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March 26, 1999

The Honorable Ben Nighthorse Campbell
Chairman
The Honorable Byron L. Dorgan
Ranking Minority Member
Subcommittee on Treasury, General Government,
and Civil Service
Committee on Appropriations
United States Senate

The Honorable Jim Kolbe
Chairman
The Honorable Steny H. Hoyer
Ranking Minority Member
Subcommittee on Treasury, Postal Service,
and General Government
Committee on Appropriations
House of Representatives

The Honorable Steve Horn
Chairman
Subcommittee on Government Management, Information
and Technology
Committee on Government Reform
House of Representatives

Subject: Outsourcing and Privatization: Private-Sector Assistance for Federal Agency Studies

Section 640 of the Treasury, Postal Service, and General Government Appropriations Act of 1997¹ authorizes the Office of Management and Budget (OMB) and federal executive branch agencies to use private-sector assistance in conducting reviews and analyses² of whether to contract out, outsource, or privatize³ certain activities under the provisions of the Clinger-

¹ P.L. 104-208, September 30, 1996.

² Private-sector assistance refers to the participation of consultants or consultant firms that are contracted from the private sector to perform or assist in the applicable federal reviews and analyses.

³ Outsourcing refers to the transfer of an existing federal business or administrative function to the commercial sector, with the government remaining responsible for the affected services. Privatization refers to the transfer of a federal business or administrative function, including the responsibility for the affected services, to the commercial sector.

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Cohen Act of 1996 (CCA),⁴ particularly section 5113 concerning new information systems (and information technology (IT)). Section 640 also requires applicable IS/TT studies, reviews, and analyses carried out under section 5113(b)(2)(B) and (C)⁵ of the CCA, hereinafter referred to as "studies," that begin on or after September 30, 1996, and end before September 1, 1999, to (1) last no longer than 180 days, unless an extension is approved by the agency head, and (2) be conducted in a manner that precludes private-sector participants of these studies from participating in subsequently outsourced work. Further, section 640 requires to review and provide an assessment of its implementation.

To fulfill this requirement, we contacted six executive branch agencies, along with OMB, to determine what actions they had taken to implement section 640, and particularly its specific emphasis on CCA section 5113 (b)(2)(B) and (C). Additionally, we obtained information from these agencies about private-sector participation on non-IS/TT-related outsourcing and privatization studies for the same period. These six agencies included the Departments of Defense (DOD), Energy (DOE), Transportation (DOT), and Health and Human Services (HHS), as well as the National Aeronautics and Space Administration (NASA) and the General Services Administration (GSA). Within DOD, we included the Army, Navy, Air Force, Marine Corps, Defense Logistics Agency (DLA), and Defense Finance and Accounting Service (DFAS). Within DOT, we included the Office of the Secretary, Federal Aviation Administration (FAA), and the Coast Guard. Together, these agencies accounted for \$175 billion, or about 90 percent, of all federal contract dollars reported in the Federal Procurement Data System Report for fiscal year 1996, the year in which section 640 was enacted. We obtained readily available documentation to support the information provided by the agencies we contacted, but did not otherwise independently verify the information.

We conducted our review from October 1998 to March 1999 in accordance with generally accepted government auditing standards. We requested comments on a draft of this letter from the heads of OMB and the six agencies we reviewed. Their comments are discussed at the end of this letter.

RESULTS

Neither the six agencies we contacted nor OMB had taken action specifically aimed at implementing section 640. OMB has issued guidance on the implementation of CCA with respect to new IS/TT investments that addresses contracting out, outsourcing, and privatization issues.⁶ This guidance, however, did not address section 640 in particular.

⁴ Section 5101 of P.L. 104-106, February 10, 1996, repealed section 111 of the Federal Property and Administrative Services Act of 1949 (popularly referred to as the "Brooks Act") and established a new statutory scheme for IT management and acquisition within the executive branch.

⁵ Subsection 5113(b)(2)(B) provides that OMB direct agencies to determine, before making investment in a new information system, whether the functions supported by the system should be contracted out, outsourced, or privatized. Subsection 5113(b)(2)(C) provides that OMB direct agencies, before making significant investments in mission-related IT, to analyze the agency's mission and revise mission-related and administrative processes as appropriate.

⁶ Examples of such guidance include OMB memorandum 97-02 on Funding Information Systems Investments, dated Oct. 25, 1996, and the July 1997 Capital Programming Guide, supplement to OMB circular A-11.

Additionally, officials in the six agencies we contacted told us that they were not aware of section 640 and had not considered it when performing CCA-related studies. However, according to the officials we interviewed, they did not need section 640 authority to obtain private-sector assistance for IS/IT- or non-IS/IT-related outsourcing and privatization studies.

