

107TH CONGRESS
1ST SESSION

H. R. 721

To ensure that the business of the Federal Government is conducted in the public interest and in a manner that provides for public accountability, efficient delivery of services, reasonable cost savings, and prevention of unwarranted Government expenses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2001

Mr. WYNN (for himself, Mr. BROWN of Ohio, Mr. LANGEVIN, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. DEFazio, Mr. MEEKS of New York, Mr. DELAHUNT, Mr. BALDACCI, Mr. FROST, Mr. WEXLER, Mr. GEORGE MILLER of California, Mr. BLAGOJEVICH, Mr. WATT of North Carolina, Mr. HOLDEN, Mr. BONIOR, Mr. GUTIERREZ, Ms. MCCARTHY of Missouri, Mr. SISISKY, Mr. SANDERS, Mr. ENGEL, Mr. MCNULTY, Mr. PAYNE, Mr. KILDEE, Mr. FILNER, Mr. CUMMINGS, Ms. WOOLSEY, Mr. SAWYER, Mr. STUPAK, Mr. KANJORSKI, Mr. MURTHA, Mr. HILLIARD, Mr. DICKS, Ms. JACKSON-LEE of Texas, Mr. OBERSTAR, Mr. DINGELL, Mr. SPRATT, Mr. KLECZKA, Mrs. MORELLA, Mr. HINCHEY, Mr. SERRANO, Mr. ABERCROMBIE, Mr. FRANK, Mr. MOORE, Mr. WAXMAN, Ms. KILPATRICK, Mrs. MALONEY of New York, Mrs. MINK of Hawaii, Mr. HOYER, Mr. ALLEN, Mrs. THURMAN, Ms. MCKINNEY, Mr. PRICE of North Carolina, Mr. FORD, Mr. STARK, Mr. PALLONE, Mr. KUCINICH, Mr. STRICKLAND, Ms. PELOSI, Mr. CONYERS, Mr. THOMPSON of Mississippi, Ms. BROWN of Florida, Ms. HOOLEY of Oregon, Mr. BACA, Mr. HALL of Ohio, Mrs. MCCARTHY of New York, Ms. BALDWIN, Mr. GREEN of Texas, and Mr. RAHALL) introduced the following bill; which was referred to the Committee on Government Reform

A BILL

To ensure that the business of the Federal Government is conducted in the public interest and in a manner that provides for public accountability, efficient delivery

of services, reasonable cost savings, and prevention of unwarranted Government expenses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Truthfulness, Responsibility, and Accountability in Con-
 6 tracting Act”.

7 (b) TABLE OF CONTENTS.—The table of contents of
 8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.
- Sec. 4. Temporary suspension of new contracting out, privatization, outsourcing, contracting, and other such initiatives; waiver authority.
- Sec. 5. Agency reporting systems and required reports.
- Sec. 6. Requirement for public-private competition.
- Sec. 7. Review of contractor performance.
- Sec. 8. Survey of wages and benefits provided by contractors.
- Sec. 9. Comptroller General reports.
- Sec. 10. Applicability.

9 **SEC. 2. FINDINGS AND PURPOSES.**

10 (a) FINDINGS.—The Congress finds the following:

11 (1) There has been a major increase in service
 12 contracting (relying on private contractors to provide
 13 services to the Federal Government) since 1993.

14 (2) Federal agencies have been increasing reli-
 15 ance on service contracting even though there are no
 16 reliable and comprehensive reporting systems in
 17 place to determine whether service contracting has

1 achieved measurable cost savings or improved Gov-
2 ernment services for taxpayers.

3 (3) Federal agencies have contracted out work
4 that either is being performed or could be performed
5 by Federal employees without any public-private
6 competition.

7 (4) Federal employees are being replaced by
8 contractor employees without even knowing with cer-
9 tainty if the result is reduced costs or improved serv-
10 ices.

11 (5) Federal agencies do not have systems in
12 place to provide for work currently performed by
13 Federal contractors to be performed by Federal em-
14 ployees, even after a determination that in-house
15 performance would be more efficient and more cost
16 effective.

17 (6) Arbitrary personnel ceilings, used to reduce
18 the size of the Federal workforce, are—

19 (A) forcing agencies to lay off Federal em-
20 ployees who could perform at least some of this
21 work effectively and at a savings to the tax-
22 payer;

23 (B) preventing agencies from hiring new
24 Federal employees who could perform this work
25 effectively and at a savings to taxpayers; and

1 (C) forcing agencies to give work to private
2 contractors without any public-private competi-
3 tion, often at higher costs.

4 (7) Public-private competition must be used eq-
5 uitably in order to be fair to both taxpayers and
6 Federal employees.

