

NFFE-IAM

Forest Service Council

Legislative Position Paper: Forest Service Competitive Sourcing

May 4, 2006

Forest Service Plans Big Ramp-Up of Failed Program

The “Competitive” Sourcing Track Record

The huge problems with competitive sourcing in the Forest Service are well-known. In fact, the results of competitive sourcing studies initiated before 2006 were so deeply flawed that legislation was enacted to “undo” most of these results.¹

Cost of performing competitive sourcing studies. The cost of running this program has been a contentious issue for years. The Forest Service originally estimated program costs of \$10,000,000 for its 2002-2003 first round of competitive sourcing. As a result of Congressional scrutiny,² the agency revised this to roughly \$23,600,000.³ An independent Forest Service Council analysis demonstrated that significant costs were omitted even from this latter estimate, and put the true costs at over \$70,000,000.⁴

Bottom line: substantial funds appropriated for mission work were being diverted, but no one knew how much. In 2004, a requirement to report “the incremental cost directly attributable to conducting” competitive sourcing studies was passed into law.⁵ Under this provision the majority of costs, including regular staff time, central program oversight and costs incurred by preliminary planning required under Circular A-76, were not reported.⁶ In the interest of capturing the true costs of the program, Congress enacted a requirement to report “all costs attributable to developing, implementing, supporting, managing, monitoring, and reporting on competitive sourcing” in 2005 and again in 2006.⁷ In addition, because of concerns about diversion of funds from mission work to fund competitive sourcing, these same Sections imposed spending caps on the program. The cap “for competitive sourcing studies and related activities” was \$2,000,000 for fiscal year (FY) 2005 and is \$3,000,000 for FY 2006.

Unfortunately, **the Forest Service is not complying with its statutory obligation to report on the true costs of the program.** In spite of substantial activities related to

competitive sourcing that clearly fall within the reporting requirements, the agency claims “no competitive sourcing costs in FY 2005.”⁸ Not only does this constitute a clear violation of the reporting requirements, it allows the agency to circumvent its statutory spending cap as well. A spending cap has little meaning unless it is based on an accurate and complete accounting of costs.

Cost of implementing competitive sourcing study results. The Forest Service is also required by law to report implementation costs attributable to competitive sourcing. It has not done so. The cost of implementing organizational changes mandated by A-76 study results and its offshoot, the Business Process Reengineering (BPR) program,⁹ has been substantial. Funds appropriated for mission work are not making it to the field, but are quietly skimmed off the top to cover these unreported costs. For example, in California alone the funding for 48 fire engines, 7 type 1 hand crews, 1 type two hand crew, 12 water tenders, miscellaneous other resources (prevention, dispatch, dozers, etc) – a total of 515 firefighters – has somehow disappeared from resources appropriated by Congress for fire preparedness. In funds appropriated for fire suppression and preparedness alone, a reallocation of \$100,000,000 has been noted.¹⁰

Long-term costs: Information Technology. Both the Forest Service and the Office of Management and Budget (OMB) tout the agency’s reorganization of its information technology (IT) infrastructure as a rousing competitive sourcing success story. The Forest Service estimates savings of \$100,000,000 over 5 years¹¹ and claims savings of \$16,000,000 in FY 2005.¹² Of course, these estimated savings do not incorporate study and implementation costs. But there are more important and fundamental problems with these savings figures. Here’s what a Forest Supervisor¹³ had to say to Washington about these so-called “savings.”

“It's hard for me to understand how anyone with even a cursory understanding of the impacts on field folks could suggest that competitive sourcing related to IT, fleet maintenance and road maintenance has saved any money at all... I believe it's relatively easy to show that burden shift, lost productivity, and real dollars spent, offset any paper savings...”

Overall, the huge amount of new and increased administrative work required by employees has created a kind of "gridlock" that is really frustrating employees at the field level--probably at all levels. Jobs that were once simple and timely have become overly complex and time consuming. I would bet most employees, if polled, would suggest they do not need much more of the kind of 'efficiency savings' they've been getting so far...”

I would like to offer that if anyone believes my description of the field situation is inaccurate, I'd be happy to host them here on the forest and show them the day-to-day impacts on employees from the supposed cost saving measures implemented so far...”

This Forest Supervisor was right about what employees in the field would say if polled. Washington did poll them. Among the findings were:¹⁴

- *Employees with nontrivial IT problems “often end up making multiple calls over days and weeks to get their problem resolved. For field employees frequently away from their desks, this callback system is very inefficient...” The new system “leaves them frustrated, burdened, and even reluctant to use the system at all.”*
- *“Average time to resolve problems has doubled.”*
- *These problems have caused “a significant loss in productivity.”*
- *“Many field offices have developed shadow organizations or de-facto IT staff to work on IT problems. In most cases, the de-facto ‘IT person’ works in GIS or engineering and is likely a GS-12 or above. This ‘burden shift’ costs the Forest Service significantly as highly paid non-IT employees spend up to 20% of their time dealing with IT issues.”*
- *“The inability to conduct routine work, communicate with partners, and transfer technology has severely hindered the field’s ability to do its job.”*

None of these or the many other documented inefficiencies are incorporated into the so-called “savings” attributable to this reorganization. These costs do not show up on the books of the new “Most Efficient Organization.” They are not tracked. They are certainly not mentioned in the agency’s or in OMB’s politically-correct proclamations about how wonderful the Emperor’s new clothes are. They are, nevertheless, very real costs borne by the agency and, ultimately, the taxpayer.

