned that the statute is not sufficiently flexible to provide even limited exemptions from requirements to rely on the private sector. We're concerned, for example, that the legislation does not address the need for core agency functions, the need to retain a minimum level of technical and ensuring competencies, and flexibility to meet research and development needs, emergency capabilities and related work loads.

We're concerned that H.R. 716 may adversely affect our ability to expand contracting with small businesses. In many cases now, it is only because of our current mix of technical in-house, reimbursable, and contract resources that small businesses are eligible to participate as direct prime contractors to the Federal Government.

The H.R. 716 requirement to convert all work to contract performance, unless otherwise justified on the basis of a best-value, past-performance competition, could result in fewer and fewer opportunities for small business participation.

Finally, we're concerned that H.R. 716 would, as a matter of law, mandate specific cost-comparison requirements. The proposal specifically amends the March 1996 supplemental handbook by changing the costing and bid evaluation rules that were so carefully established through public review and discussion. And, as I mentioned earlier, it moves the decisionmaking on these reviews from agencies to a centralized bureaucracy in OMB.

In conclusion, Federal employees are some of our Nation's most highly trained and dedicated. They respond to vast arrays of missions, public concerns, and operational requirements. We really are fundamentally reorganizing the way the Federal Government conducts its business. H.R. 716, in our view does not take into consideration the flexibilities that must exist for making this transition in a reasoned and responsible manner. Perhaps more important, H.R. 716 could result in a significant level of new litigation caused by the conversion of what were essentially management implementation decisions into statutory obligations subject to judicial review.

Mr. Chairman, that concludes my statement. I would be happy to address any questions.

Mr. HORN. We thank you for your statement.

[The prepared statement of Mr. DeSeve follows:]

STATEMENT OF
G. EDWARD DESEVE
ACTING DEPUTY DIRECTOR FOR MANAGEMENT
OFFICE OF MANAGEMENT AND BUDGET

BEFORE THE
HOUSE SUBCOMMITTEE ON
GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY
REGARDING
H.R. 716, "THE FREEDOM FROM GOVERNMENT COMPETITION ACT"

INTRODUCTION

Mr. Chairman, I am pleased to discuss with you today the provisions of the proposed "Freedom from Government Competition Act of 1997," H.R. 716, "a bill to require that the Federal Government procure from the private sector the goods and services necessary for the operations and management of certain Government agencies, and for other purposes."

The challenge of managing in a balanced budget world is to provide a Government that empowers its employees, works better and costs less. Other institutions around the world, in the public and in the private sector, have risen to this challenge. Governments and corporations have found that it is possible to improve the level and quality of services and at the same lower their costs through competition. The Vice President's National Performance Review (NPR) has laid the groundwork for bringing the Federal Government into this new era. Over the last four years, the NPR has developed a range of management "tools," techniques and strategies that agencies have been encouraged to use to save, redirect and extend current budgetary resources to protect the priorities of the American people.

We too are anxious to ensure that the Government improves its performance and operates as efficiently as possible. Our guiding principle for determining when the Government engages in commercial activities and when it considers outsourcing, privatization or competition is to ensure that we get the best deal possible for the American taxpayer. The Federal Government is a big operation and agencies provide a vast array of services to internal and external customers as well as directly to the public at large. In providing these services, agencies should accelerate the use of competition by cross-servicing with other Federal agencies or by purchasing directly from the private sector.

Mandates that require performance by in-house or contract employees are not helpful. Competition encourages and empowers employees to reinvent themselves to become competitive, reduce costs and meet generally recognized performance standards. This effort alone results in

better contract offers as more viable, responsive and cost-effective competitors come to the table. Indeed, experience here and abroad has shown that the use of public-private competition can reduce costs by 30% and more of previous costs. In testimony offered in June by Dr. Samuel Kleinman, Center for Naval Analysis, before the Senate Governmental Affairs Committee, it was noted that in more than 2,100 competitions conducted by the DOD, involving over 80,000 positions, savings of approximately 30 percent were achieved - savings that have translated into over $1.5 billion annually. However, it was also noted in that testimony that in approximately 50 percent of those competitions the Federal Government was found to be the lowest cost, highest value offeror.

THIS ADMINISTRATION SUPPORTS OUTSOURCING

We support outsourcing. But, we also believe in competition and the ability to chose that alternative which is the most cost-effective and in the best interest of the taxpayer. By issuing the March 1996 OMB Circular A-76 Revised Supplemental Handbook, we have committed to a broader range of competition and have encouraged new public and private sector competitors to enter into the competition. The Revised Supplemental Handbook provides the needed organizational and analytic structure. Under this structure, new opportunities, including certain agreements that were not previously subject to competition will be made available to both public and private sector offerors.

As you know, the Government Management Reform Act authorized us to develop six franchise fund pilots and to expand the competitive environment that exists for reimbursable activities Government-wide. This means that agencies may develop cost-effective alternatives and offer their services on a competitive and reimbursable basis, including the opportunity to challenge existing contract prices. This will result, as shown in the FAA's decision to award its ICEMAN contract to the USDA, in more aggressive competitions and, we believe, lower costs and improved performance. Again, competition between public and private offerors, on a level playing field, spurs Federal employees and the private sector to be more productive, more creative and ensures that taxpayers receive high quality services at the lowest possible cost.

We do not believe that these competitions should be one-time events. To ensure that the taxpayer continues to get the best deal, we need to periodically reexamine our outsourcing, cross-servicing and in-house performance decisions. If the function was kept in-house, is the public sector continuing to provide the best deal? If the private sector is performing the service, is the current offeror the best one for the job, or has the Government developed a better, more competitive approach? Competition should be used on a regular basis to review the situation and to determine who can best provide required services.

While we are encouraging agencies to promote competition, we are also opposed to unfair competition. That said, we certainly appreciate that public offerors should not be receiving work where their offers would not provide a cost-effective alternative to the private sector. But such a result need not, and should not, be achieved -- as is suggested by H.R. 716 -- at the expense of permitting viable public offerors the opportunity to compete, in appropriate circumstances. Eliminating viable public offerors through legislative prohibitions is the worst kind of unfair competition.

A clear distinction also needs to be drawn between the Government's involvement in private sector or even State or local markets and the need to manage our own resources on a cost-effective basis, through competition on a fair and level playing field. A substantial statutory and policy framework exists that carefully restricts the Federal Government's involvement in the private economy and in State and local service markets. This framework is provided, for example, by statutes, policies and procedures authorizing our Federal Prisons Industries, the DOD Arsenal Act (10 USC 2539), Title III of the Intergovernmental Cooperation Act of 1968, OMB Circular No. A-97, "Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government," USC 2553 with respect to DOD laboratories, the Federal Acquisition Streamlining Act, OMB Circular A-76 and others. H.R. 716 does not accommodate these situations. We would also ask your assistance in eliminating existing barriers to competition, such as those found in 10 USC 2461- 2469 and applicable to the Department of Defense.

H.R. 716 IS NOT NEEDED

H.R. 716 undermines the principle of using competition, on a level playing field, as a critical part of the decision process. It does this by restricting the consideration of competitive public offers and by inserting provisions that effect the structure of that playing field. A-76 is not a one-sided cost comparison that favors in-house performance over contract performance. Rather, A-76 permits public-private competitions, and lays out a carefully balanced approach to the costing question, recognizing the differences between public and private offerors and the interests of the taxpayer in that decision.

To its credit and like the current Circular A-76, H.R. 716 does not require the Federal Government to contract-out everything nor does it require the conversion of work from in-house to contract performance in accordance with some specified or otherwise arbitrary time-line. H.R. 716 also recognizes that some activities are inherently governmental in nature and should not be performed by the private sector. The bill would not require the conversion of functions related to

the national defense to private sector performance. What H.R. 716 does do, however, is require, as a matter or law, that which has been appropriately managed through administrative policy in the Executive Branch.

Unfortunately, the legislation does not nor can it reflect all the other ongoing reinvention efforts currently underway. This is also its weakness. We are moving to implement strategic capital acquisition planning, ITMRA and the recommendations of the Federal Accounting Standards Advisory Board (FASAB). We are looking at privatization and exiting existing business lines. We are downsizing, consolidating, and taking advantage of new technologies. We are incorporating competition into our budgets, into our financial and accounting systems and in our other management approaches to improved service delivery. Government wide acquisition reform initiatives are enabling us to take more effective advantage of competition among private sector offerors and better leverage the Government's buying power.

SPECIFIC CONCERNS

H.R. 716 begins by stating that the Government's current mixes of in-house and contract resources are "unacceptably high"; that the existence of reimbursable arrangements between agencies is inappropriate; that such consolidations divert the Government's attention from its core mission; that small business is being hurt by our current mix of in-house and contract resources, and that current laws and regulations have proven ineffective in controlling the growth of Government. While individual anecdotes can be offered pro or con, there is no quantitative data to establish any of these "findings."

We are concerned that the bill would limit the ability of public offerors to begin or otherwise participate in the competitive process for determining who should meet Federal workload requirements. The key here is that we want everyone -- public and private -- to compete for our work so that taxpayers can be assured of getting the most for their money. Restricting the scope of that competition, based upon the evidence to date, is clearly not in the taxpayer's interest. The issue is not about jobs or employee rights -- we have long had the Right-of-First-Refusal in A-76 solicitations -- and even Federal unions have supported competition. It is not even about the fundamental question as to whether to outsource. The question here is when and where to outsource in the taxpayer's best interests.

H.R. 716 requires that certain information be made available to the public, including the development of inventories of commercial activities performed by the agencies. The March 1996 A-76 Revised Supplemental Handbook already requires that agencies develop reliable and complete cost data and conduct annual inventories of their commercial activities performed with

in-house resources. The Federal Procurement Data System provides information regarding that work which is currently performed by contract. This information is available to the public upon request and private sector companies are free to make offers to perform commercial work. Taken in combination with the work we are doing to improve Federal financial management and the implementation of FASAB requirements, we believe that this process, in combination with the cost comparison process itself, will become more complete and easier to implement. A legislative mandate for this information is not required.

We are very concerned that H.R. 716 may give the private sector and the employee unions new statutory rights to review agency inventories, schedules and other information and to seek judicial or other reviews of agency determinations with respect to whether a function is inherently governmental, commercial or has otherwise met the cost effectiveness standards of the statute. These reviews will delay, not expedite, the needed competitions.

We are concerned that the statute provides very limited exemptions from the requirements to rely on the private sector, including limiting the Government's existing flexibility to convert to or from in-house or contract performance, without cost comparison. The exemptions from full reliance on the private sector are limited to: (1) inherently governmental functions, (2) functions related to national security, (3) when a best value cost comparison determines that in-house performance is more cost effective, or (4) there is no private sector offeror to perform the work. Ironically, cost comparisons would be required under H.R. 716 that are NOT required under OMB Circular A-76 to award to predominately small businesses, including provisions for conversions of: (1) procurement preference eligibles, (2) functions involving 10 or fewer FTE, (3) functions involving 10 or more FTE with placement, (4) military positions and (5) functions covered by agency waivers. Concern for core agency functions, the need to retain a minimum level of technical and engineering competencies, flexibility to meet research and development needs, emergency capabilities and related workloads are not addressed by the legislation and could be read to preclude these considerations.

We are, in fact, concerned that H.R. 716 may adversely affect our ability to expand contracting with small businesses. In many cases, it is only because of our current mix of technical in-house, reimbursable and contract resources that small businesses are eligible to participate as direct prime contractors to the Federal Government. The H.R. 716 requirement to convert all work to contract performance, unless otherwise justified on the basis of a best value/past performance competition, could result in fewer and fewer opportunities for small business participation.

Finally, we are concerned that H.R. 716 would mandate specific cost comparison requirements. Indeed, it specifically amends the March 1996 Supplemental Handbook by changing the costing and bid evaluation rules that were so carefully set out through public review

and discussion. The inclusion of several items, including the use of all direct and indirect costs and past performance, appear to have merit. However, information on the past performance of work performed by Federal employees does not exist. How that performance would be evaluated, when the Government itself is a vested interest in the outcome of the competition, is also a concern. There is also no agreement on the allocation of all indirect costs. A-76 is based upon the allocation of costs that can be expected to change as a result of a conversion to in-house or contract performance. Indirect overhead related to the Government's regulatory, national defense and other inherently governmental functions should not be included in these competitions.

OUR PRESENT SYSTEM IS WORKING

Unfortunately, many people still view A-76 as an impediment to outsourcing instead of an aid to the evaluation of public and private alternatives, on a level playing field. Ultimately, the question is whether H.R. 716 provides anything better than that already provided by Circular A-76 and its Revised Supplemental Handbook. We do not believe that it does. Among other things, the March 1996 A-76 Revised Supplemental Handbook provides a clear preference for private sector performance of new and expanded work requirements, requires agencies to develop inventories of commercial activities, establishes restrictions against the Government's entering into non-Federal support markets, restricts the development of new or expanded interagency support agreements to those competitively or otherwise justified and provides for independent administrative oversight. The Revision also provides that agencies may leave existing reimbursable agreements and convert directly to contract, without cost comparison, at the discretion of the customer agency. We believe that this process not only works, but is beginning to encourage real competition for Government work.

Circular A-76 and its Revised Supplemental Handbook create the incentives to improve performance and reduce cost by continuing to permit competition on a fair and level playing field for commercial services. The rules also provide appropriate controls and administrative assurances that agencies are competing on a level playing field and that agencies are not unduly competing with or displacing the private sector. The Defense Department alone has announced cost comparisons involving over 30,000 FTE. DOD is also actively engaged in reviews of its operations, contracts and utilities. Taken together, these initiatives constitute the largest effort to review our in-house and contract mix ever undertaken. Yes, more can and should be done in all agencies, but we also need to move cautiously, recognizing our larger reinvention efforts.

CONCLUSION

As a group, Federal employees are some of the nation's most highly trained and dedicated employees. They respond to a vast array of concerns and requirements. It has been said that H.R. 716 was introduced to inject more vigorous market competition into Government. It does not. We are fundamentally reorganizing the way the Federal Government conducts its business. H.R. 716, in our view, fails to take into consideration the flexibilities that exist and need to exist in making the outsourcing decision, ongoing initiatives to privatize and outsource in a reasoned and responsible manner and our concerns regarding judicial review and appeal. Rather we would ask your assistance in eliminating existing barriers to competition, such as those found in 10 USC 2461- 2469 and applicable to the Department of Defense.

Competition has made the American economy the envy of the world. We support the provision of Government services by those best able to do so, whether in the private sector or within the Government. Rather than open up existing markets or enhance the dynamics of competition, H.R. 716 restricts the number of competitors and skews the level playing field. We are concerned that H.R. 716 will spawn a whole new level of compliance litigation, resulting in higher costs to the taxpayer. Finally, as noted above, the bill is simply not needed and may result in more harm than good.

Mr. Chairman, that concludes my prepared statement. I would be happy to address any questions that you might have.

Mr. HORN. Now, our last witness to get everything out on the table is Bobby L. Harnage, Sr., national secretary-treasurer, American Federation of Government Employees, AFL–CIO. Congratulations on your election.

Mr. HARNAGE. Thank you, sir.

Mr. HORN. Please proceed.

Mr. HARNAGE. Thank you you very much. Although this is my first appearance before your panel, Mr. Chairman, I look forward to working with you and your staff on issues of concern to Federal employees. I thank you and the ranking minority member for this invitation. I've submitted my testimony for the record, and so this morning, I will just summarize, if I may.

Mr. Chairman, AFGE is not reflexively opposed to each and every instance of contracting out in these times; such a position is as unrealistic as it is untenable. Because we are conscientious employees, patriotic Americans, and hard-working taxpayers, AFGE members are determined to see that the Federal Government's tax dollars are spent wisely. Quite simply, Federal employees should not perform work that is not inherently governmental if they cannot do it more effectively, more efficiently, and more reliably than contractors.

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

Mr. Chairman, let me now express our concerns about H.R. 716. This bill is flawed for several reasons. First, it is not needed. Last year, AFGE contractors, representatives, and officials from many Federal agencies worked with OMB officials to reform A–76. The resulting supplement provides Federal managers with unprecedented latitude and flexibility to outsource to the private sector.

It requires agencies to annually determine which activities it will consider for conversion to contract, as well as which inherently governmental functions it will continue to perform in-house. It mandates primary reliance on the private sector if it is shown to be cost effective. It provides agencies with unprecedented flexibility to waive the circular's cost comparison requirements in a wide variety of situations. And, finally, the Federal Government is engaged in the largest privatization and outsourcing effort ever undertaken. Currently, over 40,000 AFGE positions are being examined for contracting, and many thousands more are being identified for outright privatization. Moreover, let us never forget that taxpayers already foot a bill for more than $120 billion worth of service contracting.

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

For example, the GAO surveyed nine studies on service contracting and concluded that in each case, substantial savings would have been realized if the work had been retained in-house. GAO also reported that even after years and years and billions and billions of dollars in contracting out, it could not convincingly prove

nor disprove that Federal agency contracting decisions have been beneficial and cost effective.

The bottom line, Mr. Chairman, is that although we have our own point of view, AFGE is ready to work with you and address the concerns that were raised at today's hearing. Thank you for the opportunity to testify this morning, and I would gladly attempt to answer any questions you might have.

[The prepared statement of Mr. Harnage follows:]

INTRODUCTION

Mr. Chairman and Subcommittee members, my name is Bobby L. Harnage. I am the National Secretary–Treasurer of the American Federation of Government Employees (AFGE)––the largest federal employee union, representing 600,000 government workers serving worldwide.

Although this is my first appearance before your panel, Mr. Chairman, I look forward to working with you and your staff to ensure full and fair public–private competition for work that is not inherently governmental as well as other issues of concern to federal employees.

You are well aware that a version of the "Freedom From Government Competition Act" (H.R. 716) was introduced last year. From our standpoint, and that of many others, last year's version was, to be candid, terrible. Essentially, it would have mandated that all of the federal government's commercial activities be contracted out or devolved to lower levels of government in five years––even if federal employees could have performed the work more effectively, more efficiently, and more reliably. While H.R. 716 is still profoundly–flawed legislation, it must be acknowledged that it is an improvement over its predecessor.

AFGE AND OMB CIRCULAR A-76

Since this is my first appearance before this panel, Mr. Chairman, permit me to say a few words about where AFGE stands on contracting out and outsourcing. Unlike some organizations in the federal employee community, AFGE is not reflexively opposed to each and every instance of contracting out. In these times, such a position is as unrealistic as it is untenable. Because we are conscientious employees, patriotic Americans, and hard-working taxpayers, AFGE members are determined to see that the federal government's dollars are spent wisely. Quite simply, federal employees should not perform work that is not inherently governmental if they cannot do it more effectively, more efficiently, and more reliably than contractors.

