

*Displaced DoD employee.* Any DoD employee affected by conversion to contract operation (including such actions as job elimination, grade reduction, or reduction in rank). It includes both employees in the function converted to contract and to employees outside the function who are affected adversely by conversion through reassignment or the exercise of bumping or retreat rights.

*DoD Commercial Activity (CA).* An activity that provides a product or service obtainable (or obtained) from a commercial source. A DoD CA is not a Governmental function. A DoD CA may be an organization or part of another organization. It must be a type of work that is separable from other functions or activities so that it is suitable for performance by contract. A representative list of the functions performed by such activities is provided in Enclosure 1. A DoD CA falls into one of two categories:

(a) *In-house CA.* A DoD CA operated by a DoD Component with DoD personnel.

(b) *Contract CA.* A DoD CA managed by a DoD Component operated with contractor personnel.

*DoD Employee.* Refers to only civilian personnel of the Department of Defense.

*DoD governmental function.* A function that is related so intimately to the public interest as to mandate performance by DoD personnel. These functions require either the exercise of discretion in applying Government authority or the use of value judgement in making the decision for the Department of Defense.

Services or products in support of Governmental functions such as those listed in enclosure 3 of DoD Instruction 4100.33 are normally subject to this part and its implementing instructions. Governmental functions normally fall into two categories:

(a) The act of governing; that is, the discretionary exercise of Governmental authority. Examples include criminal investigations, prosecutions, and other judicial functions; management of Governmental programs requiring value judgments, as in direction of the national defense; management and direction of the Armed Services; activities

performed exclusively by military personnel who are subject to deployment in a combat, combat support, or combat service support role; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers, and other natural resources; direction of intelligence and counterintelligence operations; and regulation of industry and commerce, including food and drugs.

(b) Monetary transactions and entitlements, such as tax collection and revenue disbursements; control of the money supply treasury accounts; and the administration of public trusts.

*DoD personnel.* Refers to both military and civilian personnel of the Department of Defense.

*Expansion.* The modernization, replacement, upgrading, or enlargement of a DoD CA involving a cost increase exceeding either 30 percent of the total capital investment or 30 percent of the annual personnel and material costs. A consolidation of two or more CAs is not an expansion unless the proposed total capital investment or annual personnel and material costs of the consolidation exceeds the total of the individual CAs by 30 percent or more.

*New requirement.* A recently established need for a commercial product or service. A new requirement does not include interim in-house operation of essential services pending reacquisition of the services prompted by such action as the termination of an existing contract operation.

*Preferential procurement programs.* Mandatory source programs such as Federal Prison Industries (FPI) and the workshops administered by the Committee for Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day Act. Also included are small, minority and disadvantaged businesses, and labor surplus area set-asides and awards made under 15 U.S.C. section 637.

[50 FR 40805, Oct. 7, 1985, as amended at 57 FR 29207, July 1, 1992]

#### § 169a.4 Policy.

(a) *Ensure DoD mission accomplishment.* The implementation of this part shall consider the overall DoD mission

and the defense objective of maintaining readiness and sustainability to ensure a capability for mobilizing the defense and support structure.

(b) *Retain governmental functions in-house.* Certain functions that are inherently governmental in nature, and intimately related to the public interest, mandate performance by DoD personnel only. These functions are not in competition with commercial sources; therefore, these functions shall be performed by DoD personnel.

(c) *Rely on the commercial sector.* DoD Components shall rely on commercially available sources to provide commercial products and services, except when required for national defense, when no satisfactory commercial source is available, or when in the best interest of direct patient care. DoD Components shall not consider an in-house new requirement, an expansion of an in-house requirement, conversion to in-house, or otherwise carry on any CAs to provide commercial products or services if the products or services can be procured more economically from commercial sources.

(d) *Achieve economy and enhance productivity.* Encourage competition with the objective of enhancing quality, economy, and performance.

When performance by a commercial source is permissible, a comparison of the cost of contracting and the cost of in-house performance shall be performed to determine who shall provide the best value for the Government, considering price and other factors included in the solicitation. If the installation commander has reason to believe that it may not be cost effective to make an award under mandatory source programs, section 8(a) of the Small Business Act or any other non-competitive preferential procurement program, a cost comparison, or any other cost analysis, although not required by OMB Circular A-76, may be performed. Performance history will be considered in the source selection process, and high quality performance should be rewarded.

(e) *Delegate decision authority and responsibility.* DoD Components shall delegate decision authority and responsibility to lower organization levels, giving more authority to the doers, and

linking responsibility with that authority. This shall facilitate the work that installation commanders must perform without limiting their freedom to do their jobs. When possible, the installation commanders should have the freedom to make intelligent use of their resources, while preserving the essential wartime capabilities of U.S. support organizations in accordance with DoD Directive 4001.15.<sup>5</sup>

(f) *Share resources saved.* When possible, make available to the installation commander a share of any resources saved or earned so that the commander can improve operations or working and living conditions on the installation.

(g) *Provide Placement Assistance.* Provide a variety of placement assistance to employees whose Federal jobs are eliminated through CA competitions.

(h) *Permit interim-in-house operation.* A DoD in-house CA may be established on a temporary basis if a contractor defaults. Action shall be taken to resolicit bids or proposals in accordance with this part.

[57 FR 29207, July 1, 1992]

### Subpart B—Procedures

#### § 169a.8 Inventory and review schedule (Report Control Symbol DD-P&L(A)).

(a) Information in each DoD Component's inventory shall be used to assess DoD implementation of OMB Circular A-76 and for other purposes. Each Component's inventory shall be updated at least annually to reflect changes to their review schedule and the results of reviews, cost comparisons, and direct conversions. Updated inventories for all DoD Components except National Security Agency/Central Security Service (NSA/CSS) and the Defense Intelligence Agency (DIA) shall be submitted to the Assistant Secretary of Defense (Production and Logistics) (ASD(P&L)) within 90 days after the end of each fiscal year. Inventory data pertaining to NSA/CSS and DIA shall be held at the specific Agency concerned for subsequent review by properly cleared personnel. Appendix A to

<sup>5</sup> See footnote 1 to § 169a.1(a).