

Privatization of Federal Services

SUMMARY

The Office of Management and Budget's (OMB) privatization scheme is all about replacing hundreds of thousands of federal employees with contractors, not making federal services more efficient. OMB is still forcing agencies to use privatization quotas. OMB's privatization scheme still employs a hopelessly pro-contractor OMB Circular A-76 process. OMB justifies its unprecedented wholesale privatization effort with unsubstantiated savings claims. Fortunately, opposition to OMB's privatization scheme is strong, bipartisan, and consistent. This opposition is based on four basic principles:

1. Federal employees should have the same appeal rights as contractors.

When federal employees win a privatization review, contractors can have the agency's decision reviewed by independent third parties—by appealing to the Government Accountability Office (GAO) or the Court of Federal Claims—and perhaps get it reversed.

However, federal employees have no such appeal rights. Only very senior managers can appeal a contracting out decision and they are allowed to do so in very limited circumstances.

Federal employees should have the same appeal rights as contractors. It is basic fairness that both sides in a contest where jobs are at stake should have the same appeal rights. A contracting official can't help but be biased now because she knows that only one side—the contractors—can hold her accountable in court.

2. Federal employees should have opportunities to perform new work and contracted out work and to become more efficient outside of the narrow OMB Circular A-76 context.

OMB grudgingly acknowledges that federal employees routinely beat their contractor counterparts in competition after competition.

So why aren't federal employees allowed to compete for new work and work that's already been outsourced?

If public-private competition is good for federal employees, then it should be good for contractors, especially given that insourcing is common practice in local government and in the private sector.

Similarly, federal employees should be allowed to reengineer internally to become more efficient without going through the costly and controversial A-76 process.

- 3. Health care and retirement costs should be excluded from the cost comparison process of privatization reviews used by all federal agencies so that contractors are not rewarded for providing bad benefits or even none at all.**

Such an approach does not require contractors to provide comparable benefits. Such an approach does ensure that federal employees won't be punished for the fixed costs of the federal government's modest health care and retirement benefits in any public-private competition.

Health care costs are already excluded for the Defense Department--and the same approach has been advocated for the Defense Department retirement costs.

However, health care and retirement costs should not be a consideration in any cost comparison in any agency.

- 4. Federal employees should not be reviewed for privatization because of guidance, direction, requirement, or encouragement from OMB officials.**

OMB's use of numerical privatization quotas was outlawed by Congress.

However, OMB is still forcing agencies to review arbitrary numbers of federal employees for privatization merely to achieve quotas.

OMB political appointees should not be telling agency career managers how many and which employees to review for privatization.

DETAILS

Here's what's wrong with OMB's privatization scheme:

- 1. OMB is still forcing agencies to use numerical privatization quotas.**

OMB officials have said agencies must review 850,000 federal employee jobs for privatization. In order to accomplish that goal, OMB officials established crude numerical quotas for agencies. Thanks to AFGE, the Congress officially outlawed the use of numerical privatization quotas; and in the face of such strong bipartisan Congressional opposition, OMB officials said they would stop enforcing such quotas.

However, the Government Accountability Office (GAO), Congress' watchdog, reports that little has changed. OMB is still directing agencies to conduct certain numbers of privatization reviews within certain periods of time affecting certain number of employees.

Even after the Congress outlawed the use of numerical privatization quotas in the FY03 Omnibus Appropriations Act, some agencies continued business as usual. For example, the Department of Labor *“committed to meeting or exceeding its FY2004 competitive sourcing goal by completing streamlined competitions or standard competitions on not less than 15 percent of the commercial (federal employees) listed on DoL's 2000 FAIR Act inventory.”*

Even worse, Congressional investigators obtained documents prepared in 2004 by a contracting out consultant to the Department of Homeland Security in which a senior contracting out official insisted that all agencies were under intense pressure from the White House to complete privatization reviews before the November 2004 elections.

In 2005, *The Washington Post* reported another example of an agency carrying out a privatization quota (“NIH Memo Hints At Goals, Set with HHS and OMB, in Contracting Out Jobs”): *“Bush administration officials say they do not play the numbers game when deciding which federal jobs should be put up for competition with the private sector, but one agency memo suggests that numbers do matter. The memo was sent this week to staff at the National Institutes of Health and seemingly suggests that the agency is having trouble meeting its ‘competitive sourcing’ goal this year. ‘Through the process of pre-planning, it has become clear that additional functional areas must be competed in order to meet the necessary 340 positions agreed upon with the Department of Health and Human Services and the Office of Management and Budget,’ the memo says. Asked about the memo, Bill Hall, a spokesman for HHS, said the number of jobs to be put at risk was determined after HHS and NIH officials studied and discussed various ‘functional areas’ that were appropriate for possible contracting out. ‘There was no numerical quota,’ Hall said. ‘While the memo may come across that way, that was absolutely not the case.’* (Emphasis added)

An Army planning document, dated July 13, 2006, reported that the Army had received a poor grade on the President's Management Agenda because it had failed to review a certain number of federal employee jobs for privatization. The document reported the number of additional jobs that had to be reviewed for privatization across the Army, as well as for a specific component, all the way down to the regional level. Installation commanders often oppose reviewing certain functions for privatization because they believe that such work should continue to be performed by reliable and experienced civilian employees. However, because of the quotas, those functions can only be shielded from privatization if installation commanders review comparable numbers of other jobs

for privatization. In other words, the numerical privatization quota must be achieved at all costs.