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

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

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

That's why AFGE was the only federal employee union to work with the Administration last year to reform OMB Circular A-76.[2] This effort resulted in a revised Supplement that, while permitting more flexibility to contract out, also ensures federal employees greater involvement in the competitive process, and makes contracting out a "two-way street" by permitting work to return back in-house when it is more cost-effective to do so.

The fact that OMB Circular A-76 is now under continuous attack is implicitly a compliment of federal employees and their work. Several years ago, federal employees were losing 70% of all A-76 competitions. As you might expect, contractors had considerably fewer problems with the Circular then. However, agencies--employees and managers alike, often working in partnership--learned from their defeats and looked to the private sector for inspiration and guidance. With the reinvention of government and partnership initiatives, agencies are now running their operations more like businesses. In doing so, the public sector has pulled even with the contractors, winning every other A-76 competition. Now, as you might expect, the contractors aren't so happy--even though the federal government runs up service contracting bills of approximately $120 billion annually. I have to wonder if this dissatisfaction can be attributed more to the fact that federal service contracts aren't quite so attractive to private sector firms now that increased competition from federal employees has driven down costs so sharply.

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[2] In fact, we are working with Pentagon officials on implementing instructions for the new A-76 supplement.

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

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

After all, our members are taxpayers also.

AFGE'S CONCERNS ABOUT H.R. 716

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

- It's not even needed. The legislation fails to take into account the reforms and initiatives which are radically altering the way the federal government does business, as well as the manner by which it obtains goods and services.
- It would result in consequences quite the opposite of those which it intended.
- Its underlying principles and rationale are not supported by the facts.

H.R. 716 IS NOT NEEDED

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

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

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

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

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

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

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

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

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

There are a few who might say:

"So what? There are no incentives for federal managers to exercise this new flexibility to contract out. Unless prodded by a measure such as H.R. 716, managers will always opt to maintain the *status quo*."

This view ignores the realities and incentives imposed by government downsizing. The fact is, we are already engaged in the largest privatization and outsourcing effort ever undertaken by the federal government. Currently, over 40,000 FTE positions are being examined for contracting, and many thousands more are being identified for outright privatization as the government makes the decision to "get out of the business" of performing certain types of work. Since enactment of the Federal Workforce Restructuring Act of 1994 the federal workforce has been reduced by approximately 300,000 federal employees. Consequently, federal agencies have been forced into reexamining not only "what" or "how" they do a particular function, but whether or not performance, in light of a smaller workforce, should continue to remain in-house.

I might add that during this era of downsizing, the current A-76 framework helps the government to rightsize. Unlike H.R. 716, the circular requires the agency to reexamine the way it performs a function and how that agency configures itself into a Most Efficient Organization (MEO). This provision is the key to savings and efficiencies. It forces agencies into "being competitive" instead of just "competing." Through re-

engineering into MEO's, agencies and departments are realizing savings of 21% or more if the work stays in-house. This creates a win-win situation for the taxpayer whether the work remains in-house or is converted to contract. H.R. 716 has no similar provision.

H.R. 716 WILL RESULT IN CONSEQUENCES OPPOSITE THOSE INTENDED

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

Let me begin by saying that the bill's provision for creating an "Outsourcing Czar" with a supporting bureaucracy within OMB moves individual agencies further away from their customers--the ordinary Americans who depend upon the federal government for important services. In criticizing this provision, I would ask the Subcommittee to keep in mind one of the most important lessons learned from the private sector: decentralization of decision-making, not centralization, is the key to efficiency. The Pentagon's almost irrational bias in favor of contracting out notwithstanding, it's better to charge those agencies actually required to provide particular services with the responsibility of making contracting out decisions, as A-76 does now. H.R. 716, however, would create an "OMBundsman" in the Center for Commercial Activities who would likely be far more

attentive to the needs of the Executive Branch's political agenda than to the needs of agencies, their customers, and the nation's taxpayers.

For example, upon cursory examination, one could argue that photographic services are a commercial activity which should be opened to competition. We would agree with that determination if the service only provided photographs for such events as promotions, social events, or visits of dignitaries. However, if the service made photographs of competition- or national security-sensitive plans, blueprints, or materials, would that work be commercial? We, and many others, would argue that such work -- because of competition and security concerns -- should be considered inherently governmental and kept in-house.

This example illustrates just one of the many flaws contained in H.R. 716. The question, I place before the Committee is very succinct. Do we want a political appointee at OMB -- far removed from the front-lines and perhaps with a political agenda to advance -- to be responsible for making a decision whether an activity is inherently governmental? Or does the Committee want to apply a lesson from the private sector by empowering the people who actually perform the work to determine whether the relevant activity is inherently governmental.

Nor would the bill result in a windfall of opportunity for small businesses. Most small businesses are not capable of providing the vast majority of services now provided by federal employees. If H.R. 716 is opening any door to the private sector, it would be for larger firms and corporations--with smaller businesses merely serving as support subcontractors through reimbursable agreements.

The bill would also result in serious delays, which would in turn result in lost savings and opportunities, because of the time unnecessarily consumed by the implementation of the less effective system mandated by H.R. 716. For example, the current round of public-private competitions would have to be halted until OMB's Center for Commercial Activities could be established. Given the nature of the legislative and regulatory processes, further delays would occur when various agencies and interest groups inevitably attempted to have site-specific, functional, or even agency-wide prohibitions enacted. In the meantime, needed efficiencies and cost savings would be permanently lost as the new, less responsive system is put in place. Never has the adage, "Nothing good comes from something poorly begun" been more applicable.

Finally, I want to state my concerns regarding another unintended consequence of codifying a public-private competition regimen, i.e., of taking the rule-making function away from essentially impartial civil servants and tossing it into the political hurly-burly-- a world populated by skilled advocates who are eager and willing to help out their constituents, whether they be wealthy contractors or anxious federal employees. Inevitably, this bill would generate a plethora of statutory exceptions and set asides -- both pro- and anti-privatization -- as various interest groups would demand and secure protection from the rigors of the competition. However, I urge the Subcommittee to keep in mind this consequence, which would be as inevitable as it would be undesirable to those of us who are interested in full and fair public-private competition for non-inherently governmental work.

THE RATIONALE FOR THIS BILL IS FLAWED

The bill's sponsors claim that work currently performed by the federal government could be "better done and could be more cheaply done through outsourcing." Since the notion that the private sector is always better and cheaper is false, legislation based on such a faulty premise is clearly not in the best interest of the taxpayers. For example, the General Accounting Office (GAO) surveyed nine studies on service contracting and concluded that in each case, substantial savings would have been realized if the work had been retained in-house.[3] Another example comes from a GAO report of two years ago in which the investigative arm of the Congress said that even after years and years of billions and billions of dollars in contracting out, it could not "convincingly prove nor disprove that the result of federal agencies' contracting-out decisions have been beneficial and cost-effective."[4]

AFGE'S SUGGESTIONS FOR IMPROVING THE COMPETITIVE PROCESS

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

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

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

Lifting Arbitrary Ceilings On Government Employees

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

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

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

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

Sadly, our concerns about this problem have been repeatedly dismissed by the Administration. Earlier this year, I was provided a copy of the attached correspondence between General George Fisher, the Commander, Army Forces Command at Fort McPherson, GA, and the Commander, III Corps and Fort Hood, Killeen, TX. (We have obtained a copy of a similar letter which was sent to the Commander, Fort Riley, KS.) In his letter, General Fisher informs the Commander of Fort Hood that the installation's FTE elimination-in-favor-of-privatization quota has been increased from 645 to 767 spaces. To soften the blow a bit, General Fisher added a handwritten note at the bottom of the letter:

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

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

Here's another example. In this attached letter, a senior Defense Information Services Agency (DISA) manager clearly instructs his subordinates not to exceed established FTE ceilings. The manager also instructs his managers to back-fill positions

at GS-12 and below with contractors, or re-engineer the positions in order to make up for FTE shortfalls. Again, this is a clear case of management-by-FTE ceilings, and then contracting out work that might have been performed more cheaply by federal employees. Administration officials say I'm wrong; it's not that the DISA manager is a bad writer, it's that I'm a bad reader. Again, Mr. Chairman, you be the judge.

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

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

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

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

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

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

Representative Eleanor Holmes Norton (D-DC) has introduced legislation (H.R. 888) which would prevent agencies from replacing downsized federal employees with contractor employees. Such meritorious legislation should serve as the starting point for your own effort to address this problem. With respect to H.R. 716, it does not address management-by-FTE ceilings, arguably the worst defect in the A-76 and government

reinvention initiative.

Developing A Better Understanding Of The Contractor Workforce

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

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

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

is somehow biased against contractors.

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

As you may know, the Administration has consistently asked the Congress to provide federal employees with significantly smaller pay raises than those recommended by the Federal Employees Pay Comparability Act, thus causing them to fall farther and farther behind their counterparts in the private sector. The deficit reduction package most recently enacted by the Congress requires federal employees to contribute even more towards their retirement plans. Since 1980, incidentally, federal employees and federal retirees have contributed more than $175 billion towards deficit reduction in the form of lost compensation. Further, the federal government's in-house workforce has been cut by approximately 300,000 over the last four years, resulting in even more savings.

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

of non-federal employees engaged in service contracts. H.R. 716 does not address the pressing need to develop more information about the federal government's "shadow workforce."

Requiring cost comparisons on all service contracting

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

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

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

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[7] GAO, Ibid.

Mr. Chairman, what do you think should happen when it is shown that a contractor has not lived up to the terms of the contract? I say that the work should be recompeted or brought back in-house--and I think you'd agree. The new supplement to A-76 already requires agencies to collect the information necessary to determine if satisfactory performance of a contract has been achieved. Now we need to charge agency managers with the responsibility of acting on well-informed determinations of poor performance by requiring them to correct the problem by either recompeting the work or bringing it back in-house. To ensure that all taxpayers and customers benefit from this important initiative, the post-contract audit should be required for all contracting out decisions, including those made outside of A-76.

Improving contract administration

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

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

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

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

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

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

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

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

Mr. Chairman, I think you'd agree that gutting A-76's firm but fair requirement for

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[9] Ibid.

[10] Ibid.

[11] Ibid.

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

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

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

H.R. 716 does not address the issue of contract administration. Of course, if proponents of H.R. 716 have their way and manage to privatize much of the work currently performed by the working and middle class Americans who make up the federal workforce, then an already problematic contract administration system would be hopelessly overloaded -- costing the taxpayers even more money.

Making contracting out decisions for the right reasons

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

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

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

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

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

This is an emotional issue for both unions and contractors--and the absence of comprehensive and reliable information invariably leads to fiery debates that shed far more heat than light. Therefore, Mr. Chairman, I suggest that you ask GAO to compare the compensation--pay, health care benefits, and retirement benefits--of the federal employees who have been downsized in favor of contractors with that of the contractor employees who have assumed their work. If it appears that significant savings from contracting out are being generated simply because the contractor workforce is poorly-compensated, then lawmakers like yourself need to consider the necessity of implementing corrective measures to ensure that some basic floors exist for the pay, and health care and retirement benefits of contractor employees.

Encouraging managers to work with rank-and-file federal employees to make the government even more competitive

Taking a lesson from the private sector, the Administration issued an executive order in 1993 that established labor-management partnerships in agencies throughout the federal government. It hasn't been easy to change the hostile climate of labor-management relations in the federal sector, but we're making great strides. And that progress is paying dividends for the taxpayers.

*Before partnership at the Naval Warfare Center, in Crane, IN, it took two years for the parties to cobble together a collective bargaining agreement. After partnership, the parties finished their negotiations in less than two months. And by jointly designing new work systems and using self-directed work teams, the union and management were able to eliminate 150 front-line supervisor and mid-

level positions, resulting in substantial savings to the taxpayers.

*At Anniston Army Depot, AL, the base Commander warned that if productivity problems could not be solved in the small arms facility, it would be necessary to bring in forty-five new contract employees. A partnership studied the problem and began to make changes in manufacturing and supply; and now the facility is working better, more economically, and faster.

*At the Department of Veterans Affairs (DVA) Medical Center, in Des Moines, IA, self-managed work teams established through partnership have cut overtime costs from thousands of dollars every year to zero. These teams have also cut by more than one-half the amount of time that veterans have to wait for treatment at the hospital's clinic. One of the team members said that she used to work for a supervisor; now she works for her real customers: the nation's veterans.

*At another DVA hospital, in Albuquerque, NM, AFGE and management have jointly designed several new clinical programs to help care for veterans, including a women's clinic, a new drug rehabilitation center, and a pain-management clinic. Other quality improvements designed in partnership by the union and management have reduced the waiting time for patients from four hours to thirty minutes.

*At the Department of Labor headquarters, here in Washington, DC, AFGE and management developed a program called "Serving Our Customer." Teams of supervisors and employees were brought together to identify customer improvement opportunities. The teams were empowered to implement their ideas without further review by any management official. When it was all over, this innovative program produced almost 10,000 decisions--not recommendations, but decisions--for improving service to the agency's internal and external customers.

Mr. Chairman, it would have been easy for a federal employee union like AFGE, during a time of unprecedented downsizing, to do nothing more than fuss and fight. But we didn't. Our members are striving every day to make the federal government the world's best service provider. Until I have an opportunity to discuss with you personally labor-management partnerships in the federal sector, I hope that you will take the time to review a copy of Partnership That Works that I am submitting under separate cover. This AFGE publication discusses in detail almost 30 different partnership success stories.

CONCLUSION

Again, Mr. Chairman, thank you for inviting me to testify at today's hearing. AFGE is ready to work with you to ensure that non-inherently governmental work remains subject to strong public-private competition before it can be contracted out.

As you consider H.R. 716, I ask you to keep several principles in mind:

Just because a service has always been provided by the federal government doesn't mean that federal employees must do that work in perpetuity.

Just because contractors are hard-working taxpayers, as we're often reminded, doesn't mean that they have some entitlement to funds in the public purse. After all, federal employees are also hard-working taxpayers.

Just because agencies--with managers and rank-and-file employees often working together in partnership--are more successful competitors in the A-76 process doesn't necessarily mean that the system has suddenly become defective.

And just because contractors aren't winning as many A-76 competitions now as they had in years past doesn't necessarily mean that they are being victimized by biased public-private competitions.

We also ask you to seriously consider the suggestions we have made for improving the competition process and generating savings for taxpayers.

The bottom line, Mr. Chairman, is that although we have our own point of view, AFGE is ready to work with you to address the concerns we have raised at today's hearing.

Biography of Bobby L. Harnage

National Secretary-Treasurer of the American Federation of Government Employees, AFL-CIO

Bobby L. Harnage is the seventh National Secretary-Treasurer of the American Federation of Government Employees, AFL-CIO, the largest union for federal workers, representing over 700,000 government employees in some 1,200 locals in the United States and overseas, as well as the District of Columbia.

Harnage was elected National Secretary-Treasurer at the AFGE National Convention on August 28, 1991, and was overwhelmingly re-elected to serve another three-year term in 1994. Prior to his election as National Secretary-Treasurer, Harnage served as District 5 National Vice President in Atlanta, Georgia. During that 13-year period, from 1978 to 1991, he represented federal workers in the states of Alabama, Georgia, Florida, South Carolina and Tennessee. He was a member of the Labor Advisory Board, Center for Labor Education and Research at the University of Alabama in Birmingham and served on the Board of Directors of the Atlanta Metropolitan Area American Red Cross. Harnage is currently the senior member of the Federation's National Executive Council (NEC) and serves as Chair of the NEC's Privatization Committee.

Before serving as National Vice President, Harnage worked as a National Representative for the 5th District for 10 years--from 1968 to 1978. As a National Representative, he worked with AFGE members in South Carolina and Georgia.

He served in the Air Force from 1959 to 1963. During that time Harnage worked as an Air Police Investigator at Clark Air Force Base in the Philippines. He was later transferred to the Strategic Air Command at Warner Robins Air Force Base in Georgia. While at Robins he became involved in small arms competition and won the 8th Air Force Individual Championship twice. He also won the Georgia State Championship, was a team member of the Air Force Logistics Command Championship Team, placed fourth in worldwide competition and won a gold medal in 1962.

After his discharge in 1963, Harnage stayed at Warner Robins, beginning his civilian career as a sheet metal helper. He later transferred to the Security Police, where he worked until his resignation in 1968 to accept the position of National Representative.

Born October 2, 1939 in Lakeland, Florida, Harnage was raised and educated in Moultrie, Georgia. He graduated from Moultrie Senior High in 1957. He attended Norman Junior College on a baseball scholarship prior to entering the Air Force. After his discharge from the military, he attended Macon College and the University of Georgia.

House Rule XI, Clause 2(g)

AFGE has no grants or contracts to declare.

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY FORCES COMMAND
FORT MCPHERSON, GEORGIA 30330-6000

REPLY TO ATTENTION OF

AFPI-IMP

S: 26 June 1996
31 MAY 1996

MEMORANDUM FOR Commander, III Corps and Fort Hood, Fort Hood, TX 76544-5000

SUBJECT: Commercial Activities (CA) Program

1. Privatization is receiving increased emphasis as the Army moves to streamline support activities and achieve cost savings while maintaining services in an environment of greatly reduced resources. The CA program provides an approach to achieve these savings whether the work remains in-house or is contracted.

2. The Army has been tasked to study CA functions totaling 16,000 spaces. Forces Command's share (DA directed) is 4700 spaces (1500 in FY 96 and a total of 3200 in FYs 97 and 98). Installation input to date is only 33 percent of our share.

3. To ensure support of the Army's privatization effort, we have established installation quotas. Based on a review of the FY 95 CA inventory, your fair share is 767 spaces. You have currently identified 645 spaces for study. We need you to increase the number of spaces identified for study by 122 in FY 98 (encl). Submit the functions you select and associated spaces to this headquarters, ATTN: AFPI-IMP, by 26 June 1996.

4. The DOD has informed the services and agencies that "seed money" will become available beginning in FY 97. These funds will be distributed in the amount of $1000 per space based on official notification of FY 96 studies.

