

Testimony of John M. Palatiello  
President, Business Coalition for Fair Competition (BCFC)  
Before the  
Subcommittee on Government Operations  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Hearing on  
Contracting Fairness  
Friday, July 8, 2016

Mr. Chairman, members of the Subcommittee, I'm John Palatiello, President of the Business Coalition for Fair Competition. BCFC is an alliance of companies, associations, think tanks, and individuals who support the Yellow Pages Test – a simple and effective process that says if you can find firms in the Yellow Pages of the phone book providing products or services that the government is also providing, then the government service should be subject to market competition to break up the government monopoly and prove a better value to the taxpayer.

That is a test that has been successfully applied by Mayors and Governors, both Democrat and Republican, across the Nation.

Unfortunately, the Federal government does not have such a process in place today for two reasons. First, Congress has failed for more than 80 years to enact legislation to codify such a process. Additionally, Congress has imposed a very unfortunate moratorium on the relevant administrative process, found in Office of Management and Budget (OMB) Circular A-76, which has guided this matter since 1955.

Today, the Federal government has 2.6 million Executive Branch employees (excluding uniformed military and Postal Service). OMB estimates that among agencies covered by the Federal Activities Inventory Reform (FAIR) Act (PL 105-270), 1.12 million full-time equivalent (FTE) employees are engaged in performance of functions that are not inherently governmental. That is some 43% in jobs that are "commercial" in nature.

Federal employees are engaged in activities ranging from architecture to zoology and include scores of other activities including apparel, audits, buses, construction, debt and bill collections, campgrounds and concessions, engineering, equipment repair and maintenance depots, film studios and theater management, FOIA software, food service and security, furniture, graphics, hearing aid and medical supply distribution, information technology and data centers, insurance, laboratories, landscaping, laundry and dry cleaning, office products, pest management and wildlife control, manufacturing, mapping, meeting planning, marketing research, motorcoaches, printing and chart production, public storage, recycling and waste management, road signage, roofing, security technologies and products, simulation technology and services, surveying, tax preparation, transportation, travel planning, and utilities, and doing other tasks that have little to do with governing. The government is the nation's largest banker, insurer, homeowner, landlord, utility provider, and bus, transit, and passenger train operator.

Only a handful of the 1.1 million commercial positions have been studied to determine whether government employees or private sector workers can perform these activities more effectively.

Studies on the impact of public-private competitions in the Federal government have not been conducted in recent years. But the historic data is important to put on the record to understand the impact of the lack of a policy or process.

OMB estimated savings of 27 percent per full time equivalent (FTE) studied, while the Center for Naval Analysis found average savings of 30 percent.

A 30 percent savings applied to all 1.1 million commercial FTEs would amount to a total savings of as much as \$35 billion annually – regardless of whether or not a function is contracted to the private sector.

Such “competitive sourcing” requires government agencies to establish a “most efficient organization” or MEO and compete its in-house MEO function against the private sector. The program was *not* directed toward privatization, but to government efficiency. Historic data showed regardless of whether the activity stayed in-house, or was contracted to the private sector, by first going through the MEO process, the taxpayer won regardless of the outcome.

Bureau of the Budget Bulletin 55-4 provided that

in the process of governing, the Government should not compete with its citizens. The competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services the Government needs ... The Federal Government shall rely on commercially available sources to provide commercial products and services ... the Government shall not start or carry on any activity to provide a commercial product or service if the product or service can be procured more economically from a commercial source.

The 1955 policy that the government should not compete with its citizens was *removed* from OMB Circular A-76 when that directive was revised by the Bush Administration in 2003.

Congress has effectively halted “competitive sourcing” through earmarked restrictions. A listing and analysis of such restrictions is provided by the Congressional Research Service in its report, *Circular A-76 and the Moratorium on DOD Competitions: Background and Issues for Congress*

In the last year for which data is available, 2007, OMB reported that 73 percent of public-private competitions were won by government employees. From 2003-2007, only 50,989 federal employee FTE positions were subject to competitive sourcing public-private competitions. That is out of a total Federal workforce performing commercial activities of more than 1 million. Nevertheless, those competitions resulted in over \$7 billion in savings.