It is important to note that these failings in no way reflect poorly on the dedicated civil servants who are struggling to the best of their abilities to meet the agency’s needs under difficult circumstances. These are, after all, the very same employees who were successfully meeting these needs before competitive sourcing was visited upon them. These failures are systemic.¹⁵ In some cases, the newly engineered procedures simply do not meet agency needs. In others, the new organization is not responsible for certain IT work because of oversights in what work should have been included in the Performance Work Statement (PWS), their “contract” with the agency. Competitive sourcing strongly discourages taking measures to address such shortcomings: A-76 mandates that employees’ jobs once again be put on the auction block if their PWS is substantially modified to meet new or unanticipated agency needs.

Things could be even worse. PWS or no PWS, the IT organization is still staffed by public employees dedicated to the mission of the Forest Service. These committed men and women are not accustomed to saying, “Sorry, that’s not in my contract.” Examples abound of IT employees performing work outside their purview in order to “get the job done.”¹⁶

Long-term costs: Region 5 Fleet Maintenance. Another success touted by the agency is the outsourcing of fleet maintenance in California (Forest Service Region 5). The fleet in question does not resemble a standard fleet of passenger vehicles; rather, it includes a

diverse collection of specialized and heavy-duty equipment needed to maintain roads, fight fires and perform other agency work in rugged and isolated terrain. Maintenance of this fleet was outsourced to Serco, a “leading international outsourcing” company headquartered in the United Kingdom.¹⁷

This organization is not staffed by civil servants who have dedicated their lives to public service. It is staffed by employees answerable to their multinational corporate employer. Their incentive is to turn a profit for this employer. The larger public good is served only through compliance with the contract. If the contract has problems or lacks teeth, well that’s too bad... for the public good:

- Serco frequently fails to complete work within the time specified by the contract, sometimes taking months.¹⁸ As a result, at least two National Forests shops have backlogs of 30 or more pieces of equipment waiting for repair or annual service, or 5-10% of the fleet. Other equipment is not being brought in for annual service because of these problems. Employees are faced with the choice of using equipment that may be unsafe or not getting their fire and mission work done.¹⁹
- Even when Serco’s service is within the contractual performance standard, agency employees experience substantial down time while Serco waits for parts. In one case, a vehicle needed only a replacement gas cap. After waiting for three hours, the employee was given a loaner vehicle and told to return the next day. The gas cap could have been purchased at a local vendor for minimal cost. Similar incidents are common. An employee familiar with the situation describes the wasted time as “astronomical,” noting that Serco has no incentive to act otherwise and that any “paper savings” do not take these inefficiencies into account.
- Serco frequently releases equipment that has not been properly repaired. In addition to the negative effects on agency efficiency, many failures have safety implications, including brake problems, bad welds, leaky or over-pressurized hydraulics, vehicle failures in remote locations, etc. A long-time Forest Service employee writes, “I am not comfortable operating equipment after it comes out of their shop.”

Such fears are widespread and well founded. A March 6, 2006 investigation²⁰ brought the following incident to light. On February 7, 2006, Engine 22, part of Strike Team 4630C, was dispatched to a fire detail. Serco had recently performed brake work on the Engine. Brake problems developed en route. Inspection revealed the incorrect brake drum had been installed and had cracked. New parts were installed by Serco. Inspection revealed the return springs were incorrectly installed. The investigation concludes, “A cracked front brake drum or brake springs incorrectly positioned would not allow the brakes to function properly and could have led to a serious accident.”

As a result of this incident, Region 5 launched a safety review and Serco-serviced vehicles were grounded pending its results.²¹ On April 3, 2006 the agency issued a “cure notice” regarding deficient performance that has “placed our employees and the public in general in unsafe situations” and caused “Forest Service personnel to delay or miss

project work targets, which results in additional costs to the government and jeopardizes the Forest Service mission.” A list of defective work that was “not all inclusive,” but only “representative,” documented 39 examples of seriously deficient work, many with critical safety implications. In addition, the fact that “Serco remains chronically behind in accomplishing numerous work orders” was cited.²²

None of these costs are tracked. They are “off the books.” This lack of accountability allows Washington to claim this outsourcing to be a success, saving \$1.7 million in 2005.²³ Workers on the ground have known better for many months. In truth, not only has this lauded outsourcing decision resulted in gross inefficiencies, it is endangering both agency employees and American citizens who expect, in return for their tax dollars, an agency capable of launching an effective response to wildfires and other emergency incidents.

