

# BACKGROUND

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## Renewing OMB Circular A-76 Competitions: Savings and Greater Effectiveness

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### Abstract

*After more than a decade under moratorium, the A-76 process should be given another chance to succeed. Competition for the provision of commercial goods and services to the federal government has ebbed and flowed, but it will never go away. By continuing the A-76 moratorium, Congress is effectively removing a tool that has been consistently proven to create efficiency and effectiveness in government functions. It is time to lift the A-76 moratorium—and for Congress to become a useful partner in the process. Due to their vast potential to create savings and improve organizational effectiveness, A-76 competitions should be a permanent part of the toolbox of government decision makers. American taxpayers deserve a more effective and efficient government.*

The Office of Management and Budget's (OMB's) Circular A-76 was created to establish fair competition between the public and private sectors for a given activity needed by the federal government.<sup>1</sup> It determines the rules and conditions under which both government and contractors can submit bids for a commercial activity, such as truck maintenance. Different from other contracting instruments, the circular pushes the public service provider to re-organize itself to submit a competitive bid. This feature has historically led to substantial savings and increased effectiveness and efficiencies, regardless of the origin of the winning bid.

Despite consistently generating savings, the circular has been only used intermittently since its initial release in 1966, with peaks during the Reagan, Clinton, and Bush Administrations. Further, since the circular's release, within the federal government, the Department of Defense (DOD) has used the circular the most,

### KEY POINTS

- Congress needs to drop its decade-long moratorium on A-76 competition and let professionals experiment and improve the process.
- It is important for the interest of good public administration to allow agencies to better understand their functions and how they are performed by other organizations. In this sense, the previous A-76 competitions have been educational and have revealed flaws in the way that government work was done.
- At a minimum, the higher threshold on data and transparency required for an A-76 competition demonstrates the need for government to have a better understanding of its own functions.
- Beyond merely the question of who can best perform a task, A-76 competitions force agencies to consider the best way to perform a given task.

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reflective of its diverse workforce composed of military members, civilians, and contractors. As a result of the 2007 debates on the deteriorating conditions at the Walter Reed Army Medical Center, A-76 Circular competitions were prohibited in the DOD by the 2008 National Defense Authorization Act.<sup>2</sup> Soon after, the competitions were prohibited government-wide.<sup>3</sup>

Congress later found that the problems attributed to the A-76 competitions were related to how the competition was carried out.<sup>4</sup> The competitions that took place were very burdensome and very lengthy for both government and contractors. This led to multiple protests and issues on how the government set the baseline for bids. Some of the real issues, mixed with the urge to act on the situation at Walter Reed and resistance to competitions expressed by public-sector unions, led Congress to prohibit A-76 processes.

Nonetheless, the prohibition was never based on failings of the competitive process itself—rather on how the competition was executed. As such, Congress has the power to change the conditions of A-76 competitions and, rather than impose a moratorium, should work to address the shortcomings revealed by previous A-76 competitions, from poor data management to ineffective tracking of outcomes. These are problems not created by A-76 competitions, but rather revealed *during* them. These problems need to be addressed, even if outside the context of an A-76 competition.

The most recent Department of Defense Business Operations Plan discusses the importance of A-76 competitions as an important tool to better shape the Department's workforce.<sup>5</sup> The plan associates the

competitions with its efforts to shape the workforce and make better use of human capital. The department marries this effort with its goal of rebuilding readiness.<sup>6</sup> The DOD seems invested in modernizing the competition process and enabling its managers to think more holistically about how they allocate manpower.<sup>7</sup> A good step forward would be for Congress to remove the prohibitions and expressly authorize A-76 competitions.

## Origin

OMB Circular A-76 was designed in 1966 by the Lyndon B. Johnson Administration to compare and decide between private-sector and public-sector performance of a given commercial function in order to obtain the best value. The circular puts in writing the policy that government should not compete with its civil society in the provision of goods and services. It determines a separation between what should be done by the private sector and what should be reserved for the public sector. The circular is written to determine which functions can be opened to competition and how to establish conditions that are fair to both sides. Heritage Vice President James Carafano explains: "OMB Circular A-76 describes how to decide what missions are inherently governmental and what tasks might be better performed by commercial enterprises."<sup>8</sup>

The challenge is to establish conditions for the competition that fairly treat both private and public interests. Sourcing decisions become inherently more complex when comparing services provided by organizations with completely different incentives, compensation, rules, and conditions, as is the case with

