



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON, DC 20310-0111

March 31, 2003

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY
(ACQUISITION, LOGISTICS AND TECHNOLOGY)
DEPUTY UNDER SECRETARY OF THE ARMY
(OPERATIONS RESEARCH)
DEPUTY CHIEF OF STAFF, G-1
DEPUTY CHIEF OF STAFF, G-3
DEPUTY CHIEF OF STAFF, G-8

SUBJECT: Army Analytical Function Exemption.

Reference:

- a. Memorandum, DUSA (OR), January 14, 2003, subject: Exemptions from the Federal Activities Inventory Reform (FAIR) Act
- b. Memorandum, OASA (ALT), January 15, 2003, subject: Revised Exemptions from the Federal Activities Inventory Reform (FAIR) Act
- c. Memorandum, DCS, G-3 (DAMO-FMP), December 3, 2002, subject: Request for Exemption – Non-Core Competency Working Group Review of G-3 Functions.
- d. Memorandum, ODCS, G-1 (DAPE-PRM), January 9, 2003, subject: Request for Partial Exemption for Y240, Management Headquarters – Manpower Management, and Y245, Manpower Management Operations.

Function. The analysis function is largely the work performed by Department of the Army analysts performing the following types of analyses—program development and management; financial; economic; cost; budget; administration; combat doctrine; strategic manning; force readiness and structure; accounting and resource management; command and installation; manpower and force program; equipment; acquisition support; operations analysis (combat development/requirements); personnel resources management; modeling and simulation war gaming; and management analysis (general).

This decision is limited in scope to those functions and positions that are *exclusively* analytical in nature. Although some significant levels of functions and positions within the scope of this determination may be documented in a management

headquarters activity, most are performed in field operating agencies and activities not included in a management headquarters. There are separate decisions pertaining to financial management, acquisition, and planning functions, which will deal with the inherently Governmental aspects of these functions. In addition, there are separate decisions on military and civilian career progression for inherently Governmental functions and core competencies. The fact that a position has "analyst" in its label is not completely dispositive of its characterization, as these separate decisions must also be considered.

Decision. The analysis functions are not a direct core competency of the Army; not specifically required by any provision of Title 10 (such as Sections 3013 and 3022); not specifically required by any other statutory provision; and are not inherently Governmental or necessarily military essential. Therefore, the degree the function is retained, divested, or competed is a matter of management discretion. However, the analysis function is considered a key enabler to the core competencies of the Army. The analysis function includes direct support to the Acquisition Process by determining the Analysis of Alternatives, and further enables the Institutional Army's missions of organizing, equipping, training, maintaining and sustaining the Operational Army through Combat Modeling, Combat Developments, Force Management, and Programming and Budgeting. Most of the analytical processes described above require specialized skills that do not lend themselves well to the A-76 process. Congress has recognized this to be the case already by exempting the research, development, test and evaluation function from the A-76 process. Functional proponents, with G-8 performing an integrating role, will complete efforts to examine alternatives to A-76 within one year of this memorandum. (The alternatives to A-76 are described in an April 16, 2002, Senior Executive Council memorandum, subject: Using Core Competencies to Determine DoD's Sourcing Decisions.) This analysis and implementation is expected not to exceed three years. In the event, the analysis or implementation shows that some or all of the affected analytical positions do not lend themselves well to the alternatives prescribed in this memorandum, these positions will be exempted from further review for public-private competition or conversion.

At the enclosure are instructions on how to implement this decision in the Inventory of Commercial and Inherently Governmental Activities (including the Federal Activities Inventory Reform Act Inventory), to be developed by DCS, G-1 in coordination with our responsible staff officers.

Requestors Positions on Issues. In general, referenced requestors provided justification to demonstrate the inherently governmental status of some military and civilian analyst positions, an exemption status for other military and civilian positions, and the potential for competition of some civilian positions. The referenced exemption requests were supported by several contentions, the most common being risk to career progression, the need for military-unique knowledge, and the concern over where to draw the manpower mix lines to avoid potential risks in the risk categories listed in the Third Wave standards of review.

Standard of Review. The senior HQDA functional official for a function must describe and substantiate specifically how preparation and implementation of a Third Wave implementation plan for each course of action poses substantial and specific risks to a core war-fighting mission of the Army (i.e., a core competency) or violates a statutory requirement affecting a function. The following are the risk factors to evaluate to consider: force management risk; operational risk; future challenges; and institutional risk. How these risk criteria are applied may vary based on each course of action evaluated (i.e., A-76; alternatives to A-76; military conversions; transfer to another agency; divestiture, and privatization). Therefore, exemption requests and decisions must assess the potentially adverse impact of each course of action.