7 (8) It would be in the best interests of tax-
8 payers if Federal contractors faced the same level of
9 public-private competition as that experienced by
10 Federal employees, especially when it has been reli-
11 ably determined that the Federal contractor work-
12 force is almost twice as large as the Federal em-
13 ployee workforce.

14 (9) In order to satisfactorily address these seri-
15 ous problems, Federal service contracting should be
16 temporarily suspended.

17 (10) This suspension should affect only new
18 contracts, and include a waiver to allow agencies to
19 enter into new contracts in certain circumstances in
20 order to preclude any serious Federal Government
21 disruption.

22 (b) PURPOSES.—The purposes of this Act are to—

23 (1) improve the ability of the Federal Govern-
24 ment to carry out its mission and perform its busi-

1 ness in the public interest in a cost-effective manner;
2 and

3 (2) temporarily suspend new Federal service
4 contracting until agencies have—

5 (A) established comprehensive and reliable
6 reporting systems to track the costs of service
7 contracting;

8 (B) prevented work from being given to
9 contractors without public-private competitions;
10 and

11 (C) subjected work performed by Federal
12 contractors to the same level of public-private
13 competition as that experienced by Federal em-
14 ployees.

15 **SEC. 3. DEFINITIONS.**

16 As used in this Act:

17 (1) The term “employee” means any individual
18 employed—

19 (A) as a civilian in a military department
20 (as defined in section 102 of title 5, United
21 States Code);

22 (B) in an executive agency (as defined in
23 section 105 of title 5, United States Code), in-
24 cluding an employee who is paid from non-
25 appropriated funds;

1 (C) in those units of the legislative and ju-
2 dicial branches of the Federal Government hav-
3 ing positions in the competitive service;

4 (D) in the Library of Congress;

5 (E) in the Government Printing Office; or

6 (F) by the Governors of the Federal Re-
7 serve System.

8 (2) The term “agency” means any department,
9 agency, bureau, commission, activity, or organization
10 of the United States, that employs an employee (as
11 defined in paragraph (1)).

12 (3) The term “non-Federal personnel” means
13 employed individuals who are not employees, as de-
14 fined in paragraph (1).

15 (4) The term “contractor” means an individual
16 or entity that performs a function for an agency
17 under a contract with non-Federal personnel.

18 (5) The term “privatization” means the end re-
19 sult of the decision of an agency to exit a business
20 line, terminate an activity, or sell Government owned
21 assets or operational capabilities to the non-Federal
22 sector.

23 (6) The term “outsourcing” means the end re-
24 sult of the decision of an agency to acquire services
25 from external sources, either from a non-Federal

1 source or through interservice support agreements,
2 through a contract.

3 (7) The term “contracting out” means the con-
4 version by an agency of the performance of a func-
5 tion to the performance by a non-Federal employee
6 under a contract between an agency and an indi-
7 vidual or other entity.

8 (8) The term “contracting in” is the conversion
9 of the performance of a function by non-Federal em-
10 ployees under a contract between an agency and an
11 individual or other entity to the performance by em-
12 ployees.

13 (9) The term “contracting” means the perform-
14 ance of a function by non-Federal employees under
15 a contract between an agency and an individual or
16 other entity. The term “contracting”, as used
17 throughout this Act, includes privatization,
18 outsourcing, contracting out, and contracting, unless
19 otherwise specifically provided.

20 (10)(A) Subject to subparagraph (B), the term
21 “critical for the provision of patient care” means di-
22 rect patient medical and hospital care that the De-
23 partment of Veterans Affairs or other Federal hos-
24 pitals or clinics are not capable of furnishing be-
25 cause of geographical inaccessibility, medical emer-

1 agency, or the particularly unique type of care or
2 service required.

3 (B) The term does not include support and ad-
4 ministrative services for hospital and clinic oper-
5 ations, including food service, laundry services,
6 grounds maintenance, transportation services, office
7 operations, and supply processing and distribution
8 services.

9 **SEC. 4. TEMPORARY SUSPENSION OF NEW CONTRACTING**
10 **OUT, PRIVATIZATION, OUTSOURCING, CON-**
11 **TRACTING, AND OTHER SUCH INITIATIVES;**
12 **WAIVER AUTHORITY.**

13 (a) SUSPENSION.—(1) Beginning on the date of the
14 enactment of this Act, no agency shall make a decision,
15 with respect to any function performed by the agency, to
16 privatize, outsource, contract out, or contract for the per-
17 formance of such function, or to conduct a study to con-
18 vert the performance of the function to the performance
19 by a contractor. This subsection does not apply to work
20 performed by the private sector prior to the date of enact-
21 ment of this Act.

