

## Reconstituting a Viable and Effective A-76 Program

Donald Birchler , Rikesh Nana, Jessica Wolfanger, Alex Yellin

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## Abstract

The Office of the Assistant Secretary of Defense asked CNA to make recommendations to improve the A-76 process and to consider the repercussions of changing certain laws governing the conversion of DOD functions to the private sector. Specifically, CNA was tasked to examine the following issues; what best practices and lessons learned can be gleaned from the legacy A-76 program, what were the deficiencies and challenges of the legacy A-76 program and how can they be addressed in a future program, what actionable, practical, and concrete steps need to be taken to establish an effective A-76 program, and what policy improvements, process enhancements, additional resources, and organizational structures are necessary to ensure the viability and credibility of a reconstituted A-76 public-private competition capability in DOD?

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# Executive Summary

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## Issue and tasking

The Department of Defense (DOD) is working to build a larger, more capable, more lethal force. This requires making the Department as cost-efficient and -effective as possible. One tool for increasing efficiency has been A-76 public-private competitions, a process that included an analytical framework for comparing public and private sector performance. However, the A-76 process has been prohibited by statute for nearly a decade. Although the A-76 moratorium remains, the Department is considering what it would need to do in the event that A-76 became an active program again.

Due to the length of the statutory prohibition, the institutional knowledge associated with the A-76 process has been significantly degraded or lost. A thorough analysis and action plan for reconstituting the program is needed. Specific issues that must be addressed include organizational structures for administering the program, processes for implementing the program, and best practices for executing A-76 studies. A robust, effective A-76 process has the potential to allow the Department the flexibility to transfer workloads between different sources of labor (civilian and contracted services) where significant cost savings could be realized.

In addition, DOD also expressed interest in examining paths toward creating a more flexible workforce management environment. Besides the moratorium on A-76, there are other laws that prevent the full use of A-76. In addition, there may be cases where a full A-76 competition is not appropriate such as hiring contractors on a temporary basis to sunset an older existing system while transferring the current government workforce to operating a newer system. The department's flexibility under such circumstances is hampered by laws that force it to use A-76 as the only route.

Accordingly, the Total Force Manpower and Resources Directorate (TFM&RS) within the Office of the Under Secretary of Defense for Personnel and Readiness (OUSD P&R) asked CNA to make recommendations to improve the A-76 process and to consider the repercussions of changing certain laws governing the conversion of DOD functions to the private sector. Specifically, CNA was tasked to conduct a literature review and SME discussions to examine the following issues:

- What best practices and lessons learned can be gleaned from the legacy A-76 program?

- What were the deficiencies and challenges of the legacy A-76 program and how can they be addressed in a future program?
- What actionable, practical, and concrete steps need to be taken to establish an effective A-76 program?
- What policy improvements, process enhancements, additional resources, and organizational structures are necessary to ensure the viability and credibility of a reconstituted A-76 public-private competition capability in DOD?

## Developing a revitalized A-76 program

Our results identified seven major deficiencies in the A-76 process (see Table 1). In some cases, the deficiency can be managed via a best practice previously implemented by one or more services. However, some issues require changes to the A-76 process itself. In addition, a key recommendation—reestablishing centers of excellence to manage, collect and disseminate lessons learned, and provide support to competitions—would help address the noted deficiencies.

Table 1. Deficiencies, best practices, and recommendations

Deficiency	Best Practice from literature/SME	Additional Recommendation
Perception that the process is unfair, adversarial, expensive, and inefficient	Best practices for leadership (e.g. leadership champions, training, transition strategies, etc.)  Best practices for savings (e.g. outcome based PWS, careful packaging of functions, etc.)	Use pre-competition manpower study to inform PWS  Limit the ability of MEO to resubmit proposals
Length of competitions	Best practices for PWS preparation and preliminary planning (e.g. conduct market research, select alternative PWS/MEO leads in case of transitions, etc.)	Use pre-competition manpower study to inform PWS  Redesign criteria for streamlined competitions to be risk-based rather than arbitrary size limit
Effect on morale	Best practices for leadership and improving morale (e.g. communications strategy)	Use pre-competition manpower study to inform PWS

Deficiency	Best Practice from literature/SME	Additional Recommendation
Concerns over the rates used	NA	Revisit guidance on overhead, determining appropriate levels, with consideration to function-specific rates
Questions about the adequacy of oversight and post-competition accountability (PCA)	NA	Develop training and monitoring program for quality assurance surveillance teams  Reconstitute post-competition data collection
Questions about the quality of performance	Best practices to mitigate risk posed by loss of civilian employees (e.g. ensure sufficient government employees to manage contractor functions to avoid failure of a critical mission)  Best practices for PWS preparation (e.g. Conduct quality independent reviews to correct errors)	Reconstitute post-competition data collection  Allow best value sourcing decisions
Questions about the quality of IGCA data	Best practices to improve IGCA data quality (quality control and analysis of the data)	Reinstitute quality control of the data and ensure the guidance that governs the IGCA is current and relevant

Note: Additional discussion of best practices and recommendations are provided in the paper.

Source: CNA.

## Legislative constraints

Regarding a more flexible hiring environment, we found DOD faces several hiring restrictions. First, 10 USC 2461 states that the only way to convert a function from the public to the private sector is via A-76 competitions.

However, we noted that Section 2461 is actually more restrictive than A-76. For example, A-76 allows for the source selection criteria to be more than just the lowest cost/technically acceptable (LCTA) option, while Section 2461 does not. Furthermore, the A-76 path is closed,

as a moratorium was placed on these competitions under Section 325 of the FY2008 National Defense Authorization Act (NDAA). This moratorium is renewed every year in appropriations bills. By lifting or repealing certain sections of these two laws, DOD can move to a more flexible hiring process.

We summarize our assessment of the legal constraints in Table 2. Each shade of green represents a situation ranging from least flexible (light green) to most flexible (dark green). For example, the two light green blocks indicate legal constraints that most hamper the DOD's workforce management flexibility. The dark green blocks indicate the most flexible situation, similar to private sector flexibility. This flexibility introduces some risk that A-76 is meant to mitigate—that government employees should have the opportunity to demonstrate that they are the most efficient organization to perform a function.

**Table 2. Restrictions on converting functions done by public sector to private sector**

Option	Section 325 NDAA 2008	10 U.S.C. 2461	OMB A-76	325 and 2461 repealed
Convert public to private sector	Prohibits the only route to conversion (A-76)	Mandates A-76 as the only route for conversions	Sets policy for competitions	Allows direct conversions without competition at agency's discretion
All tenders/ proposals treated equally	NA	Mandates MEO tender	Allows MEO tender to be dismissed	Allows possibility of A-76 or conversion at agency discretion
Standard or streamlined competition allowed	NA	Made impractical by MEO requirement	Allowed	NA
LCTA or best value as source selection criteria	NA	LCTA only	Both are allowed for standard - LCTA only for streamlined	Selection criteria at agency discretion

Source: CNA.

We stress that our analysis did not conclude with any recommendations for legislative changes. That decision requires an analysis of the role of government employees and the risk that the DOD is willing to incur in order to achieve a more flexible workforce-mix management environment and falls outside of the scope of this study.



## Conclusion

In sum, a viable A-76 process will require reconstituting certain institutions such as centers of excellence, and relearning best practices that enabled prior successes. These best practices include developing strong communication strategies, careful selection of functions, and transition planning.

In addition, we recommend some fundamental changes that could improve the process, such as conducting manpower studies throughout the DOD, and using them as the basis for the PWS when an A-76 is performed, developing a defensible overhead rate for use in the cost comparisons, and strong IGCA and post-competition data collection and quality control mechanisms.

To realize fully all the options available under A-76, certain changes to the law are also required. Lifting the moratorium is a necessary first step, but the additional restrictions imposed by 10 USC 2461 should also be removed to allow DOD the choice to implement all the options available under A-76 and achieve the most effective and efficient workforce. Other legislative changes, such as the total repeal of 10 USC 2461, could create an even more flexible workforce management environment. However, those changes carry risk and may be at odds with some of the intent of having a government workforce. Further study in this area is warranted before any decisions are made.

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# Introduction

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## Background

The Department of Defense has a continuing interest in ways to be more cost-effective in creating a more lethal force. The most recent National Defense Strategy (NDS) has three lines of effort (LOEs):

- Build a More Lethal Force
- Strengthen Alliances and Attract New Partners
- Reform the Department for Greater Performance and Affordability

The third LOE directly relates to reorganization efforts, noting:

Organize for innovation. The Department's management structure and processes are not written in stone.... If current structures hinder increases in lethality or performance, it is expected that Service Secretaries and Agency heads will consolidate, eliminate or restructure as needed. The Department's leadership is committed to changes in authorities, granting of waivers, and securing outside support for streamlining processes and organizations. [1]

A tool used in the past to achieve cost reductions and a more efficient workforce mix was the A-76 program. OMB Circular A-76 is a federal executive branch policy for managing public-private competitions to perform functions for the federal government. A-76 states that whenever possible, and to achieve greater efficiency and productivity, the federal government should conduct competitions between public agencies and the private sector to determine who should perform the work; this process uses an analytic framework to compare the cost and performance of the public and private sectors for selected governmental functions. Proponents of the program argue that the program can be successful in saving money by either converting civilian positions to private-sector contractors or forcing the civilian agency to become more efficient.

However, perceived problems with the program—ranging from perceptions that the process is unfair, to the length and cost of competitions, to the lack of complete cost data needed to determine savings to DOD (among others)—led to a government-wide moratorium on the use of public-private competitions. Congress passed legislation in the FY2008 National Defense Authorization Act (NDAA) to suspend DOD public-private competitions under OMB Circular A-76. Further, the DOD-specific suspension of public-private competitions remains in effect per

Section 325 of the FY2010 NDAA (Public Law 111-84) and is renewed annually via the defense appropriations bills.<sup>1</sup>

## Section 325 of the FY2010 NDAA (Public Law 111-84)

Section 325 of the National Defense Authorization Act for FY2010 (P.L. 111-84) required DOD to do the following:

1. Continue the suspension of all A-76 competitions until the DOD completes a certification process (see item 4)
2. Conduct a comprehensive review of A-76 policies that govern the conduct of public-private competitions
3. Have the Government Accountability Office (GAO) Comptroller General review the DOD report and within 90 days submit to the congressional defense committees a report on the findings and recommendations based on its review
4. Publish in the Federal Register that DOD submitted to congressional committees certification that
  - a. The DOD report and the Comptroller review was completed
  - b. Submit to the congressional defense committees a report on the inventory of contracts for services (to include the Secretary of each military department and the head of each defense agency) in compliance with 10 U.S.C. 2330a; and
  - c. Submit budget information on contract services in compliance with 10 U.S.C. 236.

DOD's response to Section 325 was released in June 2011. GAO's assessment of DOD's report (in response to Section 325) was completed in February 2012. Technically, the DOD could use this as a basis for A-76 competitions to begin again. Yet as of this date, the DOD has not done so.

## DOD's Response to Section 325

In June of 2011, DOD issued a report as mandated in the FY08 NDAA. The issues and findings were:

**Requirement.** (1) “the status of the compliance of the Department with the requirement of 2461(a)(1) of title 10, United States Code, as amended by section 321 of this Act;”

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<sup>1</sup> H.R. 2647, P.L. 111-84, was signed into law on October 28, 2009.



**Response.** OUSD(P&R)'s review found that the Department has complied with its statutory obligations resulting from myriad recent changes to section 2461 of United States Code Title 10 and therefore will not have any issues implementing/complying with this recent amendment once the moratoriums on competitions are lifted.

