

2007 Department of Defense: Keeping Our Nation Safe and Secure

Introduction

AFGE is honored to represent more than 200,000 federal employees in the Department of Defense (DoD)—hard-working public servants whose skill and dedication were instrumental in winning the Cold War and making the military capabilities of the United States of America second to none. AFGE's DoD members perform an extraordinary variety of critical tasks for both warfighters and taxpayers—from maintaining planes, ships, and tanks at constant states of readiness in depots and arsenals to administering contracts for goods and services and trying to prevent big defense contractors from raiding the treasury.

The DoD workforce has never been more threatened than it is today.* When not feverishly attempting to privatize the jobs of hundreds of thousands of DoD employees, the Administration is trying to strip civil servants of their protections against politics and favoritism and bust their unions. Thankfully, AFGE's hard-working DoD activists have inspired bipartisan Congressional opposition against wholesale privatization.

AFGE's Wins

1. Establishing Competition Rights for Civilian Employees:

After five years of work, AFGE convinced the Congress to forbid the Defense Department from giving work performed by civilian employees to contractors through direct conversions, effectively blocking crackpot wholesale privatization schemes such as "Pioneer Projects" and "Third Wave".

With respect to DoD activities involving ten or more employees, per Title 10:

- a. No work may be directly converted without first conducting a public-private competition. In other words, no direct conversions may be perpetrated except to qualified nonprofit agencies for blind and other severely handicapped individuals.
- b. The in-house workforce must always be allowed the opportunity to submit its most competitive bids, known as Most Efficient Organization plans.
- c. The contractor must always be determined to be a little cheaper before taking work from federal employees, using the Minimum Cost Differential ("the 10% rule"). In addition, DoD is required to examine "all other costs and expenditures that the Government would incur because of the award of such a contract."

* For information about DoD's changes to civil service protections and collective bargaining rights, see *Dismantling the Civil Service*.

- d. Agencies are not allowed to use the subjective “best value” process outside of the four-year pilot project for information technology work.
- e. There must first be an examination of “the effect of performance of the function by a contractor on the military mission associated with the performance of the function.”
- f. DoD may not avoid the competition requirement merely because an activity “performed by the Department of Defense is reengineered, reorganized, modernized, upgraded, expanded, or changed to become more efficient, but still essentially provides the same service.” In other words, DoD may not arbitrarily say an activity would be “new” if it were contracted out and thus avoid conducting a public-private competition.
- g. DoD may not “modify, reorganize, divide, or in any way change” an activity in order to avoid the competition requirement. In other words, DoD may not break up larger functions so as to get below the “more than ten employees” threshold.
- h. DoD may not contract out in order “to circumvent a civilian personnel ceiling.”

Moreover, for all DoD activities involving more than ten employees, per the Defense Appropriations Bill, contractors may not gain any advantage in a cost comparison process by providing health care benefits that are inferior to those provided to civilian employees by the Defense Department.

2. Giving Civilian Employees Opportunities to Perform New Work and Contracted Out Work:

Contractors insist that more and more contracting out is inevitable. However, the Congress, on a bipartisan basis, disagrees. In the FY06 Defense Authorization Bill (H.R. 1815), the Congress unmistakably encouraged DoD to allow civilian employees opportunities to perform new and contracted out work. The guidance to bring about this dramatic change in policy is more than a month late.

In Section 343 of the Defense Authorization Bill, the Secretary of Defense is required to prescribe guidelines and procedures for ensuring that consideration is given to using civilian employees for work that is currently contracted out or would otherwise be contracted out.

If DoD fails to take the hint, AFGE will have no choice but to work with their bipartisan allies on new legislation that will *force* Pentagon officials to ensure civilian employees have opportunities to perform new and contracted out work.

