

as of December 4, 1987, shall be continued.

(iii) Conduct a cost comparison of those commercial activities selected for conversion to contractor performance under OMB Circular A-76.

(iv) To the maximum extent practicable, assist in finding suitable employment for any DoD employee displaced because of a contract entered into with a contractor for performance of a commercial activity on the military installation.

(6) Develop specific national defense guidance consistent with DoD Instruction 4100.33.

(7) Establish administrative appeal procedures consistent with DoD Instruction 4100.33.

(8) Ensure that contracts resulting from cost comparisons conducted under this part are solicited and awarded in accordance with the FAR and the DFARS.

(9) Ensure that all notification and reporting requirements established in DoD Instruction 4100.33 are satisfied.

(10) Ensure that the Freedom of Information Act Program is complied with in responding to requests for disclosure of contractor-supplied information obtained in the course of procurement.

(11) Ensure that high standards of objectivity and consistency are maintained in compiling and maintaining the CA inventory and conducting the reviews and cost comparisons.

(12) Provide, when requested, assistance to installation commanders to ensure effective CA program implementation and technical competence in management and implementation of the CA program.

(13) Ensure that maximum efforts are exerted to assist displaced DoD employees in finding suitable employment, to include, as appropriate:

(i) Providing priority placement assistance for other Federal jobs.

(ii) Training and relocation when these shall contribute directly to placement.

(iii) Providing outplacement assistance for employment in other sectors of the economy with particular attention to assisting eligible employees to exercise their right of first refusal with the successful contractor.

(14) Maintain the technical competence necessary to ensure effective and efficient management of the CA program.

(15) Ensure, once the cost comparison is initiated, that the milestones are met, and completion of the cost comparison is without unreasonable delay.

## PART 169a—COMMERCIAL ACTIVITIES PROGRAM PROCEDURES

### Subpart A—General

Sec.

169a.1 Purpose.

169a.2 Applicability and scope.

169a.3 Definitions.

169a.4 Policy.

### Subpart B—Procedures

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

169a.9 Reviews: Existing in-house commercial activities.

169a.10 Contracts.

169a.11 Expansions.

169a.12 New requirements.

169a.13 CAs involving forty-five or fewer DoD civilian employees.

169a.14 Military personnel commercial activity.

169a.15 Special considerations.

169a.16 Independent review.

169a.17 Solicitation considerations.

169a.18 Administrative appeal procedures.

169a.19 Study limits.

### Subpart C—Reporting Requirements

169a.21 Reporting requirements.

169a.22 Responsibilities.

APPENDIX A TO PART 169a—CODES AND DEFINITIONS OF FUNCTIONAL AREAS

APPENDIX B TO PART 169a—COMMERCIAL ACTIVITIES INVENTORY REPORT AND FIVE-YEAR REVIEW SCHEDULE

APPENDIX C TO PART 169a—SIMPLIFIED COST COMPARISONS FOR DIRECT CONVERSION OF CAs

APPENDIX D TO PART 169a—COMMERCIAL ACTIVITIES MANAGEMENT INFORMATION SYSTEM (CAMIS)

AUTHORITY: 5 U.S.C. 301 and 552.

SOURCE: 50 FR 40805, Oct. 7, 1985, unless otherwise noted.

### Subpart A—General

#### § 169a.1 Purpose.

This part:

## § 169a.2

## 32 CFR Ch. I (7–1–12 Edition)

(a) Reissues DoD Instruction 4100.33<sup>1</sup> to update policy, procedures, and responsibilities required by DoD Directive 4100.15<sup>2</sup> and OMB Circular A-76<sup>3</sup> for use by the Department of Defense (DoD) to determine whether needed commercial activities (CAs) should be accomplished by DoD personnel or by contract with a commercial source.

(b) Cancels DoD 4100.33-H,<sup>4</sup> “DoD In-House vs. Contract Commercial and Industrial Activities Cost Comparison Handbook.”

### § 169a.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Defense Agencies and DoD Field Activities (hereafter referred to collectively as the “DoD Components”).

(b) Contains DoD procedures for CAs in the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Is not mandatory for CAs staffed solely with DoD civilian personnel paid by nonappropriated funds, such as military exchanges. However, this part is mandatory for CAs when they are staffed partially with DoD civilian personnel paid by or reimbursed from appropriated funds, such as libraries, open messes, and other morale, welfare, and recreation (MWR) activities. When related installation support functions are being cost-compared under a single solicitation, a DoD Component may decide that it is practical to include activities staffed solely with DoD civilian personnel paid by nonappropriated funds.

(d) Does not apply to DoD governmental functions are defined in § 169a.3.

(e) Does not apply when contrary to law, Executive orders, or any treaty or international agreement.

(f) Does not apply in times of a declared war or military mobilization.

(g) Does not provide authority to enter into contracts.

(h) Does not apply to the conduct of research and development, except for severable in-house CAs that support research and development, such as those listed in appendix A to this part.

(i) Does not justify conversion to contract solely to avoid personnel ceilings or salary limitations.

(j) Does not authorize contracts that establish employer-employee relations between the Department of Defense and contractor employees as described in the Federal Acquisition Regulation (FAR), 48 CFR 37.104.

(k) Does not establish and shall not be construed to create any substantive or procedural basis for anyone to challenge any DoD action or inaction on the basis that such action or inaction was not in accordance with this part except as specifically set forth in § 169a.15(d).

[57 FR 29207, July 1, 1992]

### § 169a.3 Definitions.

*Commercial activity review.* The process of evaluating CAs for the purpose of determining whether or not a cost comparison will be conducted.

*Commercial source.* A business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico that provides a commercial product or service.

*Conversion to contract.* The changeover of a CA from performance by DoD personnel to performance under contract by a commercial source.

*Conversion to in-house.* The changeover of a CA from performance under contract by a commercial source to performance by DoD personnel.

*Cost comparison.* The process of developing an estimate of the cost of performance of a CA by DoD employees and comparing it, in accordance with the requirements in this part, to the cost to the Government for contract performance of the CA.

*Directly affected parties.* DoD employees and their representative organizations and bidders or offerers on the solicitation.

<sup>1</sup>Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161

<sup>2</sup>See footnote 1 to § 169a.1(a).

<sup>3</sup>Copies may be obtained if needed, from the Office of Management and Budget, Executive Office Building, Washington, DC 20503.

<sup>4</sup>See footnote 1 to § 169a.1(a).