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# National Federation of Federal Employees

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## Forest Service Council



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We work for America every day

William R. Dougan, President

Mike Buntten, Secretary-Treasurer

October 11, 2006

To: USDA Office of Inspector General

From: William R. Dougan

Re: Endangerment of Public Safety and Mismanagement / Waste of Funds

On June 29, 2006, the FS made a formal public announcement of intent to conduct a Competitive Sourcing Study in accordance with OMB Circular No. A-76 of communication functions involving web posting and photography (Solicitation Number WO-3187-CS-01, hereafter "Communications Study"). In so doing, we allege that the Forest Service and the Secretary of Agriculture (1) violated statutory requirements enacted to protect human health and safety and (2) violated requirements under both law and the Office of Management and Budget (OMB) Circular No. A-76 to prevent gross mismanagement and waste of public funds.

Specifically, we allege that this act violated the requirements of Sec. 422(e) of Public Law 109-54 to consider potential effects of outsourcing on wildfire management capabilities. This uncritical dismantling of our nation's rapid emergency response assets puts the health and safety of American citizens at serious risk.

We further allege that the Forest Service is in noncompliance with legal requirements to guard against gross mismanagement of public funds. Specifically, we allege that Forest Service competitive sourcing activities are noncompliant with the requirements of

- Sec. 422(d) of Public Law 109-54 to determine all costs attributable to competitive sourcing;
- Sec. 422(a)(2) of Public Law 109-54 to limit fiscal year 2006 expenditures on competitive sourcing studies and related activities to not more than \$3,000,000; and

Finally, we allege the Forest Service and Department of Agriculture are in noncompliance with OMB Circular No. A-76, specifically with the requirements of Attachment B, Sec. A, Nos. 1 through 4 to perform preliminary planning "to ensure that the American people receive maximum value for their tax dollars."

### **Allegation 1: Noncompliance with Sec. 422(e) of Public Law 109-54**

Sec. 422(e) of PL 109-54, states "In carrying out any competitive sourcing study involving Forest Service employees, the Secretary of Agriculture shall (1) determine whether any of the employees concerned are also qualified to participate in wildland fire management activities; and (2) take into consideration the

effect that contracting with a private sector source would have on the ability of the Forest Service to effectively and efficiently fight and manage wildfires.”

Consideration of the ability of the FS to fight and manage wildfires cannot be made in the context of an A-76 study. A-76 procedures are completely prescriptive. Consideration of any matter extraneous to the procurement of the in-scope work is not allowed. Further, A-76 requires the agency to implement the A-76 “performance decision,” i.e., to contract the studied work if the performance decision favors a private provider. Formal announcement commits the agency to complete an expensive, time-consuming and highly disruptive cost comparison process within 12 months and is tantamount to an agency decision to contract if A-76 so stipulates. It would be gross mismanagement to proceed with this process without first considering the independent issue of whether outsourcing the work would unacceptably erode fire suppression capabilities.

Sec. 422(e) applies not only to employees whose primary work function is fire suppression, but also to the large number of employees who hold highly specialized firefighting and support qualifications and serve on incidents as a collateral duty. As stated in an agency briefing paper to Congress, “Incident command management is a highly effective structure to manage critical incidents such as large forest fires. The Forest Service and other federal agencies use incident management teams in this command structure when these events occur. The Forest Service has long been regarded as one of the world’s best in managing large-scale fires and other critical incidents. To staff these highly effective teams, Forest Service personnel in program areas outside of the Fire and Aviation Management organization have long been expected to support fire and other critical incidents through a volunteer process (militia) to perform these collateral duties.”<sup>1</sup>

Wildfire qualifications of agency personnel are kept in the interagency Incident Qualifications and Certification System (IQCS) database.<sup>2</sup> The consideration mandated by Sec. 422(e), the Forest Service would require analysis of the specific qualifications held by employees whose non-suppression jobs (“day jobs”) were under consideration for outsourcing. IQCS does not contain data regarding the “day jobs” of responders<sup>3</sup> and Human Resources Management (HRM) systems do not track employees’ wildfire qualifications. Therefore, the wildfire qualifications of employees identified as affected by the Communications Study would have to be determined through use of the IQCS database. A preliminary list of affected employees was generated sometime after a May 22 – June 7, 2006 “data call” to field employees. It is possible to perform an IQCS query of the wildfire qualifications of such a list of employees. According to National Wildfire Coordination Group (NWCG) personnel who manage the IQCS database through which any such request for data would have to come, no such query request has been made.