Plans Are to Put “Competitive” Sourcing into High Gear

The best-case scenario is that the Forest Service is reeling from a number of problematic transitions resulting from an overly ambitious reorganization program, but that in the long term greater efficiencies will be realized. It is likely, however, that at least some of these ill-advised reorganizations have resulted in systemic problems that will cripple capability for years to come – until they are corrected through subsequent reorganization. In either case, the prudent course of action would be a conservative one: to deal with the ongoing organization issues before embarking upon further adventures. Unfortunately, the current competitive sourcing plan is radical in the extreme.

In December 2005, the Forest Service submitted its new competitive sourcing plan to the Department of Agriculture. **The new plan includes “all commercial inventories as if no [spending] limitations exist.”**²⁴ Previous plans called for 6,180 full-time equivalents (FTEs) to be studied. The new plan calls for 21,220 FTEs to be studied by the end of FY 2009,²⁵ roughly 2/3 of the workforce.²⁶

First out of the gate is Communications work. Hot on its heels are Fire and Aviation Management’s Aviation Unit, Fleet Management, and the Geospatial Service and Technology Center (GSTC).

Lessons learned. Insanity is continuing to do the same thing and expecting different results. Accordingly, Circular A-76 requires agencies to develop and post a list of “lessons learned” as part of their competitive sourcing programs. Unfortunately, agency actions indicate that the Forest Service list²⁷ is mere window dressing:

- One “lesson learned” is to “conduct whatever pre-planning and pre-positioning is necessary before the [A-76] time clock starts.” The clock starts with the formal announcement of a study in FEDBIZOPS. In contrast to this advice, and in violation of A-76 requirements, the Forest Service informed the union of its tentative plan to formally announce its Communications study in January 2006.²⁸

A team to perform pre-planning had not even been assembled.²⁹ It was only after receiving written notification that this schedule would violate A-76 preliminary planning requirements³⁰ that the agency adjusted its schedule.³¹ The agency was poised to repeat its earlier mistake of announcing studies without adequate, or, for that matter, even the minimally required, pre-planning.

- Another “lesson learned” is to “recognize differences,” *i.e.*, recognize that “work practices vary among regions, and even between forests in the same region,” as well as between Research and the National Forest System. For example, in conducting the IT study, input from the field regarding the atypical IT needs of Research was discounted. A “one size fits all” model was chosen resulting in serious problems with support of Research.³² Similarly, the Agency is ignoring the strong and unanimous warnings of Research Station Directors and Technology and Development Center Managers regarding the inadvisability of “competitively” sourcing specific communications work.³³ Indeed all input solicited and received from the field on the Communications study has been ignored.³⁴ The Agency is poised to make the same mistake.
- Another “lesson learned” is to avoid conducting studies during peak fire season. Studies are highly disruptive to the workforce, diverting employees from their normal mission work to work on teams and respond to data calls. Earlier studies were held during fire season, affecting the quality and quantity of effort that could be committed to both competitive sourcing and fire suppression activities. The agency is poised to make the same mistake in 2006 with the studies of Communications and Fire and Aviation Management.³⁵

An agency at risk. The biggest lesson that desperately needs to be learned is that a decision to enter a study needs to be an informed decision made by agency management knowledgeable about the nuances of agency needs and operations, not by bean-counters and paper-pushers in Washington. OMB seems unwilling to learn this lesson: in spite of protestations to the contrary, the agency’s “decision” to “competitively” source work remains a direct result of intense pressure from OMB to meet numerical quotas.³⁶

It is clear that the upcoming studies will be re-runs of earlier ones, the results of which have been disastrous. A top-down “one size fits all” agenda continues to force studies that make no sense. The agency continues to lack sufficient qualified acquisition, contract management, and quality control personnel to effectively perform studies and manage their outcomes. Performance of competitive sourcing studies continues to be delegated as a collateral duty to officials whose plates are already full and who, in addition to lacking time, have little or no knowledge, training, or experience with the process. As with earlier studies, results will be decided in large part by random events in a slipshod process.³⁷

In addition to its responsibilities as the premier Federal land management agency, the Forest Service plays a key role in Homeland Security. It is not only the study of fire organization functions *per se* that stand to severely cripple this capability. The Forest

Service relies heavily on approximately 18,000 “red-carded” employees who can be called up into its firefighting militia at a moment’s notice. In this regard the agency notes that “positions with multiple duties have provided extreme workforce flexibility and have served as an organizational strength.” However, because the “practice of assigning multiple duties to single positions, sometimes called ‘fragmentation’ ... adds extreme complexity to the FAIR Act Inventory and consequently with competitive sourcing studies...,” the agency has concluded it needs to reduce this practice.³⁸ When the requirements of competitive sourcing take precedence over critical mission needs, the tail is truly wagging the dog.

