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Washington, DC 20548

September 26, 2011

Congressional Committees

Subject: *DOD Met Statutory Reporting Requirements on Public-Private Competitions*

The Department of Defense (DOD) relies on a multisector workforce of military personnel, other federal employees, and private contractors to perform needed services. The contractor workforce is substantial: DOD is the federal government's largest purchaser of contractor-provided services, such as aircraft maintenance or base operating support. Determining whether to obtain services with in-house resources or through private sector contractors is an important economic and strategic decision essential to DOD's effective and efficient use of taxpayer dollars. Conducting competitions between public and private sources to identify the most cost-effective provider of services is one tool DOD can use to achieve such efficiencies.

In the National Defense Authorization Act for Fiscal Year 2010 (NDAA 2010), Congress imposed a temporary moratorium on new competitions involving functions currently performed by DOD civilian employees until, among other things, DOD reviewed and reported to Congress on various aspects of its public-private competition policies.[1] The department submitted a report to Congress on its review on June 28, 2011. Should the moratorium be lifted, Congress also limited the duration of any new competitions to 24 months, with a possible extension to 33 months if DOD notifies Congress of the need for an extension.[2]

Congress required that we assess the DOD review and report on any use of the authority to extend the 24-month time limit.[3] To meet these requirements, we (1) identified the methodology and data sources DOD used to review its public-private competition policies, (2) assessed the extent to which DOD's report addressed statutory requirements and considered public-private competition issues we and others previously have identified, and (3) determined the extent to which DOD used its authority to extend the completion dates of any public-private competitions. To conduct this review, we met with the DOD officials responsible for the department's report and others within the department, reviewed the documents DOD used in conducting its review, and analyzed various statutes, regulations and guidance. We did not

[1] Pub. L. No. 111-84 § 325 (2009).

[2] Pub. L. No. 111-84 § 322(a) (2009).

[3] Pub. L. No. 111-84 §§ 322(c) and 325(c) (2009).

Report Documentation Page

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independently verify any of the data DOD used in conducting its review. We also reviewed our prior work in this area. Further detail on our approach is in the Scope and Methodology section on page 12.

We conducted this performance audit from July to September 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results in Brief

To conduct the required review, DOD collected relevant public-private competition guidance, lessons learned, and best practices from the military services and DOD components. The majority of information on best practices and lessons learned was from the Navy, which has had the largest public-private competition program for many years.

DOD complied with the statutory requirements in conducting its review of public-private competitions and in submitting its June 2011 report to Congress. Specifically, the report addressed the five required topics:

- compliance with a new requirement expanding competition requirements to activities with fewer than 10 federal employees;
- actions taken in response to issues raised by the DOD Inspector General (IG) in a 2008 report;
- the ability of existing systems to provide comprehensive and reliable data on the cost and quality of functions subject to public-private competition;
- the appropriateness of certain cost differentials and factors, such as the overhead rate, used in public-private competitions; and
- the adequacy of DOD policies regarding mandatory recompetitions of work previously awarded to employee groups.

While DOD's report addressed the statutory requirements, concerns remain about some of the issues on which the DOD IG and we have previously reported. For example, DOD's report stated that upgrades to the current system used to track data on public-private competitions have been made, but because of the moratorium, DOD has not reviewed whether data reliability and accuracy actually has improved. Further, the report discussed the overhead rate used in the cost comparisons and called for no change, even though both the DOD IG and we have reported that the standard rate of 12 percent of labor costs does not have a sound analytical basis, which leaves some uncertainty about whether that rate may be understated or overstated for any given public-private competition. DOD's report recommended excluding preliminary planning from the competition time limits. The report also recommended that DOD issue revised comprehensive guidance that would incorporate various policy changes as well as best practices that could improve the competitions. The report also recommends that the moratorium on DOD's use of public-private competitions be lifted.

Because of the moratorium, DOD has not initiated any new public-private competitions and therefore has not invoked its authority to extend the time limit on completing such competitions.

