

**AMENDMENT TO H.R. 5136, AS REPORTED
OFFERED BY MR. SARBANES OF MARYLAND**

At the end of title VIII, add the following new section:

1 SEC. 839. OFFICE OF FEDERAL PROCUREMENT POLICY ACT

2 AMENDMENTS.

3 (a) SERVICE CONTRACT INVENTORY REQUIRE-
4 MENT.—

5 (1) IN GENERAL.—The Office of Federal Pro-
6 curement Policy Act (41 U.S.C. 403 et seq.) is
7 amended by adding at the end the following new sec-
8 tion:

9 “SEC. 45. SERVICE CONTRACT INVENTORY REQUIREMENT.

10 “(a) SERVICE CONTRACT INVENTORY REQUIRE-
11 MENT.—

12 “(1) GUIDANCE.—The Director of the Office of
13 Management and Budget shall develop and dissemi-
14 nate guidance to aid executive agencies in estab-
15 lishing systems for the collection of information re-
16 quired to meet the requirements of this section and
17 to ensure consistency of inventories across agencies.

18 “(2) REPORT.—The Director of the Office of
19 Management and Budget shall submit a report to

1 Congress on the status of efforts to enable executive
2 agencies to prepare the inventories required under
3 paragraph (3), including the development, as appro-
4 priate, of guidance, methodologies, and technical
5 tools.

6 “(3) INVENTORY CONTENTS.—Not later than
7 December 31, 2010, and annually thereafter, the
8 head of each executive agency required to submit an
9 inventory in accordance with the Federal Activities
10 Inventory Reform Act of 1998 (Public Law 105–
11 270; 31 U.S.C. 501 note), other than the Depart-
12 ment of Defense, shall submit to the Office of Man-
13 agement and Budget an annual inventory of service
14 contracts awarded or extended through the exercise
15 of an option or a task order, for or on behalf of such
16 agency. For each service contract, the entry for an
17 inventory under this section shall include, for the
18 preceding fiscal year, the following:

19 “(A) A description of the services pur-
20 chased by the executive agency and the role the
21 services played in achieving agency objectives,
22 regardless of whether such a purchase was
23 made through a contract or task order.

24 “(B) The organizational component of the
25 executive agency administering the contract,

1 and the organizational component of the agency
2 whose requirements are being met through con-
3 tractor performance of the service.

4 “(C) The total dollar amount obligated for
5 services under the contract and the funding
6 source for the contract.

7 “(D) The total dollar amount invoiced for
8 services under the contract.

9 “(E) The contract type and date of award.

10 “(F) The name of the contractor and place
11 of performance.

12 “(G) The number and work location of
13 contractor and subcontractor employees, ex-
14 pressed as full-time equivalents for direct labor,
15 compensated under the contract, using direct
16 labor hours and associated cost data collected
17 from contractors.

18 “(H) Whether the contract is a personal
19 services contract.

20 “(I) Whether the contract was awarded on
21 a noncompetitive basis, regardless of date of
22 award.

23 “(b) FORM.—Reports required under this section
24 shall be submitted in unclassified form, but may include
25 a classified annex.

1 “(c) PUBLICATION.—Not later than 30 days after the
2 date on which the inventory under subsection (a)(3) is re-
3 quired to be submitted to the Office of Management and
4 Budget, the head of each executive agency shall—

5 “(1) make the inventory available to the public;
6 and

7 “(2) publish in the Federal Register a notice
8 that the inventory is available to the public.

9 “(d) GOVERNMENT-WIDE INVENTORY REPORT.—Not
10 later than 90 days after the deadline for submitting inven-
11 tories under subsection (a)(3), and annually thereafter,
12 the Director of the Office of Management and Budget
13 shall submit to Congress and make publicly available on
14 the Office of Management and Budget website a report
15 on the inventories submitted. The report shall identify
16 whether each agency required to submit an inventory
17 under subsection (a)(3) has met such requirement and
18 summarize the information submitted by each executive
19 agency required to have a Chief Financial Officer pursu-
20 ant to section 901 of title 31, United States Code.

