Freedom from Government Competition Act - H.R. 1554

The Freedom from Government Competition Act (H.R. 1554) would require the federal government to procure goods & services from the private sector when commercially available and efficient, instead of competing with the private sector. It was H.R. 2744 in the 118th Congress.

OMB Circular A-76: This policy dates to the Eisenhower Administration, but more recently in OMB Circular A-76.[1] As redrafted in 2003,[2] OMB Circular A-76 declared: "The longstanding policy of the federal government has been to rely on the private sector for needed commercial services. To ensure that the American people receive maximum value for their tax dollars, commercial activities should be subject to the forces of competition."

The problem: A recurring FSGG appropriations policy rider has shut down OMB Circular A-76 since FY09.

Restoring OMB Circular A-76 could save at least $27 billion a year: At one point, OMB estimated savings of 27% per full time employee (FTE) studied and the Center for Naval Analyses found an average savings of 30%.

Benefit of a private sector option: The point of this long-running policy of competitive sourcing analysis was not privatization, but government efficiency: to keep the U.S. government focused on its core necessary responsibilities and reduce the waste of taxpayer resources on duplicative (and often failing) enterprises.

A key recent example of such inefficiency is the Census Bureau's Census Household Panel (fka, the Ask U.S. Panel). The Bureau has wasted millions of dollars trying (and failing) to set up a specialized kind of online research panel to compete with the insights industry in the federal and private sectors, instead of purchasing such services on the private market for tens of thousands.

According to the initial 1999 Federal Activities Inventory Reform (FAIR) Act inventory, more than 850,000 Federal employees were then in jobs considered to be "commercial" in nature --- Federal activities duplicative and competing with the private sector. **An FY13 inventory found 1.12 million federal employees involved in commercial activities**.[3] Since the U.S. government has grown significantly since this data was last released, the number of those employees may be significantly larger now as well. Most of the U.S. government's commercial positions have never been studied for potential private sector performance.

Practically every federal department and agency has employees involved in commercial activities in most every industry, including construction, debt and bill collections, engineering, equipment repair, food services, furniture, geospatial/mapping services, graphics, IT, insurance, laboratories, landscaping, laundry, manufacturing, market research, medical supply distribution, payroll, pest management and wildlife control, printing, public storage, roofing, security, tax preparation, transportation, travel planning.

The Insights Association position: H.R. 1554, by effectively turning OMB Circular A-76 into statute, would keep the federal government focused on its core necessary responsibilities. This legislation will significantly reduce taxpayer resources wasted on duplicative (and often failing) enterprises, like the Census Household Panel. It would also help to prevent unfair competition by the federal government with the insights industry, and others.

---

[1] "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." August 4, 1983 (REVISED 1999) https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A76/a076.pdf

[2] https://georgewbush-whitehouse.archives.gov/omb/circulars/a076/a76_incl_tech_correction.html

[3] https://www.governmentcompetition.org/wp-content/uploads/2019/08/OMB-OFPP-Response-to-Rep-Duncan-TN-on-FAIR-Act-Inventory-1-28-2015.pdf

Background on H.R. 1554: "In the process of governing, the Federal Government should not compete with its citizens." This bill would set "the general policy of the Federal Government":

(1) "to rely on commercial sources to supply the products and services the Government needs";
(2) "to refrain from providing a product or service if the product or service can be procured more economically from a commercial source"; and
(3) "to utilize Federal employees to perform inherently governmental functions."[4]

Further, each federal agency would be required to "obtain all goods and services necessary for or beneficial to the accomplishment of its authorized functions by procurement from private sources."

This has traditionally been referred to as "***the Yellow Pages test***" – if you can find a service in the Yellow Pages or on Main Street, the government should generally not be performing such a service itself.

Exceptions in the Freedom from Government Competition Act: The requirements would "not apply to an agency with respect to goods or services if":

1. "the goods or services are required by law to be produced or performed… by the agency"; or
2. "the head of the agency determines and certifies to Congress … that— (A) Federal Government production, manufacture, or provision of a good or service is necessary for the national defense or homeland security; (B) a good or service is so critical to the mission of the agency or so inherently governmental in nature that it is in the public interest to require production or performance… by Government employees; or (C) there is no private source capable of providing the good or service."

In-sourcing would not be outlawed by H.R. 1554: Agencies could still "utilize Federal employees to provide goods or services previously provided by" a private entity if "a public-private competitive sourcing analysis" finds "that the provision of such goods or services by Federal employees provides the best value to the taxpayer."

Federal employees would not just be fired: According to OMB Circular A-76 guidance, if the federal entity loses the competition, government employees get right of 1st refusal to work for the winning contractor.

Small businesses would benefit: Historically, 65% of A-76 competitions were won by small businesses.[5]

The impediment in appropriations law: Since the Omnibus Appropriations Act for Fiscal Year 2009 (FY09), a recurring policy rider in the annual Financial Services and General Government (FSGG) Appropriations law has mostly prevented competitive sourcing analysis by the federal government, shutting down OMB Circular A-76.

Section 741 of the House FSSG Appropriations bill in FY24: "*None of the funds appropriated or otherwise made available by this or any other Act may be used to begin or announce a study or public-private competition regarding the conversion to contractor performance of any function performed by Federal employees pursuant to Office of Management and Budget Circular A–76 or any other administrative regulation, directive, or policy.*"

Removing this prohibition would allow for competitive sourcing and save significant taxpayer money.

Reps. Aaron Bean (R-FL-04) and Ben Cline (R-VA-06) proposed amendment #92 to delete that section in FY24. The amendment was not accepted by Rules, and the bill was later pulled from floor consideration.

FOR MORE INFO*: On H.R. 1554 or to cosponsor, contact Rep. Aaron Bean (R-FL-04) staffer Richie LaMura at (202) 225-0123; and on the appropriations rider, contact Rep. Ben Cline (R-VA-06) staffer Ben Rakes at (202) 225-5431.*

[4] "Inherently governmental" is defined in section 5 of the Federal Activities Inventory Reform (FAIR) Act of 1998 (Public Law 105–270; 112 Stat. 2384).
[5] "Impact of A-76 Competitive Sourcing on Small Government Vendors." Small Business Research Summary. SBA. May 2007.