



SENATE APPROPRIATIONS BILLS
Amendments Needed to Strike Bad Language

Agriculture – H.R. 2112-RS

<http://www.gpo.gov/fdsys/pkg/BILLS-112hr2112rs/pdf/BILLS-112hr2112rs-1.pdf>

Section to strike.

Pages 83-84

OFFICE OF THE CHIEF FINANCIAL OFFICER

For necessary expenses of the Office of the Chief Financial Officer, \$5,935,000: Provided, That no funds made available by this appropriation may be obligated for FAIR Act or Circular A-76 activities until the Secretary has submitted to the Committees on Appropriations of both Houses of Congress and the Committee on Oversight and Government Reform of the House of Representatives a report on the Department’s contracting out policies, including agency budgets for contracting out.

Commerce – S. 1572

<http://www.gpo.gov/fdsys/pkg/BILLS-112s1572pcs/pdf/BILLS-112s1572pcs.pdf>

Section to strike.

Page 68

Sec. 212.

None of the funds appropriated by this Act may be used to plan for, begin, continue, finish, process, or approve a public-private competition under the Office of Management and Budget Circular A-76 or any successor administrative regulation, directive, or policy for work performed by employees of the Bureau of Prisons or of Federal Prison Industries, Incorporated.

Section to strike.

Pages 92-94

Sec. 505.

(a) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies 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 available to the agencies funded by this Act, shall be available for obligation or expenditure through the reprogramming of funds that-- (6) contracts out or privatizes any functions or activities presently performed by Federal employees, unless the House and Senate Committees on Appropriations are notified 15 days in advance of such reprogramming of funds;

Defense – H.R. 2219-RS

<http://www.gpo.gov/fdsys/pkg/BILLS-112hr2219rs/pdf/BILLS-112hr2219rs.pdf>

Section to strike.

Pages 214-215

Sec. 8026.

During the current fiscal year, the Department of Defense may acquire the modification, depot maintenance and repair of aircraft, vehicles and vessels as well as the production of components and other Defense-related articles, through competition between Department of Defense depot maintenance activities and private firms: Provided, That the Senior Acquisition Executive of the military department or Defense Agency concerned, with power of delegation, shall certify that successful bids include comparable estimates of all direct and indirect costs for both public and private bids: Provided further, That Office of Management and Budget Circular A-76 shall not apply to competitions conducted under this section.

Section to strike.

Pages 223-226

Sec. 8038.

(a) None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of the Department of Defense that, on or after the date of the enactment of this Act, is performed by Department of Defense civilian employees unless--

(1) the conversion is based on the result of a public-private competition that includes a most efficient and cost effective organization plan developed by such activity or function;

(2) the Competitive Sourcing Official determines that, over all performance periods stated in the solicitation of offers for performance of the activity or function, the cost of performance of the activity or function by a contractor would be less costly to the Department of Defense by an amount that equals or exceeds the lesser of--

- (A) 10 percent of the most efficient organization's personnel-related costs for performance of that activity or function by Federal employees; or
- (B) \$10,000,000; and

(3) the contractor does not receive an advantage for a proposal that would reduce costs for the Department of Defense by--

- (A) not making an employer-sponsored health insurance plan available to the workers who are to be employed in the performance of that activity or function under the contract; or
- (B) offering to such workers an employer-sponsored health benefits plan that requires the employer to contribute less towards the premium or subscription share than the amount that is paid by the Department of Defense for health benefits for civilian employees under chapter 89 of title 5, United States Code.

(b)(1) The Department of Defense, without regard to subsection (a) of this section or subsection (a), (b), or (c) of section 2461 of title 10, United States Code, and notwithstanding any administrative regulation, requirement, or policy to the contrary shall have full authority to enter into a contract for the performance of any commercial or industrial type function of the Department of Defense that--

- (A) is included on the procurement list established pursuant to section 2 of the Javits-Wagner-O'Day Act (section 8503 of title 41, United States Code);
- (B) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or
- (C) is planned to be converted to performance by a qualified firm under at least 51 percent ownership by an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), or a Native Hawaiian Organization, as defined in section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15)).

