



Private Sector Jobs Now!

News Event - 3pm, January 15, 2010
Murrow Room, 13th Floor, National Press Club
529 14th Street, NW, Washington, DC 20045

Commemorating the 55th anniversary of Bureau of the Budget Bulletin 55-4 stating:

“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.” – January 15, 1955

However, the private sector is hindered by insidious amounts of unfair government competition...

- In March 2009, President Obama and the Office of Management and Budget (OMB) began the process of insourcing jobs, currently in the private sector, into Federal jobs and positions.
- Also in March 2009, Congress passed language in the Omnibus Appropriations Act, now Public Law 111-5, allowing insourcing while restricting contracting out to the private sector.
- In December 2009, Congress passed language in the 2010 Consolidated Appropriations Act, Public Law 111-117, allowing insourcing while restricting contracting out to the private sector.
- According to Bureau of Labor Statistics: Since December 2008, the Federal government (non-Postal Service) gained 109,700 jobs; and the private sector lost 4,099,000 jobs.

SPEAKERS:

John Palatiello, President, Business Coalition for Fair Competition (BCFC)

Grover Norquist, President, Americans for Tax Reform (ATR)

Tom Schatz, President, Citizens Against Government Waste (CAGW)

Pete Sepp, Vice President of Policy and Communications, National Taxpayers Union (NTU)

Michael Hough, Director of Commerce, Insurance & Economic Development Task Force, and Public Safety & Elections Task Force, American Legislative Exchange Council (ALEC)

Phil Kerpen, Director of Policy, Americans for Prosperity (AFP)

Mark Casso, President, Construction Industry Round Table (CIRT)

John Byrd, Government Affairs Manager, MAPPS



FOR RELEASE:
January 15, 2010

Commemorating the 55th Anniversary of Bureau of the Budget Bulletin 55-4 Key Policy for Federal Government Utilization of the Private Sector for Goods and Services

Today marks the 55th anniversary of a key government policy published by the Eisenhower Administration. The significance of this policy looms large considering the current state of the U.S. economy. The Obama Administration, specifically the Office of Management and Budget (OMB), would be wise to re-engage on the correct side of this public policy as one major way to generate job creation and growth in the private sector.

OMB's predecessor, the Bureau of the Budget, first published Bulletin 55-4 on January 15, 1955. Bulletin 55-4 stated:

"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."

Unfair government competition with the private sector is already rampant in many sectors of the economy including architecture, audits, buses, construction, debt and bill collections, engineering, equipment repair and maintenance depots, food service, furniture, information technology, laboratories, landscaping, laundry and dry cleaning, office products, mapping, meeting planning, marketing research, roofing, motorcoaches, printing, public storage, surveying, tax preparation, transportation and utilities, among other just as important sectors of the U.S. economy. In recent months, the U.S. economy has seen a dangerous trend toward government operations in automaking, car dealerships, banks, student loans; Departments of Agriculture, Defense and Homeland Security insourcing; and the threat of a Federal government-run health entity. This unprecedented government intrusion and competition in the private market is having a detrimental effect on capital investment and jobs creation.

Given the Federal government's shift to insourcing private sector positions in-house to Federal positions, OMB's likely redefinition of "inherently governmental" activities and functions signaling a green light for insourcing private sector positions on a vast scale, Congress' restrictions on the A-76 competitive sourcing process, debate on stimulus proposals to combat an unemployment rate in excess of 10%, and the loss of 4,099,000 private sector jobs since December 2008, the stakes moving forward could not be higher for the nation's economy.

Of a Federal (non-military uniformed, non-Postal) workforce of 1.7 million, more than 850,000 positions have been identified as "commercial" in nature, meaning there are private firms that commercially provide the product or service. In the current economy we are losing private sector jobs and growing government jobs. It is wrong to believe that taxpayer money should be spent to build in-house government capabilities to compete with the private sector. It is abundantly clear this will only exacerbate private sector job loss in the short-term and unsustainable in the long term.

