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## Forest Service Council

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## COMPETITIVE SOURCING: TIME FOR REFORM

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# Summary of GAO's Report<sup>1</sup> on Forest Service Competitive Sourcing

GAO's long-awaited report on competitive sourcing<sup>2</sup> in the Forest Service (FS) was released on February 21, 2008. It was prepared in response to a Congressional request "to determine the extent to which the Forest Service has (1) plans and guidance to help implement its competitive sourcing program effectively and (2) sufficient cost data to ensure that it complied with its competitive sourcing statutory spending limitations and accurately reported its competitive sourcing savings to Congress for fiscal years 2004 through 2006." This section summarizes the report's findings. Because we have used GAO's headings and followed their order of presentation, we have used footnotes in this section to present aspects of the issue that were not emphasized in the Report or were beyond its scope rather than to reference specific page numbers in the Report.

## **The Forest Service Does Not Have a Realistic Strategic Plan or Adequate Guidance to Effectively Implement Its Competitive Sourcing Program**

### The Forest Service's Strategic Plan for Managing Its Competitive Sourcing Program Is Not Realistic.

The current US Forest Service (FS) competitive sourcing "Green Plan" calls for performance of competitive sourcing feasibility studies on all commercial jobs in the agency, roughly 24,500 positions or two-thirds of the agency workforce.<sup>3</sup> The magnitude of this plan is based on a directive from the US Department of Agriculture (USDA) to ignore Congressional spending limits on competitive sourcing and plan to study all commercial jobs in the agency. To comply, the Forest Service added a "catch-all," 15,000 position feasibility study to its competitive sourcing "Green Plan." This plan was approved by the White House Office of Management and Budget (OMB). GAO concluded the plan is not realistic because it does not take into account the personnel and funding resources that would be required to implement it. Several senior FS officials concurred, saying it is "inconceivable" that the agency could carry it out.

### The Forest Service Lacks Guidance to Ensure That Key Work Activities Are Excluded from A-76 Competitions.

FS officials did not find Federal Activities Inventory Reform (FAIR) Act inventory data useful during the A-76 precompetition planning stage because they "were too broad to be of use or did not capture the actual work activities FS employees carried out." With little guidance, relying on intuitive knowledge and outside consultants, officials responsible for competitions developed their own methodologies to classify activities as inherently governmental or commercial but exempt from competition. This puts the agency at risk of subjecting inappropriate work to A-76 competitions.

### The Forest Service Lacks a Strategy to Assess the Cumulative Effect That A-76 Competitions Could Have on Its Ability to Respond to Wildland Fires and Other Emergencies.

The FS "cannot realistically expect a private sector firm to provide emergency services unrelated to the activity being competed." Congress has required the FS to take into account the potential effect that contracting out would have on the agency's ability to fight and manage wildfires. For the only A-76 competition since started, the FS "did not collect information on what specific duties those employees performed during the emergency response, nor the ICS-qualifications they hold. Without this

information, the Forest Service cannot assess the full impact of this competition on its emergency response capability.” Further, the FS “does not have a strategy to assess the cumulative impact that future competitions could have on its firefighting capability.”<sup>4</sup>

## **The Forest Service Does Not Have Sufficient Competitive Sourcing Cost Data to Demonstrate Compliance with Its Statutory Spending Limitations or to Accurately Report Savings to Congress**

### The Forest Service’s Interpretation of Costs That Are Subject to Statutory Spending Limitations Was Too Narrow.

For FY 2004 through 2006, Congress imposed spending limits on FS competitive sourcing studies and related activities. The FS interpreted this provision as applying only to the A-76 competitions themselves. GAO and the USDA’s General Counsel found it should also apply to all costs attributable to the FS competitive sourcing program, including feasibility studies, other precompetition planning activities, postcompetition accountability activities, and general program management. The USDA’s General Council believes “the FS may not have complied with the spending limitations in fiscal years 2004 through 2006.”

