

S. HRG. 106-812

# WHAT IS CONTRACT BUNDLING?

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ROUNDTABLE  
BEFORE THE  
COMMITTEE ON SMALL BUSINESS  
UNITED STATES SENATE  
ONE HUNDRED SIXTH CONGRESS  
SECOND SESSION  
—————  
SEPTEMBER 13, 2000



Printed for the Committee on Small Business

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\*Comments (if any) at various points throughout the roundtable.

## WHAT IS CONTRACT BUNDLING?

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WEDNESDAY, SEPTEMBER 13, 2000

UNITED STATES SENATE,  
COMMITTEE ON SMALL BUSINESS,  
*Washington, D.C.*

The Committee met, pursuant to notice, at 9:30 a.m., in room SR-428A, Russell Senate Office Building, The Honorable Christopher S. Bond (Chairman of the Committee) presiding.

Present: Senators Bond and Cleland.

### **OPENING STATEMENT OF THE HONORABLE CHRISTOPHER S. BOND, CHAIRMAN, SENATE COMMITTEE ON SMALL BUSINESS, AND A UNITED STATES SENATOR FROM MISSOURI**

Chairman BOND. Good morning and welcome to another one of our Small Business roundtables. I am pleased once again to be able to welcome the directors of the various Offices of Small and Disadvantaged Business Utilization, or OSDBUs. We had an OSDBU roundtable last November. It was a great success. We learned a lot from it. We thought we would try it again and we hope to learn and to share information with you as we did before.

I apologize, I have to leave to go to a VA/HUD markup in subcommittee this morning. For any of you whose agencies are independent agencies, you probably would like to know: we think we have got the money to keep the Government running in the VA/ HUD agencies area, but it is close. It is always interesting.

Today's roundtable has a particular focus, the problem of contract bundling. We have heard from small business owners that it is the No. 1 problem. I had a women's small business conference in Kansas City in June of this year and contract bundling was really an overwhelming problem for women small business owners, as well as all other small business owners.

The Small Business Act challenges the OSDBUs to ensure that small business has "the maximum practicable opportunity to participate" in agency procurements. You know how difficult this is, however, when agencies take discrete, small contracts, and roll them into massive procurements that are too large for small businesses to handle.

That is why the Small Business Reauthorization Act of 1997 directed OSDBUs to help identify instances of such bundling and to recommend alternative approaches to ensure small business participation. The law also enhanced the SBA's ability to identify and challenge bundling. That is what we will focus on today. The SBA recently published its final rules to implement the 1997 law, and we would like to hear from you today in detail about how those

rules work, could work, should work, and will work in the real world.

Last year, the Federal Government engaged in over 10.5 million contract actions worth a total of \$199 billion. On average, that means almost 20 contract actions every single minute of every single day of the last year. Every minute the Government purchased an average of \$377,000 of goods and services. We, the Congress, could not review all those actions. We depend upon you to help make sure that the appropriate share goes to small disadvantaged businesses.

We reserve the right to review and oversee any of the actions as circumstances warrant it, but we know it will be more productive to have a sound agency review process in place. Solid anti-bundling regulations will allow those close to the action to intervene in time to make a difference. I think that the SBA's long-overdue publication of those rules is a step in the right direction. Again, we welcome your comments.

Publication of these final rules also permits the Federal Procurement Data Center to make software revisions to collect data on bundling. A study I requested from the General Accounting Office indicated that publication of those final rules was the last hold up in getting that data collection started. We cannot simply wait for those data to accumulate so that we have a statistically useful sample. By that time, it may be too late.

Someone out there has the information. That is one reason we are coming to you—as the advocates for small business at your agencies. What have you observed in the contracts you have seen? The SBA's rules provide thresholds to determine when a bundling provides “measurably substantial” benefits that may make bundling “necessary and justified” under the law. But we ask you the question, “How do these thresholds compare to the size of the contracts you see at your agencies?”

Finally, the SBA rules do not expressly mention the OSDBUs as part of the process. The SBA envisions a vigorous role for the Procurement Center Representatives or PCRs. How sure are we that PCRs will even find out about proposed bundlings? Can you find out about them in time to take remedial action?

These are questions we would like to have you discuss today. We hope to learn from your personal experiences. We appreciate very much the hard work you do. It sometimes seems like a thankless job, but I can tell you it means a great deal to the women and the men who are out there trying to make small businesses work, and we want to see them get their share of contracts.

We, at the Committee, hope to develop a closer relationship with you. We want to learn from your experiences and we appreciate your coming to share them with us.

I am off to an appropriations hearing. My colleague, good friend and Ranking Member, Senator Kerry will be joining us before long. Obviously, we have the staff here, and the staff for all the Committee will be paying a great deal of attention. We thank you for your time and wish you well and look forward to the guidance that you can give us today. Thanks very much.

