



AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Eric Bunn Sr.
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March 16, 2023

Hon. Ken Calvert
Chair, Subcommittee Defense
House Appropriations Committee
H-405 The Capitol
Washington, D.C. 20515

Hon. Jon Tester
Chair, Subcommittee Defense
Senate Appropriations Committee
122 Dirksen Building
Washington, D.C. 20510

Hon. Betty McCollum
Ranking Member, Subcommittee Defense
House Appropriations Committee
H-405 The Capitol
Washington, D.C. 20515

Hon. Susan Collins
Ranking Member, Subcommittee Defense
Senate Appropriations Committee
122 Dirksen Building
Washington, D.C. 20510

Dear Chair Calvert, Chair Tester and Ranking Members McCollum and Collins:

On behalf of the American Federation of Government Employees, AFL-CIO (AFGE) which represents over 750,000 federal and District of Columbia employees who serve the American people in 70 different agencies, including approximately 250,000 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 servicemen and women. As you and the Armed Services Committees begin work on the Defense Appropriation for Fiscal Year 2024, we write to urge your support on the following issues which we will be submitting as Member Requests in accordance with each Member's prescribed formats.

1. **Please carry forward the current section 8012 from the Pub. L. 117-328, "Consolidated Appropriations Act, 2023" Division C (Dec. 29, 2022)** which most accurately corresponds to language in sections 129 and 129a of title 10. Section 1102 of the Publ. L. 117-81, the Fiscal Year 2022 National Defense Authorization Act, repealed an ambiguity and contradictory language in section 129 of title 10 that would have allowed the imposition of arbitrary hiring restrictions and reductions of the DoD civilian workforce. Accordingly, the current section 8012 language is fully consistent with that most recent amendment of title 10 and any reversion to earlier language is incorrect and not in conformity with sections 129 and 129a of title 10. Section 8012 currently corresponds to the statutory language on how the Department of Defense civilian workforce is to be managed in title 10 United States Code section 129, "Civilian personnel management," which specifically incorporates by reference and requires compliance with title 10 USC 129a, "General policy for total force management." Relevant extracts are quoted below:

The civilian personnel of the Department of Defense shall be managed each fiscal year solely on the basis of and consistent with (1) the total force management policies and

procedures established under section 129a of this title, (2) the workload required to carry out the functions and activities of the department, and (3) the funds made available to the department for such fiscal year. The management of such personnel in any fiscal year shall not be subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. The Secretary of Defense and the Secretaries of the military departments may not be required to make a reduction in the number of full-time equivalent positions in the Department of Defense except in accordance with the requirements of this section and section 129a of this title.

...

The Secretary may not reduce the civilian workforce programmed full-time equivalent levels unless the Secretary conducts an appropriate analysis of the impacts of such reductions on workload, military force structure, lethality, readiness, operational effectiveness, stress on the military force, and fully burdened costs.

2. **Please include language enforcing compliance with section 815 of the Fiscal Year 2022 NDAA, codified at section 4506 of title 10, with respect to services contract budget submissions.** Absent appropriations language, there is little incentive for the Department to come into full compliance with section 4506 of title 10, which was enacted to great fanfare by former Chairman Thornberry in the 2018 NDAA as a major acquisition reform that would finally provide the Department and Congress transparency over services contracts in response to longstanding GAO findings and recommendations. Six years later, the Department has not fully or consistently complied with the various statutory prohibitions incorporated into section 4506 of title 10 against privatizing federal employee jobs and requirements to mitigate risks of contractor performance of “closely associated with inherently governmental” and “critical functions” by giving “special consideration” to federal employee performance of such functions. The Department should be mitigating those risks both for new requirements as well as those currently performed by contractors.