The private sector, especially small business, faces difficult odds when competing for contracts and work when the private sector's main competition is a public agency with vast resources including in-house capabilities firmly in place. It is no wonder that when the government tries to compete with the private sector, unfair government competition results. Every Congressionally-chartered White House Conference on Small Business has made unfair government competition with small business a top issue. Concern for government competing with the private sector has been a serious concern for small business for decades.

The time is now for President Obama and Congress to employ the private sector to the maximum extent practical. President Obama would be well served to leverage the benefits of and need for maximum utilization of the private sector--- thus creating private sector jobs now. It is time for the federal government to rededicate itself to Eisenhower's common sense policy.

John M. Palatiello, President
Business Coalition for Fair Competition (BCFC)

The Business Coalition for Fair Competition (BCFC) is comprised of trade associations, businesses, and organizations dedicated to free enterprise, relief from unfair government sponsored competition, and smaller, more efficient government. BCFC is working to elevate the issue of unfair government competition, promoting legislation and policies to eliminate unfair competition, and opposing efforts to mandate government monopoly performance of commercially available goods and services.



HOW MUCH DOES IT COST TO HIRE ONE NEW FEDERAL EMPLOYEE? \$1.57 MILLION TO \$4.61 MILLION

January 15, 2010

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When politicians claim that they will save money by “in-sourcing” federal functions from contractors, or will respond to some new need by expanding the federal workforce, that has a cost to taxpayers. How much is that cost?

In order to determine the cost of hiring a new federal bureaucrat, ATR has calculated the “all-in” cost of hiring a new employee. We include salary as well as benefits, pension contributions, and payroll taxes. We assume a 20-year federal career (the standard used by agencies when estimating cost). The numbers presented are both nominal and inflation-adjusted. A COLA is assumed which is equal to the average level in the Washington, DC area for the past five years.

Here are the results for a low-cost, medium-cost, and high-cost employee:

	GS-7 (Low-Cost)	GS-11 (Mid-Cost)	GS-15 (High-Cost)
Nominal	\$1.57 million	\$2.33 million	\$4.61 million
Inflation-Adjusted	\$1.22 million	\$1.81 million	\$3.56 million

- The federal general pay schedule for the Washington, DC area is used
- There are separate estimates for low-cost (GS-7), intermediate-cost (GS-11) and high-cost (GS-15) employees. This was recommended as appropriate levels by former administration officials to give a sense of scope
- The employee is assigned a “Step 5” in the GS table for a 20-year career. For the first half of that career, they will be under a Step 5. For the second half, they will be over a step 5
- The five-year moving average for this locality’s COLA is 3.55%, so that is assumed to be the COLA rate going forward
- In order to account for benefits, pension contributions, and payroll taxes, the GS dollar levels are increased by 33 percent, which was standard budgeting practice in the Department of Labor in the Bush Administration
- The dollar value is expressed in nominal terms and after-inflation (2.5%)

For more information, contact ATR Tax Policy Director Ryan Ellis at rellis@atr.org

AMERICAN LEGISLATIVE EXCHANGE COUNCIL **ALEC**

PUBLIC-PRIVATE FAIR COMPETITION ACT

Summary

This act prohibits government from engaging in any commercial activity of any goods or services to or for government agencies or for public use which are also offered by private enterprise. It establishes a Private Enterprise Advisory Committee to act in conjunction with the state auditor to review and make determinations concerning state agencies engaged in or proposed to be engaged in activities which unfairly compete with the private sector. It also establishes a system to resolve complaints from the private sector regarding unlawful government activity established in this Act. (An example of this bill is Oregon BB #2778, 1993.)

Model Legislation

{Title, enacting clause, etc}

Section 1.

This Act shall be known and may be cited as the Public-Private Fair Competition Act.

Section 2. {Statement of purpose}

The Legislative Assembly finds and declares that the growth of private enterprise is essential to the health, welfare, and prosperity of this state and that government competes with the private sector when it provides goods and services to the public. It is the intent of the Legislative Assembly and the purpose of this Act to protect economic opportunities for private industry against unfair competition by government agencies and enhance the efficient provision of public goods and services. It is also the intent of the Legislative Assembly that issues and complaints regarding competition between government and the private sector be addressed by the state auditor, with advise from the Public Enterprise Advisory Committee created by this Act.