That record should dispel one of the myths surrounding this issue – that competitive sourcing and OMB Circular A-76 is bounty hunting for Federal employees. In fact, a GAO study of the Labor Department found about 79 percent of affected employees (248 of 314) were reassigned to new positions at the same Federal grade and salary level. Only six workers (about 2 percent) were involuntarily separated, while 15 workers (almost 5 percent) were promoted -- i.e., more than twice the number involuntarily separated.

It should be noted that not only do Federal agencies duplicate the private business, but many engage in unfair government competition with the private sector.

In 1932, a Special Committee of the House of Representatives expressed concern over the extent to which the government engaged in activities which might be more appropriately performed by the private sector. The first and second Hoover Commissions expressed similar concern in the 1940's. The first (1947) and second (1953) Commission on Organization of the Executive Branch of the Government also recommended legislation to prohibit government competition with private enterprise. However, there was no formal policy until 1955, when the House passed and the Senate Committee reported legislation to require the Executive Branch to increase its reliance on the private sector. Final action was dropped only upon assurance from the Executive Branch that it would implement the policy administratively.

Bureau of the Budget Bulletin 55-4 was issued in 1955 prohibiting agencies from carrying on any commercial activities which could be provided by the private sector. That Federal policy, implemented by President Eisenhower said, "The Federal government will not start or carry on any commercial activity to provide a service or product for its own use if such product or service can be procured from private enterprise through ordinary business channels."

The Bureau of the Budget became the Office of Management and Budget and "bulletins" became "Circulars". OMB Circular A-76 succeeded Bureau of the Budget Bulletin 55-4, and the policy that the government should not compete with private enterprise remained through Democrat and Republican administrations until the provision was eliminated by George W. Bush in 2003.

The Reagan Administration's "Grace Commission", also known as the President's Private Sector Survey on Cost Control, recommended contracting out to private firms for certain support services in four separate reports, and the Clinton Administration's National Performance Review, or Reinventing Government, endorsed A-76 and urged Congress to lift restrictions on its application.

In 1988, the Commission on Privatization appointed by President Reagan recommended privatization of hundreds of federal programs, activities and even complete agencies. Most are still on the government's books today, not because privatization was a bad idea, but the commission's report was completed late in Reagan's second term and there has been no executive branch focus on shedding federal functions since.

Each time there has been a White House Conference on Small Business (1980, 1986, and 1995), one of the top issues identified by American entrepreneurs is unfair government-sponsored competition with the private sector.

In 1980, the first White House Conference on Small Business made unfair competition one of its highest-ranked issues. It said, "The Federal Government shall be required by statute to contract out to small business those supplies and services that the private sector can provide. The government should not compete with the private sector by accomplishing these efforts with its own or non-profit personnel and facilities."

In 1986, the second White House Conference made this one of its top three issues. It said, "Government at all levels has failed to protect small business from damaging levels of unfair competition. At the

federal, state and local levels, therefore, laws, regulations and policies should ... prohibit direct, government created competition in which government organizations perform commercial services ... New laws at all levels, particularly at the federal level, should require strict government reliance on the private sector for performance of commercial-type functions. When cost comparisons are necessary to accomplish conversion to private sector performance, laws must include provision for fair and equal cost comparisons. Funds controlled by a government entity must not be used to establish or conduct a commercial activity on U.S. property."

And the 1995 White House Conference again made this a priority issue when its plank read, "Congress should enact legislation that would prohibit government agencies and tax exempt and anti-trust exempt organizations from engaging in commercial activities in direct competition with small businesses." That was among the top 15 vote getters at the 1995 Conference and was number one among all the procurement-related issues in the final balloting.

In fact, BCFC estimates that more than \$517 billion in spending, subsidies and other measures supporting government agencies and government-underwritten entities duplicate, are otherwise available from, or could be turned over to private, for-profit entities in the free enterprise system.

Mr. Chairman, in your invitation to testify, you indicated the hearing "will examine the impact on the private sector from the decreased use of public-private competition in sourcing government products and services. The hearing will also examine best practices for encouraging a more robust utilization of commercially available products and services to increase government efficiency while decreasing costs."

