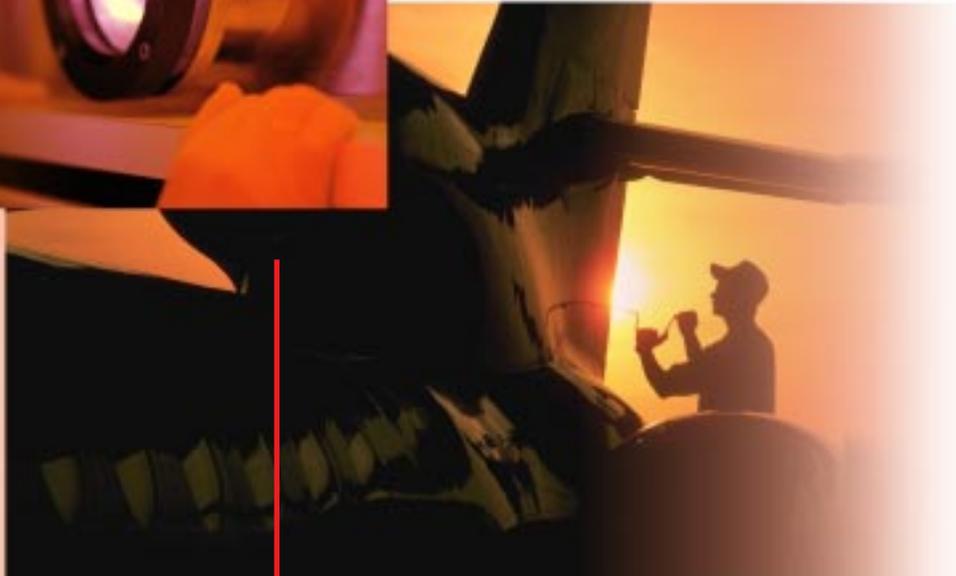


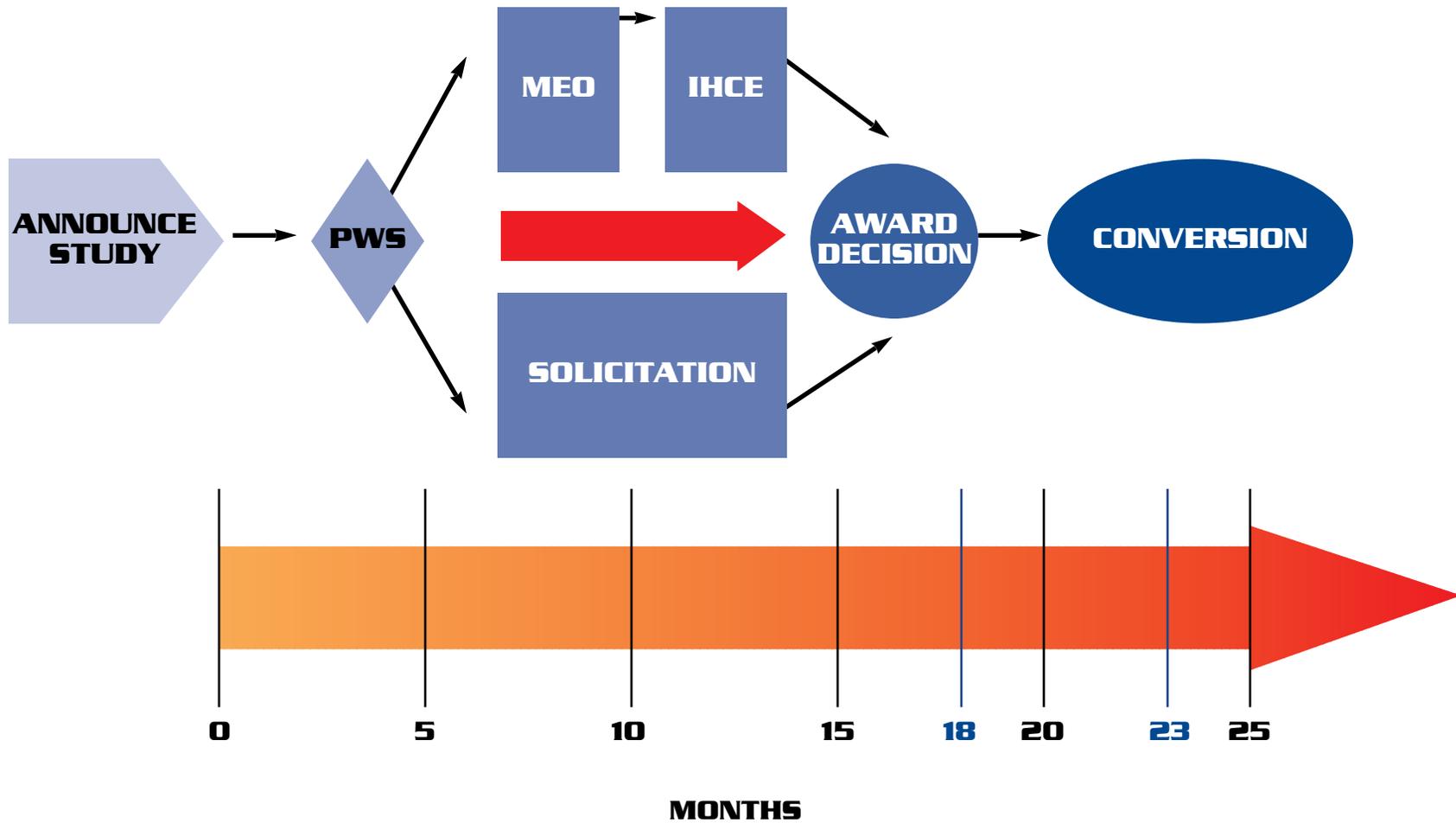


The Department of Defense **Commercial Activities Program**



Highlights of Policy and Procedures

A-76 Cost Comparison Studies



Key

PWS - Performance Work Statement
MEO - Most Efficient Organization
IHCE - In-House Cost Estimate



Indicates Processes Can Run Concurrently

Foreword

The DoD Commercial Activities Program implements the federal commercial activities program and supports that program's two central principles: the government should utilize the private sector; and the competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength. In recognition of those principles, it has been and continues to be the general policy of the Department of Defense to rely on the private sector, when appropriate, to supply the products and services that the Department needs.

The DoD Commercial Activities Program makes use of competition in the marketplace to foster improved quality, increased efficiency, and savings in DoD operations. Quality service and reduced costs are accomplished in two ways: (1) by providing an incentive to the military departments and defense agencies to clearly define their performance standards and to reduce the cost of their operations in order to compete with private industry; and (2) by offering the private sector an opportunity to meet DoD needs when it can do so more economically. In either case, the American people are the true beneficiaries, since costs are reduced whether DoD or industry "wins" the competition.

The DoD Commercial Activities Program should be an integral part of your overall installation management program. This brochure provides an overview of the DoD Commercial Activities Program. It highlights DoD policy and procedures for determining whether commercial activities should be performed in-house, by contract, or through intragovernmental support agreements. This overview is based on the procedures outlined in Office of Management and Budget (OMB) Circular A-76, *Performance of Commercial Activities*, and its supplemental handbook. DoD guidance is provided in DoD Instruction 4100.33, *Commercial Activities Program Procedures*.



John B. Goodman

Deputy Under Secretary
(Industrial Affairs and Installations)



The DoD Commercial Activities Program

DoD activities are classified as either inherently governmental or commercial. Inherently governmental activities are those that are so intimately related to the exercise of the public interest that they mandate performance by DoD civilian employees. Command of military organizations and control of federal funds are examples of such activities. Inherently governmental activities are not subject to the requirements of the DoD Commercial Activities Program.

All other activities are commercial. In general, all DoD commercial activities that are staffed partially or solely by DoD employees that are paid by appropriated funds are potential candidates for competition under the DoD Commercial Activities Program. However, the DoD Commercial Activities Program is

not mandatory for commercial activities staffed solely with DoD employees paid with nonappropriated funds, such as military exchanges.