22 (2)(A) Notwithstanding paragraph (1), an agency
23 may undertake a contracting effort of a function not then
24 performed by Federal employees if the function would be

1 performed under contract by the blind or handicapped (or
2 both).

3 (B) Any contract entered into pursuant to subpara-
4 graph (A) shall be immediately terminated if it is deter-
5 mined that the performance of the function is not being
6 carried out by the blind or handicapped.

7 (C) In this paragraph:

8 (i) The term “blind” has the meaning that term
9 has in section 5(1) of the Javits-Wagner-O’Day Act
10 (41 U.S.C. 48b(1)).

11 (ii) The term “handicapped” means an indi-
12 vidual or class of individuals with a disability, as
13 that term is defined in section 7(9) of the Rehabili-
14 tation Act of 1973 (29 U.S.C. 705(9)).

15 (b) WAIVER.—(1) Any agency may submit to the Di-
16 rector of the Office of Management and Budget a request
17 for a waiver of this section with regard to a particular
18 function. Such a waiver request shall—

19 (A) identify the facilities, units, or activities af-
20 fected;

21 (B) specify the reason a waiver is needed;

22 (C) identify the duration sought; and

23 (D) explain the justification for the waiver.

1 (2) The Director of the Office of Management and
2 Budget may grant a waiver with regard to a particular
3 function if the Director determines that a waiver—

4 (A) is necessary for the preservation of national
5 security;

6 (B) is critical for the provision of patient care;

7 or

8 (C) is necessary to prevent extraordinary eco-
9 nomic harm.

10 (3) The Director of the Office of Management and
11 Budget may not grant a waiver under this section until
12 the Director publishes the request of the agency for a
13 waiver in the Federal Register.

14 (c) EXCEPTIONS.—(1) Subsection (b) shall not apply
15 with regard to a function performed by employees within
16 a unit with respect to which a labor organization is ac-
17 corded exclusive recognition under chapter 71 of title 5,
18 United States Code—

19 (A) if the waiver would violate a collective bar-
20 gaining agreement (as defined in section 7103(a)(8)
21 of title 5, United States Code) between the agency
22 and the labor organization, unless there is another
23 written waiver between the agency and the labor or-
24 ganization; or

1 (B) if the waiver is not covered by such a col-
2 lective bargaining agreement, until there has been
3 consultation or negotiation, as appropriate, by the
4 agency with the labor organization.

5 (2) Subsection (b) shall not apply with regard to a
6 function performed by employees within any unit with re-
7 spect to which a labor organization has not been accorded
8 exclusive recognition under chapter 71, title 5, United
9 States Code, unless the agency has consulted with the em-
10 ployees in the unit regarding the waiver.

11 **SEC. 5. AGENCY REPORTING SYSTEMS AND REQUIRED RE-**
12 **PORTS.**

13 (a) **CENTRALIZED REPORTING SYSTEM.**—Not later
14 than 180 days after the date of the enactment of this Act,
15 each agency shall establish a centralized reporting system
16 in accordance with guidance promulgated by the Office of
17 Management and Budget that allows the agency to gen-
18 erate periodic reports on the contracting efforts of the
19 agency. Such centralized reporting system shall be de-
20 signed to enable the agency to generate reports on efforts
21 regarding both contracting out and contracting in.

22 (b) **REPORTS ON CONTRACTING EFFORTS.**—(1) Not
23 later than 180 days after the date of the enactment of
24 this Act, every agency shall generate and submit to the
25 Director of the Office of Management and Budget a report

1 on the contracting efforts of the agency undertaken during
2 the 2 fiscal years immediately preceding the fiscal year
3 during which this Act is enacted. Such report shall comply
4 with the requirements in paragraph (3).

5 (2) For the current fiscal year and every fiscal year
6 thereafter, every agency shall complete and submit to the
7 Director of the Office of Management and Budget a report
8 on the contracting efforts undertaken by the agency dur-
9 ing the current fiscal year. Such reports shall comply with
10 the requirements in paragraph (3), and shall be completed
11 and submitted not later than the end of the first fiscal
12 quarter of the subsequent fiscal year.

13 (3) The reports referred to in this subsection shall
14 include the following information with regard to each con-
15 tracting effort undertaken by the agency:

16 (A) The contract number and the Federal sup-
17 ply class or service code.

18 (B) A statement of why the contracting effort
19 was undertaken and an explanation of what alter-
20 natives to the contracting effort were considered and
21 why such alternatives were ultimately rejected.

22 (C) The names, addresses, and telephone num-
23 bers of the officials who supervised the contracting
24 effort.