With regard to best practices, former President Bill Clinton—a Democrat—privatized more functions in the federal government than did the administration of President Ronald Reagan, a Republican.

Additionally, former Indianapolis Mayor Stephen Goldsmith, a Republican, identified \$400 million in savings and opened up over five dozen city services— including trash collection, pothole repair and wastewater services—to competitive bidding.

Meanwhile, former Chicago Mayor Richard Daley, a Democrat, privatized more than 40 services and generated over \$3 billion in privatization deals for the Chicago Skyway toll road, four downtown parking garages, and the city's downtown parking meter system. When former Pennsylvania Governor Ed Rendell, a Democrat, was mayor of Philadelphia, he saved \$275 million by privatizing 49 city services, including golf courses, print shops, parking garages, and correctional facilities. Former Cleveland Mayor Michael White, a Democrat, launched the "Cleveland Competes" initiative to allow private vendors to bid on contracts for services like pothole repair, downtown trash collection and payroll services, resulting in millions of dollars in savings. Former Ohio State Treasurer Richard Cordray, now the Director of the Consumer Financial Protection Bureau (CFPB), set out to implement a robust real property inventory program that would compile a comprehensive on-line database of state-owned property and look for opportunities to put that property to more effective and efficient use. More recently, Chicago Mayor Rahm Emanuel has generated billions in savings and revenue through privatizations, public-private partnerships, and competitive contracting of Chicago assets or services. In Michigan, former Governor John Engler implemented a process known as PERM - Privatize, Eliminate, Retain, or Modify in his first term, which used sound methodology for determining whether or not a state activity should be privatized. Virginia's Commonwealth Competition Council was for more than a decade a trend-setter in policies and procedures for private sector utilization.

A current best practices example worthy of review is Utah's Free Market Protection and Privatization Policy Board. This body has conducted a state commercial activities inventory and reviewed privatization opportunities, including those suggested from outside of state government that agencies themselves may not promote or identify on their own.

Another best practices model is the 3DEP or 3-Dimensional Elevation Program of the U.S. Geological Survey (USGS) in Reston, VA. Over a period of some 20 years, USGS has successfully transitioned from an in-house mapping production agency that was viewed as duplicating and competing with private enterprise to the entity it is today that effectively utilizes the private sector for mapping data acquisition and production, while focusing government employees on standards and coordination. A positive public-private partnership model is needed so that there are clearly defined roles and responsibilities to provide synergy between the public and private sectors in the Federal level, and particularly with regard to geospatial activities. There is a need and role for government in surveying, mapping and geospatial activities. Agency personnel should be focused on inherently governmental activities such as enforcement of standards and specifications, development of requirements, coordination, and administering contracts. Commercial activities, including data acquisition, processing, applications, and value added services should be left to the qualified, competent and capable private sector in surveying and mapping.

With regard to the impact on the private sector, the SBA Office of Advocacy is designed to be the in-house advocate for small business within the Federal Government. It is an independent office within SBA that has the statutory authority to go to other agencies and advocate policies, changes in regulations, etc., when an agency is doing something harmful to small business. The office conducted a series of hearings and issued a report, "Government Competition: A Threat to Small Business", (March 1980), and "Unfair Competition by Nonprofit Organizations With Small Business: An Issue for the 1980s" (June, 1984). It offered testimony, when requested by the House and Senate Small Business Committees, in 1988 and 1996 and conducted some research on non-profit competition in 1999.

Its last study of OMB Circular A-76 showed of the 795 companies that received these procurements, 567 companies, or 71 percent, were small. Small businesses won 65 percent of the total number of A-76 contracts. It is clear that the moratorium on A-76 harmfully and disproportionately impacts small business.

Utilization of the private sector can take many different forms - direct conversion, contracting out, vouchers, asset sales and leases, privatization, divestiture, and other instruments to transfer activities from the government to the private sector. (For a comprehensive list of such strategies and instruments, see the General Accounting Office publication, "Terms Related to Privatization Activities and Processes", GAO/GGD-97-121, July 1997.) Another very effective tool is public-private partnerships, or P3s.