5. For more information, contact Mr. David Mayes, DSN 367-6254.

FOR THE COMMANDER:

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

Encl

GEORGE A. FISHER, JR.
Lieutenant General, USA
Chief of Staff

received
APR 14 1997

DEFENSE INFORMATION SYSTEMS AGENCY
701 S. COURTHOUSE ROAD
ARLINGTON, VIRGINIA 22204-2199

IN REPLY REFER TO: DISA WESTHEM (WE04)

12 February 1997

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Results of the DMCs' Revenue Based Staffing Plans

1. The outstanding effort you put forth in developing your staffing plan is appreciated. The results show the bottom-line objective was achieved to attain the targets for FY98: 2,116 A-Goal staffing and an A-Goal Revenue per FTE of greater than $230,000. Enclosure 1 contains the narrative results of each DMC's submission and the Resource Management Advisory Group (RMAG) approved A- and C-Goal staffing levels for FY98. Enclosure 2 is a spreadsheet synopsis showing the following staffing breakouts: the original FY98 Staffing Projections from the June 1996 model, the DMC requested staffing from their plans, the RMAG approved staffing levels, and the DMC onboard staffing as of 31 December 1996.

2. The attachment identifies each DMC's RMAG approved strength for civilians, military, and contractor personnel. That strength is your new ceiling and is not to be exceeded without exception approval. These numbers will be used by RM during the build for the FY99 budget. In order to assist you in implementing your plans, the following guidance is provided.

a. If your site is below target and you require filling a position at the GS-12 and below level, you may utilize contractors or reengineer the position for filling under the DISA Bridge Position Program to meet your need. However, you are not authorized to increase your civilian end strength.

b. Due to the variety of versions and overall age of many of the exception requests currently submitted to WE1 and the RMAG, ALL pending requests for hiring exceptions are canceled effective with receipt of this memo. If you determine that you have a critical position that performs an inherently governmental function such as supervision, technical COTR, senior security specialist, contract management, senior financial management, etc., a new request for exception hiring should be prepared and forwarded to WE1.

DISA WESTHEM Memo, WE04, Results of the DMCs' Revenue Based Staffing Plans

c. We are still working several issues relating to filling vacancies from within the WESTHEM "family" and will update you as decisions and solutions are achieved.

3. Quarterly, we will be reviewing with you your staffing plan revisions. The next review will occur in May 1997. Details will be provided to you under separate cover.

4. Points of contact for staffing plan guidance are staff members of WE04 at DSN 869-9600 or commercial (614)693-9600. Points of contact for personnel actions are WE1 staff members at DSN 761-2284.

2 Enclosures a/s

for JOHN W. MEINCKE
Brigadier General, USAF
Commander

Distribution:
WE0, WE0CS, WE01, WE02, WE04, WE05, WE06, WE1, WE2, WE3, WE4, WE5, WEA, WEB, WED, WEE, WEG, WEH, WEJ, WEK, WEL, WEM, WEP, WER, WES, WET, WEW, WEY

DMC STAFF MODEL SYNOPSIS

Jan '97

DMC NAME	[illegible]			[illegible]			[illegible]			[illegible]			
	A-GOAL	C-GOAL	TOTAL	A-GOAL	C-GOAL	TOTAL	A-GOAL	C-GOAL	TOTAL	A-GOAL	C-GOAL	TOTAL	
CHAM	106	9	115	115	28	143	115	28	143	149	8	157	+14
COLS	230	150	380	185	284	469	185	275	460	256	133	389	-71
DAY	41	26	87	81	79	159	81	70	151	118	33	151	∅
DEN	118	78	194	121	91	212	121	91	212	148	79	227	+
HUNT	105	2	107	114	56	170	94	52	146	133	4	137	-9
JAX	42	25	67	67	77	144	67	77	144	93	50	143	-1
MECH	240	10	250	265	57	322	265	57	322	264	42	306	-16
MONT	95	1	96	68	74	142	68	71	139	139	0	139	∅
OGDEN	227	106	333	205	177	382	205	177	382	243	118	361	-21
OKC	143	69	212	121	129	250	121	129	250	145	106	251	1
ROCK	75	7	82	139	32	171	139	32	171	180	5	185	+14
SAC	25	18	43	37	43	80	37	43	80	65	26	91	+11
SANT	157	52	209	173	121	294	173	121	294	224	70	294	∅
SAND	26	40	66	55	77	132	55	77	132	74	109	183	+51
STL	157	25	182	117	120	237	117	93	210	193	17	210	∅
WARN	119	28	147	114	97	211	114	82	196	165	30	195	-1
CMDR'S DISC*	135												
SUB TOTAL	2041	644		1975	1542		1957	1475		2589	830		
A to C Shift**		845											
TOTAL (A&C)			3530			3518			3432			3419	

NOTE: Manpower includes civilian, military and contractor personnel at DMCs only. Storefronts, headquarters and other overhead organizations are not included.

*NOTE: Commander's discretion derived from model generated increases to current DMC end-strength. Model is restricted from allowing end-strength increases. The model will not produce A-Goal strength greater than 2116 or an aggregate greater than 3530.

**NOTE: "A to C Shift" identifies the number of A-Goal personnel needing to move to C-Goal lines of business by FY98 in order for us to meet rate reduction goals. Original estimate of 770 increased due to model re-run and one formula change.

FIGURE 2.

Mr. HORN. Thank you, Mr. Harnage. That's a very thorough statement that you provided us.

Let me start with you just to ask a couple questions to fill out some details. On page 6, you note in the first line under the paragraph, H.R. 716 is not needed, the legislation fails to take into consideration recent statutory and policy reforms, which provide the government greater flexibility to privatize and outsource its work to the private sector. What statutory and policy reforms are you thinking of? I would just like them in the record at this point.

Mr. HARNAGE. Well, first of all, we're talking about the revisions of A–76, which we participated in in 1995 and the early part of 1996. We all had considerable concerns about the previous document not being adequate, and fair competition was a concern of everybody's. If you get a contractor's comments, they will say, it's unfair competition; if you get a manager's comments, they'll say it's unfair competition; if you get a union's comments, they'll say it's unfair competition. What we all consider unfair is not necessarily the same.

We think this provision went a long way toward eliminating many of the concerns. When something new like that takes place, it slows down the process for everybody to get familiar with it; regulations will be updated, and people, to begin the process. So contracting or outsourcing may have appeared to slow down, but it was simply that a new procedure was being implemented. The same thing will happen with H.R. 716. If it's implemented, things will come almost to a screeching halt for a considerable amount of time, for everybody to understand what the new law provides.

So that was one of the things that we——

Mr. HORN. So that the policy side is the rewrite of A–76 essentially?

Mr. HARNAGE. Right.

Mr. HORN. It's the statutory side I'm fishing for, because frankly—maybe it's there and maybe I just don't know about it, but is there a statutory base that you've had to confront when I've argued some of these points with OMB or different departments that might have engaged in outsourcing?

Mr. HARNAGE. I can't recall right now exactly what we're talking about there, but I will be glad to get that to you.

Mr. HORN. Yeah. If we could, we'll have a space left, without objection, at this point in the record.

[The information referred to follows:]

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MR. HARNAGE. Reliable cost and performance information is crucial to the effective management of government operations and to the conduct of competitions between public or private sector offerors. Unfortunately, until recent enacted statutory reforms, this information was not generally available and was often found to be unreliable. The two legislative reforms having the most impact on the flexibility to outsource are the Chief Financial Officers Act of 1990 (CFO Act) and the Government performance and Results Act (GPRA).

The Chief Financial Officers Act of 1990 (CFO Act) includes among the function of chief financial officers "the development and reporting of cost information" and "the systematic measurement of performance." This includes performance by in-house, contract or Inter-Service Support Agreement resources.

In July 1993, Congress passed the Government Performance and Results Act (GPRA) which mandates performance measurement by Federal agencies. This reform, in turn, generated policy reforms such as the Statement of Federal Financial Accounting Concepts No. 1, "*Objectives of Federal Financial Reporting (1993),*" which states that one of the objectives of Federal Financial reporting is to provide useful information to assist in assessing the budget integrity, operating performance, stewardship, and control of the Federal Government. Additionally, in 1995, the Federal Accounting Standards Advisory Board (FASAB), in response to GPRA reforms, recommended standards for managerial cost accounting. These standards were then approved by the Director of OMB, the Secretary of the Treasury and the Comptroller General. They were issued as the Statement of Federal Accounting Standards No.4, *"Managerial Cost Accounting Standards for the Federal Government."*

The importance of these reforms to the contracting out process cannot be underestimated or understated. The revised Supplement to A-76 is based on the managerial cost accounting and performance standards established by the CFO Act, GPRA, and the Federal Accounting Standards. These laws and standards, in turn, serve as the basis for the cost and performance information used in the A-76 cost comparison process. It is with this in mind that I base my contention that H.R. 716 is not needed. I urge the Committee not to "over-legislate". Federal managers already have sufficient authority and flexibility under the existing statutory and policy framework to outsource and privatize.

Mr. HARNAGE. It doesn't come to mind right now, but I'll be glad to get that to you.

Mr. HORN. OK. Now, on page 15 you noted, and we would abide by your wishes on that, that we wouldn't put it in the record. But you're talking about, "Some of the managers have been establishing FTE bogies on some depot maintenance facilities." This official insisted that he was taking corrective action. And then you noted you'd be glad to share this correspondence with ourselves or the staff, if you could, with Mr. Brasher, just so we can—and then we'll give them back to you, and it will not be part of the record because you didn't want to—correctly, I think—reform that.

Mr. HARNAGE. I appreciate that, and we'll certainly do that.

Mr. HORN. I would just like to take a look at it because I was interested on some of the scrawls that appeared on some of the exhibits, which I enjoyed. And let's see here, anything else I wasn't quite sure on? Just the simple things.

As I say, you did a very thorough statement here. Yeah, the scrawl is Lieutenant General Fisher's letter, which I found fascinating. I think that's about it on that.

Now let me just move to general questions for all of you, starting with Mr. DeSeve.

Senator Thomas lists—is this a response that just came in? To Mr. Brownback? OK, we'll look it over.

Senator Thomas mentioned there had been no response yet to Mr. Brownback's series of questions—and nothing like a hearing to promote responses, I must say—September 24, 1997.

Why, there is an answer here, and we will go into it. But I guess we didn't see your testimony until 9 o'clock this morning, and we have that. Make us a few copies. Mrs. Maloney enjoys reading these things; so do I. So that will help us very much in answer to some of these questions. We might have a few more follow-up questions.

In terms of the general testimony here, we won't restate all the ones here, I don't think. We might—staff might furnish them to you. But I guess—let's just start with GAO and OMB, and AFGE can get into it. The Congressional Budget Office has estimated that savings of 25 to 35 percent are the average under competition. Does GAO's work at the Federal, State and local agencies confirm that estimate?

Mr. STEVENS. We have looked at a great number of studies, Mr. Chairman, over the years. And I think that's in the ballpark. But it does derive from competition. That quote is often used to say that it arises from contracting out. In fact, the A–76 program, as Mr. DeSeve can confirm, does lead to savings, but very often the savings come from cutting the management, the government in-house——

Mr. HORN. The middle management——

Mr. STEVENS. Exactly.

Mr. HORN [continuing]. That we're all aiming for.

Mr. STEVENS. Subjecting them to competition is certainly what drives the savings, as Mayor Goldsmith said.

Mr. HORN. Yeah. Well, you heard my questions with the previous panel in terms of the deputy secretary in Virginia and the mayor of Indianapolis.

I was interested in the degree to which the "savings," come from either removal of the middle management staff that are not the worker-bee producers of work on the job, but do sign their initials to things. What I'm interested in is, do the health care benefits go with, say, union members that are going to maybe be in that contracted-out operation? Do the pension benefits go? Did the GAO ask those questions when they looked at some of these contracting-out examples? Did they look at what the average salary was, which I was getting to at the last with the mayor, what's the average salary of contracted-out work versus the average salary of the in-house work?

Mr. STEVENS. No, we didn't really analyze those numbers. What we reported back was what the cities and the State had told us themselves. And what we heard was basically what Mayor Goldsmith said. I didn't hear him say anything that was inconsistent with what we heard and what we reported to you. Pension portability is a problem. Health care benefits tend to be as good or even better in the private sector than those available to government employees; in many instances, pension benefits often are not. And very often, particularly people who have been in the workforce for a long time in the Federal context, the 49 percent of the Federal employees that are still in the Civil Service Retirement System tend to get locked into Federal employment by that pension benefit that's off in the future.

FERS, the Federal Employees Retirement System in the Federal system has anticipated that somewhat by being much more portable. Two-thirds of that, including Social Security coverage, is portable to wherever you're employed. So as we go along, that should be less of a problem in the Federal context than it's been so far.

Mr. HORN. Are there any existing laws now where the Federal pension programs could accept contributions from contracted-out work for the Federal Government?

Mr. DESEVE. I believe there was a pilot project passed as part of one of last year's defense bills that permitted that. But it was costly, and I don't believe the Defense Department ever implemented it. It is very complicated. We advised against that in fact, Mr. Chairman.

Mr. HORN. Yes. Since I don't have the Civil Service Subcommittee—that's Mr. Mica's—I'm not up on all those laws.

You're saying that's one example that was put in the defense software?

Mr. DESEVE. It was put in as a demonstration project for privatization. I believe it was in Indianapolis. And it basically provided that employees who went to work for a contractor would get their Federal benefits and have them indexed over time so that when they finally did collect their Federal pensions, they would have built up cost-of-living allowances in the meantime. One of our major objections was that such a benefit would not be available to anyone else who lost their jobs during the same time period. There have been hundreds of thousands of Federal employees released.

Mr. HORN. Mr. Brasher informs me that Chairman Mica is obviously clairvoyant. He's holding a hearing on that subject on Wednesday, so maybe something will come out of it. We'll see what it is.

Mr. Stevens, your testimony advised agencies to integrate competition into their strategic and performance plans, and I agree that this is natural and should be done. How should this be done? Has GAO had a chance to look at some of the executive branch results or strategic plans?

Mr. STEVENS. We certainly have, Mr. Chairman. We've analyzed 30 of them, I believe, for various committees and task forces of the House in particular. While I say that the Results Act could be a mechanism for agencies to examine how best to perform their missions, I don't think anybody would claim that is now taking place yet. It's an aspiration. We're making some progress. But we put out an overall report on the Government Performance and Results Act—in fact, I testified here on it—that shows they still have a long way to go for that to happen.

The reason why it is particularly advantageous in this context is that it does encourage agencies, as Mayor Goldsmith said, to focus on the outcomes, what they are trying to secure, and then ask themselves the strategies for best getting there. Very often those strategies will be something quite different from what they are now doing, which is devoting Federal employees to carry out tasks directly.

Mr. HORN. One more question for you, Mr. Stevens. The testimony noted incentives, which we were just talking about obviously. If you integrate the Results Act with the competition process, that might be a place for an incentive to go. Allowing agencies to use the savings to fund other programs might be one approach, and we have encouraged that on the Debt Collection Improvement Act that is now law.

However, when Congress has this annual appropriations process, how can we really provide an incentive for agencies to reduce costs so they can keep the savings, when the next Congress could come in, duly elected every 2 years, in the case of the House, and cut their budget? How do we deal with that? We cannot bind the next Congress.

Mr. STEVENS. It is a difficult problem conceptually, Mr. Chairman, and Congresses do change. We have revolving funds, however, that allow inputs from user fees and that sort of thing. It is something that can be done.

The problem, in our view, has been more of a conceptual one. Is Congress willing to give up the kind of control over the expenditures of the executive branch to allow them to do things more or less on their own discretion? Matters of executive bonuses, for example, have come up in the past as something very sensitive.

It is perfectly within the realm of possibility to think some of these savings might be devoted to rewarding the employees who achieve them. This can be stated in the press as a $20,000 giveaway or something. There are some problems here.

Mr. HORN. I now yield to the ranking member, Mrs. Maloney of New York, for any questions she might have.

Mrs. MALONEY. I would just like to ask OMB, it was testified earlier that the legislation was put in response to an OMB directive. I would like to know whether or not you feel the legislation is necessary or whether or not OMB is appropriately handling the problem.

Incidentally, I would like to thank publicly OMB for their help on what I think is one of the finest pieces of legislation that the chairman and I worked on, which was the Debt Collection Act. It is working well. There was testimony in front of the Banking Committee last week on electronic transfers and how that was saving money, and it could not have happened without the professional support of your staff. I just wanted to publicly thank you.

Mr. DESEVE. Thank you, Mrs. Maloney. The debt collection process is a good analogy to what we are talking about here today. In the Debt Collection Improvement Act, you and the chairman empowered agencies to better collect debt by gain-sharing, and then told them that if gain-sharing does not work, we would like you to turn the debt over to the Treasury at the appropriate time and allow them to work the debt.

Here again, we have said that we would like to empower agencies to make their own decisions with regard to competition. We didn't set up a centralized bureaucracy at OMB or Treasury to administer all debt collection. We said, "agencies, you do it right first. If you don't do it right, here are some guidelines by which you are allowed to transfer that debt over to a central agency."

A–76 is the guidance that we provide to agencies. We went through a very extensive review process. I think it probably took at least 18 months or 2 years, formal comment, hearings, and comments in the Federal Register to try to find a mechanism for competition. We didn't go as far as some people would have liked us to. I think H.R. 716 is a reaction to that.

Mrs. MALONEY. I have no further questions.

Mr. HORN. Does the gentleman from Virginia, Mr. Davis, have some questions?

Mr. DAVIS of Virginia. I do. I thank you for your varied perspectives on this bill.

Looking at the testimony, for example, Mr. Harnage, and I hope you say "hi" to Mr. Sturdivent for me. I hope he is doing better. You did an able job in his absence, you can tell him.

The issue of having an outsizing czar there gives me some concern, because a lot of these decisions I think can be better made at the local level. I think you make a good point on that, that you spread these out in a decentralized fashion.

The A–76 circulars that we have now work decently at the DOD level because managers have an incentive to utilize it because they get to keep some of that saved money. That is a good incentive. It does not work for the other parts of the government. I just wonder if there is a way to work with the A–76 formula and make these changes as opposed to moving ahead with this legislation and maybe having some unintended consequences, or if you think we really need to continue to move in a more comprehensive manner.

I am not sure how you write a criteria for all procurements that determine whether you will outsource or privatize. It is so varied, there are so many variables, some of this stuff nobody has thought about. That is what concerns me about having one person directing it. But if there is no incentive for a manager to go out and outsource, they will never do it, because the first inclination is we are going to protect our people. That is kind of the quandary we are in.

How do you close it? Because I see there is a little bit of a flaw directing this essentially, it seems to me. Let me start, Mr. DeSeve, with you, and hear Mr. Stevens and Mr. Harnage on that.

It seems that is the nub of this issue. If you are serious about making sure the government is making right decisions about outsourcing, there are going to be instances where we have to do more of this, and there are instances where we are just not going to save money, even though people think we can. What is the best way to get to it?

