

[NOTE: A Section of H.R. 2673]

SEC. 647. (a) LIMITATION ON CONVERSION TO CONTRACTOR

PERFORMANCE- *None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of an executive agency, that on or after the date of enactment of this Act, is performed by more than ten federal employees unless--*

- (1) the conversion is based on the result of a public-private competition plan that includes a most efficient and cost effective organization plan developed by such activity or function; and*
- (2) the Competitive Sourcing Official considers, as part of the cost or price evaluation, whether over all performance periods stated in the solicitation of offers for performance of the activity or function, the cost of performance of the activity or function by a contractor would be less costly to the executive agency by an amount that equals or exceeds the lesser of--*

- (A) 10 percent of the most efficient organization's personnel-related costs for performance of that activity or function by Federal employees; or*
- (B) \$10,000,000.*

(b) Not later than 120 days following the enactment of this Act and not later than December 31 of each year thereafter, the head of each executive agency shall submit to Congress a report on the competitive sourcing activities on the list required under the Federal Activities Inventory Reform Act of 1998 (Public Law 105-270; 31 U.S.C. 501 note) that were performed for such executive agency during the previous fiscal year by Federal Government sources. The report shall include--

- (1) the total number of competitions completed;*
- (2) the total number of competitions announced, together with a list of the activities covered by such competitions;*
- (3) the total number (expressed as a full-time employee equivalent number) of the Federal employees studied under completed competitions;*
- (4) the total number (expressed as a full-time employee equivalent number) of the Federal employees that are being studied under competitions announced but not completed;*
- (5) the incremental cost directly attributable to conducting the competitions identified under paragraphs (1) and (2), including costs attributable to paying outside consultants and contractors;*
- (6) an estimate of the total anticipated savings, or a quantifiable description of improvements in service or performance, derived from completed competitions;*
- (7) actual savings, or a quantifiable description of improvements in service or performance, derived from the implementation of competitions completed after May 29, 2003;*

(8) the total projected number (expressed as a full-time employee equivalent number) of the Federal employees that are to be covered by competitions scheduled to be announced in the fiscal year covered by the next report required under this section; and

(9) a general description of how the competitive sourcing decisionmaking processes of the executive agency are aligned with the strategic workforce plan of that executive agency.

(c) The head of an executive agency may not be required, under Office of Management and Budget Circular A-76 or any other policy, directive, or regulation, to automatically limit to 5 years or less the performance period in a letter of obligation, or other agreement, issued to executive agency employees, if such a letter or other agreement was issued as the result of a public-private competition conducted in accordance with the circular.

(d) Hereafter, the head of an executive agency may expend funds appropriated or otherwise made available for any purpose to the executive agency under this or any other Act to monitor (in the administration of responsibilities under Office of Management and Budget Circular A-76 or any related policy, directive, or regulation) the performance of an activity or function of the executive agency that has previously been subjected to a public-private competition under such circular.

(e) An activity or function of an executive agency that is converted to contractor performance under Office of Management and Budget Circular A-76 may not be performed by the contractor at a location outside the United States except to the extent that such activity or function was previously performed by Federal Government employees outside the United States.

(f) In this section, the term 'executive agency' has the meaning given such term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403). SEC. 648. Notwithstanding section 1346 of title 31, United States Code, and section 610 of this Act, the head of each executive department and agency shall transfer to or reimburse the Federal Aviation Administration, with the approval of the Director of the Office of Management and Budget, funds made available by this or any other Act for the purposes described below, and shall submit budget requests for such purposes. These funds shall be administered by the Federal Aviation Administration as approved by the Director of the Office of Management and Budget, in consultation with the appropriate interagency groups designated by the Director to ensure the operation of the Midway Atoll Airfield by the Federal Aviation Administration pursuant to an operational agreement with the Department of the Interior. The total funds transferred or reimbursed shall not exceed \$6,000,000 and shall not be available for activities other than the operation of the airfield. The Director of the Office of Management and Budget shall notify the Committees on Appropriations of such transfers or reimbursements within 15 days of this Act. Such transfers or reimbursements shall begin within 30 days of enactment of this Act.

This division may be cited as the 'Transportation, Treasury, and Independent Agencies Appropriations Act, 2004'.