**Requirement.** (2) *"actions taken by the Secretary to address issues raised in the report of the Department of Defense Inspector General numbered D-2009-034 and dated December 15, 2008;"*

**Response.** Upon review of Department of Defense Inspector General numbered D-2009-034 (hereafter "the IG report"), eight issues were identified to be addressed. While OUSD (AT&L) addressed these individual findings at the time of the IG's report issuance, per section 325, OUSD (P&R) has reviewed the eight findings and provides some recommendations for implementing or leveraging best practices as follows:

**1. Staffing.** *The IG report stated: "Many of the installation officials we met with state that public-private competitions were difficult because key personnel were either removed from their regular duties to work on the competition, or had to perform regular duties in addition to competition requirements..."*

OUSD(P&R)'s review found that the use of dedicated personnel, similar to how personnel are assigned to conduct/support other one-time events or special assignments, is a best practice that can enable the success and timely completion of a competition. As such, to the maximum extent practicable, it is our recommendation that DOD components undertaking competitions (should the moratoriums be lifted) should dedicate personnel to the effort and provide adequate training and resources for those personnel.

**2. Follow-on Competitions.** *The IG report stated: "OMB Circular A-76 requires an agency to conduct another public-private competition before the final performance period of the MEO. However, Section 323 of the FY 2008 Defense Authorization Act amended section 2461(a), title 10 United States Code, stating that once a function had been under the public-private competition process, DoD was no longer required to recompetite the function through another public-private competition."*

OUSD(P&R)'s review of the Department's competitions and discussions with program officials found that it was not the MEO in and of itself that was recompetited but rather the work or functions performed under the MEO organizational construct. Over the course of the original MEO performance period (normally five years), changes to requirements, mission, workload, and significant modifications to the performance work statements occur. As such, identifying functions performed by the MEO for follow-on competition is an effective means ensuring continuous process improvement.

**3. Agency Tender Official (ATO) Qualification.** *The IG report highlighted a concern raised by the Air Force that "it was difficult at smaller bases to dedicate [a senior civilian] employee as the ATO for the competition duration, because*

*some of the smaller bases had very few individuals at the GS-13 level or above.” The Army and the Navy did not raise similar concerns.*

OUSD(P&R)’s review endorses the Navy’s approach to appoint a senior grade civilian (who at some commands may be below the GS-13 level) and employ an ATO on more than one competition to leverage corporate knowledge and lessons learned as a best practice. It is our recommendation that, once applicable moratoriums are lifted, the Department implement these requirements across the board and that this best practice be adapted, to the maximum extent practicable, for any future competitions. In the event that small, localized competitions are conducted and an issue such as the Air Force raised becomes apparent, an ATO could be assigned from outside that specific command as appropriate to support the competition.

**4. Changing Guidance.** *The DoD IG found that “A common issue among many of the personnel involved with competitive sourcing was that competitive sourcing guidance was very untimely, always changing, and in some cases, was issued after the work had already been completed. Army and Air Force officials we met with stated congressional restrictions on competitive sourcing change every year, which make it difficult to keep up with the laws and regulations of the public-private competition process. In addition, there were different interpretations of the guidance at all levels, ranging from OMB and OSD all the way down to the installation level. Some also stated that the Share A-76! And COMPARE Web sites were not user-friendly and did not provide sufficient guidance or tools to assist with the public-private competition process.”*

Annual changes to legislation are largely responsible for the continuously changing policies and procedures that impacted competitions in recent years. Statutory changes can drive complex policy and procedure changes that can require a significant amount of time to develop and coordinate within an agency the size of the DOD.

As part of its review, OUSD (P&R) did identify several recommended best practices employed at the Component or organizational level for the timely and clear promulgation of changing guidance. One such preliminary finding is the use of “Info Sheets” and program office e-mails by the Navy’s program office. This was a streamlined process by which to promulgate information expeditiously, the Navy successfully utilized these to inform a broader community of legislative changes, regulatory changes, and decisions outside the scope of formal guidance.

**5. Support Contractors.** *The IG report highlighted an issue with a variety of opinions from across the Department related to “support provided by contractors hired to assist the PWS teams in writing the PWS and identifying workload requirements and the MEO teams in developing agency tenders”. The support contractors were hired either locally by the command undertaking the A-76 competition or by a Component in a more centralized fashion, with varying degrees of success in finding companies with the appropriate level and depth of A-76 or work specific knowledge to support the government.*

The Navy's structure and management of the support contract element ought to be adopted DoD-wide, with Components required to implement a similar approach once the applicable moratoriums are lifted. The Navy established two centralized acquisition offices to procure competition support contracts – one for preliminary planning and PWS support and one for AT support. These contracting offices awarded multiple award indefinite delivery/indefinite quantity task order contracts for this support and were able to easily and quickly manage performance issues. As with the other issues above, it is our recommendation that the Department work to apply this best practice for any future competitions.

**6. Training.** *The IG report stated: "The competitive sourcing training that officials received at their respective installations was also an issue on which we received a wide range of opinions." For the most part, Army and Navy found their Service training programs to be helpful. "Navy officials and personnel stated that the training provided by the Navy Competitive Sourcing/Manpower Optimization Branch...was very in-depth and covered all the necessary areas... However, personnel within the Air Force stated the training offered by the Defense Acquisition University was not helpful or extensive enough to provide the skills needed to work on public-private competitions.*

As part of the review, OUSD (P&R) conducted cursory assessments of DOD training programs at Components and the Defense Acquisition University (DAU). We found that there is an opportunity to use the Army and Navy training programs/curriculum, and leverage the delivery capabilities (curricula distribution, video instruction, virtual classrooms, etc.) of the DAU to improve the content delivery capability and timeliness of the training, while also lowering the per student cost (thereby lowering the overall cost of the competitions).

**7. Firewalls.** *The IG report stated: "To avoid any appearance of conflict of interest, OMB Circular No. A-76 requires separate participation on the PWS and MEO teas. Members of the PWS team, including but not limited to advisors and consultants, cannot be members of the MEO team. Members of the MEO team, including but not limited to the ATO, human resources advisor, advisors, and consultants, cannot be members of the PWS team. This separation between the PWS and MEO team is commonly referred to as a firewall."*

OUSD(P&R) believes these issues are easily addressed with additional clarifying guidance and supportable within the Department's chain of command. Additionally, a recommended best practice from the Navy program involves clarifying, through written appointment letters, who is and who is not affected by the firewall.

**8. Contracting Issues.** *The IG report highlighted a concern that many Components struggled with: "...some Army officials ... expressed concerns about acquiring and retaining competent contracting officers, [and] the Army Contracting Agency experiences constant turnover and during the course of a competition, the contracting officer may change many times...because the contracting function for public-private competitions does not belong to*

*Installation Management Command (where the competitions were being conducted), [so this]...is out of the control of competition officials.*

OUSD(P&R), in its review, recognizes there are significant benefits associated with the best practice of centralizing A-76 acquisition support similar to how other specialized acquisition project offices are established. It is our recommendation that such a structure be required at the component level for future competitions. However, accommodation and support must be provided for smaller components that conduct A-76 competitions, but do not have these resources. Additionally, the focus on revitalizing the acquisition workforce (through in-sourcing, hiring and training) in the past few years will further support these efforts.

**Requirement.** (3) *the reliability of systems in effect as of the date of the enactment of this Act to provide comprehensive and reliable data to track and assess the cost and quality of the performance of functions that have been subjected to a public-private competition;*

**Response.** OUSD (P&R) believes that the Department of Defense (DOD) Commercial Activities Management Information System (DCAMIS) is a comprehensive and reliable system for the Department to track and assess the cost and quality of the performance of functions in public-private competitions. DCAMIS is the Department's database of record established to meet official reporting requirements on the conduct of A-76 competitions, and the results from implementing competition decisions. This system was greatly improved during the 2003-2006 timeframe to meet the evolving needs of the Department's A-76 program, and comply with Congressional direction and statutes – including the annual report to Congress required under section 2462 of Title 10, United States Code and section 647(b) of the Consolidated Appropriations Act of 2004, P.L. 108-199, June 23, 2004.

**Requirement.** (4) *the appropriateness of the cost differential in effect as of the date of the enactment of this Act for determining the quantifiable costs and the current overhead rates applied with respect to such functions;*

**Response.** The OUSD (P&R) review finds that the cost differential represents an appropriate methodology to ensure the government is not changing sources (i.e., government to private sector) based on a minimal savings projection. The Circular's approach to applying the conversion differential in public-private competitions is a fair and equitable approach for both the public and private sector.

**Requirement.** (5) *the adequacy of the policies of the Department of Defense in implementing the requirements of section 2461(a)(4) of title 10, United States Code.*

**Response.** This section prohibits the Department from requiring a military department or defense agency to conduct a public-private competition at the end of the performance period specified in the letter of obligation or other agreement as a result of a public-private competition (i.e. to direct "re-

competition” of a MEO). Current DoD policies are adequate to implement the requirements of section 2461(a)(4) of United States Code Title 10. [2]

In conclusion, DOD recommended that the moratorium be lifted and that the preliminary planning process be excluded from the competition timeline. The justifications for these recommendations are described in the report:

The Department finds nothing in its review that requires a special provision restricting public-private competition in DOD. The Department needs to rebuild a viable program, align resources, and promulgate improved guidance. These must be informed recommendations for improvement noted by the Congress, federal labor unions, the private sector, and DOD IG and GAO audits. Joint oversight by the OUSD (P&R) [Office of the Under Secretary of Defense (Personnel and Readiness)] and the OUSD (AT&L) [Office of the Under Secretary of Defense (Acquisition Technology and Logistics)] will ensure well-reasoned acquisition processes incorporate Total Force Management principles. Competitions nominated by commanders and managers will be central to the success of future efforts. DOD will, of course, respect the government-wide moratorium on public-private competition should it remain in effect after the suspension is lifted. Any competitions following the lifting of the suspension and the moratorium will be required to incorporate the preliminary recommendations and best practices. [2]

### **GAO Report: DOD met statutory reporting requirements on public-private competitions**

The subsequent required GAO Report found that DOD met the statutory reporting requirements on public-private competitions. Per GAO’s response, DOD’s report to Congress addressed each of the five required elements in Section 325(b) of the NDAA 2010 and made recommendations to improve how DOD conducts public-private competitions. In sum, the GAO report recommended that the moratorium on DOD’s use of public-private competitions be lifted.

### **Congressional response**

Despite the DOD’s response to Section 325 and the GAO report indicating that the department satisfied the requirements of Section 325, the moratorium on conducting A-76 public-private competitions remains.

## **Issues**

### **What should a reconstituted A-76 program look like?**

The study was sponsored by the OUSD (P&R)/Assistant Secretary for Manpower and Reserve Affairs (M&RA)’s Total Force Manpower and Resources Directorate (TFM&RS) with the intent of positioning the DOD to respond to the potential lifting of the moratorium. In preparing to

stand up a viable and effective A-76 program, given the many years that have passed since the program was active, and address the perceived problems with the program, CNA was asked to examine the following:

- What best practices and lessons learned can be gleaned from the legacy A-76 program?
- What were the deficiencies and challenges of the legacy A-76 program and how can they be addressed in a future program?
- What actionable, practical, and concrete steps must be taken to establish an effective A-76 program?
- What policy improvements, process enhancements, additional resources, and organizational structures are necessary to ensure the viability and credibility of a reconstituted A-76 public-private competition capability in DOD?

In responding to this tasking, specific issues that we consider in this study are the best organizational structures for administering the A-76 process, best practices for conducting A-76 competitions, and improvements to the overall process.

