



# AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

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April 5, 2021

Honorable Kathleen H. Hicks  
Deputy Secretary of Defense  
1010 Defense Pentagon  
Washington, D.C. 20301-1010

Dear Secretary Hicks,

On behalf of the American Federation of Government Employees, AFL-CIO, (AFGE) which represents more than 700,000 federal employees who serve the American people in 70 different agencies, including approximately 300,000 in the Department of Defense (DoD), we appreciate your support of a strong national defense and your recognition of the importance of a professional, apolitical civil service supporting our uniformed warfighters. We applaud the actions taken by President Biden and Secretary of Defense Austin to revitalize the federal civilian workforce, including the restoration of full collective bargaining rights, the recognition of the importance of diversity and inclusion, the revamping of the Department's advisory boards, and the return to apolitical merit-based civil service principles.

We write with regard to the Department's apparent neglect of the total force management approach required by Title 10 over the past the past four years, and the related failure to address Government Accountability Office (GAO) findings and recommendations related to "services contracts." The effect of this has been a diminishment of DoD civilians (relative to private contractors) in the Department's planning, programming and budgeting processes in a way that could harm Departmental missions and optimum use of its resources.

A prime example of the marginalization of the civilian workforce is the practice of imposing programmatic savings wedges during Defense wide reviews and the Program Objective Memorandum processes that shift the work performed by DoD civilians to contractors or the military. One of the main impediments to fixing this problem is the failure of Cost Analysis and Program Evaluation (CAPE) to ask for component spending projections for service contracts over the FYDP and then to validate, compete and prioritize contract services requirements in the Department's Defense-wide reviews and Program Objective Memorandum process. The House FY 2021 National Defense Authorization Act criticized this process and asked for a report by January 2021. A GAO assessment of that report continues to place "services contracts" at DoD on its high-risk list because of failures to adequately address this defect.<sup>1</sup>

A symptom of these problematic programming and budgeting practices is reflected in civilian pay under-execution averaging \$1.8B overall over the course of the FY 2015-2019 period documented by the GAO in its June 17, 2020 report to Congress, some of which the

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<sup>1</sup> See, GAO-21-267R: "Services Acquisitions: DOD's Report to Congress Identifies Steps Taken to Improve Management, But Does Not Address Some Key Planning Issues" (Feb. 22, 2021).

Department of Defense Inspector General documented as being spent on lower priority functions, including private contracts for services.

Section 2329 of Title 10, "Procurement of services: data analysis and requirements validation," requires the Department's planning, programming and budgeting process to validate contract services "requirements" and follow the total force management requirements of Section 129a of Title 10, "General policy for total force management". Section 129a includes the following limitations, risk assessment requirements and prohibitions against privatization of functions performed by DoD civilian employees:

- Inherently governmental functions;
- Annual management reviews of contractor inventories to reduce "closely associated with inherently governmental" contracts and inappropriate "personal services contracts";<sup>2</sup>
- In-sourcing requirements for certain high-risk contracts and providing "special consideration" for government performance of new requirements pursuant to Section 2463 of Title 10;
- The requirements of Section 2461 of Title 10 prohibiting the conversion of any function performed by DoD civilian employees to contractor performance unless there is a public-private competition, for which there is currently a moratorium pursuant to Section 325 of the Fiscal Year 2010 National Defense Authorization Act.

Unfortunately, it seems many Defense Components and the Defense Acquisition University (DAU) are ignoring virtually all of the statutory limitations on privatization with the exception of a narrow definition of inherently governmental that would mis-characterize virtually all of the Department's work as "commercial."<sup>3</sup> Accordingly, the Department over the past four years has largely deemphasized and ignored the various total force management categories defined in Title 10 that would statutorily limit or prohibit what has become a form of "stealth privatization," reflected by a number of actions (and summarized in the attached enclosure).

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<sup>2</sup> The Department's suspension of these reviews and degradation of the once robust Departmental contractor inventories by moving from the Enterprise Contractor Manpower Reporting Application (ECMRA) to the System for Award Management (SAM), and the failure to use the contractor inventories to mitigate risks from over-reliance on "closely associated with inherently governmental functions" are two of the matters referenced by the GAO-21-267R "high risk" contract services report cited earlier. ECMRA included direct labor costs and the "requiring organization," critical information missing from SAM.

<sup>3</sup> Interestingly, shortly after enactment of Section 2329 of Title 10 in the 2018 NDAA, the Defense Acquisition University captured the Army's comprehensive guidelines promulgated by its ASA (M&RA) in its Services Contract Handbook that include all the statutory elements referenced in Section 129a of Title 10 as well as other statutory limitations regarding contract interrogators, guards and firefighters in CONUS and more. But the DAU guidebooks have been completely rewritten to delete that comprehensive guidance and now emphasize only the concept of "inherently governmental" as the sole limitation on privatization. And the Army Federal Acquisition Regulation Supplement was rewritten during the same period to make the ASA (M&RA) checklist optional and instead allow contracting officers to merely comply with the "inherently governmental" requirement.