Background

Since the mid-1950s, the executive branch has encouraged federal agencies to obtain commercially available services from the private sector when doing so is cost effective. The policy has recognized, however, that circumstances may exist when these services should be performed by government employees. This policy was formally instituted in 1966 with the issuance of Circular A-76, which governs the conduct of public-private competitions and related processes for determining whether a commercial activity should be performed by federal employees or under a private sector contract.[4]

In 2003, the Office of Management and Budget (OMB) issued its most recent revision to Circular A-76. This revision was intended to provide an improved foundation for public-private competition decisions. In its current form, the guidance provides agency management with a structured process for comparing the public and private sector approaches and costs of performing commercial activities with the stated goal of obtaining maximum value for taxpayers' dollars by taking advantage of competitive forces. It includes four key public-private competition phases, each of which involves a number of tasks (see fig. 1).

[4] OMB Circular A-76, *Performance of Commercial Activities*, establishes federal policy and procedures for determining whether commercial activities should be performed in-house, by another federal agency, or by the private sector. Circular A-76 contains procedures agencies must use in calculating and comparing the costs of performance by in-house, private, or public reimbursable sources.

Figure 1: Major Competitive Sourcing Phases and Related Tasks

Source: GAO analysis of OMB Circular A-76.

[a]An inventory is not done for each specific competition, but is required for the entire agency under the Federal Activities Inventory Reform Act.

[b]Competitive Sourcing Officials appoint competition officials for each standard competition, and, as appropriate, may appoint competition officials for streamlined competitions. These include: Agency Tender Official, Contracting Officer, Performance Work Statement Team Leader, Human Resource Advisor, and Source Selection Authority.

After DOD announces a public-private competition, it may receive bids from both the public and private sectors, which are the basis for a cost comparison and performance decision. Private sector firms may submit bids, much as in any federal procurement, while government agencies also develop in-house bids, or “tenders,” under which agency employees will perform the work if they win the competition. The staffing plan identified in the in-house agency bid is referred to as a “most efficient organization” (MEO). The MEO is not usually a reflection of the existing organizational structure, but more commonly it reflects a smaller, restructured version of the incumbent government organization doing the work. After comparing the private sector and in-house agency bids, the agency selects the winning bid and announces a performance decision, which results in a contract or agreement transferring performance of the activities to the winning entity.

DOD Collected and Analyzed Policies and Lessons Learned to Address the Review Requirements

The department began its review of the public-private competition program in December 2009 with a kickoff meeting and the subsequent collection of relevant policy

documentation and lessons learned from the military services and several DOD components with the largest public-private competition programs in terms of number of competitions conducted and positions competed under the revised OMB Circular A-76. DOD also reviewed DOD-wide guidance. The majority of best practice and lesson learned information was from the Navy, which has had the largest A-76 program within DOD over many years. As a result, according to DOD officials, the Navy had the most extensive history of documented best practices and lessons learned from which to draw upon for this review.

We conducted a limited analysis of the documentation collected by DOD officials and observed that the majority of the policy documentation had been updated within the past 5 years. All of the policies had been revised to reflect changes made during the last major revision of OMB Circular A-76 in 2003.

The DOD review relied on the Defense Commercial Activities Management Information System (DCAMIS) for data on the performance decisions resulting from completed competitions and cost savings achieved by the department's public-private competition program. We and others have reported over the years on various shortcomings with DCAMIS. DOD officials acknowledged these past shortcomings, but they believe that DCAMIS has been improved and was the best source of data for purposes of the review.

The DOD officials who led the review effort met with various DOD stakeholders and held subsequent discussions and information exchanges by telephone and e-mail as needed to clarify any of the information provided. Officials stated that they completed the collection and review of relevant documentation and other information during the summer of 2010 and coordinated the preliminary results of their review with stakeholders from September 2010 through March 2011.

DOD Met Statutory Requirements for Its Review but Concerns Remain about Issues on Which We and Others Have Previously Reported

DOD complied with statutory requirements in conducting its review of public-private competitions and in submitting its June 2011 report to Congress. In its report, the department addressed the required topics, most of which relate to policy and process issues associated with public-private competitions. But concerns remain about some issues on which the DOD IG and we have previously reported. DOD's report discussed issues involving preliminary planning and service contract inventories and made a recommendation that the moratorium on DOD's use of public-private competitions be lifted.

DOD's Report Addressed the Statutory Requirements

DOD's report 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. Table 1 summarizes how the DOD report addressed the five elements. Additional details on each element and the report's related response follow.