Mr. SMITH. Good morning. Thanks to everyone for being here. Let me just say a couple of quick words about how this works. Most

of you were here last year so you already know, but we will go over the ground rules just for a quick refresher.

Generally, we have found it works very well that if you have something that you want to say, just take your name tent and turn it up prominently so that I can see it from over here, and I will be happy to get to you just as quickly as possible. That has proven to be the best way to let us know when you have something to say.

Obviously, it is not a confrontational setting of any kind so it is a chance for you to throw something out if you have something you would like to say on these issues. If not, if you have nothing to say on the subject at hand, that is fine. It will help us to stay on time. So that is good, too.

We are not really going to try to look so much at specific contract actions that are out there that people are concerned with. Most of those are hideously complex and we will not resolve this morning whether they are good or bad for small business or good or bad in terms of the bundling regulations. Our hope here is to focus on the process rather than on individual procurements. Now, individual contracts may come up to the extent that they illustrate the process; however, the hope here this morning is to focus on the process.

We are not really out to attack the regulation. When we wrote our law 3 years ago, we took a stab at this issue and tried to come up with something that works, and the SBA has done the same thing and taken a stab at it. We are all going to learn from this experience, and hearing about that experience is what we are trying to do here today.

So, that is all that I had for opening. Patty, did you want to say a couple of quick words?

Ms. FORBES. Thank you all for coming. It is really a very impressive group. I did not realize there were quite so many of you but I am glad you could make it today.

This is obviously a very important issue for small businesses. We are trying to struggle, this Committee is trying to struggle with the conflicts of streamlining and reserving contracts for small businesses or making sure there are contracting opportunities for small business. We do have concern that if there is too much streamlining there will not be enough competition when, in fact, we need competition in the future.

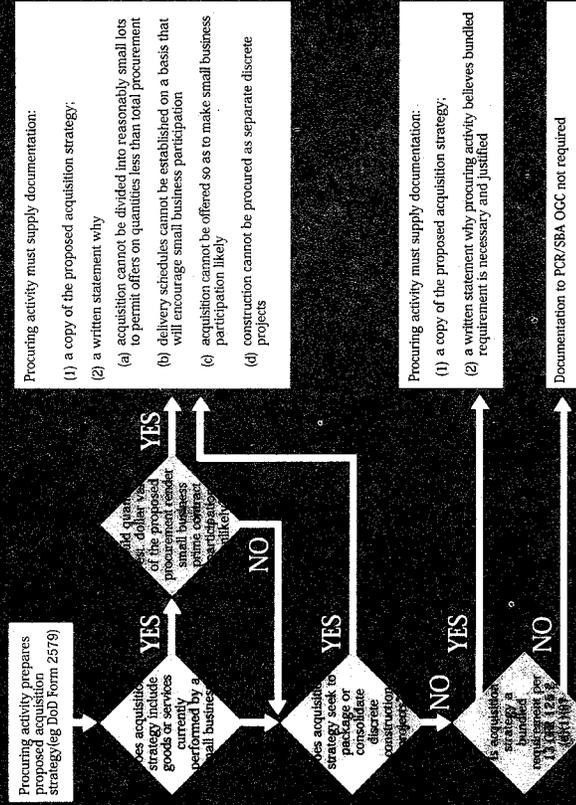
Senator Kerry is going to try to come. He has a scheduling conflict at this time which is why he could not be here to open the roundtable with Senator Bond but he will be very interested in all your comments. So thank you very much for coming.

Mr. SMITH. Thank you, Patty. Also just one quick reminder as you see us trading the microphones back and forth, please feel free to do the same so that our court reporter is able to get a good record of what is going on and to generate a useful transcript. It helps also if, when you are speaking, and given the size of the group, if you will identify yourself and the agency that you are from.

I want to start just a little bit with the question—the title of the roundtable is “What is Contract Bundling?” and you see that statement is written a little farther down on the agenda. I want to start with the broader question of who decides.

I have a chart here, and you have copies in your packets. If you look, there is one that reads, "Does Procuring Activity Need to Supply Documentation To PCR for Buying Activity?"

# Does Procuring Activity Need to Supply Documentation To PCR for Buying Activity (Or SBA Office of Government Contracting If No PCR)?



Mr. SMITH. That issue is what gets the whole ball rolling on this regulation: when a proposed contracting strategy is underway that needs the attention of small business advocates at the agencies and at SBA. This chart here illustrates that there are four basic screens that proposed strategies have to go through to determine if requirements need documentation submitted to the PCR.

The first screen tests whether it is something that is currently being performed by a small business. This is a relatively objective thing. You can see whether there is a current contract that small business is doing. You can determine that.

