

106TH CONGRESS  
2D SESSION

# H. R. 3766

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.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 29, 2000

Mr. WYNN (for himself, Mr. KANJORSKI, Mr. BONIOR, Mr. CONYERS, Mr. WAXMAN, Mr. DIXON, Mr. LANTOS, Mr. TOWNS, Mr. SABO, Mr. LEWIS of Georgia, Ms. DELAURO, Mr. STRICKLAND, Mr. FROST, Mr. KILDEE, Mr. PALLONE, Ms. MCKINNEY, Mr. KUCINICH, Mr. FILNER, Mr. CUMMINGS, Mr. BROWN of Ohio, Mr. ANDREWS, Ms. NORTON, Mr. HILL of Indiana, Mr. FORD, Ms. SCHAKOWSKY, Mr. ABERCROMBIE, Mr. THOMPSON of Mississippi, Ms. KAPTUR, Mr. DAVIS of Illinois, Ms. ROYBAL-ALLARD, Mr. BISHOP, Mr. UNDERWOOD, Mrs. JONES of Ohio, Mr. CAPUANO, Mr. SANDERS, Mr. DICKS, Mr. KLINK, Mr. FRANK of Massachusetts, Mr. FATTAH, Mr. DINGELL, Mr. TIERNEY, Mr. SHOWS, Ms. BROWN of Florida, Mr. KIND, Ms. RIVERS, Mr. OWENS, Mr. HINCHEY, Mr. GUTIERREZ, Mr. HILLIARD, Ms. STABENOW, Ms. KILPATRICK, Mr. MENENDEZ, Mr. EVANS, Mr. HOYER, Mr. MASCARA, Mr. JACKSON of Illinois, Ms. CARSON, Mr. BALDACCI, Mr. LEVIN, Mr. BECERRA, Ms. HOOLEY of Oregon, Mr. RUSH, and Mr. STUPAK) introduced the following bill; which was referred to the Committee on Government Reform

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## 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 au-  
  thority.
- 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 **SEC. 4. TEMPORARY SUSPENSION OF NEW CONTRACTING**  
21 **OUT, PRIVATIZATION, OUTSOURCING, CON-**  
22 **TRACTING, AND OTHER SUCH INITIATIVES;**  
23 **WAIVER AUTHORITY.**

24 (a) SUSPENSION.—Beginning on the date of the en-  
25 actment of this Act, no agency shall make a decision, with

1 respect to any function performed by the agency, to pri-  
2 vatize, outsource, contract out, or contract for the per-  
3 formance of such function, or to conduct a study to con-  
4 vert the performance of the function to the performance  
5 by a contractor. This subsection applies only to con-  
6 tracting efforts undertaken on or after the date of the en-  
7 actment of this Act.

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

12 (A) identify the facilities, units, or activities af-  
13 fected;

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

15 (C) identify the duration sought; and

16 (D) explain the justification for the waiver.

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

20 (A) is necessary for the preservation of national  
21 security;

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

23 or

24 (C) is necessary to prevent extraordinary eco-  
25 nomic harm.



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

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

10           (A) if the waiver would violate a collective bar-  
11 gaining agreement (as defined in section 7103(a)(8)  
12 of title 5, United States Code) between the agency  
13 and the labor organization, unless there is another  
14 written waiver between the agency and the labor or-  
15 ganization; or

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

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

1 **SEC. 5. AGENCY REPORTING SYSTEMS AND REQUIRED RE-**  
2 **PORTS.**

3 (a) **CENTRALIZED REPORTING SYSTEM.**—Not later  
4 than 180 days after the date of the enactment of this Act,  
5 each agency shall establish a centralized reporting system  
6 in accordance with guidance promulgated by the Office of  
7 Management and Budget that allows the agency to gen-  
8 erate periodic reports on the contracting efforts of the  
9 agency. Such centralized reporting system shall be de-  
10 signed to enable the agency to generate reports on efforts  
11 regarding both contracting out and contracting in.

12 (b) **REPORTS ON CONTRACTING EFFORTS.**—(1) Not  
13 later than 180 days after the date of the enactment of  
14 this Act, every agency shall generate and submit to the  
15 Director of the Office of Management and Budget a report  
16 on the contracting efforts of the agency undertaken during  
17 the 2 fiscal years immediately preceding the fiscal year  
18 during which this Act is enacted. Such report shall comply  
19 with the requirements in paragraph (3).