Section 3. {Definitions}

(A) "Commercial Activity" means performing services or providing goods which can normally be obtained from private enterprise.

(B) "Committee" means the Private Enterprise Advisory Committee.

(C) "Competitive impact statement" means a cost analysis using uniform accounting standards accepted by private enterprise to determine the total cost of commercial activity. The cost analysis shall include a comparison of impact of commercial activity on state and local tax revenues. The private enterprise cost figures in the cost analysis shall be determined by obtaining one or more bids for performing or providing commercial activity.

(D) "Government agency" means the state, any unit of state government and any local government or other subdivision or district of the state, and shall not be construed to exclude any entity which is not majority owned as private property and which established under the Constitution, statutes, ordinances or any other order or action by any such entity or its officers.

(E) "Private enterprise" means an individual, firm, partnership, joint venture, corporation, association or any other legal entity engaging in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing or advertising of goods or services for profit.

(F) "Uniform accounting standards" means an accounting method which allows government agencies to identify the true and total cost to supply goods and services in the same manner as private enterprise would identify true and total cost, including but not limited to the following:

(1) Labor expenses, including direct wage and salary costs, training costs, overtime and supervisory overhead;

(2) Total employee fringe and other personnel expenses;

(3) Operating costs including vehicle maintenance and repair, marketing, advertising, and other sales expenses, office expenses, billing and insurance expenses;

(4) Real estate and equipment costs, debt service costs and a proportionate amount of other agency overhead and capital expenses including vehicle depreciation and depreciation of other fixed assets such as buildings and equipment;

(5) Contract management costs;

(6) The imputed tax impact of the activity if such entity were required to pay federal state and local taxes; and

(7) Any other cost particular to the business or industry supplying the goods or services.

(G) "Government agency" means the state, any unit of state government and any local government or other subdivision or district of the state, and shall not be construed to exclude any entity which is not majority owned as private property and which established under the Constitution, statutes, ordinances or any other order or action by any such entity or its officers.

Section 4. (Government activity prohibitions and exceptions)

(A) Except as provided in this act, a government shall not engage in any commercial activity, including, but not limited to, the manufacturing, processing, managing, sale, offering for sale, rental, leasing, delivering, dispensing, distributing, or advertising, in whole or part, of any goods or services to or for government agencies or for public use which are also offered by private enterprise.

(B) Notwithstanding any other provision of law, a government agency is authorized to perform or provide a commercial activity only when:

(1) The activity is authorized by state law.

(2) Use of a private enterprise source would cause unacceptable delay or disruption of an essential program.

(3) The agency can provide or is providing goods or services to government agencies or the public on a continuing basis at a lower cost than if such goods or services were obtained from private enterprise as determined by cost comparison as outlined in the competitive impact statement relating to the specific good or service.

Section 5 (Competitive Impact Statement)

(A) A government agency shall not be required to perform more than one competitive impact statement within one year for the same good or service as specified in a complaint under this act.

Section 6 (Committee governance)}

(A) The state auditor in consultation with the Public Enterprise Advisory Committee, shall review and make determinations concerning state statutes, state rules and practices of state agencies relating to activities engaged in or proposed to be engaged in by government agencies which may be affected by this act and shall enforce the provisions of this act.

(B) The state auditor, in consultation with the committee, shall determine final uniform accounting standards to be used for cost analysis in this Act in at least as strict a form as the definition of uniform accounting standards in this Act.

(C) The state auditor, in consultation with the committee, shall adopt rules:

- (1) Necessary to govern the public bidding process by private enterprise.
- (2) Establishing procedures for hearing and resolving complaints filed under this Act.

(D) The state auditor shall report activities and determinations made under this Act to the Governor and Legislative Assembly not later than [deadline].

