

Apr-15-2003 09:05pm From-Rep.Dennis J.Kucinich

202 225 5745

T-398 P.002/004 F-245

1730 LONGWORTH OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-5871



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14400 DETROIT AVENUE
LAKEWOOD, OHIO 44107
(216) 228-3850

Congress of the United States
House of Representatives

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April 14, 2003

Mr. Thomas R. Bloom
Director
Defense Finance and Accounting Service
1931 Jefferson Davis Highway
Arlington, Virginia 22240-5291

Dear Mr. Bloom:

We have followed with great interest the investigation of the Department of Defense Inspector General (IG) into the flawed public-private competition for the Defense Finance and Accounting Service's (DFAS) military retired and annuitant pay functions. As you know, the IG has determined that, "a \$31.8 million error by a DFAS consultant in the public-private competition resulted in the award of an A-76 contract with a potential value of \$346 million to the contractor rather than the lower in-house bid."¹ It is our understanding that DFAS does not dispute the IG's determination that a fair public-private competition would have been won by the in-house bidder.

Although it took a long time, the error has been identified. Now, it is time to rectify that error by reversing the results of that public-private competition and bringing back in-house the work which was wrongly privatized. DFAS possesses the authority, upon expiration of the option, to opt out of its contract with Affiliated Computer Services (ACS) and bring the work back in-house with the waiver authority established in OMB Circular A-76.

Under the Supplement, Chapter 1, E., Agency Cost Comparison Waivers, the Departmental Agency Head—the DFAS Director—

"may authorize cost comparison waivers and direct conversions to or from in-house (or) contract...performance...A written cost comparison waiver will be prepared and signed by the authorized waiver official. The waiver will be accompanied by a detailed determination that the conversion meets the following requirements:

- 1) *The conversion will result in a significant financial or service quality improvement and a finding that the conversion will not serve to reduce significantly the level of quality of competition in the future award or performance of work; or*

¹Department of Defense Office of the Inspector General, *Infrastructure and Environment: Public/Private Competition for the Defense Finance and Accounting Service Military Retired and Annuitant Pay Functions* (D-2003-056) March 21, 2003.

- 2) *The waiver will establish why in-house or contract offers have no reasonable expectation of winning a competition conducted under the cost comparison procedures of this Supplement.*"

Based on the IG's report, DFAS could exercise the waiver authority to bring the work back in-house under either option.

With respect to the first option, not only would bringing the work back in-house result in significant savings to the taxpayers, but DFAS' ability to control the quality of work performed would be improved dramatically. That is because a fair competition would have determined that the in-house bid was approximately \$30 million cheaper, "a significant financial improvement." Moreover, the IG also reported that the contract awarded "had inadequate standards in the performance requirements summary for 7 of 10 contract performance requirements. As a result, contractor performance cannot be fully or effectively evaluated and holding the contractor accountable for inadequate performance is difficult."

With respect to the second option, as a result of the IG's lengthy investigation, it has been determined conclusively that a fair competition would have been won by the in-house bid. Consequently, it can clearly be said that the contractor offer has "no reasonable expectation of winning a competition."

Under either option, DFAS has the authority to bring the work back in-house using the waiver authority in OMB Circular A-76.

Consequently, we believe that DFAS had both the authority and the information required to opt out of its contract with ACS and bring the work in-house in the 2003 option year. But DFAS did nothing. According to DoD IG, on or about June 4, 2002 -- seven months before the option renewal period -- the IG informed DFAS about the calculation error that resulted in the erroneous award of the contract to ACS. In testimony before the subcommittee on National Security, Emerging Threats and International Relations, and Technology, Information Policy, Intergovernmental Relations and the Census, you stated that the calculation error was proven to you in July. So DFAS could have begun efforts to transition the Military Retired and Annuitant pay work once it was known to DFAS, by the work of an independent agency, that the contract was erroneously awarded to ACS. DFAS clearly possessed the regulatory authority to do so.

The contract's annual option expires again in January 2004. By that time, DFAS will have known for 18 months that the contract was erroneously awarded to the more expensive bidder. We believe that that is an adequate amount of time for DFAS to facilitate an organized and efficient transition of the work back in-house. Since the contractor workforce is largely made up of former DFAS employees, there should be no difficulty in quickly recruiting the necessary staff.

We believe it is important for DFAS to bring the Military Retired and Annuitant Pay work back in-house because righting the wrong done by an unfair competition restores integrity to the competition process and actually increases "the level of quality of competition" in the future award or performance of work. You testified to a joint hearing of the subcommittee on National

Security, Emerging Threats and International Relations, and Technology, Information Policy, Intergovernmental Relations and the Census that you would take action to address this erroneous privatization:

KUCINICH:

If you know the taxpayers are going to lose money on this contract, are you going to renew the contract in January, '04?

BLOOM:

If it's proven that the taxpayers would indeed be better off, we will do that. We will do the correct thing.

We look forward to working with you to right the wrong that was done to taxpayers and DFAS' workforce through the erroneous award to a contractor of Military Retired and Annuitant Pay, following a flawed A-76 public-private competition.

Sincerely,

Dennis J. Kucinich
Dennis J. Kucinich
Member of Congress

Stephanie Tubbs Jones
Stephanie Tubbs Jones
Member of Congress

Steven LaTourette
Steven LaTourette
Member of Congress

Sherrod Brown
Sherrod Brown
Member of Congress

Marcy Kaptur
Marcy Kaptur
Member of Congress

DJK:jb