

procuring municipal services for participating installations from local counties or municipalities, and containing any recommendations that the Secretary considers appropriate regarding expansion or alteration of the program.

(2) The Comptroller General shall submit to the congressional defense committees an assessment of the findings and recommendations contained in the report submitted under paragraph (1).

(f) **TERMINATION OF PILOT PROGRAM.**—The pilot program shall terminate on September 30, 2010. Any contract entered into under the pilot program shall terminate not later than that date.

SEC. 326. BID PROTESTS BY FEDERAL EMPLOYEES IN ACTIONS UNDER OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A-76.

(a) **TREATMENT OF AGENCY TENDER OFFICIAL AS INTERESTED PARTY.**—Section 3551(2) of title 31, United States Code, is amended—

(1) by inserting “(A)” after “(2)”; and

(2) by adding at the end the following new subparagraph:

“(B) The term includes the official responsible for submitting the Federal agency tender in a public-private competition conducted under Office of Management and Budget Circular A-76 regarding an activity or function of a Federal agency performed by more than 65 full-time equivalent employees of the Federal agency.”.

(b) **FILING OF PROTEST ON BEHALF OF FEDERAL EMPLOYEES.**—Section 3552 of such title is amended—

(1) by inserting “(a)” before “A protest”; and

(2) by adding at the end the following new subsection:

“(b)(1) In the case of an agency tender official who is an interested party under section 3551(2)(B) of this title, the official may file a protest in connection with the public-private competition for which the official is an interested party. At the request of a majority of the employees of the Federal agency who are engaged in the performance of the activity or function subject to such public-private competition, the official shall file a protest in connection with such public-private competition unless the official determines that there is no reasonable basis for the protest.

“(2) The determination of an agency tender official under paragraph (1) whether or not to file a protest is not subject to administrative or judicial review. An agency tender official shall provide written notification to Congress whenever the official makes a determination under paragraph (1) that there is no reasonable basis for a protest.”.

(c) **INTERVENTION IN PROTEST.**—Section 3553 of such title is amended by adding at the end the following new subsection:

“(g) If an interested party files a protest in connection with a public-private competition described in section 3551(2)(B) of this title, a person representing a majority of the employees of the Federal agency who are engaged in the performance of the activity or function subject to the public-private competition may intervene in protest.”.

(d) **APPLICABILITY.**—The amendments made by this section shall apply to protests filed under subchapter V of chapter 35 of title 31, United States Code, that relate to studies initiated under Office of Management and Budget Circular A-76 on or after the end of the 90-day period beginning on the date of the enactment of this Act.

(e) **RULE OF CONSTRUCTION.**—The amendments made by this section shall not be construed to authorize the use of a protest under subchapter V of chapter 35 of title 31, United States Code, with regard to a decision made by an agency tender official.

31 USC 3551
note.

SEC. 327. LIMITATIONS ON CONVERSION OF WORK PERFORMED BY DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES TO CONTRACTOR PERFORMANCE.

10 USC 2461
note.

(a) **REQUIRED COST-SAVINGS THRESHOLD FOR CONVERSION.**—If a public-private competition conducted under the Office of Management and Budget Circular A-76 dated May 29, 2003 (68 Fed. Reg. 32134), regarding an activity or function performed by civilian employees of the Department of Defense is required to include a formal comparison of the cost of civilian employee performance of the activity or function with the cost of contractor performance, the Secretary of Defense shall maintain the continued performance of the activity or function by civilian employees unless the competitive sourcing official determines that, over all performance periods stated in the solicitation of offers for performance of the activity or function, the cost of performance of the activity or function by a contractor would be less costly to the Department of Defense by an amount that equals or exceeds the lesser of the following:

(1) \$10,000,000.

(2) 10 percent of the most efficient organization's personnel-related costs for performance of the activity or function by civilian employees.

(b) **PROHIBITION ON MODIFICATION OF FUNCTIONS TO PERMIT STREAMLINED A-76 STUDY.**—The Secretary of Defense shall ensure that no organization, function, or activity of the Department of Defense is consolidated, restructured, reengineered, or otherwise modified in any way for the purpose of exempting any public-private competition conducted under the Office of Management and Budget Circular A-76 dated May 29, 2003 (68 Fed. Reg. 32134), regarding a commercial or industrial type function of the Department of Defense from the requirement to formally compare, in accordance with such Circular, the cost of civilian employee performance of the function with the cost of contractor performance.

(c) **EXCEPTION.**—Subsection (a) does not apply in the case of a public-private competition conducted as part of the best-value source selection pilot program authorized by section 336 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 10 U.S.C. 2461 note).

SEC. 328. COMPETITIVE SOURCING REPORTING REQUIREMENT.

Not later than February 1, 2005, the Inspector General of the Department of Defense shall submit to Congress a report addressing whether the Department of Defense—

(1) employs a sufficient number of adequately trained civilian employees—

(A) to conduct satisfactorily, taking into account equity, efficiency and expeditiousness, all of the public-private competitions that are scheduled to be undertaken by the Department of Defense during the next fiscal year (including a sufficient number of employees to formulate satisfactorily the performance work statements and most efficient organization plans for the purposes of such competitions); and