## What legal obstacles to workforce mix flexibility need to be addressed?

Although the moratorium remains in place, DOD also needs to consider the current legal impediments to workforce flexibility that must be addressed. These impediments need to be addressed in order to give commanders and managers the flexibility to use A-76 as a tool, not just as a response to leadership's direction to make cuts or to find savings.

While the usual justification for converting work from civilian to contractor performance is to generate savings, there are other reasons such as the requirement for temporary conversion that could necessitate this change in workforce mix. For example, take a scenario in which a legacy IT system that it is going to be phased-out in the near term is currently managed and operated by DOD civilians whose jobs are not considered inherently governmental. The relevant command/agency would like to bring in a contractor to maintain the legacy system and allow the current civilian workforce to work on the new contracted system or to be retrained/reskilled for other cyber functions/positions that the government has not been able to fill. Under these conditions, the command/agency might want to hire contractors on a short-term basis to manage the legacy system during the transition. Ideally, the government civilian positions would be moved to a contractor and the DOD workforce would move to the new system, with the command/agency sending out a request for proposal (RFP) in accordance with the Federal Acquisition Rules (FAR) and then choosing a contractor after examining all the proposals. The government civilian workforce would then be retrained on the new system.

However, 10 USC 2461 requires that any conversion from civilians to contractors must go through a full A-76 competition. The issues here are twofold:

- The size of the function might not warrant a full A-76 competition with the development of a most efficient organization (MEO), but the command/agency is required to perform a full competition under Section 2461.
- The command/agency cannot perform any public private competitions per Section 325.

Thus the command/agency does not have the flexibility it needs to perform a function more efficiently or to free up civilian manpower for a critical and emerging need.

Regardless of the A-76 moratorium, legislative review and amendment of Title 10 Section 2461 is critical to ensuring the success of future competitions and giving commanders/managers the flexibility they need to make workforce decisions. Thus, we also examine Section 2461 and suggest necessary changes.

## Approach

To better understand the problems with the A-76 process and to identify best practices of the legacy program, we reviewed relevant policies and research published by federally funded research and development centers (FFRDCs), the Government Accountability Office (GAO), the Congressional Research Service (CRS), and similar policy research organizations. We also conducted discussions with SMEs who had previous experience with A-76. Much like the literature review, these discussions focused on the deficiencies and best practices of the A-76 process. Specifically, we concentrated on identifying policy improvements and process enhancements that would be necessary to reconstitute a more viable A-76 program. We note that our conversations with SMEs were not for attribution. Thus in our report we only reference SMEs vice particular individuals. The SMEs we talked to had a wide range of experience with conducting and overseeing A-76 competitions throughout the Department of Defense and represented both the private and public sectors. We also talked to legal experts regarding the issues with the legal framework governing public-private competitions.

## The legacy A-76 program

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Office of Management and Budget (OMB) Circular A-76 establishes federal policy on how to conduct a competition for commercial activities that are currently being performed by civilian employees. A-76 has been rewritten several times, the latest revision being published in May 2003.

Under A-76, agencies within the DOD are required to “Use a streamlined or standard competition to determine if government personnel should perform a commercial activity.” [3] That is, any agency that currently has government employees performing a commercial activity (versus an inherently government activity) can conduct an A-76 public-private competition to determine if a contractor can perform the activity more cost-effectively. A streamlined competition process was also available for competitions that affected fewer than 65 full-time equivalent government personnel (FTE). In sum, if a function is being performed by a government employee and it is not considered inherently governmental, military essential, or commercial but exempt from competition for reasons outlined in DOD Instruction (DODI) 1100.22, *Policy and Procedures for Determining Workforce Mix*, it could be subject to a public-private competition.

### Standard competitions

Figure 1 shows the seven key steps that we identified for a standard A-76 competition. Most of these steps are sequential. However, the solicitation preparation and most efficient organization (MEO) steps can overlap. The following sections briefly describe each of these steps along with a description of the program management organizations that were created to implement the A-76 process.

Figure 1. Seven key steps for standard competitions in the legacy A-76 process

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Source: CNA.
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## The IGCA process and function selection

The A-76 process was used to compete activities that are considered commercially reviewable and not inherently governmental. OMB Circular A-76 describes an *inherently governmental activity* as “one that is so intimately related to the public interest as to mandate performance by federal employees” [4]. A non-exhaustive list of inherently governmental functions can be found in Appendix A.

Workforce mix determination is governed for all authorized positions by DODI 1100.22, *Policy and Procedures for Determining Workforce Mix*, which provides defense organizations with a framework for determining the mix of military and civilian personnel and contracted services to perform defense functions. The framework recognizes mission success, cost, and risk mitigation as important factors in determining the best source of personnel to perform an activity.

The codes outlined in DODI 1100.22, known as criteria codes bin functions as inherently governmental, commercial but exempt from competition, and commercial and reviewable for competition under A-76. These codes are then included in the annual Inherently Governmental and Commercial Activities (IGCA) inventory required of every DOD component. The criteria code paired with the function code (the work performed in the billet) provide a picture of what functions are considered subject to public private competition.

All DOD agencies are required to compile this annual inventory providing detailed information on function, location, and criteria classification of all authorized military billets and civilian positions within DOD. The inventory is used to meet DOD and congressional reporting requirements regarding commercial activities and provides the necessary data elements for the DOD Federal Activities Inventory Reform (FAIR) Act submission.

## Function Selection

While there was no standard method for selecting which functions to compete, the IGCA inventory data served as a starting point by identifying commercial functions that could potentially be competed. In considering whether a function was a good candidate for competition, other factors considered by commanders and managers included the following (for example):

1. Are there current or potential commercial suppliers?
2. Is the function separable?
3. Can a contract be written with sufficient control?
4. Will competition likely reduce costs?

Previous A-76 competitions included a range of commercial functions and varied in size from just a few FTEs to very large competitions with multiple functions across many locations. Rarely did a command/agency initiate an A-76 competition of its own accord. More often, each military department and defense agency was assigned specific targets, which were determined using a top-down approach. Within the federal government, the administration assigned each agency FTE targets. DOD then assigned FTE targets to each of its military departments and agencies, which then delegated those targets to their subordinate organizations. The subordinate organizations, in turn, conducted the competitions.

## Performance Work Statement (PWS) preparation

Each competition required a PWS. Creating the PWS was consistently mentioned in our SME discussions as one of the most challenging and time consuming steps in the A-76 process.

Prior to any competition, A-76 stipulates that an agency must begin planning for the competition. This preliminary planning phase includes the following:

1. Determine the activities and the full-time equivalent (FTEs) positions that will be competed.
2. Conduct research to determine the appropriate grouping of activities to be competed.
3. Assess workload data for those activities.
4. Determine the baseline costs of those activities as currently performed.
5. Determine whether to use a streamlined or standard competition.
6. Develop the completion schedules.
7. Develop the roles and responsibilities of the participants in the completion.
8. Appoint competition officials (if a standard competition).

PWS development requires detailed workload data and performance standards that may not be readily available for some functions being considered for competition. Identifying workload data often required creating a new work breakdown structure and collecting workload data against this structure over a sufficient period of time to describe adequately what is needed.

Performance standards were also often difficult to determine. Specifying a work process based on current ways of doing business was sometimes provided as a substitute for a performance standard. However, this prescriptive approach is not a true performance standard and may preclude the use of a commercial method that meets the requirements in a more efficient manner. In our SME discussions, we heard that many of the performance standards used in past A-76 competitions were too prescriptive and not truly performance-based, particularly when they were based on existing work processes.

In some cases, performance of the function requires providing government-furnished property (GFP). Identifying GFP is another part of the PWS that may not be readily available or determined and requires additional study to complete the PWS.

## Solicitation preparation

In accordance with the Federal Acquisition Regulation (FAR), a solicitation was created for the competition. In addition to the PWS, the solicitation must include the source selection process, such as lowest cost/technically acceptable (LCTA) or best value, and the selection evaluation factors. This acquisition process for the solicitation must be identified at the time the competition was announced.

## Most efficient organization (MEO) development

Based on the PWS, the current organization performing the functions can make modifications to its current staffing and organization in order to perform the PWS with a revised, more efficient structure. The MEO becomes the central portion of the government bid (agency tender) within the competition.

Most of the effort preparing both the PWS and MEO falls to the civilian currently working that function within the organization. A related complication is the requirement to have different staff work on the PWS and the MEO preparation. This internal information “firewall” is required to ensure that the personnel preparing the MEO and agency tender are not advantaged over the private-sector commercial bidders, which do not have access to this information.

U.S. Code 2461 mandates that the source selection must include a technically feasible offer by an MEO (see the subsequent section on the legal framework). Thus if a MEO initially provides a proposal that is considered to be not technically feasible, it must go back and fix its proposal and then resubmit it. This allows the MEO multiple tries to “get it right.” Private contractors are not allowed to do this. Thus, the MEOs have an advantage over the private sector, as they are allowed to fix mistakes that make their proposal not technically feasible.

## Generating private-sector interest

A successful A-76 competition requires a good response from the private sector. One way to improve commercial participation was to introduce the planned solicitation to the private sector using “Industry Day” events and requesting commercial comments about the proposed competition. These events provided the private sector with the opportunity to understand the scope of the competition better and to uncover issues that might improve the PWS.

One input that can improve competition results relates to the scope of the work in the competition. For example, regional or national competitions can appear to be an efficient way

to structure an A-76 effort by enabling economies of scale. However, if few private-sector companies perform the function on a regional or national scale, then such a scope may not yield the desired results. For example, grounds maintenance is typically performed by small local companies, so a regional grounds maintenance competition is unlikely to get many qualified private-sector competitors.

## Source selection

Cost comparisons between the agency tender and the private-sector tenders were performed using a standard costing software program, COMPARE, which provided a consistent way to examine each of the financial bids.

In order to evaluate possible conversion from government to contractor performance, a conversion differential was calculated and added to the private-sector tenders' costs before the cost comparisons were completed. This differential was the lesser of 10 percent of the MEO's personnel costs or \$10 million over the total performance period. The differential captures non-quantifiable costs, such as disruption and decreased productivity related to converting the function from government to private sector performance.

The tenders were also evaluated using the evaluation factors in the solicitation. If the contracting officer discovered a material deficiency in the agency tender or any private sector offer, the offeror was notified and given an opportunity to correct the deficiency and modify its offer.

Our SME discussions identified protests by both the private- and public-sector organizations as a difficult problem during past A-76 competitions. These protests often significantly delayed implementation of an MEO or private sector conversion. We heard of instances where protests delayed completion of a competition sufficiently to force the cancellation of the competition due to exceeding mandated periods for completing these actions.

## Post-competition review

Agencies were required to track the performance results from completed A-76 competitions, whether the winner was the MEO or a private-sector organization. This required measuring performance results, implementing a quality assurance surveillance plan, and collecting actual performance costs that were compared to the expected costs in the selected tender.

Most competitions resulted in five-year contracts or MEO agreements with an initial contract year and four option years. Post-competition results were tracked for this five-year period. The Defense Commercial Activities Management Information System (DCAMIS) was developed and implemented to collect post-competition results.

## Program Management Organizations

All the SMEs we talked to agreed that the A-76 process is complex and time-consuming; it is a contracting process that is much different from those most government personnel have worked with. In order to oversee the broader A-76 program and to support the activities contributing to the specific A-76 competitions, most of the higher-echelon commands created independent A-76 Program Management Organizations (PMOs), often at the service or agency level.

Although there were some differences in the structure of these groups, they performed many of the same tasks, including overseeing the identification of specific functions to be competed, tracking progress against assigned FTE targets, monitoring competition progress, and tracking post-competition performance.