Before Katrina, American Federation of Government Employees (AFGE) Local 4060 wrote to Congress about “the severe deterioration of the Department of Homeland Security’s Federal Emergency Management Agency (FEMA) under the current Administration, and to ask for your help in reversing the process before it is too late.”³⁹ We likewise ask for your help. The Forest Service is a crossroads. With time, it is likely the agency can recover from the mismanagement forced upon us by OMB. But current plans, if implemented, would utterly destroy the agency.

After Katrina, Americans learned there could be a heavy price to pay when government services upon which they depend have been decimated by rot and neglect. Death may come by fire as well as by flood. We urge you to keep this in mind as you weigh the importance of maintaining the capabilities of the Forest Service with that of going along with an ideologically-driven agenda with a track record of failure.

Legislative Actions to Improve Accountability

Currently, there is no way to determine whether outsourcing mandated by the combination of OMB targets and binding A-76 studies increases the efficiency of government. Legitimate accounting of costs and savings is not performed. Contract management is seriously deficient.⁴⁰ Erosion of capabilities is a serious concern.

The General Accountability Office (GAO) will very soon begin an audit of the Forest Service competitive sourcing program. This will result in specific recommendations about how to improve the program.⁴¹ Rather than allowing a demonstrably flawed program to make bad matters worse, **we urge Congress to prohibit the expenditure of additional funds for Forest Service competitive sourcing activities in FY 2007.** This moratorium will allow the audit to be completed and appropriate procedures implemented to bring accountability to the program.

Additional Action Items. In addition, we urge Congress to pass appropriate legislation to:

1. Modify the language regarding reporting to Congress on competitive sourcing activities to ensure that all costs attributable to considering, developing, planning, performing, monitoring, and reporting on competitive sourcing studies, including

- costs attributable to program management and implementing study results, are tracked using full cost accounting principles. The reference to “incremental costs” is redundant with the more comprehensive reporting requirement and should be removed.⁴²
2. Enact legislation to require tracking of costs using full cost accounting principles to ensure that expected savings from competitive sourcing are actually achieved. Include in the scope of this tracking all true costs to the agency, such as “off-the-contract” costs due to changes in productivity of agency personnel and “burden shift” attributable to A-76-mandated reorganizations.
 3. Continue to appropriately regulate competitive sourcing through use of funding caps. Require that all costs related to competitive sourcing, per section 1 above, be applied toward these limits.
 4. To ensure accountability, enact consequences for agency noncompliance with tracking and reporting requirements and funding caps.
 5. Enact S.2438 in its original form as introduced in the 108th Congress to guarantee A-76 competition appeal rights for employees and their representatives.⁴³

ENDNOTES, FOREST SERVICE COMPETITIVE SOURCING

¹ Sec. 422(c) of Public Law 109-54 states, “Competitive Sourcing Exemption for Forest Service Studies Conducted Prior to Fiscal Year 2006- The Forest Service is hereby exempted from implementing the Letter of Obligation and post-competition accountability guidelines where a competitive sourcing study involved 65 or fewer full-time equivalents, the performance decision was made in favor of the agency provider; no net savings was achieved by conducting the study, and the study was completed prior to the date of this Act.” This covers the majority of studies conducted prior to 2006.

² [Letter from Thomas Mills, Forest Service Deputy Chief for Business Operations to field managers, DATA CALL FOR MAINTENANCE AND RFD INCURRED IT INFRASTRUCTURE COMPETITIVE SOURCING COST INFORMATION \(July 8, 2003\)](#)

³ [A REPORT TO THE COMMITTEE ON APPROPRIATIONS, US HOUSE OF REPRESENTATIVES, ON THE IMPLEMENTATION OF THE COMPETITIVE SOURCING INITIATIVE AT THE US FOREST SERVICE, Surveys and Investigations Staff \(March 2004\)](#), at 5

⁴ See [The Forest Service Council, THE TRUE COSTS OF COMPETITIVE SOURCING IN THE FOREST SERVICE, \(October 9, 2003\)](#). The Council offered to collaborate with the Forest Service in developing an accurate estimate. See the [letter from William Dougan, Forest Service Council President, to Dale Bosworth, Forest Service Chief \(July 18, 2003\)](#). The agency declined to do so and even went so far as to instruct field units not to provide costing information to the Council. See [Letter from Thomas Mills, supra note 2](#). So much for the stated goal of “transparency.”

⁵ Sec. 647(b)(5) of Public Law 108-199

⁶ [A REPORT TO THE COMMITTEE ON APPROPRIATIONS](#), *supra* note 3, at 6

⁷ See Sec. 332(e) of Public Law 108-447 and Sec. 422(d) of Public Law 109-54, which state, “In preparing any reports to the Committees on Appropriations on competitive sourcing activities, agencies funded in this Act shall include the incremental cost directly attributable to conducting the competitive sourcing competitions, including costs attributable to paying outside consultants and contractors and, in accordance with full cost accounting principles, all costs attributable to developing, implementing, supporting, managing, monitoring, and reporting on competitive sourcing, including personnel, consultant, travel, and training costs associated with program management.”