Mr. DESEVE. I think Chairman Horn touched on it when he talked about the annual appropriations process, which is, in fact, a double-edged sword. I think one of the reasons for DOD's success has been the base closing initiative they had. It forced people to realize that if they didn't become more efficient, it was possible that their function could be terminated and moved somewhere else. So there was what one might call a "negative incentive." There was a bit of a stick in that sense.

The Balanced Budget Act, with its very tight spending caps, both in defense and the domestic discretionary area, as well as in the mandatory area, will be a reality check starting this year for many agencies. I don't want to be too dramatic here, but the survival, or at least the survival of their entity, will be continuously tested over the next several years in the budget process.

In addition, the output of these entities will be viewed for the first time as part of performance plans that are coming in with the 1999 budget. OMB and the agency heads will be asking: What are we getting for what we are spending?

Now, with perfect accounting information, it would be easier to ask that question. But even in the aggregate, when you balance the outcomes within a budgetary framework against the budget resources, even if you have not attributed all the indirect costs, all the facilities' costs and so on, it begins to make you wonder. If you are challenged by having less money, and you are challenged with hard questions about what your real mission is, and what your outputs and outcomes are, many of the incentives for becoming more efficient starts to become clearer, as Mayor Goldsmith has said.

Mr. DAVIS of Virginia. Let me follow. One of the concerns is you put too many criteria down in statutory language, then somebody can come after you and say you didn't follow this, you get the appeals, you get all those kinds of issues. As I said, one size doesn't fit all. It is impossible to prescribe all this kind of thing, and that is the concern.

On the other hand, you have to be driven by the bottom line. I think there is probably a way to write that in. It just seems to me it ought to be written at a level where the people who make those decisions are going to get the benefit that will save the dollars or whatever as opposed to the current system where it works OK with DOD. I would still make some changes in the circular, but on the other side of the ledger it has not had the same effect. Is that a fair comment?

Mr. DESEVE. Very fair.

Mr. DAVIS of Virginia. Let me ask Mr. Stevens and Mr. Harnage, any reaction to that?

Mr. STEVENS. I don't disagree with anything Mr. DeSeve said. I would note that it also worked very well in the General Services Administration over the years. That is an agency that is less than a third the size it was when they started a very aggressive contracting out or A–76 program, and OMB had a major part in that by holding down the employment ceilings that they were allowed. I know that is not something that you would recommend, but it was very effective in their case.

Another area was one that the State and local governments mentioned, and that was political leadership. I think the leaders of GSA, going back to Gerald Carmen back in the 1970's, right up through Mr. Roger Johnson in the Clinton administration, have really promoted using the private sector capability for those business-like functions that GSA does very effectively. I think it is a better agency now for it.

Mr. DAVIS of Virginia. The reason I don't like the FTE positions is you have to be driven by dollars and not by people. So many times there is the assumption if you lose employees, somehow you are saving money, and that is not always the case. You also lose your perspective of mission, you lose your perspective of what are the appropriate lines of business we should be in versus shouldn't be in, and that is why.

It can have some utility, but I think we put way too much. It is also a great political sound bite, we got rid of so many employees, and that has mixed reactions. At a time when your employees are the strongest asset of any organization, and that is true of a lot of private companies and we recognize it is true in government too for recruiting and retention purposes.

Mr. STEVENS. There are some functions. Mr. Harnage mentioned the GAO report which pointed to nine service functions where they could have been done more cheaply by Federal employees. We did find some of those and that was not reflective of the whole thing, but they are there. The reason they didn't was they couldn't get the ceilings from OMB.

Mr. DAVIS of Virginia. Mr. Harnage points out correctly that at least the AFGE is learning. They follow their employees. If they get privatized, the union follows them. So they are adapting to the new realities.

Mr. Harnage, do you want to add anything?

Mr. HARNAGE. Yes. Just to pick up on your comment about us following the work, I think that makes us a more fair-minded participant in this deliberation. But in following that work, some of the questions of the previous panel concerning employees, health benefits, pension and pay, and I really appreciate those probing questions in the interests of the employees that are affected. But that contractor, the initial proposal was to cut the pay to 50 percent of what it was, so they would have lost half of their income had it not been a unionized shop to start with, and not even talking about their pension or their health benefits.

So that was a positive story, but it also had a special spin on it in that it was a unionized shop.

With your question concerning this one person being in charge of privatization studies and why is it more effective in DOD or has been more effective in DOD than other agencies, I think there are

several reasons for it. One is DOD is the one that got most of the attention back in the early days. Even today there has been some reference to President Eisenhower's initiative and his concern, which was the Department of Defense, more so than other Government agencies.

One of the things that has helped drive the competition, and that is the position that this union has taken, is that we are supporting fair competition, not just opposed to contracting out under any circumstances, but in looking at that. The BRAC did a lot to create the competition within the government, within DOD, knowing that either they would be a target if they were inefficient, or if they became a target, they needed to be very efficient to survive, if they were going to do that.

Mr. DAVIS of Virginia. So survival is a pretty good incentive.

Mr. HARNAGE. Right. Exactly. One of the problems we have with a continuation of the BRAC, though, is an example of how this got politicized. BRAC got politicized at the very end with the privatization in place, initiatives of McClellan and Kelly, and we opposed any continuation of BRAC until that matter was revolved. So that is just a small example of what could happen with this one individual overseeing all of the government competition and outsourcing initiatives.

I think the main thing that drove DOD was, first of all, that was where the interest was shown by Congress, and, second, BRAC helped.

Mr. DAVIS of Virginia. I would just add one other thing. I know we talk about protecting wages and benefits, but if, for example, I will just use local government, which I am very familiar with, if you are paying your trash collector $60,000 a year with benefits and you can end up hiring people for $30,000 equally qualified to do the same thing, why would you worry about protecting jobs? It seems to me your loyalty is to the taxpayers who are electing you to provide the best service at the cheapest cost. I probably exaggerated the numbers, although there have been some instances.

I think still we have to be driven at the bottom line at the end of the day. There are a lot of factors that go into that. But if we start looking with other objectives, preserving employees, privatizing two competing objectives, as opposed to trying to get the taxpayers the best value for their dollar, I think we can go astray very quickly.

Mr. HARNAGE. I agree with you on that. In that example I gave, one of the problems, the contractor wasn't just saying they wanted to cut the Federal employees' salary that was following the contract. It was proposing to cut new employees' salary by one-half so we would have employees working side-by-side, one drawing twice as much as the other, doing the same job with the same skill. The only difference was the prior employment, which would create a havoc work situation. So there is more to it than just that.

Mr. DAVIS of Virginia. I hear you. Good point. Thank you very much, Mr. Chairman.

Mr. HORN. Well, we thank you for that excellent line of questioning.

Now, I have listened to the base closure process get into this. Let me just tell you, I know 3,000 employees personally that do not

think the base closure process was very good, and those are the ones at the Long Beach Naval Shipyard that just closed finally this last week.

They competed. They were the only shipyard in the United States returning money to the Treasury and the Navy. They were ranked ahead of Portsmouth, et cetera, even though they dummied the figures and tried to figure out a way to rank them behind. They just lied, let us put it that way, to be charitable.

The fact was that the President of the United States knew there would be a primary in New Hampshire, and he didn't want to do anything to hurt New Hampshire. The boys in the Navy understood that. The fact was that the Chief of Naval Operations, who later committed suicide, wanted to get the nuclear yards preserved, and that was the only non-nuclear yard they could work on nuclear ships.

Then, when you look at the autocratic process by which the Base Closure Commission operated under the ex-Senator from Illinois, you find a new number of reasons why I don't have much faith in the base closure process. But I will tell you one thing, since there is not one single Naval installation left within my district, I can certainly be objective about the defense budget, and I plan to be.

Anyhow, so much for the base closure process. I just had to get that in the record, because I don't want—maybe it has done some good somewhere, and heaven knows we need more base closure processes, if they work honestly. Because as everybody will tell you, the Pentagon still has too much infrastructure that they are paying maintenance bills on. It is sad. Many of those are connected to some very wonderful people, just like the 3,000 I know.

Now, they were helpful in placing maybe 1,000 of them. Some retired. But some of them have had their challenges and their opportunities cut very short by strange forces for strange reasons.

So let me finish with a few questions here, starting with Mr. Harnage. I think we have probably explored some of the pension health care issue a bit, but that certainly is a major concern of mine, when you think about how this system works or doesn't work. You are affecting real human beings, most of whom have spent a lot of their life in the public service, and we have got to figure out what we do under those circumstances.

As I say, I am all for cleaning out a lot of places in a lot of parts of government, be it Capitol Hill or the executive branch, and I think we found when we get at that middle management staff that seems to have grown up over the last 30 years, much more than Eisenhower had. You know, somebody said, I think the Speaker did, that Franklin Roosevelt ran the Second World War with six assistants. Those were the anonymous six of the Brownlow Commission, and, of course, no assistant in the White House has ever been anonymous ever since that report came out. They are running for office or they are getting TV jobs or whatever, but they are not anonymous. Then the Presidents are ill-served when they are not anonymous.

As the union that has represented a number of Federal agencies undergoing competition, Mr. Harnage, I would like to focus on the one-half of the competitions that the Federal employees lose.

Have you any data on that in terms of when the Federal employees do not go into the operation, that even under A–76, which not much seems to be really happening under it, but even when they go in there, have we looked at how the pensions were affected and how many received further Federal employment and how many go to work for the contractor? Does the union have any data on those situations?

Mr. HARNAGE. No, sir, not at this time. We have added a new staff person that will be doing some of that research for us. I do not know how far back we will be able to go.

Mr. HORN. OPM should be doing this kind of thing.

Mr. HARNAGE. We have asked for it for years. We do not get any response. Somebody in the Federal Government ought to be keeping that data for your use as well as ours.

Mr. HORN. I think the President is ill-served by the staff. As I was listening to this dialog and the fact that President Eisenhower had authorized this A–76 under which not much is happening, I am reminded of what President Truman was said to have said about President Eisenhower. He said,

> You know, the old general will get in here, the White House, and he will make a decision and tell somebody to do something, and 6 months later he will find out nobody has done anything about it.

That was Truman's experience with the White House.

Of course, now, with A–76, we have got living proof. It isn't just 6 months later and nobody has done much about it, it is about 60 years later almost, not quite, but it certainly is getting to be 45, shall we say, years later, and not much has happened. So if something is going to happen, we are going to need some sensible guidelines and rules that take into account people's service and other things.

Mr. DeSeve, maybe this is under your jurisdiction, is it, down in OMB, the implementation of that?

Mr. DESEVE. Yes, sir.

Mr. HORN. What do you think of it? You are a longtime civil servant in this Government. How have you seen it change between administrations, starting with Eisenhower?

Mr. DESEVE. Actually, I am a political appointee confirmed by the Senate. Senator Thomas would hold tenaciously to that right. I served in other governments, local governments and State governments, but with this administration I came in as the Chief Financial Officer at Housing and Urban Development.

Mr. HORN. That is right, that is a political appointment.

Mr. DESEVE. I think Mr. Duncan's statement offers an interesting way to look at this. He quotes the Roles and Missions Commission, under former Deputy Secretary White, as saying that at least 250,000 civilian employees are performing commercial-type activities that do not need to be performed by government personnel.

[The prepared statement of Hon. John J. Duncan follows:]

Mr. Chairman,

I would like to simply thank you and the Members of the Subcommittee for holding this hearing today. I would also like to thank Senator Thomas for all his hard work on this issue.

As you know, I have introduced H.R. 716, the Freedom From Government Competition Act. Senator Thomas has introduced the companion bill in the Senate, S.314.

This legislation has bipartisan support with 55 cosponsors in the House and 13 in the Senate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I think all of us would agree that the American public wants the federal government to improve the services it provides without increasing taxes.

I also think we would agree that almost everyone would like us to reduce the size of the federal government.

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

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

Organizations that support the Freedom From Government Competition Act

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

Mr. DESEVE. It has also been testified to here today that approximately 40,000 jobs at DOD, that number may be a little high, are in the midst of undergoing the A–76 process. So, as a percentage, that is a good start, but it is not the end of the day. So I think where there is a focus on A–76, it is working. Your question I think is a good one: why isn't there more of a focus within the agencies?

I am going to ask that question more directly myself, because this hearing has prompted me to review the data more thoroughly. We have currently asked, at the request of Senator Brownback, for an inventory. It is in the letter that you discussed. The material for the inventory is in. It was supposed to come in 2 weeks ago; but it is now in. We are compiling that information. I would like to, if the record stays open long enough, supply that for the record, because I think it will begin to shine a spotlight on this issue.

Mr. HORN. Without objection, it will go at this point in the record. Can you do it in 2 weeks?

Mr. DESEVE. Let me ask the guy who is really going to do it, who is a civil servant. He tells me we can.

Mr. HORN. Thank God there are a few still down there.

[NOTE.—The USDA's inventory of commercial activity may be found in subcommittee files.]

[The information referred to follows:]

ENCLOSURE 3

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

DEPUTY DIRECTOR
FOR MANAGEMENT

November 12, 1997

Honorable Sam Brownback
Chairman, Subcommittee on
Oversight of Government Management,
Restructuring, and the District of Columbia
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510-6250

Dear Mr. Chairman:

This forwards detailed responses to the questions you posed in your letters of August 21 and August 28, 1997. These questions were developed in response to the Subcommittee's June 18, 1997, hearing on S. 314, "The Freedom from Government Competition Act." An interim response was forwarded to you on September 24, 1997, which covered questions 2, 3, and 5 in your letter of August 21st. For your convenience, the enclosure restates questions 2, 3 and 5 along with your other questions.

Again, thank you for your inquiry. Please let me know if I can be of any further assistance.

Sincerely,

G. Edward DeSeve
Acting Deputy Director
For Management

Enclosure

ENCLOSURE

OMB RESPONSES
TO
SENATOR BROWNBACK'S QUESTIONS OF AUGUST 21 AND AUGUST 28, 1997,
IN RESPONSE TO THE SENATE SUBCOMMITTEE ON THE OVERSIGHT OF GOVERNMENT MANAGEMENT HEARING OF JUNE 18, 1997,
ON
S. 314, "THE FREEDOM FROM GOVERNMENT COMPETITION ACT OF 1997."
OCTOBER 10, 1997

From Senator Brownback's letter of August 21, 1997.

1. *"During the question and answer period Deputy Director Koskinen agreed with me that the NOAA fleet offered a good opportunity for contracting out . . . For example, Commerce CFO Ray Kammer and NOAA Admiral William Stubblefield informed us that it was NOAA's intention to contract out 50 percent of NOAA's charting and mapping work by way of the A-76 process. What progress is being made in that area by Commerce, what milestones are scheduled and when will they be met?"*

Response

In his letter to you dated August 28, 1997, Secretary Daley stated that "significant progress has been made toward contracting for at least 50 percent of mapping and charting activities." Secretary Daley noted that NOAA has deactivated two NOAA hydrographic survey vessels and has contracted for hydrographic surveys in several locations. The A-76 cost comparison of the NOAA ship KA'IMINOANA is scheduled for completion in January 1998. We support the Department's efforts and believe that these and other efforts will result in significant savings as we expand our capacity to meet hydrographic survey requirements.

Our goal is to optimize the use of both public and private sector resources by selecting the highest quality, most cost-effective sources to meet current and future requirements. We are using best value techniques to evaluate both the public and the private sector offers. We are changing our buying behavior in ways that significantly reduce risk on the taxpayer and ensure that contractors are providing products and services with the best overall value for the dollars spent. The Federal Acquisition Streamlining Act, the Clinger-Cohen Act and other Administration reform initiatives are better enabling us to make more efficient and effective use of marketplace competition and financial incentives. This, in turn, is putting us in a stronger position to get more from our in-house and contract dollars.

2. *"What is the status of the reports required by Section 3515 of the Government Management and Reform Act of 1994? Have they been completed?"*

Response. (*Also provided in OMB letter dated September 24, 1997*)

In accordance with Section 3515 of Title 31 of the United States Code, Federal agencies submitted the financial statements for the fiscal years ended September 30, 1994 and 1995. As required by Section 3512(a)(5), OMB submitted these reports to the Chair and Ranking Minority Members Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives. For the fiscal year ended September 30, 1996, agencies prepared consolidated agency-wide financial statements covering all accounts and associated activities of each office, bureau, and activity of the agency. OMB transmitted the financial statements on 15 of the 24 agencies, is preparing to submit the financial statements received from five agencies, and has not received the required financial statements from four agencies. OMB expects to receive these four statements in the near future and will transmit them to Congress within 30 days thereafter.

3. *"What is the agency composition of the estimated 300,000 FTE reduction achieved by the Clinton Administration?"*

Response. (*Also provided in OMB letter dated September 24, 1997*)

A break down by agency is provided in the 1998 Budget, Analytic Perspectives, Chapter 10 (Federal Employment) page 206, provided as Attachment 1. A summary chart outlining the Change in Federal Civilian Employment (Jan 1993 to March 1997) is also provided at Attachment 2.

4. *"Senator Thomas asked Mr. Koskinen to provide him with the number of A-76 competitions conducted in 1996. Please provide that information, as well as the estimated number of FTE that these competitions covered, and the distribution of these studies (and FTE) among the agencies and departments."*

Response.

In response to your request, OMB staff contacted the agencies and requested information on the number of A-76 competitions conducted in 1996, including the estimated number of FTE that these competitions covered by agency. Attachment 3 is a summary of the data reported by the agencies. As noted below, the information requested in Question 7 has also been incorporated into Attachment 3.

5. *"What portion of the dollar value of services that the Federal Government contracts out is accounted for by the Department of Defense - over the past 5 years?"*

Response. (*Also provided in OMB letter dated September 24, 1997*)

Service Contracting
($ Billions)

Year	Total Service Contracting	DOD Service Contracting	Percent DOD
FY 1992	$105.2	$60.9	57.9
FY 1993	$105.5	$62.0	58.8
FY 1994	$110.0	$65.3	59.4
FY 1995	$114.1	$66.9	58.6
FY 1996	$111.7	$68.8	61.6

Note: Source: The Office of Federal Procurement Policy (OFPP), Federal Procurement Data System (FPDS). These numbers include R&D, Construction, A&E, ADP services (including installation and maintenance) and other services.

For comparative purposes we have also provided the total Federal civilian personnel compensation figures for the same years, which are also essentially flat after 1992.