21 “(e) REVIEW AND PLANNING REQUIREMENTS.—Not
22 later than 180 days after the deadline for submitting in-
23 ventories under subsection (a)(3) for an executive agency,
24 the head of the executive agency, or an official designated
25 by the agency head shall—

1 “(1) review the contracts and information in
2 the inventory;

3 “(2) ensure that—

4 “(A) each contract in the inventory that is
5 a personal services contract has been entered
6 into, and is being performed, in accordance with
7 applicable laws and regulations;

8 “(B) the contracts do not include to the
9 maximum extent practicable functions that are
10 closely associated with inherently governmental
11 functions;

12 “(C) the agency is not using contractor
13 employees to perform inherently governmental
14 functions;

15 “(D) the agency has specific safeguards
16 and monitoring systems in place to ensure that
17 work being performed by contractors has not
18 changed or expanded during performance to be-
19 come an inherently governmental function;

20 “(E) the agency is not using contractor
21 employees to perform critical functions in such
22 a way that could affect the ability of the agency
23 to maintain control of its mission and oper-
24 ations; and

1 “(F) there are sufficient internal agency
2 resources to manage and oversee contracts ef-
3 fectively;

4 “(3) identify contracts that have been poorly
5 performed, as determined by a contracting officer,
6 because of excessive costs or inferior quality; and

7 “(4) identify contracts that should be consid-
8 ered for conversion to—

9 “(A) performance by Federal employees of
10 the executive agency in accordance with agency
11 insourcing guidelines required under section
12 736 of the Financial Services and General Gov-
13 ernment Appropriations Act, 2009 (Public Law
14 111–8, division D) and section 46 of this Act;
15 or

16 “(B) an alternative acquisition approach
17 that would better enable the agency to effi-
18 ciently utilize its assets and achieve its public
19 mission.

20 “(f) REPORT ON ACTIONS TAKEN IN RESPONSE TO
21 ANNUAL INVENTORY.—Not later than one year after sub-
22 mitting an annual inventory under subsection (a)(3), the
23 head of each executive agency submitting such an inven-
24 tory shall submit to the Office of Management and Budget
25 a report summarizing the actions taken pursuant to sub-

1 section (e), including any actions taken to consider and
2 convert functions from contractor to Federal employee
3 performance. The report shall be included as an attach-
4 ment to the next annual inventory and made publicly
5 available in accordance with subsection (c).

6 “(g) SUBMISSION OF SERVICE CONTRACT INVEN-
7 TORY BEFORE PUBLIC-PRIVATE COMPETITION.—Not-
8 withstanding any other provision of law, beginning in fis-
9 cal year 2011, if an executive agency has not submitted
10 to the Office of Management and Budget the inventory
11 required under subsection (a)(3) for the prior fiscal year,
12 the agency may not begin, plan for, or announce a study
13 or public-private competition regarding the conversion to
14 contractor performance of any function performed by Fed-
15 eral employees pursuant to Office of Management and
16 Budget Circular A-76 or any other administrative regula-
17 tion or directive until such time as the inventory is sub-
18 mitted for the prior fiscal year.

19 “(h) GAO REPORTS ON IMPLEMENTATION.—

20 “(1) REPORT ON GUIDANCE.—Not later than
21 120 days after submission of the report by the Di-
22 rector of the Office of Management and Budget re-
23 quired under subsection (a)(2), the Comptroller Gen-
24 eral of the United States shall report on the guid-
25 ance issued and actions taken by the Director. The

1 report shall be submitted to the Committee on
2 Homeland Security and Governmental Affairs and
3 the Committee on Appropriations of the Senate and
4 the Committee on Oversight and Government Re-
5 form and the Committee on Appropriations of the
6 House of Representatives.