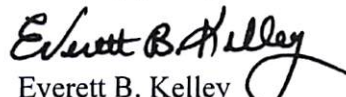
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During the Obama Administration, the USD (P&R) had designated the ASD (M&RA) that included the Director for Total Force Management as the office labor unions could come to when they ran into problems. This practice ceased during the past administration, and the demise of the total force management function has eliminated some important checks and balances on industry influence on the USD (Acquisition and Sustainment).

AFGE had also asked for an appointment to the Defense Business Board during the Obama Administration, and I renew that request here. As representative of 300,000 civilian employees of the Department, our union should be a mission partner on such an advisory board. We also ask that you include AFGE in the inter-agency working groups being established to implement President Biden's February 4, 2021 "Memorandum on Revitalizing America's Foreign Policy and National Security Workforce, Institutions, and Partnerships." We believe that DoD has the potential to lead the way in meeting what we believe to be the spirit and intent of President Biden's actions.

Should your staff have any questions, our subject matter experts on these issues are John Anderson, [john.anderson@afge.org](mailto:john.anderson@afge.org) at 703-943-9438 or Richard Loeb, [Richard.Loeb@afge.org](mailto:Richard.Loeb@afge.org) at 202-639-6466.

Sincerely yours,

  
Everett B. Kelley  
National President

Enclosures:

1. H.R. 6395 Report Language: "Compliance with Contract Services Planning, Programming, and Budgeting Requirements and Statutory Limitations on Outsourcing Government Jobs"
2. Examples of Privatizations That Ignored Total Force Management Policies

cc: SASC, HASC, SAC-D, HAC-D

**Amendment to H.R. 6395**  
**National Defense Authorization Act for Fiscal Year 2021**

In the appropriate place in the report to accompany H.R. 6395, insert the following new Directive Report Language:

**Compliance with Contract Services Planning, Programming, and Budgeting Requirements and Statutory Limitations on Outsourcing Government Jobs**

The committee notes that contract services spending comprises at least one-quarter of the Department of Defense topline but is not currently subjected to the validation and funding offset drills currently applied to the Department of Defense civilian workforce. Further, according to the Government Accountability Office, spending on service contracts has increased significantly in recent years. It is therefore critical that appropriate and sufficiently detailed data are collected and analyzed to support the validation of requirements for service contracts, avoid duplication with other requirements, and properly inform the planning, programming, budgeting and execution process of the Department of Defense. Further, the committee notes that statutory limitations regarding the privatization and outsourcing of Department of Defense civilian jobs are not universally applied throughout the Department. As a result, there are insufficient management controls in place to ensure compliance within the Department.

Therefore, the committee directs the Secretary of Defense to provide a report to the House Committee on Armed Services not later than January 1, 2021, on the Department's current compliance with the contractor inventory requirements in section 2330a of title 10; the specification of amounts required under section 235 of title 10; the data analysis and requirements validation required under section 2329 of title 10; and any guidelines established pursuant to section 852 of the National Defense Authorization Act for Fiscal Year 2018 or any other guidance published by the Department of Defense relating to solicitations for contracts.

Enclosure 1

## EXAMPLES OF PRIVATIZATIONS THAT IGNORED TITLE 10 TOTAL FORCE MANAGEMENT POLICIES

- Downsizing Military Medical Treatment Facilities by shifting the work to oversaturated TRICARE networks, harming military beneficiary access to care, without even considering backfilling the downsized military structure with civilian employees for this “critical” function. Congress has temporarily put a pause on this reorganization which might have been avoided if the Department had backfilled the military medical structure being realigned to operational requirements with DoD civilian hires rather than divesting themselves of care of military beneficiaries through privatization networks which lacked the capacity to handle the additional workload.
- The United States Transportation Command (TRANSCOM) obtained from Congress authority under Section 375 of the Fiscal Year 2020 National Defense Authorization Act for a “global household goods contract,” a “closely associated with inherently governmental” and “critical” function, shifting work to a private sector monopoly without considering the risks to the mission. TRANSCOM did not disclose to Congress that this authority would be an exception to the requirements of 2461 of Title 10, and Section 325 of the Fy2010 NDAA.
- The Defense Resale Task Force proposals to merge Commissaries with Exchanges, temporarily put on hold by Congress because of GAO findings that the investment costs were understated and savings overstated.
- The “core logistics” requirements of Section 2464 of Title 10 for the organic industrial base have similarly been weakened through the largely successful re-framing by industry and the DoD acquisition community that component parts to weapon systems are “commercial” and no different than the parts for a copy machine sold to the general public. As a result of these faux “commercial” characterizations achieved through technical changes made to procurement procedures over the course of several NDAAs, the government’s ability to negotiate access to technical data for these component parts for major weapon systems has been greatly diminished and resulted in largely unanticipated escalation of sustainment costs for these weapon systems
- Some in the Department and press seem to be unaware that there currently is a public private competition moratorium, or a statutory requirement that would preclude contracting services performed by DoD civilian employees. A recent example is the public pronouncement by the new Director of the Defense Information Systems Activity. See, e.g., Andrew Eversden, “DISA Director Favors Outsourcing IT Services to Contractors,” (March 12, 2021); Link is at: <https://www.c4isrnet.com/battlefield-tech/it-networks/2021/03/12/disa-director-favors-outsourcing-it-services-to-contractors>