Federal Civilian Personnel Compensation
($ Billions)

Year	Total Fed. Civ. Compensation	DOD Civ. Compensation	Percent DOD
FY 1992	$107.3	$42.7	39.9
FY 1993	$110.9	$41.3	37.2
FY 1994	$111.1	$40.7	36.6
FY 1995	$111.2	$40.1	36.0
FY 1996	$112.3	$39.6	35.3

6. *"At the conclusion of the questioning, Mr. Koskinen agreed to give me his reaction to a list of potential contracting candidates that I would provide . . . I would like to have OMB's reaction to (1) the contracting potential of the many activities of the NOAA fleet and your plans to fulfill that potential and (2) the routine maintenance, janitorial, mapping, recreational oversight and management activities of the National Park Service (NPS) . . . "*

Response.

As noted in our response to question 1, NOAA has begun a serious effort to examine the commercial services that NOAA might place into competition with the private sector. Many of these services are highly technical and require significant levels of investment to be fully performed by the private sector. There are issues of cost comparability, liability, recurring operations and maintenance cost and other concerns in the development of these asset dominated cost comparisons. Nevertheless, NOAA is engaged in a cost comparison for the work of the NOAA ship KA'IMINOANA, and has issued a CBD request for information in the expectation of a review of a "charter back" arrangement involving the NOAA ship FAIRWEATHER. Shore support is included in these analyses.

Attachment 4 is a memorandum from Paul A. Dennett, Director of the Office of Acquisition and Property Management, Office of the Secretary, Department of Interior (DOI), dated September 25, 1997. This letter responds to OMB's inquiry regarding DOI's A-76 cost comparison efforts and the potential for competing the routine maintenance, janitorial, mapping, recreational oversight and management activities of the National Park Service (NPS). In sum, the Department and the NPS are reviewing their use of A-76 competitions as a part of their larger reinvention efforts. A legislatively mandated report is due from the NPS on the use of A-76 cost comparisons in January 1998. OMB will be working with the NPS in the development of this report. A more thorough response can be offered at that time.

7. *"Finally, OMB's June 24, 1996 memo to agencies (M96-33) requested that they "... identify the approximate number of FTE they expect to submit to cost comparison (bid opening) in Fiscal years 1996, 1997 and 1998. Please provide this information, arranged by year and by agency."*

Response.

Attachment 3 is a summary of the data reported by the agencies in response to Questions 4 and 7. These data do not in every case reflect the level of change being considered. Several agencies have increased their support contracting for new or expanded work or have increased their level of contracting through other means, including privatization.

From Senator Brownback's letter of August 28, 1997.

1. *"...what is the explanation for the significant decline in the use of the A-76 program within a Department that has averaged 31 percent cost savings through the program? Have other departments experienced a similar decline? Please update the attached data through 1996."*

Response.

During the 1980s, legislation was introduced to end, delay, change or otherwise restrict the conduct of cost comparisons for the conversion of work from in-house to contract performance. There are several provisions of law that have inhibited DoD's outsourcing efforts. The first provision, contained in the National Defense Authorization Act for Fiscal Years 1988-89 (P.L. 100-180), authorized installation commanders to determine whether to study activities for potential outsourcing. Because of disruptions to their workforce, the cost of committing local resources to conduct studies, and a desire for more direct control of their workforce, many commanders chose not to pursue outsourcing. This law, which was known as the "Nichols Amendment" and codified at 10 U.S.C. 2468, was effective through September 30, 1995. Another provision contained in the Department of Defense Appropriations Act for Fiscal Year 1991 (P.L. 101-511) and subsequent DoD appropriations acts, prohibited funding for lengthy A-76 studies and required their cancellation in certain cases. Finally, the National Defense Authorization Acts for Fiscal Years 1993 and 1994 contained provisions that prohibited DoD from entering into contracts resulting from cost studies done under A-76 (conversions from in-house to contract performance). Taken in combination and overtime, these provisions have limited the level of outsourcing by A-76 until 1996. Legislation was also passed affecting the program at GSA, Veterans, and Interior.

We are reversing these restrictions and have encouraged the agencies to commit the necessary resources to once again conduct the needed cost comparisons. The chart included with your letter of August 28, 1997 is updated as follows:

FTE BY FISCAL YEAR OF STUDY COMPLETION

YEAR	CIV	MIL	TOTAL
1995	44	146	190
1996	1,601	840	2,441
1997	0	505	505
Grand Total (1978-1997)	18,989	64,818	83,807

2. *"What efforts are underway to reverse this trend?"*

Response.

In March of 1996, OMB issued the A-76 Revised Supplemental Handbook. Since then, agencies have begun to review their inventories of commercial activities and have considered the options available, including reinvention, consolidation, privatization, technology investment and outsourcing. Agencies have undergone training in the use of the Revised Supplement, have announced studies and have begun cost comparisons. The Revised Supplemental Handbook took a significantly different tack from the approach that had preceded it, e.g., one that encourages expanded and improved competition on a level playing field, while allowing the forces of downsizing, budgetary reductions and the effects of statutory and administrative reinvention initiatives (CFO Act, GPRA, GMRA) to create the incentives for conducting cost comparisons.

The Revision modifies the cost comparison requirements for recurring commercial activities and makes certain interagency agreements that were not previously subject to competition available to both public and private sector offers. Agencies are not required to conduct an A-76 cost comparison, unless that agency seeks to convert workload to or from in-house, ISSA or contract performance and that conversion is not otherwise authorized by the Circular or its Handbook. As a result, we believe that agencies, the unions and the private sector are viewing the Revised A-76 Supplement not simply as a tool to contract out, but rather, as one of several management tools to reduce cost and improve performance.

3. *"Recognizing that the results of A-76 completions reflect earlier actions to conduct A-76 reviews, and that such reviews can take as long as two to four years to complete, will you please provide us with information on the number of A-76 reviews (and the number of FTE covered) that were initiated at Defense in each year since 1992?"*

Response.

DEPARTMENT of DEFENSE
COST COMPARISON INFORMATION
COST COMPARISONS AND FTE INITIATED DURING FISCAL YEAR:

FY	NO. OF STUDIES	MILITARY FTEs	CIVILIAN FTEs	TOTAL FTEs
92	14	200	296	496
93	8	236	205	441
94	10	1417	206	1623
95	18	804	1324	2128
96	64	1810	3431	5241
97	344	2423	23032	25255
Total	458	6890	28494	35384

Table 10–1. FEDERAL EMPLOYMENT IN THE EXECUTIVE BRANCH

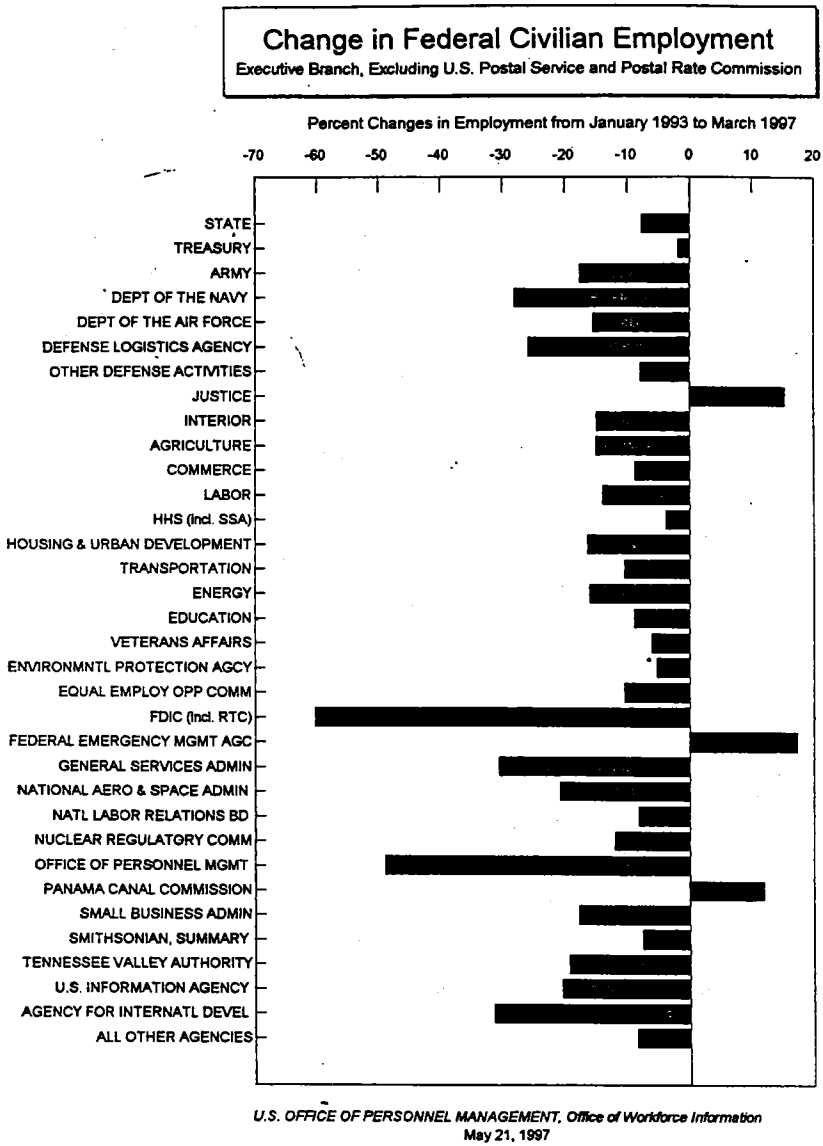
(Civilian employment as measured by Full-Time Equivalents, in thousands)

Agency	1993 Base	Actual				Estimate		Change: 1993 base to 1998	
		1993	1994	1995	1996	1997	1998	FTE's	Percent
Cabinet agencies:									
Agriculture [1]	115.6	114.4	109.8	103.8	100.7	101.7	99.9	-15.8	-13.6%
Commerce	36.7	36.1	35.0	35.3	33.8	34.9	38.3	+1.6	+4.3%
Defense-military functions	931.3	931.8	868.3	821.7	778.9	760.0	733.2	-198.1	-21.3%
Education	5.0	4.9	4.8	4.8	4.7	4.6	4.6	-0.5	-9.3%
Energy	20.6	20.3	19.8	19.7	19.1	18.2	17.2	-3.4	-16.5%
Health and Human Services [2]	65.0	66.1	62.9	59.3	57.2	57.6	57.6	-7.3	-11.3%
Social Security Administration	65.4	64.8	64.5	64.8	64.0	65.6	65.4	———	———
Housing and Urban Development	13.6	13.3	13.1	12.1	11.4	11.4	11.0	-2.7	-19.8%
Interior	78.5	78.1	76.3	72.0	68.7	70.6	71.4	-7.9	-10.0%
Justice	99.4	95.4	95.3	87.9	103.6	113.3	121.8	+22.4	+22.5%
Labor	19.3	19.0	17.5	16.8	18.0	16.8	17.1	-1.2	-6.5%
State	26.0	25.6	25.2	23.9	22.9	23.2	23.2	-2.8	-10.8%
Transportation	70.3	69.1	66.4	63.2	62.4	64.0	64.8	-5.5	-7.8%
Treasury	168.1	161.1	157.3	157.5	151.1	148.3	148.1	-18.0	-10.8%
Veterans Affairs [1]	232.4	234.2	233.1	228.5	221.9	215.5	210.6	-21.8	-9.4%
Other agencies (excluding Postal Service):									
Agency for International Development [1]	4.4	4.1	3.8	3.6	3.4	3.1	3.0	-1.4	-31.9%
Corps of Engineers	29.2	28.4	27.9	27.7	27.1	27.1	26.4	-2.8	-9.7%
Environmental Protection Agency	18.6	17.9	17.6	17.5	17.2	18.0	18.3	-0.3	-1.6%
Equal Employment Opportunity Commission	2.9	2.8	2.8	2.8	2.7	2.7	2.7	-0.2	-6.2%
Federal Emergency Management Agency	2.7	4.0	4.9	4.6	4.7	5.0	4.7	+1.9	+70.5%
Federal Deposit Insurance Corp./Resolution Trust Corp.	21.6	21.9	20.0	15.7	11.8	9.4	7.8	-13.8	-64.0%
General Services Administration	20.6	20.2	19.5	17.0	15.7	14.9	14.4	-6.2	-30.2%
National Aeronautics and Space Administration	25.7	24.9	23.9	22.4	21.1	20.7	19.8	-6.0	-23.3%
National Archives and Records Administration	2.8	2.8	2.6	2.5	2.5	2.5	2.5	-0.2	-8.6%
National Labor Relations Board	2.1	2.1	2.1	2.0	1.9	2.0	2.0	-0.1	-6.0%
National Science Foundation	1.3	1.2	1.2	1.2	1.3	1.3	1.2	-0.1	-8.2%
Nuclear Regulatory Commission	3.4	3.4	3.3	3.2	3.1	3.1	3.0	-0.4	-12.1%
Office of Personnel Management	8.2	5.9	5.3	4.2	3.4	3.4	3.3	-3.0	-47.6%
Panama Canal Commission	8.7	8.5	8.5	8.8	9.0	10.2	10.3	+1.6	+18.5%
Peace Corps	1.3	1.2	1.2	1.2	1.1	1.2	1.1	-0.1	-9.4%
Railroad Retirement Board	1.9	1.8	1.7	1.6	1.5	1.4	1.3	-0.5	-29.0%
Securities and Exchange Commission	2.7	2.7	2.7	2.7	2.8	2.8	2.8	+0.1	+2.1%
Small Business Administration	4.0	5.8	6.3	5.7	4.8	4.6	4.6	+0.6	+15.2%
Smithsonian Institution	5.9	5.5	5.4	5.3	5.1	5.3	5.3	-0.6	-10.4%
Tennessee Valley Authority	19.1	17.3	16.6	16.6	16.0	15.7	15.6	-3.6	-18.8%
United States Information Agency	8.7	8.3	8.1	7.7	7.0	7.0	6.9	-1.8	-20.9%
All other small agencies	16.1	15.4	15.0	15.1	14.1	14.8	14.5	-1.6	-9.9%
Total, Executive Branch civilian employment	2,155.2	2,138.8	2,052.7	1,970.2	1,891.7	1,881.3	1,855.6	-299.6	-13.9%
Reduction from 1993 base	———	-16.4	-102.5	-185.0	-263.5	-273.9	-299.6	———	———
Subtotal, Defense	931.3	931.8	868.3	821.7	778.9	760.0	733.2	-198.1	-21.3%
Subtotal, non-defense	1,223.9	1,207.1	1,184.4	1,148.4	1,112.8	1,121.2	1,122.4	-101.5	-8.3%
Status of Federal civilian employment relative to the Federal Workforce Restructuring Act (FWRA): [3]									
Total, Executive Branch employment	———	———	2,052.7	1,970.2	1,891.7	1,881.3	1,855.6	———	———
Less: FTEs exempt from FWRA	———	———	5.7	5.7	7.8	7.9	5.6	———	———
Total, Executive Branch subject to FWRA Ceiling	———	———	2,047.0	1,964.4	1,884.1	1,873.3	1,850.0	———	———
FWRA ceiling	———	———	2,084.6	2,043.3	2,003.3	1,963.3	1,922.3	———	———
Executive Branch employment relative to FWRA ceiling	———	———	-37.6	-78.9	-119.2	-90.0	-72.3	———	———

[1] The Departments of Agriculture, Health and Human Services, Veterans Affairs, and the Agency for International Development have components that are exempt from FTE controls. In 1998, Agriculture has 2,000 exemptions; HHS has 268 exemptions; Veterans Affairs has 3,200 exemptions and AID has 27 exemptions.

[2] FTE limitations are set for the Executive Branch in the Federal Workforce Restructuring Act of 1994 (P.L. 103-226) from 1994-99.

ATTACHMENT 2



U.S. OFFICE OF PERSONNEL MANAGEMENT, Office of Workforce Information
May 21, 1997

ATTACHMENT 3

AGENCY	A-76 STUDIES COMPLETED 1992-DATE	FTE OUTSOURCED 1992-DATE	STUDIES SCHEDULED FOR COMPLETION 1996	1997	1998	FTE SCHEDULED FOR STUDY 1996	1997	1998
AGRICULTURE	11	37	1	1		12	3	
COMMERCE			1			23		
DEFENSE	61		14	15		5,241	35,384	
EDUCATION								
EPA								
ENERGY	10	13	1			216		
GENERAL SVCS	14	19	1			30		
HHS	5	30	2					
HUD								
INTERIOR	8	1	1			10		
JUSTICE								
LABOR								
NASA								
OPM								
STATE								
TRANSPORTATION								
TREASURY					(1)			
VETERANS	6	103	19			368		

(1) IRS is considering several candidates for cost comparison beginning in 1998.

ATTACHMENT 4

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240
September 25, 1997

Memorandum

TO: David C. Childs, Program Examiner
Office of Management and Budget, BASD

FROM: Paul A. Denett, Director
Office of Acquisition and Property Management

SUBJECT: **OMB CIRCULAR A-76 DATA REQUEST**

In response to your transmittal message dated September 3, 1997, attached is the Department of the Interior's data on cost comparisons completed during the period from Fiscal Year 1992 through the present. At this time, no formal cost comparison studies are contemplated for Fiscal Year 1998. However, we intend to exercise continuous A-76 program oversight and further assess the implementation of the Circular's requirements on the Department's updated inventory of commercial activities.

The attachment responds to your request for cost comparison data. We are waiting for a response from the National Park Service (NPS), which we expect by January 1, 1998. The NPS continues to undergo leadership changes in organization and management of administrative support activities, and therefore, is having difficulty gathering the requested data and especially, assessing agency impact of the House Committee Report recommendation on increasing its contracting of commercial activities. Upon receipt of NPS' response, we will promptly submit it.

Please contact Jennings Wong at (202) 208-6704, if you have any questions concerning the preliminary data submitted.

Attachment

cc: Director, Office of Budget
Deny Galvin, Deputy Director, NPS

Attachment

A-76 COST COMPARISON AND DIRECT CONVERSION DATA

FISCAL YEAR 1992:

Bureau of Land Management, Oregon State Office

A-76 cost comparison study was performed to determine the most cost effective acquisition alternative for providing aircraft services for the Oregon State Office. Based on the study results, BLM awarded a lease/purchase agreement to satisfy its aircraft operational needs.

FISCAL YEAR 1993:

Office of Aircraft Services, Boise, Idaho

Formal A-76 cost comparison study was performed to determine whether it was more cost effective to use and acquire 5 different types of aircraft than to lease the same aircraft to accomplish mission requirements. The acquisition option selected was deemed to be the most economical and cost efficient approach.

FISCAL YEAR 1994:

Bureau of Land Management*

Formal A-76 cost comparison study was performed to determine and support justification of government use and ownership of existing aircraft. Bureau aircraft use justified.