(E) The Private Enterprise Advisory Committee is created in the Department of Insurance and Finance. The committee shall advise the state auditor in the implementation and enforcement of this Act. The committee shall consist of nine unpaid members who shall be appointed as follows:

- (1) The Governor, Speaker of the House of Representatives and President of the Senate shall each appoint two members from private enterprise who are business owners or officers.
- (2) Two members who shall be chief executive or administrative officers of a government agency and who shall be appointed by the Governor.
- (3) One member of the Legislative Assembly who shall be appointed by the Speaker of the House of Representatives.
- (4) The chairperson of the committee shall be appointed by the Governor from the members representing private enterprise.

(F) All initial appointments to the committee shall be made no later than January 1 of the year following enactment. Terms of office for all members of the committee shall be two years and members may be reappointed up to an additional four terms. Each member who is a state agency employment shall remain on the committee until the end of the member's term of office, but only so long as the person remains a state agency employee. A vacancy on the committee shall be filled within 60 days of the date the vacancy occurred in the same manner as the original appointment. Any member appointment to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of the term. Each member shall continue in office until a successor is appointed and qualified.

(G) Five members of the committee shall constitute a quorum. No action shall be taken by the committee without the concurrence of at least three members.

(H) The state auditor shall adopt rules necessary to govern proceedings of the committee. Members of the committee shall serve without compensation but shall be entitled to expenses.

Section 7 {Complaints}

(A) Any person who believes that a government agency has engaged in or is proposing to engage in commercial activity in violation of this Act may file a written complaint with the state auditor stating the grounds for the complaint. Upon receipt of the complaint the state auditor shall immediately transmit a copy of the complaint to the head of the government agency which is the subject of the alleged violation and to the committee.

(B) The head of the government agency named in the complaint shall respond to the state auditor in writing within 30 days after receipt of a complaint. The state auditor shall transmit a copy of the response to the committee. The government agency shall either admit or deny the allegations made in the complaint and indicate whether remedial action will be taken.

(C) If a government agency denies the allegations made in the complaint, the government agency shall:

(1) Prepare and submit to the state auditor a competitive impact statement concerning the commercial activity that is the subject of the complaint; and

(2) Prepare a detailed request for proposal which will be widely disseminated within segments of private enterprise which normally engages in the commercial activity that is the subject of the complaint in order to obtain firm bids or proposal for the activity requested. All bidding processes shall be a matter of public record. A reasonable time period shall be given to private enterprise to submit bids or proposals. Bids received from the request for proposal shall be made available upon request of the state auditor. Bids received from request for proposal shall be used in the preparation of the competitive impact statement.

(D) The state auditor shall establish a deadline for submission of the competitive impact statement by the government agency.

(E) The state auditor shall hold a public hearing on the complaint where all parties are afforded an opportunity to present evidence. The hearing shall be held:

(1) Within 30 days after receipt of the agency's response under this section, if the agency admits the allegations in the complain but does not indicate whether remedial action will be taken; or

(2) Within 30 days after the state auditor receives the competitive impact statement prepared under this section.

(F) After considering the competitive impact statement, bids received from private enterprise under this Act and other evidence presented, the state auditor, after consulting with committee, shall determine whether the government agency is in violation of the provisions of this Act. If a government agency is found to be in violation of this Act, the state auditor shall take the necessary steps to terminate the commercial activity.

(G) Within 30 days after the public hearing, the state auditor shall issue a report of its findings to the complainant and the government agency.

(H) If the government agency's commercial activity is to be terminated, the termination shall take place within three months of the state auditor's report or under a schedule set by the state auditor.

(I) The state auditor shall establish by rule fees for filing complaints which will supply the operating funds of the committee. The fee shall not be less than \$2,000 per complaint. In the case where the state auditor finds in favor of the complainant, the government agency shall pay the filing fee, and the complainant shall be reimbursed by the state auditor.

(J) If the government agency fails to comply with the state auditor's order, the state auditor may file an action to restrain and enjoin the government agency from engaging in the activity.

(K) A private enterprise that suffers economic loss as a result of a government agency violating this Act has a cause of action for injunctive relief or damages, or both, in the county where the government agency is located. Any damages awarded in a cause of action brought under this Act shall be assessed against the specific government agency and specifically assessed against its budget. Court costs shall be awarded to any private enterprise prevailing under this section. A private enterprise shall not have standing to seek injunctive relief or damages or to challenge violations of this Act in the courts of this state until the private enterprise has first made a complaint to the state auditor and has received the decision of the state auditor.