Because of the effort and the uniqueness of the individual competitions, most of these A-76 PMOs also provided direct support to the implementing organizations. PMOs often used selected contractors with expertise in different phases of the process, including contractor support for PWS and MEO development and completion of the tender documents.

Each PMO developed a series of training programs to instruct its department's organizations in specific A-76 tasks (such as PWS and MEO development). Defense Acquisition University (DAU) ran some of these training programs, while others were operated independently.

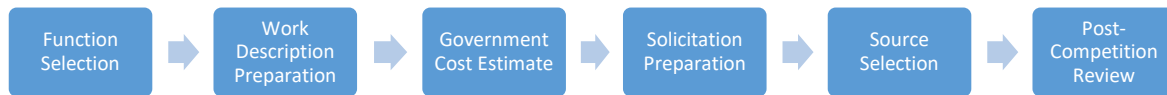
The unique A-76 contracting process led some organizations to create separate legal and contracting support organizations, which were separate from the PMOs, to guide these aspects of the process.

PMOs were also responsible for implementing post-competition reviews, including collecting the required information and maintaining the required DCAMIS records for their competitions.

## Streamlined competitions

The previous section describes the process used for the standard competition process. A streamlined competition process is also available, which allows the agency to skip some of the steps in the competition, simplifying the A-76 process. In this section, we describe the streamlined competition process.

**Figure 2. Six key steps for streamlined competitions in the legacy A-76 process**



Source: CNA.

Under A-76, an agency can use the streamlined competition process if the aggregate workforce being competed is fewer than 65 FTEs. Streamlined competitions may not exceed 90 days unless the competitive sourcing official (CSO), an agency employee charged with implementing the competition in accordance with A-76 guidelines, grants a 45-day waiver.

## Function selection

Function selection for a streamlined competition was similar to the standard competition. Positions selected for streamlined competitions were based on information from the IGCA inventory and many of the same factors considered in a standard competition, such as the availability of real or potential commercial suppliers, whether the function was separable, and so forth. The primary difference is the limit of 65 FTE for a streamlined competition, which limited the scope of the competition, along with the opportunity for multiple-base regional competitions.

## Work description preparation

A streamlined competition did not require a formal PWS as in a standard competition. Instead, only a scope and requirements documentation of the activity being competed was required. Given that the development of a PWS is often the longest and most complicated part of a standard competition, skipping this step is one major advantage of a streamlined competition.

## Government cost estimate

The cost for government performance of the work scope is estimated using the incumbent organization performing the activity as it is currently configured. A-76 allows for the development of an MEO, which bases its cost proposal on a revised organization that is more cost-efficient, but it is not required. However, as we will see in the next section, current law mandates an MEO. Given how long it takes to develop an MEO cost estimate, this effectively makes streamlined competitions impractical.

## Solicitation preparation

An estimated contract price for performing the activity with a private sector source is required. This was determined using documented market research for functions for which there are established cost estimate sources. Another way to determine the private-sector contract cost estimate was to prepare a solicitation based on the scope and requirements of the activity and use it to request cost proposals from private-sector sources.

## Source selection

The source selection for a streamlined competition is based on a cost comparison between the government cost estimate and the estimated contract price for performing the activity with a private-sector source. These estimates were determined as described above.

The cost comparison was performed with the COMPARE program and was used to determine whether the government or private sector was successful in terms of accurately assessing the costs for performing the activity/function. Unlike the standard competition, no conversion differential is included in the cost comparison.

Unlike standard competitions, streamlined competitions allowed no protests, eliminating one of the most time-consuming aspects of the standard competition process.

## Post-competition review

Post competition accountability reviews were conducted in the same manner as standard competitions. This information was also included in DCAMIS.

## Summary

As we previously mentioned, the goal of this study was twofold. First, we were tasked with understanding the legal framework for public-private competitions and what steps would be necessary to bolster flexibility in workforce mix decisions. This was addressed in the previous

section of this report. The second goal was to examine ways that the A-76 process itself could be changed to make it more palatable to agencies who want to use it to achieve savings.

Numerous reports addressing the shortcoming of the A-76 process have been written by government and nongovernment agencies. In addition, while A-76 competitions have been under a moratorium for 11 years, we were able to locate many people in the DOD and private sector who had significant experience in this area. Drawing on our conversations with these SMEs and a review of the literature on ways to improve A-76, we created a list of recommendations that should create a less burdensome process. These recommendations, and the underlying reasons for them, are presented in the next section.



## Deficiencies of the legacy A-76 program

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In the event that an A-76 program is reconstituted, the deficiencies of the legacy program must be addressed. In this section, we outline some of the major deficiencies we found in our literature review and SME discussions. Our summary of best practices and listed recommendations are meant to alleviate the problems presented in the section.

### Questions about the quality of IGCA data

Some SMEs we spoke with pointed out the shortcomings of the IGCA inventory which served as the basis for the selection of functions to compete. First, the quality of the data relies on the knowledge of the person responsible for coding the positions and the appropriate application of the *DOD Guide to Compile the IGCA Inventory Submission* as well as DODI 1100.22. The quality of the data also depends on how often the data is reviewed and updated. If Components assign a function code and criteria code to a position in their manpower system and do not update those data when the nature of the position changes, the IGCA will likely not reflect accurate information. In addition, the data can be “gamed” to code functions as inherently governmental versus commercial without proper quality control and oversight.

### Questions about the adequacy of oversight and post competition accountability (PCA)

Several of the articles we reviewed noted that the A-76 Competition lacks a meaningful, consistent post-competition accountability process. This process needs to ensure that the expected cost savings were achieved and that the overall performance was satisfactory. Our SME discussions and the literature on A-76 performance highlighted issues with both the data required for post competition accountability and lack of corrective action available to agencies who completed a competition.

### Data quality and missing data

Several reports questioned whether there was complete and reliable cost data related to the conduct of A-76 competitions that make it possible to determine the overall savings to DOD. We note that the literature emphasized that part of the problem with the data stemmed from the difficulties in collecting long run data on cost and performance, especially when changes to the contract occurred or when the scope of the work changed for legitimate reasons [5-7].

Several other papers also noted challenges with the Defense Commercial Activities Management Information System (DCAMIS), including that there were many data inconsistencies in the system [7-8]. A review of government reporting and federal guidance noted that, within DCAMIS, “inaccurate guidance from OMB to Federal agencies has resulted in systematically overstated savings and understated costs, and that Federal agencies have not collected complete and reliable cost data related to the conduct of Circular A-76 competitions, making it difficult to determine overall savings” [8]. Another challenge in accurately calculating savings because of poor data quality was that the government does not record “baseline costs”, the cost of performing a function by an in-house team before it is competed [9].

This problem has been acknowledged by the DOD and prior to the moratorium they made changes to data collection and guidance to improve the quality of the data. However, in their response to Section 325, the GAO still expressed concerns:

We have reported previously on various shortcomings in DCAMIS with respect to the accuracy and completeness of the data it contains. We recommended that DOD develop guidance and milestones for making needed improvements to the system, and DOD concurred. DOD officials told us that the improvements made to DCAMIS have enhanced the system’s reliability, but no additional reviews of the system have been completed since the improvements were implemented. However, officials noted that the Deputy Under Secretary of Defense (Installations and Environment) commissioned the Center for Naval Analysis to complete a study that would have addressed the reliability of the DCAMIS data, but the study was stopped after the system was taken off-line in early 2011. [10]

Finally, we note that performance data is also problematic. DCAMIS only collects cost data. Performance data is collected via the Past Performance Information Retrieval System (PPIRS), which only collects data on contractor performance. MEO performance data is not collected.

### **Problems with the post-competition accountability processes**

In addition to the data issues stated above, we note that there are some post accountability process issues that were called out in the literature. One study noted that there is no standardized post-competition accountability process across the services. This is especially true for MEOs. MEO accountability is done at the installation level as the FAR regulations governing contracts does not extend to MEO letters of obligation when examining cost and performance. That is, MEO letters of obligation were not legally binding like contracts and there was no legal redress for non-compliant PWS performance. The study also noted that there is a lack of attention paid to workload post competition. As a result, there is no way of ensuring that cost overruns are not due to an increase in workload [11].

Another study noted that even if good data was collected and guidance for taking corrective measures against either a MEO or the private contractor was promulgated, implementing an

effective post-competition accountability process may be especially difficult for some as many PCA employees have not been trained in performance monitoring [7].

## Perception that the process is unfair, adversarial, expensive, and inefficient

While it is difficult to generalize the range of views and opinions about A-76, SME discussions revealed that it is generally the case that many federal employees and labor organizations believe that A-76 is unfairly slanted in favor of the private sector. These perceptions of unfairness dovetail with other issues that create problems with morale (see below).

On the other hand, private sector contractors generally believe that federal government employees have an unfair advantage. The perceptions from the private sector were most succinctly highlighted in a 2006 CNA report on A-76 competitions. This paper cited a set of interviews with OMB, GAO, and private sector staff from four completed A-76 competitions that identified several issues potential private service providers had with the A-76 competition process:

- In general, potential private service providers viewed the A-76 competition process as opaque and lacking accountability [12].
- Potential private service providers believed competitions were cancelled too often [12].
- Potential private service providers found workload data inaccessible and difficult to manipulate [12].
- Potential private service providers had poor experiences with pre-proposal conferences and early site visits [12].
- Potential private service providers found PWSs too heavily weighted on requirement compliance rather than performance quality [12].
- Potential private service providers did not believe they had enough time in the competition process to create necessary teaming agreements with other potential private service providers [12].
- Potential private service providers believed government agencies would occasionally “game” PWSs to make them deliberately uncompetitive. For example, writing a PWS as a small business set-aside when it is not feasible that a small business could complete the scope of requirements in the PWS [12].

The study stated that these factors contributed to fewer private sector proposals being submitted [12].

In addition, proponents of the A-76 policy view it as a necessary mechanism for gaining efficiencies in federal operations; opponents view A-76 as unfair, adversarial, expensive, and inefficient. It is important to note that these problems of perception are not necessarily based on facts. Nonetheless, correctly managing expectations around A-76 competitions will help the DOD create a less hostile environment for future competitions.

## Length of competitions

A frequent complaint about the A-76 process was that competitions took too long to complete, often taking several years. The largest effect of this problem was the expanded workload on the civilian employees tasked with working on the A-76 competition while simultaneously managing their normal workload and the overall negative effect on morale that a protracted completion causes. To shorten the A-76 competitions, one study recommended that Congress “exclude the preliminary planning process from the statutory time limit for conducting the A-76 competition” [8].

## Effect on Morale

The most commonly noted negative effect of A-76 competitions both in SME discussions and in the literature was on the morale of the affected government employees who feared the loss of their jobs [12-15]. A case study of the Walter Reed Medical Center A-76 competition noted that the fear of job loss from an A-76 competition caused skilled personnel to quit, forcing the government to hire new workers to replace them [16]. This turnover may negatively affect activity performance leading up to an A-76 competition. In addition, this loss of skilled personnel resulting from low morale may have second order effects as well. One study noted that two of the effects on government employees after being laid off are “bumping”, where an employee elects to replace a lower tenured employee, and “retreating”, in which an employee elects to replace a lower tenured employee within the employee’s own tenure group and subgroup [15]. Finally, in addition to job loss, one study found that even when MEOs win A-76 competitions it often leads to lower pay grades for the civilian employees and more limited potential for future pay raises [17]. We note that these negative effects are partially offset as a few studies found that winning private providers often hire displaced government employees, as it saved costs, specifically related to training [14, 17].