20 (2) For the current fiscal year and every fiscal year  
21 thereafter, every agency shall complete and submit to the  
22 Director of the Office of Management and Budget a report  
23 on the contracting efforts undertaken by the agency dur-  
24 ing the current fiscal year. Such reports shall comply with  
25 the requirements in paragraph (3), and shall be completed

1 and submitted not later than the end of the first fiscal  
2 quarter of the subsequent fiscal year.

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

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

8 (B) A statement of why the contracting effort  
9 was undertaken and an explanation of what alter-  
10 natives to the contracting effort were considered and  
11 why such alternatives were ultimately rejected.

12 (C) The names, addresses, and telephone num-  
13 bers of the officials who supervised the contracting  
14 effort.

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

18 (E) The cost of Federal employee performance  
19 at the time the work was contracted out (if the work  
20 had previously been performed by Federal employ-  
21 ees).

22 (F) The cost of Federal employee performance  
23 under a Most Efficient Organization plan (if the  
24 work was contracted out through OMB Circular A-  
25 76).

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

3 (H) The current cost of contractor perform-  
4 ance.

5 (I) The actual savings, expressed both as a dol-  
6 lar amount and as a percentage of the cost of per-  
7 formance by Federal employees, based on the cur-  
8 rent cost, and an explanation of the difference, if  
9 any.

10 (J) A description of the quality control process  
11 used by the agency in connection with monitoring  
12 the contracting effort, identification of the applicable  
13 quality control standards, the frequency of the prep-  
14 aration of quality control reports, and an assessment  
15 of whether the contractor met, exceeded, or failed to  
16 achieve the quality control standards.

17 (K) The number of employees performing the  
18 contracting effort under the contract and any re-  
19 lated subcontracts.

20 (c) REPORT ON CONTRACTING IN EFFORTS.—(1)

21 For the current fiscal year and every fiscal year thereafter,  
22 every agency shall complete and submit to the Director  
23 of the Office of Management and Budget a report on the  
24 contracting efforts undertaken by the agency during the  
25 current fiscal year. Such reports shall comply with the re-

1 requirements in paragraph (2), and shall be completed and  
2 submitted not later than the end of the first fiscal quarter  
3 of the subsequent fiscal year.

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

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

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

10 (C) The names, addresses, and telephone num-  
11 bers of the officials who supervised the contracting  
12 in effort.

13 (D) The cost of performance at the time the  
14 work was contracted in.

15 (E) The current cost of performance by Federal  
16 employees or military personnel.

17 (d) REPORT ON EMPLOYEE POSITIONS.—Not later  
18 than 30 days after the end of the current fiscal year and  
19 every fiscal year thereafter, every agency shall report on  
20 the number of Federal employee positions and positions  
21 held by non-Federal employees under a contract between  
22 the agency and an individual or entity that has been sub-  
23 ject to public-private competition.

24 (e) COMMITTEES TO WHICH REPORTS MUST BE  
25 SUBMITTED.—The reports referred to in this section shall

1 be submitted to the Committee on Government Reform of  
2 the House of Representatives and to the Committee on  
3 Governmental Affairs of the Senate.

4 (f) PUBLICATION.—The Director of the Office of  
5 Management and Budget shall promptly publish in the  
6 Federal Register notices including a description of when  
7 the reports referred to in this section are available to the  
8 public and the names, addresses, and telephone numbers  
9 of the officials from whom the reports may be obtained.

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

13 (h) REVIEW.—The Director of the Office of Manage-  
14 ment and Budget shall review the reports referred to in  
15 this section and consult with the head of the agency re-  
16 garding the content of such reports.

17 **SEC. 6. REQUIREMENT FOR PUBLIC-PRIVATE COMPETI-**  
18 **TION.**

19 (a) IN GENERAL.—After the date of the enactment  
20 of this Act and the expiration of the suspension authority  
21 in section 4 of this Act, any decision by an agency to pri-  
22 vate, outsource, contract or contract out, including the  
23 exercise of options, extensions, and renewals of any con-  
24 tracting efforts, for the performance of a function shall

1 be based on the results of a public-private competition  
2 process that—

3           (1) formally compares the costs of Federal em-  
4           ployee performance of the function with the costs of  
5           the performance by a contractor;

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

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

11 This subsection applies only to contracting efforts under-  
12 taken on or after the date of the enactment of this Act.