Section 8. {Severability clause.}

Section 9. {Repeals.}

Section 10. {Effective date.}

*Adopted by ALEC's Tax and Fiscal Policy Task Force and
Approved by full ALEC Board of Directors January 1995.*

PRESS STATEMENT
by
Mark A. Casso, Esq.
President
Construction Industry Round Table
January 15, 2010

Introduction

*“Government is like fire, both a dangerous servant and
a fearsome master.”*

George Washington

America’s great success and progress is a direct result of its indomitable spirit and entrepreneurial aspirations coupled with its diverse and ubiquitous private sector economic engine. Putting this spirit and energy to work for the federal/state/local government’s program goals is sound public policy!

Even in these difficult economic times, President Eisenhower’s powerful, yet simple statement of public policy remains as true today (if not more so) as it did some 50 years ago: *“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.”*

Government should rely on the diverse and teeming private sector to deliver on a myriad of program needs and services. There is no reason to “reinvent the wheel,” or hire, train, and employ countless government workers to only then have to provide for their gainful employment and eventual retirement when numerous private sector businesses (most of them small) are ready, willing, and able to fill those requirements.

Putting aside the omni-present studies and less than persuasive price competitions now being conducted under A-76, it is simple common sense to conclude: one is greatly advantaged to only pay for services when a need arises and to only bare that cost as long as it is necessary. In the private sector it is called “core competency.” If this fact was not so, then every private sector firm would look like the federal government (large, bureaucratic, wasteful, redundant, and over budget!)

To be certain, the relationship between the private sector and the government rests upon a proper balance, a partnership if you will, that takes into account the inherent nature of the work, management of the contracted services, and a final accounting of the product. When handled properly – the taxpayer is the ultimate winner.

To quote a recent President, elections “have not reversed the laws of economics.” Government does best when it concentrates on the matters it is inherently and uniquely responsible for while utilizing America’s vast business assets for everything else.

-- more --

Design/Construction Community

Government “in-house” competition as it relates to the design/construction community (i.e. industry) can be summarized by the following elements:

- The Design/Construction industry is labor intensive (and will remain so in the foreseeable future) with little off-shore outsourcing for design work, and none in terms of construction labor.
- The recent financial/economic turmoil has put severe stresses on the private sector in the Design/Construction industry.
- The market has both been SHRINKING and SHIFTING:

SHRINKING: From a high in the spring 2006 of \$1.2 Trillion to the current level (based on the most recent figures in Nov. '09) of \$900 Billion: [A decrease of \$300B or 25%].

SHIFTING: The market sectors when divided between Private vs. Public has traditionally (over the past 25-40 yrs) been approximately 80%-20% (Private to Public spending). **Today, that mix is 64.5%-35.5% (Private to Public spending)** and growing ever more public sector oriented.

IMPACT: The results of these two major market trends are high unemployment levels for both union and non-union households (running at more than twice the national average – at 22.7% [or 2.04 million, Dec. '09] in the design/construction industry); AND With the shift to Public project spending, greater intrusion of regulations, taxation, and government “in-house” competition will drive the markets and determine who gets the work.

Consequences

Why should the taxpayer (i.e. American public) care whether a private sector worker or a government bureaucrat does the design work?

- Innovation: The private sector has a wide array of project experiences and approaches driven by innovation, creativity, use of new or alternative materials, means, and methods – all in the search for competitive edge;
- Competition: The private sector must compete every day for project contracts – through improved management and labor techniques that spur quality and efficiencies;
- Productivity: The private sector is rewarded for its bottom line productivity resulting in cost savings;
- Costs: The overall benefit to the taxpayer through a process whereby the private sector provides the services to meet public needs is manifested in the best quality for a competitive price.

Conclusion

The Design/Construction industry has been a strong symbiotic partner with government since the beginning of the Republic – now more than ever the government should rely on this industry for its infrastructure related needs.