Is participation likely or unlikely by small business? That is a little bit on the subjective side.

Does it package discrete construction projects? Again, objective.

And then we have the contract bundling definition itself as the last screen.

If you get past all four of those screens, no documentation is required to the PCR or the SBA Office of Government Contracting.

So my question to you, based on your experience in dealing with these problems at your agencies, is: will the SBA's PCR ever get documentation about a proposed bundling action to get the chance to review it in the first place? Will the documentation go to the people who need to see it and will PCRs even know that something is in the process that needs their attention? What have you observed in your agencies with this regulation?

Mr. Denniston.

Mr. DENNISTON. Somebody has to start this off. Scott Denniston, Department of Veterans Affairs.

For a minute forget the definition of significant bundling, the \$75 million, but just look in terms of consolidation, if you will, of discrete opportunities. The answer to your question, as it relates to the Department of Veterans Affairs, is no.

The reason I say that is because we have got 200 buying centers around the country, but we have PCRs that are assigned to less than a dozen of those 200 facilities. So just by those sheer numbers, most of the facilities that we have do not have PCRs covering them.

Mr. SMITH. How does that compare to other people's experiences?

Mr. McCall.

Mr. MCCALL. Stan McCall, NASA.

We have about 10 buying centers. Any requirement, not necessarily based upon the \$75 million dollar range, should face some mechanism to involve the PCR in anything of this magnitude. The normal process should provide some involvement with the PCR to determine the impact the contract is going to have on small business.

Normally, if you have got a relationship going, there is a dialog on the overall program and anything of that significance will just automatically be discussed.

Mr. SMITH. That is actually one thing I definitely want to focus on, because I want to know, in places where PCRs have been assigned, are they part of the acquisition team to begin with? Do they know what is happening? Are they part of the sessions as the strategy is being prepared, or do they simply have to hope that they can find out about it as things go along?

Mr. Bryan.

Mr. BRYAN. Ken Bryan, Department of Justice. I think one of the significant things that you just talked about was the presence of the PCRs themselves. Again, we are not slamming anyone, here. But because of the cutbacks of the PCRs themselves, there are not that many to go around to be able even to review the contracts you are talking about.

At the Department of Justice I cannot remember the last time that our PCR may have reviewed a consolidated contract, or any contract for that matter. And it is not because they do not want to but, again, it is because of the scarcity of the PCRs.

Mr. SMITH. Ms. Brown.

Ms. BROWN. Jeanette Brown, EPA OSDDBU. The same thing here for the EPA. We are in contact with the PCR. We talk when we need to, but my PCR is assigned to four agencies and as a small agency we do not get that kind of attention.

Mr. SMITH. Ms. Pinson.

Ms. PINSON. Yes. Tracey Pinson, Department of the Army.

We experienced the same problem in terms of coverage of PCRs. We have over 200 buying activities and some PCRs are assigned there on a resident basis, and some are roaming which means they get there if they can. But we do have our small business advisors there, small business specialists there at all of our contracting activities that do review all the acquisition plans that come out of contract.

In fact, there is a Form 2579 in the Defense Department that basically requires the SADBUs to concur on the acquisition strategy.

Mr. SMITH. So there is a place for you and your office to sign off?

Ms. PINSON. Not my office but, yes, at the contracting office level.

Mr. SMITH. Right. Someone in your office at some level to sign off that they have seen it?

Ms. PINSON. SADBUs. Right.

Mr. SMITH. And that way it gets routed past—

Ms. PINSON. And if there is a PCR assigned, then that PCR would also have to sign off on that 2579 as well.

Mr. SMITH. I see.

Ms. Williams.

Ms. WILLIAMS. In conjunction with the number of PCRs we are the first to admit that there are not enough. We have tried to get coverage where it is possible and we have hired an additional 13 PCRs to try to expand our coverage but our regulations also say that when there is not an applicable PCR, the documentation should come into the area office that has responsibility for that activity. As Ms. Pinson mentioned, agencies have small business specialists, and our PCRs work with them in order to review these requirements.

