



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
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WASHINGTON, D.C. 20301-4000

MAR 8 2012

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
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UNDER SECRETARIES OF DEFENSE
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SUBJECT: Update on OMB Circular A-76 Public-Private Competition Prohibitions

This memorandum provides guidance related to the continuing moratorium on public-private competitions pursuant to Office of Management and Budget (OMB) Circular A-76 and section 2461 of title 10, United States Code, within the Department of Defense. As a result of statutory restrictions, delineated below, the Department is prohibited from converting any work currently performed, or designated for performance, by any number of civilian personnel to private sector (contract) performance.

A government-wide moratorium on the use of funds for public-private competitions has been extended through fiscal year 2012. This funding moratorium was extended on December 23, 2011 by section 733, Title VII (General Provisions-Government-wide Departments, Agencies, and Corporations) of Division C (Financial Services and General Government Appropriations Act, 2012) of Public Law (P.L.) 112-74, the Consolidated Appropriations Act, 2012. This extends, through September 30, 2012, the government-wide funding moratorium on competitions that has been in place since the Fiscal Year 2009 Omnibus Appropriations Act.

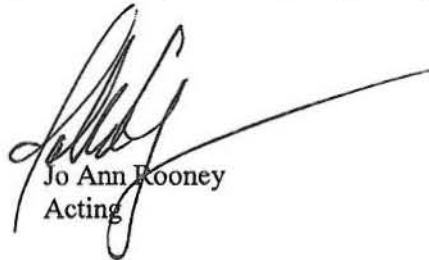
Furthermore, consistent with section 325 of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84), the Department of Defense is prohibited from beginning or announcing any public-private competitions under OMB Circular A-76 until certain certification requirements are met. While the requirement to conduct a comprehensive review and report to Congress on the Department's A-76 policies and procedures (and subsequent review by the Comptroller General) has been met, the

Department has not met all of the certification requirements to lift this prohibition, specifically those related to the Inventory of Contracts for Services.

The National Defense Authorization Act for Fiscal Year 2012 (P.L. 112-81), enacted on December 31, 2011 made certain modifications related to preliminary planning in the governing statute for public-private competitions (section 937). The enactment of these changes shall not be construed as a lifting of the current prohibitions or moratoriums, and may not be used to begin (or reinstitute) any A-76 public-private competition or related preliminary planning effort.

Finally, consistent with section 2461 of title 10, United States Code, these moratoriums prohibit 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 a position, or billet, is established for that work, and whether or not that position, or billet, is encumbered.

Please ensure maximum distribution of this memorandum across your organization, particularly to your manpower, personnel, acquisition, and resourcing communities. Questions regarding application and implementation of this memorandum should be addressed to my points of contact within the Office of Total Force Planning & Requirements: 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 Kooney
Acting

EXECUTIVE SUMMARY

UNCLASSIFIED

27 February 2012
(703) 697-3402
Mr. Thomas Hessel

Subject: Update on OMB Circular A-76 Public-Private Competition Prohibitions

1. Executive Issue:

- Public private-competitions under OMB Circular A-76 continue to be prohibited under current appropriations and authorization laws.
- Recent Congressional action and highly publicized reports of draft laws have led some to believe restrictions on competitions are no longer applicable.

2. Background:

- Public-private competitions, conducted under OMB Circular A-76, are the only statutorily allowable process by which to convert work performed (or designated for performance) by government civilian employees to private sector performance.
- Since FY09, there has been a government-wide moratorium on beginning or conducting public-private competitions that has been renewed annually in appropriations acts.
- An additional, DoD-specific suspension was imposed in the FY10 National Defense Authorization Act (NDAA).
 - This suspension was directly linked to the completion of a report by the DoD and certain certifications regarding of the inventory of contracts for services.

3. Discussion:

- In June 2011, USD(P&R) submitted a report to Congress following a review of A-76 public-private policies and programs, recommending the DoD-specific suspension be lifted.
 - The GAO issued a positive assessment of the DoD's report in September 2011
- The House Armed Services Committee, in its mark-up of the FY12 NDAA, proposed rescinding the DoD-specific suspension, however the Senate version of the bill did not.
 - The final FY12 NDAA, enacted on 31 Dec 2011, maintained the restriction on DoD's use of public-private competitions until improvements to the inventory of contracts for services are made to include a full and complete accounting of contracted services; initiation by Components of the required review of their inventory; and full incorporation of contracted services into the budget justification materials.
- During the FY12 legislative cycles, numerous amendments, both House and Senate, were made to various appropriations bills to lift agency and government-wide prohibitions.
 - The Consolidated Appropriations Act for 2012, signed by the President in late December, extended the government-wide moratorium.
- The recent legislative activity has created some uncertainty as to the status of the prohibitions, and the reductions in civilian workforces and budget pressures have increased queries as to the ability to conduct public-private competitions.

4. Recommendation:

- Sign the memorandum at TAB A reiterating the restriction on use of A-76 competitions.
- Suspense: 1 March 2012

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