1. U.S. Office of Management and Budget, *Circular No. A-76 (Revised)*, May 29, 2003, [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A76/a76\\_incl\\_tech\\_correction.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A76/a76_incl_tech_correction.pdf) (accessed July 5, 2018).
2. National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181.
3. Omnibus Appropriations Act, 2009, Public Law 111-8.
4. Valerie Baily Grasso, "Walter Reed Army Medical Center (WRAMC) and Office of Management and Budget (OMB) Circular A-76: Implications for the Future," Congressional Research Service *Report for Congress*, August 21, 2007, <https://fas.org/sgp/crs/misc/RL34140.pdf> (accessed July 5, 2018).
5. U.S. Department of Defense, "FY 2018–FY 2022 National Defense Business Operations Plan," 2018, [https://cmo.defense.gov/Portals/47/Documents/Publications/NBDOP/TAB%20A%20FY18-22%20NDBOP%20\(CMO%20signed%2005\\_18\\_18\).pdf](https://cmo.defense.gov/Portals/47/Documents/Publications/NBDOP/TAB%20A%20FY18-22%20NDBOP%20(CMO%20signed%2005_18_18).pdf) (accessed July 5, 2018).
6. U.S. Department of Defense, "FY 2018–FY 2022 National Defense Business Operations Plan: Appendices," 2018, p. A-21, <https://cmo.defense.gov/Portals/47/Documents/Publications/NBDOP/TAB%20B%20FY18-22%20NDBOP%20Appendices.pdf> (accessed July 5, 2018).
7. Jared Serbu, "DOD Pushing to Resurrect Contractor-vs-Civilian Competitions," Federal News Radio, June 28, 2018, <https://federalnewsradio.com/on-dod/2018/06/dod-pushing-to-resurrect-contractor-vs-civilian-competitions-as-part-of-new-effort-to-manage-total-force/> (accessed July 5, 2018).
8. James Jay Carafano, *Private Sector, Public Wars* (Westport, CT: Praeger Security International, 2008), p. 73.

the public and private sectors. As Carafano expressed while analyzing the role of contractors in the military, “Government contracting procedures are far from simple. The effort to make them fair, transparent, and cost-effective has created a web of requirements.”<sup>9</sup> This web of requirements needs to be fair and balanced so as to not bias decision makers one way or the other. These requirements then need to be navigated by both the contracting officer and the competing parties.

Despite the complications introduced by the web of requirements, the private sector has been able to continuously sell goods and services to the government. As Professor Donald Kettl from the University of Maryland states, “Governments, of course, have always relied on private partners to provide key goods and services. As long as there have been governments, there have been armies; as long as there have been armies, governments have purchased weapons and supplies from private vendors.”<sup>10</sup> In the United States, even the “colonies relied on merchants, farmers, and craftsmen for supplying their troops during the French and Indian War and the Revolutionary War.”<sup>11</sup> It has always been a matter of setting the conditions for how the government purchases from society.

### Commercial Activities Panel of 2002

The Circular A-76 has been reviewed and modified at least four times since its establishment in 1966.<sup>12</sup> The last review of the circular came in 2003, after the conclusion of the Commercial Activities Panel of 2002.<sup>13</sup> This panel was established by the National Defense Authorization Act for Fiscal Year 2001 as “a panel of experts to study the policies and procedures governing the transfer of commercial activities for the Federal Government from Government personnel to a Federal contractor.”<sup>14</sup>

One important step taken by the panel was establishing guidelines for government sourcing decisions

that were unanimous and that took into account the views of many different stakeholders. These principles set fair and broad guidance for how government and society should assess and consider sourcing decisions. They have served to establish a solid footing for the current version of the A-76 Circular and can be seen in full in the “Guiding Principles for Sourcing Policy” box.

These principles served to guide the work of the panel to the conclusion that the “end state should be integration of the needed elements of Circular A-76 and the ‘common language’ of the FAR [Federal Acquisition Regulation], so that there would be one integrated system, familiar to all participants, with rules that are well known, a process that is fair and transparent, and which provides for accountability.”<sup>15</sup> At the core of the discussion resides the integration and transparency of how government purchases goods and services from the private sector.

At the end of the day, the goal is to create the most value for the taxpayer. In the private sector, market forces push companies to deliver a better and cheaper service every day. The A-76 process endeavors to bring these forces to bear in government work. In this regard, the panel stated that an “agency always should strive to be the most efficient organization possible, and not wait until an A-76 cost comparison to begin those efforts. The Panel is convinced that the government needs incentives and processes that encourage both management and employees to develop high-performing and efficient organizations.”<sup>16</sup>

### A-76 Distinctive Advantages

The A-76 process establishes the parameters for a competition for an already known service. It works best when the work can be clearly described and bounded. It is usually applied to routine tasks that can be repeated through time and improved through

9. Ibid., p. 90.

10. Donald F. Kettl, *Sharing Power: Public Governance and Private Markets* (Washington, DC: The Brookings Institution, 1993), p. 6.

11. L. Elaine Halchin, “Sourcing Policy: Selected Developments and Issues,” Congressional Research Service Report for Congress, February 7, 2012, p. 11, <https://fas.org/sgp/crs/misc/R42341.pdf> (accessed July 5, 2018).

12. Ibid.

13. Commercial Activities Panel, *Improving the Sourcing Decisions of the Government: Final Report*, April 2002, [https://digital.library.unt.edu/ark:/67531/metadc291584/m2/1/high\\_res\\_d/202033.pdf](https://digital.library.unt.edu/ark:/67531/metadc291584/m2/1/high_res_d/202033.pdf) (accessed July 13, 2018).