### The Forest Service Did Not Ensure That Cost Data Used to Comply with Statutory Spending Limitations Are Reliable.

“Even when it used its own interpretation of costs subject to the spending limitations, the Forest Service still did not know whether it complied with the limitations because it did not have a cost accounting system sufficient to track costs related to competitive sourcing.” The FS failed to adequately establish job codes to track costs – officials could not explain why. For job codes that were established, guidance and oversight was lacking; officials acknowledged “employees probably continued to charge time spent on competitive sourcing activities to their regular job codes.” For example, “[i]n fiscal years 2005 through 2006, Forest Service employees charged only 0.22 FTEs to the job code established to track costs associated with the communications competition, even though competitive sourcing activities for the competition began in fiscal year 2005 and were ongoing at the end of fiscal year 2006.”

### The Forest Service Could Not Substantiate Savings Reported to Congress.

The Consolidated Appropriations Act, 2004, requires agencies to report on “actual savings, or a quantifiable description of improvements in service or performance,<sup>5</sup> derived from the implementation of competitions” for the previous fiscal year. FS officials “could not provide us with the information necessary to fully substantiate the savings reported to Congress.” For two of three completed competitions, officials could not tell GAO “the methodology they used to determine postcompetition costs. For all three, data used to calculate savings were not available.<sup>6</sup>

### The Forest Service Did Not Include All Costs Associated with Its Competitive Sourcing Program When Calculating Savings Reported to Congress.

“While the Forest Service could not substantiate the savings it reported to Congress using OMB’s guidance, the guidance itself allows agencies to exclude some costs associated with A-76 competitions,<sup>7</sup>

which, if excluded, may not provide Congress with an accurate measure of the savings produced by the competitions.” For example, approximately \$40 million in transition costs were excluded from savings calculations that generated a reported savings of \$35.2 million for competitive sourcing of information technology activities. In addition, “OMB guidance does not direct that precompetition planning costs be included in the savings calculations;” they were omitted.<sup>8</sup> “OMB guidance also does not direct agencies to include in their savings calculation other potential costs associated with the termination of a contract.” The FS omitted substantial costs associated with termination of its contract with Serco for fleet maintenance.

## GAO’s Conclusions

The FS plan “to consider competing up to two thirds of its workforce against the private sector... is a massive undertaking whose long-term success will depend on a realistic strategic plan, clear guidance to identify the key work activities that should be excluded from competition, and a strategy to assess the cumulative effect that outsourcing a large number of federal jobs could have on its firefighting capability. Unfortunately, the Forest Service has none of these in place... [T]he problems we have identified could, in the long term, severely impact its ability to implement this program effectively—jeopardizing not just the overall success of the program, but the **nation’s ability to fight fires and respond to other emergencies** (emphasis added).”

The FS “did not collect complete and reliable cost data related to its competitive sourcing program” and consequently “did not know whether it had complied with statutory spending limitations.” In addition, the FS “could not provide us with sufficient data to verify the accuracy of the reported savings and excluded substantial costs from the savings calculations... Including these costs would have provided Congress with a more realistic picture of the extent to which the Forest Service’s competitive sourcing program is saving the American taxpayers’ money.”

## Government-Wide Implications

Contracting has roughly doubled under the current administration, to \$400 billion in FY 2006. It is among the fastest, if not the fastest, growing component of the federal budget.<sup>9</sup> Comptroller General Walker recently said, in testimony to Congress, that “we must engage in a fundamental re-examination of when and under what circumstances we should use contractors versus civil servants or military personnel,” calling this a “major and growing concern that needs immediate attention.”<sup>10</sup> Mr. Walker chaired the Commercial Activities Panel whose recommendations formed the basis of the 2003 revisions to OMB Circular No. A-76. As such, his words should carry substantial weight.