For meaningful consideration of how loss of specifically qualified personnel would affect the ability of the Forest Service to effectively and efficiently fight and manage wildfires, needs and trends data would also be needed. To the best of our knowledge, no efforts have been made by the Communications Competitive Sourcing Team or by the Competitive Sourcing Program Office (CSPO) to compile mobilization records, “Unable to Fill” (UTF) reports, After Action Reports (AARs), etc. to this end. Indeed, we are unaware of any organized collaboration with fire program personnel to even begin considering how to proceed.

To the best of our knowledge, the only data collected by the Communications Competitive Sourcing Team (CCST) regarding fire suppression activities by affected employees prior to announcement of the study was in a May 22, 2006 “data call,” which asked employees to report “How many pay periods did

this position spend last year on INCIDENTS (fire, hurricane, other disasters) in any capacity?" This crude approach allows for no meaningful analysis or consideration. It may not even capture all qualified individuals, much less the nature of their qualifications. Meaningful analysis would require determination of specific wildfire qualifications, not merely knowledge of which employees have been mobilized recently in some unknown capacity.

On June 29, 2006, the FS made a formal public announcement of intent to conduct a Competitive Sourcing Study in accordance with OMB Circular No. A-76 of communication functions involving web posting and photography (Solicitation Number WO-3187-CS-01). In so doing, the agency violated the requirement of Sec. 422(e), Public Law 109-54 to determine affected personnel's wildfire qualifications and consider potential effects of outsourcing on wildfire suppression capabilities.<sup>4</sup>

### **Allegation 2: Noncompliance with Sec. 422(d) of Public Law 109-54**

Sec. 422(d) of PL 109-54 requires that Forest Service reports to Congress include, "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."<sup>5</sup> As noted by the appropriators who drafted this language and who are privy to the reports, "This is apparently not occurring."<sup>6</sup>

With respect to the Communications Study, thousands of employees have participated in national conference calls, studying and evaluating national guidance, responding to data calls, etc. According to employees engaged in these activities, and in violation of Sec. 422(d), the personnel costs of performance of these activities have not been tracked.<sup>7</sup>

We also question and ask your office to investigate whether costs attributable to the many other competitive sourcing activities subject to this section have been tracked "in accordance with full cost accounting principles." This includes costs associated with program oversight and the performance of three competitive sourcing feasibility studies in fiscal year (FY) 2006.<sup>8</sup> By the agency's own admission, costs associated with program oversight and the performance of the Communications Competitive Sourcing Feasibility Study were not tracked;<sup>9</sup> to our knowledge, nothing has changed since this admission was made.

### **Allegation 3: Noncompliance with Sec. 422(a)(2) of Public Law 109-54**

Sec. 422(a)(2) states, "Of the funds appropriated by this Act, not more than \$3,000,000 may be used in fiscal year 2006 for competitive sourcing studies and related activities by the Forest Service."

Because the agency has failed to comply with Sec. 422(d) and therefore has no verifiable books on the relevant expenditures, it cannot verify compliance with Sec. 422(a)(2). Given the likely magnitude of the untracked expenditures, we consider it likely the cap has in actuality been exceeded and ask for your office to undertake an independent audit to assess this issue.

#### **Allegation 4: Noncompliance with OMB Circular A-76, Attachment B, Sec. A, Nos. 1-4**

This allegation has been documented in detail in our September 14, 2006 letter to the Department of Agriculture Competitive Sourcing Official (CSO),<sup>10</sup> who has the responsible for proper implementation of the Circular to ensure that the American people receive maximum value for their tax dollars and the authority to cancel studies that have been formally announced. To date, we have received no response to this letter. We incorporate into the present complaint by reference the allegations in September 14, 2006 letter and the documentation cited therein, and add the allegation that the CSO has failed to fulfill his explicit responsibility under the Circular to ensure its proper implementation.