Congress has two internal groups that are advocates for these strategies. The "Yellow Pages" Caucus, of which Mr. Meadows is a member, is a group of members of Congress dedicated to reliance on the private sector, to the maximum extent possible, rather than government, to provide commercially available goods and services to the government and the American people. The Congressional Caucus on Public-Private Partnerships (P3s), co-chaired by Mr. Connolly and Mr. Rogers of Alabama, to focus on the nation's infrastructure and the growing use of public-private partnerships in building and maintaining it. BCFC recommends these groups actively seek legislative initiatives to assure the proper role of government and the private sector in the provision of services.

Why use the private sector? Experience at all levels of government demonstrate the following benefits, as documented by the Reason Foundation:

- **Cost Savings:** A Reason Foundation review of more than 100 privatization studies found savings ranging from 20 percent to 50 percent.
- **Access to Expertise:** Contracting gives government access to expertise it does not have in-house on an as-needed basis. It is cheaper to retain architects, engineers, lawyers and other occupations on an as-needed basis than to hire them as full-time employees.
- **Better Quality:** Competition brings out the best in competitors, whether it is in sports or in the business of providing public services. Competitors have incentives to offer the best possible combination of price and service quality to beat their rivals.
- **Improved Risk Management:** Contractors, rather than the government, are responsible for cost overruns, strikes, delays, and other risks.
- **Innovation:** Competition to win and retain contracts spurs the discovery of new, cutting-edge solutions. Without competition, even top-notch employees may stop looking for ways to improve how they meet customers' needs.
- **Meeting Peak Demand:** The cost of providing a public service can be raised considerably by the capital and manpower needed to satisfy demand at peak periods, even though those peaks may last only for a few hours a day, a few days a week, or a few months a year. Contracting allows governments to obtain additional help when it is needed so that services are uninterrupted for residents.
- **Timeliness:** "Time is money" if you are a contractor footing the bill, or if your contract with the city or state includes penalties for delays. Contractors can recruit additional workers or provide performance bonuses to meet or beat deadlines, options that often are unavailable to in-house staff.

BCFC is pleased to recommend the following:

1. Congress should enact the "Freedom from Government Competition Act", H.R. 2044/S. 1116, introduced by Representative John J. "Jimmy" Duncan, Jr. (R-TN) and Senator John Thune (R-SD). This long-overdue legislation would establish a balanced and reasonable statutory process for review commercial activities in the Federal government. This bill does not mandate privatization. However, it does establish a process for agency review of in-house commercial activities.
2. Current law limitations, restrictions, prohibitions and moratoria on OMB Circular A-76 and other competitive sourcing or private sector utilization for commercial activities should be repealed.
3. End "insourcing", the practice of converting work currently performed by private sector contractor firms to performance by Federal government employees. This program has been a failure inasmuch as it has not proven to identify and reverse the alleged contracting out of inherently governmental activities, but rather has been applied to unequivocally commercial activities, without a "reverse A-76" or any demonstration of cost savings.
4. Establish a Federal entity similar to Utah's Free Market Protection and Privatization Policy Board or Virginia's former Commonwealth Competition Council.

5. Enhance Federal agency contract monitoring. This is an often neglected and necessary governmental skill and management capability that will hold the private sector's feet to the fire and ensure that taxpayers are realizing the full benefit of a private sector utilization program. Hand in hand with this requirement is an accelerated acquisition workforce improvement program. Agencies need to invest in procurement expertise to have the in-house expertise to evaluate, select, negotiate, award and manage contracts. This capability must work with program managers to assure a successful public-private partnership.

Mr. Chairman, the Federal government has become too big to succeed. The reason is government, in an effort to be all things to all people, cannot provide the basic services fundamental to its core mission and the Constitution. Above all, the Federal government is spread too thin, attempting to carry out activities best left to private enterprise.

Perhaps the most successful thing the Federal government has ever done was the original G.I. Bill. My late father, a D-Day veteran, was a beneficiary of that program. After World War II, the Federal government provided every eligible returning veteran an opportunity to buy a home and get an education. But the government did not start in-house home building capabilities or create government-run schools. The G.I. bill was essentially a voucher program. The government contracted with the private sector for these programs and let our veterans go into the private market to get what they needed to return to civilian life, revitalize post-war America, and began one of the largest economic expansions in human history. That's a bi-partisan best practices model we should review and emulate in America today.