7 “(2) REPORTS ON INVENTORIES.—

8 “(A) INITIAL INVENTORY.—Not later than
9 September 30, 2011, the Comptroller General
10 of the United States shall submit a report to
11 the Committees named in the preceding para-
12 graph on the initial implementation by executive
13 agencies of the inventory requirement in sub-
14 section (a)(3) with respect to inventories re-
15 quired to be submitted by December 31, 2010.

16 “(B) SECOND INVENTORY.—Not later than
17 September 30, 2012, the Comptroller General
18 shall submit a report to the same Committees
19 on annual inventories required to be submitted
20 by December 31, 2011.

21 “(3) PERIODIC BRIEFINGS.—The Comptroller
22 General shall provide periodic briefings, as may be
23 requested by the Committees, on matters related to
24 implementation of this section.

1 “(i) EXECUTIVE AGENCY DEFINED.—In this section,
2 the term ‘executive agency’ has the meaning given the
3 term in section 4 of the Office of Federal Procurement
4 Policy Act (41 U.S.C. 403).”.

5 (2) CLERICAL AMENDMENT.—The table of sec-
6 tions in section 1 of such Act is amended by adding
7 at the end the following new item:

“Sec. 45. Service contract inventory requirement.”.

8 (3) REPEAL OF SUPERSEDED LAW.—Section
9 743(c) of the Financial Services and General Gov-
10 ernment Appropriations Act, 2010 (Public Law
11 111–117; 123 Stat. 3216) is amended by striking
12 “and annually thereafter,”.

13 (b) PROHIBITION AGAINST DIRECT CONVERSIONS.—

14 (1) IN GENERAL.—Section 43(a)(1) of the Of-
15 fice of Federal Procurement Policy Act (41 U.S.C.
16 439) is amended by striking “10 or more”.

17 (2) GUIDANCE.—Not later than 60 days after
18 the date of the enactment of this Act, the Director
19 of the Office of Management and Budget shall issue
20 guidance to all Federal agencies other than the De-
21 partment of Defense to ensure that no function last
22 performed by Federal employees is converted to con-
23 tractor performance without complying with the re-
24 quirements of section 43 of such Act, as amended by
25 this section.

1 (c) GUIDELINES ON INSOURCING NEW AND CON-
2 TRACTED OUT FUNCTIONS.—

3 (1) IN GENERAL.—The Office of Federal Pro-
4 curement Policy Act (41 U.S.C. 403 et seq.), as
5 amended by subsection (a), is further amended by
6 adding at the end the following new section:

7 **“SEC. 46. GUIDELINES ON INSOURCING NEW AND CON-**
8 **TRACTED OUT FUNCTIONS.**

9 “(a) GUIDELINES REQUIRED.—(1) The heads of ex-
10 ecutive agencies subject to the Federal Activities Inventory
11 Reform Act of 1998 (Public Law 105-270; 31 U.S.C. 501
12 note) shall devise and implement guidelines and proce-
13 dures to ensure that consideration is given to using, on
14 a regular basis, Federal employees to perform new func-
15 tions and functions that are performed by contractors and
16 could be performed by Federal employees.

17 “(2) The guidelines and procedures required under
18 subparagraph (A) may not include any specific limitation
19 or restriction on the number of functions or activities that
20 may be converted to performance by Federal employees.

21 “(b) SPECIAL CONSIDERATION FOR CERTAIN FUNC-
22 TIONS.—The guidelines and procedures required under
23 paragraph (1) shall provide for special consideration to be
24 given to using Federal employees to perform any function
25 that—

1 “(1) is performed by a contractor and—

2 “(A) has been performed by Federal em-
3 ployees at any time during the previous 10
4 years;

5 “(B) is a function closely associated with
6 the performance of an inherently governmental
7 function;

8 “(C) has been performed pursuant to a
9 contract awarded on a non-competitive basis; or

10 “(D) has been performed poorly, as deter-
11 mined by a contracting officer during the 5-
12 year period preceding the date of such deter-
13 mination, because of excessive costs or inferior
14 quality; or

15 “(2) is a new requirement, with particular em-
16 phasis given to a new requirement that is similar to
17 a function previously performed by Federal employ-
18 ees or is a function closely associated with the per-
19 formance of an inherently governmental function.

