



**DEFENSE HEALTH AGENCY**  
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FALLS CHURCH, VIRGINIA 22042-5101

DHA-IPM 23-005  
November 2, 2023

MEMORANDUM FOR DISTRIBUTION

**SUBJECT:** Contracting for Services to Fill Capability Gaps Arising Because of Vacancies in Government Civilian Positions

- References:**
- (a) Department of Defense (DoD) Directive 5136.01, "Assistant Secretary of Defense for Health Affairs (ASD(HA))," September 30, 2013, as amended
  - (b) DoD Directive 5136.13, "Defense Health Agency (DHA)," September 30, 2013, as amended
  - (c) DHA Procedural Instruction 5025.01, "Publication System," August 24, 2018
  - (d) United States Code, Title 10, Section 2463
  - (e) DoD Instruction 1100.22, "Policy and Procedures for Determining Workforce Mix," April 12, 2010, as amended
  - (f) DoD Instruction 7041.04, "Estimating and Comparing the Full Costs of Civilian and Active Duty Military Manpower and Contract Support," July 3, 2013, as amended
  - (g) DoD Instruction 6000.19, "Military Medical Treatment Facility Support of Medical Readiness Skills of Health Care Providers," February 7, 2020
  - (h) Public Law 117-328, Division C, Section 8046, "Consolidated Appropriations Act, 2023," December 29, 2022
  - (i) Federal Acquisition Regulation, Subpart 2.101
  - (j) United States Code, Title 32, Section 6301

This Defense Health Agency Interim Procedures Memorandum (DHA-IPM), based on the authority of References (a) and (b), and in accordance with the guidance of References (c) through (j), establishes the DHA's guidance and procedures to acquire contracts for services to fill capability gaps arising because of vacancies in Government civilian positions. Unless the exception described in the attached applies, and the proposed contracting action is approved pursuant to the attached procedures, requiring activities may not contract out functions or work that is performed, or designated for performance, by Government civilian personnel.

This DHA-IPM applies to the DHA Enterprise (components and activities under the authority, direction, and control of the DHA) to include assigned, attached, allocated, or detailed personnel.

This DHA-IPM is cleared for public release and available on the internet from the Health.mil site at <https://health.mil/Reference-Center/Policies>, and is also available to authorized users from the DHA SharePoint site at <https://info.health.mil/cos/admin/pubs/>. The proponent of this publication is the Director, Administration and Management (J1).

This DHA-IPM is effective upon signature. It will expire one (1) year from the date of signature if it has not been reissued or canceled before this date in accordance with Reference (c).

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Michael P. Malanoski, M.D., SES  
Deputy Director, DHA

Attachment:  
Guidance and Procedures

**DISTRIBUTION:**

Chief of Staff, Defense Health Agency  
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Assistant Director, Support  
Assistant Director, Healthcare Administration  
Director, Administration and Management (J-1)  
Director, Strategy, Plans, and Functional Integration (J-5)  
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ATTACHMENT 1

GUIDANCE AND PROCEDURES

1. Since 2008, the Department of Defense (DoD) has been subject to a Congressionally imposed moratorium on conducting public-private competitions pursuant to Office of Management and Budget Circular A-76. This moratorium, coupled with restrictions established in Reference (d), prohibits DoD Components from converting any functions or work currently performed, or designated for performance, by any number of civilian personnel to private sector (contract) performance. The prohibition applies to functions and work assigned to civilian personnel, regardless of whether a position or billet is established for that work or whether that position or billet is encumbered. The prohibition pertains to any workload, functions, and positions/billets (including healthcare or healthcare-related workload, functions, and positions in Military Medical Treatment Facilities (MTFs)) impacted by ongoing agency reform initiatives, hiring constraints or challenges (e.g., longstanding civilian position vacancies), or funding shortfalls. It also applies to functions that are being modified, reengineered, reorganized, modernized, upgraded, expanded, or changed to become more efficient but still essentially provide the same service. Finally, DoD components may not contract for services to perform work associated with civilian positions that were eliminated within the past five years, regardless of the reason for the elimination or reduction of the positions.
2. The only exception to the prohibition on converting functions currently performed, or designated for performance, by civilian employees to contract performance is that provided pursuant to the procedures outlined herein. Specifically, the Director, Administration and Management (J-1) may approve execution of a contract in such circumstances if the function to be converted/contracted out is (1) included on the procurement list established pursuant to section 2 of the Javits-Wagner-O'Day Act (section 8503 of title 41, United States Code); or (2) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or (3) is planned to be converted to performance by a qualified firm under at least 51 percent ownership by either an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act or a Native Hawaiian Organization as defined in Section 8(a)(15) of the Small Business Act in accordance with Reference (h).
3. Requiring activities considering converting civilian employee functions or work to contract performance under this exception shall provide the Director, Administration and Management (J-1), with the information necessary to conduct the analysis required by References (e) (pertaining to inherently governmental functions and commercial services exempt from private sector performance) and (f) (pertaining to cost comparisons), as applicable. At a minimum, the requiring activity shall provide a description of the current workforce mix performing, or designated to perform, the functions; an explanation of the purpose and intent of the proposed conversion; and a copy of any proposed performance work statement or statement of work describing the functions.

