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IN FOCUS

December 22, 2016

DOD A-76 Competitions

In 1966, the Johnson Administration's Bureau of the Budget—now the Office of Management and Budget (OMB)—issued Circular A-76. The circular, which was last updated in 2003, calls for the federal government to "rely on the private sector for needed commercial services" and provides a process for conducting public-private competitions. In a public-private competition, government agency employees compete against one or more contractors to determine whether a particular agency function will continue to be performed by government personnel or will be performed by contractor personnel.

Only commercial functions may be subjected to Circular A-76 competitions; inherently governmental functions may not. Within the text of Circular A-76, the term *inherently governmental* refers to "an activity that is so intimately related to the public interest as to mandate performance by government personnel."

The George W. Bush Administration coined the term *competitive sourcing* to refer to public-private competitions and related activities. Competitive sourcing was one of the components of the Bush Administration's President's Management Agenda.

Moratorium

Beginning with the FY2008 National Defense Authorization Act (NDAA) (P.L.110-181), Congress suspended new A-76 competitions within DOD, in part due to problems with an A-76 competition at Walter Reed Army Medical Center. Congress has continued to approve similar suspensions for DOD and other agencies in annual appropriations legislation.

Title VII, Section 742 of the FY2016 Consolidated Appropriations Act (H.R.2029, P.L.114-113) applies the following to all federal agencies, including DOD: "None of the funds appropriated or otherwise made available by this or any other Act may be used to begin or announce a study or public-private competition regarding the conversion to contractor performance of any function performed by Federal employees pursuant to Office of Management and Budget Circular A-76 or any other administrative regulation, directive, or policy."

Pros of Competitive Sourcing

Several observers have suggested that the competitions as a whole have been beneficial for DOD. A 2006 RAND Corporation study concluded that despite some problems identified with A-76 procedures, "There may not be a way for commensurate savings to be achieved without A-76. Indeed, many of the negative comments we heard about A-76 might, in fact, be attributable to dissatisfaction with budget cuts."

Case Study: Walter Reed Army Medical Center

In 2007, the debate over A-76 competitions took on a highly public dimension after the *Washington Post* published a series of articles criticizing conditions at the Washington, DC Walter Reed Army Medical Center (WRAMC).

Some Members of Congress identified an A-76 competition at WRAMC, announced in 2000 during the final months of the Clinton Administration, as potentially being part of a broader problem at WRAMC. The competition involved base operations support functions such as information technology, clerical support, and maintenance. The process proved to be more complicated and drawn-out than most DOD A-76 competitions, lasting six years and involving a series of protests, appeals, and Congressional actions. Finally, in November 2006, the company IAP Worldwide Services was awarded a five-year contract, for which the Army ultimately obligated $101 million.

At the time, some Members of Congress raised the concern that the use of A-76 procedures may have undermined the quality of care at WRAMC. During a March 2007 hearing, Representative John Tierney suggested that the A-76 process led to instability and low morale in WRAMC's workforce, citing an unreleased DOD memo: "The Army's decision to privatize was causing an exodus of highly skilled and experienced personnel from Walter Reed and... fear that patient care services are at risk of mission failure."

During one of several hearings held after the WRAMC A-76 competition, former Air Force Chief of Staff General John Jumper said, "I think that we have over-outsourced in many ways, and the direction to over-outsource was done with criteria that probably didn't always work to the best interest of the people in uniform. At Walter Reed, again, the A-76 process required outsourcing that put certain critical functions into the hands of... lowest bidders."

Regardless of alleged problems with the specific competition that took place at WRAMC, some in DOD continued to state that competitive sourcing was a net benefit for the organization. Under Secretary of Defense for Installations and Environment Philip Grone said at a hearing on the FY2008 NDAA that A-76 competitions "generated substantial savings whether the in-house or private sector wins the competition."