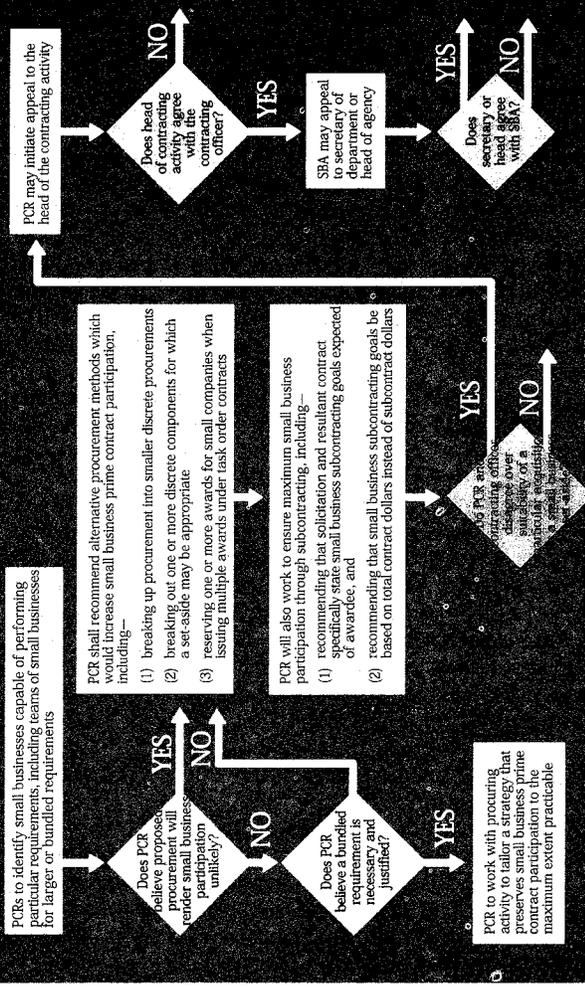
I mean if there were not bundling regulations the PCRs would still have a role to play in looking at opportunities that should be set aside for small businesses. So all of this is still within the normal responsibility of the small business specialists and the PCRs.

Mr. SMITH. That is an excellent point to make. One thing that I wanted to ask regarding the SBA Government Contracting area office, when notification comes in, is there a person in that office who is asked to do something with the documentation when it ar-

rives? Is there someone at each area office that is the substitute PCR for this office? One of the charts in your packet describes this situation.

[The chart follows:]

# What Actions Should a PCR Take Upon Receiving Documentation From Procuring Activity?



Prepared by the Staff of the U.S. Senate Committee on Small Business, Christopher S. Bond, Chairman

Ms. WILLIAMS. We try to funnel it to the appropriate person to handle.

Mr. SMITH. Is it possible to cover all the workload? Because I could see an area office covering a lot of contracting activities and getting a lot of material that is more than one person can handle. What is the word you are hearing on how that is working?

Ms. HOPEWELL. My name is Luz Hopewell. I am the Associate Administrator for Government Contracting at the SBA. We do have a very large workload. I just started with the SBA 2 months ago.

I have been evaluating everything that is going on. The workload on the PCRs is really significant. The number of PCRs that we have across the country is very limited. I know the SBA has taken corrective action and we have actually hired 13 new ones that we are training at the end of this month. Then for 2002 we will be getting 15 more. But I think in terms of the requirements, we do need more coverage.

Mr. SMITH. So it would be helpful to have more staff. It would also be helpful to make sure you have a process—something like the Army has—where people actually get something routed past them to make sure that it actually gets seen?

Ms. HOPEWELL. That is correct.

Mr. SMITH. That actually raises another question. Is there some place where acquisitions, before they end up in Commerce Business Daily, are printed or some sort of information is out there that is a resource where people who are small business advocates can look to find out about stuff that is happening, or is it just kind of a game to see if we can get the acquisition out the door before the small business people find out about it?

I thought I saw that Mirinda Jackson had a comment, I am sorry, a moment ago.

Ms. JACKSON. I was going to comment on a previous question. I am Mirinda Jackson with the GSA.

We have a process in place that allows the PCR to sign off on all of the GSA's procurements that are not set aside for small businesses. We have a form that is called a GSA Form 89.

Mr. SMITH. I see. So some agencies have various forms that do allow the routing. Some do not, but some do, is the impression that I am getting; is that about right?

Stan McCall.

Mr. MCCALL. We call it an acquisition forecast.

Mr. SMITH. Right.

Mr. MCCALL. And anything of this magnitude would probably be caught in the acquisition forecast. We probably would give some kind of indication that it would be a bundling-type activity.

Mr. SMITH. I see. And that is OSDBU that puts that out? Does everyone put out the forecast from OSDBU or is that other places? It looks like we got a lot of yeses there.