13          (b) DETERMINATION OF COSTS.—(1) An agency shall  
14 commence or continue the performance of a function by  
15 Federal employees if, under a cost comparison performed  
16 pursuant to a public-private competition process described  
17 in subsection (a), the agency determines that at least a  
18 10-percent cost savings would not be achieved by perform-  
19 ance of the function by a contractor.

20          (2) During the temporary suspension established in  
21 section 4 of this Act, an agency may undertake a con-  
22 tracting effort made pursuant to the issuance of a waiver  
23 granted under section 4 for a function that is not cur-  
24 rently performed by Federal employees if the agency has  
25 determined the total cost to the agency of performing the

1 function by a contractor and the total cost to the agency  
2 of having those services performed by Federal employees  
3 and that the contractor performance costs are less than  
4 the Federal employee performance costs.

5 (c) INAPPLICABILITY OF CERTAIN LIMITATION.—  
6 Notwithstanding any limitation on the number of Federal  
7 employees established by law, regulation, or policy, an  
8 agency may continue to employ, or may hire, such Federal  
9 employees as are necessary to perform work acquired  
10 through public-private competition required by this sec-  
11 tion.

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

13 (a) IN GENERAL.—If a report completed pursuant to  
14 section 5 indicates that, for 2 consecutive years, the actual  
15 cost of privatization, outsourcing, contracting, or con-  
16 tracting out of a particular function exceeds the antici-  
17 pated cost of contractor performance, based on the award  
18 (referred to in section 5(b)(3)(G)), or fails to substantially  
19 meet quality control standards (referred to in section  
20 5(b)(3)(J)), the agency shall either conduct a new public-  
21 private competition or convert the function to performance  
22 by Federal employees not later than the earlier of the date  
23 of the expiration of the contract or the beginning of the  
24 first fiscal year which is not more than 12 months after  
25 the initial determination that the cost of a contracting ef-



1 fort exceeds the anticipated cost of contractor performance  
2 or that quality standards have not been substantially met.  
3 Any resulting terminations for convenience may be under-  
4 taken without cost to the United States Government. This  
5 subsection applies only to contracting efforts undertaken  
6 on or after the date of the enactment of this Act.

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

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

19 **SEC. 8. SURVEY OF WAGES AND BENEFITS PROVIDED BY**  
20 **CONTRACTORS.**

21 (a) REQUIREMENT TO CONDUCT SURVEY.—Using  
22 information provided by agencies, the Secretary of Labor  
23 shall conduct a survey of the wages and quantifiable bene-  
24 fits provided by contractors to non-Federal personnel  
25 working in various occupations under contracts between

1 agencies and individuals or entities that were entered into  
2 during the 2 fiscal years immediately preceding the date  
3 of the enactment of this Act.

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

6 (A) review the analysis prepared by the Sec-  
7 retary of Labor under subsection (a) and determine  
8 the extent to which the wages and quantifiable bene-  
9 fits paid by contractors are comparable to the wages  
10 and quantifiable benefits earned by Federal employ-  
11 ees; and

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

13 (2) Not later than 180 days after the date of the en-  
14 actment of this Act, the report shall be submitted to the  
15 Committee on Government Reform of the House of Rep-  
16 resentatives and to the Committee on Governmental Af-  
17 fairs of the Senate, and published in the Federal Register.

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

21 **SEC. 9. COMPTROLLER GENERAL REPORTS.**

22 The Comptroller General shall report to the Com-  
23 mittee on Government Reform of the House of Represent-  
24 atives and the Committee on Governmental Affairs of the  
25 Senate every 60 days after the date of the enactment of

1 this Act on the compliance by agencies with the require-  
2 ments of this Act.

3 **SEC. 10. APPLICABILITY.**

4 This Act does not apply with respect to the following:

5 (1) The General Accounting Office.

6 (2) Depot-level maintenance and repair of the  
7 Department of Defense (as defined in section 2460  
8 of title 10, United States Code).

○