Core Competency Relevant to Risk Issue. The analysis functions encompassed in Resource Management budgeting and programming, support to Acquisition and Fielding, Combat modeling, Combat Developments and Requirements Analysis, and Force Structure Development and Management support the nearly all of the six recognized core competencies of the Army, as provided for in Army Field Manual 1 and The Army Plan: Shape the Security Environment (Deter Forward); Prompt Response; Forcible Entry Operations; Mobilize the Army; Sustained Land Dominance; or Support Civil Authority. For example, the analysis performed through combat modeling, combat development and force development directly helps shape and define the capabilities that U.S. forces will need to deter and defeat adversaries to enable "Sustained Land Dominance". The resource management analytical function enables the prioritization of capital, emerging system acquisition, and manpower initiatives and activities that result in the force structures adding to the broad-based capabilities required for "Forcible Entry Operations" and "Sustained Land Dominance." Combat Modeling and force management also provide independent analysis and oversight relating to the Army's ability to "Mobilize the Army" (analysis helps answer the question of what the optimal COMPO mix is to enable the core capabilities the Army wants to provide Joint Force Commanders). The force strategy analysis subcomponent of Force Management and Development and Combat Modeling enables examination of options for defending the U.S. in the context of homeland security initiatives. It also provides forums for political military games and analysis. These analyses lend definition to "Support Civil Authorities" and Shaping the Security Environment". The analysis function examines and helps validate the strategic placement of Army equipment around the world that underpins "Prompt Response"

The analysis function is a key enabler to the Army's core competencies. The analysis function touches on virtually every aspect of the Secretary of the Army's responsibility to recruit, organize, supply, equip, train, service, mobilize, administer, and maintain an Operational Army.

Statutory Requirement Relevant to Divestiture Issue. There is no requirement to perform the analysis function in 10 U.S. Code, Section 3013, nor is there a requirement in section 3022 or any other statute provided in the record. Therefore, there is no statutory bar with respect to some level of divestiture, consolidation, or downsizing of the analytical function.

Inherently Governmental Relevant to Outsourcing Issue. An inherently Governmental function includes those activities that require either the exercise of substantial discretion in applying government authority or the making of value judgments in making decisions for the Government. An inherently Governmental function is so intimately related to the public interest as to require performance by Federal Government employees; it does not include providing advice to Federal Government officials. According to the FAIR Act's statutory definition of inherently Governmental functions, analysis and advisory functions are "normally" not inherently Governmental.

An analyst providing advice or recommendations to a Government official may be performing a very important function. But analysis, and providing recommendations based on analysis, normally does not involve interpreting or executing the laws of the United States so as to bind the Government to take or not take a course of action. Analysis in support of combat modeling, combat developments, force management, programming and budgeting, does not involve interpreting and executing the laws of the United States so as to advance United States interests by military action. Resource management analysis does not involve interpreting or executing the laws of the United States so as to exert ultimate control over the acquisition, use, or disposition of United States property or funds.

A substantial percentage of the Army's analytical functions are performed by the private sector, to include Federally Funded Research and Development Corporations (FFRDCs) and firms in the private sector.

Appendix B to Office of Federal Procurement Policy (OFPP) Letter 92-1, Inherently Governmental Functions, lists the following services and actions as not considered inherently Governmental -

- Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.
- Services that involve or relate to reorganization and planning activities.
- Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.
- Services that involve or relate to the development and regulations.
- Services in support of acquisition planning.

Although the analysis support functions included in Appendix B of the Office of Federal Procurement Policy Letter 92-1 are ordinarily not inherently Governmental, the level of contractual support in specific circumstances may approach being inherently Governmental because of the way in which the contractor performs the contract or the manner in which the Government administers the contract.

Statutes Relevant to Sourcing Decision. There are no statutes identified in the record that mandate that analysis functions be performed by Government officials. Analysis functions are subject to the standard statutory processes (10 U.S. Code, Section 2461 and Section 8014 of the annual appropriations acts) that require public-private competition in all but a few circumstances, such as the exceptions for functions with 10 or fewer civilian employees and for use of the preferential procurement programs. Therefore, enabling legislation is required before pursuing any alternatives to A-76. Most of the analytical processes within the scope of this determination require specialized skills that do not lend themselves well to the A-76 process. Congress has recognized the limitations of the A-76 process when applied to certain kinds of specialized professional skills, such as the research, development, test and evaluation function, and the architect and engineer function, both of which are exempted by law. Accordingly, in the event an alternative to A-76 is later recommended the affected functional proponents, enabling legislation will be proposed for consideration.

Personal Services. The personal services issue does not usually arise unless an analyst is directly supervised by an inherently Governmental decision maker in circumstances where effective analysis requires the level of supervision found in an employer-employee relationship, rather than an independent contractor relationship. A personal services arrangement may typically be mitigated by changing the terms of a contract or the manner of administering a contractual relationship.