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<sup>1</sup> See the USDA Forest Service Congressional briefing paper, [COMPETITIVE SOURCING IN THE FOREST SERVICE](#) (April, 2003) at 3.

<sup>2</sup> For a list of wildfire positions, see [National Wildfire Coordinating Group \(NWCG\) positions](#) and [FS specific positions](#) (also available at <http://iqcs.nwcg.gov>). These lists include wildfire position codes for specific Incident Command System (ICS) jobs as well as for specialized fire-fighting support jobs. These jobs require highly specialized skills: qualification and certification involves years of training and experience. For more information on minimum interagency standards for specific wildfire positions, see [Wildland Fire Qualification Guide](#), National Wildfire Coordinating Group (April, 2006). The FS supplements these minimums for all jobs with additional training requirements to produce a more highly trained responder workforce. In addition, the FS has established qualification and certification standards for 80+ highly specialist positions, also managed by IQCS, including Forward Looking Infrared Interpreter, Burned Area Emergency Response Team Leader, Military Aviation Operations Coordinator, etc. See [FS Handbook 5109.17](#).

<sup>3</sup> “Day job” work refers to the work employees normally perform when not serving on an incident. These duties are described with reasonable accuracy in employees’ position descriptions. Although some Office of Personnel Management (OPM) Job Series codes have recently been added to IQCS, they are not entirely accurate. More significantly, Job Codes are not descriptive of the work being performed. For example, employees with primary fire management duties share Job Series GS-462, Forestry Technician, with employees performing a wide range of land management activities. See [Individual Occupational Requirements for GS-462: Forestry Technician Series](#). Integration of “day job” duties and emergency response qualification records is a substantial obstacle, one which the agency Competitive Sourcing Program Office has not even begun to address.

<sup>4</sup> After we pointed out these failings in a briefing paper, [FOREST SERVICE COMPETITIVE SOURCING CONTINUES TO VIOLATE LAW](#), Forest Service Council (August 3, 2006), the agency polled field employees on their fire suppression qualifications in an August 9 – August 25 “data call.” However, as noted in the text, after announcement the binding A-76 procedures do not allow consideration of matters outside of the scope of the study. Consequently, the Forest Service is now considering expanding the study’s scope to include incident support, which in addition to being an absurd bundling would constitute a violation of OMB Circular A-76 (Allegation 4). Alternatively, the agency may carry out an expensive and disruptive study only to have the results of said study overturned on the basis of Sec. 422(e) considerations, which would constitute a gross waste of funds. In addition, the poor distribution and resultant quality of data is noteworthy – this issue is discussed further in the document cited in note 10.

<sup>5</sup> This provision applies to fiscal year 2006. Identical language contained in Sec. 332(e) of Public Law 108-447 applied to fiscal year 2005.

<sup>6</sup> See House Report 109-465, 109th Congress, 2<sup>nd</sup> Session

<sup>7</sup> See House Report 109-465, *supra* note 5, which makes Congressional intent regarding Public Law 109-54 Sec. 422(d) excruciatingly clear: “The Committee *reiterates* that all associated activities related to competitive sourcing

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need to be charged against the funding cap. This includes all staff time engaged in feasibility studies as well as all staff time spent on training and answering data calls related to competitive sourcing tasks (emphasis added).”

<sup>8</sup> See [Q3FY2006 Internal Scorecard](#), USDA Forest Service (May 11, 2006)

<sup>9</sup> See [letter from Dale Bosworth](#), Chief, USDA Forest Service to Charles Christopherson, Competitive Sourcing Official, USDA (December 23, 2005)

<sup>10</sup> See [letter from William Dougan](#), Forest Service Council President, to Charles R. Christopherson, Jr., Department of Agriculture CSO (September 14, 2006).