



**UNDER SECRETARY OF DEFENSE**

4000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-4000

**DEC 1 2011**

**PERSONNEL AND  
READINESS**

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
DEPUTY CHIEF MANAGEMENT OFFICER  
COMMANDERS OF THE COMBATANT COMMANDS  
ASSISTANT SECRETARIES OF DEFENSE  
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
DIRECTOR, OPERATIONAL TEST AND EVALUATION  
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION  
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE  
ASSISTANTS TO THE SECRETARY OF DEFENSE  
DIRECTOR, ADMINISTRATION AND MANAGEMENT  
DIRECTOR, NET ASSESSMENT  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DoD FIELD ACTIVITIES

SUBJECT: Prohibition on Converting Certain Functions to Contract Performance

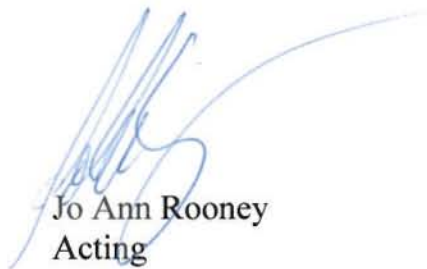
This memorandum provides clarification regarding statutory language as related to the conversion of certain functions to contract performance. While the Department is holding civilian funding at fiscal year (FY) 2010 levels through FY 2013, with some exceptions, the Congress and the Secretary also remain concerned that the Department not be overly reliant on contracted services.

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. In particular, as we implement the results of organizational assessments; continue to assess missions and functions in terms of priority; and revisit both our civilian and military force structures, we must be particularly vigilant to prevent the inappropriate conversion of work to contract performance.

Under section 2461 of title 10, United States Code (U.S.C.) the Department is prohibited from converting work currently performed (or designated for performance) by civilian personnel to private sector (contract) performance without first conducting a public-private competition. The National Defense Authorization Act for fiscal year 2010 (Public Law 111-84) included a significant modification to this statute, extending the requirement for a public-private competition prior to the conversion of work by any number of civilian employees. Prior to this change, functions performed by fewer than 10 civilian employees could be converted to contract performance absent a public-private competition, known as a "direct conversion".

The Department is currently precluded, under a moratorium, from conducting public-private competitions. This prohibits the conversion of any work currently performed (or designated for performance) by civilian personnel to contract performance. This prohibition applies to functions and work assigned to civilians, regardless of whether or not the position is encumbered. When new requirements arise, such as those that may occur as military end-strength levels are reduced, special consideration must first be provided, consistent with section 2463 of title 10, U.S.C., and applicable Department policies, to using Department of Defense civilian employees. This includes billets and work that may have been unencumbered for an extended period of time.

Please ensure maximum distribution of this memorandum across your organization, particularly to your manpower, personnel, and acquisition communities. Questions regarding implementation/enforcement of this memo should be addressed to my points of contact: Mr. Thomas Hessel (thomas.hessel@osd.mil or 703-697-3402) and Ms. Amy Parker (amy.parker@osd.mil or 703-697-1735).



Jo Ann Rooney  
Acting