FISCAL YEAR 1995:

Bureau of Reclamation, Aviation Support Activity

Number of cost comparisons initiated. **One**
Number of FTE included. **Two**
Number of cost comparisons and direct conversions completed. **One**
Number of FTE outsourced or retained in-house. **Two FTE retained in-house**

Bureau of Reclamation, Pacific Northwest Regional Office*

Formal A-76 cost comparison study was performed which supported Bureau decision to continue to provide in-house aircraft services with Government-owned aircraft. As a result, the cost study justified the bureau's decision to purchase the aircraft.

Office of Aircraft Services, Boise, Idaho

Interior's Office of the Inspector General performed a follow-up review of the 1993 A-76 study performed on aircraft use and acquisition of 5 types of aircraft. The review confirmed the decision that government use and ownership of aircraft was more cost effective than leasing.

National Park Service, Southeast Regional Office*

Formal A-76 cost comparison study was performed to justify aircraft replacement and retained in-house use by the Park Service.

FISCAL YEAR 1996:

Office of Aircraft Services, Aircraft Maintenance, Anchorage, AK

Number of cost comparisons initiated. **One**
Number of FTE included. **Ten**
Number of cost comparisons and direct conversions completed. **One**
Number of FTE outsourced or retained in-house.
Ten FTE retained in-house after no commercial responses were received.

FISCAL YEAR 1997:

Office of Aircraft Services

Formal A-76 cost comparison study was performed to determine whether a specific type of replacement aircraft would be a suitable replacement to perform mission requirements. Cost study replacement aircraft acquisition was justified. Action to obtain the aircraft is subject to the availability of a surplused aircraft.

*Denotes technical assistance was provided by the Office of Aircraft Services in accordance with OMB Circular A-126, "Improving the management and Use of Government Aircraft" guidelines.

Mr. DESEVE. This gentleman, David Childs, is the father of A–76. I think what we want to do as we look at that data is to shine a spotlight on some of the agencies and ask them that question. I will be talking to the President's management council about the data once it is compiled. Let me take a look at it, because we certainly have been challenging agencies in this area to contract out, to exit functions, and to privatize where appropriate. I want to know the answers to some of these questions myself.

Mr. HORN. We will be glad to work with you on it. As you know, we had a successful marriage here, as Mrs. Maloney pointed out, with the debt collection improvement bill. I think everybody was working on the same team, whether it be GAO, OMB, or the agencies, and we got something done. So I would like to see what we can do on this to make some sense out of the policy and also recognize what human beings are contributing.

I am a Henry Ford type. I believe you pay the workers a good salary so they can go out and buy your car. He was smart on that. He didn't have a great college education, no Harvard MBA or anything, but he had common sense, and he was right.

The staff might well send you some additional questions which we would appreciate all of you answering for the record. They will go in at this point.

[The information referred to follows:]

ENCLOSURE 1

OMB RESPONSES
TO
CHAIRMAN HORN'S QUESTIONS DATED OCTOBER 6, 1997,
IN RESPONSE TO THE HOUSE SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY
HEARING OF SEPTEMBER 29, 1997,
ON
H.R. 716, "THE FREEDOM FROM GOVERNMENT COMPETITION ACT OF 1997."

OCTOBER 17, 1997

1. ***"In your testimony, you note that "30,000 FTEs are under study in the Defense Department alone." How many agencies outside of the Department of Defense are currently conducting studies under OMB Circular A-76? How many employees, of the estimated million or so Federal employees engaged in commercial functions, are involved?"***

OMB has surveyed the agencies to collect information on their current application of the cost comparison requirements of the OMB Circular A-76. Enclosure 2 is a summary of the data submitted by the agencies. Within DOD, 34,000 FTE have been announced for competition (completion) in FY 1996 through FY 1998.

The annual OMB Circular A-76 Inventory of Commercial Activities, as required by the March 1996 Supplemental Handbook, currently identifies approximately 475,000 FTE as commercial in nature. However, these numbers are being reviewed within the agencies. Overall, we expect this number to increase, as more thorough reviews are conducted. Estimates based upon simple aggregations of government position descriptions to produce a figure of a million or more commercial FTE are not reliable and do not, necessarily, reflect whether a function is contractible, inherently governmental or determined by the agency to reflect core mission requirements.

2. ***"What incentive is there for an agency to engage in an A-76 study?"***

There are several incentives for an agency to consider an A-76 study. These incentives include the Balanced Budget Agreement, the recognition that discretionary resources are severely constrained, the need to reallocate existing resources to reflect mission and technology changes, and the reengineering of management processes as envisioned by the CFO Act, GPRA, FASA, and the Clinger-Cohen Act, and the competitions now required for new and expanded interservice support agreements are creating a new competitive management environment within the Government.

We are working to reinvent the way Government meets its mission requirements and we are asking managers three important questions: (1) do we need to keep doing this work at all; (2) if the work needs to be done, could a contractor or another agency do it better; and (3) is the work being performed in the most efficient manner possible or does it need to be fundamentally re-engineered? Pursuant to the implementation of the Chief Financial Officers Act, the standards recommended by the Federal Accounting Standards Advisory Board (FASAB) and issued by OMB and the Government Performance and Results Act, we are holding managers more accountable for results. We are asking managers to justify their decisions to perform work by in-house, contract or interservice support agreement to achieve the best value to the taxpayer.

While these incentives are just now beginning to take effect, they are significant. We do not believe that top down requirements to cost compare functions alone, without recognizing the broader implications of our larger reinvention initiative are in the taxpayer's best interests. In the past, A-76 itself became the target and, as a result, its implementation was resisted by the agencies and, in some cases, prohibited by statute. Rather, we believe that A-76 must be viewed as one of the many management tools available to seek efficiency and one that market tests those decisions, when appropriate.

3. ***"In 1988, OMB estimated that if each of the 800,000 commercial positions were competed under A-76, $7.5 billion in savings would be achieved each year. The Federal Government has competed an average of 10,000 positions per year, historically. Have we maximized the impact of A-76?"***

We cannot confirm that OMB ever estimated that there were 800,000 commercial positions subject to A-76. This number is, however, reflective of the work done in the 1980s by the Grace Commission, the Linowes Commission and, more recently, by the Defense Sciences Board. The 1987 OMB Circular A-76 Inventory of Commercial Activities reported approximately 250,000 FTE subject to A-76. Nevertheless, there is no question that the full benefit of the A-76 program has not been realized. By the mid to late 1980s, the Circular had become controversial. Legislation was introduced to end, delay, change or otherwise restrict the conduct of cost comparisons for the conversion of work from in-house to contract performance. As noted in our letter to Sen. Brownback (Enclosure 3) there are several provisions of law that have inhibited the outsourcing efforts of DoD, GSA, Veterans, and Interior.

A-76 competitions encourage and empower employees to reinvent themselves to become competitive, reduce costs and meet generally recognized performance standards. This effort alone results in better contract offers as more viable, responsive and cost-effective competitors come to the table. Experience here and abroad has shown that the use of public-public and public-private competition can reduce costs by 30 percent and more of previous costs. In the 2,100 competitions conducted by the DOD since the early 1980s, involving over 80,000 positions, savings of approximately 30 percent were achieved - savings that have translated into over $1.5 billion annually. It is important to note, however, that in approximately 50 percent of

those competitions the Federal Government was found to be the lowest cost, highest value offeror. Savings from reviewing the current organization and implementing the Government's Most Efficient Organization (MEO) have averaged 20 percent per study. Over the years, this too has translated into billions of dollars of annual savings, without service reductions. This is a strong indication that competition creates added incentives to reform the way the Government conducts its work and that the competition process itself works.

4. ***"Prior GAO and Inspector General studies have pointed out contract administration weaknesses throughout the Federal Government. What efforts might OMB undertake to improve the Federal Government capacity to manage contracts, since the passage of H.R. 716 may result in the increased use of private sources for goods and services?"***

As a result of ongoing efforts to reengineer the acquisition process, agencies have a number of tools that can serve as an efficient and effective alternative mechanism to intrusive and costly types of oversight.

Contract administration constitutes that primary part of the procurement process that assures that the Government gets what it pays for. The specific nature and extent of contract administration varies from contract to contract. Good contract administration starts with developing clear, concise performance based statements of work and preparing a contract administration plan that effectively measures the contractor's performance. We are working to improve this capability and assure that the end users are satisfied with the product or service being obtained. One way to accomplish customer satisfaction is to obtain input directly from the customers through the use of customer satisfaction surveys. These surveys help to improve contractor performance because the feedback can be used to notify the contractor when specified aspects of the contract are not being met. In addition, the contracting and program officials can use the information as a source of past performance information on subsequent best value contract awards, which we are also now encouraging.

For the acquisition of services, we are using performance-based service contracts that include objective performance requirements and standards (which give contractors latitude to be innovative and adopt the latest, most cost effective management practices). Performance based service contracts (PBSC) are accompanied by a quality assurance plan that allows for the use of both positive and negative incentives. The contractor's payment is tied to the achievement of requirements and standards. Poor contractor performance may result in an immediate reduction in payment and would also be reflected in contractor past performance evaluations which could impact the contractor's future business opportunities.

The Administration has also undertaken a concerted effort to do business with better-performing contractors that are committed to excellence and to meeting cost, schedule, and performance, goals. FAR Subpart 42.15 now requires evaluation of contractor performance for all contract actions (with certain exceptions) in excess of $1,000,000. Because completed evaluations are used to support future award decisions -- and agencies have been increasing their

focus on the past performance of contractors when conducting competitions for work -- contractors are motivated to excel in their performance. A recent survey conducted by OFPP on a pilot to study the impact of increased use of past performance revealed that customer satisfaction with contractor performance was significantly higher when past performance was more heavily considered in the source selection process.

Agencies are also taking steps to improve their management systems for major acquisitions. They are working to develop realistic cost, schedule, and performance goals that establish clear accountability for project progress and support budget priorities. We have been stressing to agencies the importance of creating performance-based management systems that will provide agency managers good visibility into the progress of their projects in achieving stated goals.

5. ***"The Economy Act provides authority for one agency to provide services to another agency. Under the Act, agency heads are required to determine whether goods or services provided by a Federal agency can be procured more cheaply and conveniently from a private sector source. Do you know how agencies make this comparison, if not through A-76?"***

Interservice Support Agreements (ISSAs) are authorized under the provisions of the Economy Act of 1932 (31 USC 1535), the Federal Property and Administrative Services Act of 1949, and the Government Management Reform Act of 1994 (103 USC 356). As a general matter, the decision to acquire commercial services by in-house, contract or ISSA has been left to the customer agency. It is our understanding that, in most cases, when ISSA performance was feasible, the decision with respect to ISSA versus private sector performance generally centered on a review of existing contract prices for similar types of work and administrative convenience. They have not been based upon competitive offers submitted by the ISSA or the private sector, in accordance with OMB Circular A-76, so that comparisons could be conducted on a fair and level playing field. This approach changed with the issuance of the March 1996 A-76 Supplemental Handbook. The cost principles and competition procedures established by the Supplement are now being applied to determine when recurring commercial services should be performed by in-house, contract or ISSA resources.

6. ***"Last year, OMB issued a Supplemental Handbook to OMB Circular A-76 allowing agencies to avoid a cost-comparison after October 1, 1997 for Interservice Support Agreements (ISSA). Given that a cost comparison is required by the Economy Act and the FAR, on what legal basis does OMB waive the cost comparisons in ISSAs through a Supplement Handbook to an OMB Circular? Could you provide for the record the listing of ISSAs covered by this situation?***

Beginning on October 1, 1997, the March 1996 Revised Supplemental Handbook requires cost comparisons for new and expanded ISSAs, where such cost comparisons were not conducted or required in the past. Cost comparisons have not been waived. What the Revision

did not do is retroactively apply this new and more formal cost comparison requirement to agencies that are currently obtaining a commercial support service from another Department or agency, in accordance with the Economy Act, the Federal Property and Administrative Services Act or the Government Management Reform Act.

The decision to not require cost comparisons for existing ISSA workload has been all too often misunderstood. Two factors were involved in this decision. First, we believe that the budgetary and other reinvention incentives noted above will encourage customer agencies to seek lower cost and best value support service offerors. As they do, A-76 cost comparisons for new or expanded ISSA relationships will increasingly be conducted for existing ISSA workload. It also makes little sense to delay significant reinvention opportunities, in order to conduct an A-76 cost comparison, if the function, its mission or the general approach to meeting service requirements could be fundamentally changed. Second, as existing ISSA service providers face more and more direct competition from other public and private sector offerors, they too will test and improve their in-house and contract mix to reduce costs and to improve their competitive position, in order to preserve their workloads. In effect, the Circular does not need to directly require cost comparisons for existing ISSA workload. The forces of the market will require that these cost comparisons will be appropriately conducted.

7. **"How often are commercial activities that stay within the government after an A-76 recompeted? How many activities have actually been recompeted in the past 10 years?"**

Part 1, Chapter 1, paragraph c.1.c. of the August 1983 Supplemental Handbook refers to the need to review each commercial activity retained in-house once every 5 years. These reviews are not, however, synonymous with a requirement to conduct a cost comparison. They were simply a review of the agency's commercial activity inventory designation, to determine whether or not the function continued to be subject to possible outsourcing or cost comparison. Today, workload that is retained in-house, as a result of a cost comparison, is subject to audit and possible recompetition, under the Post-MEO Performance Review requirements of Part 1, Chapter 3, paragraph L. of the March 1996 Revision.

As a general matter, the decision to submit in-house performance to cost comparison has been left to the discretion of the agency. The incentives generated by the Balanced Budget Act and the other incentives noted above will continue to put pressure on agencies to consider outsourcing and to identify the lowest cost, best value providers of support services.

8. ***"How does OMB enforce A-76. In other words, how does OMB compel agencies to conduct A-76 reviews?"***

While OMB exercises oversight of agency compliance with its policies and procedures, OMB does not compel agencies to conduct A-76 cost comparisons. As provided by the Circular and the March 1996 Revision, these decisions are discretionary, unless an agency decides to

consider the conversion of work to or from in-house, contract or ISSA performance. Upon reaching this decision, the requirements of OMB Circular A-76 apply. Again, the incentives presented by the Balanced Budget Agreement, the recognition that resources are constrained, the need to reallocate existing resources to reflect mission and technology changes, the need to consider employee impacts and the recognition of efforts to improve financial management, technology investment and output measures are creating pressures for agencies to consider changes to the in-house and contract mix. The Revised Supplemental Handbook also requires agencies to establish an Administrative Appeal process that may address not only questions related to the conduct of a cost comparison, but also, fundamental compliance with the policies and procedures of the Circular and its Supplement.

9. ***"OMB Circular A-97, which implements the Intergovernmental Cooperation Act, requires state or local government to certify to the Office of Management & Budget that services cannot be procured reasonably and expeditiously by it from the private sector through ordinary business channels before a Federal agency can provide such services. How many such certifications have been filed with OMB? What is the process for requesting and processing such certifications? For what types of services have such certifications been filed with OMB?"***

Title III of the Intergovernmental Cooperation Act of 1968 was implemented through OMB Circular A-97, dated August 29, 1969. OMB Circular A-97 then refers to Circular A-76 with respect to the conduct of cost comparisons to justify Federal performance of State or local workload requirements. Federal agencies are not permitted to provide commercial services to State or local governments unless they are providing such services to meet their own needs and are doing so in compliance with the requirements of OMB Circular A-76. At paragraph 7.c. of OMB Circular A-97, the requesting entity must also certify to the Federal agency that they have been unable to procure the requested services reasonably and expeditiously through ordinary business channels from the private sector. This approach permits Federal, State and local agencies to rely on one another for the provision of inherently governmental or other unique or highly technical services while ensuring that generally available commercial services are provided cost-effectively.

To the extent that a Federal agency began to provide a commercial service to a State or local agency after 1968, the State and local certifications should be on file with the Federal agencies involved. OMB has not requested or maintained a file of these State or local certifications.

10. ***"President Reagan issued Executive Order 12615, which requires each agency to study not less that 3 percent of its work force engaged in commercial activities each year. This executive Order has not been repealed. How has it been enforced and implemented?"***

Executive Order 12615, dated November 29, 1987, required Federal agencies to conduct an inventory of commercial activities, schedule commercial activities for cost comparison, include budget savings from these prospective studies in annual budget proposals, designate a senior level official to coordinate Circular A-76 requirements within the agency and report the progress on each study to the President, through the Director of OMB, on a quarterly basis. These requirements were implemented. The March 1996 Revised Supplemental Handbook provides similar requirements, though it eliminates the quarterly reporting requirement as unnecessary and administratively burdensome.

The Order also required each Federal agency to "conduct annual studies of not less than 3 percent of the department or agency's total civilian population . . . " This requirement was never fully implemented or enforced. As noted in Enclosure 3, the first legislative restrictions to implementing OMB Circular A-76 were enacted at about the same time and contained in the National Defense Authorization Act for Fiscal Years 1988-89 (P.L. 100-180). Other restrictions followed, including those contained in the Department of Defense Appropriations Act for Fiscal Year 1991 (P.L. 101-511) and subsequent DoD appropriations acts, which prohibited funding for A-76 studies and required their cancellation and the National Defense Authorization Acts for Fiscal Years 1993 and 1994, which contained provisions that prohibited DoD from entering into contracts resulting from cost studies done under A-76 (conversions from in-house to contract performance).

11. ***"What major goods or services have been converted from in-house to contractor performance in recent years?"***

A wide variety of commercial functions have been submitted to cost comparison and converted to and from in-house, contract and ISSA performance. A representative list of functions contained in the OMB Circular A-76 Inventory of Commercial Activities is provided as Enclosure 4.

12. ***"A franchising pilot program was established by the Government Management Reform Act. This act specifically applies to "administrative support services." Where do administrative services fall vis-a-vis inherently governmental and commercial services? How are such services defined?"***

Inherently governmental activities are not subject to Circular A-76 or its Supplemental Handbook. As a matter of policy, an inherently governmental activity is one that is so intimately related to the exercise of the public interest as to mandate performance by Federal employees. The Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, dated September 23, 1992

(Federal Register, September 30, 1992, page 45096), provides detailed guidance on the identification of inherently governmental activities. Common administrative support services -- to the extent that they are available in and through the private sector -- are considered commercial in nature and subject to the provisions of the Circular.