1 (D) The competitive process used or the statu-
2 tory or regulatory authority relied on to enter into
3 the contract without public-private competition.

4 (E) The cost of Federal employee performance
5 at the time the work was contracted out (if the work
6 had previously been performed by Federal employ-
7 ees).

8 (F) The cost of Federal employee performance
9 under a Most Efficient Organization plan (if the
10 work was contracted out through OMB Circular A-
11 76).

12 (G) The anticipated cost of contractor perform-
13 ance, based on the award.

14 (H) The current cost of contractor perform-
15 ance.

16 (I) The actual savings, expressed both as a dol-
17 lar amount and as a percentage of the cost of per-
18 formance by Federal employees, based on the cur-
19 rent cost, and an explanation of the difference, if
20 any.

21 (J) A description of the quality control process
22 used by the agency in connection with monitoring
23 the contracting effort, identification of the applicable
24 quality control standards, the frequency of the prep-
25 aration of quality control reports, and an assessment

1 of whether the contractor met, exceeded, or failed to
2 achieve the quality control standards.

3 (K) The number of employees performing the
4 contracting effort under the contract and any re-
5 lated subcontracts.

6 (c) REPORT ON CONTRACTING EFFORTS.—(1) For
7 the current fiscal year and every fiscal year thereafter,
8 every agency shall complete and submit to the Director
9 of the Office of Management and Budget a report on the
10 contracting efforts undertaken by the agency during the
11 current fiscal year. Such reports shall comply with the re-
12 quirements in paragraph (2), and shall be completed and
13 submitted not later than the end of the first fiscal quarter
14 of the subsequent fiscal year.

15 (2) The reports referred to in paragraph (1) shall in-
16 clude the following information for each contracting in ef-
17 fort undertaken by the agency:

18 (A) A description of the type of work involved.

19 (B) A statement of why the contracting in ef-
20 fort was undertaken.

21 (C) The names, addresses, and telephone num-
22 bers of the officials who supervised the contracting
23 in effort.

24 (D) The cost of performance at the time the
25 work was contracted in.

1 (E) The current cost of performance by Federal
2 employees or military personnel.

3 (d) REPORT ON EMPLOYEE POSITIONS.—Not later
4 than 30 days after the end of the current fiscal year and
5 every fiscal year thereafter, every agency shall report on
6 the number of Federal employee positions and positions
7 held by non-Federal employees under a contract between
8 the agency and an individual or entity that has been sub-
9 ject to public-private competition.

10 (e) COMMITTEES TO WHICH REPORTS MUST BE
11 SUBMITTED.—The reports referred to in this section shall
12 be submitted to the Committee on Government Reform of
13 the House of Representatives and to the Committee on
14 Governmental Affairs of the Senate.

15 (f) PUBLICATION.—The Director of the Office of
16 Management and Budget shall promptly publish in the
17 Federal Register notices including a description of when
18 the reports referred to in this section are available to the
19 public and the names, addresses, and telephone numbers
20 of the officials from whom the reports may be obtained.

21 (g) AVAILABILITY ON INTERNET.—After the excision
22 of proprietary information, the reports referred to in this
23 section shall be made available through the Internet.

24 (h) REVIEW.—The Director of the Office of Manage-
25 ment and Budget shall review the reports referred to in

1 this section and consult with the head of the agency re-
2 garding the content of such reports.

3 **SEC. 6. REQUIREMENT FOR PUBLIC-PRIVATE COMPETI-**
4 **TION.**

5 (a) IN GENERAL.—After the date of the enactment
6 of this Act and the expiration of the suspension authority
7 in section 4 of this Act, any decision by an agency to pri-
8 vatize, outsource, contract or contract out, including the
9 exercise of options, extensions, and renewals of any con-
10 tracting efforts, for the performance of a function shall
11 be based on the results of a public-private competition
12 process that—

13 (1) formally compares the costs of Federal em-
14 ployee performance of the function with the costs of
15 the performance by a contractor;

16 (2) employs the most efficient organization
17 process described in OMB Circular A-76; and

18 (3) is conducted in consultation or through bar-
19 gaining with the exclusive representative of the Fed-
20 eral employees performing the function, if applicable.

21 This subsection does not apply to work performed by
22 the private sector prior to the date of enactment of
23 this Act.

24 (b) DETERMINATION OF COSTS.—(1) An agency shall
25 commence or continue the performance of a function by

1 Federal employees if, under a cost comparison performed
2 pursuant to a public-private competition process described
3 in subsection (a), the agency determines that at least a
4 10-percent cost savings would not be achieved by perform-
5 ance of the function by a contractor.