14. National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398.

15. Commercial Activities Panel, *Improving the Sourcing Decisions of the Government*, p. 49.

16. Ibid., p. 43-44.

## Guiding Principles for Sourcing Policy

The Panel believes\* that federal sourcing policy should:

1. Support agency missions, goals, and objectives.
2. Be consistent with human capital practices designed to attract, motivate, retain, and reward a high-performing federal workforce.
3. Recognize that inherently governmental and certain other functions should be performed by federal workers.
4. Create incentives and processes to foster high-performing, efficient, and effective organizations throughout the federal government.
5. Be based on a clear, transparent, and consistently applied process.
6. Avoid arbitrary full-time equivalent or other arbitrary numerical goals.
7. Establish a process that, for activities that may be performed by either the public or the private sector, would permit public and private sources to participate in competitions for work currently performed in-house, work currently contracted to the private sector, and new work, consistent with these guiding principles.
8. Ensure that, when competitions are held, they are conducted as fairly, effectively, and efficiently as possible.
9. Ensure that competitions involve a process that considers both quality and cost factors.
10. Provide for accountability in connection with all sourcing decisions.

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\* Commercial Activities Panel, *Improving the Sourcing Decisions of the Government: Final Report*, April 2002, <https://www.gao.gov/assets/210/202027.pdf> (accessed April 4, 2018).

development of new technology and processes. In this sense, Mathew Blum, an administrator in the Office of Federal Procurement Policy at OMB, states that “competitive sourcing has been an especially useful tool for closing performance gaps in routine—but nonetheless essential—services.”<sup>17</sup>

These gaps emerge through time when the government continues to execute the task in the same manner throughout the years, since there is no market pressure to make the process more efficient or streamlined. In discussing performance gaps, Carafano states that “the ability to contract commercial practices gives the government the flexibility to buy the latest skills and

technologies from the private sector without having to invest in the costs of their development.”<sup>18</sup> The A-76 process of bid formulation allows the government to assess if its procedures and technologies still reflect cutting-edge practices in the given area.

### How Does A-76 Work?

The first step in an A-76 process is to establish the types of activities that can be opened to competition. For such, the work is divided into two categories: commercial activities and inherently governmental functions.<sup>19</sup> An activity characterized as commercial can be opened to competition under the A-76 process.

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17. Mathew Blum, “The Federal Framework for Competing Commercial Work Between the Public and Private Sectors,” in Jody Freeman and Martha Minow, eds., *Government by Contract: Outsourcing and American Democracy* (Cambridge, MA: Harvard University Press, 2009), p. 79.

18. Carafano, *Private Sector, Public Wars*, p. 74.

19. Halchin, “Sourcing Policy: Selected Developments and Issues,” pp. 6-10.

**Commercial Activities.** Under the most recent version of Circular A-76, commercial activities are defined as “a recurring service that could be performed by the private sector and is resourced, performed, and controlled by the agency through performance by government personnel, a contract, or a fee-for-service agreement. A commercial activity is not so directly related to the public interest as to mandate performance by government personnel. Commercial activities may be found within, or throughout, organizations that perform inherently governmental activities or classified work.”<sup>20</sup> Examples of commercial activities are functions such as installation services, education and training services, property maintenance services, or transportation services.

One important factor when understanding the interaction of commercial activities and government agencies is oversight. American taxpayers expect government agencies to be good stewards of their dollars. In order to fulfill that expectation, the government must be capable of monitoring commercial activities, regardless of whether they are performed by the private or the public sector.

It is also important to highlight that the circular emphasizes value creation for the taxpayer: “The long-standing policy of the federal government has been to rely on the private sector for needed commercial services. To ensure that the American people receive maximum value for their tax dollars, commercial activities should be subject to the forces of competition.”<sup>21</sup> It is thus crucial for the government agency to be capable of properly defining the work and being able to monitor its execution to create proper conditions for competition.

**Inherently Governmental Functions.** The simplest way to conceive of what are “inherently governmental functions” is to think about the type of activities that leverage state power in the name of public interest. Since 1979 there have been two broad categories of functions that are deemed “so intimately related to the public interest as to mandate performance by

government personnel.”<sup>22</sup> the discrete exercise of government authority and monetary transactions.<sup>23</sup>

The National Defense Authorization Act for Fiscal Year 2009 requested OMB create a single definition of “inherently governmental function” and provide further details on classification of functions.<sup>24</sup> The Obama Administration addressed the request from Congress in Policy Letter 11-01 in 2011. They defined an inherently governmental function as “necessary to the agency being able to effectively perform and maintain control of its mission and operations.”<sup>25</sup>

The review maintained the two broad categories of inherently governmental functions, but it further detailed them into five types. As such:

An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as—

(1) to bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(2) to determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(3) to significantly affect the life, liberty, or property of private persons;

(4) to commission, appoint, direct, or control officers or employees of the United States; or

(5) to exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriations and other Federal funds.<sup>26</sup>

20. U.S. Office of Management and Budget, *Circular A-76 (Revised)*, p. A-2.

21. *Ibid.*, p. 1.

22. *Ibid.*, p. A-2.

23. Valerie Ann Bailey Grasso, “Circular A-76 and the Moratorium on DOD Competitions: Background and Issues for Congress,” Congressional Research Service Report for Congress, January 16, 2013, <https://fas.org/sgp/crs/misc/R40854.pdf> (accessed April 3, 2018), p. 10.

24. Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law, 110-417.

25. *Federal Register*, Vol. 76, No. 176 (September 12, 2011), p. 56229.

26. *Ibid.*, p. 56236.