Table 1: How DOD's Report Addressed the Five Required Elements

Required element	DOD response	Met reporting requirement
(1) Status of compliance with revisions to 10 U.S.C. 2461(a) extending competition requirements to activities involving fewer than 10 full-time DOD civilian employees.	DOD reported that it complied with legislative changes regarding public-private competitions involving fewer than 10 employees because it has not initiated any new competitions since the statutory moratorium.	√
(2) Actions taken by DOD to address specific concerns about the department's public-private competition program discussed in a DOD IG December 2008 report.	DOD reported on actions and best practices to be adopted by the military services and components to address the issues raised in the DOD IG report.	√
(3) Ability of systems in effect as of the date of enactment of the NDAA 2010 to provide comprehensive and reliable information on public-private competitions, which for DOD was DCAMIS.	DOD reported its belief that DCAMIS is a comprehensive and reliable system for tracking information on public-private competitions given acceptable error tolerances for the types of data it contains.	√
(4) Appropriateness of the cost differential and overhead rates used in public-private competitions in effect as of the date of enactment of the NDAA 2010.	DOD reported that it did not find a need for any changes to the cost differential at this time. The report also noted that updated guidance on the use of overhead rates emphasized the importance of segregating the categories of overhead costs to make sure all components consistently calculate overhead costs.	√
(5) Adequacy of policies to ensure compliance with the prohibition on requiring military services and other components to conduct a public-private competition at the end of a performance period for an activity that previously had been awarded to an agency organization.	DOD reported that it believes current policies are adequate to implement the statutory prohibition.	√

Source: GAO analysis of DOD's *Report to the Congressional Defense Committees on the Department of Defense's Conduct of Public Private Competitions,* June 23, 2011.

Activities with Fewer Than 10 Full-time Employees

As required, DOD reported on the status of compliance with legislative changes regarding public-private competitions involving fewer than 10 DOD civilian employees. Previously, public-private competitions with fewer than 10 full-time DOD civilian employees were allowed to use a streamlined process that included a cost comparison between the costs of performance of the incumbent government activity and a contractor without creating an MEO. This process did not require a cost differential to be added to the contractor's cost proposal.[5] DOD is now required to conduct a public-private competition for any commercial activity currently performed by DOD civilian

[5] The cost (or conversion) differential is equal to 10 percent of the government's personnel-related costs for the MEO created in response to the competition or $10 million, whichever is less.

employees, regardless of the number of affected DOD civilian positions.[6] Should the current moratorium on competitions be lifted, DOD's report states that the department will not have any issues implementing and complying with the current requirement.

Specific Findings Reported by the DOD Inspector General

The DOD report also addressed specific areas enumerated in a December 2008 report by the DOD IG including how DOD had addressed the DOD IG recommendations. The IG identified eight general concerns about the public-private competitions.[7] These concerns covered a range of issues mostly dealing with the integrity of the process. DOD's main response to the IG report included identifying best practices it intended to implement to improve how DOD conducts competitions. DOD's recommended best practices were also consistent with the Commercial Activities Panel report and our past work.[8] The practices that could improve the conduct of public-private competitions involve (1) building and maintaining an agency staff capable of managing competitions, building the in-house MEO, and overseeing the implementation of competition decisions; (2) centralizing responsibility for conducting public-private competitions to increase control and effectively use support contractors to manage competitions; (3) establishing 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; and (4) avoiding conflicts of interest and protecting the integrity of the public-private competition decision-making process.

Reliability of the DOD Information System

As required, the report discussed the reliability of the Defense Commercial Activities Management Information System (DCAMIS), which is the system DOD has used to track the results of public-private competitions since 2002.[9] In May 2011, this system was taken off-line because of the legislative moratorium on conducting public-private competitions, and as a result, each military service and component is now responsible for maintaining its public-private competition information. DOD officials told us that before the system was taken off-line actions were taken to improve the reliability of the data in DCAMIS. For example, DOD officials said changes were made to the system user manual and automated checks were added to the system to improve the reliability

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[6] While OMB Circular A-76 establishes federal policy for the conduct of public-private competitions of commercial activities, a number of additional requirements, reports, and certifications are necessary for competitions conducted by DOD, per section 2461 of title 10, U.S. Code. As a result, section 2461 limits certain flexibilities on DOD competitions that OMB Circular A-76 would otherwise provide.

[7] DOD, Office of Inspector General, *DOD Inspector General Report to Congress on Section 325 of the "National Defense Authorization Act for Fiscal Year 2008"* (Arlington, Va.: Dec. 15, 2008).