America's first experience with privatization happened in 1492 when Queen Isabella hired an Italian contractor to explore the western ocean; she didn't turn to her foreign ministry or her ministry of war, noted Dr. E.S. Savas, a professor in the School of Public Affairs at New York's Baruch College, a former deputy city administrator and author of "Privatization: The Key to Better Government" (Chatham House, 1987). And America itself is named after a contract mapmaker – Amerigo Vespucci.

Private involvement in public works is as old as the Republic. George Washington was our first president, but his business interest, as well as his investment, was in the Potowmack Company, a for-profit firm created in 1785 to make improvements to the Potomac River and improve its navigability for commerce. That venture ultimately resulted in the Chesapeake and Ohio (C&O) Canal.

"It is not the role of government to provide services. It is the role of government to see to it that services are provided," New York governor Mario Cuomo once said. The late columnist David Broder once called privatization an idea "no politician – liberal or conservative – can ignore". When Sharon Pratt Dixon became mayor of Washington, DC, she sought advice from Chicago mayor Richard M. Daley. "Privatize everything you can" he said.

## JOHN M. PALATIELLO

John M. Palatiello (pronounced pal – a – tee – EL – lo) is President of the Business Coalition for Fair Competition (BCFC, [www.governmentcompetition.org](http://www.governmentcompetition.org)) an organization comprised of trade associations, businesses, and organizations dedicated to free enterprise, relief from unfair government sponsored competition, and maximum government reliance on the private sector.

John is President and owner of John M. Palatiello & Associates, Inc. ([www.jmpa.us](http://www.jmpa.us)) a public affairs consulting firm located in Reston, Virginia, providing government affairs and association management services to firms and organizations, with a specialization in the A/E, geospatial, infrastructure and privatization markets. He serves as Executive Director of MAPPS, [www.mapps.org](http://www.mapps.org), an association of private firms in the geospatial field and Administrator of the Council on Federal Procurement of Architectural-Engineering Services (COFPAES, [www.cofpaes.org](http://www.cofpaes.org)), a coalition of the nation's leading design professional societies, Executive Director of the Maryland Society of Surveyors and the Virginia Association of Surveyors. His firm is the government affairs representative of the National Society of Professional Surveyors (NSPS).

In 2008, John was named by Secretary of the Interior Dirk Kempthorne as a charter member of the National Geospatial Advisory Committee, where he served a 2-year term.

John has written more than 50 published papers and articles, many on Federal policy, government contracting and privatization issues. He was a leader of efforts to enact the Federal Activities Inventory Reform (FAIR) Act, Public Law 105-270, including being the primary private sector witness in hearings held by Congress. John has served as Chairman of the Procurement and Privatization Council of the U.S. Chamber of Commerce, and currently serves on the Chamber's Small Business Council. He has also been a frequent witness before Congress on the need for reform to eliminate various forms of unfair government competition with private sector firms.

A Connecticut native, John has a degree in political science from The American University in Washington, DC. He served for eight years as a Congressional staff assistant, including service as an aide to former Congressman John Myers (R-IN) and former Congressman Bill Hendon (R-NC). He is a former 9-year member of the Fairfax County (VA) Planning Commission and numerous state and local governmental, community and political boards and committees and currently serves on the Virginia Geographic Information Network (VGIN) Advisory Board. He formerly served as Executive Director of America Moving Forward, an association of firms involved public-private partnerships ("P3s") for financing, building, and operating tolls roads and other surface transportation infrastructure.



Committee on Oversight and Government Reform  
Witness Disclosure Requirement – “Truth in Testimony”  
Required by House Rule XI, Clause 2(g)(5)

Name: John M. Palatiello

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1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2012. Include the source and amount of each grant or contract.

None

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2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

Business Coalition for Fair Competition

President

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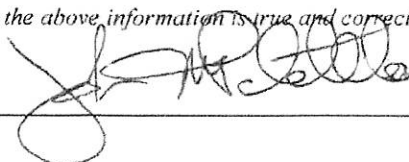
3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2012, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

None

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*I certify that the above information is true and correct.*

Signature:



Date:

July 5, 2016

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