But because A-76 competitions have been prohibited since 2008, the additional categories of inherently governmental functions have had little historical impact on the debate and performance of the competitions.<sup>27</sup> Nonetheless, the creation of closely related functions vastly reduced the number of activities that were eligible for competition.

## Federal Activities Inventory Reform Act Report

The passage of the Federal Activities Inventory Reform Act of 1998 created a mandate for every federal agency to submit a report to OMB that divides its activities into inherently government and commercial categories.<sup>28</sup> These reports are publicly available and show the number of positions in each of the government departments that would be eligible for competition. Nonetheless, simply being a commercial function does not make it automatically eligible for competition. In 2003, OMB estimated that 26 percent of its workforce was engaged in activities that were eligible for competition.<sup>29</sup>

**Steps in an A-76 Competition.** A typical A-76 competition has six steps, from assessment of activity to the decision of the bid.

Among the steps, the three initial ones reflect a departure from other governmental contracting.

**1. Performance Work Statement.** After reviewing which activities are commercial, the agency develops the Performance Work Statement (PWS) for each activity to be competed. The PWS describes the different elements composing the activity and should provide the basis for both competition and oversight of the work. It is this document that will be used by competitors to determine the scope of work and its costs.

Properly developing the PWS is key to a successful competition, since it affects directly the cost projections. In this regard, L. Nye Stevens from the

Government Accountability Office stated: “Past GAO audits have shown that tasks omitted from the PWS were later added to the contract, resulting in increased costs. Contract cost increases have contributed to a growing congressional concern that the A-76 program does not produce savings.”<sup>30</sup> Thus, determining the scope and dimension of the work to be competed has cascading implications not just for each individual competition, but for the program as a whole.

It is important to mention that there is one replacement alternative to the PWS that allows the bidder greater flexibility to innovate—a statement of objectives (SOO). The SOO defines the scope and the performance objectives required by the contracting party, while leaving room for the contractor to execute the task more freely.<sup>31</sup> A PWS determines some aspects of how the activity will be performed, while an SOO leaves room for the bidders to determine it. The potential to use a SOO instead of a PWS within the confines of an A-76 competition is something that lawmakers should consider when shaping the future of the program.

**2. Most Efficient Organization.** Once the work statement has been established, the next step for the agency is to assess the internal costs for doing the task through the determination of the Most Efficient Organization (MEO). The MEO allows the agency to change its organization to be more competitive; the agency does not have to compete using the existing, perhaps less efficient, organizational structure. The MEO becomes the baseline against which commercial bids are then compared.

The mere creation of the MEO usually changes how government thinks about its own work and prompts it to organize in new ways. The MEO creates an inclination toward competition that should be favorable for the taxpayer, both in cost and effectiveness.

27. Grasso, “Circular A-76 and the Moratorium on DOD Competitions.”

28. Federal Activities Inventory Reform Act of 1998, Public Law 105-270.

29. U.S. Office of Management and Budget, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner*, July 2003, [https://obamawhitehouse.archives.gov/sites/default/files/omb/procurement/comp\\_sourcing\\_072403.pdf](https://obamawhitehouse.archives.gov/sites/default/files/omb/procurement/comp_sourcing_072403.pdf) (accessed July 9, 2018).

30. L. Nye Stevens, “Achieving Cost Efficiencies in Commercial Activities,” testimony before the Subcommittee on Legislation and National Security, Committee on Government Operations, U.S. House of Representatives, April 25, 1990, p. 4, <https://www.gao.gov/assets/110/103190.pdf> (accessed April 4, 2018).

31. Defense Acquisition University, “Statement of Work, Performance Work Statement, Statement of Objectives,” Acquisition Encyclopedia, September 29, 2017, <https://www.dau.mil/acquikipedia/Pages/ArticleDetails.aspx?aid=488854b0-d8ee-4e32-aa3e-301d2ac8ffca> (accessed June 27, 2018).

**3. Competition Resolution.** Once the agency has been able to organize a given function into an MEO, the next three steps are more familiar: cost review, bid solicitation, and bid evaluation and decision. In order for the commercial bid to be viable, the cost difference between the government, represented by the MEO costs, and incoming commercial bids needs to be over 10 percent or \$10 million in the period of performance. In close to half of all completed A-76 competitions, government employees organized under a MEO won, still yielding savings for the agency.<sup>32</sup> As found by the 2002 Commercial Activities Panel charged with analyzing sourcing policy, “[c]ompetitions, including public-private competitions, have been shown to produce significant cost savings for the government, regardless of whether a public or a private entity is selected.”<sup>33</sup>

### A-76 and the Department of Defense

Among agencies of the federal government, the Department of Defense has most fully embraced the A-76 process in volume and in process development. In the documented results of government-wide A-76 competitions from 1981 to 1987, the DOD accounted for close to 88 percent of the dollars saved and over 81 percent of the personnel positions saved.<sup>34</sup> Furthermore, according to the GAO, in 1987, the DOD had over 1,200 A-76 ongoing studies.<sup>35</sup> OMB reports that between 2000 and 2003, the Department of Defense alone was projected to save over \$6 billion through A-76 competitions.<sup>36</sup>

One of the reasons the DOD was so easily able to incorporate A-76 competitions into the management of its functions is that by its own nature, the workforce employed by the department is diverse, composed of

military personnel, civilians, and contractors. The department necessarily has to think in terms of multiple workforces, embracing the idea that not everyone working in support of national defense need or should be an active servicemember, especially since military personnel are both expensive and hard to recruit.<sup>37</sup> The person providing lawn care for a military base can, and probably should, be a civilian, whether a public-sector or a private-sector worker.

