

Bush Contracts Out Government Work

By David H. Richardson

The process by which the government competes for work with the private sector is defined by Office of Management and Budget (OMB) Circular A-76. The putative goal is to save the taxpayers money. The Department of Labor (DOL) has completed 18 A-76 competitions, of which government employees won 16.

About 27 government jobs were eliminated in the two competitions that the government employees lost. In addition, 14 jobs were lost in the competitions that were “won” by government employees. DOL has committed to keep all but five of the affected employees on the payroll, a humane gesture on the part of senior career managers that eliminates any possibility that the A-76 process will save taxpayers any money. The five employees were involved in a competition that the government employees actually “won.”

At present, more than 800 DOL jobs (out of 17,000 total) are being subjected to competition with the private sector. If this process continues, separations are expected in many parts of the DOL over the next few years.

What Is A-76?

OMB is the agency that enforces the president’s program on other Government agencies. Dating back to 1966 and revised several times since, OMB Circular A-76 sets out the process by which the government competes with private sector jobs that had previously been performed in-house.

Prior to the second Bush administration, A-76 competitions were largely confined to the Department of Defense. This changed in 2001 when the administration announced a policy forcing about half of the federal workforce to compete with the private sector. Feeling the heat from the American Federation of Government Employees, the principal union in the federal sector, and other groups, Congress passed legislation making quotas for competition illegal. Still, many agencies, DOL among them, are carrying out longterm plans as if the quotas were still in place.

The A-76 Process: the Performance Work Statement (PWS)

The Bush administration revised Circular A-76 in 2003 and did make one improvement. Previously, it was legal to simply convert up to 10 jobs at a time from government

employees to contractors without any competition at all. The revised circular requires a competition for even a single job.

Ironically, the A-76 process itself creates work for contractors. Although DOL managers have responsibility for the project, they have no experience or expertise in A-76 competitions. Consequently, they must hire specialized A-76 contractors to assist them.

The first step is to identify and define the work that is to be competed, which is done by writing the PWS. A PWS team is established to draft the document. The A-76 contractor, theoretically under the direction of the PWS team, interviews all, or a representative sample, of the employees whose jobs are being competed, to learn what they do. Far too often, this process has been cursory, resulting in too little work being included in the PWS. This gives the contractors a competitive advantage, since they do not have to bid on all the work but the government does.

The A-76 Process: the Most Efficient Organization (MEO)

Once the PWS is completed, the MEO Team assembles the government’s bid. The people at OMB who sponsor the A-76 process believe that the government is not organized efficiently and that reorganization can save work and taxpayer money. In practice, the “business units” being competed at DOL are not units at all, but employees doing similar types of work in different parts of DOL. For example, one competition encompasses accountants from all DOL agencies and parts of the country.

Since the “business units” are not actual units, there is no reorganization that will save money. As a result, the only thing left is to cut positions and/or grades. If DOL were actually competing a functional unit, contractors as well as federal employees might well be in the same group, and the contractors might well be the first to go. The current grouping of similar positions across DOL, however, makes this approach impossible. For example, contractor accountants are not part of the accounting competition. Thus, the MEO Team must cut

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grades or positions (or both). Already the result has been to leave one DOL agency with too few employees to do the work.

Protests

The A-76 process is headed by the Agency Tender Official (ATO). The ATO appoints the leaders of the PWS and MEO teams and assembles the government bid in the competition. In addition, the ATO is the only federal employee who can protest the competition itself.

Under the Competition in Contracting Act (CICA) of 1984, protests can be decided either at the Government Accountability Office (GAO) or by the U.S. Court of Federal Claims. However, the CICA was written not for A-76, but with general procurement in mind: it protects contractors but not federal employees.

To remedy this situation in part, an amendment to the 2005 Defense appropriation allows the ATO to protest a competition. Federal employees, however, are still not allowed to protest directly. If the ATO is presented with a petition signed by more than half of the employees in a competition, then the ATO must protest at GAO or write a letter to Congress explaining why she or he didn't protest. Unfortunately, at DOL, ATOs have done neither, and there is no recourse for the employees or the union.

It is widely recognized by all, including U.S. Comptroller General David Walker of GAO, that the interests of the ATO and federal employees may not be the same. In March, Local 12 tested the rules by protesting the Accounting Competition at GAO. The protest was dismissed for lack of standing: it was claimed that the President of Local 12 was not an "interested party," as CICA requires.

Problems with A-76 and Contracting Out

The contractors claim that they will reduce costs, provide the same level of service to the public, and provide the same pay and benefits as the government. However, they insert an additional level of bureaucracy (the contractor's management team), and they must make a profit as well. It doesn't add up.

There is an enormous civil rights issue underlying the push to contract out government work. In most cases, the jobs that

have been competed are at the lower grade levels and are overwhelmingly held by women and people of color. Most often, the contractors replace these employees with white or Asian males. Federal personnel practices tend to rectify the harm done by racial and gender discrimination in our society, but contractors are under no such obligation.

Appointments and promotions in the U.S. Civil Service are already competitive. When an activity is contracted out, hiring and promotion cease to be competitive while there is no guarantee that the contracts will be awarded competitively. In addition, the first loyalty of government employees is to

the government and people of the United States. Contractors cannot match this.

Any savings reported from the competitions are figments of the imagination. Most of the cost of running the competitions – and the cost of the time of the government employees who work on them – is not counted. If the government wins with no change in operations, there is a cost "savings" equal to the difference between the government bid and the private bid. If the contractor wins, the all-but-certain future cost increases are ignored.



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