CIRT is a national business trade association composed of 100 CEOs from the leading architectural, engineering, and construction companies doing business in the United States; these firms' activities include billions of dollars in both public and private infrastructure projects that improve the quality of life for all Americans. For more information on this and other issues affecting the design and construction industry, check out: www.cirt.org



Introduction

Unfair government-sponsored competition has been a top issue at every White House Conference on Small Business.

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.

However, the unfair government-sponsored competition issue has not been a top priority for Congress, or the White House (under either party), for several years.

Since the enactment of the Federal Activities Inventory Reform (FAIR) Act in 1998, and the implementation of "competitive sourcing" by the Bush Administration, (OMB Circular A-76, revised May 29, 2003), the focus on a broader, philosophical issue of government not competing with its citizens has been lost in favor of the narrower attention to A-76.

Similarly, 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. Again, the Office of Advocacy has not had government competition as an issue on its agenda for many years. 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.

Issue Background

Today, the Federal government owns and operates hundreds of activities that are commercial in nature. They are functions that are not inherent or unique to government, but rather they can be found in the Yellow Pages from small businesses on Main Street in virtually every town in America.

In his first term, President Bush made a good start with his “competitive sourcing” initiative. This activity, a key part of the President’s Management Agenda, requires Federal agencies to subject commercial activities of the government to market-based competition. Under the FAIR Act, first implemented by President Clinton in 1998, agencies identified more than 850,000 Federal employee positions that are “commercial” in nature. These commercial activities – those operated by a Federal executive agency and which provides a product or service that could be obtained from a commercial source, include such positions as mapping, computer programming, landscaping, photography, construction, laundry services, printing, auto repair and engineering. Competitive sourcing required agencies to compete these functions against the private sector, with the provider offering the best value to the taxpayer – regardless of whether that provider is the government employees or a private firm – getting to do the work. Since the government’s in-house incumbent had to modernize and economize in order to beat the private sector, the taxpayer wins regardless of whether the work stayed in-house or got contracted.

Competitive sourcing should be an arrow in the private sector’s quiver – not the entire arsenal. Even the modest Bush program has been thwarted by Congress, with restrictions on the FAIR Act and A-76 competitions. The Obama Administration is moving in the wrong direction – it is “in-sourcing” work from private enterprise to government employee performance.

BCFC favors direct conversion contracting out, vouchers, asset sales and leases, public-private partnerships, privatization, divestiture, and other instruments to transfer activities from the government to the private sector should be implemented. 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.)

BCFC is elevating this issue and recommending renewal of a little-used policy of the government that dates to the Eisenhower Administration. That policy, prior to 2003, 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.

While the Bush Administration took a significant step toward efficiency through competitive sourcing, a broader look at government agencies, programs and activities is needed to identify those that have outlived their usefulness, have lingered despite achieving their original goals, or should no longer be part of the government funding – irrespective of whether they are performed by contractors or government employees. The aforementioned policy was *eliminated* from OMB Circular A-76 by the Bush Administration in 2003.

How Does the Government Compete or Facilitate Unfair Competition?

The following is a summary of just a few of the ways in which the Federal Government creates or supports unfair government-sponsored competition with the private sector.

Government Competition/Utilization of the Private Sector – Since the first Hoover Commission in the 1940s, and through each White House Conference on Small Business in the 1980s-1990s, government duplication of and competition with the private sector has been a major public policy issue for government (Federal, as well as state and local), and has had a particularly severe impact on small business. The issue, however, has lost its visibility and priority. Most attention to the issue has been limited to cost-comparisons under OMB Circular A-76 and the Bush Administration’s “competitive sourcing” initiative (see below). The foundation principle of the Eisenhower Administration’s landmark 1955 Bureau of the Budget Bulletin 55-4, that it is the policy of “the Federal Government that it 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,” should be the fundamental tenet of Federal policy. The high moral and philosophical ground should be taken on this principle, and A-76 and competitive sourcing should be implemented as one (but not the only) tool to accomplish this goal.