In 2012, former Under Secretary of Defense for Acquisition, Technology, and Logistics Jacques Gansler claimed that with the A-76 moratorium, Congress had applied "well-intentioned efforts... to potentially unsuitable cases." Gansler suggested that this might create a "risk to mission effectiveness" and that it was time to "give A-76 a second chance." During a hearing in 2016, Representative Mark Meadows echoed Gansler's views on the issue: "Promoting public-private competition through the A-76

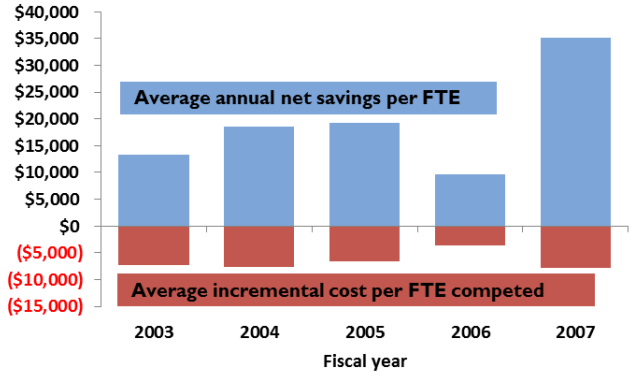
process... is the way we realize cost savings for the American taxpayer."

Many individuals in the federal contractor community and broader private sector have long expressed strong support for elimination of the moratorium in DOD and other agencies. Former Bush Administration official Angela Styles claimed in 2016 that it was, "A true travesty of public governance that public-private competition has been stalled for eight years, and every attempt to create a true infrastructure for competition has been struck down by special interests."

Cost Savings

Prior to the moratorium on new DOD A-76 competitions, OMB assessments suggested that the competitions served as a highly effective tool for cost reduction in DOD. The Bush administration released a related report in 2008, shortly after the approval of the moratorium. The report estimated that from FY2003 to FY2007, DOD's completed A-76 competitions had resulted in a cumulative net savings of $1.8 billion.

Figure 1. DOD A-76 Competitions Prior to FY2008 Moratorium: DOD-reported Net Savings and Costs



Source: DOD Competitive Sourcing Reports, FY2003-FY2007.
Notes: "FTE" refers to "full-time employee equivalents," a measure of the number of man-hours competed.

Advantages of Contractor Specialization

Some have argued that contractors' special skills can provide quality and cost benefits—notably in niche fields of information technology. A 2012 report co-authored by former Under Secretary Gansler stated that

> Contractors often specialize in a particular service and can provide it to multiple entities on a constant basis, increasing efficiency... For example, in the event that the DoD requires a computer programmer with experience using a certain programming language, it may make more sense... to hire a contractor rather than to retrain a government employee who is experienced in another computer language.

Cons of Competitive Sourcing

In contrast, other observers have suggested that some activities can, in fact, be more effective from a quality perspective when managed by government. Representative Gerry Connolly said during a 2016 hearing

> You shouldn't be looking at the whole issue of outsourcing... on an *a priori* basis. Look at it on a case-by-case, merit basis. Does it make sense, does it meet certain criteria in terms of cost... but also quality? Quality does matter, and common sense matters... There are some inherently governmental functions that should never be, in my view, outsourced.

Review and Implementation Costs

Some have also suggested that A-76 competitions might be less cost-effective than official estimates have claimed, due to the administrative and implementation costs of the competition procedures themselves. In 2007, for example, Senator Barbara Mikulski and colleagues discussed these types of costs that were associated with the WRAMC A-76 competition process. In a letter to the Secretary of the Army, Senator Mikulski wrote that the review process "not only took... $7 million to complete, but would cost taxpayers another $5 million to implement."

Difficulty of Independent Verification

Some observers have also questioned the extent to which cost reductions associated with A-76 competitions can be concretely and objectively verified. In a 2016 congressional hearing, University of Maryland professor Donald Kettl said, "There is no consistent methodology by which to make effective cost comparisons between public and private provision of government's work."

Status

The FY2017 Department of Defense Appropriations Act (H.R.5293) passed the House in June 2016. Section 10009 of the bill would continue the prohibition on conducting A-76 competitions.

The Senate version of the FY2017 NDAA (S.2943) contained a provision (Section 806) that would have repealed the ban on A-76 competitions in DOD. This language was not included in the final bill.

Additional Resources

For additional information on the A-76 moratorium and DOD service contract procurement, see: Archived CRS Report R40854, *Circular A-76 and the Moratorium on DOD Competitions: Background and Issues for Congress*, by Valerie Bailey Grasso; CRS Report R42325, *Definitions of "Inherently Governmental Function" in Federal Procurement Law and Guidance*, by Kate M. Manuel; and CRS Report R42341, *Sourcing Policy: Selected Developments and Issues*, by L. Elaine Halchin.

(Note: this In Focus was originally co-authored by former CRS Specialist in Defense Acquisition Moshe Schwartz.)

Heidi M. Peters, Research Librarian
Gabriel M. Nelson, Research Assistant

IF10566

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