



MANPOWER AND
RESERVE AFFAIRS

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
1500 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1500

JUL 10 2023

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
COMMANDERS OF THE COMBATANT COMMANDS
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Suspension of DoD Public-Private Competitions and Related Policy Affecting Use of Contracts for Services

- References:
- (a) Assistant Secretary of Defense for Manpower and Reserve Affairs Memorandum, "Update on OMB Circular A-76 Public-Private Competition Prohibitions – FY 2019," December 12, 2018 (hereby rescinded)
 - (b) Department of Defense Instruction (DoDI) 1100.22, "Policy and Procedures for Determining Workforce Mix"
 - (c) Section 2461, title 10, United States Code (U.S.C.), "Public-private competition required before conversion to contractor performance"
 - (d) Section 2463, title 10, U.S.C., "Guidelines and procedures for use of civilian employees to perform Department of Defense functions"
 - (e) Section 2679, title 10, U.S.C., "Installation-support services: intergovernmental support agreements"
 - (f) Section 325, National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010, Public Law 111-84, October 28, 2009
 - (g) Division C, Title VIII, Section 8030, Consolidated Appropriations Act of 2022, Public Law 117-103
 - (h) Division E, Title VII, Section 741, Consolidated Appropriations Act of 2022, Public Law 117-103

This memorandum rescinds reference (a) and provides guidance regarding the DoD-specific prohibition on public-private competitions imposed by reference (f). This statutory provision, which remains in effect unless repealed or amended, prevents DoD from conducting public-private competitions pursuant to Office of Management and Budget (OMB) Circular A-76 for purposes of converting performance of functions currently performed by civilian employees to contractors. Public-private competitions may be performed in very limited circumstances, involving depot maintenance activities, as described in reference (g). Studies concerning public-private competitions are prohibited by reference (h).

Because, pursuant to reference (c), public-private competitions are a prerequisite to DoD converting functions and work currently performed, or designated for performance, by civilian personnel to private sector performance, DoD Component workforce mix plans may not shift any work of civilian personnel to contractor personnel.

This prohibition on out-sourcing applies to functions and work assigned to civilian personnel, regardless of whether a position or billet is established for that work, or whether that position or billet is encumbered or unencumbered. It applies to workload, functions, and positions/billets impacted by reform initiatives (including personnel reductions), hiring constraints or challenges, or funding shortfalls. It also applies to functions that are being modified, reengineered, reorganized, modernized, upgraded, expanded, or changed to become more efficient but still essentially provide the same service. Significantly, contracted services may not be used to perform work associated with civilian positions that were eliminated within the past five years, regardless of the reason for the elimination or reduction of the positions. Similarly, it is not permissible to eliminate civilian positions for the purpose of contracting for that work at a later date.

This prohibition on out-sourcing does not preclude the establishment, under reference (e), of intergovernmental support agreements (IGSA) with State or local governments, to provide, receive, or share installation support services. However, IGSA's shall not be used to circumvent restrictions on out-sourcing, and work performed or designated for performance by civilian personnel cannot be transferred to performance by a non-Federal source of labor using IGSA's.

Contracted services may be used to perform new functions or requirements under certain circumstances. Nevertheless, special consideration must be given to using civilian personnel for a new requirement, especially when that requirement is similar to a function previously performed by Department of Defense civilian employees or is a function closely associated with the performance of inherently governmental functions. As with all manpower management decisions, decisions concerning the use of contracted services to execute new functions or requirements must be made in accordance with reference (b).

Contracted services may be used to perform a segregable expansion to an existing commercial activity already being performed by government personnel. However, such use of contracted services may not displace any government personnel and is not appropriate when civilian positions exist but have been left unfilled.

Although reference (f) was initially viewed as a temporary measure or "moratorium," its long-standing provisions remain in effect. This implementing guidance will be incorporated in the next update to reference (b). Please ensure maximum distribution of this memorandum across your organization, particularly to your acquisition, human capital, manpower, and resource management communities. My point of contact for this issue is Mr. Jason Beck, who may be reached at jason.m.beck10.civ@mail.mil or 703-697-1735.



Grier Martin
Performing the duties of the Assistant Secretary
of Defense for Manpower and Reserve
Affairs