[8] Commercial Activities Panel, *Improving the Sourcing Decisions of the Government* (Washington, D.C.: Apr. 30, 2002).

[9] DCAMIS uses more than 150 data elements to track public-private competitions from announcement of a competition through the selection of the service provider and the end of the last performance period used in the competition. These elements include information such as the status of a competition, the type of solicitation, the issue and close dates of the solicitation, the number of positions competed, the final decision, appeals and protests filed, and the cost comparison data for the proposals.

of data entry. In addition, a review and validation process was established to make DOD components responsible for the accuracy of their respective public-private competition information.

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.[10] 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.

Appropriateness of the Cost Differential and Overhead Rates Used in Cost Comparisons

DOD's report discussed the appropriateness of two separate and distinct cost elements—the cost differential and overhead rates—that are part of developing and comparing the government cost estimate and private sector cost proposal.

- The cost differential, which is required by statute,[11] is added to the cost of the non-incumbent private sector proposal before it is compared with the cost of the government estimate. The purpose of the cost differential is to ensure that no activity is converted to a private sector source unless the expected savings exceed this specific monetary target. The cost differential is calculated as the lesser of either $10 million or 10 percent of the government's direct personnel-related costs for the MEO created in response to the competition, which is then added to the private sector proposal. It is intended to preclude conversions based on marginal estimated savings and is designed to capture nonquantifiable costs related to a conversion, such as the costs of service disruption and decreased productivity. DOD's report states that the cost differential currently in effect is an appropriate methodology. The Commercial Activities Panel also viewed the differential as a reasonable way to take into account the costs of the disruption and risk of converting from the public to the private sector.

- In addition, 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

[10] GAO, *DOD Competitive Sourcing: Results of Recent Competitions*, GAO/NSIAD-99-44 (Washington, D.C.: Feb. 23, 1999).

[11] Section 2461(a)(1)(F) of title 10, U.S. Code.

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.

In our past work, we reported that the standard 12 percent rate for general and administrative overhead was adopted by OMB for all competitions governmentwide, 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.[12] 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.

Similarly, the DOD IG reported in March 2003 that the standard 12 percent rate was not a fair estimate for calculating general and administrative overhead costs. DOD officials we met with in August 2011 stated that DOD is reviewing the procedures used to estimate and compare costs of different configurations of military and DOD civilian staffing with the cost of service contracts. The review is intended to help make DOD workforce mix decisions and could better inform DOD regarding the methodologies that might be used to compute more accurate overhead cost estimates in public-private competitions.

Holding Follow-on Competitions at the End of a Performance Period

DOD's report stated that current DOD policies are adequate to implement a statutory provision prohibiting the military services and other DOD components from being required to conduct another public-private competition at the end of a performance period for an activity that had previously been subject to a competition.[13] DOD stated in its report that current DOD policies are adequate to implement this provision. More

[12] GAO, *Defense Outsourcing: Better Data Needed to Support Overhead Rates for A-76 Studies*, GAO/NSIAD-98-62 (Washington, D.C.: Feb. 27, 1998).

[13] Section 2461(a)(4) of title 10 of the U.S. Code states that a military department or defense agency may not be required to undertake a public-private competition under OMB Circular No. A-76 at the end of the performance period specified in a letter of obligation or other agreement entered into with DOD civilian employees pursuant to a public-private competition for any function of the department performed by DOD civilian employees.

specifically, a March 2008 DOD policy memorandum outlines the limits of the provision. But the memorandum recognizes that the provision does not entirely prohibit the use of public-private recompetitions and states that the provision gives the military services and components the discretion to conduct them. The memorandum noted that the military services and DOD components can still independently determine the commercial activities that will be subject to a public-private competition during the normal program and budget review process. As a result, the memorandum notes that annual and out-year public-private competition plans can be developed by the military services and components and then implemented, provided they receive budget approval. DOD's report recommended that the department issue clarifying guidance regarding the statutory limitations on recompetitions and how to correctly apply them when reviewing work for inclusion in a public-private competition that may include an activity previously subject to a competition.