Does the GAO report on FS competitive sourcing merely depict a series of isolated events of little to no relevance beyond the boundaries of the agency? Or does FS competitive sourcing typify what is going on with competitive sourcing in other federal agencies, in which case these extremely troubling findings are just the tip of the iceberg? Consider the following facts from the Report:

- In calculating its misleading savings estimates, the FS followed the same accounting guidance from OMB that is used by all federal agencies. This finding undermines White House claims that competitive sourcing will save billions of dollars government-wide.
- OMB ordered the FS to reclassify as eligible for outsourcing thousands of positions the agency had designated as inappropriate for outsourcing.
- The Department ordered the FS to submit a competitive sourcing plan of such a magnitude that senior

agency officials knew it was “inconceivable” the agency could implement. This plan was rapidly approved by OMB.

In 2004, GAO reviewed competitive sourcing in seven agencies.<sup>11</sup> They concluded that “OMB focused more on targets and milestones for conducting competitions than on the outcomes the competitions are designed to produce” and noted that this emphasis did not “ensure achievement of the ultimate goal of increasing efficiency and improving the performance of commercial activities.” As a result, “agencies have focused more on following OMB guidance on the number of positions to compete—not on achieving savings and improving performance.”

This 2004 report recommended that OMB “require agencies to develop competition plans that focus on achieving measurable efficiency and performance improvement outcomes.” Presumably this recommendation applied to all federal agencies, including the Forest Service. It does not seem to have taken root there.

Is the Forest Service situation typical? Are the billions in savings that OMB attributes to competitive sourcing government-wide based on misleading accounting? Are serious losses in productivity ignored? Is competitive sourcing actually costing taxpayers billions while it erodes our public infrastructure?

We add our voice to that of Mr. Walker, and suggest that this is a matter that needs immediate attention.

## Legislative Recommendations

### **Require Reports with Accurate Savings and Assessments of Performance to Hold Competitive Sourcing Accountable**

PL 108-199, § 647(b) requires agencies to submit annual reports to Congress about their competitive sourcing activities.<sup>12</sup> These reporting requirements need to be tightened up to ensure Congress is provided with a more accurate and realistic picture of the costs and benefits of agencies’ competitive sourcing programs.

#### Amend PL 108-199 § 647(b)(7) to require inclusion of all competitive sourcing costs in savings calculations

§ 647(b)(7) currently requires that “actual savings” be reported to Congress. However, OMB guidance on implementation of this provision encourages agencies to exclude substantial costs from savings calculations. As a result, Congress and the American taxpayer have been misled about the program’s true savings for years. One of GAO’s recommendations for executive action to the FS was for the agency to “[e]nsure that the savings reported to Congress are a realistic measure of the actual savings resulting from A-76 competitions by... including costs such as planning costs and transition costs when calculating the savings.” We respectfully suggest that legislative action is warranted to ensure the same thing occurs with all federal agencies. Because of OMB’s history of hiding costs, we feel it is important for Congress to specify the costs that must be included using language along the following lines:

*In calculating savings derived from competitive sourcing competitions, agencies shall determine, in accordance with full cost accounting principles, and offset against savings all costs attributable to competitive sourcing activities, including personnel, consultant, travel, and training costs associated with:*

*(1) performing analyses, including feasibility studies, to determine the appropriateness of performing competitive sourcing on specific work activities;*

- (2) performing competitive sourcing studies, including preliminary planning activities required by Circular A-76;*
- (3) implementing the new organization, including costs associated with buyouts, transfers of station, and reductions in force;*
- (4) post-competition accountability activities, including supporting, managing, and monitoring organizational changes resulting from competitive sourcing decisions; and*
- (5) performing competitive sourcing program management activities.*

We note that these costs should also be taken into account in development of estimates of “total anticipated savings” whose reporting is required under § 647(b)(6). Also, Report language should specify that time spent by employees responding to “data calls”<sup>13</sup> is to be included in items (1) and (2).

