



# AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

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April 14, 2004

Defense Acquisition Regulations Council  
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Re: DFARS Case 2003-D087

To Whom It May Concern:

On behalf of the more than 600,000 federal employees represented by the American Federation of Government Employees, AFL-CIO (AFGE), including 200,000 civilian employees in the Department of Defense (DoD), I offer the following comments on DoD's proposed rule that will give military commanders power over contract employees outside the United States. Instead of extending the military's control over contract employees, we believe that the U.S. military should rely more heavily on military personnel and federal civilian employees to conduct these operations. The use of a federal workforce is the right answer for warfighters, employees, and U.S. citizens.

## **I. Military Duties Should be Performed by Military Personnel**

The job of the military is to defend our country and protect our national security. AFGE believes that military duties should be performed by military personnel. Military-related duties that are not suitable for performance by military personnel should be performed by federal civilian employees, who are public servants with proven qualifications and allegiance to the United States. Action taken by U.S. government personnel in a foreign theater is inherently governmental, as defined in the FAIR Act, because such operations can bind the United States to take

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action, protect U.S. interests, and/or significantly affect the property of private persons.

Carrying out America's national security mission should not be outsourced to private firms whose first obligation is necessarily to their own shareholders and whose interests will often conflict with those of the public at large, and our government's strategic mission. The war in Iraq has already exposed the fact that relying upon private contractors to maintain approximately 30 percent of all weapons systems created unanticipated military, security, and financial vulnerabilities for our warfighters. Relying upon the employees of these contractors to serve as back up military units should military commanders decide they are needed will only exacerbate these vulnerabilities. And as the Abu Ghraib scandal has shown, the accountability that not only American citizens and taxpayers, but also Iraqis deserve, does not exist when private contractors' actions come into question.

## **II. U.S. Federal Civilian Employees are Subject to Greater Scrutiny than Contract Employees**

Several screening requirements are imposed upon civilian employees that are not imposed on contract employees, and these requirements make federal civilian employees a better choice for supporting operations abroad. Federal employees are required to establish their citizenship and take an oath of allegiance to the United States Constitution upon employment. Federal law, 5 U.S.C. 3331 says that an individual ... in the civil service or uniformed service shall take the following oath: "I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter... " The federal government does not require such an oath of contract employees.

Many federal employees are subject to extensive security checks and must show that they do not have a financial conflict of interest with their employment duties. There is no standard rule requiring contract employees to be screened as thoroughly.

Every federal civilian position is based upon certain standardized qualifications to ensure that highly qualified individuals are performing these functions on behalf of the United States. The credentials of contract employees are generally not screened by the federal government.

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The federal government has established hiring procedures that reflect our nation's values, and these procedures are not necessarily followed by private contractors. For example, the federal government recognizes the sacrifices of our military veterans and gives them a hiring preference in the civilian workforce. Also, the federal government hiring and workplace procedures do not allow discrimination based on "race, color, religion, national origin, sex, sexual orientation, political affiliation, marital status, physical handicap, age, membership or non-membership in an employee organization, personal favoritism, or other non-merit factors". Private employers are not held to such high standards, and enforcing the non-discrimination rules that do apply to private employers is often costly to the offended employees or potential employees.

### **III. Contract Employees Can Strike, Federal Employees Cannot**

Federal labor laws make contract employees less than reliable military resources. While military personnel are clearly the best positioned force to handle military duties, civilian employees are a better alternative than contract employees. Private contract employees have the right to strike against their employer, while federal civilian employees have waived their right to strike as a condition of employment. If contract employees decide to strike, then our military forces could be left with no one to perform critical core competency tasks, including maintaining supply lines, aircraft, and weapons systems.

### **IV. Contract Employees Cannot Be Conscripted Into Military Service**

Since the Vietnam Era, the United States has operated an all-volunteer military force. Unless this policy is overturned by congressional legislation, U.S. citizens should not be conscripted into military service. However, requiring contract employees to follow military orders would violate this policy of an all-volunteer military force.

### **V. Federal Civilian Employees Ensure Accountability**

Military contractors have been used in the past as a back-door method to avoid Congressionally imposed troop limits and to carry out clandestine operations that have been banned by Congress or are not popular with the public. In Nicaragua, the CIA secretly used private companies to transport weapons to the Nicaraguan contras during the 1980s after Congress had specifically cut off aid. Federal law bans U.S. soldiers from participating in the internal Columbian war, but the United States has paid private contractors to perform military tasks there for the past several years.

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In addition to skirting Congressional limits, military contractors are often used to avoid Congressional oversight and public scrutiny. In 2001, a U.S. military contractor working with the CIA in South America misidentified a plane as belonging to cocaine traffickers. The plane was consequently shot down, killing a U.S. missionary. When Congress tried to investigate the incident, the State Department and the CIA refused to provide any information, citing privacy concerns because the contractor was a private company, not part of the U.S. military. Our democratic system of government is compromised when the legislative branch of government is not allowed to exercise its jurisdiction.

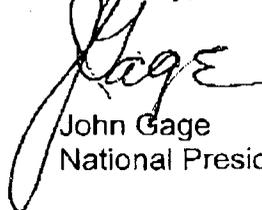
#### **VI. Use of Military Contractors Conflicts with International Law**

The United States is a party to the Geneva Convention, which expressly bans the use of mercenaries, defined as any person who is specially recruited to fight in an armed conflict, who takes a direct part in the hostilities, who is motivated by money, and who is not a national. While it is debatable whether the employees of private military contractors could fall under the definition of "mercenary", the policy is still clear that military battles should be fought by the militaries of the countries in conflict, not other individuals. The government is still trying to figure out not only how, but whether the contractor employees allegedly involved in prisoner mistreatment at Abu Ghraib will be held legally accountable for the actions they have been accused of, including those which violate the Geneva Convention.

#### **V. Conclusion**

AFGE has always supported our nation's military mission, and we remain ready and willing to work collaboratively with Pentagon officials to maintain the high level of service provided by DoD civilian employees.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Gage", with a large, stylized flourish extending downwards and to the left.

John Gage  
National President