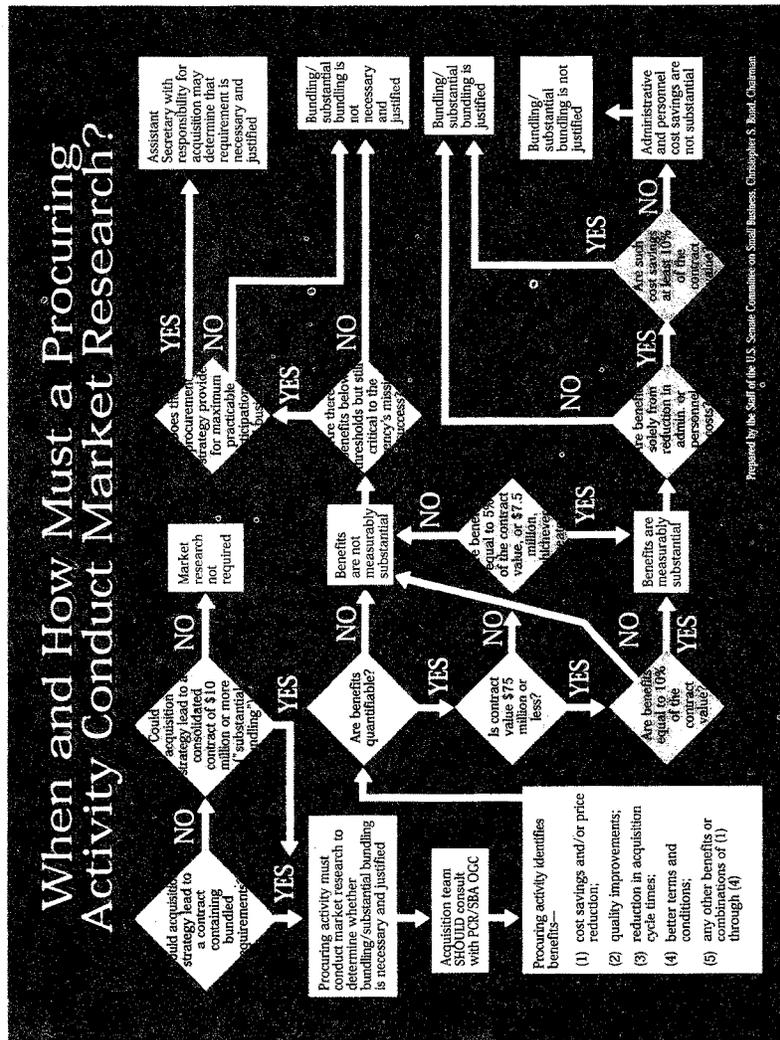
Let me look at a couple of specific questions on this. I am sorry, Ms. White, you had something?

Ms. WHITE. In addition to the forecast I know some of the agencies also publish an inventory of active recurring contracts that kind of cues people that, next year, a particular contract is coming up. We also have on our website at the State Department our In-

formation Resource Management (IRM) strategic plan, which high-tech companies can read to see what is coming up.

Mr. SMITH. I see. Let us go ahead and look at a couple of points on the specific tests here that are on this chart. Again, you have a copy in your handouts.

[The chart follows:]



Mr. SMITH. This kind of raises a question that I had when I was going through the regulation. There were two pieces of it I was not sure how they fit together.

One of those was the requirement to perform market research. The market research seems to end up with the judgment of whether the benefits are measurably substantial and then you can make a judgment whether the bundling is necessary and justified. It seems to me that if you get all the way down to the test here, the last diamond of the chart that asks, "Is the acquisition strategy a bundled requirement?"—then the Agency has to submit a written statement stating that the bundling is necessary and justified. Then obviously, at that point, they need to have the market research done in order to be able to make that statement and supply that documentation.

As part of the market research process, it says that the acquisition team should consult with the PCR, or the Office of Government Contracting. It does not say that they must but that they should.

Have you all run into some examples of the market research and how that is working? There is one instance that I know of with the Air Force, but I am not aware of other instances in the market research process and how that works yet. Mr. Capuano, you had something on the previous issue I think?

Mr. CAPUANO. Joe Capuano, Department of Transportation.

I wanted to mention on the PCR issue—of course, we commend the SBA for getting additional PCRs. We are very fortunate at Transportation. We feel we have one of the best in Reggie Holloway. He is resident in our headquarters building. We have been very fortunate.

I also think the issue of establishing relationships with the small business specialists throughout the department and with our procurement officers is very important. Reggie Holloway does that. We include him in all of our monthly meetings. We include him in our major decisionmaking and he is very helpful to us in that respect. So, I think it is important to establish the balance, especially on large procurements.

The second point is on the procurement forecast. Many of us publish it electronically on our website. Transportation has one of the better websites in the Government. We are very pleased with it.

But again in working with the PCR it is very important to involve them even as you get into your procurement planning processes. And that is, I think, where the issues are because they are so drained in terms of other responsibilities and other programs. The key issue is how to develop the priorities for the PCR working together? I think that is extremely key.

Mr. SMITH. Thank you.

Ms. Pinson.