#### Amend PL 108-199 § 647(b)(7) to require reporting of effects of competitions on performance

§ 647(b)(7) currently requires that “actual savings *or* a quantifiable description of improvements in service or performance” be reported to Congress. Thus, if “savings” are reported, changes in performance need not be. OMB guidance states, “As appropriate, include a description of improvements in service or performance that can be quantified. If there is no data for this field, leave it blank.”<sup>14</sup> The administration expects competitive sourcing to generate “significant savings and noticeable performance improvements,”<sup>15</sup> yet there is no accountability for performance in current reporting requirements. Without this information, conclusions about efficiency cannot be made. Reporting of accurate savings *and* a quantifiable description of improvements in service or performance is required.<sup>16</sup>

#### Amend PL 108-199 § 647(b)(5) to require reporting of all costs attributable to each competition

§ 647(b)(5) currently requires that “the incremental cost directly attributable to conducting the competitions...” be reported. OMB instructs agencies to exclude “costs of in-house staff that may have spent time of the competition during regular working hours.”<sup>17</sup> Reporting of full costs, as described in the section above on calculating savings, would provide Congress with a more accurate picture of the true costs of the program.

### **Apply the FY 2008 DOD Reforms to Civilian Agencies**

The 2008 National Defense Authorization Act (PL 110-181) put fundamental regulatory reform in place for the Department of Defense (DOD). Civilian agencies and employees have also suffered under the competitive sourcing excesses of the last several years and are also in need of these reforms.

#### Extend DOD’s Guidelines on Insourcing to Civilian Agencies

PL 110-181§ 324 reforms a fundamental regulatory bias in favor of contracting out. Under Circular No. A-76, a public-private competition is not required for private sector performance of new work or expansion of existing work. In both cases, an A-76 competition is required for public sector performance. § 324 removes this requirement and puts the public sector on even footing with the private sector.

PL 110-181 § 324 also directs DOD to undertake the “fundamental re-examination of when and under what circumstances we should use contractors versus civil servants or military personnel” called for by Comptroller General Walker. In particular, it requires development and implementation of “guidelines and procedures to ensure that consideration is given to using... civilian employees to perform new functions and functions that are performed by contractors and could be performed by... civilian employees.” The guidelines and procedures “shall provide for special consideration” of work that:

- Has been performed in-house during the previous 10 years
- Is closely associated with performance of an inherently governmental function
- Was awarded to a contractor on a noncompetitive basis
- Has been performed poorly by a contractor
- Is a new requirement similar to functions previously performed by civilian employees or closely associated with performance of an inherently governmental function

Insourcing may be performed as determined to be appropriate pursuant to these analyses without an A-76 competition.

We recommend that these provisions be extended to civilian agencies. In addition, we recommend that legislation be enacted to authorize similar authority with respect to work awarded to in-house service providers. Under a standard competition, in-house service providers are quasi-contractual entities accountable to an internal “contract,” the Letter of Obligation (LOO). Currently, regulations prohibit re-establishment of a line-management organization should the contractual model prove to be ineffective. In addition to the authority to address ill-advised outsourcing, agencies need the flexibility to address in-house organizational mistakes thrust upon them by competitive sourcing.<sup>18</sup>

#### Strengthen Current Provision that Prohibits OMB Interference in Agency Competitive Sourcing Decisions

PL 110-161 § 739(d) prohibits agencies from undertaking, continuing, or completing a public-private competition under direction from OMB; however, there is no method to ensure compliance. We suggest amending existing reporting requirements to require the head of each executive agency to certify compliance with this provision as part of each agency’s Congressional report. PL 110-181 § 327 has already put a similar certification requirement in place for civilian agencies as part of a new requirement to report to Congress before commencing new competitions.<sup>19</sup> We recommend a certification regarding the PL 110-161 § 739(d) prohibition be added to this reporting requirement:

*... a certification that the agency did not undertake, continue, or complete a public-private competition or direct conversion under Office of Management and Budget Circular A-76 or any other administrative regulation, directive, or policy as a result of direction or requirement from the Office of Management and Budget or to meet a numerical goal, target, or quota provided by the Office of Management and Budget for subjecting the employees of the agency to public-private competitions.*

We note it would be very instructive to require a similar certification as part of annual reports on competitions that are ongoing or have already been completed.

