

***Testimony of Manny Cruz, President
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Before The General Accounting Office
COMMERCIAL ACTIVITIES REVIEW PANEL
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I want to thank the General Accounting Office for this opportunity to discuss with this panel today the impact that the outsourcing decisions exercised through the A-76 process has had on the island of Guam. My name is Manny Cruz and I am the President of the Guam Local 1354 American Federation of Government Employees (AFGE) Union on Guam. Until 1999, AFGE Local 1354 members provided all of the services at the naval installation on Guam. From our perspective, I want to say that not only have these outsourcing decisions by the DoD created short-term deleterious effects on our country's defense preparedness and viability, the long-term implications of these decisions have severely damaged our island economy and any hope we have to rebuild the relationships between the Naval installation and local businesses.

Guam's isolated, yet strategically located geography makes its economy particularly ill suited for outsourcing activities. The impact that the out-sourcing process has had on Guam, the level of service afforded the Navy and the overall impact on the island has been devastating. In fact, the effects extend past socio-economic considerations as the "brain-drain" of qualified employees has exceeded Guam governmental concerns.

Background on Guam's A-76 Process

Guam's story with the DoD privatization efforts began with the 1995 round of military base closures. At that time, the decline in military presence on Guam suggested to the Navy that it could outsource its base operations on the island. As the in house civil service entity, the AFGE team knew that while competition under the A-76 process would be intense but we felt our bid was extremely responsive to the RFP. Further, we took great comfort in the knowledge that the requirements of the A-76 process would protect the military viability of the Guam Naval Installation as well as the inter-related consideration of the impact this decision would have on the local economy – the majority of which was small business oriented. I hope you can imagine our deep disappointment in learning that the A-76 contract was awarded to Raytheon Technical Services and worse – that many of the requirements of the A-76 process had been either circumvented or ignored.

Effects of the A-76 Process

When Raytheon assumed the contract, Guam experienced job losses of unique proportions. In an economy where the unemployment rate is in excess of 15%, most of

the workers were forced into early retirement or forced to leave the island. Unlike other jurisdictions in the country, when an individual loses a federal job in Guam, one can not simply drive to a neighboring county or state to seek new employment. Guam is seven flying hours from Hawaii and twelve flying hours from the continental United States. This disruption has forced approximately 1,200 workers and their families to sell their homes and travel thousands of miles away in search of employment.

An island like Guam has a unique specialized economy that is very sensitive to slight movements in the labor market. The exodus of skilled workers from Guam represents a serious brain drain. It also depresses real estate markets as hundreds of homes are sold off. Finally, the local tax base suffers as there is a decline in the local working population paying into the Guam treasury.

Consider the following factors:

- 1) The private contractor hired by Raytheon to oversee the operations at the Naval Base is Trend Western Technical Corporation from Fullerton, California. The company had not done any business on Guam before. As such, it has no local workforce. The degree to which Trend Western subcontracted work to local businesses has been kept to a minimum. Few of the existing employees opted to take the “right of first refusal” and work for the private company.
- 2) Raytheon, as the winning contractor, offered a bid for services at costs far below any other bidder. However, since the award of the contract, Raytheon has realized that many of the services that were to have been included in the bid were not factored into its offer. Consequently, there has been “contract creep” that has slowly but consistently increased the cost of the original bid to levels on parity with the other bid offers.
- 3) The performance reviews conducted by the Navy have never provided Raytheon with satisfactory standards. Many of the reward payments have been missed, due in large measure by the inability of the contractor to access a skilled local workforce. Labor and morale standards have become genuine issues. Many members of the local Workforce who continued with Raytheon is working at reduced wages and many are not provided with full-time employment. Because of the provisions of the OMB Circular A-76, the wages and benefits under the Service Contract Act (SCA) were implemented. Most of the current wages and benefits set by the U. S. Department of Labor are between 30% to 50% lower than Federal civil service wages and benefits
- 4) Further, many employees of the current contractor have been required to work holidays even though they are less than full-time. The life styles and spending practices of these employees have been dramatically changed and curtailed.
- 5) There are considerable negative signs began to show almost immediately after the contract to Raytheon was activated. The daily newspapers are advertising house sales by the realtors, as well as house mortgage foreclosures by banking institutions.
- 6) There is no telling that the welfare rolls will increase on Guam, as well as additional Food Stamps recipients. Guam is currently receiving between \$1.5 million to \$2 million a month from the Federal Government.

Unfortunately, while Guam is still searching for relief from the Navy's actions, the Air Force has now begun a process of outsourcing its base function at Andersen Air Base, which will exasperate Guam's already difficult economic situation.

