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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

August 9, 2002

The Honorable George V. Voinovich
Ranking Member
Subcommittee on Oversight of Government Management,
Restructuring and the District of Columbia
Committee on Governmental Affairs
United States Senate

Subject: *Commercial Activities Panel: Use of Numerical Goals*

Dear Senator Voinovich:

I am pleased to provide the following response to your letter of August 5, 2002, requesting my views on two competitive sourcing initiatives. Specifically, you asked me to address whether the two initiatives are consistent with the sourcing principles recommended by the Commercial Activities Panel (the Panel) in its April 30, 2002, report entitled *Improving the Sourcing Decisions of the Government*. The two initiatives are:

- 1) the Administration's "performance target" that federal agencies compete or directly convert to private-sector performance specified percentages of their full-time equivalent positions listed under the Federal Activities Inventory Reform Act (FAIR) by specified dates, and
- 2) section 640 of S. 2740, the Fiscal Year 2003 Treasury and General Government Appropriations bill, which would restrict the availability of funding for the use of numerical goals, targets, or quotas for public-private competitions or direct conversions.

As discussed below, I do not believe that, based on their current design, either of these initiatives is fully consistent with the sourcing principles adopted by the Panel.

As you know, I convened and chaired the 12-member Commercial Activities Panel in response to the requirements of section 832 of the Fiscal Year 2001 National Defense Authorization Act. The Panel consisted of senior representatives from the groups most affected—agencies, federal employees, and private industry—as well as other individuals with a broad range of relevant experiences and expertise. The Panel heard and carefully considered all perspectives on the issues and unanimously agreed upon a package of 10 principles that should guide decisions in this area. Although several of the recommended principles are relevant to your inquiry, the most relevant is that federal sourcing policy should "avoid arbitrary full-time equivalent (FTE) or

other arbitrary numerical goals.” The commentary accompanying this principle stresses that the success of government programs should be measured by their value to the taxpayer, not by their effect on the size of the in-house or contractor workforce. Furthermore, the report notes that any related FTE or other numerical goal should be based on considered research and analysis.

As you are aware, the Office of Management and Budget (OMB) issued a memorandum in March 2001, setting goals for a percentage of agencies’ FTE positions that are to be subjected to public-private competition or directly converted to contractor performance. I do not believe that this OMB initiative is consistent with the Panel’s recommended principles. Specifically, I have seen no evidence to indicate that its numerical FTE goals were based on considered research and sound analysis. In my view, any related goals should be based on a review of historical data on sourcing activity in the public and private sectors combined with an analysis of current and emerging market trends. The end result would be the identification of specific functions or activities that should be subject to public-private competition. In addition, I am not aware that OMB’s FTE goals took into full account the capacity of agencies, particularly civilian agencies, to conduct public-private competitions. In this regard, there is concern that agencies that lack experience in conducting such competitions, or the ability to develop the capacity in the near term to perform them, will opt for direct conversions in order to meet the specified FTE goals. The Panel report expressed concern about potential misuse of direct conversions, which generally should occur only when the number of affected positions is so small that the cost of conducting a public-private competition would clearly outweigh any expected savings.

Agencies’ abilities to meet goals in this area could be further complicated by the fact that OMB’s goals are based on the universe of FAIR Act inventories, not a smaller subset that, after further analysis, may be deemed eligible for competition. The Panel’s report notes that guidelines implementing the FAIR Act outline a variety of reasons for permitting agencies to exclude certain commercial activities from being considered eligible for competition; they may include such reasons as legislative exemptions, national security considerations, etc. Accordingly, the number of positions deemed eligible for competition may be much smaller than the overall inventory of commercial activities. For example, while the Department of Defense reported 412,756 commercial positions in its fiscal year 2001 inventory only 241,332 positions were considered eligible for competition. The OMB goal, however, is set as a percentage of the larger overall number.

I recognize the Administration’s prerogative to set policy, and that, in general, it has the discretion to decide how best to implement its policy choices. I also recognize the benefits of well designed and executed competitive sourcing activities, and understand that establishing goals is often a key element in achieving change. GAO’s work monitoring the implementation of the Government Performance and Results Act notes the importance of setting qualitative and quantitative goals with specific performance measures that permit tracking progress toward meeting the goals. Nevertheless, as noted by the Panel, the use of arbitrary numerical targets or goals is inappropriate and can be counterproductive.

On the other hand, I believe the approach of using sourcing targets or goals reflected in section 640 of S. 2740 could serve to inappropriately constrain the exercise of reasonable management discretion. The amendment provides as follows:

“None of the funds made available in this Act [may be] used by an Executive agency to establish, apply, or enforce any numerical goal, target, or quota for subjecting the employees of the agency to public-private competitions or converting such employees or the work performed by such employees to private contractor performance under Office of Management and Budget Circular A-76 or any other administrative regulation, directive, or policy.”

Although not entirely clear, the provision does not appear to be limited to arbitrary goals or targets. Rather, the provision could be construed to prohibit use of goals or targets that may be based on considered research and sound analysis of past activities and current and emerging market trends. As a result, in my view, any blanket prohibition on the use of goals, even those based on considered research and sound analysis, would be inconsistent with the Panel’s recommended principles. In this regard, the Congress may wish to consider incorporating the word “arbitrary” in any legislation that might ultimately be enacted. Doing so would help to ensure consistency with the Panel’s recommendations.

I appreciate your interest in this important issue and would be pleased to provide any additional information or assistance you may require. Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its issue date. At that time, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. M. Walker", with a long horizontal line extending to the right.

David M. Walker
Comptroller General
of the United States

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