



J. David Cox, Sr.
National President

Augusta Y. Thomas
NVP for Women & Fair Practices

375537

January 19, 2018

Honorable Mark T. Esper
Secretary of the Army
101 Army Pentagon
Washington, DC 20310

Dear Secretary Esper:

On behalf of the American Federation of Government Employees, AFL-CIO, which represents about 300,000 Department of Defense federal employees in every state and territory, I am asking you to ensure the Department complies with the statutory prohibitions against converting work designated for civilian employee performance to contract performance.

Section 325 of the National Defense Authorization Act (NDAA) for FY 2010 (Public Law 111-84) suspended public-private competitions, and that moratorium continues in effect. The Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs longstanding Departmental guidance has been that "this continued restriction prohibits the conversion of any work currently performed (or designated for performance) by civilian personnel, regardless of whether a position or billet is established for that work, or whether that position or billet is encumbered."

On December 28, 2017, we were informed that the U.S. Army Sustainment Command had tasked the 406th Army Field Support Brigade to augment the workforce for Logistics Readiness Center (LRC) West Point, New York, by "contract[ing] services to produce approximately 1,400 black parkas and 2,600 sashes and belts, with delivery by August 2018 and April 2018." This is described as a "stop gap measure, necessary until such time that the workforce and inventory can grow and stabilize," and that "no Department of Army Civilian is losing his/her job or opportunity for overtime." (Enclosure).

The contracting of this function is inconsistent with longstanding title 10 statutory prohibitions against converting work that has been designated for civilian performance, and parallel appropriations restrictions reaffirmed each year (and in continuing resolutions). The representation that "no Department of Army Civilian is losing his/her job or opportunity for overtime" *dodges* the fact that this contracting out of functions for which there are vacancies and for which civilian hires have been designated blatantly ignores very clear statutory (and parallel appropriations language), and the Department's longstanding policies implementing these statutory requirements.

Most recently in the Fiscal Year 2018 National Defense Authorization process and during the Fiscal Year 2018 Appropriations processes, on an overwhelming bi-partisan basis, the Congress continued the moratorium on public-private competitions out of concerns to ensure the Department does not waste its precious resources on costly contracts rather than relying upon its most cost-effective civilian workforce.¹

- The Defense Business Board recently documented that Department spent as much on 777,000 contract services employees (\$141.7B or 24 percent) as it does on military pay and benefits (\$136.7B or 23 percent), double what the DoD spends on its 740,000 civilian workforce (\$71.5B or 12 percent).²
- When “apples to apples” comparisons are made with Army contractor inventory data, the indirect costs (including overhead and profit) for contractors is more than double the direct labor costs for those services, making contracted services far more expensive than DoD civilians.³
- The Department has not fulfilled the conditions required by section 325 of the NDAA for FY2010 to establish better transparency for contract services in its inventories and budget submissions to Congress. Indeed, most recently for the FY2018 NDAA, the House Armed Services Committee Chairman's Press Release for the FY2018 NDAA stated: "Unfortunately, DoD and Congress have limited insight into how and where this [\$144 billion of contract services spending in DoD] is spent."⁴ The GAO recognized that the "DoD's budget exhibits on contract services provide limited visibility to Congress on planned spending, and the primary exhibit for contracted services does not meet statutory reporting requirements."⁵

Accordingly, I am asking for your assistance to ensure these statutory requirements and policies are implemented by the U.S Army Sustainment Command and the LRC-West Point, and

¹ Rep. Matt Cartwright Amendment passes by a vote of 253-172 (co-sponsored by Rep. Don Beyer, Rep. Rob Bishop, Rep. Tom Cole, Rep. Paul Cook, Rep. Dan Donovan, Rep. Walter Jones, Rep. Derek Kilmer, Rep. Dave Loebsack, Rep. John Ratcliffe, Rep. Austin Scott, and Rep. Carol Shea-Porter on 27 Jul 2017 as part of DoD, Military Construction, Department of Veterans Affairs, Energy and Water and Legislative Branch appropriations bills. See also, Congressional Research Service: Circular A-76 and the Moratorium on DoD Competitions: Background and Issues for Congress (16 Jan. 2013) (contains comprehensive documentation of DoD IG and GAO reports cited in Fiscal Year 2010 NDAA section 325; see also, GAO-03-214, “Defense Management: Army Needs to Address Resource and Mission Requirements Affecting its Training and Doctrine Command” (Feb 2003) (illustrating the dilemma posed by A-76 competitions to the Army requiring either cutting its military End Strength or facing annual unprogrammed military buyback costs ranging from \$98M to \$145M).

² Defense Business Board Briefing, “Fully Burdened and Life Cycle Cost of the Workforce,” 17 Apr 2016.

³ Army Testimony Before the Subcommittee on Contracting Oversight, Committee on Homeland Security and Governmental Affairs, “On Contractors: How Much Are They Costing the Government?”, 29 Mar 2012.


⁴ House Armed Services Committee Chairman’s Press Release, “Reform and Rebuild: National Defense Authorization Act for FY18,” p. 3.

⁵ GAO 16-119, “DoD Service Acquisition: Improved Use of Available Data Needed to Better Manage and Forecast Service Contract requirements” (Feb 2016); See also GAO-17-17, “DoD Inventory of Contacted Services” timely Decisions and Further Actions Needed to Address Long-Standing Issues” (Oct 2016).

to hear back from you on how the Department is taking steps to comply with the requirements imposed by Congress based on DoD IG and GAO concerns with the lack of savings and accountability over contract spending that led to the public-private competition moratorium in the first place.

If you have any questions, please feel free to contact John Anderson, Legislative Representative, at john.anderson@afge.org or 202-639-6485, or Jacque Simon, Policy Director, at simonj@afge.org or 202-639-6410. We look forward to hearing from you.

Sincerely,



J. David Cox, Sr.
National President

Enclosure

cc: Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs
U.S. Army Sustainment Command
LRC West Point



DEPARTMENT OF THE ARMY
OFFICE OF THE DEPUTY CHIEF OF STAFF FOR PERSONNEL, G-1
USACHRA. NORTHEAST REGION, WEST POINT CIVILIAN PERSONNEL ADVISORY CENTER
626 SWIFT ROAD
WEST POINT, NY 10996-1514

December 28, 2017

Mr. Don Hale, President
AFGE Local 2367
P.O. Box 81
West Point, New York 10996

Dear Mr. Hale:

This is a courtesy notification to advise you that the U.S. Army Sustainment Command (ASC), tasked the 406th Army Field Support Brigade to augment the workforce for LRC West Point, New York in order to ensure mission readiness of supported units. This directive applies to critical LRC services, specifically, the Cadet Uniform Factory.

LRC West Point requires contract services to produce approximately 1,400 black parkas and 2,600 red sashes and belts, with delivery by August 2018 and April 2018 respectively. This is a stop gap measure, necessary until such time that the workforce and inventory can grow and stabilize. It is required to meet critical time deadlines, and no Department of Army Civilian is losing his/her job or opportunity for overtime. No civilian employee will be displaced, reassigned, subjected to reduction in force, or otherwise adversely affected.

//SIGNED//
Niko Jones-Bowsky
Chief, L/MER

Attachment