Ms. PINSON. On the issue of market research, we found that it is very easy to just say we will put something in the Commerce Business Daily to ascertain the interest in the small business community and if we do not get any interest, so be it. But we found that we have had to go one step further and work with the SBA, ask them to give us firms and also hold forums with the small businesses that may be interested in the procurement, because in-

variably on some procurements the Small Business Administration might appeal us. We want to demonstrate that we did adequate market research and that is not just putting a notice in the Commerce Business Daily because for whatever reason we do not always get a good response.

Mr. SMITH. Does the likelihood that the SBA might appeal become, basically, a club that can be used to say this is a reason why you should get the PCRs in early to avoid delay at the end of the cycle?

Ms. PINSON. I think so. Yes.

Mr. SMITH. Ms. King.

Ms. KING. If I could just follow-up on what Mr. Capuano is talking about in regard to the PCRs and the procurement forecast from the perspective of business owners: How do they know about these PCRs? How do they know where they are? How do they know they can get in touch with them? And things like that because relationships should be developed both on the PCRs extending outreach to small businesses and vice versa.

Small businesses need to be proactive with these PCRs but they need to know who they are and how to get in touch with them.

The second point is on the forecast. There are still some agencies that do not put their forecast on their web page. Whatever the agencies and OSDBUs can do to deal with that, it is necessary. It really needs to be, in the information age, on the web pages.

Mr. SMITH. Thank you.

Mr. Bryan.

Mr. BRYAN. To follow with what Tracey Pinson was saying, I think the Commerce Business Daily (CBD) is an important tool that all the agencies use. I know at the Department of Justice even though it is, in fact, a part of the market survey, many times that is a copout. One of the things that I have heard many small business representatives say is that they do not actually take it seriously because many times they think that by the time it hits the Commerce Business Daily it is already "awarded" to someone anyway.

So I think this may be one of the reasons why some of the smaller businesses are not necessarily responding to the Commerce Business Daily—because they do not necessarily take it that seriously.

Mr. SMITH. Ms. Jackson.

Ms. JACKSON. We use the CBD but we also use some of the small business media. We use the Set-Aside Alert. We use the Minorities In Business Insider. We post all of our major acquisitions on our home page. Whenever we have a major acquisition we do what we call a networking session. We try to bring together potential prime contractors and potential small businesses so that they can consider partnering or doing a joint venture. And that has worked for us.

Mr. SMITH. Jeanette Brown.

Ms. BROWN. Even after it is publicized in the CBD I know there is a tendency—because we have to make a recommendation as to whether or not there is a small business community out there that can, in fact, do the work. The program offices are really sharp in

coming up with ways of saying that they are technically not qualified.

A lot of times when the small businesses respond they give us a general response in terms of what their overall capabilities are. Often that is to their disadvantage because they do not speak directly to the requirement that is at hand and they may or may not have enough information to give us at that time because it is a brief synopsis of what the requirement is. That also is a barrier to the small businesses participating. That is what we have seen at the EPA.

Mr. SMITH. Would it be useful, and I have not seen one of these notices in Commerce Business Daily or in the various other media on this—is there usually a phone number where if people do not understand they should call and develop a relationship and ask questions about what the information is that you are seeking and how they can be responsive? Or how does that work?

Ms. BROWN. There is a phone number and a point of contact and we also solicit information over the Internet.

However, when the paperwork comes in what we have seen in the past is that it is not detailed enough to make a valid determination as to whether or not a small business, in a lot of instances, is really qualified for the work.

Mr. SMITH. Let us go ahead and move on to the next phase here. Thank you for your input on this question.

We will look at the main focus here on “What is contract bundling?” You will recall that the last screen before we decide whether documentation is required for the PCR or the Office of Government Contracting is, “Is the acquisition strategy a bundled requirement under the definition in the Code of Federal Regulations?”

I think some of you saw the definition as you came in the front door here this morning. We put it out on the little poster there. It is quite an involved little definition. There are a lot of implications to some of the word choices and all those other good things.

[The chart follows:]

## What is Contract Bundling?

The term *bundled requirement* or *bundling* refers to the consolidation of two or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business concern due to:

- (A) The diversity, size, or specialized nature of the elements of the performance specified;
- (B) The aggregate dollar value of the anticipated award;
- (C) The geographical dispersion of the contract performance sites; or
- (D) Any combination of the factors described in paragraphs (d)(1)(i)(A), (B), and (C) of this section.

Source: 13 CFR § 125.2(d)(1)(i)

Mr. SMITH. I have actually something a little more basic to ask and that is what is a “contract” and how does that differ from a “contract action?” I understand “contract action” takes in something a little bit broader but what constitutes a “contract” as used in the bundling definition? And I can see that there would be a number of things that might happen that people would say, “Well, that is not really a contract so, therefore, it cannot be a bundling.”

What are you observing on that question? What constitutes a contract for the purpose of this definition? I have a specific question if no one volunteers.