⁸ See [INFORMATIONAL MEMORANDUM FOR CHIEF FINANCIAL OFFICER CHARLES CHRISTOPHERSON, OCFO from Dale Bosworth, Forest Service Chief \(December 13, 2005\)](#), regarding the revised [USDA FOREST SERVICE COMPETITIVE SOURCING GREEN PLAN FOR FY 2005-2009 \(December 7, 2005\)](#). It states, “The Agency’s costs associated with... [competitive sourcing] feasibility studies, A-76 cost comparison pre-planning, and post-performance decision implementation, review, and reporting of A-76 cost comparisons are tracked and monitored under general program management activities.” It reports, with respect to the spending cap on “competitive sourcing studies and *related activities* (emphasis added),” that the agency “had no competitive sourcing costs in FY 2005.” Tracking these costs using the agency’s existing accounting structure would be a trivial matter. See the [letter from Dale Bosworth, Forest Service Chief, to the Forest Service National Leadership Team \(July 22, 2005\)](#) (highlighting added to document). The agency simply chooses not to do so.

⁹ The driving force behind the BPR program was FTE quotas mandated by OMB. The agency hoped to “count the 1,100 FTEs to be studied under the BPR studies... towards its competitive sourcing goals.” In a classic case of having one’s cake and eating it too, the agency did not plan to count the costs of performing BPR studies as competitive sourcing costs. See [A REPORT TO THE COMMITTEE ON APPROPRIATIONS](#), *supra* note 3, at 6.

¹⁰ These cuts were described by Forest Service Fire & Aviation Director Tom Harbour at the Forest Service Chief Officers conference in Reno, Nevada on February 28, 2006. See the [letter from Casey Judd, Business Manager, Federal Wildland Fire Service Association, to Senator Pete Domenici, Chairman, Senate Energy & Natural Resources Committee \(March 7, 2006\)](#). The original agency estimate of total implementation costs was \$144,000,000. Upon review, this figure turned out to be “inaccurate and understated” and was revised to \$174,000,000. See the [letter from Hank Kashdan, Forest Service Deputy Chief for Business Operations to field managers \(January 6, 2006\)](#). True costs are likely even higher, and have ripple effects all across the agency in addition to those already mentioned in fire preparedness. For examples of programs shortfalls, see the following accounts from the field: [Vegetation Resource Management – Pre-commercial Thinning Example, FY06 NFIM Budget](#), and [How the Forest Service “Leaders in Conservation” Address Resource Management](#). While it is not the only factor, the diversion of funds appropriated for this kind of mission work to competitive sourcing activities has contributed significantly to money not making it to the field.

¹¹ [USDA FOREST SERVICE COMPETITIVE SOURCING GREEN PLAN FOR FY 2005-2009](#), *supra* note 8, at 4

¹² [FS TODAY \(an agency newsletter\), FOREST SERVICE EFFICIENCY EFFORTS SHOW \\$20 MILLION COST SAVINGS \(February 24, 2006\)](#)

¹³ See the [email from Steve Eubanks, Forest Supervisor, Tahoe National Forest to Hank Kashdan, Forest Service Deputy Chief for Business Operations \(March 1, 2006\)](#). This was written in response to the article cited in note 12.

¹⁴ See the [US FOREST SERVICE, BUSINESS OPERATIONS TRANSFORMATION ASSESSMENT, PHASE I REPORT \(December 20, 2005\)](#). This report provides a remarkably frank assessment of the realities on the ground. It is required reading for those interested in what competitive sourcing is doing to the agency.

¹⁵ For a more comprehensive treatment of these systemic failures, see [The Forest Service Council, COMPETITIVE SOURCING: WHAT IS THE VALUE TO THE TAXPAYER? \(May 3, 2005\)](#). The words of Dr.

Steven L. Schooner, Co-Director of the Procurement Law Program of the George Washington University Law School and an advocate of outsourcing, cited therein, bear repeating here: “The Bush administration's competitive sourcing initiative will fail. Granted, the number of government employees will continue to shrink, while the number of contractor personnel serving the Government will methodically increase. But the Government's unwillingness to appreciate the policy's costs leads to the corresponding failure to identify, obtain, and invest appropriate resources needed to properly effectuate the policy. The Government simply lacks sufficient qualified acquisition, contract management, and quality control personnel to handle the outsourcing burden. Because the Government is ill-positioned to successfully outsource in a manner that generates higher quality services, lower prices, greater efficiency, or, ultimately, better government, an aggressive outsourcing policy will further expose long-standing problems in service contracting, including poor planning, inadequately defined requirements, insufficient price evaluation, and lax oversight of contractor performance. All of which lead to disquieting expectations for the Government's future.” See also [Steven L. Schooner, *Competitive Sourcing Policy: More Sail Than Rudder*, PUBLIC CONTRACT LAW JOURNAL VOL. 33, No. 2 \(Winter 2004\)](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=488266), available on the internet at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=488266.

