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Comments to the proposal to revise Circular No. A-76 dated November 14, 2002

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Note: I am a government employee, but these are my comments and not my agency's.

Definition of Inherently Governmental Activities – The definition in the proposal is too narrowly defined. This definition goes against the intent of Congress when it developed the civil service and it goes against the intent of Congress when it passed the original A-76 process. In addition, President George Bush has stated in writing that “Federal employees carry out countless essential responsibilities that include maintaining critical government services, ensuring economic growth, and supporting efforts to extend peace and freedom around the world.” (From his December 2002 memo to the Employees of the Federal Government.) The “countless essential responsibilities” and “supporting efforts” include a much broader definition of inherently governmental than the definition in the proposed revision. By so narrow a definition of inherently governmental activities the proposal is not following the expressed intent of the President of the United States.

The proposal so narrowly defines “inherently governmental” that only agency heads will meet the definition. After getting rid of all the civil servants, where will the replacements come from to fill the senior executive service which is an inherently governmental function?

Congress and the President made all airport baggage screeners federal employees. The baggage screeners do not meet the proposed definition of inherently governmental function. Will they have to compete for their jobs with the private sector?

Why wasn't an environmental impact study done on this proposal? This is controversial and has a significant effect on the human environment. Just ask the government employees about their environment. Also, for those land management agencies (Forest Service, Bureau of Land Management, etc.) that will now be run or operated by contractors, what's the effect on the environment? Civil servants worked to carry out the will of Congress and the American public. Contractors are in the business to make money. Who analyzed the impacts?

In addition, a number of employees for the land management agencies fight forest fires as part of their jobs. They are not full time forest fire fighters, but fight fires when called upon depending on the severity of the fire season. How will this loss of fire fighting capability impact public safety and ecosystem health? This needs to be analyzed in an environmental impact statement.

Civil servants must live up to a code of ethics – we can hardly accept a cup of coffee from a contractor. How will the contractors be limited in their dealings with the public and other contractors? This is a cost to be factored in.

All civil servants must be US citizens. Will this be a requirement for the contractors?

Civil servants are limited in what they can do politically and the offices they can hold. Will contractors meet those same limits?

Civil servants cannot hold another job without approval from their supervisor and definitely cannot hold another job that relates to their government employment. Will contractors meet those same limitations?

Civil servants are paid fringe benefits (retirement, medical, etc.). Contractors should also have to pay its employees these fringe benefits otherwise the cost comparison is apples to oranges.

You need to figure in the “extras” that the contractors will eventually get. No contract is written to include every task. So when the government asks the contractor’s employee to do a task not written in the contract, how much extra will the contractor make off of it?

Why is there a material and supply cost for the agency bid but not the contractor’s bid? The government is going to end up buying the same amount and the cost should be on both or neither estimate. In addition, the contractor’s cost estimate should not include a deduction for federal income taxes. Government employees also pay federal income tax. If a contractor gets the bid, that firm will not pay any additional federal income tax, the firm’s tax lawyers will see to that.

Government employees are assured that if two people hold the same grade level they are paid the same amount. How will you ensure that private employees are not discriminated against especially since women in the private sector are universally paid less than men doing the same job?

The Government is under orders from the President, Congress, and certain judges to hire a certain percentage of women, minorities, and people with disabilities (yes, they call them goals not quotas, but it’s the same thing). How will this proposal affect these rulings and orders? What sort of environmental justice impacts did you analyze and document? How will you ensure the equal employment act is adhered to?

Will agencies be held liable for the discriminatory actions of private contractors?

When comparing costs between government employees and contractors, no where do you include the cost of preparing the solicitation package. This should be a cost borne by the contractor since if government employees did not have to compete for their jobs the solicitation expense would not have occurred.

Another cost that should be borne on the contractor’s side of the equation is the cost of unemployment benefits that the former government employee is entitled to. Because if a contractor gets my job, the government will have to pay salary and benefits and overhead to the contractor and unemployment benefits to me and that’s far more than what the government would have to pay if they kept me in the job.

Other costs that should be included on the contractor side should be the training cost and loss of productivity. New contractor employees will not know the systems, policies, and regulations of the agency they will now work for. Thus, for several weeks or months or years, they will not perform as the previous government employee did and this loss of productivity should be reflected in the contractor price. Also, on-the job training costs should be determined and added to the contractor price. In addition, the remaining government employees in the agency will not be doing their jobs, but training these new contractors – so that loss of productivity should be added to the contractor side of the estimate.

Government employees cannot strike. Loss of productivity due to potential strikes and negotiations or new solicitations for a new contractor should be borne by the contractor side of the equation.

When government employees are replaced by contractors, many former government employees who are near retirement age will retain retirement benefits (you haven’t gotten rid of them, have you?). Thus this expense should appear on the contractor’s side of the cost estimate.

Will contract employees oversee or supervise other government contractors such as loggers, park or campground concessionaires, outfitter guides, etc.? What safeguards do you have in place that contractors do not supervise contractors?

What safeguards do you have in place to keep government employees personnel records secret from contractors? Contractors should not have access to social security numbers, etc.

When Congress passed and President George H. W. Bush signed the Federal Employees Pay Comparability Act in 1990 they stated that government employees were not being paid at comparable wages to those in the private sector. In 2001, President George Bush reaffirmed that government employees were not being paid comparable wages because he signed the increase to the salary wages and locality payments. In 2002, President George Bush signed a 3.1% pay increase for government employees and stated that the locality payments would stay the same. If government employees are too expensive, why did the President sign the bill?

Helene Cleveland

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