Actually, the following question I guess is on the question of Indefinite Delivery/Indefinite Quantity contracts (IDIQs). I have to say I am not sure exactly which one is the broad categorical term. I have seen IDIQs. I have seen multiple award contracts. I have seen Blanket Purchase Agreements (BPAs). I have seen Government-wide Acquisition Contracts (GWACs). I am not sure what the broad-basket term is for all of those. I would be interested in some discussion of how those differ from each other.

The impression that I have is if you have a contract that is a standing arrangement to buy from somebody and various agencies come to it and buy off of it, they do not consider those additional orders to be contracts. They consider them to be orders, and, therefore, they are not contracts, and even though you are coming from several different agencies it does not constitute a bundling. What are you observing on that score?

Mr. GERICH. First of all, I am Mike Gerich from the Office of Federal Procurement Policy. Because you have a little problem, I guess, on the definition of contract, I will take a shot and I will hope that individuals will come in. Now as far as experiences you are going to have to look to the agencies and their actions there.

But the regulatory definition of contract, procurement contract, et cetera versus the general legal definition of contract—procurement contract obviously involves something the Government is buying as opposed to giving something away as far as grants.

As far as contractual actions we have a procurement contract where you actually sign a contract, a contract document, that is generally the procurement contract. The Government is buying something. A contract action might be something like a contract modification as opposed to a beginning contract. You also might have orders under a contract where you already have a contractual document in place.

It gets a little sketchier when you come to multiple-award contracts and orders under those, whether an order might be a contract per se for one purpose versus a contract for other purposes.

Generally when you fund something, an order under a contract you are adding additional funding. That traditionally is considered another contract. Whether that is a contract for the purposes of contract bundling I do not know. I think that is probably where you are driving at. That is where we need to probably flesh it out a little bit.

Mr. SMITH. Right.

Mr. GERICH. But that is just the general definition.

Mr. SMITH. Are there differences for this purpose between the BPAs and the GWACs and the IDIQs and various other things that

seem to be variations on the theme here or are they pretty much all the same thing at least on this particular question?

Mr. GERICH. My understanding is that some agencies are issuing supplemental regulations to the FAR, the Federal Acquisition Regulation, to provide more specific guidance on how to handle those orders. So there are some agencies that have gotten more specific in that area and how to handle this for bundling.

Mr. GREEN. Mike Green with USDA.

When we talk about contracts—anything that we use to buy goods and services is a contract. I think a lot gets confused with the FAR in using contract procedures.

We have contracting procedures and we have got simplified acquisition procedures where, in fact, the question has to be raised: Is a simplified acquisition a contract? The answer is yes because we are buying a good or service. When people, companies, and government employees use the term contract they are typically talking about a document to buy goods and services even where different types of procedures were used to buy that product. And that is what we have a contract for.

Now these IDIQs, these BPAs, these GWACs, are all basically the same. One is a contract and one can be a simplified acquisition with zero dollars in it and you issue task orders on an as-needed basis whereas an IDIQ typically is relegated to the use of that Federal agency.

A GWAC contract can be a huge contract with maybe a stipulated amount, over the contract amount for the original buying agency, where other agencies can also buy off that by issuing task orders. For all intents and purposes I would think any GWAC contract would be a bundled contract if it is going to be that big.

Any IDIQ contract, if it does not go to a small business, I think we can consider a bundled requirement because when you start lumping all these things together and giving Contract Line Item Numbers (CLINs) and all this, you have one contract where anybody can buy from that one source. If you are buying services, hardware, software from that one source, you are cutting the potential for other small businesses and other businesses who compete with that product.

Mr. SMITH. So if you have an arrangement in which different agencies can buy off of that same instrument, those probably would have been separate contracts from each agency previously. And now, you have a standing arrangement where they can all buy off of the same thing and it becomes a *de facto* bundling even if technically it is not.

Mr. GREEN. Government-wide bundling is what that is.

Mr. SMITH. OK.

Mr. GREEN. And then IDIQs are more of a localized agency bundling.

Mr. SMITH. Esther Aguilera, you had some thoughts?

Ms. AGUILERA. Yes, thanks. Cordell, I agree with Mike Green there. At the Department of Energy, we recently had to issue some guidance from our procurement head, as well as our Deputy Secretary, to clarify that GWACs are covered within the contract bundling definition because when we had the lawyers look at it they

could not make a clear determination whether that was the case or not.

So we just decided to go ahead and make it and send the word out that that is the case. One thing that is happening is, in a GWAC where you have a company chosen off of a schedule and that schedule only has large businesses in it, they are setting some of these up to then add more contracts and requirements later on.

So they build on that vehicle and that I think is how the GWACs are being used.