4. Upon receiving a request for review of a proposed conversion action from a requiring activity, the Director, Administration and Management (J-1), will examine the information provided and determine whether the functions under consideration for conversion are inherently governmental in nature or commercial functions exempted from private sector performance, as described in reference (e). If the Director, Administration and Management (J-1), determines the functions fall into either category, then the functions may not be converted to contract performance. The requiring activity shall appropriately document the determination using the DHA Form 67, Service Contract Approval Request.
5. If the functions do not fall into either category, then the Director, Administration and Management (J-1), will coordinate with the DHA Comptroller (J-8) to conduct a cost comparison to determine if the contractor can provide the functions at a cost lower than the cost of employing civilians to perform the functions. The cost comparison shall be conducted pursuant to the business rules provided in Reference (f). If the proposed contract will involve delivering primary care services primarily to non-military patients in an MTF or associated site, then the Director, Administration and Management (J-1), will take the additional step of ensuring that the requiring activity has obtained an approved exception from the Director, DHA, to contract for such services, as required by Reference (g).
6. DHA policy mandates that requiring activities procure all professional medical services that are within the scope of the Agency's Medical Q-Services (MQS) Program through the MQS Program and its suite of contracts. After the J1 A-76 waiver has been obtained the requiring activity will obtain an MQS waiver. Information on obtaining the MQS waiver can be found through the MQS Program Office at [dha.ncr.j-4.mbx.dha-mqs-pmo@health.mil](mailto:dha.ncr.j-4.mbx.dha-mqs-pmo@health.mil).
7. Pursuant to the procedures outlined herein, when seeking/obtaining contract augmentation, the requiring activity will continue to actively pursue hiring the civilian equivalent. The contract is until a civilian is hired and cannot be constrained by the contract augmentation (e.g. the civilian hire will not start until the contract period of performance is complete). The total period of performance (including option periods of any kind) shall not exceed 2-years and the resultant contract will have a clearly defined off-ramp tied to each civilian hire. At the end of the period of performance of the contract augmentation, the requiring activity shall assess whether the work or functions can be converted back to performance by civilian employees.

## GLOSSARY

### ABBREVIATIONS AND ACRONYMS

DHA	Defense Health Agency
DHA-AI	Defense Health Agency-Administrative Instruction
MTF	Military Medical Treatment Facility

### PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

Circular A-76. Establishes Federal policy regarding the performance of commercial activities sets for the procedures for determining whether commercial activities should be performed under contract with commercial sources or in-house using Government facilities and personnel.

contract. Defined in Reference (i) is a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by Reference (j).

conversion. The changeover of an activity from Government performance to performance under a contract by a commercial source. Conversion of functions does not include the augmenting of civilian staff with contractors unless government employees are displaced, reassigned, subjected to a reduction in force, or otherwise adversely affected.

requiring activity. The DHA component or activity charged with meeting a mission and delivering requirements. The requiring activity is responsible for requirement development, obtaining funding, and submitting requests through established contract support approval processes. The requiring activity is also responsible, in coordination with the requisite contracting activity, for ensuring there is adequate post-contract award oversight.