The Commercial Activities Panel notes that the “DOD has been the leader among federal agencies in recent years in its use of OMB Circular A-76.”<sup>38</sup> The report goes on to describe the commercial functions typically subjected to A-76 processes within the DOD: installation services; aircraft equipment maintenance; real property maintenance services; logistics services; information and communications; acquisition and supply operations; transportation services; computer/ADP (automatic data processing) services; RDT&E (research, development, test and evaluation) support; education and training services; and commissary operations.<sup>39</sup>

Another important reason DOD has embraced the A-76 is that “to sweeten the pot, from 1981 to 1988, OMB allowed DOD alone to keep all of the savings A-76 competitions produced. The Defense Department thus had unique incentives to pursue A-76 aggressively.”<sup>40</sup> This is an incentive that, according to The Heritage Foundation’s Ronald Utt, should be expanded through the federal government. He states: “One way to encourage enthusiastic participation is to allow agencies to keep a portion of the savings they realize through competitive contracting and use some of it as a financial reward for employees and managers in the program.”<sup>41</sup>

32. Kettl, *Sharing Power: Public Governance and Private*.

33. Commercial Activities Panel, *Improving the Sourcing Decisions of the Government*.

34. Kettl, *Sharing Power: Public Governance and Private*, p. 47.

35. U.S. General Accounting Office, “OMB Circular A-76: Legislation Has Curbed Many Cost Studies in the Military Services,” *Report to Congressional Committees*, July 1991, <https://www.gao.gov/assets/220/214528.pdf> (accessed April 4, 2018).

36. U.S. Office of Management and Budget, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner*.

37. U.S. Department of Defense, *Guidance for Manpower Management*, Directive No. 1100.4, February 12, 2005, <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/110004p.pdf> (accessed April 4, 2018).

38. Commercial Activities Panel, *Improving Sourcing Decisions for the Government*, p. 20.

39. *Ibid.*

40. Kettl, *Sharing Power: Public Governance and Private*, p. 49.

41. Ronald D. Utt, “Improving Government Performance Through Competitive Contracting,” Heritage Foundation *Backgrounder* No. 1452, June 25, 2001, p. 2, <https://www.heritage.org/markets-and-finance/report/improving-government-performance-through-competitive-contracting>.

TABLE 1

## Examples of A-76 Competitions

Management Objective	Cost-saving Changes Facilitated by Competition	Estimated Savings
FAA: Modernize Automated Flight Service Stations	<ul style="list-style-type: none"> <li>• Consolidation of stations from 58 into 20</li> <li>• Modernization of facilities and technologies</li> </ul>	\$2.2 billion over 10 years
Army Corps of Engineers: Reengineer IT support	<ul style="list-style-type: none"> <li>• Consolidate redundant IT activities</li> <li>• Leverage enterprise-wide purchasing to enable greater compatibility in IT solutions</li> </ul>	\$950 million over 6 years
IRS: Reengineer support operations	<ul style="list-style-type: none"> <li>• Consolidation of distribution centers from 3 into 1</li> <li>• Leveraging of technology</li> <li>• Reduction of labor costs</li> </ul>	\$207 million over 5 years
Forest Service: Improve IT support	<ul style="list-style-type: none"> <li>• Consolidation of operations from 150 locations to 10 server farms</li> <li>• Reduction of labor costs</li> </ul>	\$147 million over 5 years
Navy: Make facilities management more cost-effective	<ul style="list-style-type: none"> <li>• Leveraging of technology</li> <li>• Restructuring of workflow to adopt customary commercial practices</li> </ul>	\$73 million over 5+ years
NASA: Eliminate redundant investments in shared services	<ul style="list-style-type: none"> <li>• Consolidation of HR, procurement, financial management, and IT transactional activities from 10 centers into 1</li> <li>• Leveraging of technology</li> <li>• Process reengineering</li> </ul>	\$42 million over 10 years
SSA: Make IT support more efficient	<ul style="list-style-type: none"> <li>• Consolidation and streamlining of help desk and administrative support activities</li> <li>• Redeployment of labor to understaffed IT-related positions</li> </ul>	\$36 million over 5 years
Energy: Make the delivery of financial services support more efficient	<ul style="list-style-type: none"> <li>• Consolidation of financial services operations from 15 into 2</li> <li>• Restructuring of job mix</li> <li>• Leveraging of telecommunications technology</li> </ul>	\$31 million over 5 years
Centers for Disease Control (HHS): Reduce cost of editorial support services	<ul style="list-style-type: none"> <li>• Process reengineering</li> <li>• Realignment of workforce</li> </ul>	\$21+ million over 5 years
Public Buildings Service (GSA): Obtain less costly custodial services	<ul style="list-style-type: none"> <li>• Reliance on a more cost-effective mix of federal and contractor support (identified through a series of regionalized competitions)</li> </ul>	\$14 million over 5 years
Justice: Reduce the cost of vehicle maintenance	<ul style="list-style-type: none"> <li>• New performance standards</li> <li>• Consolidation of operations</li> <li>• Reduction of labor costs</li> <li>• More efficient use of resources</li> </ul>	\$11.5 million over 5 years
OPM: Reengineer test administration services	<ul style="list-style-type: none"> <li>• Leveraging of technology to automate test scheduling</li> <li>• Reduction of labor costs</li> <li>• Restructured customer-focused processes</li> </ul>	\$10 million over 5 years
Employment and Training Administration (DOL): Improve delivery of financial support	<ul style="list-style-type: none"> <li>• Consolidations of accounts payable operations</li> <li>• Reduction of labor dedicated to payment processing/restructuring of job mix</li> </ul>	\$5 million over 5 years
Coast Guard: Make public works support for the Academy more effective and efficient	<ul style="list-style-type: none"> <li>• Streamlined work order process and reporting</li> <li>• Fewer FTEs dedicated to administration</li> <li>• Clear, customer-focused performance standards</li> </ul>	\$6 million over 5 years