To determine whether commercial activities should be performed in-house using DoD personnel, under contract with a private-sector source, or through intragovernmental support agreements, the military departments and defense agencies are required to conduct cost comparisons. Specifically, the DoD Commercial Activities Program requires the DoD components to (1) define their minimum work requirements, (2) determine the most efficient organization (MEO) to meet the defined requirements using a federal work force and then determine the associated costs, and (3) compare that cost with offers from the private sector or non-DoD agencies. If it is more economical to have a contractor perform the activity, then the activity is to be contracted. If it is not more economical, then the activity is to remain in-house, but the commander must implement the MEO developed during the cost-comparison process. If specific criteria are met, a commercial activity may be converted to or from contract without a cost comparison. Such a conversion is commonly referred to as a direct conversion. While direct conversions provide some flexibility, they have limited application. (Cost-comparison requirements related to intragovernmental support agreements are covered on page 11.)

The DoD Commercial Activities Program does not require that all commercial activities be contracted to the private sector. Rather, it requires that competitions be conducted to determine whether work should be performed by the government or by the private sector.

The competitive process alone enhances productivity by challenging commanders and managers to find the most effective and efficient means of doing business at competitive costs.

Inherently Governmental Activities

Definition: Activities that are so intimately related to the public interest as to mandate performance by government employees. These activities require either the exercise of discretion in applying government authority or the use of value judgment in making decisions for the government.

Examples:

- Command of military organizations
- Management and supervision of DoD personnel
- Criminal investigations
- Revenue disbursements
- Control of federal funds

For detailed guidance on the identification of inherently governmental activities, see DoD Instruction 4100.33, *Commercial Activities Program Procedures*. That instruction contains (at appendix 5 of enclosure 3) the Office of Federal Procurement Policy's 1992 policy letter concerning inherently governmental functions.

Regardless of the outcome, commanders, DoD, and the American taxpayer benefit because operational costs are reduced.

DoD Commercial Activities

Definition: Activities that are operated by a DoD component and that provide a recurring service that could be obtained from a private source. A commercial activity may be part of an organization or a type of work that is separable from other functions or activities and is suitable for performance by contract.

Examples:

- Office and administrative services
- Automatic data processing
- Food services
- Industrial shops and services
- Maintenance, overhaul, repair, and testing
- Management support services
- Audiovisual products and services

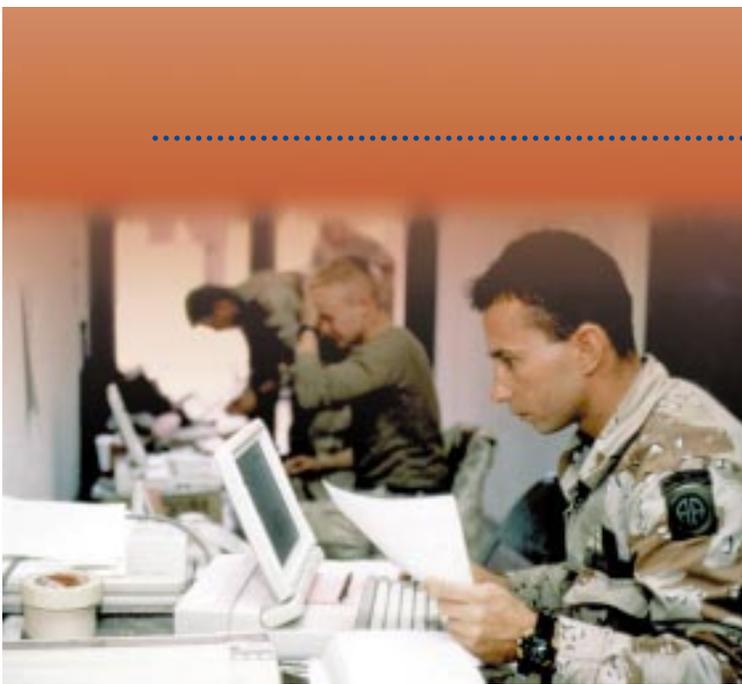
For detailed guidance on the identification of commercial activities, see DoD Instruction 4100.33, *Commercial Activities Program Procedures*.