Finally, we note that when private contractors win, they often find themselves in a hostile environment due to resentment from the host agency. One of the most significant examples of this comes from a case study of 16 DoD Competitive sourcing competitions. During an operations support (BOS) contract, one of the private service provider project managers noted that the provider was unable to establish a positive relationship with government agency representatives due to the government loss of the competition. This resulted in “overzealous” government quality assurance evaluators according to the project manager [5].

## Concerns over the rates used

The DOD Inspector General reported as early as 2003 that the standard 12 percent rate was not a fair estimate for calculating general and administrative overhead costs for A-76 competitions. This was echoed in a 2011 report by GAO that stated the 12 percent overhead figure had no sound analytical justification [10]. However, as stated in the same report, DOD as a whole believes that the 12 percent overhead rate aligns with OMB policy. This is a stark difference of opinion and casts doubt on the true savings from public private competitions.

## Questions about the quality of performance

The quality of post-A-76-competition performance was mixed regardless if the competition was won by the AT/MEO or private provider. A panel discussion of experts from DOD, private industry, labor organizations, and OMB came to the consensus that, in general, A-76 competitions have not “worked well....to identify the best provider in terms of quality” [6].

One study reviewed the quality of performance for sixteen A-76 competitions using contract representative, manager, and customer interviews. Two of these competitions involved an AT/MEO award and the other 14 involved a private contract award. On average, post-competition performance was ranked as between 3 and 4 on a five-point scale [5]. One study found that A-76 competitions resulted in a reduction in customer service, regardless if the competition was won by an MEO or private provider [15].

A review of one A-76 competition found a private service provider’s work to be satisfactory through a review of a Defense Finance and Accounting Service (DFAS) review of pre-and post-competition performance, contract compliance, and customer satisfaction surveys. In general, this article found that the private provider was “as well or slightly better than the government provider”. However, the article did note that compared to the previous government provider, the private provider had “performance problems in establishing new accounts, maintaining accounts and making changes, and responding to customer calls within 20 seconds” [14].

The studies we reviewed noted several issues with either private providers themselves, or issues in transitioning activities from government providers to private providers:

- There are difficulties in transitioning duties within the first year after a competition, which led to poorer performance scores [5].
- Contractors are unlikely to take on additional tasks without adjustments to the original contract, which can negatively impact customer service [15].
- Private provider Grounds Maintenance competition winners tended to receive the poorest performance scores, in part because many of them did not provide a satisfactory quality assurance plan [5].

- Removing military personnel provided customers with more consistent service because employees were not called on for military exercises [5].
- Occasionally, private service providers would be overly aggressive in seeking out scope expansion opportunities, according to contract representatives [5].
- An out-of-state private service provider could not effectively manage the contract, as they would seldom visit the base [5].
- A small business contractor did not have the cash flow to repair necessary equipment, resulting in delays [5].
- Various quality of work issues were noted, such as private service providers simply not performing assigned duties [5].

# Best Practices of the Legacy A-76 Program

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Our review of the literature and SME discussions revealed best practices that made A-76 competitions more successful in terms of saving more money and creating less stress on the agency conducting the competition and the affected employees. These best practices should be followed in any new A-76 or A-76-like program.

## Best practices for leadership

SME discussions and a review of the literature found that effective leadership is necessary for a successful A-76 competition. One study noted that “public-private competition is most successful when there is a committed leader at the highest level to champion it and other leaders at succeeding levels to implement it and sustain momentum” [18]. The study reported that successful high-level leaders tended to introduce and build support within government workforces, find champions for competitions at every level of an organization, develop and implement transition strategies, develop an organization structure to ensure that plans are implemented correctly, and institute training for managing competitions and contracts [18]. The study also noted that successful intermediate-level leaders tended to ensure that competitive pricing was an integral priority in their mission; give clear, constructive, and concise guidance to installation commanders; and provide sufficient resources to conduct competitions [18]. Additionally, several studies we reviewed noted the importance of providing incentives for leaders to engage in A-76 competitions [8, 18-19], particularly for meeting cost-savings goals [19].

## Best practices for IGCA data quality

Prior to the suspension of the A-76 program, IGCA inventories were subjected to a quality-control process, reviewed extensively for errors and analyzed to ensure consistency. If, for example, a Component coded a function as inherently governmental while another Component coded the same function as commercial, this raised a red flag that DODI 1100.22 was not being applied consistently and a further examination of this coding was warranted. However, since the moratorium, it is unclear whether quality/consistency review and analysis of the inventories is conducted. In addition, a review of DODI 1100.22 is necessary to consider if the three categories of inherently governmental, commercial reviewable, and commercial

exempt accurately capture the range of functions performed in the Department of if more granularity of these codes is required.

Although not a perfect tool, the IGCA is the only formal construct that bridges military and civilian billets performing similar work and categorizes the nature of that work. It serves as an important baseline of the types of functions being performed across the entire Department. A renewed emphasis on quality assurance for the IGCA inventory and a review of the guidance governing the IGCA, particularly DODI 1100.22 is necessary. Ensuring that the *DoD Guide to Compile the IGCA Inventory Submission* as well as DODI 1100.22 are relevant and current should be a priority.

## Best practices to increase cost savings

Several of the studies we reviewed noted that the threat of competition was the most important factor in creating savings for the government [18-19]. As it involved the solicitation of bids from the private sector, the A-76 process also provided managers in executive agencies more precise information about how much activities should cost to perform, and this process of critical thinking would often lead to cost savings [19]. These studies cited the following best practices for agencies conducting a competition as key to increasing cost savings:

- Package similar functions to create savings over the standard A-76 competition [20].
- Research modern methods and equipment for function completion as a means of understanding what the market can provide [17].
- Substitute military employees for civilian employees when possible to allow their function to be competed [17-19].
- Do not hold regionalized competitions, as these reduce savings if other factors are held constant [19].
- Note when making costing estimates that private providers tend to be comparatively more expensive than the MEO/AT provider during the first couple of years and then become cheaper after that period. This is likely due to startup costs for the contractor. Knowing this will help the agency understand the business model their contractor will operate under [14, 18].

## Best practices for preliminary planning

Before the official start of an A-76 competition, many executive agencies conduct preliminary planning sessions to analyze workload activities, determine whether a competition is appropriate, identify relevant PWS templates, and organize both PWS and MEO/AT teams. A



well-implemented preliminary planning process can aid the competition by both having A-76 participants better understand the A-76 process and promoting buy-in from stakeholders [21].

One article noted that data collection during site visits was an important part of this process, as it inherently involved establishing relationships with stakeholders [21]. These relationships fostered both a true understanding of work activities and created buy-in for the process [21]. Another article recommended that A-76 legislation allow PWS development to start during preliminary planning time to aid in the process and better inform the data collection effort [22].

To improve the preliminary planning process, the studies we reviewed made the following suggestions:

- Appoint decisive, experienced team members familiar with the A-76 process [21].
- Select “alternative leads” for the preliminary planning team in case a transition is required [23-24].
- Conduct market research by using FedBizOpps to solicit firms that wish to participate in market research [23] and contacting relevant professional organizations [24].
- Notify relevant union leaders and members [24].
- Ensure advertisements use the correct North American Industry Classification System (NAICS) codes [23].
- Produce a gap analysis that calculates what information is needed for a PWS and baseline costing [23].
- Standardize data collection through the use of drop-down menus [24].
- Cross-train PWS and agency tender development teams so that both teams understand the roles and responsibilities of the other team. This will limit errors arising from misunderstandings and the increase the time needed for asking questions by the MEO/AT [21].

## Best practices for PWS preparation

A case study of four completed A-76 competitions found that completing an effective PWS was the most time-consuming step of the competition. The study noted that conducting the research to ensure that the PWS includes all relevant work to be competed is a particularly challenging part of the PWS process [25].

Private providers noted that PWSs authored by executive agencies were not “performance-based” [14], were “overly-complex” [14], and had difficulty in listing requirements for difficult-

to-define tasks such as “leader research and education” in the PWS format [15]. This made the development of a private proposal far more difficult.

To improve the PWS creation process, we make the following suggestions, which we discuss in more detail later in this report:

We recommended that a manpower study be the precursor to any A-76 competition announcement. Because manpower studies have much in common with a formal PWS, this allows for a mapping of resources to functions for better identification of potential competitions. In addition, in both the literature and SME discussions, the PWS was cited as the longest part of a competition [25]. Thus, building a PWS from the manpower study should shorten the overall length of a competition, reducing stress on the agency involved. Nonetheless, a PWS will still be necessary to perform any standard competition. In the final preparation of the PWS, the literature suggests the following:

- Ensure that the PWS focuses on the outcomes and outputs to be achieved, rather than on how the outcomes and outputs are achieved
- Allow prospective private providers room to propose innovative ways to accomplish PWS activities
- Ensure that the PWS does not artificially limit competition by including arbitrary restrictions not directly connected to the provision of activities
- Conduct quality independent reviews to correct errors
- Convene an independent review board to correct PWS errors, check PWSs to ensure focus on outcomes and outputs, and review PWSs to ensure that both MEO/AT and private service providers have an equal chance of winning [25].
- Create the largest competition possible by including all commercial jobs relevant to the category specified on the PWS [25].

## **Best practices for the preparation of MEO public tender**

As mentioned above, A-76 competitions tend to be won by the MEO/AT service providers. The articles we reviewed mentioned several benefits for MEO production teams. A case study of four completed A-76 competitions found that A-76 training was viewed as effective by MEO teams, and that MEO teams were highly committed to producing a high-quality MEO [25]. MEO teams were able to effectively incorporate lessons learned from previous work efforts into their proposal [12]. MEO teams also were able to effectively cut costs by “cross-utilizing

employees, and realigning functional groups to eliminate supervisory positions and increase efficiency” [12].

However, a few of the studies we reviewed mentioned barriers and inefficiencies in the MEO process. One of the A-76 competitions reviewed in one of the studies found that an MEO could not be implemented until the MEO team received authority for a reduction-in-force, a process that proved to be time-consuming [25]. Several of the articles reviewed noted that MEO teams inaccurately calculated MEO costs, specifically because of inaccurate overhead or administrative cost calculation [8, 26], and that the use of save pay for senior personnel drove up expected costs [27]. One article noted that an MEO for US Space Command bid only to win and thus the bid was too low to perform the actual work. This problem was accentuated by the fact that the MEO was not allowed to grow, even if external circumstances changed [15].

## **MEO teaming**

MEO teams often partner with potential private service providers as part of the MEO production, in a process called “teaming.” One study noted several benefits for teaming, including private partners’ ability to bring not only more start-up capital to fund technology, but also innovative problem-solving ideas to MEO production [11].

However, the study also noted drawbacks to MEO teaming, which can reduce the number of competitors for the A-76 competition, in turn driving up costs. Potential private service providers can perceive MEO teaming to be unfair, as all members of an MEO team will receive a conversion differential, and different goals and objectives may inhibit government and private MEO team members from working together effectively [12].

## **Best practices for MEO/AT formation**

For any competition, a MEO tender must be considered by the agency. The MEO is headed by the Agency Tender Official (ATO) who leads the MEO team in developing their proposal. The literature has several best practices regarding the formation of a MEO.

One article noted the importance of having ATOs holding senior positions, as they might be more well-known throughout the chain of command and thus may shorten the process of developing trust and enable the MEO/AT to fulfill its requirements without much resistance [21].

One article strongly recommended that, at the start of a competition, AT/MEO leads set firm deadlines for data collection and designate a document control lead, involve MEO subcontractors in early strategy sessions, and hire an SME for each functional area to avoid any

data-related mistakes being made during the MEO/AT data-collection process. This would ensure that the MEO tender would more likely be technically acceptable and free of errors [28].