6 (2) During the temporary suspension established in
7 section 4 of this Act, an agency may undertake a con-
8 tracting effort made pursuant to the issuance of a waiver
9 granted under section 4 for a function that is not cur-
10 rently performed by Federal employees if the agency has
11 determined the total cost to the agency of performing the
12 function by a contractor and the total cost to the agency
13 of having those services performed by Federal employees
14 and that the contractor performance costs are less than
15 the Federal employee performance costs.

16 (c) INAPPLICABILITY OF CERTAIN LIMITATION.—
17 Notwithstanding any limitation on the number of Federal
18 employees established by law, regulation, or policy, an
19 agency may continue to employ, or may hire, such Federal
20 employees as are necessary to perform work acquired
21 through public-private competition required by this sec-
22 tion.

23 **SEC. 7. REVIEW OF CONTRACTOR PERFORMANCE.**

24 (a) IN GENERAL.—If a report completed pursuant to
25 section 5 indicates that, for 2 consecutive years, the actual

1 cost of privatization, outsourcing, contracting, or con-
2 tracting out of a particular function exceeds the antici-
3 pated cost of contractor performance, based on the award
4 (referred to in section 5(b)(3)(G)), or fails to substantially
5 meet quality control standards (referred to in section
6 5(b)(3)(J)), the agency shall either conduct a new public-
7 private competition or convert the function to performance
8 by Federal employees not later than the earlier of the date
9 of the expiration of the contract or the beginning of the
10 first fiscal year which is not more than 12 months after
11 the initial determination that the cost of a contracting ef-
12 fort exceeds the anticipated cost of contractor performance
13 or that quality standards have not been substantially met.
14 Any resulting terminations for convenience may be under-
15 taken without cost to the United States Government. This
16 subsection does not apply to work performed by the pri-
17 vate sector prior to the date of enactment of this Act.

18 (b) PUBLIC-PRIVATE COMPETITION.—For each fiscal
19 year, an agency shall subject to public-private competition
20 an equivalent number of Federal employee positions and
21 positions held by non-Federal employees under a contract
22 between an agency and an individual or entity.

23 (c) INAPPLICABILITY OF CERTAIN LIMITATION.—
24 Notwithstanding any limitation on the number of Federal
25 employees established by law, regulation, or policy, an

1 agency may continue to employ or may hire such Federal
2 employees as are necessary to perform work acquired
3 through public-private competition required by this sec-
4 tion.

5 **SEC. 8. SURVEY OF WAGES AND BENEFITS PROVIDED BY**
6 **CONTRACTORS.**

7 (a) REQUIREMENT TO CONDUCT SURVEY.—Using
8 information provided by agencies, the Secretary of Labor
9 shall conduct a survey of the wages and quantifiable bene-
10 fits provided by contractors to non-Federal personnel
11 working in various occupations under contracts between
12 agencies and individuals or entities that were entered into
13 during the 2 fiscal years immediately preceding the date
14 of the enactment of this Act.

15 (b) REVIEW.—(1) The Director of the Office of Per-
16 sonnel Management shall—

17 (A) review the analysis prepared by the Sec-
18 retary of Labor under subsection (a) and determine
19 the extent to which the wages and quantifiable bene-
20 fits paid by contractors are comparable to the wages
21 and quantifiable benefits earned by Federal employ-
22 ees; and

23 (B) issue a report on the findings of the review.

24 (2) Not later than 180 days after the date of the en-
25 actment of this Act, the report shall be submitted to the

1 Committee on Government Reform of the House of Rep-
2 resentatives and to the Committee on Governmental Af-
3 fairs of the Senate, and published in the Federal Register.

4 (c) GUIDANCE.—The Director of the Office of Man-
5 agement and Budget shall issue guidance to implement
6 the provisions of this section.

7 **SEC. 9. COMPTROLLER GENERAL REPORTS.**

8 The Comptroller General shall report to the Com-
9 mittee on Government Reform of the House of Represent-
10 atives and the Committee on Governmental Affairs of the
11 Senate every 60 days after the date of the enactment of
12 this Act on the compliance by agencies with the require-
13 ments of this Act.

14 **SEC. 10. APPLICABILITY.**

15 This Act—

16 (1) does not apply with respect to the General
17 Accounting Office;

18 (2) does not apply with respect to depot-level
19 maintenance and repair of the Department of De-
20 fense (as defined in section 2460 of title 10, United
21 States Code); and

22 (3) does not apply with respect to contracts for
23 the construction of new structures or the remodeling
24 of or additions to existing structures, but shall apply

- 1 to all contracts for the repair and maintenance of
- 2 any structures.

○