Preliminary Planning and Service Contract Inventories Also Discussed in DOD's Report

In addition to the required elements discussed above, the DOD report addressed two other issues related to the conduct of public-private competitions—preliminary planning and the preparation of DOD service contracts inventories. Preliminary planning has generally occurred prior to the announcement of a public-private competition. In some cases, preliminary planning may determine that a public-private competition is not feasible or appropriate and rule out the need for holding a competition. The DOD report recommends that preliminary planning not be included in the formal competition period. We have reported that depending on the complexity of the competition, the competition periods (from public announcement to a performance decision) have taken on average about 20 to 22 months for single function studies and 31 to 35 months for multifunction studies.[14] Because some requirements have changed since our work was completed, the extent to which these average timeframes take into consideration any of the time required for preliminary planning is unclear.

As described in the DOD report, the department is taking steps to improve the accuracy of its inventories of contractor employees, which must be certified as complete as a condition of restarting its public-private competition program. But these steps have yet to be completed. In fiscal year 2009, DOD estimated that nearly 767,000 contractor employee full-time equivalents (FTE) were working under service contracts in support of DOD activities.[15] We have reported on DOD's contractor inventories since December 2009. Most recently, in January 2011, we reported that DOD had implemented a more uniform approach for compiling its fiscal year 2009 inventories compared to its approach in the prior year and that these changes in the approach affected both the reported

[14] GAO, *Defense Management: DOD Faces Challenges Implementing Its Core Competency Approach and A-76 Competitions*, GAO-03-818 (Washington, D.C.: July 15, 2003), and *Competitive Sourcing: Challenges in Expanding A-76 Governmentwide*, GAO-02-498T (Washington, D.C.: Mar. 6, 2002).

[15] Contractor employee estimates are stated in terms of FTEs, a measure of employment that represents the number of full-time employees that could have been employed if the reported number of hours worked by part-time employees had been worked by full-time employees. Generally, one FTE is equal to one workyear of approximately 2,080 hours.

spending on service contracts and the reported number of contractor employee FTEs.[16] DOD noted that the improved approach provided more consistency in certain areas but still reflected continued limitations with the inventory. In response to our report, DOD concurred with our recommendations calling for the department to develop a plan of action to better collect manpower data and address limitations in its approach to meeting inventory requirements and to assess ways to improve how the department estimates contractor employee FTEs until it is able to collect manpower data directly from contractors. In its report on public-private competition, DOD said the department is working to develop an action plan and guidance to improve the inventory process to make it a more valuable tool that improves DOD's services acquisition and total force management. In August 2011, DOD officials told us that the accuracy of the service contracts inventory is improving, but it is not ready to be certified.

DOD Has Not Used Its Statutory Authority to Extend the Time Period for Completing Public-Private Competitions

Section 322 of the NDAA 2010 provided that the duration of any public-private competition initiated by DOD after October 28, 2009, may not exceed 24 months. Section 322 allows DOD to specify an alternative period not to exceed 33 months if it determines that the competition is of such complexity that it cannot be completed within 24 months. The department must provide a written notification to Congress to use the alternative time period and explain the basis for such an extension.[17] A DOD official told us that the department has not prepared congressional notifications to use an alternative time period because no new competitions have begun since the moratorium on competitions began. Section 322 requires that we report again on DOD's use of the alternative time period no later than October 28, 2014.

Concluding Observations

Efforts to use public-private competitions as a means to implement cost-effective solutions to carry out commercial activities in DOD have undergone much scrutiny over the last decade, culminating in the current moratorium on the competitions. As a step toward lifting the moratorium and to satisfy requirements in the NDAA 2010, DOD has reported to the congressional defense committees on its policies and processes governing the competition process. In large part, the report stated that DOD believes its revised policies and processes are sufficient to continue with its public-private competition program. Our review of the department's report found that the DOD report met the requirements contained in the NDAA 2010. The DOD report also provided recommendations to build on its updated policies and processes, which we believe could improve the program. DOD's recommendations call for revised overall guidance governing the use of public-private competitions within the military services and DOD

[16] GAO, *Defense Acquisitions: Further Action Needed to Better Implement Requirements for Conducting Inventory of Service Contract Activities*, GAO-11-192 (Washington, D.C.: Jan. 14, 2011).

[17] The formal congressional notification must address (1) any efforts to geographically or functionally break up the study included in the public-private competition, (2) justification for undertaking a public-private competition instead of using internal realignment alternatives, and (3) the cost savings that DOD expects to achieve as a result of the public-private competition.

components that would incorporate the various legislative, regulatory, and DOD policy changes as well as incorporate the best practices identified in DOD's report. The DOD report also recommended excluding preliminary planning from the statutory time limit allowed for public-private competitions. Based on our prior work, we generally agree with the DOD recommendations and believe they would add uniformity and improvement across the military services and components in how DOD conducts public-private competitions should the legislative moratorium on these competitions be lifted.