**SOURCE:** Mathew Blum, "The Federal Framework for Competing Commercial Work between the Public and Private Sector," in Jody Freeman and Martha Minow (ed.), *Government by Contract: Outsourcing and American Democracy* (Cambridge, MA: Harvard University Press, 2009), pp. 77-78.



The incentives have served to achieve savings. Valerie Bailey Grasso from the Congressional Research Service states that “DOD estimated that increased efficiencies resulting from these competitions could yield a 20–30% cost savings, regardless of whether the government or the commercial sector wins.”<sup>42</sup> The Commercial Activities Panel reached a similar conclusion: “Regardless of whether the public or the private sector wins the cost comparison, Department of Defense (DOD) officials have noted that savings of 20 percent or more are not uncommon. This is because competitive pressures promote efficiency and improve the performance of the activity studied.”<sup>43</sup> Further, the competitions that took place in the early portion of the Bush Administration consistently generated savings between 10 percent and 40 percent.<sup>44</sup>

The results took place while the A-76 process represented only a small portion of the contracting work developed at the DOD. In this fashion, the Commercial Activities Panel stated that “[p]ublic–private competition through the use of OMB Circular A-76 represents a very small percentage of total service contracting. For example, DOD reported to Congress that only 2 percent of the service contracting dollars it awarded in FY 1999 resulted from its use of A-76.”<sup>45</sup>

At the Department of Defense, the circular had better conditions and incentives to take hold and produced notable improvements both in outcomes and in savings. Along these lines, Utt concludes that “[s]uch outcomes emphasize that the real issue in competitive contracting is not whether the function is performed by private rather than government workers, but whether it is performed under competitive conditions that approximate the market process.”<sup>46</sup>

## Congressional Prohibition

When discussing the opposition to A-76 competition, Jacques Gansler, former Under Secretary of Defense (Acquisition, Technology, and Logistics) under President Bill Clinton and currently a professor at the University of Maryland, stated that “[d]espite the huge potential savings and the demonstrated results of obtaining equal or better performance, few competitions were held because the government unions strongly opposed any such competitions and were able to convince the Congress to resist them.”<sup>47</sup>

A-76 competitions have been prohibited since the National Defense Authorization Act for Fiscal Year 2008.<sup>48</sup> This prohibition started largely as a reaction to problems experienced at the Walter Reed Army Medical Center in the early 2000s.<sup>49</sup> The problems emerged due to a perfect storm of the intersection of two processes that affected its workforce: BRAC and A-76 simultaneously.<sup>50</sup> Because the installation was under the effect of two different processes that have long decision-making and implementation periods, the workforce left at a pace faster than anticipated, and leadership was unable to replace them at the same pace. It affected the quality and the availability of services and personnel at the installation and garnered negative media and congressional attention.

As then-Commander of Walter Reed Medical Center Major General George W. Weightman explained in a hearing on March 5, 2007, the instability created by the changes impacted the civilian workforce: “[B]etween BRAC and A-76[,] it was two huge impacts on our civilian work force, which is two thirds [sic] of our work force here at Walter Reed.”<sup>51</sup>

42. Valerie Bailey Grasso, “Defense Outsourcing: The OMB Circular A-76 Policy,” Congressional Research Service Report for Congress, June 30, 2005, p. 3, <https://fas.org/sgp/crs/natsec/RL30392.pdf> (accessed April 4, 2018).

43. Commercial Activities Panel, *Improving Sourcing Decisions for the Government*, p. 10.

44. U.S. Office of Management and Budget, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner*.

45. Commercial Activities Panel, *Improving Sourcing Decisions for the Government*, p. 21.

46. Utt, “Improving Government Performance Through Competitive Contracting,” p. 3.

47. Jacques S. Gansler, *Democracy’s Arsenal: Creating a Twenty-First-Century Defense Industry* (Cambridge, MA: The MIT Press, 2013), p. 307.

48. National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181.

49. Grasso, “Walter Reed Army Medical Center (WRAMC) and Office of Management and Budget (OMB) Circular A-76: Implications for the Future.”