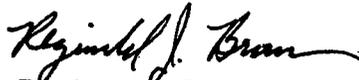
Conflicts of Interest. To the extent the required specialized analytical skills are provided by a small group of contractors, there may be a potential for biased analysis that would confer an unfair competitive advantage on the company writing the analysis, were the Army to divest its organic analytical capability. This concern is not necessarily completely mitigated by restrictions within the acquisition process precluding contractors from bidding on work for which they wrote the specifications—the contractor who gave the advice is prohibited from making an offer regarding the resulting procurement.

Military Conversions. The central issue concerns whether adequate performance of the function in the infrastructure requires military-unique knowledge and skills. According to Office of Secretary of Defense Guidance for compiling the Inventory of Commercial and Inherently Governmental Activities, military-unique knowledge and experience can only be derived from *recent* first-hand involvement in military activities – i.e., through commanding military forces or conducting or participating in military operations or exercises. This knowledge and experience must be more substantial than familiarity with doctrine, tactics, operations, or regulations; capabilities that can be developed by civilians; or, advice military retirees can provide based on their knowledge and experiences.

The current policy and guidelines under OPMS 3 establish the precedent for military personnel in analysis function positions in the Institutional Army. As the exemptions concerning military career development, personnel transformation, and the level of management discretion in workforce mix management are considered, I will

impose the following guidelines pending full implementation of the Third Wave initiatives:

- a. Personnel Transformation will address the impacts of the OSD military knowledge and skills policy on the current officer population career opportunities and development. In the interim, analysis positions programmed for FA49 and FA50 will be exempted from A-76 competition pending the personnel transformation decisions addressing skill qualification identifiers or some other means for enabling rotational assignments in to the operating force that will enable meeting the military unique knowledge and skills policy. A review of these efforts will be completed within at least one year of this memorandum, not to exceed three years, upon which all military positions deemed necessary to enable the analysis function will be permanently exempted from review for public-private competition or conversion. (The permanence of this exemption is subject to review upon issuance of a revision to the OMB Circular A-76.)
- b. Analysis function requirements (military, civilian, and contractor) in the Generating Force, and the associated workforce mix criteria, will be addressed in the Total Army Analysis (TAA) process.



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Enclosure

CODING RULES for Army Analysis and Combat Development functions

1. Combat Development
 - a. All military in the following APEs (except FA49)
 - 1. 121018 Combat Development Activities
 - 2. 122015 Combat Development Tests, Experimentation & Instrumentation
 - 3. 122018 Combat Development Activities

Code F – Military Unique Skills and Knowledge
 - b. All civilians in above APE's
2. Operations Research functions (Except as stated in the Management Headquarters, ASA(FM&C), and Army Test and Evaluation Command decisions)
 - a. Officers in FA49

Code P – Pending Restructuring
(will be coded F after examination of restructuring)
 - b. Civilians in GS-1515

Code X – Candidates for alternatives to A-76
(will be coded H if alternatives prove unfruitful)
3. Scientists and Engineers in Major Analytic Agencies
 - a. Concepts Analysis Agency (W3WCAA)
 1. Civilians in the following series
 - GS-1529 Mathematics and Statistician Series
 - GS-1550 Computer Science Series

Code X – Candidates for alternatives to A-76
(will be coded H if alternatives prove unfruitful)

b. US Army Training and Doctrine Command

1. Civilians in the following series

GS-0801 General Engineering
GS-0830 Mechanical Engineering
GS-0840 Nuclear Engineering
GS-0854 Computer Engineering
GS-0855 Electronics Engineering
GS-0856 Electronics Technician
GS-0861 Aerospace Engineering
GS-0893 Chemical Engineering

Code X – Candidates for alternatives to A-76
(will be coded H if alternatives prove unfruitful)

GS-0896 Industrial Engineering
GS-1301 General Physical Science
GS-1310 Physics
GS-1311 Physical Science Technician
GS-1320 Chemistry
GS-1521 Mathematics Technician
GS-1531 Statistical Assistant
GS-1550 Computer Science

c. US Army Material Systems Analysis Activity (W3JCAA)

1. All grades in the following series

GS-0801 General Engineering
GS-0830 Mechanical Engineering
GS-0855 Electronics Engineering
GS-0896 Industrial Engineering

Code X – Candidates for alternatives to A-76
(will be coded H if alternatives prove unfruitful)

GS-1301 General Physical Science
GS-1310 Physics
GS-1529 Mathematics and Statistician Series
GS-1550 Computer Science

4. Force Management and Force Development functions

Officers in FA50 & Civilians in GS-343 (Program/Mgmt Analyst) excluding those in Management Headquarter positions

a. Officers in FA50

Code P – Pending Restructuring
(will be coded F after examination of restructuring)

b. Civilians in GS-343

Code X – Candidates for alternatives to A-76
(will be coded H if alternatives prove unfruitful)