

UNCLASSIFIED

AMCCC-PA

POINT PAPER

12 November 1997

SUBJECT: A-76 Cost Studies

PURPOSE: Provide information about when cost studies are required under OMB Circular A-76

FACTS:

< OMB Circular A-76 requires cost comparisons when converting commercial activities to or from in-house performance, contract or inter-service support agreement, unless an activity is exempt.

< A **commercial activity** is an activity that can be obtained from a commercial source. **Inherently Governmental functions**, which involve the exercise of discretion in applying Government authority or use of value judgement in making decisions for the Government, are *not* commercial activities, and are thus not subject to OMB Circular A-76 or its supplemental handbook.

< **Exemptions** from cost comparison requirement - **when converting the activity to or from in house, contract, or ISSA :**

- **National defense and national intelligence security.** The Secretary of Defense or Director of Central Intelligence, or designee, approves national security justifications.
- **Conduct of Research and Development**, but *not* recurring and severable activities in support of research and development.
- **Direct patient care** at Government-owned hospitals.
- **Minimum core capability** of specialized scientific or technical employees.
- Activities where there is **no satisfactory commercial source**. All reasonable efforts (in compliance with FAR) must be made to identify available sources.

UNCLASSIFIED

UNCLASSIFIED

- **Activities performed by 10 or fewer full time equivalent employees (FTEs).** Functions with 10 or fewer FTEs may be converted to contract if the contracting officer determines that offerors will provide required levels of service quality at fair and reasonable prices.
- Activities for which a **waiver of cost comparison requirements is approved by the ASA(IL&E)**. The waiver must be based on a determination that conversion will result in a significant financial or service quality improvement without reducing significantly the level or quality of future competition. A waiver must establish *why* in-house or contract offers have no reasonable chance of winning a competition conducted under cost comparison procedures.
- **Functions at installations scheduled for closure on a date certain** e.g. BRAC installations.

< Under OMB Circular A-76 and its Revised Supplemental Handbook, **the following activities may be converted to contract without performance of a cost comparison:**

- **Activities with 11 or more FTEs if** fair and reasonable prices can be obtained through *competitive award*, and *all* directly affected employees serving on permanent appointments are reassigned to other comparable positions for which they are qualified.
  - \* No commercial activity may be modified, reorganized, divided or changed for the purpose of circumventing this requirement.
  - \* For activities performed at multiple locations, the number of FTEs encompassed within the solicitation scope of work generally determines whether the 11 FTE threshold is met.
  - \* Per draft AR 5-20, the existing Government organization must be determined to be the most efficient organization (MEO).

UNCLASSIFIED

UNCLASSIFIED

\* *But note:* Draft DODI 4100.33 and AR 5-20 take the position that an A-76 cost comparison *is required* for conversion of activities involving over 45 FTEs by 10 USC 2461. While some cost comparison is required by statute, it is still legally uncertain whether the statute requires compliance with OMB Circular A-76 cost comparison procedures.

- **Activities performed by uniformed military** personnel if the contracting officer determines that fair and reasonable prices can be obtained from commercial sources.
- **Support services that are obtained from another department or agency under an ISSA**, after proper notification of termination is given to the providing agency.
- **Activities awarded under preferential procurement programs**, defined in AR 5-20 as FAR Part 8 mandatory source programs, including Federal Prison Industries and workshops administered by the Committee for Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day Act.

< **Temporary in-house performance** of commercial activities is authorized where a contractor defaults or is otherwise terminated, and interim contractor support is unavailable.

< **Depot Maintenance.** By statute (10 USC 2464) an in-house capability to perform depot maintenance of mission essential materiel must be maintained. The Secretary of Defense must grant a waiver for activities designated for in house performance under this authority to be subject to a cost comparison under OMB Circular A-76 and contract performance. Depot maintenance workloads not considered subject to this restriction and which are above \$3 million are not subject to A-76 procedures per 10 USC 2469.

< **Statutory exemptions.** Security guard and firefighting functions, and all activities performed at Crane and McAlester AAPs, are exempt from OMB Circular A-76 requirements by statute.

UNCLASSIFIED

UNCLASSIFIED

- < **Privatization of a commercial activity**, when the Government transfers ownership, control and performance of the activity, is not a commercial activity conversion to contractor performance. The Government no longer supervises or controls the activity, i.e. it "gets out of the business."
  
- < **Business process reengineering**. A workload reduction resulting from business process reengineering, where the function performed by Government employees no longer exists, is not considered to involve the conversion of a Government function to contractor performance and is not subject to cost comparison requirements.

RELEASED BY: EDWARD J. KORTE  
COMMAND COUNSEL  
AMCCC  
DSN 767-8031

ACTION OFFICER: DAVE HARRINGTON  
ASSOCIATE COUNSEL  
AMCCC-PA  
DSN 767-7570

UNCLASSIFIED