A-76 Procedures and Requirements

As I mentioned, many of the steps required in the A-76 process were not followed in the awarding of this contract to Raytheon. For example, in the FY1999 DoD Authorization Act (Public Law 105-261), there is a requirement (Section 2461) that any commercial or industrial type function of the DoD that, on October 1, 1980, was being performed by DoD civilian employees may not be converted to performance by a private contractor unless the Secretary of Defense provides to Congress a number of things. One of those requirements is a report to Congress that shows the potential economic effect on employees affected, and the potential economic effect on the local community and the Federal Government, if more than 75 employees are involved, of contracting for performance of such function. Even though P.L. 105-261 was signed into law by President Clinton on October 17, 1998, the requirement was not made applicable to the Navy A-76 Study on Guam.

Bundling

A second significant issue in the awarding of this contract was the issue of bundling. The “bundling” issue in the Navy A-76 Study was challenged by the U. S. Small Business Administration (SBA) in 1998. The FY1997 SBA Reauthorization Act added new provisions to Section 15(a) of the Small Business Act that requires Federal agencies to consider the effect on small business when requirements currently being performed by small businesses are considered for consolidation. The Act instructed agencies to avoid unnecessary and unjustified bundling of contract requirements that precluded small business participation in procurements as prime contractors.

In April 1998, the RFP for the Guam BOS Contract was indefinitely delayed pending the settlement of an appeal from the SBA of the Navy’s proposal to “bundle” the current service contracts under the proposed Guam BOS procurement. In addition, the SBA was questioning the single, integrated BOS A-76 Study and wanted to separate the project into smaller pieces to include the prime contract opportunities for small businesses.

Exemption from Commercial Activities Program

For quite some time, Congress has expressed some concerns about the entire practice of outsourcing various DoD activities. In the FY 1980 DoD Authorization Act, the House Armed Services expressed concern over the efficacy of in-house conversions to

performance by private contractors. For a variety of reasons, NAVFAC and PACDIV conducted a fact-finding study (September 8-19, 1980) on Guam on behalf of DoD.

A major finding of the study was to exempt the Territory of Guam from the provisions of OMB Circular A-76 for a five-year period commencing on October 10, 1980, due to the inability of the local private sector to provide adequate competition in the contracting arena. Another finding indicated that to effectively implement the provisions of OMB Circular A-76 on Guam, greater interactions among all U. S. Government agencies, whose policies and procedures affect the socio-economic development of Guam, would be necessary.

Prior to the expiration of the five-year exemption of Guam from the provisions of the OMB Circular A-76, the Commander U. S. Naval Forces Marianas (COMNAVMAR) was tasked to re-examine and update the issues that supported the subject exemption. Based on the COMNAVMAR study, it was recommended to DoD that the CA Program moratorium be extended indefinitely.

One of the major findings of the COMNAVMAR study was the unavailability of a skilled labor workforce of U. S. citizens on Guam. On May 12, 1986, after consultation with both military and civilian groups, the Chief of Naval Operations (CNO) agreed to exempt Navy activities on Guam from the CA Program for reasons of national defense and security.

The exemption of Guam from the CA Program remained in effect until 1997/1998 when COMNAVMAR decided to quietly terminate it due to the Navy A-76 Study, which was on-going then.

Regionalization Study on Guam

COMNAVMAR was conducting a regionalization study on Guam prior to 1997 as a result of the base closures of the Naval Air Station (NAS) Guam in BRACC 1993, and the Naval Ship Repair Facility (SRF) Guam, and the Fleet and Industrial Supply Center (FISC) Guam in BRACC 1995, as well as the merger of the Naval Activities (NAVACTS) Guam and the Naval Magazine (NAVMAG) Guam into the newly-established COMNAVMAR Support Activity Guam.

In 1998, the proposed consolidation of other Navy commands on Guam with COMNAVMAR became complicated. Even though certain common command support functions from the Naval Computer and Telecommunication Station (NCTS) Guam, the Naval Hospital (NAVHOSP) Guam, and the Navy Public Works Center (PWC) Guam, could easily be consolidated/merged, there were other major functions affecting command mission and ownership assets that were actively resisted by their Navy Claimants.

The galley, security, and MWR functions from NCTS were transferred in February 1998 and the NAVHOSP functions on October 1998. As for PWC-Guam, it was determined that it would remain a separate command under the Navy Working Capital Funds.