¹⁶ Employees go the extra mile in spite of a strong disincentive to do so under A-76. The efficiency of an A-76 Most Efficient Organization (MEO) is measured only in terms of PWS (“on the books”) work accomplished. Any work performed “off the books” increases the chances that the MEO will fail to meet its “contractual” obligations and thereby put employees’ jobs once again at risk by A-76-mandated re-competition. A pragmatic MEO employee would put the success of the MEO over that of the agency. This is the contract model to which competitive sourcing, explicitly or not, aspires. Fortunately for the agency, dedication and commitment are hard habits to unlearn. Undoubtedly, in time, this will occur.

¹⁷ [FOREST SERVICE REGION 5 PRESS RELEASE, FEWER FOREST SERVICE ROAD MAINTENANCE EMPLOYEES TO CONTINUE WORK, FLEET MAINTENANCE TO BE CONTRACTED \(January 7, 2004\)](#)

¹⁸ The contract fails to assign a monetary penalty for timeliness noncompliance. See note 15 for a discussion of infrastructural shortcomings that make such problems all but inevitable.

¹⁹ A Forest Supervisor states, “Regarding R5 fleet maintenance, the suggestion that savings are occurring is totally inaccurate. It is costing us more in real dollars, and even more than that in terms of lost productivity as vehicles sit for weeks waiting for simple maintenance and repair that is often substandard and must be redone.” See the [email from Steve Eubanks](#), *supra* note 13.

²⁰ [FOREST SERVICE REGION 5, EXPANDED BRIEFING: SIERRA INCIDENT; TRABUCO RD; CLEVELAND NF, FEBRUARY 8, 2006 \(March 6, 2006\)](#)

²¹ See the [email from Tom Quinn, Forest Supervisor, Stanislaus National Forest \(March 17, 2006\)](#) and the [letter from Bernard Weingardt, Forest Service Region 5 Regional Forester, to Region 5 employees \(April 4, 2006\)](#).

²² See the [letter from Douglas Lee, Forest Service Region 5 Director for Acquisition Management to Serco Management Services, Inc. \(April 3, 2006\)](#) and accompanying [SUMMARY OF DEFECTIVE WORK](#). On May 1, 2006, Serco was found to be in default and the contract was terminated by the Forest Service. See [FOREST SERVICE REGION 5 IN BRIEF \(May 1, 2006\)](#) and [FOREST SERVICE COUNCIL PRESS RELEASE \(May 3, 2006\)](#).

²³ See [FS TODAY](#), *supra* note 12.

²⁴ Current law limits expenditures on Forest Service competitive sourcing to \$3,000,000. See Sec. 422(a)(2) of Public Law 109.54.

²⁵ [INFORMATIONAL MEMORANDUM](#), *supra* note 8

²⁶ The Forest Service's failure to use Reason Code A to designate certain work as commercial but exempt from competition (vital core work) on its Federal Activities Inventory Reform (FAIR) listings was widely recognized as a serious problem. See [A REPORT TO THE COMMITTEE ON APPROPRIATIONS](#), *supra* note 3. Subsequently, the agency spent a good deal of time and effort developing criteria and guidelines for field managers to use in making Reason Code A determinations. The current competitive sourcing plan ignores Reason Code A, repeating the mistake of earlier rounds of study, and making the substantial amount of time and effort that went into determining what work was properly Reason Code A completely meaningless. This has the effect of transferring discretion regarding core requirements for field operations from the field to Washington, where political considerations trump needs on the ground.

²⁷ [A REPORT TO THE COMMITTEE ON APPROPRIATIONS](#), *supra* note 3

²⁸ See [letter from Jacqueline Myers \(for\) Christopher Pyron, Forest Service Deputy Chief for Business Operations, to William Dougan, Forest Service Council President \(November 30, 2005\)](#). Dougan spoke with Myers and Stanna Federighi, Forest Service Office of Communications Director in early December, 2005 and verified the plan stated in this letter to formally announce the study in January based on their understanding that the agency's "feasibility study" had met the pre-planning requirements. The referenced study is [FOREST SERVICE COMPETITIVE SOURCING PROGRAM OFFICE, FEASIBILITY OF CONDUCTING A COST COMPARISON ON COMMUNICATION ACTIVITIES IN THE USDA FOREST SERVICE, \(June 30, 2005\)](#) [Note: potentially procurement sensitive costing information has been redacted]. The role of feasibility studies in Forest Service competitive sourcing is discussed in more detail in notes 34 and 36. Suffice it to say for now that feasibility studies do not meet A-76 preliminary planning requirements, as is made clear in the feasibility study itself as well as in an explicit agency comparison. See [Forest Service Competitive Sourcing Program Office, COMPARISON OF OMB A-76 PRELIMINARY PLANNING AND USDA FEASIBILITY STUDY GUIDANCE \(February 3, 2006\)](#).