IS/IT Studies Performed Pursuant to CCA

As shown in table 1, of the six agencies we visited in November and December of 1998, DOE, Air Force, and GSA reported conducting a total of 12 CCA section 5113(b)(2)(B) and (C) IS/IT studies beginning after September 30, 1996. Also, FAA reported conducting nine studies pursuant to CCA during fiscal years 1996 and 1997 as part of the investment analysis performed for each of the nine projects. Although, FAA had information on the start and completion dates of the investment analyses, it was unable to determine whether the outsourcing portion of the investment analysis study, as defined by section 640, began before, on, or after September 30, 1996. An IS/IT official from FAA explained that the agency's IS/IT records were not clear as to when each of the studies actually began during fiscal years 1996 and 1997. With the exception of GSA, officials in each of these three agencies also told us that private-sector assistance was used on each of the studies and that the assistance was obtained using the agencies' general contracting authority. GSA reported that the decisions regarding CCA section 5113(b)(2)(B) and (C) for each of its six IS/IT projects beginning after September 30, 1996, were based on studies performed in-house by agency personnel.

Specifically, as shown in table 1, DOE reported conducting three studies with private-sector assistance after September 30, 1996, each of which lasted more than 180 days. According to an IS/IT official in DOE, DOE did not formally obtain agency head approval for the extended time on these studies. The Air Force reported three studies that had private-sector assistance and began after September 30, 1996, and FAA reported nine studies with private-sector assistance, but officials in neither agency were able to identify in their records the period of time for the studies.

Table 1: IS/IT Studies Performed Pursuant to CCA Section 5113(b)(2)(B) & (C) Since Fiscal Year 1996

Federal agency	Studies beginning before 9/30/96		Studies beginning on or after 9/30/96	
	Total studies	PSA studies	Total studies	PSA studies
DOD components^a				
Army	1	0	0	0
Air Force	9	9	3	3
DLA	0	0	0	0
DFAS	1	0	0	0
DOE	2	2	3	3
DOT components				
Office of the Secretary	0	0	0	0
FAA ^b	0	0	0	0
Coast Guard	0	0	0	0
HHS	0	0	0	0
GSA	0	0	6	0
NASA	1	0	0	0
Total	14	11	12	6

Legend: PSA refers to private-sector assistance.

^aNavy, which includes the Marine Corps, could not gather the information in time for us to report the number of IS/IT studies it had performed pursuant to CCA, which was enacted in February 1996.

⁶FAA reported that nine studies were conducted with private-sector assistance during fiscal years 1996 and 1997; however, FAA did not have information on when the studies began.

Source: Agency officials.

As explained by DOE, FAA, and Air Force officials, since they were not aware of section 640, they did not routinely monitor the length of the studies performed or take steps to ensure that any studies lasting more than 180 days had specific agency-head approval for the additional time. DOE officials told us that they believed that the length of the studies generally depended on the complexity of the IS/TT under consideration rather than on a predetermined number of days.

In addition, DOE, FAA, and Air Force officials said that the contractors participating in these studies did not participate in subsequently outsourced work. They explained that, irrespective of section 640, subpart 9.5 of the Federal Acquisition Regulation already required them to take steps to preclude such organizational conflicts of interest, and they provided us with copies of the exclusions normally included in the contracts for these types of services.

We discussed the need to inform federal agencies about the effect of section 640 on the outsourcing and privatization provisions of CCA with OMB's staff. They informed us that it is not OMB's responsibility generally to notify agencies of statutory requirements that have government-wide impact, and it does not typically do so.

While the other agencies included in our review did not report any studies applicable to the period set by section 640, table 1 shows that Army, Air Force, DFAS, DOE, and NASA reported a total of 14 studies performed pursuant to section 5113(b)(2)(B) and (C) that began before September 30, 1996. According to these agencies' officials, 11 of these studies were performed with private-sector assistance obtained through their general contracting authority, and 3 studies were performed in-house by agency personnel.

Non-IS/IT Outsourcing and Privatization Studies Performed

For studies other than those associated with CCA-related IS/IT, which are not affected by section 640, Army, Navy, Air Force, DLA, and DFAS reported, as shown in table 2, that private-sector assistance was used, or was planned, on 2,391 of the 2,989 non-IS/IT-related outsourcing⁷ and privatization studies being performed, or planned to be performed, since fiscal year 1996. These non-IS/IT-related functions considered for outsourcing included a wide range of activities, from day care centers on military installations to whole-base support or maintenance operations.

According to DOD officials, private-sector assistance for competitive sourcing studies is funded through DOD's annual appropriations. The non-IS/IT related functions considered for

⁷ "Outsourcing" decisions generally are governed by OMB Circular A-76, which describes the procedures (i.e., studies, reviews, and analyses) that agencies must perform in order to determine whether a government-operated commercial activity or administrative function should be outsourced to the private sector or remain as a government-operated function. In essence, the A-76 process requires the government to "compete" with the private sector to determine which entity is best capable of performing the function under consideration in the most cost-effective manner. To recognize this "public/private competition" aspect of the outsourcing process, DOD refers to the A-76 process as "competitive sourcing."

privatization consisted of the provision of military housing and installation utilities. Private-sector assistance for studies related to providing these two functions are authorized by specific legislation.

