

SECOND “MINIBUS” SENATE APPROPRIATION BILL
H.R. 2354 -- Energy & Water, Financial Services, State/Foreign Operations
Amendments Needed to Strike Bad Language

Energy & Water

Section to strike.

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SEC. 102.

None of the funds in this Act, or previous Acts, making funds available to the Corps, shall be used to implement any pending or future competitive sourcing actions under OMB Circular A-76 or High Performing Organizations.

Financial Services

Section to strike.

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SEC. 734.

None of the funds appropriated or otherwise made available by this or any other Act may be used to begin or announce a study or public-private competition regarding the conversion to contractor performance of any function performed by Federal employees pursuant to Office of Management and Budget Circular A-76 or any other administrative regulation, directive, or policy.

Section to strike.

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SEC. 741.

Section 743 of the Consolidated Appropriations Act, 2010 (Public Law 111-117; 31 U.S.C. 501 note) is amended—

- (1) in subsection (a)(3), by inserting after “exercise of an option” the following: “, and task orders issued under any such contract,”;
- (2) in subsection (a)(3)(G), by inserting before the period at the end the following: “, using direct labor hours and associated cost data collected from contractors”;
- (3) in subsection (e)(2)(B), by striking the text and inserting the following: “the contracts exclude to the maximum extent practicable functions that are closely associated with inherently governmental functions;”;
- and
- (4) by redesignating subsections (h) and (i) as subsections (i) and (j) and by inserting after subsection (g) the following new subsection:
“(h) SUBMISSION OF REPORT ON ACTIONS TAKEN BEFORE PUBLIC-PRIVATE COMPETITION MAY OCCUR.— An executive agency may not begin, plan for, or announce a study or public-private competition regarding the conversion to contractor performance of any function performed by Federal employees pursuant to Office of Management and Budget Circular A-76 or any other administrative regulation or directive until after that agency has submitted to the Office of Management and Budget a report, pursuant to subsection (f), that includes actions taken to convert from contractor to Federal employee performance functions that are not inherently governmental, closely associated with governmental functions, critical, or should not otherwise be reserved for performance by Federal employees. This subsection shall take effect beginning with the report required under subsection (f) that is included as an attachment to the annual inventory due by December 31, 2011.”.

Section to strike.

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SEC. 742.

The Office of Management and Budget shall issue guidance, consistent with section 735 of division D of the Omnibus Appropriations Act, 2009, Public Law 111–8, and section 739(a)(1) of division D of the Consolidated Appropriations Act, 2008 (Public Law 110–161), and section 327 of the 2008 National Defense Authorization Act (Public Law 110–181), to prohibit the use of direct conversions to contract out, in whole or in part, activities or functions last performed by any number of Federal employees by an executive agency without first conducting a public-private competition. Such guidance shall ensure that—

- (1) activities or functions performed by an executive agency and are reengineered, reorganized, modernized, upgraded, expanded, or changed to become more efficient, but still essentially providing the same service, shall not be contacted out without first conducting a public-private competition;
- (2) activities or functions performed by Federal employees for an executive agency may not be modified, reorganized, divided, or in any way changed for the purpose of exempting the conversion of the activities or functions from the prohibition against the use of direct conversions; and
- (3) activities or functions performed by Federal employees for an executive agency who have retired or been reassigned to perform other activities may not be converted to contractor performance without first conducting a public-private competition.

State/Foreign Operations

Section to strike.

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REPROGRAMMING NOTIFICATION REQUIREMENTS

SEC. 7015.

(a) None of the funds made available in title I of this Act, or in prior appropriations Acts to the agencies and departments funded by this Act that remain available for obligation or expenditure in fiscal year 2012, or provided from any accounts in the Treasury of the United States derived by the collection of fees or of currency reflows or other offsetting collections, or made available by transfer, to the agencies and departments funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that:

...

- (8) contracts out or privatizes any functions or activities presently performed by Federal employees; unless the Committees on Appropriations are notified 15 days in advance of such reprogramming of funds.*

The Business Coalition for Fair Competition (BCFC) is a national coalition of businesses, associations, taxpayer organizations and think tanks that are committed to reducing all forms of unfair government created, sponsored and provided competition with the private sector. BCFC believes the free enterprise system is the most productive and efficient provider of goods and services and strongly supports the Federal government utilizing the private sector for commercially available products and services to the maximum extent possible.

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