Competitive Sourcing - The Bush Administration’s “competitive sourcing” program (implemented by OMB Circular A-76) is under attack. The Bush revisions to the Circular have been stopped by numerous provisions added to appropriations bills and the Defense Authorization bill. A provision in the FY10 Omnibus Appropriations bill effectively placed a moratorium on such public-private competitions. Moreover, according to OMB’s most current data, 91 percent of competitions were won by the Federal employees. About half of all competitions did not attract a private sector offer. Private sector confidence in the revised A-76 evaporated.

Non-Profit Competition – Nonprofit organizations unfairly compete with private, for-profit businesses by engaging in commercial activities, but not paying taxes. This also denies the government revenue. Then-Senate Finance Chairman Grassley and House Ways and Means Chairman Thomas both investigated abuses by non-profit and tax exempt organizations in the 109th Congress, but there was no legislative remedy. From YMCA’s competing with private health clubs to credit unions competing with banks to rural electric and telephone cooperatives competing with investor-owned utilities, nonprofit organizations, provided special tax status under sec. 501(c) of the Internal Revenue Code, unfairly compete with the private sector. Their special “exempt” treatment is clearly intended for “governmental” activities, rather than commercial. A report by the tax-writing Committee on Ways and Means of the U.S. House of Representatives noted:

“The exemption from taxation of money or property devoted to charitable and other purposes is based upon the theory that government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriations from public funds and by the benefits resulting from promotion of the general welfare.”

Source: (Unfair Competition: The Profits of Nonprofits, James T. Bennett, Thomas H. DiLorenzo, Hamilton Press, 1989, p. 26)

Policies that prevent nonprofit organizations from engaging in unfair competition (via the tax code) with the private sector should be implemented.

Prison Industries - Federal Prison Industries unfairly compete with the private sector. Provisions in Defense Authorizations bills and Appropriations bills have curbed FPI's mandatory source status. Comprehensive reform passed the House in the 108th Congress (a vote of 350 to 65, November 2003, H.R. 1829, and a bill was reported by the Senate Governmental Affairs Committee, S. 346). In the 109th Congress, the bills are H.R. 2965 and S.749; the House bill passed 362-57 on September 14, 2006). Federal and State prison industries are also opening the commercial market for inmate services. Enactment of FPI reform legislation, create a level competitive playing field, eliminate unfair prison industry advantages, and a prohibit prison industry participation in the commercial market should be a priority.

Universities - Schools of higher education are increasingly venturing away from their core missions of teaching and conducting basic research. Financial pressures, ranging from reduced government funding to pressures to limit tuition increases have led university presidents to transform academicians into entrepreneurs. Universities are generating revenues from commercial activities to supplement their budgets. Universities enjoy significant advantages over for-profit companies. They are eligible for billions of dollars in grants from Federal and State governments. They often have the ability to secure non-competitive, sole source contracts with government agencies. They pay no taxes. Their overhead – buildings, electricity, even equipment, is already paid for and is provided for “free”. Their student labor force is either unpaid or compensated at well below prevailing market wages. They carry no professional liability insurance, do not have to pay unemployment compensation and in many cases are exempt from social security contributions. When universities enter into contracts to perform services, they usually insist on “best effort” clauses, which absolve them of ever completely finishing a project. They are also recipients of millions of dollars in free or discounted hardware and software, donated from vendor firms so that students will learn on their systems, be proficient in their use upon graduation and instill a consumer loyalty that will translate into sales once these students move up in the ranks of their private sector employers. The advantages universities bring to the market make it virtually impossible for private firms to compete. Policies that restrict universities to their education and research missions and prevent unfair competition with the private sector should be enacted.

Conclusion

In order to organize the private sector community, the Business Coalition for Fair Competition (BCFC) is the voice of the community, a leader and organizer of pro-active policy initiatives, and the coalition that brings together pro-free market interested parties.

BCFC will work to assure that the government utilizes the private sector to the maximum extent possible; fights unfair competition with and duplication of the private sector by government, universities, nonprofits and prison industries; and recommends policies and legislation to assure that the U.S. Government supports, rather than impede, growth in the small business community.

Finally, BCFC will be the coalition of private sector organizations, particularly small business, to focus attention to this issue and mobilize interested parties on legislative and policy action.

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