DoD Policy Regarding Commercial Activities

The DoD Commercial Activities Program supports DoD policy. That policy, as specified in DoD Instruction 4100.33, *Commercial Activities Program Procedures*, has the following objectives:

- ◆ *Ensure DoD mission accomplishment.* The DoD Commercial Activities Program is a means for commanders to accomplish the overall DoD mission efficiently and effectively, to maintain readiness, and to ensure a capability for mobilizing the defense and support structure.
- ◆ *Retain governmental functions in-house.* Those functions that are inherently governmental in nature and intimately related to the public interest shall be performed only by DoD personnel.
- ◆ *Achieve economy and enhance productivity through competition.* DoD shall rely on viable private-sector sources to provide commercial products and services, and should compare the cost of contracting to the cost of in-house performance.
- ◆ *Delegate decision authority and responsibility.* The DoD components may delegate decision authority and responsibility to lower-level organizations.
- ◆ *Provide placement assistance.* DoD components will provide all available placement assistance to employees whose federal jobs are eliminated because of staff reductions resulting from cost comparisons.
- ◆ *Share saved resources.* When permissible, DoD components may make available to the commander or installation a portion of any resources saved as a result of a cost comparison.
- ◆ *Perform a cost comparison, when appropriate.* DoD components shall not modify, reorganize, divide, or in any way change a commercial activity for the purpose of circumventing the requirement to perform a cost comparison.



Identification of Candidate Activities Eligible for the Competitive Process

In general, any commercial activity performed by a DoD component is a candidate for the cost-comparison process. Typically, activities that should be considered candidates for the program fall into the following broad categories:

- ◆ *Contracted activities.* Commercial activities should be obtained by contract, unless a cost comparison demonstrates that in-house or intragovernmental support agreement performance is more cost-effective. Existing contracts cannot be converted to in-house performance without a cost comparison.
- ◆ *New requirements.* Commercial activities should be obtained by contract, unless contract quality or price appears unreasonable. A cost comparison must be performed to justify the in-house or intragovernmental support agreement performance.
- ◆ *Expansions.* Commercial activities should be obtained by contract, unless the contract quality or price appears unreasonable. A cost comparison must be performed to justify in-house or intragovernmental support agreement performance.
- ◆ *Activities with 10 or fewer full-time (or full-time-equivalent) DoD civilian employees.* Commercial activities may be performed by contract (or in-house personnel) without a cost comparison.
- ◆ *Activities with 11 to 45 full-time (or full-time-equivalent) DoD civilian employees.* Commercial activities may be converted directly to contract if all directly affected DoD civilian employees on permanent appointments can be reassigned to other comparable federal positions, if fair and reasonable contract prices can be obtained by competitive award, and if all congressional reporting requirements can be satisfied.
- ◆ *Activities performed by the military.* If not military essential, commercial activities performed solely by military personnel may be converted to contract without cost comparison.
- ◆ *Preferential procurement programs.* Contract performance may be granted without cost comparison if the contract is awarded to a preferential procurement program recipient.



Conditions Permitting Government Performance of Commercial Activities

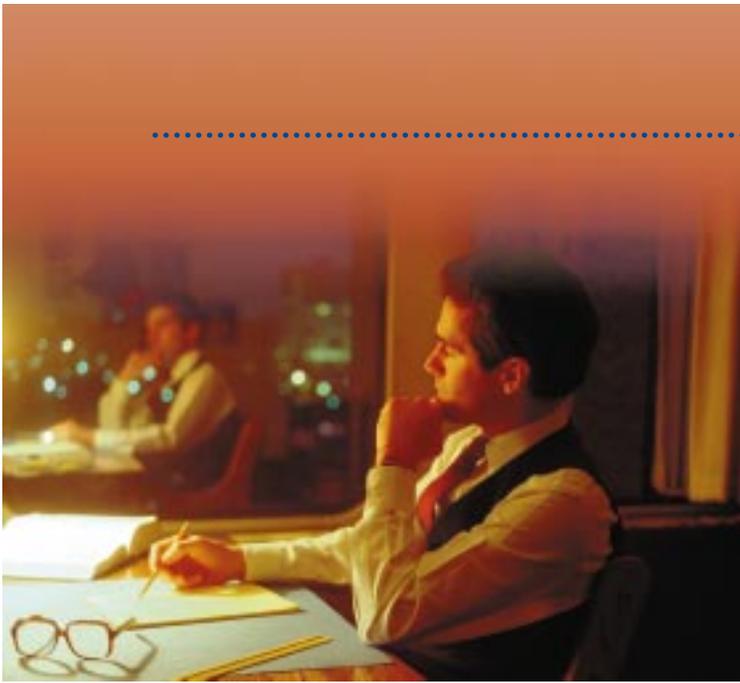
Under certain conditions, the government is permitted to perform some commercial activities without competition. Work with your headquarters to apply the following conditions for permitting government performance of commercial activities:

- ◆ *National defense or intelligence security.* The Secretary of Defense, or designee, approves national defense justifications. The Director of Central Intelligence, or designee, approves national intelligence security justifications.
- ◆ *Patient care.* Commercial activities at government-owned hospitals or other health facilities may be performed by in-house

employees when needed to maintain the quality of direct patient care.

