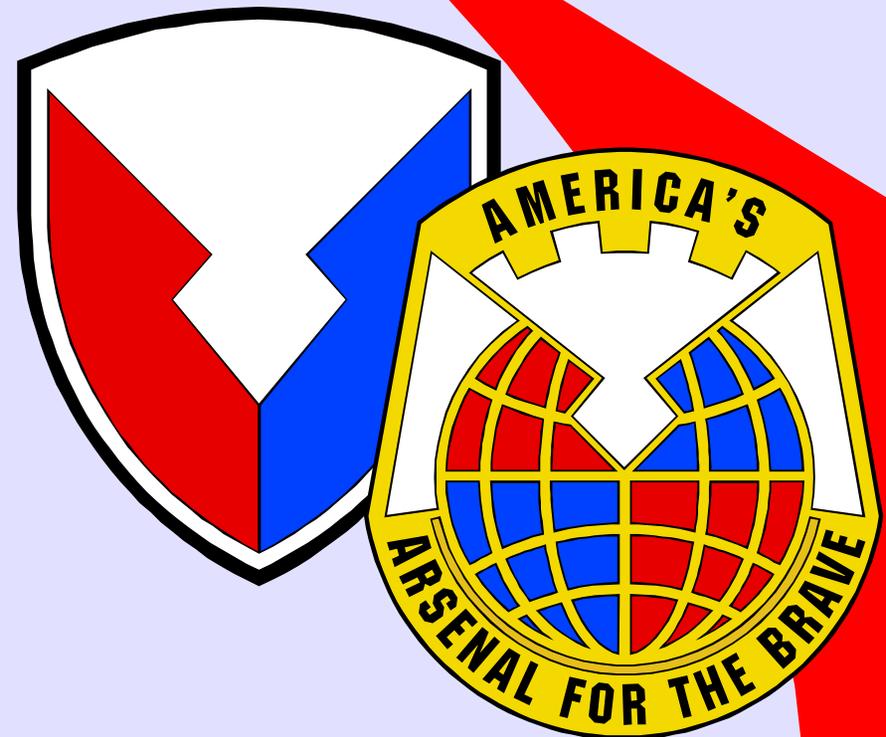


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Army Materiel Command

**Agency Procedures and
Statutory Requirements**

17 December 1998



AMC – Relevant, Responsive & Ready!



DOD Notification and Analysis Requirements in 10 USC 2461

- ★ **A-76 vs. 2461**

- ★ **Requirements apply to commercial or industrial type functions of DOD being performed by DOD civilian employees as of 1 Oct 1980**

- ★ **SEC DEF must notify Congress of intent to study function for change to private sector performance**
 - ❖ **function to be analyzed**
 - ❖ **location where function performed**
 - ❖ **number of civilian employee positions potentially affected**
 - ❖ **anticipated length and cost of analysis**



DOD Notification and Analysis Requirements in 10 USC 2461

- ❖ **certification that proposed performance by private sector not the result of a decision to impose predetermined limits on DOD employees in terms of man years, end strengths, full-time equivalent positions, or maximum numbers of employee**

- ★ **Failure to submit report or certification may be challenged to SEC DEF**
 - ❖ **challenges must be raised within 90 days**
 - ❖ **failure to comply delays solicitation issuance or contract award**



DOD Notification and Analysis Requirements in 10 USC 2461

- ★ Congressional notification initiated by Commercial Activity Proposed Action Summary (CPAS), DA Form 7375-R, AR 5-20, para. 4-5.**

- ★ Analysis of function requires examination of cost of performance by DOD and by one or more private contractors to demonstrate if private sector performance will result in savings over the life of the contract, including:**
 - ❖ cost to the government of private sector performance (based upon offers received)**
 - ❖ cost of performance by DOD employees**
 - ❖ estimate of all other contract costs and expenditures**



DOD Notification and Analysis Requirements in 10 USC 2461

- ★ A-76 cost comparison waivers (AR 5-20, para. 2-3)**

- ★ Examination of economic effect of private sector performance on:**
 - ❖ affected DOD employees**
 - ❖ local community if more than 75 employees perform the function**