Consolidation of AT/MEO staff and efforts was a key recommendation in making sure the AT/MEO process ran effectively. One case study recommended that other executive agencies follow the Commander, Navy Installations Command strategy of hiring a single agency tender official (ATO) for a four-year term covering multiple studies, as this led to a “continuity in Agency Tender construction” and brings “confidence” to every MEO/AT submission effort [28].

Similarly, one article found that MEOs were most competitive when they were able to consolidate similar duties across several pay grades in a process known as “multiskilling” to ensure flexibility [29].

Flexibility in hiring was also a recommendation in ensuring an effective MEO/AT. One article recommended that MEOs be allowed to hire outside contractors when certain positions were not filled by a civil service employee, such as when an executive agency hired an “otherwise assigned military member” or when the position was vacant before [21].

One article noted that the availability of support staff was crucial in managing an effective A-76 process. Crucial support positions included SMEs, legal counsel, HR representatives, and A-76 process specialists [30].

Finally, one article recommended that the MEO bid specifically to the positions listed on the PWS instead of what it believes is necessary to complete the mission [21].

## **Best practices for improving morale during the competition**

As noted earlier, a significant difficulty of A-76 competitions was the negative effect on the morale of the civilian employees due in large part to the fear of job loss. However, the literature revealed instances where agencies made efforts to improve morale. Some of the recommendations we noted throughout our SME discussions and review of the literature are

- Holding a kickoff conference between government agency employees and private service provider representatives to blunt tension and identify potential performance issues [5]
- Identifying communication outlets for government agency employees to express concerns, particularly about job loss [25]
- Sharing a portion of savings generated from A-76 competition with employees [18]
- Publicizing the benefits and savings made as a result of A-76 competitions [18].

## **Best practices to mitigate risk posed by loss of civilian employees**

One article noted that DOD should consider the complexities of risk mitigation when deciding which activities should be competed out. Specifically, the article wanted DOD to certify that critical activities could continue to be performed if certain employees were reallocated during a national emergency and/or there was be a “pool” of employees to draw from to complete critical activities during a national emergency [31]. One article noted that in order to mitigate risk for “near IG” functions, executive agencies must ensure that there are sufficient government employees to manage contractor functions to avoid failure of a critical mission [32].

## Recommendations for a reconstituted A-76 program

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In addition to the best practices noted above that should be followed in a reconstituted A-76 program, we recommend the following changes:

### Recommendation 1 – Re-establish centers of excellence

We heard throughout the SME discussions that the A-76 competitions ran more smoothly when services stood up A-76 “Centers of Excellence” (COE) to manage the competitions. For the most part these COEs acted as a central repository of expertise on A-76. Their functions were to lend people to agencies running a competition (thus providing expertise and reducing labor burden on the agencies running competitions), institute best practices, and ensure commonality across A-76 competitions.

The DOD Inspector General Report of 2008 concluded the same. Specifically, it argued that the best practices for A-76 competitions included having a COE that could manage competitions, assist in the development of the MEO, and oversee the implementation of competition decisions. In addition, the report argued for an organization with centralized responsibility for conducting public-private competitions to increase control and effectively use support contractors to manage competitions. This organization would be the center of a basic program infrastructure that would oversee the program and create policies and procedures to ensure that DOD competition policies and directives are carried out as well as avoiding conflicts of interest and protecting the integrity of the public-private competition decision-making process [33].

Thus, we recommend that each service and the DOD stand up a COE. In the past these COEs lent people with expertise to an agency running a competition to help them throughout the various stages of the process. We see an expanded role for them. Specifically, the COEs will have four main functions:

1. Collect and conduct quality control on all IGCA inventories from agencies within their purview.
2. Collect all manpower studies done for an agency within their purview.
3. Create a list of possible A-76 competitions based on analysis of IGCA inventories and manpower studies.

4. Be a repository of personnel with experience in both running an A-76 competition and in instituting best practices.

## COEs as a repository of expertise and leadership

The literature on best practices strongly suggests that effective leadership is necessary for a successful A-76 competition. One review of competitive sourcing literature noted that “public-private competition is most successful when there is a committed leader at the highest level to champion it and other leaders at succeeding levels to implement it and sustain momentum” [18]. The study reported that successful high level leaders tended to introduce and build support within government workforces, find champions for competitions at every level of an organization, develop and implement transition strategies, develop an organization structure to ensure plans are implemented correctly, and institute training for managing competitions and contracts [18]. The paper also noted that successful intermediate-level leaders tended to ensure that competitive pricing was an integral priority in their mission, give clear constructive and concise guidance to installation commanders, and provide sufficient resources to conduct competitions [18].

We believe the COEs could play a leadership role in all of these areas. This does not excuse the agency from exercising leadership during the competition. It simply provides a level of expertise at a leadership level to support the senior officials in their leadership role to ensure a more smooth competition.

## Recommendation 2 – Redesign the criteria for streamlined versus standard competitions

Currently A-76 allows for a streamlined competition if the function has 65 FTEs or fewer. We could not find in the literature nor in our SME discussions any rationale for this number. Thus, we recommend that DOD create a different criteria for streamlined competitions. These risk criteria should be based on the risks of skipping some of the steps in the standard competition. For example, the risk of not including creating a full PWS might be improperly written RFPs. The full list of these risks fall outside scope of this study but a few that were mentioned in our SME discussions are:

- The scope of the work is too amorphous for streamlined competitions.
- The competition might include other regional offices with separate work procedures that would only be apparent in a PWS.

In practice, once the risk criteria is developed, the COE will use it as part of their analytic effort to suggest A-76 competitions. For example, once they have used the IGCA inventory and

workload data collected in a manpower study and have made an initial determination that a certain function or functions are eligible for a competition, they can then use the criteria as a basis to suggest which kind of competition to have. This would allow for a more analytic approach than just the 65 FTE cutoff.

In order to do this, DOD would first have to conduct a study of the potential risks associated with streamlined competitions. The end-result of this study would be a rubric or logic tree which future A-76 administrators could use to decide whether a competition should be standard or streamlined. Finally, OMB Circular A-76 would need to be amended to allow for the rubric/logic tree approach.

### **Recommendation 3 – Complete a manpower study/develop a PWS prior to the announcement of any competition**

There were two main issues that were consistently brought up in the literature and the SME discussions concerning A-76 competitions. First, the standard competitions were almost always the result of an ad hoc determination by DOD or service leadership to achieve some number of savings across the service (i.e. an agency was compelled to do a competition to find some pre-determined budget wedge). Second, the entire process was too long with the PWS development being the longest and most difficult part. Several studies noted that government agencies should do whatever they can to ensure the A-76 competition is as short as possible [8, 13]. Both of these problems contributed greatly to a decline in employee morale and created hostility across the DOD to A-76 competitions. This recommendation helps address both of these problems and is alignment with recommendations made previously by both DOD and a 2001 GAO report [17].

Ad hoc budget wedges are not a carefully conceived process to determine workforce mixes for any particular agency. For example, several studies noted that neither Congress nor executive agencies should create any form of quota for public-private competitions [6, 13, 16]. One study noted that arbitrary quotas constrain government agencies from having the flexibility to create optimal workforce balances [13]. The true savings are never apparent until after a competition is done.

Thus, the process to establish a competition should be the result of examining the results of a manpower study and mapping that to the workload being done in those functions that could potentially be competed. For A-76 competitions, that occurs within the development of the PWS. Note that A-76 states that a PWS team is in charge with (1) developing the PWS including supporting workload data, performance standards, and any information related to the activity completed; (2) determining government furnished property (GFP); (3) assisting the



development of the solicitations; (4) developing a quality assurance surveillance plan; and (5) implementing the performance decision.

A-76 does not spell out exactly how to create the actual PWS. It simply says to use workload data, performance standards, and any other pertinent information. This kind of analysis is quite similar to manpower studies which are mandated across each service. For example, the United States Army Manpower Analysis Agency conducts manpower studies for all Army commands. These studies are complex, data driven, and are used to estimate FTE requirements for business processes as they currently are. Their methodology requires the following minimum data requirements:

- Functions & outputs of the agency
- Personnel & Work
- Backlog & Projected Workload.
- Work Center Input Requirements
  - Organizational chart of the work center
  - Copy of all Statements of Work or Performance Work Statements for all contractors working within the work center
  - Any process maps, process descriptions, or standard operating procedures used within the work center or in conjunction with other work centers/organizations
  - All applicable documents pertaining specifically to the work center which the study team should review
  - Backlog and/or projected workload justification
- Input Requirements from Organization Overall
  - Resource management print-out of personnel who earned overtime during the data collection period, by work center
  - Manning document
  - Organization & function manual
  - Applicable DoD/Army/Joint regulations and documents [34]

Manpower studies are very close to a full PWS; what's missing are performance standards and assessing GFP. By providing this level of analysis upfront before a competition begins, the length of the competition will be reduced if a PWS is already completed.<sup>2</sup>

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<sup>2</sup> We note that every service has different manpower study standards. The scope of this study did not allow for a complete gap analysis comparing their manpower study methodologies with a PWS. However, discussions with SMEs and a cursory look at Navy and Army manpower study methodologies strongly suggest that there is overlap between manpower studies done across all services and a PWS.

## **Recommendation 4- Review the guidance governing the IGCA inventory and reinstitute quality control of the data**

All DOD agencies and components are required to submit an IGCA inventory annually. Although IGCA inventories were reviewed and analyzed extensively in the past to ensure quality and consistency of the data, it is unclear if there is any current quality control process for the Inventories.

As noted earlier, the IGCA inventory is not a perfect tool. Quality control and oversight of this inventory, however, allows for coding comparisons to be made across the Department. If a component is trying to protect functions/positions by coding them as inherently governmental while other components are coding these same types of functions/positions as commercial, the inventory allows DOD to identify these differences and follow-up with the components. Quality control and oversight of the data also allows basic errors to be identified (for example, an invalid function code or criteria code is entered or fields that have been left blank). Quality control, analysis of the data, and an ongoing dialogue with the Components to correct errors leads to a much more useful and reliable dataset.

In addition, a review of DODI 1100.22 and the *DoD Guide to Compile the IGCA Inventory Submission* is necessary to ensure they are current, relevant, and fully enable the workforce mix decision-making process. For example, a review of DODI 1100.22 should consider if the categories of inherently governmental, commercial reviewable, and commercial exempt continue to accurately capture the range of functions performed in the Department or if more granularity of these groups is required. As part of this review, OSD should consider how to account for functions considered closely associated to inherently governmental or critical. A renewed emphasis on data quality as well as a review of the guidance governing the IGCA is necessary. Ensuring that the *DoD Guide to Compile the IGCA Inventory Submission* as well as DODI 1100.22 are up-to-date and accurate should be a priority.

## **Recommendation 5 – Reconstitute post competition data collection to ensure accountability**

Several of the studies we reviewed noted that the A-76 competitions lack a meaningful, consistent post-competition accountability process in part due to poor data collection. For example, there was mixed evidence on the success rate of protests. One study found that competitive sourcing decisions were rarely overturned, despite the comparatively large

number of protests [12]. On the other hand, another study noted that A-76 protests were “highly successful” [11].