- ◆ *Core capabilities.* A core capability of in-house performance may be warranted for certain functional areas.
- ◆ *Research and development.* Research and development activities may be converted to or retained in-house without cost comparisons.
- ◆ *No satisfactory private-sector source available.* If a commercial activity could be contracted, but there is no private-sector source, the activity is to be operated by the DoD component's most efficient organization.





Comparison of Costs

The purpose of the cost comparison is to determine whether the activity should be performed by the government or by the private sector. In general, the activity should be done by the sector that can provide the recurring service at lower cost while meeting or exceeding identified performance standards.

Cost comparisons should be completed within 18 months for a single-function activity and 36 months for multifunction activities. No later than 1 month before the end of the allotted period, your military department or defense agency must submit a report to the Under Secretary of Defense for Acquisition and Technology about the status of any studies that may exceed the time allowed. Detailed guidance on the conduct of cost comparisons is contained in DoD Instruction 4100.33 and in service implementing guidance.

The cost-comparison process has seven major elements:

- ◆ Development of a performance work statement and quality assurance surveillance plan
- ◆ Preparation of a management plan describing the government's most efficient organization
- ◆ Development of a government cost estimate
- ◆ Issuance of a request for proposals or request for bids
- ◆ Comparison of the in-house bid against the selected contract offer
- ◆ Processing of administrative appeals, if any
- ◆ Award of contract or implementation of the MEO.

The following paragraphs summarize the elements for a typical cost comparison.

Be aware that commercial activities staffed with 11 to 65 full-time (or full-time-equivalent) DoD civilian employees and any number of military personnel may be open for competitive bidding on the basis of streamlined cost-comparison procedures when such competition is adequately justified and the work force is certified as an MEO.



Performance Work Statement and Quality Assurance Surveillance Plan

The performance work statement defines the minimum work requirements, the performance standards and measures, and required time frames. It provides the technical performance sections of the request for proposals or bids issued by the contracting officer. It also serves as the basis for the design of the MEO. Special care should be taken when developing the performance work statement to ensure that it only includes minimum requirements and permits full and open competition.

The quality assurance surveillance plan describes the methods of inspection to be used.

This plan is not included in the solicitation, nor is it provided to private-sector offerors.

Management Plan

The management plan, which is based on the scope of the performance work statement, describes the DoD component's most efficient organization. It identifies the organizational structure, staffing, operating procedures, equipment, transition plan, and inspection plan necessary to ensure that the in-house activity is performed efficiently and cost-effectively. The management plan serves as the basis for developing the in-house cost estimate.

In-House Cost Estimate

The in-house cost estimate describes all costs associated with the performance of the most efficient organization. It is calculated in accordance with the provisions of DoD Instruction 4100.33.

Request for Proposals or Bids

The request for proposals or bids, issued by the contracting officer, describes the required recurring service. The description is based on the performance work statement. The solicitation may also specify other requirements with which an offeror must comply.

In-House Bid versus Selected Contract Offer

When soliciting offers for the cost comparison, the government may use any competitive method allowed by the Federal Acquisition Regulation. Examples are sealed bids and negotiated procurement techniques. Before converting from or to in-house, contract, or intragovernmental agreement, the selected offer or bid must exceed 10 percent of personnel costs or \$10 million over the cost-comparison period, whichever is less.

Administrative Appeals

The administrative appeals process is conducted following the tentative cost-comparison decision. Eligible appellants have 20 days to query, in writing, your installation's compliance with the requirements and procedures in DoD Instruction 4100.33.

Contract Award or MEO Implementation

Utilizing the transition plan, the contracting officer awards the contract, or the commander implements the MEO.