In 2000, the Navy Comptroller came to Guam to conduct a three-year review of COMNAVMAR and other Navy Commands on Guam. One of the major findings was that COMNAVMAR had failed to complete its regionalization study prior to commencing the Navy A-76 Study on Guam. The Navy Comptroller has not officially released its findings.

Guam as a Model A-76 Study

The Chief of Naval Operations (CNO) in January 1997 announced that the Navy bases on Guam and Pensacola, Florida, were selected to be the model study locations, one for the West Coast and the other for the East Coast, because of their similar or same base support functions across each regional area.

Pensacola requested and was granted a two-year delay for its A-76 study until its regionalization efforts are completed. No request came from Guam even though there were rumblings among certain commands to allow the completion of the regionalization study before embarking on the A-76 Study to allow the realignment of personnel (and functions) to occur across all the commands.

Outcome Oriented Contracting Approach

In January, 1997, the CNO announced that there would be a new round of A-76 (Commercial Activities) studies. The basic premise of this round of CA's was to seek an estimated 20-30% savings through competition between the public and the private sector. The new approach was essentially a design-build process for services, to support the government's stated outcomes, which will be based on the core mission. This approach had never been attempted before in the government.

Proposes were asked to start from scratch and build the services and operations that they will provide to fulfill the government's outcomes. Without the constraints of historically-prescriptive specifications, service providers were invited to propose innovative methodologies, based on industry's best practices and experience.

Because of declining budgets for BOS services, the government looked to industry leaders to help achieve cost savings through changes in technology, system operations and management techniques.

Only Fortune 500 or world class companies were solicited to bid on the BOS Contract. Past work performance would play an important factor in the proposed "value" source selections. These companies were required to hold an ISO-9000 certification with a

proven quality control program. This was new and intended to further reduce/eliminate-needed positions in the workplace.

Wage Busting

“Wage busting” is defined as “an unwarranted reductions in salaries and fringe benefits” that occur as a result of competitions for support service contracts. “Wage busting” happens when the competitions for a successor support contract underestimate existing salaries and fringe benefits, and then receive an award based on low price/cost, or under a best value selection decision. The resulting effect, in these instances, is labor unrest and low morale the workforce over the term of the successor contract.

The office of Federal Procurement Policy (OFPP) attempted to address this problem with Policy Letter 78-2, issued on March 19, 1978. This Policy Letter is implemented in FAR Subpart 22.11, which requires, inter alia, submission, with the competitive proposals, of a compensation plan setting forth proposed salaries and fringe benefits; this is to be evaluated as to “the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives.” FAR 52.222-46(b). These procedures are mandatory for an acquisition where the proposed contract is valued in excess of \$500,000, and the services to be delivered will require “meaningful” number of professional employees. FAR 22.1103.

“Wage busting” usually occurs with requirements for white-collar service workers, but a very recent GAO decision shows that the problem can also occur with requirements for blue-collar service workers, workers to whom designated minimum salaries and benefits are to be paid as specified by the Service Contract Act of 1965, 41 USC, Sect. 351(a)(1). The decision is General Security Services Corporation, B-280959, Dec. 11, 1998.

In fact, the net effect of the A-76 process on Guam was to engage in wage-busting. Combined with the outcome oriented approach that the Navy wanted to pursue, it was only natural that Guam and our local economic base would suffer. Indeed, that is exactly what is happening. The reason that you should be concerned and ultimately why all of the services should be concerned is the impact these practices have on the American taxpayer and on military readiness.

The hoped for cost saving anticipated through the A-76 process are proving to be illusory. The low-bid by Raytheon is steadily being eroded by contract creep as the contractor is realizing the scope of services that were not factored into the original bid. The inability of the contractor to enjoy the incentive/reward payments is indicative of some of the problems inherent in this approach.

The other set of problems inherent in this approach is the inability to attract a skilled, competent workforce to handle important functions on these installations. Ordinance handling problems, communications problems, even basic maritime servicing problems are all being realized on Guam. Paying employees a fraction of what they were

previously paid for performing the same service cannot be expected to provide the same high level of service. Readiness will clearly suffer.

Conclusion

Guam is a vital and important asset to US national security. From World War II to the present Guam played and plays a pivotal role in us military and intelligence operations. The citizens of Guam are proud Americans who deserve the same considerations and respect as any American community would expect. The Navy's A-76 and outsourcing efforts on Guam was done in a manner which completely disregarded the interest, concerns and well being of Guam, its Island economy or future. I encourage this panel to do what I have encouraged the government and Congress to do---Stop outsourcing Guam's hopes and future.

Respectfully
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