Numerous GAO reviews have documented the Department’s inadequate effort to do so. As late as February 2021, the GAO still found the Department to be largely non-compliant with section 4506, retaining services contract management on its high-risk list. See, GAO-21-267R (Feb. 2021). And as of July 2022, the HASC issued directive report language in its markup at H.R. 7900, National Defense Authorization Act for Fiscal Year 2023 H. Rept. No. 117-397, pp. 237-9:

Total Force Management. The committee observes with concern that the Department has not submitted the plan, including in particular any changes to programming guidance, and the roles and responsibilities of the Under Secretary of Defense Comptroller, Under Secretary of Defense for Acquisition and Sustainment, Under Secretary of Defense for Personnel and Readiness, and Office of Cost Assessment and Program Evaluation, due June 1, 2022, for improving visibility on future services requirements in the future years defense program, as required by section 815 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81). . . . Over one quarter of the Department’s topline and the largest share of total force spending among military, civilian workforce, and contractors goes to service contracts, and yet their requirements

still are not fully transparent or validated in the Department's planning, programming, budgeting, and execution system process.

Compliance with section 4506 of title 10 would introduce an element of fairness and transparency currently lacking in the appropriations process whereby DoD civilian employees funded out of the same appropriations as service contractors are currently penalized for under-execution of Departmental hiring projections, when the funding gets inappropriately shifted over to service contracts.¹ Appropriation and Authorization funding tables show funding for the civilian workforce down to the Defense Component, program element, and organizational level but completely omit any kind of transparency for services contractors funded out of the same appropriation. This creates massive incentives to under-execute civilian hiring projections and shift the funds to contract services, creating a slush fund for Defense spending where waste, duplication and lower priority work is not highlighted.²

Last year, no services contract budget was submitted for Fiscal Year 2023. The last submission in Fiscal Year 2022 reflected \$165.04 billion in this category, omitting RDTE and MilCon funded services contracts which are supposed to be included in the section 4506 of title 10 budget exhibit.³ Absence of transparency over services contracts in budget creates a slush fund of potential waste and duplication for Department of Defense. The CBO has recently done work pointing out the importance of this transparency over services contracts over the FYDP that is currently lacking, and failure to implement section 4506 is one major reason why management of DoD services contracts remains on GAO's high-risk list. See, GAO-21-267R (Feb. 2021); <https://www.cbo.gov/system/files/2023-01/58579-FYDP.pdf>.

It is wasteful and an abrogation of oversight responsibilities not to deal with this issue covering a substantial share of DoD's top line, much more than is spent on the civilian workforce. The FY2020 HAC-D markup had directive report language to address this issue, but then the issue dropped off the radar, both in fiscal year 2021 and 2022 Defense Appropriations: "The Committee notes that 10 USC 2329 [now 4506] requires the Secretary of Defense to ensure that appropriate and sufficiently detailed data are collected and analyzed to support the validation of requirements for services contracts and inform the planning, programming, budgeting, and execution process of the Department of Defense. Appropriated funds should not be used to fund services contracts that have not complied with the planning, programming, budgeting and total force management requirements of 10 U.S.C. sections 2329 and 2330a...." See pp. 13-14 of

¹ Current Deputy Secretary of Defense Hicks accurately described what this lack of transparency over services contracts yields when the civilian workforce is cut: "Predictably, for example, even though Congress directed the Defense Department to cut \$10 billion through administrative efficiencies between 2015 and 2019, the Pentagon failed to substantiate that it had achieved those savings. The reason those efforts rarely succeed is that they merely shift the work being done by civilians to others, such as military personnel or defense contractors." Kathleen Hicks, "Getting to Less: The Truth About Defense Spending," *Foreign Affairs* (March 2020), p. 56.

² And this further results in most headquarters services contracts spending getting reported in mission accounts when they should be reported in headquarters accounts. This sometimes works to the disadvantage of small business contractors when for example Ability One dining facility contracts showed up on a MilDeps' unfunded low priority list until it was pointed out that there were lower priority Pentagon consultant contracts that could have been cut to fund these dining facility contracts.

³ See <https://comptroller.defense.gov/Budget-Materials/Budget2022/>.



HAC-D FY2022 markup. This language needs to be codified in the Defense Appropriation, or it will recur as a problem in the coming years.

For additional information or questions, please contact John Anderson, (202) 258-9362, john.anderson@afge.org.

Sincerely,



Julie N. Tippens
Director, Legislative Department

Cc: HASC SASC
Chairwoman Patty Murray
Chairwoman Kay Granger
Ranking Member Rosa DeLauro
House and Senate Appropriations Committee Members