The decision that a particular function is inherently governmental or commercial rests on a number of factors, including: the level of Federal control required, the ministerial nature of the function, certain statutory provisions, and distinguishing between recurring operations and oversight. Statutory authority to perform a function is not, itself, sufficient to warrant continued in-house performance as an inherently governmental function. The full range of issues addressed by the OFPP Policy Letter 92-1 must be considered. As provided by the Policy Letter, OMB remains available to resolve agency concerns in this determination.

13. ***"The franchise fund pilot program provision in the Government Management Reform Act requires that "services shall be provided by such funds on a competitive basis." Does this require an A-76 competition before the franchise fund activity can be performed for the agency or other agencies?"***

Unless otherwise exempted by the Circular itself and beginning October 1, 1997, new or expanded commercial support services that could be provided by the franchise fund pilots, or any other revolving, working capital or industrial fund, are generally subject to the cost comparison requirements of the Circular. There are certain and appropriate exceptions to these cost comparison requirements that include, for example, national defense requirements, direct patient care, and other exemptions provided by the Circular where the decision to seek services from one public provider or another is not cost-based. The cost comparison requirements of the Supplement also do not apply to existing ISSAs or to the consolidation of commercial or other services within a Department or agency, unless that consolidation includes the conversion of work to or from in-house or contract performance and such conversion is not otherwise authorized by the Supplement.

14. ***"Has OMB conducted a recent, comprehensive inventory of employees (FTEs and part time positions) in the Federal government that are considered "commercial" in nature? If so, how many are there, where are these employees located, and what function or occupations do they perform?***

Agencies maintain a baseline inventory of all in-house commercial activities performed by the agency on an annual basis. The March 1996 Revision requires that agencies maintain an inventory which identifies those commercial activities that are exempt from cost comparison and the status of activities that are subject to cost comparison. Agencies are required to maintain an annual inventory of all commercial activities performed by in-house FTE, including, at a minimum, the following information:

a. STATE
b. LOCATION/ORGANIZATION UNIT.
c. FTE.
d. COMMERCIAL ACTIVITY FUNCTION CODE.
e. REASON CODE
f. YEAR OF COST COMPARISON OR CONVERSION
g. CIV/FTE SAVINGS.
h. ANNUAL DOLLAR SAVINGS
I. DATE OF COMPLETED POST-MEO PERFORMANCE REVIEW.

Enclosure 4 is a copy of the most recent agency submissions requested by OMB. This submission identifies each agency's commercial activities FTE by agency and function.

15. ***"What is OMB estimate of the total dollar value or appropriated amount provided to agencies in the most recent fiscal year available for performance of commercial activities?"***

Federal budgets are not structured to identify or split out, by agency, location or function, the total dollar or FTE resources authorized for the performance of commercial activities.

ENCLOSURE 2

AGENCY	A-76 STUDIES COMPLETED 1992-DATE	FTE OUTSOURCED 1992-DATE	STUDIES SCHEDULED FOR COMPLETION 1996	1997	1998	FTE SCHEDULED FOR STUDY 1996	1997	1998
AGRICULTURE	11	37	1	1		12	3	
COMMERCE			1			23		
DEFENSE	61		14	15		5,241	35,384	
EDUCATION								
EPA								
ENERGY	10	13	1			216		
GENERAL SVCS	14	19	1			30		
HHS	5	30	2					
HUD								
INTERIOR	8	1	1			10		
JUSTICE								
LABOR								
NASA								
OPM								
STATE								
TRANSPORTATION								
TREASURY					(1)			
VETERANS	6	103	19			368		

(1) IRS is considering several candidates for cost comparison beginning in 1998.

Mr. HORN. I appreciate your coming up here. Those were very thorough statements. Let's continue the dialog. So the record will be open for at least 2 weeks and we will work it out with OMB to get that evidence in the record.

With that, I want to thank the staff that have been involved in putting together this hearing. We have our thanks to J. Russell George, staff director and chief counsel seated back against the wall here; Mr. Brasher, the senior policy director to my left; Mr. Hynes, professional staff member; Mr. Bartel, my chief of staff; Andrea Miller, our faithful clerk; and Matthew Ebert, the staff assistant working with the subcommittee. We also have Mark Stephenson, faithful professional staff member for the minority; Jean Gosa, faithful clerk for the minority, who is not here, but she is somewhere out there working; and obviously, needless to say the court reporters, with Bob Cochran, who is still at it, and Vicki Stallsworth, who occasionally relieves him. We thank you all for that.

With that, the hearing is adjourned.

[Whereupon, at 1 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

STATEMENT
on
H.R. 716, THE FREEDOM FROM GOVERNMENT COMPETITION ACT
before the
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION AND TECHNOLOGY
of the
HOUSE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
by
R. Bruce Josten

September 29, 1997

My name is R. Bruce Josten. I am Senior Vice President of Membership and Policy at the U.S. Chamber of Commerce. The U.S. Chamber of Commerce is a business federation representing an underlying membership of more than three million businesses and organizations of every size, sector, and region. We appreciate the opportunity to lend our enthusiastic support for H.R. 716, *The Freedom From Government Competition Act* (FFGCA). Mr. Chairman, we request that these remarks be included in the record of testimony for the September 29, 1997 hearing on *The Freedom From Government Competition Act*.

The Chamber believes that because of Representative Duncan's careful redrafting, this year's version of the *Freedom From Government Competition Act* is more practical than previous versions. The Chamber believes earlier objections have been addressed and this bill should be given serious consideration. The bill's implementation provisions strike a balance between private and public sector interests and outsourcing decisions are based upon statutory requirements for managed competition.

This bill accomplishes three very important objectives: (1) it reduces the size of the federal government bureaucracy by limiting it to performing its core mission functions, (2) it saves

billions of federal budget dollars without reducing services, and (3) it prohibits government competition with the private sector.

LESS BUREAUCRACY

The FFGCA establishes a consistent government policy that relies upon the private sector to provide goods and services necessary for the operation and management of federal agencies and departments. The exceptions to this policy are for goods or services that are (1) inherently governmental, (2) those that are necessary for national security, or (3) those so unique or of such a nature that they must be performed by the government. The bill also requires activity-based cost comparisons between public and private entities and exempts goods and services performed by the government if the production or manufacture by a government source represents the best overall value. The very nature of this bill will reduce the size of the federal bureaucracy and improves government performance.

A 1987 study from the Congressional Budget Office (CBO) estimated that 1.4 million federal workers are engaged in "commercial activity." Similarly, the Office of Management and Budget (OMB) estimated that 800,000 federal workers could be working in the private sector rather than in the public sector if many of these activities were outsourced.

Claims of massive unemployment of federal workers as a result of privatization have been historically disproven. The most comprehensive evaluation of the effect of privatization on government workers was conducted in 1989 by the National Commission of Employment Policy (NCEP), a research arm of the Department of Labor. The study, entitled "The Long-Term Employment Implications of Privatization," examined 34 privatized city and county

services in a variety of jurisdictions around the country. The study found that of the 2,213 government workers affected over a five-year period by the privatizations, only 7 percent were laid off. Over half of the workers (58 percent) went to work for the private contractor; 24 percent of the workers were transferred to other government jobs; and 7 percent of workers retired.

These findings are similar to those of other studies examining job displacement from privatization. A 1985 General Accounting Office (GAO) study found that of the 9,650 defense employees affected by contracting out, 94 percent were placed in other government jobs or retired voluntarily from their positions. Of the 6 percent of displaced employees, half obtained jobs with the private contractor.

COST SAVINGS

Outsourcing by the private sector has proven to be successful. On average, the private sector records savings between 10-30% when it outsources commercial activities. Data illustrates similar savings potential within the Federal government. In fact, the Office of Management and Budget, the Grace Commission and the President's Council on Management Improvement all indicate that current government service contracting is already saving the American taxpayer $3-5 billion annually, with the potential savings of $15 billion, or more, per year.

1. Conservative Extrapolation of OMB Numbers Reveals H.R. 716 Saves Approximately $10.4 Billion

A 1987 report by the Office of Management and Budget (OMB) estimated that approximately forty percent of the two million full time employee (FTE) positions in the

government could be candidates for outsourcing or reengineering. OMB estimated savings of $9,700 per FTE when studied, regardless if the function was reengineered and remained in-house or was outsourced.

Assuming a conservative 3.0% average annual inflation rate over the past ten years, a simple annual compounding of the $9,700 figure would yield a 1997 inflation adjusted figure of $13,035.99 for FTE savings. If we round the 1997 figure to $13,000 and apply it to the 800,000 FTE's identified by OMB, approximately $10.4 billion of savings would accrue from the implementation of this legislation. Even with the recent government downsizing, the OMB's 800,000 FTE figure is a conservative benchmark since the latest data from the 1996 Defense Science Board (DSB) Report identified 640,000 FTE's for outsourcing within the Department of Defense (DoD) alone.

2. The Defense Science Board Estimates $24-32 Billion of Savings in DoD Alone

Looking at only DoD, billions of dollars could be saved. A 1996 report by the DSB identified 640,000 DoD workers whose jobs have private sector equivalents. DoD spends between $120-160 billion annually on these support functions. The DSB estimated $12-16 billion in savings annually if a 20% rate (the midpoint derived from the 10-30% private sector savings from outsourcing) were applied to <u>just half</u> of the Department's $120-160 billion in support expenditures (i.e. $60-80 billion). Using the same assumptions, the savings would be between $24-32 billion annually if applied to all of the support services at DoD. At a minimum, applying a 10% figure to only half of the $120-160 billion in annual support expenditures, the DoD would realize savings between $3-8 billion annually. Even the minimal savings are comparable to annual budgets for the Environmental Protection Agency ($7.1

billion) and the Department of Commerce ($4.3 billion).

3. Historical Data from the A-76 Proves that Outsourcing Saves 30%

Opponents of privatization claim that the savings from privatization are inflated. Historical data, however, disproves their assertion. For instance, the data from the implementation of the OMB's Circular A-76 indicates that when public-private competitions are conducted, savings from the original in-house government cost are approximately 30%. The OMB found that 40% of competitions resulted in the government retaining the work in-house. A 20% savings resulted when the government won the A-76 competition. A 35% savings was achieved when the private sector won the competition.

In 1987, OMB reported that the federal government spent more than $21 billion on commercial services, such as automated data processing, aircraft repair, and food preparation. Based upon the limited number of A-76 competitions performed between 1981 and 1986, OMB reported $2.8 billion in cumulative savings and annual savings for the federal agencies of $696 million. The $2.8 billion in savings represents approximately 13% of the total $21 billion spent on commercial services in 1987. The $696 million in annual savings was derived from A-76 studies conducted on approximately 72,000 positions. The savings were achieved by studying only 9% of the 800,000 FTE positions targeted by the agency for review under A-76.

Opponents of privatization may criticize the data from the A-76 studies, however, most of the problems have been attributed to an agency's inability to collect or analyze cost information. Recent testimony by the GAO cited improper contract administration, including poorly worded performance work statements, as reasons leading to unnecessary cost

escalations. Improper contract management negatively impacts the cost savings achieved via outsourcing.

It should also be noted that while the data from the A-76 studies is helpful as background for cost savings, the U.S. Chamber disagrees with individuals who contend that *The Freedom From Government Competition Act* is not needed because A-76 achieves the same purpose. The Freedom From Government Competition Act is better than A-76 for at least two reasons: (1) The FFGCA is mandatory for agencies, while A-76 is voluntary and (2) the FFGCA requires the use of generally accepted accounting principles that force agencies to perform cost competitions based upon the same costs that the private sector has to account for. A-76 has no such requirement, thus tilting the playing field and skewing the results.

STOP UNFAIR GOVERNMENT COMPETITION

The FFGCA also prevents the proliferation of the widespread abuse of unfair government competition with the private sector by precluding federal offices from starting or carrying on new activities if those products or services can be provided by commercial sources.

The Act precludes the contracting of agency functions to other government entities. A recent example of this unfair government competition involves the renewal of an information technology contract between a private sector firm and the Federal Aviation Administration (FAA). The new contract was not awarded to another private sector firm, but to a public sector bidder--the Department of Agriculture (USDA). Interestingly, the cost information from the USDA for this contract has not been revealed and the USDA is under investigation by GAO for poor internal information technology management. The private sector questions why

an agency can bid on contracts that are unrelated to its core mission especially when it does not have to consider cost and past performance.

Because of the prevalence of unfair competition, all three sessions of the White House Conference on Small Business (1980, 1986, and 1994) have identified unfair government competition as one of the top issues impacting small business. The commercial activities of the federal government that are in direct competition with the private sector run from the mundane to very hi-tech. Some of the industry examples where government competition is occurring include: training and education, office supply sales, laboratory testing and analysis, motels, campgrounds, janitorial services, landscaping, flag making, furniture making, architecture-engineering, helicopter and fixed-wing aircraft operation, campgrounds, audio/visual services, golf courses, laundry services, printing, data processing, motor pool and vehicle maintenance, food preparation and serving, real estate appraisals, bill collection, photo processing and warehousing. The list of examples of government competition with private firms goes on.

IMPROVEMENTS IN THIS VERSION

This year's version of the Freedom From Government Competition Act is practical and adequately addresses previous concerns. The major changes include the following: (1) The creation of a Center for Commercial Activities under OMB; (2) The addition of managed competition through "best value" language; and (3) The inclusion of the outsourcing reporting requirements under the Government Performance and Results Act (GPRA).

The creation of the Center for Commercial Activities was an important addition to this year's legislation because it provides information to agencies and the private sector entities and facilitates conversions from the federal government to the private sector. The addition of

managed competition language removes objections by federal employees who wanted an opportunity to compete for work currently performed by the public sector designated as "commercial," rather than automatically giving the work to the private sector. The inclusion of agency reporting requirements under GPRA is a critical mechanism for Congressional oversight of the conversion process.

Mr. Chairman, on behalf of the U.S. Chamber of Commerce and its underlying membership of more than three million businesses of every size and sector, I urge the Committee's favorable consideration of this important legislation that will reduce the size of our government's bureaucracy and save American taxpayers billions of dollars annually. I thank you for allowing us to submit these comments on this very important budget and small business issue.

ACSM

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Statement of the American Congress on Surveying and Mapping to the House Committee on Government Reform and Oversight's Subcommittee on Government Management, Information, and Technology, on H.R. 716, Freedom From Government Competition Act

September 29, 1997

The American Congress on Surveying and Mapping (ACSM) is pleased to submit its views on H.R. 716, the proposed Freedom From Government Competition Act. ACSM is an individual membership society that represents more than 7,500 professionals in the fields of surveying, cartography, geodesy, and geographic information systems technology who work in both the public and private sectors throughout the world. ACSM is made up of four member organizations that serve as special interest groups. ACSM's member organizations are the American Association for Geodetic Surveying, the Cartography and Geographic Information Society, the Geographic and Land Information Society, and the National Society of Professional Surveyors.

In commenting on H.R. 716, ACSM seeks to represent the interests of its private- and public-based members, the surveying and mapping profession as a whole, and the nation's long-term interest in ensuring the availability of comprehensive, timely, accurate, and useful geospatial information.

General Comments on H.R. 716

ACSM commends Representative Duncan, Senator Thomas, and the other sponsors of the Freedom From Government Competition Act for introducing the bill. H.R. 716 makes an important contribution to the ongoing debate over the appropriate roles of government agencies and the private sector in providing needed services. Whether, and to what degree, services provided by agency staff should be outsourced to private firms is an important part of that debate.

ACSM believes it can look at outsourcing objectively because its membership includes surveying and mapping professionals who work in private firms as well as government

agencies. ACSM also can contribute to the debate from its experience over the past two years in generating a nonpartisan study of the appropriate future roles of government and the private sector in surveying and mapping. Scheduled for completion this fall, the study on "U.S. Geographic Information Resources" is being conducted by the National Academy of Public Administration (NAPA), a policy analysis organization chartered by Congress. The study will include a discussion of outsourcing that ACSM believes will prove helpful to the subcommittee as it examines H.R. 716.

H.R. 716 provides a framework for determining whether a given service or product should be supplied by agency staff or outsourced to a private firm. Essentially, all goods and services are to be outsourced unless they are inherently governmental or should be provided in-house for reasons of national security, best value, or because private sector sources are inadequate to satisfy an agency's requirements. While the bill's framework is helpful, ACSM believes it is impossible to determine H.R. 716's real-world impact, particularly on services provided to the public by technical professions such as surveying and mapping. For technical fields, H.R. 716 raises important questions about agencies' roles as providers of base data, ownership of data, maintenance of agencies' core capabilities, and other issues.

ACSM Opposes Enactment of H.R. 716

ACSM supports having increased opportunities for its private sector members to contract with government agencies to perform surveying and mapping. ACSM opposes enactment of H.R. 716, however, because the potential impact of the measure is largely unknown. We are concerned that enactment of H.R. 716, without further assessment of its potential impact, could disturb the interdependent relationship that exists between government surveying and mapping agencies and private sector professionals, perhaps disrupting the nation's access to timely, accurate geospatial data. We also believe that H.R. 716 proposes a broad-based solution to procurement situations that are best addressed on a targeted basis.

Before enactment of H.R. 716 is pursued, ACSM believes Congress needs:

- More information on the appropriate roles of government and the private sector in technical fields such as surveying and mapping;

- A better understanding of procurement decisions at the individual agency level. If agencies are inappropriately competing with the private sector, whether through interservice support agreements (ISSAs) or in-house procurements, ACSM believes those practices should be examined on an agency-by-agency basis.

On April 10, 1997, ACSM's Board of Direction adopted a position statement expressing opposition to the Freedom From Government Competition Act as currently drafted. A copy of that statement is appended to our testimony.

Surveying and Mapping Agencies and Private Firms Are Interdependent

As a national society with both public- and private-based members, ACSM believes it can take a balanced view of the issue of government competition. On the one hand, we strongly support an outcome that provides increased opportunities for our private sector members to contract with government agencies. Technological advances in the last twenty years have given private firms the ability to perform surveying and mapping tasks that previously only government agencies could complete. It is also true that many of the technical advances in the profession, particularly in the field of GIS, or geographic information systems, are occurring in the private sector. There is no question that private surveying and mapping firms can complete many tasks that government agencies traditionally have performed in-house.

On the other hand, ACSM members who work in surveying and mapping agencies such as the Bureau of Land Management, the U.S. Forest Service, the U.S. Geological Survey, and the National Ocean Service raise important cautions about the need to retain core capabilities. Private firms may be able to perform most production under contract, but agencies must retain in-house technical expertise and some production to ensure that contractors' products meet quality standards. In-house staff also are needed for contract negotiation and administration, preparation of government-supplied materials, and quality assurance.

ACSM does not know how other professions or industries view their relationship with government agencies, but for the surveying and mapping profession, the operative word is "interdependence."