Traditionally, the data for tracking the performance of A-76 competitions were stored in DCAMIS (which was discontinued in 2011), the Past Performance Information Retrieval System (PPIRS), and the Contractor Performance Assessment Reporting System (CPARS). However, all of these data sources suffered from several issues. Some of these issues were a function of differing guidance across services. Some of the issues stemmed from the fact that baseline costs were not always recorded for a function, making it difficult to calculate true cost savings. A 2008 CNA report offered the following suggestions for tracking post-competition cost savings performance:

- Issue DOD-level PCA guidance on the following elements:
  - Incentives and corrective actions to foster good performance by MEOs;
  - Methods and standards for workload monitoring;
  - Validation of MEO cost and performance; and
  - Definition of actual or observed cost.
- Clarify what types of costs should be captured as data-driven costs (e.g., salaries, supplies and materials, etc.) and what costs should be captured using cost factors (e.g., fringe benefits, overhead, etc.).
- Revise the DCAMIS to improve its ability to measure savings.
- Use CPARS/PPIRs to capture past performance data for MEOs [19].

In sum, before the moratorium, there were problems ensuring post-competition performance using the available data. These data issues need to be resolved prior to lifting the moratorium so that transparency and post-competition accountability can be established.

## **Recommendation 6: Allow sourcing decision for streamlined competitions to include best value**

A panel discussion of experts from DOD, private industry, labor organizations, and OMB recommended that future A-76 competition policies from executive agencies ensure that both cost and quality are factors in evaluating bids [6]. As we discuss in the legal framework portion of the present study, standard competitions are allowed to consider other factors beyond cost while streamlined competitions are not. In order for streamlined competitions to be more useful to agencies that might want to consider best value as the decision criteria, we recommend that Paragraph F in 10 USC 2461 be repealed. This will allow both streamlined and standard competitions to consider best value as a decision criterion although it will still be

incumbent on the agency to fund this out of its current budget if the cost of the new function is higher.

## **Recommendation 7: Reduce the ability of MEOs to resubmit proposals**

In the following section on the legal framework, we will show that paragraph (a), section 1, subsection (B) of Section 2461 requires an agency tender to be considered in the source selection process. This requirement gives the MEO an advantage over private bidders. Specifically, if a private contractor sends in a proposal that is not considered technically feasible by the source selection board, its proposal is dismissed and the contractor cannot resubmit another offer. This prevents contractors from trying to “lowball” their costs in order to win a contract with the intention of renegotiating the contract if they win. However, it also prevents the contractor from tweaking its offer in order to correct some technical issue. Section 2461 actually forces an MEO to resubmit its proposal if it is not feasible. In a sense, this allows MEOs multiple chances to “get it right”.

Some of the SMEs we spoke to cited this as unfair advantage to the MEOs. They also noted that it lengthened the competitions and created hostility among the private contractors toward the process. Thus we recommend that this language be amended to either eliminate the requirement (which would still allow for an MEO tender, but would put it on the same footing as private contractors) or reduce it so that the MEOs do not have unlimited attempts to resubmit their proposals. One possibility that would ensure that a government bid is still included if the MEO tenders are not deemed technically acceptable after some limited attempts is to make the current government system in place the de facto tender.

The exact nature of this limit was beyond the scope of this study and should be evaluated by the DOD to ensure that some semblance of fairness to both the government and private sector is instilled into the A-76 process.

## **Recommendation 8: Revisit guidance on 12 percent overhead rate**

A-76 competitions require the calculation of overhead costs for the government cost estimate that consist of two separate categories: (1) operations overhead, which is included in specifically identifiable agency costs, and (2) general and administrative overhead, which OMB Circular A-76 requires be calculated using a standard rate of 12 percent of labor costs. DOD’s report states that the department has provided updated guidance on what is included in these types of overhead costs, emphasizing the importance of segregating the two categories to make

sure all components consistently calculate overhead costs in public-private competitions. The Deputy Under Secretary of Defense (Installations and Environment) sent a letter to OMB in August 2010 stating that DOD believed the updated overhead definitions were consistent with OMB guidance on the conduct of public-private competitions and that the department intended to use these definitions in competitions once the legislative moratorium on competitions is lifted.

However, GAO came to a different conclusion in its report:

In our past work, we reported that the standard 12% rate for general and administrative overhead was adopted by OMB for all competitions government wide, leaving some doubts as to how closely this rate matched actual overhead costs on a site-by-site, activity-by-activity, or agency-by-agency basis. We noted in our report that OMB established this standard rate in response to private sector concerns that federal agencies were not properly recognizing overhead in their cost of performance and to reduce the administrative burden of estimating general and administrative overhead cost because of difficulties in obtaining accurate information on the full cost of government programs. Our past work acknowledged the difficulty of obtaining reliable cost data that could provide a sound basis for an overhead rate, but we concluded that until actual overhead costs are used to develop a more meaningful standard overhead rate, the magnitude of savings expected from public-private competitions will be imprecise and competition decisions could continue to be controversial. We recommended that OMB and DOD develop a methodology to determine appropriate overhead rates. The agencies did not agree with our recommendation. [30]

We conclude that this represents too stark a difference in position for A-76 to proceed without any concerns from stakeholders. Thus we recommend a study to examine overhead rates prior to the renewal of any A-76 program.

## Legal Framework

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In this section, we examine the statutes that were identified by SMEs as the legal framework governing public-private competitions. The goal of this section is to understand the implications of these laws as they pertain to converting work from government employees to private contractors and highlight how changing or repealing these laws could move the DOD to a more flexible workforce management environment.

Congress has passed several laws that govern conversions of government work to the private sector. In some cases, these laws are more restrictive than OMB Circular A-76 in terms of converting functions to the private sector. That is, even if the moratorium were lifted, not all options within OMB Circular A-76 would be available. We caveat this analysis by noting that we examine only what SMEs identified as the most pertinent laws regarding workplace management and acquisition. There are likely other laws that impinge on workforce flexibility that may need to be addressed.

### 10 U.S.C. 2461

According to discussions with SMEs, 10 U.S.C. 2461 (2461) is considered the major piece of legislation governing the conversion of work from civilians to contractors. This statute states:

“No function of the Department of Defense performed by Department of Defense civilian employees may be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition...” [35]

Furthermore, under 2461 all competitions must create an agency tender, including a most efficient organization (MEO) in accordance with A-76. Other major provisions include:

- Offers must meet criteria other than costs (i.e., quality, reliability, etc.).
- For a contractor to win, its cost of performance must beat the MEO by at least 10 percent or \$10,000,000.
- Contractor labor costs must include an employer sponsored health care insurance plan whose employer contributions are less than what the DOD offers its employees, a retirement benefit that is in alignment with DOD’s retirement benefit.
- Restrictions on redesigning a function currently done by DOD civilians by simply reorganizing, modernizing, or reengineering it.

## Implications of Section 2461

The statute prohibits converting any function currently performed by DOD civilians to contractors without a public-private competition via the A-76 process. Further, it sets the conditions for conversion by ensuring that contractors do not win by lower labor costs via a reduction in benefits and by making sure that some level of minimum quality is also a criterion for considering who should win the competition. Finally, no agency can circumvent a competition by reorganizing or reengineering the function.

It also mandates the development of a MEO tender for all competitions. We note that A-76 allows the source selection authority a great deal of latitude in accepting or dismissing a MEO tender or private contractor proposal if it finds that it is materially deficient in some way (i.e., not technically feasible). However, under Section 2461, a MEO tender is mandated. According to our SME discussions, the effect of the mandate is that it allows the MEO many opportunities to fix any problems in its tender, while private contractors are not usually allowed such opportunities.

Another difference between A-76 and Section 2461 is that A-76 allows for either a standard or a streamlined competition if the number of FTEs being competed is 65 or fewer. A streamlined competition does not require the agency to develop an MEO, an advantage in terms of time, as developing an MEO is difficult and time-consuming. However, Section 2461 as currently written expressly calls for the development of an MEO for all competitions, regardless of size. Given the 135-day constraint on streamlined competitions, it is unlikely that developing an MEO is practical. Thus streamlined competitions, while still allowed, are too difficult to manage, leaving standard competitions as the only option available to agencies.

We also note that Section 2461 allows a contractor to win solely by being less costly than the government agency, regardless of whether the competition is standard or streamlined. As we mentioned earlier, under a standard competition the source selection criteria may be either LCTA or best value. If the proposals meet some minimum acceptable level of performance, the lowest-cost contractor wins as long as it is at least 10 percent or \$10,000,000 less costly than the MEO. However, we also note that best value could also be considered as the source selection criterion. That is, A-76 does allow for a “trade-off source selection” process under some circumstances as long as the agency announces in the beginning that the competition will not be LCTA. Section 2461 does not allow this and is thus more restrictive than A-76.

In sum, Section 2461 not only restricts an agency’s ability to convert DOD civilian jobs to contractors easily, but it is actually more restrictive than A-76.

## Section 325 of the NDAA for 2008

Congress passed the National Defense Authorization Act of 2008 which suspended the DOD's ability to conduct A-76 public-private competitions [8]. Specifically, the FY08 NDAA states:

"The Secretary of Defense or the Secretary of a military department may not prepare for, undertake, continue, or complete a public-private competition or direct conversion of a Department of Defense function to performance by a contractor under Office of Management and Budget Circular A-76, or any other successor regulation, directive, or policy by reason of any direction or requirement provided by the Office of Management and Budget." [4]

In the FY2010 NDAA, this language was updated to include a possible way for DOD to reconstitute A-76 competitions via a certification process. This process mandated the Secretary of Defense to review and report to Congress on the conduct of A-76 competitions, which was then to be assessed by the GAO. In addition, Section 325 also mandated DOD to submit to Congress (1) an inventory of contracts for services by each service and defense agency, and (2) budget information on contract services in compliance with 10 USC 236. In theory, after complying with these mandates, the Secretary of Defense can get A-76 certification (i.e., permission to do A-76 competitions).

In addition to these restrictions, each year language is added to the appropriations bills that prohibits funding of A-76 competitions. The language in the appropriations bills is not permanent in terms of restricting competitions, however; it is simply another route that Congress uses to ensure that no competitions are held that particular year.

### Implications of Sec 325

As we mentioned earlier, Section 2461 mandates that no conversion from civilian to contractor can occur without an A-76 public-private competition. Yet the FY2008 NDAA prohibits A-76 competitions. While the Secretary of Defense can request that Congress certify that the requirements of Section 325 have been met, the prohibitions in the annual appropriations language prevents this. For this reason, and the criticisms surrounding the legacy A-76 program, the Secretary of Defense has chosen not to initiate the certification process. Thus in effect, the hands of DOD leaders are tied in their efforts to reduce costs via competitions and in their ability to change their workforce mix from civilian to contractor performance.



## Toward a more flexible workforce mix decision-making process

The optimal goal of standardized decision-making on a flexible workforce mix would be one where hiring authorities consider only issues relevant to ensuring that a governmental function/activity is filled with the most appropriate manpower alternative. This could mean picking the lowest-priced technically acceptable proposal or choosing some other source based on another set of factors such as best value. In all cases, the optimal goal of decision-making to hire contractors, civilians, or some mix of the two would not be complicated by processes or incentives imposed by another authority.

Table 3. Restrictions on converting public-sector functions to the private sector

Option	Section 325 NDAA 2008	10 U.S.C. 2461	OMB A-76	325 and 2461 repealed
Convert public to private sector	Prohibits the only route to conversion (A-76)	Mandates A-76 as the only route for conversions	Sets policy for competitions	Allows direct conversions without competition at agency's discretion
All tenders/proposals treated equally	NA	Mandates MEO tender	Allows MEO tender to be dismissed	Allows possibility of A-76 or conversion at agency discretion
Standard or streamlined competition allowed	NA	Made impractical by MEO requirement	Allowed	NA
LCTA or best value as source selection criteria	NA	LCTA only	Both are allowed for standard - LCTA only for streamlined	Selection criteria at agency discretion

Source: CNA.