We also recommend legislation be enacted to require a review of agencies’ compliance with PL 110-161 § 739(d), similar to that enacted by PL 110-181 § 325(c) with respect to the prohibition of OMB interference with DOD competitive sourcing activities.<sup>20</sup> Reviews could be performed by Inspectors General of each agency or a comprehensive review could be performed by GAO.

## Amend Current Provision that Exempts Agencies from a 5-yr Re-competition Cycle

PL 108-199 § 647(c) currently exempts agencies from the A-76 requirement to “automatically limit to 5 years or less the performance period in a letter of obligation [LOO], or other agreement, issued to executive agency employees.”<sup>21</sup> This provision has been interpreted to allow only specification of longer performance periods in solicitations, not to authorize the extension of performance periods beyond those specified in the LOO. We believe the intent is to give agency managers the discretion to continue operations with public employees beyond the performance period stipulated in the LOO if things are going well, a decision that obviously cannot be made at the time of solicitation. This intent is more clearly conveyed in PL 110-181 § 323, applicable to DOD. We recommend that PL 108-199 § 647(c) be replaced by new language modeled on this provision:

*The head of an executive agency may not be required to conduct a public-private competition under Office of Management and Budget Circular A-76 or any other provision of law at the end of the performance period specified in a letter of obligation or other agreement entered into with executive agency employees pursuant to a public-private competition for any function of the agency performed by executive agency employees.*

## Notes

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<sup>1</sup> GAO, BETTER PLANNING, GUIDANCE, AND DATA ARE NEEDED TO IMPROVE MANAGEMENT OF THE COMPETITIVE SOURCING PROGRAM (February 21, 2008), report number [GAO-08-195](#), hereafter called “the Report.” The report verifies our earlier accounts of severe problems with the program. See Forest Service Council brief, [AGENCY AT RISK: COMPETITIVE SOURCING OF THE FOREST SERVICE](#) (April 12, 2007) for additional information.

<sup>2</sup> See the Report at 8-10 for background on the competitive sourcing process. See also Forest Service Council brief, [AN OVERVIEW OF COMPETITIVE SOURCING](#) (April 12, 2007).

<sup>3</sup> A more recent “Green Plan” posted on the agency’s intranet site is identified as “draft until approved by USDA and OMB.”

<sup>4</sup> Senate requestors were particularly concerned about the FS’s capacity to respond to wildfires and other emergencies, since a significant portion of the nation’s capacity resides in the agency’s workforce. We have been raising this point for some time. See, for example, Forest Service Council brief, [A-76 COLLATERAL DAMAGE: THE FOREST SERVICE MILITIA](#) (April 12, 2007) and Forest Service Council release, [FOREST SERVICE LOOKS TO OUTSOURCE ITS FIRE MILITIA](#) (August 3, 2006). However, the agency’s lack of a strategy to assess potential impacts of competitive sourcing on this mission-critical capability is merely an example of an overarching failure to holistically consider impacts on mission capabilities in general. Because of its responsibility to manage 192 million acres, FS employees are of necessity thinly distributed geographically. This decentralized structure, in which small units must perform many tasks, in turn requires that employees be multi-functional. Thus, the typical FS employee performs multiple duties. As a consequence, individual work functions are often distributed among many employees as partial full-time-equivalents (FTEs). Consideration of targeted work functions in isolation ignores this distribution of duties. Effects of outsourcing or reorganization on duties collateral to those under consideration are not considered. Collateral duties become collateral damage – potentially of a much larger magnitude than the marginal and hypothetical benefits projected for the conceptually isolated work activities. This holds just as true for mission-critical land management activities as for fire suppression. For example, a competitive sourcing feasibility study identified roughly 8,000 field