50. *Ibid.*

51. Hearing, *Is This Any Way to Treat Our Troops? The Care and Conditions of Wounded Soldiers at Walter Reed*, before the Subcommittee on National Security and Foreign Affairs, Committee on Oversight and Government Reform, U.S. House of Representatives, March 5, 2017, <https://www.gpo.gov/fdsys/pkg/CHRG-110hrg40852/html/CHRG-110hrg40852.htm> (accessed June 26, 2018).

It is understandable for these civilian employees to seek more stable situations, especially considering that both these processes are lengthy—measured in years, rather than months.

Nonetheless, the actual problems were not originated by the A-76 competition rules themselves, but rather how these rules were implemented. The Congressional Research Service found that an “enforcement of the rules of the Walter Reed A-76 competition may have resulted in a different outcome.”<sup>52</sup> As Carafano concludes, when discussing the same issue: “[I]t is wrong to blame outsourcing, per se, for the outcome. Rather, the failure of government to effectively manage its own processes proved its undoing.”<sup>53</sup> It is a matter of making the process work, rather than simply walking away from it.

### Shortcomings of A-76

Despite the fact that those shortcomings were not directly related to the A-76, this does not mean that past A-76 competitions were free of problems. Three of them are worth highlighting for future action: shortcomings in the construction of the work description, failure to establish proper overhead costs, and poor tracking of savings.

One problem that consistently appears when the federal government is endeavoring to contract for outside work is the drafting of the work requirements. Issues range from incomplete requirements to mandating elements that are not necessarily suited for the task. As pointed out by the GAO, “[p]ast GAO audits have shown that tasks omitted from the PWS were later added to the contract, resulting in increased costs.”<sup>54</sup> This is a problem derived from how agencies approach the development of requirements in each agency.

Another factor affecting past A-76 competitions is the establishment of the proper overhead costs for the government MEO. Private-sector firms typically have

a good understanding of their overhead costs and are capable of accounting for them when bidding for a contract. On the other hand, in the public sector there is little incentive or experience for agencies to maintain an accurate, repeatable account of overhead costs.

The determination of overhead costs in the MEO’s proposal has swung many bids.<sup>55</sup> In fact, the “government’s experience with Circular A-76—specifically the development of the overhead rate that is used in public–private competitions—is yet another example of data problems facing government agencies.”<sup>56</sup> These data problems exist regardless of the presence of any competition and should be addressed independently. Max Sawicky from the Economic Policy Institute stated that the “federal government has yet to construct management information systems that would enable well-informed, economical decisions about outsourcing.”<sup>57</sup> It is more than data systems, however. Federal budget staffs are typically untrained and inexperienced in calculating the basic elements of overhead costs such as labor rates, utilities, and facilities.

This compounds the problems that the government has in determining realized savings. In general, because the process compares potential to actual expenditures, savings are challenging to track. If data are poor, the challenge is further compounded. This is partially why considerable incentives are needed to encourage agency managers to properly track savings. It is possible that allowing agencies to keep a portion of the savings generated would be enough for them to make a substantial effort in properly documenting the costs and tracking savings or cost increases that are generated. DOD was able to retain part of their savings in the 1980s, which coincides with a high-activity period for A-76 competitions.<sup>58</sup> The issue is to establish proper data and systems for tracking overhead and total burdened costs within the federal government as a whole, not just in the context of A-76 competitions.

52. Grasso, “Walter Reed Army Medical Center (WRAMC) and Office of Management and Budget (OMB) Circular A-76: Implications for the Future,” p. 24.

53. Carafano, *Private Sector, Public Wars*, p. 76.

54. L. Nye Stevens, “Achieving Cost Efficiencies in Commercial Activities,” p. 4.

55. Halchin, “Sourcing Policy: Selected Developments and Issues.”

56. *Ibid.*, p. 41.

57. Max B. Sawicky, “Show Me the Money,” Economic Policy Institute *Briefing Paper* No. 145, October 9, 2003, p. 2, [https://www.epi.org/publication/briefingpapers\\_bp145/](https://www.epi.org/publication/briefingpapers_bp145/) (accessed April 6, 2018).

58. Kettl, *Sharing Power: Public Governance and Private*.

One revealing aspect of A-76 competitions is that “[i]n general, many federal employees and labor organizations believe that the A76 process is unfairly slanted in favor of the private sector, while private sector contractors generally believe that government employees have an unfair advantage in A-76 competitions.”<sup>59</sup> This indicates there is work to be done on the transparency of the competition on both sides.

### Renewing the A-76 Process

There is widespread agreement the government should focus on inherently governmental activities—and that it should not compete with its citizens. A refined A-76 process would mitigate some of the objections that have led to its prohibition in the past. The major problems associated with A-76 competitions involve the execution of the process rather than the concept itself. The issues pertain to the establishment of the competition and the data agencies have available to them and the public. These problems are diverse, such as properly and fairly establishing and attributing overhead costs and adequately defining the work statement. A-76 competitions are not, nor should they be, the only way the government can contract for services in the marketplace, but they should be a tool available to government professionals.

Congress needs to drop its decade-long moratorium on A-76 competition and let professionals experiment and improve the process. It is important for the interest of good public administration to allow agencies to better to understand their functions and how they are performed by other organizations. In this sense, the previous A-76 competitions have been educational and have revealed flaws in the way that government work was done. At a minimum, the higher threshold on data and transparency required for an A-76 competition demonstrates the need for government to have a better understanding of its own functions.