20 “(c) EXCLUSION OF CERTAIN FUNCTIONS FROM
21 COMPETITIONS.—The head of an executive agency may
22 not conduct a public-private competition under Office of
23 Management and Budget Circular A-76 or any other pro-
24 vision of law or regulation before—

1 “(1) in the case of a new agency function, as-
2 signing the performance of the function to Federal
3 employees;

4 “(2) in the case of any agency function de-
5 scribed in paragraph (2), converting the function to
6 performance by Federal employees; or

7 “(3) in the case of an agency function per-
8 formed by Federal employees, expanding the scope
9 of the function.

10 “(d) DEADLINE.—(1) The head of each executive
11 agency shall implement the guidelines and procedures re-
12 quired under this subsection by not later than 120 days
13 after the date of the enactment of this subsection.

14 “(2) Not later than 210 days after the date of
15 the enactment of this subsection, the Government
16 Accountability Office shall submit a report on the
17 implementation of this subsection to the Committees
18 on Appropriations of the House of Representatives
19 and the Senate, the Committee on Oversight and
20 Government Reform of the House of Representa-
21 tives, and the Committee on Homeland Security and
22 Governmental Affairs of the Senate.

23 “(e) DEFINITIONS.—In this subsection:

1 “(1) The term ‘inherently governmental func-
2 tions’ has the meaning given such term in subpart
3 7.5 of part 7 of the Federal Acquisition Regulation.

4 “(2) The term ‘functions closely associated with
5 inherently governmental functions’ means the func-
6 tions described in section 7.503(d) of the Federal
7 Acquisition Regulation.

8 “(f) APPLICABILITY.—This subsection shall not apply
9 to the Department of Defense.”.

10 (2) CLERICAL AMENDMENT.—The table of sec-
11 tions in section 1 of such Act, as amended by sub-
12 section (a), is further amended by adding at the end
13 the following new item:

 “Sec. 46. Guidelines on insourcing new and contracted out functions.”.

14 (3) REPEAL OF SUPERSEDED LAW.—Subsection
15 (b) of section 739 of division D of the Consolidated
16 Appropriations Act, 2008 (Public Law 110–161;
17 121 Stat. 2030) is repealed.

18 (d) CONVERSION OF FUNCTIONS TO PERFORMANCE
19 BY FEDERAL EMPLOYEES.—

20 (1) DECISION TO INSOURCE.—The Office of
21 Management and Budget shall not establish any nu-
22 merical goal, target, or quota for the conversion to
23 performance by Federal employees of functions pre-
24 viously performed by contractors unless such goal,

1 target, or quota is based on considered research and
2 analysis.

3 (2) REPORTS.—

4 (A) REPORT TO CONGRESS.—The Office of
5 Management and Budget shall submit to Con-
6 gress a report on the aggregate results of the
7 efforts of each Federal agency to convert func-
8 tions from contractor performance to perform-
9 ance by Federal agency employees made during
10 fiscal year 2010. Such report shall include—

11 (i) agency decisions for converting
12 such functions to Federal employee per-
13 formance;

14 (ii) the basis and rationale for the
15 agency decisions;

16 (iii) the number of contractor employ-
17 ees whose functions were converted to per-
18 formance by Federal employees.

19 (B) COMPTROLLER GENERAL REPORT.—
20 Not later than 120 days after the submittal of
21 the report under paragraph (1), the Comp-
22 troller General of the United States shall sub-
23 mit to the Committee on Oversight and Govern-
24 ment Reform of the House of Representatives,
25 and the Committee on Homeland Security and

1 Governmental Affairs of the Senate an assess-
2 ment of the report.

3 (3) DEPARTMENT OF DEFENSE.—Nothing in
4 this subsection shall apply to the Department of De-
5 fense.