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employees performing an estimated 3,295 FTEs of National Environmental Policy Act (NEPA) work. The study recommended that NEPA work be competitively sourced or centralized by Business Process Reengineering (BPR). See [STATEMENT FROM NFFE FOREST SERVICE COUNCIL ON PEER RELEASE ON FS NEPA PLAN](#) (Jan. 22, 2008). Consider the effect this would have on the land management capabilities of a hypothetical typical ranger district staffed with 10 employees performing NEPA work. On average, each of these land management professionals performs “in scope” work (NEPA work) approximately 40% of the time. Since 40% of each employee cannot be reassigned to the centralized facility, 4 whole employees would have to go. They would take with them the knowledge, skills, and abilities with which they performed the other 60% of their jobs. What effects would their removal from the ranger district to a centralized NEPA Service Center have on the land management capabilities of the district? The agency lacks a methodology for this assessment; indeed, they did not even collect data on the “other 60%” of work outside the scope of the study. We acknowledge that this hypothetical scenario is an oversimplification; however, we maintain it is less so than the unspoken assumption that partial FTEs may be redistributed without causing major disruptions to overall agency operations. The agency has recently decided against implementation of this particular feasibility report’s recommendation. The fact remains that there is currently no methodology for assessment of collateral effects of this sort. Inexplicably, in the absence of any analysis on the issue, the agency considers such “fragmented” work a strong candidate for competitive sourcing because of the unjustified and highly questionable premise that it “may benefit from restructuring.” See the Report at 14.

<sup>5</sup> Cost is undeniably easier to measure than performance; however, equally undeniable is the fact that cost is only half of the story. Efficiency is productivity divided by cost, and it is efficiency that is the true measure of whether the American taxpayer is getting what s/he is paying for. Costs can always be cut for any particular agency operation by downsizing the workforce performing that operation. However, if performance suffers or the work is merely shifted elsewhere within the organization, efficiency may diminish. For example, halving the number of cashiers at a grocery store would show a line item savings on the store’s books, but would be a bad business move if it resulted in excessively long lines, reassignment of butchers and bakers to cover check out, etc. Competitive sourcing roughly halved the Forest Service information technology (IT) workforce. Line item savings of \$35.2 million during fiscal years 2005 and 2006 were reported to Congress. Effects on productivity were far more substantial than the hidden A-76 and transition costs addressed in the Report. According to an internal agency assessment, this downsizing/reorganization cost the FS roughly \$327 million in lost productivity. (It is important to note that this should 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 – their previous performance is the baseline from which this result was calculated. The failure is systemic – due to the ill-advised A-76 downsizing/reorganization.) See Forest Service Council release, [FOREST SERVICE OUTSOURCING PLAN PRODUCES BIG LOSSES](#) (May 22, 2007). Similarly, the outsourcing of fleet maintenance to Serco resulted in substantial productivity losses. See Forest Service Council release, [FOREST SERVICE COMPETITIVE SOURCING CONTRACT TERMINATED](#) (May 3, 2006). In addition to accurately reporting savings associated with the specific work function competed, agencies should at a minimum be required to certify that no attendant decline in performance has occurred.

<sup>6</sup> GAO did not address the reliability of baseline cost determinations. Baseline cost is the cost of performing agency work prior to initiation of an A-76 competition of that work. Savings calculated following OMB guidance is the difference between baseline cost and postcompetition cost. Circular A-76 requires determination of baseline cost before formal announcement of an A-76 competition. The relative uselessness of FAIR Act inventory data has already been noted. This requires teams performing competitive sourcing feasibility studies to make “one or more requests for data from field offices, which may require information from several hundred Forest Service employees.” See the Report at 11 and 20. These “data calls” ask field employees to retrospectively estimate, among other things, the time they spent performing the work activity being studied over a representative period of time. Typically, this work is performed on a less than full-time basis. For example, an estimated 133 FTEs of communications work subjected to A-76 competition is performed by