Scope and Methodology

To assess the methodology and data sources DOD used in conducting its required review, we obtained and reviewed the policies, best practices, and lessons learned that DOD officials collected from the military services and other DOD components regarding how DOD conducts public-private competitions. In addition, we interviewed officials from the Offices of the Under Secretary of Defense (Personnel and Readiness) and the Under Secretary of Defense (Acquisition, Technology and Logistics) to identify the data sources and methodologies DOD used to conduct the review. To determine whether the statutory requirements were met, we reviewed the statute and the report DOD prepared to meet the requirements. We also met with DOD IG Office officials to discuss their views on DOD's report. We conducted a limited analysis of the policy, best practice, and lessons learned documentation collected by DOD officials, and we did not independently verify any of the data included in DOD's report on the public-private competitions completed and cost savings achieved.

To determine the extent to which DOD's report considered prior work completed by us and the DOD IG on how DOD conducts of public-private competitions, we reviewed our past work, analyzed past DOD IG reports concerning public-private competitions, and met with DOD IG Office officials to discuss their past work. We also reviewed relevant research conducted by the Congressional Research Service and Congressional Budget Office to inform our assessment of DOD's review. To assess DOD's use of the alternative time period for public-private competitions, we requested copies of the notifications that DOD is required to submit to Congress should the alternative time period be used and we reviewed information in DOD's report on the status of studies that were announced since the beginning of fiscal year 2009.

We conducted this performance audit from July to September 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Agency Comments and Our Evaluation

We provided a draft of this report to DOD for comment. DOD provided written comments, which are reprinted in enclosure I. The Director, Requirements and Program & Budget Coordination, in the Office of the Under Secretary of Defense (Personnel and Readiness) expressed concern with how we reported on the standard 12 percent rate used to calculate overhead costs in public-private competitions. Briefly stated, he said

that the 12 percent rate may affect the precision, but not the fairness, of the results of a public-private competition. We did not intend to imply that a rate of 12 percent might not be appropriate in certain circumstances or is unfair. Depending on the activity that is being competed under the A-76 process, however, we believe specific rates based on empirical data might be higher or lower. To address DOD's concern, and consistent with our previous reporting on this issue, we revised the language of our report.

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We are sending a copy of this report to the Secretary of Defense. In addition, the report is available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions, please contact me at (202) 512-4841 or woodsw@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in enclosure II.

William T. Woods
Director, Acquisition and Sourcing Management

Enclosures - 2

The Honorable Carl Levin
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The Honorable John McCain
Ranking Member
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The Honorable Daniel K. Inouye
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The Honorable Thad Cochran
Ranking Member
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Comments from the Department of Defense

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PERSONNEL AND READINESS

SEP 20 2011

Mr. William T. Woods
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Dear Mr. Woods,

This is the Department of Defense (DoD) response to the GAO draft report 11-923R, "DOD Met Statutory Reporting Requirements on Public-Private Competitions".

The Department appreciates the support of the recommendations made to Congress in June. We have one concern related to the following statement on page 2 specific to the issue of uncertainty about the "fairness" of results

> *"Further, the report discussed the overhead rate used in the cost comparisons and called for no change, even though both the DOD Inspector General and we have reported that the standard rate of 12 percent does not have a sound analytical basis, which leaves some uncertainty about the fairness of the results of public-private competitions."*

Page 9 of the report correctly states that the overhead amount actually affects the precision of the results of public-private competitions, not the fairness. The 12% overhead amount is not unfair; rather ommitting it would allow unfair manipulation. In fact, the 12% overhead amount is used specifically to address the fairness of the results.

Should you have any questions, please contact my primary action officer Ms. Amy Parker at 703-697-1735, or at amy.parker@osd.mil.

Sincerely,

Kevin Kelly
Director, Requirements and Program & Budget Coordination

GAO Contact and Staff Acknowledgments

GAO Contact

William T. Woods, (202) 512-4841 or woodsw@gao.gov

Staff Acknowledgments

In addition to the contact named above, Jim Fuquay, Assistant Director; Morgan Delaney Ramaker; Matt Drerup; Marie Ahearn; Kenneth Patton; and Roxanna Sun made key contributions to this report.

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