(2) This section shall not apply to depot contracts or contracts for depot maintenance as provided in sections 2469 and 2474 of title 10, United States Code.

(c) The conversion of any activity or function of the Department of Defense under the authority provided by this section shall be credited toward any competitive or outsourcing goal, target, or measurement that may be established by statute, regulation, or policy and is deemed to be awarded under the authority of, and in compliance with, subsection (h) of section 2304 of title 10, United States Code, for the competition or outsourcing of commercial activities.

Section to strike.

Pages 239-240

Sec. 8058.

(a) Prohibition on Conversion of Functions Performed by Federal Employees to Contractor Performance- None of the funds appropriated or otherwise made available by this Act, or that remain available for obligation for the Department of Defense under any prior appropriations act, may be used to begin or announce the competition to award to a contractor or convert to performance by a contractor any functions performed by Federal employees pursuant to a study conducted under Office of Management and Budget (OMB) Circular A-76.

(b) Exception- The prohibition in subsection (a) shall not apply to the award of a function to a contractor or the conversion of a function to performance by a contractor pursuant to a study conducted under Office of Management and Budget (OMB) Circular A-76 once all reporting and certifications required by section 325 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84) have been satisfactorily completed.

Energy & Water – H.R. 2354-RS

<http://www.gpo.gov/fdsys/pkg/BILLS-112hr2354rs/pdf/BILLS-112hr2354rs.pdf>

Section to strike.

Page 75

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 – S. 1573

<http://www.gpo.gov/fdsys/pkg/BILLS-112s1573pcs/pdf/BILLS-112s1573pcs.pdf>

Section to strike.

Page 134

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.

Pages 138-140

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.

Pages 140-141

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 contracted 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.

Homeland Security – H.R. 2017-RS

<http://www.gpo.gov/fdsys/pkg/BILLS-112hr2017rs/pdf/BILLS-112hr2017rs.pdf>

Section to strike.

Page 155

Sec. 514.

For fiscal year 2012 and thereafter, none of the funds appropriated by this Act may be used to process or approve a competition under Office of Management and Budget Circular A-76 for services provided as of June 1, 2004, by employees (including

employees serving on a temporary or term basis) of United States Citizenship and Immigration Services of the Department of Homeland Security who are known as of that date as Immigration Information Officers, Contact Representatives, or Investigative Assistants.

Section to strike.

Page 161

Sec. 528.

None of the funds appropriated by this Act may be used to conduct, or to implement the results of, a competition under Office of Management and Budget Circular A-76 for activities performed with respect to the Coast Guard National Vessel Documentation Center.

Interior and Environment – H.R. 2584

No Senate bill or markup currently available.

No language to strike.

Labor/HHS/Education – S. 1599

<http://www.gpo.gov/fdsys/pkg/BILLS-112s1599pcs/pdf/BILLS-112s1599pcs.pdf>

No language to strike.

Legislative Branch – H.R. 2551-RS

<http://www.gpo.gov/fdsys/pkg/BILLS-112hr2551rs/pdf/BILLS-112hr2551rs.pdf>

No language to strike.

Military/Veterans – H.R. 2055-PP

<http://www.gpo.gov/fdsys/pkg/BILLS-112hr2055pp/pdf/BILLS-112hr2055pp.pdf>

No language to strike.

State/Foreign Operations – S. 1601

<http://www.gpo.gov/fdsys/pkg/BILLS-112s1601pcs/pdf/BILLS-112s1601pcs.pdf>

No language to strike.

Transportation – S. 1596

<http://www.gpo.gov/fdsys/pkg/BILLS-112s1596pcs/pdf/BILLS-112s1596pcs.pdf>

No language to strike.

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.

**1856 Old Reston Avenue, Suite 205, Reston, Virginia 20190
P (703) 787-6665; F (703) 787-7550**