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roughly 800 employees. See Forest Service Council brief, [MISTAKES REPEATED: A-76 STUDY OF COMMUNICATIONS WORK](#) (April 12, 2007). Similarly, a recently completed feasibility study determined that 8,000 or so employees perform 3,295 FTEs of National Environmental Policy Act (NEPA) work. See [STATEMENT FROM NFFE FOREST SERVICE COUNCIL ON PEER RELEASE ON FS NEPA PLAN](#), *supra* note 4. Employees with diverse sets of collateral duties are the norm in the Forest Service. Data obtained by asking employees to retrospectively estimate the time they spent on one of a number of duties is highly suspect. GAO faced the same problem in obtaining data with which to calculate the cost of time employees spent on competitive sourcing activities; here is their assessment: “In consultation with Forest Service officials, we agreed that it was not feasible to reconstruct cost data for competitive sourcing activities between fiscal years 2004 and 2006 to determine if the Forest Service exceeded the appropriations acts’ spending limitations. Forest Service officials told us it would require a significant amount of time and resources to query employees on their past work activities associated with competitive sourcing. Furthermore, it is unlikely that employees could reliably report the time they spent on competitive sourcing activities that took place months and years ago.” See the Report at 25. This leads inescapably to the conclusion that for savings calculations to be accurate, real-time data collection of baseline costs must supplant retrospective estimates.

<sup>7</sup> GAO noted that the FS followed this guidance in calculating savings, albeit poorly, but stated, “[W]e believe the guidance provides the Forest Service with the latitude to include the other costs we identified—some of which substantially reduce or even exceed the savings reported to Congress.” See the Report at 45. The FS disagreed, noting that inclusion of these costs “may be in conflict with current OMB guidance on what costs should and should not be included in these reports.” See the Report at 43. Relevant OMB guidance states, “Savings should be calculated as follows. For competitions where a contractor was selected to perform, subtract contract payments and contract administration costs (as identified by COMPARE) from the baseline costs... [For] savings from in-house performance..., subtract cost of in-house performance from the baseline costs...” See OMB, [M-07-01](#) (October 5, 2006). We believe a plain reading of OMB’s guidance supports the FS on this issue. OMB’s direction is prescriptive and simple. It does not explicitly give agencies the discretion to include costs other than those it states should be subtracted. Whether or not agencies have the authority to assume that “subtract contract costs” really means “subtract contract costs and other relevant costs as you deem appropriate” is a question about which GAO’s opinion is obviously worth more than ours. However, we would be willing to wager a substantial sum that not many agencies would be so bold as to interpret OMB’s accounting guidance in the manner suggested by GAO.

<sup>8</sup> Substantial costs associated with running the A-76 competitions themselves were also omitted. See the Report at 24-25. Costs associated with data calls to hundreds, in some cases thousands, of employees were not tracked and were consequently also omitted. As noted by agency officials, it “require[s] a significant amount of time and resources to query employees on their past work activities.” See note 6.

<sup>9</sup> US House of Representatives, [House Report No. 110-207](#) (June 22, 2007)

<sup>10</sup> See GAO, [FEDERAL ACQUISITIONS: SYSTEMIC CHALLENGES NEED ATTENTION](#) (July 17, 2007), report number [GAO-07-1098T](#).

<sup>11</sup> See GAO, [COMPETITIVE SOURCING: GREATER EMPHASIS NEEDED ON INCREASING EFFICIENCY AND IMPROVING PERFORMANCE](#) (February, 2004), report number [GAO-04-367](#).

<sup>12</sup> Sec. 647(b) Not later than 120 days following the enactment of this Act and not later than December 31 of each year thereafter, the head of each executive agency shall submit to Congress a report on the competitive sourcing activities on the list required under the Federal Activities Inventory Reform Act of 1998 (Public Law 105-270; 31 U.S.C. 501 note) that were performed for such executive agency during the previous fiscal year by Federal Government sources. The report shall include--

- (1) the total number of competitions completed;

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- (2) the total number of competitions announced, together with a list of the activities covered by such competitions;
  - (3) the total number (expressed as a full-time employee equivalent number) of the Federal employees studied under completed competitions;
  - (4) the total number (expressed as a full-time employee equivalent number) of the Federal employees that are being studied under competitions announced but not completed;
  - (5) the incremental cost directly attributable to conducting the competitions identified under paragraphs (1) and (2), including costs attributable to paying outside consultants and contractors;
  - (6) an estimate of the total anticipated savings, or a quantifiable description of improvements in service or performance, derived from completed competitions;
  - (7) actual savings, or a quantifiable description of improvements in service or performance, derived from the implementation of competitions completed after May 29, 2003;
  - (8) the total projected number (expressed as a full-time employee equivalent number) of the Federal employees that be covered by competitions scheduled to be announced in the fiscal year covered by the next report required under this section; and
  - (9) a general description of how the competitive sourcing decisionmaking processes of the executive agency are aligned with the strategic workforce plan of that executive agency.