3. Stopping a Massive Privatization Review of Locks and Dams:

Thanks to the bipartisan and bicameral opposition of the House and Senate Energy and Water Appropriations Subcommittees, the Corps of Engineers cancelled a privatization review of 2,000 employees across the nation who are

responsible for the operation and maintenance of locks and dams. Although the work was clearly inherently governmental, there was no way AFGE could take the threat lightly. After all two locks had been contracted out more than ten years ago, even though the in-house workforce had won two different OMB Circular A-76 competitions.

However, instead of a privatization review, the Corps will subject locks and dams personnel to a high performing organization (HPO) review over the next 18 months, which, according to Corps management, involves 'looking at current processes and re-engineering them to make them more efficient and effective.' Corps management maintains 'that while some work processes may change, no operation and maintenance employees are at risk of losing their jobs.'

Nevertheless, AFGE will be following the HPO process closely to ensure that any re-engineering efforts don't undermine the safety and security of the locks and dams or the employment rights and status of the dedicated and experienced employees who have kept the locks and dams safe and secure. In fact, AFGE members will attempt to participate vigorously in the HPO process. After all, nobody knows better how to make the locks and dams as effective and efficient as they are safe and secure as the Corps' rank-and-file locks and dams personnel.

However, if the planned HPO would compromise the safety and security of the locks and dams or punish the locks and dams workforce, AFGE members will work with their lawmakers, Republicans and Democrats alike, to shut it down—just as surely as they shut down the privatization review. AFGE is hopeful that Corps management will work cooperatively with its represented employees on this important matter.

AFGE's Challenges

1. Securing Equitable Appeal Rights for Civilian Employees for Contracting Out Decisions:

Contractors can overturn agencies' contracting out decisions by appealing them to the Government Accountability Office (GAO) and the Court of Federal Claims. Federal employees have no such appeal rights. The integrity of every single privatization review is undermined because contracting officers—no matter how conscientious—will always be more inclined to favor contractors because only contractors can take contracting officers and their agencies to court. Despite several attempts and strong bipartisan support, AFGE has not yet been successful in establishing equitable appeal rights.

The need for appeal rights has never been made more convincingly than it was last year by the Army's illegal and wasteful privatization of base operations support work of 350 employees at Walter Reed Army Medical Center, in

Washington, DC. The Army admitted that its six-year privatization review was in violation of law as well as its own rules and that whatever savings could be achieved by contracting out were more than offset by the cost of conducting the privatization review and transitioning the work. Even worse, an attempt by senior managers at Walter Reed Army Medical Center to appeal the contracting out decision on behalf of the adversely-affected rank-and-file employees was dismissed by GAO—without ever being heard on the merits—because it was determined that the workforce had no appeal rights. AFGE will strive to rectify this terrible injustice.

2. Eliminating the Arbitrary OMB 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.

The Defense Department is under extraordinary pressure to achieve these arbitrary numerical privatization quotas. 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.

Here's how this policy works in practice: 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."*

Civilian employees should not be reviewed for privatization because of guidance, direction, requirement, or encouragement from OMB officials. AFGE will strive to ensure that OMB officials won't be able to tell agency career managers how many and which employees to review for privatization.

3. Eliminating the Automatic Recompetition Requirement:

The OMB Circular A-76 requires that work performed by federal employees be automatically recompeted at the end of the performance periods (or five years when there are no performance periods)—except in very narrow circumstances. However, the A-76 circular imposes no such requirement on contractors; instead, the Federal Acquisition Regulation (FAR) applies to contractors in such situations, but the FAR includes no automatic recompetition requirement. While the FAR's official policy is one of "Full and Open Competition", the FAR also includes numerous escape clauses that allow for "Other Than Full and Open Competition". Automatic recompetitions are starting to occur throughout the Defense Department for functions that were first competed in the latter part of the Clinton Administration and the early years of the Bush Administration. AFGE Locals report that managers say they are under pressure to conduct recompetitions in order to achieve numerical privatization quotas.

