

## Pentagon Moves Against Conversion of In-house Work to Contractors

By Charles S. Clark

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The Defense Department early this month reminded its personnel managers of the ban under current law on converting work recently performed in-house into service work for contractors. The memorandum from acting Defense Undersecretary Jo Ann Rooney comes as some in Congress want to apply the ban governmentwide.

"As the department adapts to declining budgets and operating in a constrained fiscal environment, we must ensure that we make analytically based spending choices based on sound strategy and policies," Rooney wrote, citing the current moratorium on public-private competitions for federal work under Office of Management and Budget Circular A-76. "[W]e must be particularly vigilant to prevent the inappropriate conversion of work to contract performance." She noted that "the Congress and [Defense Secretary Leon Panetta] also remain concerned that the department not be overly reliant on contracted services."

The American Federation of Government Employees applauded the stepped-up enforcement, having earlier sent a proposal to OMB to expand the ban to all agencies.

"When agencies are downsizing, it's all too easy to focus in-house because the costs are more easily identified and controlled than they are with the service contracts inventory," said John Threlkeld, AFGE's legislative representative. "That's why they often use hiring freezes or reduce workers by some arbitrary number. The largest department has now seen fit to issue this guidance, and we wanted to highlight this positive development."

Threlkeld added that such a clarifying memo is important because many "far-flung commanders in the military are torn" by two imperatives -- to cut the budget and to fulfill their mission -- and hence might prefer to rely on contractors. "Many managers don't even know they are violating the law," he said.

A provision to require OMB to expand such guidance governmentwide is included in the fiscal 2012 Financial Services and General Government appropriations bill. As phrased in a Congressional Research Service summary, the OMB guidance "would address agency activities or functions that have been reengineered, upgraded or expanded, and activities or functions 'performed by federal employees . . . who have retired or been reassigned.' The guidance would also prohibit modifying, reorganizing or changing any agency function or activity for the purpose of avoiding the prohibition against direct conversions."

Asked to respond, OMB spokeswoman Moira Mack told *Government Executive*: "We appreciate the Department of Defense reminding the department's leadership of the rules regarding shifts between private and public sectors performance of work. OMB has also taken steps to clarify the rules governing use of contractors, in particular, through issuance of our policy letter on inherently governmental and critical functions. In addition, we have discussed this in many forums -- with acquisition leadership in Chief Acquisition Officers Council meetings, with the Front-Line Forum, and in our monthly telephone calls with agencies' senior procurement executives."

The timing of the Pentagon's memo "is curious," said Alan Chvotkin, executive vice president and counsel of the Professional Services Council, a contractors trade group. It was just this summer, he noted, that the Defense Department recommended ending the moratorium on conversions to contractors, and such a change is currently part of the House version of the Defense authorization act. The moratorium was written for a different set of circumstances, he said, before OMB this September issued its [memo](#) clarifying the term "inherently governmental" for use in agency decisions on what to contract out.

"Though the memo accurately states current law, there is some needed flexibility that the Defense Department would like to have had" over the past few years, which is why, Chvotkin added, the ban should not be expanded governmentwide.

A similar stance was taken by Trey Hodgkins, senior vice president for national security and procurement policy at TechAmerica. "When it makes sense to contract out, that should not be taken off the table," he said, adding that the former Defense secretary, Robert Gates, originally called for more insourcing of services, and later abandoned that position when it became clear that only limited savings were achieved.

"There needs to be a healthy relationship between the skill sets in government and those they can contract for," Hodgkins said. "Taking one option off the table is potentially disadvantageous to the taxpayer."

The nonprofit Project on Government Oversight, which has conducted studies pointing to an overreliance on contracting, said the memo moves in the right direction but is "fatally flawed." It "fails to direct the implementation of a system that ensures that money for service contracts and civilian personnel that is budgeted in the department's Operations and Maintenance account will in fact result in the policy objectives of not increasing service contract expenditures," said POGO investigator Paul Chassy in an email.

"The department has conducted analyses that document that in fiscal 2010 it requested \$63-plus billion for service contractors, but in fact actually spent \$106 billion," Chassy said. "Those figures document that the department cannot credibly be held accountable for honoring its obligation to actually spend no more than what it has informed Congress it would spend on service contracts."