<sup>13</sup> See note 6 for a discussion of the use of data calls to support feasibility studies and A-76 competitions. We surveyed employees on the time they spent responding to data calls in support of competitive sourcing activities associated with FS communications work activities, and found it to be a substantially larger cost than that attributable to employees detailed to work on teams dedicated to competitive sourcing work. See line item cost estimate for “other staff time” in [MISTAKES REPEATED: A-76 STUDY OF COMMUNICATIONS WORK](#), *supra* note 5.

<sup>14</sup> [OMB M-07-01](#), *supra* note 7, at 7.

<sup>15</sup> OMB, [THE PRESIDENT’S MANAGEMENT AGENDA](#) (Fiscal Year 2002) at 18.

<sup>16</sup> PL 110-181 § 327 amended Title 41 USC 403 et seq. to require examination of “the effect of performance of the function by a contractor on the agency mission associated with the performance of the function” with respect to planned A-76 competitions; however, we are unaware of any requirement to monitor and report to Congress the actual effects on performance.

<sup>17</sup> [OMB M-07-01](#), *supra* note 7, at 6.

<sup>18</sup> The downsizing/reorganization of IT work forced upon the FS by competitive sourcing is a prime example. See [FOREST SERVICE OUTSOURCING PLAN PRODUCES BIG LOSSES](#), *supra* note 5. Under A-76 regulations, any significant change in the scope of the letter of obligation (LOO) to which this internal “service provider” is held accountable automatically triggers another A-76 competition. This is a strong disincentive to meaningful change, even for cases in which productivity losses far outstrip gains realized by the downsizing.

<sup>19</sup> PL 110-181 § 327 amended Title 41 USC 403 et seq. to require, “Before commencing a public-private competition..., the head of an executive agency shall submit to Congress a report containing... a certification that a proposed performance of the function by a contractor is not a result of a decision by an official of an executive agency to impose predetermined constraints or limitations on such employees in terms of man years, end strengths, full-time equivalent positions, or maximum number of employees.” It goes on to give employees the right to object and block the competition should the certification not be provided. Given the propensity of OMB to provide its directions behind closed doors, a similar provision regarding direction from OMB would appear to be warranted.

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<sup>20</sup> PL 110-181 § 325(c) Inspector General Review-

(1) COMPREHENSIVE REVIEW REQUIRED- The Inspector General of the Department of Defense shall conduct a comprehensive review of the compliance of the Secretary of Defense and the Secretaries of the military departments with the requirements of this section during calendar year 2008. The Inspector General shall submit to the congressional defense committees the following reports on the comprehensive review:

(A) An interim report, to be submitted by not later than 90 days after the date of the enactment of this Act.

(B) A final report, to be submitted by not later than December 31, 2008.

(2) INSPECTOR GENERAL ACCESS- For the purpose of determining compliance with the requirements of this section, the Secretary of Defense shall ensure that the Inspector General has access to all Department records of relevant communications between Department officials and officials of other departments and agencies of the Federal Government, whether such communications occurred inside or outside of the Department.

<sup>21</sup> PL 108-199 § 647(c) The head of an executive agency may not be required, under Office of Management and Budget Circular A-76 or any other policy, directive, or regulation, to automatically limit to 5 years or less the performance period in a letter of obligation, or other agreement, issued to executive agency employees, if such a letter or other agreement was issued as the result of a public-private competition conducted in accordance with the circular.

Visit our competitive sourcing webpage at <http://www.nffe-fsc.org/Documents/CSIndex/CSIndex.html> for more information, or you may contact:

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