MEOs do not exist outside the context of an A-76 competition, but they should be the norm in government agencies. This conclusion is shared by the Commercial Activities Panel: “The federal government should promote high-performing organizations as

a standard business practice, independent of any sourcing decision.”<sup>60</sup> The competition forces government agencies to rethink how they operate. Beyond merely the question of *who* performs a task, A-76 competitions force agencies to consider the *best way* to perform a given task.

Based on past A-76 experiences, the key for future success will be to enact a more disciplined approach to both setting up the conditions for the competition and its oversight. The elements that marred previous A-76 competitions were largely related to the lack of a methodical manner to define and calculate the value of current government work. Even if these tasks were never to be transferred to any other entity, the management of the agency would undoubtedly benefit from having more clarity and transparency on what their functions are and how they are carried out.

Despite being the object of much attention and reconsideration (ending in yearly moratoriums), A-76 processes have not been widely applied in government acquisition of goods and services. The panel stated that “[n]otwithstanding the Circular’s long history, A-76 cost comparisons have not been widely used, except for a period in the 1980s[,] and again in the past 5 years.”<sup>61</sup> This effectively means that both government and contractors are less familiar with the process and that there has not been enough time and data to resolve every possible wrinkle.

If Congress were to lift the moratorium, it would be once again up to the agencies to determine which process is best to purchase goods and services in the market. Furthermore, it would give entrepreneurial heads of agencies a way to assess if their agencies are executing activities in the most effective and efficient manner.

### Department of Defense Business Operations Plan

The DOD’s new Chief Management Officer recently published the National Defense Business Operations Plan for FY 2018–FY 2022.<sup>62</sup> This document outlines and elaborates on the three strategic goals for the DOD: rebuilding military readiness, strengthening our alliances, and reforming the Department’s business practices.

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59. Grasso, “Walter Reed Army Medical Center (WRAMC) and Office of Management and Budget (OMB) Circular A-76: Implications for the Future,” p. 4.

60. *Ibid.*, p. 52.

61. *Ibid.*, p. 20.

62. U.S. Department of Defense, “FY 2018–FY 2022 National Defense Business Operations Plan.”

As part of the goal of rebuilding military readiness and increasing lethality, the plan discusses the importance of the supporting infrastructure in the DOD, including the civilian workforce. The plan shows a commitment from the Department to rationalizing its workforce and better understanding the value that it brings. In that regard, the DOD pushes for the elimination of “legislative restrictions on the conduct of A-76 public-private competitions.”<sup>63</sup> The renewed interest in the A-76 competition will serve the Department well in its quest for efficiency and effectiveness.

### The Way Forward

Year after year, Congress has repeated language that prohibits competitions under the A-76 process, including in the 2018 appropriations legislation.<sup>64</sup> Congress needs to move beyond reflexive opposition to the circular and re-authorize A-76 competitions, incorporating appropriate legislative improvements.

The opposition to A-76 exists despite the surprisingly small number of government employees typically affected by the process. As stated by Donald Kettl of the Brookings Institution, “Compared with the size of the federal work force, however, the number of employees adversely affected by A-76 reviews was small.”<sup>65</sup>

Bearing these points in mind, Congress should:

- **Embrace the process and incorporate lessons learned.** The Executive, through OMB, has consistently designed and developed rules for A-76 competitions. There are decades of data on how to improve the competition process. Congress needs to incorporate it into the current rules for A-76.
- **Lift the A-76 moratorium.** Congress should allow agencies willing to experiment with the current A-76 process to do so. Lift the moratorium and see how agencies actually implement the process and leverage their lessons to shape future competitions.
- **Establish proper savings tracking mechanisms.** The main problem with congressional oversight of A-76 competitions related to tracking

mechanisms. Congress needs to establish proper incentives—such as allowing the agencies to keep the realized savings in their budget. That change will propel the agencies to track *realized* savings, as opposed to *projected* savings.

- **Emphasize fair and predictable competition.** Both contractors and government labor unions have complained about the rules of the competition. Congress should play a role in determining the rules to make sure they are fair and predictable, from determining overhead costs to appeals processes.

### Conclusion

After more than a decade under moratorium, the A-76 process should be given another chance to succeed. Competition for the provision of commercial goods and services to the federal government has ebbed and flowed, but it will never go away. By continuing the A-76 moratorium, Congress is handicapping federal government managers. It is effectively removing one tool that has been consistently proven to create efficiency and effectiveness in the functions performed by their workforce.

It is time to lift the A-76 moratorium—and for Congress to become a useful partner in the process. For too long, Congress has allowed the occupant of the White House to singlehandedly decide if agency executives would be able to create savings within their budgets through A-76 competitions. Due to their vast potential to create savings and improve organizational effectiveness, A-76 competitions should be a permanent part of the toolbox of government decision makers. Congress needs to help iron out the wrinkles that still exist and further institutionalize the process. American taxpayers deserve a more effective and efficient government.

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63. U.S. Department of Defense, “FY 2018-FY 2022 National Defense Business Operations Plan: Appendices.”

64. Consolidated Appropriations Act, 2018, Public Law 115-141.

65. Kettl, *Sharing Power: Public Governance and Private*, p. 62.