²⁹ The first indication that a competitive sourcing team (from which pre-planning team members would come) had been assembled occurred on February 24, 2006, at which time the team had neither met nor received any training. See the [letter from Hank Kashdan, Forest Service Deputy Chief for Business Operations, to field managers \(February 24, 2006\)](#). Most team members had no experience with competitive sourcing. Their first order of business was to attend a week-long training session on Circular A-76. The earliest pre-planning could have commenced was therefore March 13, 2006.

³⁰ [Letter from William Dougan, Forest Service Council President, to Dale Bosworth, Forest Service Chief \(December 12, 2005\)](#)

³¹ [Letter from Christopher Pyron, Forest Service Deputy Chief for Business Operations, to William Dougan, Forest Service Council President \(December 22, 2005\)](#)

³² [Email correspondence between Joan Golden, Forest Service Acting Chief Information Officer and Melissa Baumann, Forest Service Council Vice-President for Research \(December 20, 2005\)](#)

³³ After pointing out the qualitative differences between scientific communications and other agency communications work, the Station directors stated, "It is possible that the [proposed] competition could create a process that would put the credibility and quality assurance of the agency's research publications at risk. If so, we urge that you consider removing research publishing from the study or setting up a separate study for research publishing with decentralized staffs that are accountable to individual Station Directors." See [CONSIDERATIONS FOR COMPETITIVE SOURCING STUDY FOR RESEARCH COMMUNICATIONS from Robert Doudrick, Acting Director, North Central Research Station; Terry Hueth \(for\) Ariel Lugo, Director, International Institute of Tropical Forestry; Marcia Patton-Mallory, Director, Rocky Mountain Research Station; Thomas M. Quigley, Director, Pacific Northwest Research Station; Michael T. Rains, Director, Northeastern Research Station; Robert J. Ross \(for\) Christopher Risbrudt, Director, Forest Products Laboratory; Peter J. Roussopoulos, Director, Southern Research Station; and James R. Sedell, Director, Pacific Southwest Research Station to Forest Service Chief Dale Bosworth \(August 12, 2005\)](#). See also the

letter's enclosure, [IMPLICATIONS OF DRAFT FEASIBILITY STUDY FOR R&D](#). This recommendation was ignored.

³⁴ The agency's plan was distributed to the field with a request for feedback. See the [letter from Christopher Pyron, Forest Service Deputy Chief for Business Operations, to field managers \(July 1, 2005\)](#) and the associated [FOREST SERVICE COMMUNICATION FUNCTION FEASIBILITY STUDY FEEDBACK SHEET \(June 28, 2005\)](#). The feedback received indicated fatal flaws. See, for example, [COMMENTS PROVIDED BY CAT PUBLISHING ARTS \(August 1, 2005\)](#). The feasibility study was not edited following this cycle of input. The current version posted on the agency competitive sourcing intranet site is the same June 30, 2005 version for which input was solicited. The entire field input process was a farce.

³⁵ As the agency notes, "The 2006 wildland fire season is upon us and predictions show we could have a very busy year ahead." See [FS TODAY, MESSAGE FROM THE CHIEF: GET READY FOR FIRE SEASON \(March 24, 2006\)](#). Concurrent with this, the agency is cranking up major competitive sourcing activities. See the [letter from Tom Harbour, Director, Fire and Aviation Management, DATA CALLS FOR COMPETITIVE SOURCING ACTIVITIES – FIRE AND AVIATION MANAGEMENT, to field managers \(March 21, 2006\)](#) and the [letter from Stana Federighi, Director, Office of Communications to field managers \(April 7, 2006\)](#).

³⁶ In 2003, OMB numerical quotas were explicit. The Forest Service followed these quotas without performing research or analysis to determine effects on mission or fire suppression work. For example, the agency entered binding A-76 studies without knowing the number of employees or FTEs, either agency-wide or in positions under study, that were involved in fire suppression and fuel abatement activities and without knowing how much work was provided by contractors in these areas. See the [letter from Wilson Fisher, Forest Service "Agency Representative," to Melissa Bauman, Forest Service Council Vice-President for Research \(August 28, 2003\)](#). OMB's quotas were politically unpalatable and consequently have moved behind closed doors. Now, it is stated Department policy to perform a feasibility study to determine whether work should be subjected to competitive sourcing study. See [USDA GUIDANCE FOR DETERMINING THE FEASIBILITY OF CONDUCTING COMPETITIVE SOURCING COMPETITIONS \(May 11, 2004\)](#). In fact, it is clear that this determination had already been made for communications work before the feasibility study was performed. See [The Forest Service Council, UPDATE ON COMPETITIVE SOURCING IN THE FOREST SERVICE: OFFICE OF COMMUNICATIONS WORK TO BE STUDIED UNDER A-76 \(January 27, 2006\)](#) and [USDA FOREST SERVICE COMPETITIVE SOURCING INFORMATIONAL UPDATE \(May 3, 2005\)](#) (highlighting added to this document). The latter document, circulated two months prior to completion of the feasibility study, candidly states, "OMB/USDA recently restated that they were holding the Forest Service accountable for studying 100 FTEs in FY 05," and notes that "Right now, the Agency does not have that kind of staff work to back-up how the 100 FTEs in communications was selected previously." "Competitive" sourcing studies seem to be preordained for Fire and Aviation Management as well. A briefing paper states, "The Competitive Sourcing Feasibility Study of Commercial Activities and *the resulting A-76 competitions* between the public and private sectors will determine the most cost effective, efficient and safe aviation program for the US Forest Service (emphasis added)." See [USDA FOREST SERVICE FIRE AND AVIATION MANAGEMENT BRIEFING PAPER \(February 9, 2006\)](#). As in the failed earlier rounds of competitive sourcing, there is no indication that meaningful analysis to determine effects on mission or fire suppression work has been performed.