Looking first at the private side, it is clear that private sector surveying and mapping professionals depend on government agencies for accurate base data that serve as the foundation for geospatial products. For example:

- Professional land surveyors depend on the National Geodetic Survey (NGS) for accurate, consistent positioning data (coordinates and elevations) upon which a variety of surveying products and services are based, including property surveys that are part of GIS mapping projects based on a common coordinate system, and engineering projects such as the placement of highways and the construction of bridges and water delivery systems. NGS develops survey standards and specifications and provides local baseline standards by which professional surveyors check or calibrate electronic

distance measuring equipment. NGS also transfers new technical developments, such as the Global Positioning System (GPS) to the private sector. GPS is increasingly being used by professional land surveyors for efficient, accurate measurements.

Land surveyors also depend on the U.S. Geological Survey in their work. USGS provides (1) basic geospatial data to which cadastral (i.e., property boundary) information can be related, (2) mapping requirements for map revision, orthoimagery, and so forth, and (3) a nationally consistent, accurate map series that depicts the Public Land Survey System.

- Geographic Information Systems/Land Information Systems (GIS/LIS) specialists depend on government agencies to provide the base mapping and earth science layers for GIS/LIS projects. Agencies provide reliable, standard, multi-scale base cartographic data such as digital elevation models, digital line graphs, digital raster graphics, digital land use/land cover, and digital orthophotoquads, as well as various specialized data sets covering geologic, hydrologic, and biologic phenomena on the land surface that GIS/LIS specialists employ in creating their products.

- Private-based cartographers and academics depend on agencies for (1) establishing map standards, (2) base maps from which enhanced or value-added maps can be produced and resold or onto which research is plotted, and (3) digital orthophotographs for compilation of map features.

On the public side, there is interdependence between federal agencies, and between federal agencies and other levels of government. For example:

- Other federal agencies depend on USGS to coordinate the collection of a broad suite of geospatial data and research, including providing GIS support, applications development, and orthophotographic base data. ISSAs are one mechanism used to provide this information.

- Other agencies depend on NGS for positioning data for applications ranging from defining political boundaries, to national defense, to communications systems. Agencies use these data to make decisions on placement of highways, fuel storage sites, geothermal energy development, and other structures in areas prone to earthquakes, subsidence, and fault zones. The data are also essential to the development of precision agriculture, "smart" highways, and other leading-edge transportation systems. For example, the National Ocean Services is currently conducting a pilot project in San Francisco Bay to determine accurate, real-time positions and clearances for large container ships and other ocean-going vessels. Findings from the project will help make the U.S. more competitive in commercial

shipping by enabling shipping companies to increase the capacity of their vessels.

- State and local governments use USGS base data for GIS and other applications; base data are also used as an unbiased, accurate basis to which more detailed information is added, such as for legal, tax, and other official purposes. Many state governments cooperatively produce maps and digital geospatial data in conjunction with USGS.

Finally, it is clear that agencies are increasingly dependent on the private sector:

- In response to personnel cuts and direction from Congress, federal surveying and mapping agencies increasingly are turning to private firms for surveying and mapping products. Our members at USGS, for example, report that approximately 50 percent of their map production in FY 1997 (ca. $40 million) will be done in conjunction with the private sector.

- Of course, agencies need to maintain enough technical staff who are current in their knowledge in order to oversee the work of contractors. It is also clear that private firms will continue to depend on agencies to perform surveying and mapping of areas that are not commercially attractive. For example, private firms would not routinely update base maps of federal lands, rural areas, or forests. Ownership of geospatial data is another concern that has arisen as outsourcing increases. However, H.R. 716's potential impact in this area is completely unknown.

The foregoing analysis illustrates the interdependence that characterizes relations between surveying and mapping professionals in the public and private sectors. Other technical professions may evince a similar relationship between agencies and private firms. ACSM believes Congress needs more information on the impact of H.R. 716 on surveying and mapping and other technical goods and services before it moves the bill toward enactment.

Study of U.S. Geographic Information Resources Will Provide Valuable Information

Since 1995, ACSM has played a leading role in generating a nonpartisan study of the appropriate future roles of government and the private sector in surveying and mapping. The study, "U.S. Geographic Information Resources," began in October 1996 and will be completed this fall. Conducted by the National Academy of Public Administration (NAPA), the study examines options for reducing duplication in the surveying and mapping activities of federal agencies or for increasing the amount of surveying and mapping done by private firms. The study will look at outsourcing, the specific focus of H.R. 716, as well as broader options such as privatization, consolidation, downsizing, or elimination of certain agency functions. Other issues covered by the study include public purpose; the policy bases of surveying and mapping; leadership, coordination, and

standards; structure and organization; intellectual property rights; pricing; partnerships; technology; and domestic-national security relationships.

ACSM identified the need for a study in 1995 when Congress considered three different proposals that had major implications for both public- and private-based survey and mapping professionals. One proposal would have abolished the U.S. Geological Survey. Another proposal would have abolished the Commerce Department and moved certain functions, including surveying and mapping activities, to other federal departments. A third proposal would have required the Department of the Interior to contract out all of its surveying and mapping activities within six months.

Although none of these proposals became law, their consideration by Congress provided a wake-up call to our profession. We concluded that any decisions Congress and the administration make to alter the balance between public and private sector responsibility for surveying and mapping should be guided by current, comprehensive information about the profession and the respective capabilities of public and private entities. ACSM identified NAPA, a nonpartisan, Congressionally chartered policy analysis organization, as the appropriate entity to conduct the study. Four federal agencies that play major roles in surveying and mapping agreed to sponsor the study. The sponsoring agencies are the Bureau of Land Management, the National Ocean Service, the U.S. Forest Service, and the U.S. Geological Survey.

NAPA's study will be completed this fall. ACSM believes the study's findings will prove helpful as the subcommittee considers H.R. 716's potential impact on technical professions such as surveying and mapping. We recommend that the subcommittee not approve H.R. 716 until it examines the findings of the forthcoming study, "U.S. Geographic Information Resources." Background materials on the study are appended to our statement for the subcommittee's information.

ISSAs Create Work for Private Firms

ACSM also urges the subcommittee to carefully consider the impact of H.R. 716 on interservice support agreements (ISSAs). Subsection 3(b)(2) of the bill would prohibit agencies from obtaining goods or services from, or providing goods and services to, any other government entity. Although interagency arrangements are allowed under the exceptions contained in Section 3(c), some supporters of H.R. 716 have made it clear that they would like to completely prohibit ISSAs.

Opposition to ISSAs is based on the assumption that agencies that perform work for other agencies clearly are competing inappropriately with the private sector. ACSM cannot speak to the government-wide impact of ISSAs on private firms, but in surveying and

mapping the reality is that ISSAs frequently create opportunities for private firms to contract with agencies for the production of surveys or maps. Examples include the National Aerial Photography Program, Digital Orthophoto Quadrangles, Department of the Interior High Priority Program, and the National Digital Orthophoto Program.

ACSM supports the use of ISSAs that provide opportunities for its private sector members to contract with government agencies. In surveying and mapping ISSAs can provide effective, cooperative funding mechanisms and often are the most cost effective approach through which agencies can obtain base data and related services needed to carry out their missions. For example, development of the GPS Continuously Operating Reference Stations (CORS) network would not have been possible without interagency agreements. Development of CORS involved the cooperation of five federal and seven state and local agencies that pooled their resources and avoided duplication of activities.

Elimination of ISSAs would force Federal agencies to create redundancies and incur increased costs, thereby reducing opportunities for outsourcing. H.R. 716 would force data users to become, in effect, data producers. Agencies that currently use data provided by other agencies would have to develop in-house expertise on the production of data. They would have to conduct studies of the production methodologies of their sister agencies and of the private sector firms that claim to be able to produce the same data. To conduct an effective and accurate study, every requesting agency would have to become as knowledgeable about the data as those agencies and firms they would be comparing. This would require additional effort and personnel on the part of the requesting agencies, most likely outside of their missions. If the studies found that private sector contracts are more cost effective than obtaining the data from producing federal agencies, the requesting agencies would incur significant additional costs to manage and operate a contracting process.

Before the subcommittee approves a blanket prohibition on ISSAs, we recommend that the panel examine ISSAs on an agency-by-agency basis to determine the extent to which such arrangements inhibit contracting or, in fact, create work for private firms.

Congress Needs More Information Before H.R. 716 Becomes Law

ACSM commends the sponsors of H.R. 716 for throwing a spotlight on the important issue of government competition and for revising the proposal in response to concerns raised at hearings in 1996. We oppose enactment of H.R. 716, however, because the bill's impact on the provision of technical goods and services remains unknown. Before the bill moves forward, ACSM believes Congress needs more information on the appropriate roles of government and the private sector in technical fields such as surveying and mapping. The forthcoming NAPA study, "U.S. Geographic Resources" will provide information that

will help the subcommittee understand the pros and cons of outsourcing for surveying and mapping. The study's general findings may have application to other technical professions that would be affected by H.R. 716. ACSM recommends that Congress take no action on H.R. 716 until it has examined the findings of the NAPA study.

ACSM also recommends that the subcommittee gather more information on individual agencies' procurement decisions before moving to approve H.R. 716. Examination of a representative sample of agencies that have elected to perform services in-house, or that perform work for other agencies, could provide helpful information on the procurement issues addressed by H.R. 716.

ACSM appreciates this opportunity to present its views on the proposed Freedom From Government Competition Act and will be pleased to provide additional information on any point in our statement. Please contact Joseph Kuchler, ACSM Government Affairs Director, at 301-493-0200.

Adopted by ACSM's Board of Direction: April 10, 1997

The Freedom From Government Competition Act
(S. 314, H.R. 716)

Background

The Freedom From Government Competition Act (FFGCA) has been reintroduced in the 105th Congress as S. 314 by Sen. Craig Thomas (R-WY) and as H.R. 716 by Rep. John Duncan, Jr. (R-TN). Although some exceptions are provided, the proposal would require the federal government to procure from the private sector most of the goods and services it needs to carry out its functions. The legislation also would restrict agencies' ability to provide goods and services to other agencies through Interservice Support Agreements (ISSAs).

The bill is supported by a coalition of small business organizations. The FFGCA is controversial because the long-term consequences of the government-wide reorganization and downsizing of agencies it would require are unclear. For the surveying and mapping profession, the issues raised by FFGCA are closely related to those generated by the contracting out debate, and the findings of the NAPA study will be applicable to Congress' 1997 debate on this proposal as well as to discussions of contracting out that will arise during consideration of the FY98 budget.

ACSM Position Statement

ACSM is a professional society with members working in private surveying and mapping firms as well as government agencies. In this position statement on the Freedom From Government Competition Act (FFGCA), ACSM strives to represent the interests of public and private members, the profession as a whole, and long-term national interests.

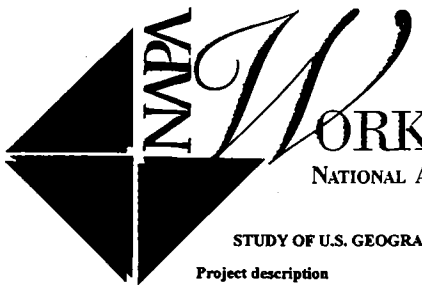
ACSM supports having increased opportunities for its private firm members to contract with government agencies to perform surveying and mapping. However, ACSM is very concerned that FFGCA proposes a broad-based solution to situations that are best addressed on a targeted basis. If agencies are inappropriately competing with the private sector, ACSM believes those practices should be addressed on an agency-by-agency basis.

The FFGCA's approach of requiring that all government functions that are not "inherently governmental" be outsourced to the private sector would produce long-term effects that are largely unknown and potentially disruptive to the nation's need for accurate, accessible geospatial data. FFGCA's impact on the ownership (public or private) of geospatial base data is unclear, but the proposal's potential effect on this area is of great concern to ACSM.

FFGCA also would sharply curtail the use of Interservice Support Agreements (ISSAs). In surveying and mapping, ISSAs can provide effective, cooperative funding mechanisms and often are the most cost effective approach through which agencies can obtain base data and related services needed to carry out their missions. ISSAs frequently create opportunities for private firms to contract with agencies for the actual production of surveys or maps. Elimination of ISSAs would force Federal agencies to create redundancies and incur increased costs, thereby reducing opportunities for outsourcing. ACSM supports the use of ISSAs that provide opportunities for its members to contract with government agencies.

RESOLVED,

For the reasons outlined above, ACSM opposes the Freedom from Government Competition Act as currently drafted. ACSM further recommends that Congress take no action on this proposal until it has information from the National Academy of Public Administration study of geospatial information that will help lawmakers make sound public policy with respect to FFGCA's impact on surveying and mapping.



WORK-IN-PROGRESS

NATIONAL ACADEMY of PUBLIC ADMINISTRATION

STUDY OF U.S. GEOGRAPHIC INFORMATION RESOURCES

Project description

Advances in surveying, mapping and other geographic information* technologies, the trend toward devolution of federal programs and activities toward state and local governments, and the impact of U.S. budget deficits on economic growth over the past decade precipitate the need for a comprehensive examination by a non-partisan, unbiased, respected organization of current geographic information functions and how these functions can be most effectively structured and performed. The American Congress on Surveying and Mapping (ACSM) and representatives of four federal agencies involved in geographic information asked the Academy to undertake this study. The Academy will address the following questions:

1. Is geographic information acquisition, analysis and distribution critical to keeping the United States competitive in a global economy? What are the most important uses of this information on a national scale?

2. What is the appropriate role of the federal government in civilian surveying, mapping and other geographic information given recent technological and sociological trends? What functions are largely federal as contrasted with state and local and the private sector and academe?

3. If some functions are deemed suitable to be commercialized, privatized, or transferred to non-federal governments, what would be the effectiveness and economic impact of those transfers?

4. Are there opportunities to consolidate or otherwise restructure federal surveying, mapping and other geographic information functions to achieve greater economy and performance? If so, which functions should be brought together and how should they be structured?

* Surveying, mapping and other geographic information describe the broad field of activities, technologies and science including geodesy, land and cadastral surveying, land records, cartography, charting, remote sensing, photogrammetry, image processing, geographic information systems, and generally all geospatial data.

About the Academy

The Academy was established in 1967 as a source of independent advice and counsel on making government work. By seeking the very best management practices in both the public and private sector, NAPA studies have helped federal, state, and local agencies achieve new levels of effectiveness. The unique resource of the Academy is its membership, composed of more than 400 Fellows who represent a diversity of backgrounds and experience at every level of government. The Academy maintains a core professional staff that is regularly augmented by study teams recruited for their superior qualifications to contribute to specific projects. Panels composed of Fellows and invited experts direct project and study activities.

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Panel members

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Gerald Riso *Co-Chair* - Management consultant, former Vice President, Booz Allen and Hamilton; Associate Director for Management, Office of Management and Budget; Assistant Secretary for Program/Budget Administration, U.S. Department of the Interior.

Eric Anderson - City Manager, City of Des Moines, Iowa; former City Manager, City of Evanston, IN; City Manager, City of Eau Claire, WI; Town Manager, Munster, IN; Assistant Town Manager, Windsor, CN; Assistant Director, Research and Development, International City Management Association..

Jerry Aspland* - President, California Maritime Academy; Vice Chairman of the Marine Board, National Academy of Sciences; retired President, ARCO Marine, Inc.

Lawrence Ayers* - Executive Vice President, Intergraph Corporation; former Civilian Director, Defense Mapping Agency; key participant in charter to consolidate the Army, Navy and Air Force assets into the Defense Mapping Agency.

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Jonathan Howes - Secretary, Department of Environment, Health and Natural Resources, State of North Carolina; former Research Professor and Director, Center for Urban and Regional Studies, University of North Carolina; Mayor, Town of Chapel Hill; Director, Urban Policy center, Urban America, Inc.

Bradford Huther - Associate Commissioner and Chief Financial Officer, Patent and Trademark Office, former Assistant Commissioner for Finance and Planning, Deputy Assistant Commissioner for Administration, Deputy Assistant Commissioner for Operations, Patent and Trademark Office

Terrence Keating* - Owner and President, Lucerne International, specializing in marketing and development issues; former owner and President, Kork systems, Inc.

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Lisa Warnecke, *Senior Research Associate*. Author of the *State Geographic Information Activities Compendium*; co-founder of the National States Geographic Information Council; principal investigator, *National Study of Information Resources Management in State Governments*; Town Manager in Colorado.

U.S. GEOGRAPHIC INFORMATION RESOURCES

ISSUES

Policy Bases: Are the policy bases under which the federal government and individual agencies conduct their surveying, mapping, and GI activities adequate and relevant to current problems and technologies?

Leadership, Coordination and Standards: Do E.O. 12906 on the National Spatial Data Infrastructure & OMB Circular A-16 on operations of the Federal Geographic Data Committee provide sufficient policy and institutional bases for setting standards, integrating federal activities, and coordinating with other governmental and private sector activities?

Structure & Organization: Are there opportunities to consolidate major federal activities or otherwise share capabilities that could eliminate redundancies, significantly improve performance, and/or reduce costs?

Public Purpose: Which surveying, mapping, and GI activities serve fundamental public purposes and are inherently governmental functions? Which are inherently federal?

Outsourcing: Are there significant opportunities to contract out substantial additional portions of the federal government's surveying, mapping, and GI activities?

Intellectual Property Rights: What policy options are there to protect and/or monetize data rights that would enhance revenues for federal operations and/or motivate the private sector or other providers to perform greater portions of these activities?

Pricing: Would alternative pricing strategies and/or mechanisms for government products help to "clear the market", i.e., better balance federal government demands with federal government resources? What are they?

Partnerships: Are there significant opportunities for federal agencies to enter into additional partnership arrangements (with states, localities, academe, NGOs and/or private industry) to help better meet federal, state and local needs? What are they?

Technology: Are there major technological options that could significantly impact federal performance of geographic information missions that should be more aggressively pursued/funded?

Domestic/National Security Relationships: What national security and/or international considerations significantly influence civil surveying, mapping, and GI activities and how should they be accommodated?

OTHER ANALYSES

1. Economic Value: How important are these activities to the nation's global competitiveness? What are their most important uses on a national scale?

2. Historical Evolution: How have U.S. geographic activities evolved and how does this history impact current geographic missions and options?

3. Societal Changes: What non-technological changes in society are significantly impacting geographic information activities and how do they/should they influence the options being considered?

4. International Practices: How do international and the practices of other nations compare to those of the United States?

5. Best Practices: What exemplary practices exist in the surveying, mapping, and geographic information areas that should be emulated more widely?

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