For example, Redstone Army Arsenal's request for a deferral on a particular privatization review was refused, in a July 12, 2006, memorandum from the Army's Installation Management Agency: *"Although your request provides justification as to why the DOIM function should be deferred, it does not provide a comparable number of spaces to be substituted as required by HQ IMA. We will only consider this request for deferral if you identify comparable spaces to be studied in 4th Quarter FY06 in lieu of the DOIM function."*

At the Department of Interior, managers make no effort to hide their use of numerical privatization quotas. The Deputy Assistant Secretary for Performance, Accountability, and Human Resources, told heads of bureaus and equivalent offices, in a June 6, 2006, memorandum, *"the Department's Green Plan was approved by OMB based on the overall level of commitment made by all of the bureaus/equivalent offices to support the President's Management Agenda. While substitutions based on sound business decisions and preliminary planning efforts are perfectly appropriate, we expect bureaus/equivalent offices to maintain at least a comparable level of competitive sourcing activity to honor the original commitment."* What does this direction mean in practice? DoI managers insist that, *"A competition of similar size will have to be substituted for anything removed."* Again, the numerical privatization quota must be achieved at all costs.

2. OMB's privatization scheme is hopelessly pro-contractor.

The House of Representatives has voted to eliminate the May 2003 OMB Circular A-76 privatization process in 2003, 2004, and 2005, because it is simply too pro-contractor. In 2003, the Senate failed by just one vote to do the same. In 2004, however, the Senate joined with the House in trying to defund A-76. And in 2005, the Senate agreed on significant bipartisan reforms of the May 2003 circular.

Here are some examples of why the A-76 privatization process as implemented has been rejected by Republicans and Democrats alike:

- a. Contractors, but not federal employees, can appeal agencies' contracting out decisions to independent third parties.
- b. Federal employees, but not contractors, are automatically recompeted in cases of default.
- c. Federal employees, but not contractors, are automatically recompeted at the end of their performance periods.
- d. Federal employees, but not contractors, are required to compete in order to acquire new work or when their work changes in value.
- e. New work and contracted out work are treated as contractor monopolies.

- f. The definition of what work is “inherently governmental”, and thus off-limits to contractors because it is too important or sensitive to sell off, is narrower than the definition in law.
- g. Contractors, but not federal employees, can lend money to agencies in order to pay for even more contracting out and get paid for how long they work-- instead of what they accomplish.
- h. Agencies are not encouraged—let alone given credit—for using less costly, less controversial alternatives to privatization.
- i. Agencies are still not required to establish inventories to track contractor work, what they’re supposed to be doing and how much they cost, although detailed information about federal employees is meticulously collected and compiled.
- j. Overhead costs for federal employees, but not contractors, are significantly inflated, according to an independent federal watchdog.
- k. Contractors can continue to gain an unfair advantage over federal employees in all agencies except the Defense Department by providing inferior health care benefits, or none at all.
- l. Contractors can gain an unfair advantage over federal employees in all agencies by providing inferior retirement benefits, or none at all.
- m. An unfair and disproportionate burden from privatization continues to be borne by wage-grade employees, rank-and-file employees, and employees who are women and minorities.

3. OMB’s privatization savings claims cannot be substantiated.

OMB officials claim \$1.4 billion in savings from their privatization effort. However, let’s check the facts. The Government Accountability Office (GAO) has repeatedly questioned OMB’s historically grandiose savings claims, and the Comptroller General has said agencies’ financial systems are so decrepit that such estimates cannot be made.

Moreover, OMB officials acknowledge that

- a. only the tiniest fraction of that claim—far less than one percent—represents actual savings, and even that measly claim has not been independently verified;
- b. previous savings claims of 40% are wrong, weakly insisting that privatization, using obvious hedge words, “arguably yielded about 15 percent in savings...”; and
- c. they deliberately used criteria that exaggerate savings from and minimize costs of conducting privatization reviews.

OMB also acknowledges that the savings it claims from privatization reviews come almost exclusively from reducing the number of federal employees. Given that acknowledgement by OMB and OMB’s other acknowledgement that federal employees are more competitive than contractors (because of the high winning percentage of federal employees in A-76 competitions conducted), why does

OMB insist on wasting money on privatization reviews when agencies could restructure internally, thus generating efficiencies but without the significant costs and controversies associated with privatization reviews?