The previous section clearly demonstrated that various laws have created an environment that is not conducive to workforce flexibility. In this section, we examine how changes to laws would move the DOD to a more flexible environment.

## Repeal section 325 FY08 NDAA

If Section 325 is repealed or Congress certifies that DOD has met the requirements it specified, DOD would have the authority to once again conduct public-private competitions, provided it follows the actions it agreed to in its response to Section 325. However, the language in the annual appropriations bills prohibiting funding for A-76 competitions would need to be removed.

With these changes, A-76 competitions would be allowed; however, they would be restricted by the language in Section 2461 that requires the development of an MEO for the conversion of even one civilian position. Recall that this is more restrictive than A-76 policy, which allows for a streamlined competition that does not require an MEO. Given the condensed timeline of streamlined competitions, the development of an MEO makes most streamlined competitions impractical. This necessitates a legislative amendment to Section 2461.

## Changes to Section 2461

Paragraph (a), section (1), subsection (B) states that all A-76 competitions in DOD must include an MEO. If this section is removed, DOD will have the authority to conduct streamlined competitions without the development of an MEO.

In addition, subsection (F) paragraph (a) states that contractors can win a competition only if their cost is 10 percent or \$10,000,000 less than the MEO. Thus a contractor cannot compete on quality, only on being less costly while meeting a minimum performance standard (i.e., lowest-priced technically acceptable provider).

This is more restrictive than A-76. As we mentioned earlier, in a standard competition other factors may be considered (i.e., best value) as long as the competition was initially announced publicly as allowing such. Repealing Paragraph F will allow both streamlined and standard competitions to consider best value as a decision criterion, although it will still be incumbent on the agency to fund this out of its current budget if the cost of the new function is higher.

Another possible change would be to insert language into Section 2461 that would allow for hiring contractors for certain reasons. In our earlier example, an agency might want to hire contractors for a short term to perform a function that is currently done by civilian employees but is being phased out. This would allow the agency to move the civilians into the new system without having to conduct a competition. This is just one possible instance in which a waiver to A-76 might be granted. If DOD decides to adopt this change, it should consider other possible cases where a waiver to conducting a competition under A-76 could be granted and include the appropriate language in Section 2461.

The most radical change would be to repeal paragraph (a) in its entirety. This would effectively eliminate the requirement for A-76 competitions to convert the performance of a function from

civilians to contractors. It is important to note that that this does preclude an agency from using A-76; it simply means that they are not required to.

## Summary

Concerning the conversion of functions from public to private, Section 2461 mandates a public-private completion using A-76 guidelines. However, a moratorium was placed on these types of conversions in the FY2008 NDAA. This effectively prohibits all conversions from the public to the private sector. By repealing certain sections of these laws, the DOD would move toward a more flexible workforce management environment.

## Non-A76 Cost Saving Ideas

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Several of the studies we reviewed recommended that government agencies pursue cost savings ideas that were tangential to, but not directly a part of the A-76 competition process. In this section, we briefly discuss some of these alternative methods to perform functions at a lower cost. We identified these non-A-76 cost saving ideas through our literature review and discussions with A-76 SMEs.

We note that while the lack of competition within these alternatives has often reduced the overall level of achieved savings [13], they do have some advantages over A-76 competitions, which are limited to the relatively small number of government positions that perform commercial activities and were identified as suitable for competition. These alternatives are available for use with all government positions in DOD, increasing the breadth of functions and locations that could be examined for efficiencies. The implementation of these other cost-saving methods are also much simpler to use. While there may be published requirements for implementation, they do not have the complex requirements of A-76. And because they do not involve a competition, they do not involve a FAR action. Implementation of these methods also follows a much shorter timeline.

### Incentive systems

One study recommended that government agencies adopt incentives based on outcomes (including gainsharing), pay employees for skills they possessed, engage in “broadbanding,” and pursue waivers [27].

One study noted that when employees switched to piece-rate pay—an incentive system where employees are paid directly based on their output—output increased by 44 percent. The study noted that output-based incentives work best when the employee can influence the output. However, the study cautioned that unintended consequences will crop up if only certain tasks are incentivized (causing employees to only focus on the incentivized tasks). The authors mentioned that gainsharing, where both managers and employees are incentivized based on company profit, might mitigate the unintended consequences. The study also states “skill-based pay,” or paying employees directly based on the employees’ competencies, helps make employees more flexible in responding to a variety of tasks. This may aid in the issue of both MEO/AT and private-service providers performing only tasks explicitly mentioned in the scope and not performing necessary related tasks. The study also mentioned that this will make work more efficient by decreasing coordination required between shops, such as “when a plumber is allowed to do carpentry associated with the plumbing job.” Lastly, the study noted that

government agencies can seek waivers from DOD or OMB to eliminate major “roadblocks” when implementing initiatives. Not only will this aid this specific government agency, but other agencies can “piggyback” off the waiver to eliminate the roadblock [27].

One memo recommended that government agencies use the following alternatives to the A-76 competition: convert functions directly to contract, exit unnecessary businesses/functions, and eliminate efficiency reviews [18]. As mentioned above, A-76 cost savings are less when the activity is small, since running a competition process, including MEO production, for low-dollar activities is not efficient [18]. The memo also recommended converting activities with 10 or fewer FTEs directly into a contract for private service providers. Similarly, one study recommended government agencies exit businesses they believe may be inherently more efficiently provided by the private sector. As an example, the study noted that the Navy formerly operated a dairy, and instead of holding a competition for the dairy operation, it simply decided to produce dairy products from food suppliers, who inherently are more efficient at dairy production.

## Process improvement efforts

One of the articles we reviewed examined both continuous process improvement (CPI) and Lean Six Sigma (LSS) initiatives as alternatives for cost saving among executive agencies [19].

The goal of CPI was to encourage managers to seek ways systematically to create process improvements in an effort to increase readiness, reduce production times, create better products, more closely consider customer needs, think about long-term implications, and align with greater DOD strategy [19]. The article noted that most CPI efforts take only a few days to implement [19].

The goal of LSS initiatives is to examine processes to eliminate waste and errors, decrease the use of resources needed for production, increase output, and increase quality, with the ultimate goal of improving customer satisfaction [19].

A return on investment analysis conducted on Secretary of the Navy monthly review data revealed that most CPI and LSS initiatives created positive improvements in safety and quality [19]. However, the estimate of the return on investment (ROI) on CPI/LSS initiatives was either unclear or “pessimistic” [19].

## High-performing organizations (HPOs)

The Office of Personnel Management (OPM) allowed executive agencies to designate public-private competition winners as high-performing organizations (HPOs); as such, the organizations could continue to perform contract activities past the original contract period

for up to three years if this would result in savings [6]. This would also save costs in conducting additional competitions [6].

A panel discussion of experts from DOD, private industry, labor organizations, and OMB recommended that government at all levels take steps to encourage HPO designations [6]. One study found that HPOs created savings of 10–20 percent, although the study noted that this was less than the 30–40 percent savings generated by A-76 competitions [19]. The study also noted that in order to ensure that HPOs would save money in the future, guidance should specify enforcement procedures when HPOs do not meet required level of savings [6].

## Summary and Conclusions

In the event that an A-76 program is reconstituted, DOD must execute A-76 competitions in a manner that avoids some of the perceived problems commonly expressed by both the public and private sector.

Table 4. Deficiencies, best practices and recommendations

Deficiency	Best Practice from literature/SME	Additional Recommendation
Perception that the process is unfair, adversarial, expensive, and inefficient	<p>Best practices for leadership (e.g. leadership champions, training, transition strategies, etc.)</p> <p>Best practices for savings (e.g. outcome based PWS, careful packaging of functions, etc.)</p>	<p>Use pre-competition manpower study to inform PWS</p> <p>Limit the ability of MEO to resubmit proposals</p>
Length of competitions	Best practices for PWS preparation and preliminary planning (e.g. conduct market research, select alternative PWS/MEO leads in case of transitions, etc.)	<p>Use pre-competition manpower study to inform PWS</p> <p>Redesign criteria for streamlined competitions to be risk-based rather than arbitrary size limit</p>
Effect on morale	Best practices for leadership and improving morale (e.g. communications strategy)	Use pre-competition manpower study to inform PWS
Concerns over the rates used	NA	Revisit guidance on overhead, determining appropriate levels, with consideration to function-specific rates

Deficiency	Best Practice from literature/SME	Additional Recommendation
Questions about the adequacy of oversight and post-competition accountability (PCA)	NA	Develop training and monitoring program for quality assurance surveillance teams  Reconstitute post-competition data collection
Questions about the quality of performance	Best practices to mitigate risk posed by loss of civilian employees (e.g. ensure sufficient government employees to manage contractor functions to avoid failure of a critical mission)  Best practices for PWS preparation (e.g. Conduct quality independent reviews to correct errors)	Reconstitute post-competition data collection  Allow best value sourcing decisions
Questions about the quality of IGCA data	Best practices to improve IGCA data quality (quality control and analysis of the data)	Reinstitute quality control of the data and ensure the guidance that governs the IGCA is current and relevant

Source: CNA.

We discovered via a review of the literature and SME discussions that some of these issues can be managed using best practices that many services had already developed. However, in some instances, larger changes were required to the A-76 process itself to make it more amenable to agencies charged with running them (see Table 4).

In addition, we discovered that there are certain changes that are needed as well to create a more flexible environment to hire contractors. First, U.S.C. 2461 forces the DOD to use A-76 for all conversions from the public to private sector. In addition, the full range of actions and choices available under A-76 is restricted by U.S.C. 2461. Second, section 325 of NDAA 2010 placed a moratorium on all A-76 competitions making any changes to the A-76 process moot. We showed that by repealing various portions of section 325 and 2461, DOD could move to a more flexible hiring environment.





## Appendix A: Examples of Inherently Governmental Functions

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- Criminal investigation, prosecutions, and performance of adjudicatory functions (this does not include arbitration or other methods of alternative dispute resolution methods. e.g. mediators)
- The command of military forces, especially combat forces, and some combat support or combat service support
- The conduct of foreign relations and the determination of foreign policy
- Agency policy, such as determining the content and application of regulations The determination of federal program priorities or budget requests
- The direction or control of federal employees
- The direction and control of intelligence and counter-intelligence operations The selection or non-selection of individuals for Federal Government employment
- Approval of position descriptions and performance standards for Federal employees
- The disposal of government property and on what terms, although an agency may give private contractors authority to dispose of property at prices within specified ranges
- Regarding federal procurement with respect to prime contracts:
  - Determining what supplies or services are to be acquired by the government, although an agency may give private contractors the authority to acquire supplies at prices within specified ranges
  - Participating as a voting member on a source selection board
  - Approving of any contractual documents, including awarding contracts
  - Administering contracts and terminating contracts
- Approving agency responses to Freedom of Information Act requests, other than routine responses that do not require the exercise of judgement in determining whether documents are to be released or withheld
- Actions that affect matters of personal reputation or eligibility to participate in Government programs, such as the conduct of administrative hearings to determine the eligibility of any person for a security clearance
- The approval of Federal licensing actions and inspections
- The determination of budget policy guidance and strategy
- The collection, control, and disbursement of public funds unless authorized by statute. This does not include the collection of fees, fines, penalties, costs or other charges from visitors to, or patrons of, mess halls, post or base exchange concessions, national parks, other similar entities, or from other persons where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard cash management techniques. Routine voucher and invoice examinations are not inherently governmental as well.
- The control of treasury accounts.
- The administration of public trust accounts.

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