Table 2: Non-IS/IT Outsourcing and Privatization Studies Since Fiscal Year 1996

Federal agency	Grand total		Outsourcing studies beginning				Privatization studies beginning			
	Total studies	PSA studies	Before 9/30/96	On/after 9/30/96	Before 9/30/96	On/after 9/30/96	Before 9/30/96	On/after 9/30/96	Total studies ^a	PSA studies ^b
DOD component										
Army										
Function ^c	158	62	0	0	158	62	0	0	0	0
Housing	43	25	0	0	0	0	0	0	43	25
Utilities	1,085	817	0	0	0	0	249 ^d	86	836	731
Navy										
Function ^c	120	52	1	0	119	52	0	0	0	0
Housing	16	16	0	0	0	0	0	0	16	16 ^e
Utilities ^f	916	916	0	0	0	0	30	30	886	886 ^e
Air Force										
Function ^c	152	4	52	0	100	4	0	0	0	0
Housing	15	15	0	0	0	0	0	0	15	15 ^e
Utilities	463	463	0	0	0	0	0	0	463	463 ^e
Marines										
Function ^c	0	0	0	0	0	0	0	0	0	0
Housing	9	9	0	0	0	0	0	0	9	9
DLA										
Function ^c	4	4	0	0	4	4	0	0	0	0
DFAS										
Function ^c	8	8	3	3	5	5	0	0	0	0
Totals										
Function ^c	442	130	56	3	386	127	0	0	0	0
Housing	83	65	0	0	0	0	0	0	83	65
Utilities	2,464	2,196	0	0	0	0	279	116	2,185	2,080
Grand total	2,989	2,391	56	3	386	127	279	116	2,268	2,145

Legend: PSA refers to private-sector assistance.

^aIncludes studies that were performed, or planned to be performed, on and after 9/30/96.

^bNumber of housing installations or utility systems with privatization studies.

^cFederally operated commercial or administrative function that is being considered for outsourcing.

^dArmy officials reported 16 additional utility systems that did not undergo the privatization process because they were always under private control.

^eTotal number of projects to be considered for privatization and which, according to agency officials, should be performed with private-sector assistance. An Air Force official told us that Air Force projects may or may not be performed with private-sector assistance.

^fIncludes utility systems for both Navy and Marines.

Source: Agency officials.

Agency Comments

On March 16, 1999, NASA's Audit Liaison, Office of Procurement, told us orally that NASA concurred with the substance of our report. On March 19, 1999, DOT's Audit Liaison, Office of the Assistant Secretary for Administration, provided us with FAA's written technical comments. We considered and incorporated these comments in our report as appropriate. On March 22, 1999, DOE's Audit Liaison, Office of the Director; HHS' Audit Liaison, Office of

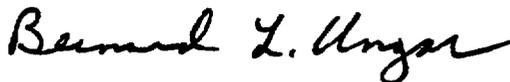
Inspector General; DOT's Audit Liaison, Office of the Assistant Secretary for Administration; and GSA's Audit Liaison, Audit Follow-Up and Evaluation Branch, all told us orally that their agencies had no comments.

On March 23, 1999, we also received oral comments from DOD's Office of the Under Secretary of Defense for Acquisition and Technology. Although DOD concurred with the report's assessment of the implementation of section 640, it suggested that we extract the non-IS/IT related data or further clarify that non-IS/IT functions are not covered under section 640. We clarified the report as suggested by DOD. On March 24, 1999, an Assistant General Counsel in OMB told us orally that OMB had no comments.

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We are sending copies of this letter to Senator Fred Thompson, Chairman, and Senator Joseph I. Lieberman, Ranking Minority Member, Senate Committee on Governmental Affairs, and to Representative Dan Burton, Chairman, and Representative Henry Waxman, Ranking Minority Member, House Committee on Government Reform. We are also sending copies of this letter to The Honorable William S. Cohen, Secretary of Defense; The Honorable Bill Richardson, Secretary of Energy; The Honorable David J. Barram, Administrator, General Services Administration; The Honorable Donna E. Shalala, Secretary of Health and Human Services; The Honorable Jacob Lew, Director, Office of Management and Budget; The Honorable Rodney E. Slater, Secretary of Transportation; and The Honorable Daniel S. Goldin, Administrator, National Aeronautics and Space Administration. We will also make copies available to others upon request.

Major contributors to this letter were Sherrill Johnson, Assistant Director; Michael Rives, Senior Evaluator; and Ray Occhipinti, Evaluator. If you or your staff have any questions, please contact me on (202) 512-8387.



Bernard L. Ungar
Director, Government Business
Operations Issues

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