Recent developments indicate that OMB and other agencies are actually indifferent as to whether the privatization effort is resulting in any savings.

- a. OMB: After five years of forcing agencies to review tens of thousands of jobs for privatization, OMB finally got around to establishing a database *“to collect data to see whether the Bush administration’s competitive-sourcing initiative is living up to its claims of saving billions of dollars and improving efficiencies,”* according to an October 20, 2005, article in *Government Computer News* (“InfoReliance to build competitive-sourcing database for OFPP”). *“We did not have this before,’ said Robert Burton, deputy administrator at OFPP, at a recent conference sponsored by the Contract Services Association of America based in Arlington, Va. ‘Data is very important, especially when you [are] reporting to Congress on a regular basis and to the taxpayer on how we are doing on these initiatives... We like data on all our initiatives,’ Burton said. ‘It is hard to authoritatively speak about results without data.’”* How true. But how awful for taxpayers that OMB has consistently failed to heed its own admonition.
- b. DoD: The agency that OMB and contractors consistently cite as a model for other agencies in carrying out their own privatization efforts is, indeed, a model—a model for how to use privatization to charge taxpayers more and provide warfighters with inferior services.
 1. *Not Tracking Costs:* According to the Department of Defense Inspector General, *“DoD had not effectively implemented a system to track and assess the cost of the performance of functions under the competitive sourcing program because system users entered inaccurate and unsupported costs, did not always maintain supporting documentation for key data elements, and the Army, Navy, and Air Force used different methodologies to calculate baseline costs. The overall costs and the estimated savings of the competitive sourcing program may be either overstated or understated. In addition, legislators and Government officials were not receiving reliable information to determine the costs and benefits of the competitive sourcing program and whether it is achieving the desired objectives and outcomes.” DoD Reporting System for the Competitive Sourcing Program (November 22, 2005)*

2. *Giving Contractors Undeserved Bonuses: "The Government Accountability Office reported that the Defense Department paid contractors about \$8 billion in award fees despite the fact that their performance often did not warrant such rewards," according to GovExec.com. "Award fees, which are supposed to compensate contractors for outstanding performance, are used frequently by Defense and civilian agencies. The report [Defense Acquisitions: DoD Has Paid Billions in Award and Incentive Fees Regardless of Acquisition Outcomes, GAO-06-66] found, however, that Defense gave awards to contractors for mediocre and even poor performance."*
 3. *Not Tracking Quality: According to the Department of Defense Inspector General, "For the judgmentally selected service contracts reviewed, contracting officers usually appointed representatives to monitor contractors' performance. However, contracting officials and activity personnel did not provide sufficient contract oversight for service contracts to ensure that contractors were performing in accordance with contract specifications. Of 23 contracts reviewed, 3 contained required quality assurance surveillance plans, 14 had no surveillance plans, and 6 had inadequate surveillance plans. Non-Defense Contract Audit Agency officials approved vouchers for 13 contracts. In addition, contracting and program offices performed cursory reviews of contractor performance against costs for 12 contracts, did not adequately record past performance history for 10 contracts, and did not use performance-based contracting methods for 18 contracts. Overall, DoD could not be assured it received the best value when contracting for services." Contract Surveillance for Service Contracts (October 28, 2005)*
- c. Department of Veterans Affairs (DVA): This agency has already acknowledged that most of its service contracts lose money. In its last required report to the Congress, DVA reported that 38% of the outsourced contracts generated positive savings of \$18 million; 35% of the outsourced contracts generated negative savings of \$31 million; and the remaining 27% generated no savings, which would likely mean additional losses after costs associated with contract administration are taken into account.

Wait, it gets worse. GAO reports that DVA is a long-time and systematic lawbreaker; for several years and on occasions too numerous to count, DVA has diverted precious patient care dollars to pay for illegal cost comparison studies. (Purpose Statute Violation: Veterans Affairs Improperly Funded Certain Cost Comparison Studies with VHA Appropriations, GAO-06-124R) But

that's not all: *"However, VA did not track the time and expense associated with performing cost comparison studies in-house...Moreover, VA was unable to provide us with any estimate, no matter how rough, of the time its VA employees spent on activities in connection with the cost comparisons...(even though) as discussed previously, this amount is likely to be substantial given the amount VA spent contracting out similar activities."*

And then, adding insult to injury, VA, in the form of a letter from Secretary James Nicholson himself, refuses to at least follow GAO's recommendation to start tracking the "substantial" costs associated with privatization studies. As GAO tartly noted, *"VA's disagreement with our conclusions (that the department was a systematic lawbreaker in its repeated violation of the prohibition against diverting health care dollars to pay for privatization studies) is not a sound basis for rejecting our recommendations."*