³⁷ The agency's infrastructure is essentially unchanged from earlier rounds of competitive sourcing. Personnel trained and experienced in A-76 studies are not assigned to study teams; rather, they are staffed by volunteers with little to no experience with A-76. See the [letter from Elizabeth Estill, Forest Service Deputy Chief for Legislation and Communications Programs \(April 26, 2005\)](#) and the [letter from Hank Kashdan, supra note 29](#). To make matters even worse, the agency is embarking upon interagency competitive sourcing adventures that present even greater administration difficulties to running competent studies. See the [letter from William Dougan, Forest Service Council President, to Mark Rey, Undersecretary of Agriculture \(March 27, 2006\)](#). Such administrative barriers underlie the serious deficiencies in oversight of the qualifications and training of Forest Service firefighting contract crews. See [OFFICE OF INSPECTOR GENERAL, WESTERN REGION, US DEPARTMENT OF AGRICULTURE, AUDIT](#)

[REPORT: FOREST SERVICE FIREFIGHTING CONTRACT CREWS, \(Report No. 08601-42-SF, March 2006\)](#), which states, “the National Interagency Fire Center... had insufficient resources [to conduct pre-season reviews to verify crewmembers’ qualification and training records or to monitor work capacity testing] and *lacked the authority* to direct the [Forest Service] regions to do this work (emphasis added).” Substantial problems with unqualified contract firefighters resulted. The complexity and therefore degree of coordination needed for a multi-agency competitive sourcing study is much greater than that of simple credentials testing. Further, A-76 requirements make substantive failures essentially impossible to repair.

³⁸ [USDA FOREST SERVICE COMPETITIVE SOURCING GREEN PLAN FOR FY 2005-2009](#), *supra* note 8, at 5

³⁹ [Letter from Pleasant Mann, President, AFGE Local 4060 to Senator Hillary Rodham Clinton \(June 21, 2004\)](#)

⁴⁰ See, for example, the [OFFICE OF INSPECTOR GENERAL AUDIT REPORT](#), *supra* note 37, which states, “These findings confirm the need to address serious control weaknesses with respect to the firefighting contract crews. They also disclose that **deficiencies identified in a prior [Forest Service] review, GAO audit, and OIG investigation have not been adequately addressed** (emphasis added).” We suggest that these problems should be addressed prior to outsourcing any additional work.

⁴¹ The parameters of the audit are given in a [February 14, 2006 letter to The Honorable David M. Walker, Comptroller General of the United States, Government Accountability Office from Senators Byron Dorgan, Conrad Burns, Russ Feingold, Jeff Bingaman, and Herb Kohl](#), to whom we offer our deepest thanks for taking this important step to interject accountability into competitive sourcing in the Forest Service. See also the [letter from Gloria Jarman, GAO Managing Director for Congressional Relations, to Senator Russ Feingold \(February 27, 2006\)](#).

⁴² Current reporting requirements are at Sec. 422(d) of Public Law 109-54, *supra* note 7. The Forest Service is not reporting comprehensive costs. See note 8. “Confusion” with respect to the reporting requirements is given as justification. The Forest Service is waiting for “clarification” from OMB, and will then “respond to this reporting requirement within the parameters of the language suggested by OMB.” See [USDA FOREST SERVICE COMPETITIVE SOURCING REPORTING REQUIREMENTS \(December 20, 2004\)](#).

⁴³ The Commercial Activities Panel final report recommended that public employees’ representatives be afforded legal standing equal to that of private contractors to challenge competitions at the GAO and the US Court of Federal Claims. The Panel noted that this was important not only to be fair to public employees, but also because their ability to protest flawed competitions would help prevent “users of services [*i.e.*, taxpayers, from experiencing] lower performance levels and higher costs than necessary.” See [GAO, COMMERCIAL ACTIVITIES PANEL FINAL REPORT: IMPROVING THE SOURCING DECISIONS OF THE GOVERNMENT](#) at 35. See also [COMPETITIVE SOURCING: WHAT IS THE VALUE TO THE TAXPAYER?](#), *supra* note 15, at 6.