Performance Reviews

If the decision is made to perform the required services in-house, the MEO described in the management plan should be reviewed formally. This review should confirm that the MEO has been implemented and that actual costs are consistent with the in-house cost estimate. Adjustments may be made for formal changes in mission or scope of work. Noncompliance with the MEO will require a re-competition.





Other Procedures and Options

Statutory Requirements

Congressional Announcements

Congress must be notified

- ◆ before a cost comparison is initiated for an activity staffed with more than 45 DoD civilian employees, and
- ◆ when a cost comparison of an activity staffed with more than 10 DoD civilian employees results in a decision to convert to contract.

On the basis of your input, your military department or defense agency will make the notification. Refer to DoD Instruction 4100.33 and your military department's or defense agency's implementing regulations or instructions for guidance on the content of the notifications.

Work Force and Local Community Consultations

DoD civilian employees who will be directly affected by the results of the cost comparison must be consulted on the development and preparation of the performance work statement and management plan. That consultation must occur at least monthly. Consultation with representatives of the employees' labor union is permitted and encouraged. Consultation with nonunion DoD civilian employees may be through such means as group meetings or designated representatives. In all cases, management retains the right to make final decisions on the performance work statement and the management plan.

Reports on Inventory and Cost-Comparison Data

Inventories of all in-house commercial activities must be maintained and updated annually. Data for these inventories are transmitted to your military department or defense agency using the *Inventory and Review Schedule* (Report Control Symbol DOD-A&T(A)1540).

In addition to the commercial activities inventory, data about commercial activities that undergo a cost comparison and about commercial activities that are converted directly to contract without a cost comparison must be collected and transmitted to your military department or defense agency via the *Commercial Activities Management Information System* (Report Control Symbol DOD-A&T(Q)1542). These data are updated quarterly. Instructions and formats for both reports are contained in DoD Instruction 4100.33.

Personnel Considerations

DoD civilian employees who lose their jobs as a result of a decision to convert an in-house activity to contract or intragovernmental support performance have the right of first refusal for jobs for which they are qualified that are made available by the conversion. Your personnel officer should work with your contracting officer to implement this requirement.

Cost-Comparison Waivers

Under prescribed conditions, the Under Secretary of Defense for Acquisition and Technology, designated officials in the military departments, and heads of defense agencies may waive the cost comparison, allowing direct conversions to or from in-house, contract, or intragovernmental support agreement performance. A waiver either must be accompanied by a determination that the conversion will result in a significant financial or quality improvement, or must establish why in-house or contract offers have no reasonable expectations of winning a cost competition.

Other requirements and conditions are detailed in DoD Instruction 4100.33.

Intragovernmental Support Agreements

In terms of the DoD Commercial Activities Program, an intragovernmental support agreement is support provided by or to a federal agency outside the Department of Defense. A cost comparison is required. From the DoD Commercial Activities Program perspective, a support agreement with another DoD component is not considered an intragovernmental support agreement. A cost comparison is not required before entering into a support agreement with another DoD component.



Primary References

For detailed information about the DoD Commercial Activities Program, consult these references:

- ◆ OMB Circular A-76, *Performance of Commercial Activities*. This circular establishes federal policy regarding the performance of commercial activities.
- ◆ OMB Circular A-76 Revised Supplemental Handbook, *Performance of Commercial Activities*. This handbook sets forth the procedures for determining whether commercial activities should be performed under contract with private-sector sources or in-house using government facilities and personnel.
- ◆ DoD Directive 4100.15, *Commercial Activities Program*. This directive states DoD policy and responsibilities for carrying out the federal policy (detailed in OMB Circular A-76) for the performance of recurring commercial activities.
- ◆ DoD Instruction 4100.33, *Commercial Activities Program Procedures*. This instruction implements the procedures in the A-76 handbook and supplements those procedures with DoD-specific provisions.
- ◆ Your military department's or defense agency's implementing regulations or instructions.

Sample performance work statements are available through the following OSD Internet site [www.acq.osd.mil/inst/].

Please direct any questions or comments to Colonel John D. Horsfall, Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations), DSN 664-6735 or (703) 604-6735, or contact the manager of your military department's or defense agency's Commercial Activities Program.

**Office of the Deputy Under Secretary of Defense
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