- ★ Effect of private sector performance on military mission**



DOD Notification and Analysis Requirements in 10 USC 2461

- ❖ **Congressional notification of decision prior to change to private sector performance**
 - ❖ **required examinations completed**
 - ❖ **SEC DEF certification that cost of DOD performance based on estimate of most cost effective manner for performance**
 - ❖ **SEC DEF certification that the analysis demonstrates savings over life of the contract**
 - ❖ **SEC DEF certification that entire analysis is available for examination**
 - ❖ **schedule for changing to private sector performance**



DOD Notification and Analysis Requirements in 10 USC 2461

- ★ Waiver for functions performed by 50 or fewer DOD employees, *but***
- ★ FY 99 Appropriations Act, Sec. 8014 requires certification to Congress of a most efficient and cost-effective organizational analysis for functions performed by 10 or more employees**



DOD Notification and Analysis Requirements in 10 USC 2461

- ★ **Waiver for functions**
 - ❖ on the procurement list under the Javits-Wagner-O'Day Act
 - ❖ planned to be changed to performance by a qualified non-profit agency for the blind or severely handicapped
 - ❖ planned to be converted to performance by a qualified firm under 51% Native American ownership (Sec. 8014)

- ★ **Decision notification initiated by Commercial Activities Final Decision Report, DA Form 7379-R, AR 5-20, para. 4-5**



DOD Competitive Sourcing Statutes

- ★ **10 USC 2460** defines depot-level maintenance or repair as requiring the overhaul, upgrading, or rebuilding of parts or assemblies, testing and reclamation, regardless of source of funds or location where the work is performed.

- ★ **10 USC 2462** requires procurement of supplies or services from the private sector if the cost is lower
 - ❖ **Includes cost differentials required by law, EO, or regulation**
 - ❖ **must use realistic and fair cost comparisons**



DOD Competitive Sourcing Statutes

- ★ **10 USC 2463 requires the collection and retention of information on performance costs for conversions to or from contractor performance.**

- ★ **10 USC 2464 requires DOD to maintain a GOGO core logistics capability**
 - ❖ **logistics activities identified by the SEC DEF**
 - ❖ **depot-level maintenance of mission essential materiel performed at depots and arsenals**
 - ❖ **SEC DEF waiver**
 - ❖ **new commercial item notification**



DOD Competitive Sourcing Statutes

- ★ **10 USC 2465 prohibits contracting for guards and firefighters.**

- ★ **10 USC 2466 prohibits more than 50% of funds provided for depot maintenance to be used for contractor performance.**

- ★ **10 USC 2467 contains requirements when conducting A-76 studies to**
 - ❖ **include retirement costs in cost comparisons**
 - ❖ **consult with affected employees**



DOD Competitive Sourcing Statutes

- ★ **10 USC 2469 requires that decisions to change performance of \$3M+ depot-level maintenance and repair workloads be made using**
 - ❖ **merit-based selection procedures for competitions among DOD depot-level activities**
 - ❖ **competitive procedures for public-private competitions**
 - ❖ **A-76 inapplicable**



DOD Competitive Sourcing Statutes

- ★ **Sec. 346, FY 99 DOD Authorization Act requires a report to Congress 30 days prior to entering into a prime vendor contract for depot-level maintenance describing**
 - ❖ **competitive procedures to be used**
 - ❖ **cost-benefit analysis demonstrating savings over the life of the contract**

- ★ **FY 99 DOD Appropriations Act Conference Report requires Congressional notification 90 days prior to awarding any new contracts resulting from A-76 studies at Army arsenals**



DOD Competitive Sourcing Statutes

- ★ **FY 99 DOD Appropriations Act Conference Report requires SEC DEF to report to Congress by 31 Mar 99 results of privatization strategy to date.**

- ★ **Sec. 8026, FY 99 DOD Appropriations Act prohibits funds to be used to perform A-76 studies exceeding**
 - ❖ **24 months for a single function study**
 - ❖ **48 months for a multi-function study**
 - ❖ **AR 5-20, para. 1-5 establishes 18/36 month time limits**
 - ❖ **AR 5-20, para. 4-5 report to DA on studies that may exceed time limits**



DOD Competitive Sourcing Statutes

- ★ **Sec. 317, P.L. 99-661 prohibits contracting for functions performed by DOD employees at Crane and McAlester Army Ammunition Plants**
- ★ **Sec. 364, P.L. 105-85 prohibits RIFs prior to AWPS certification at depots participating in demonstration**
- ★ **10 USC 4532 requires supplies to be made in Army factories and arsenals if they can make them on an economical basis**