The House version of the FY07 Defense Authorization Bill noted that civilian and contractor workforces "are treated differently with respect to recompetitions" in both A-76 and the FAR. However, because of the opposition of the majority, DoD was only tasked with reporting on "this apparent inequity", specifically determining how often recompetitions occur, identifying "areas of possible disparity" of treatment, and providing "recommendations regarding any inequities". AFGE will strive to eliminate the automatic competition requirement.

DoD managers should make their own decisions about whether civilian employees should be recompeted under the OMB Circular A-76, instead of putting those decisions on automatic pilot. DoD managers currently have discretion with respect to whether to recompete contractors. They should be able to use their discretion with respect to recompeting civilian employees. AFGE will strive to eliminate the automatic recompetition requirement.

4. Excluding Retirement Costs from a Privatization Review's Cost Comparison Process:

Retirement costs should be excluded from the cost comparison process of privatization reviews used by the Defense Department 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. However, such an approach does ensure that federal employees won't be punished for the fixed costs of the federal government's modest retirement benefits in any public-private competition. Health care costs are already excluded for Defense Department privatization reviews, thanks to Senator Edward Kennedy (D-MA). Last year, Senator Kennedy attempted to also exclude retirement costs from Defense Department privatization reviews. However, the amendment he and Senator Orrin Hatch (R-UT) offered to the FY07 Defense Appropriations Bill was

dropped in conference. AFGE will strive to exclude retirement costs from the cost comparison process for DoD privatization reviews.

5. Preserving DoD's National Security-Critical Industrial Facilities (Depots, Arsenals, Ammunition Plants):

The Pentagon regularly demands that the Congress repeal the statutes ensuring that the nation retains a robust and reliable depot maintenance capability to repair and maintain tanks, planes, and ships.

If not for statutes like 10 U.S.C. 2460, 10 U.S.C. 2464, and 10 U.S.C. 2466, the depots would have experienced the same indiscriminate downsizing and reckless privatization suffered by the rest of DoD--with critical shortages of civilian employees in important occupational category after category. Clearly, that would serve the interests neither of warfighters or taxpayers.

Even with the necessary statutory safeguards, depot employees are still better service providers than their contractor counterparts. According to GAO, depot prices are lower for 62% of items repaired by both depots and contractors.

Pentagon privatizers and their contractor cronies will attempt to portray their scheme to destroy the depots as a pro-competition effort. However, that contention is easily refuted when one notes the three other laws that they often attempt to strike from the code. The first law (10 U.S.C. 2469) ensures that a contractor must prove that it can perform the work more efficiently before taking that work from reliable and experienced depot employees. The second (10 U.S.C. 2470) ensures that depots in one service can compete for work needed by another service. And the third (10 U.S.C. 2472) prevents DoD from managing the depot maintenance workforce by arbitrary personnel ceilings, which result in personnel shortages, which in turn force non-competitive privatization.

Given the Congress' decision last year to extend without limitation a loophole that allows depot maintenance workload performed by contractors on the depots to not count towards the contractor side of the 50/50 split, AFGE is also interested in working with lawmakers to strengthen the in-house depot maintenance capability through the following actions:

- a comprehensive, independent study and survey to identify barriers to accelerated depot improvement
- a requirement that services to develop weapon system sustainment roadmaps
- the establishment of programs that formally link trade schools/community colleges/universities with depots as part of a comprehensive long-range strategic personnel plan specifically for the depots
- allowing for reapplication of depot funding saved through continuous process improvement initiatives to the depot sponsoring the initiative

- the development and deployment of a plan to improve the method for determining maintenance repair rates and pricing accuracy.

The Army must secure from the Congress the necessary authority to dismantle the depots and ammunition plants. The arsenals are the exception. The Secretary of the Army could use authority under 10 U.S.C. 4532 to "abolish any United States arsenal that he considers unnecessary" without any Congressional input. AFGE continues to work with House and Senate lawmakers, on a bipartisan basis, to oppose such an effort.

AFGE strongly opposes any attempt to undermine the current in-house industrial capabilities for depots, arsenals, and ammunition plants, and AFGE will work closely with interested House and Senate lawmakers to repel such efforts.