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ONE HUNDRED EIGHTH CONGRESS

# Congress of the United States

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October 31, 2003

The Honorable C. W. Bill Young  
Chairman, Committee on Appropriations  
H218 Capitol  
Washington, DC 20515

The Honorable David R. Obey  
Ranking Minority Member, Committee on Appropriations  
1016 Longworth House Office Building  
Washington, DC 20515

Dear Reps. Young and Obey:

I am writing regarding H.R. 2989, a bill making appropriations for the Departments of Transportation and Treasury, and independent agencies for the fiscal year ending September 30, 2004, and for other purposes.

First, I urge you to support the language of the Van Hollen amendment, which was adopted by the House on a bipartisan basis, 220 to 198. This amendment would prevent the Administration from using federal funds to implement revisions to OMB Circular A-76 promulgated on May 29, 2003. Those revisions were patently unfair to federal employees in a number of respects. Among other problems, the revisions could prohibit federal employees from reorganizing themselves more efficiently in order to compete with a private sector offer, and they eliminate the 10% cost differential needed to ensure that the costs of transition to the private sector are calculated in making a comparison between the public and private sectors.

Second, I would urge you to reject section 644(f) of the Senate bill, which seems to have been adopted without prior notification and was not discussed during debate on the bill. This section would require the use of the so-called Brooks Act procedures for certain services when conducting a public/private comparison under Circular A-76. I am concerned that use of Brooks Act procedures, which are codified at 40 U.S.C. 1101-1104, would unfairly disadvantage federal employees and might also result in decisions that could cost the American taxpayer millions of dollars.

Brooks Act procedures were originally designed for the procurement of architectural and engineering services. They require agencies to conduct an initial competition based solely on the

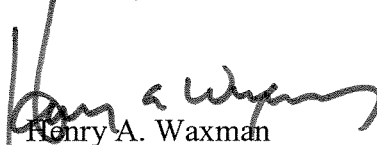
The Honorable C. W. Bill Young  
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technical merits of the proposal, without regard to cost. Only after a contractor is chosen do negotiations on cost or price begin. These procedures may make sense in traditional Brooks Act competitions, where alternative contractors must be available in the event that a reasonable price cannot be negotiated with the initial winner of the competition. But they are nonsensical and unfair in the A-76 context. In fact, it is not even clear that these procedures could be used in the context of an A-76 competition.

The entire thrust of the Administration's initiative on competitive sourcing has been to promote efficiency and save scarce resources. Mandating the use of Brooks Act procedures would prohibit federal managers from even considering cost or price, even though federal employees are already satisfactorily performing the function under competition. This is a recipe for wasting money.

In sum, I urge you to adopt the Van Hollen amendment and eliminate the Brooks Act provision in conference.

Sincerely,



Henry A. Waxman  
Ranking Minority Member

Cc: The Honorable Ernest J. Istook, Jr.  
The Honorable Steny H. Hoyer