Mr. SMITH. So you modify it down the road and basically it is the camel's nose under the tent and then you can modify it subsequently and it just gets worse.

Ms. AGUILERA. Right.

Mr. SMITH. And if the modification is a contract action, not a whole new contract, it would never come under these rules?

Ms. AGUILERA. Right. Well, what we did clarify at DOE is that for new contracts, subsequent modifications would come under the rules. We would have to review them for potential small business impact. But if that clarification were not in place, they would be able to go through the process of bringing modifications under that larger contract without our review. So we were able to catch it and have a process in place to have that review. But it is a potential danger there.

Mr. SMITH. Lynn King, you have had your card up for some time.

Ms. KING. I am actually here also representing Patricia Stout who is a council member, National Women's Business Council, and unfortunately she was unable to make it. Patricia owns the Alamo Travel Group in San Antonio, Texas. She is a small business owner.

She prepared a definition of contract bundling that she was going to offer and I think it is a good perspective from the small business owner on what her perception is of contract bundling. And I will just read her words.

The bundling of government contracts is a consolidation of requirements that may provide obstacles to participation by small businesses. The contracts are so large that it limits the potential prime contractors to a few giant companies.

In fact, the potential contracts are so large they even limit the ability of medium-sized companies to bid. Bundling creates offerings that exceed the capability of small- and medium-sized businesses and reduces participation in these types of contracts to a mere fraction of the available competition. This runs contrary to every principle of competitive procurement.

Mr. SMITH. Mr. Foreman.

Mr. FOREMAN. Tim Foreman from the Department of Defense. In regards to the IDIQs, BPAs and GWACs I think the important issue from a small business standpoint is the new environment that we are operating under in procurement, as a result of the Federal Acquisition Streamlining Act (FASA) and the Federal Acquisition Reform Act (FARA) and pressures on personnel reductions in the Department of Defense we have gone from about 460,000 personnel involved in procurement down to 280,000.

These are convenient tools and methodologies to get contracts out quicker. I do not know if I can say better, faster, cheaper but quicker is the key word, less administrative cost. And it is a new environment and does have a tremendous effect on small businesses. It does have a tremendous effect on our ability to meet the

various statutory goals now that we negotiate with the SBA. So it is a critical issue.

Do I want to turn the clock back? I do not know that I do. I have also, I think, learned a lot. And I think I have learned a lot in terms of small businesses that can perform other things in the commercial arena and also have been somewhat successful in these other arenas. So that is just food for thought, more than describing what they are.

By the way, the largest of the group is probably the Federal Supply Schedule, which we did not really talk to but that is a huge and growing arena.

Mr. SMITH. Right. Actually I was hoping that someone would discuss all the different flavors of this thing. I had some questions on the Federal Supply Schedule that I wanted to do as follow-up but no one took the bait. Terry or Terrence, which do you prefer?

Mr. TYCHAN. Yes, Terry Tychan.

Mr. SMITH. Nice to have you here.

Mr. TYCHAN. I am from HHS and currently I am acting OSDDBU while we are replacing ours. I have had a chance to have some conversations with all of our contracting officers and small business specialists because I have gotten a lot more interested in all of these issues and how we are achieving or not achieving our goals.

I just wanted to mention and kind of echo the last remarks that the idea of GWACs and Federal Supply Schedules and all these larger-type contracts even transcend the questions of bundling, the issues of bundling. It is just as was described.

It is all the reforms. They are good, they are very good in a way, but they present a very general problem. And that is: How do we meet our small business goals and ensure that we foster the capacity of small business and still take advantage of sensible economies of scale and so on? And I think that is where our department is really struggling, to see how can we do this. There have been a lot of good things that agencies have done in setting up those contracts.

I think that is probably a key area where we want to do more and where we should look at how one sets up these government-wide contracts to make sure that small businesses are able to compete well. So just a general comment that that is a problem across the board.

Mr. SMITH. Mr. Neal.

Mr. NEAL. I am Robert Neal with the Department of Defense. I have got a couple issues with the description that IDIQs are just consolidation. We go through an extensive process of competing to select firms for IDIQs.

We are in the process now that we have looked at a select number of case studies and what we have found is that a large number of those IDIQ awards have gone to small businesses with a substantial increase in the amount of contract opportunity that results in awards to small businesses. So to make the general statement that an IDIQ keeps out a small business I think is inaccurate.

I think we need to recognize that there is a balance that has to be struck here. We have competing pressures. The most difficult task in looking at all of this is trying to strike that balance, being able to understand that we have pressures that are pushing all of

our departments, with reduced personnel, to be more efficient and more effective and at the same time provide the same opportunities to small businesses.

IDIQs in and of themselves do not preclude small businesses from winning. GWACs do not preclude small businesses from winning. The strategies that we employ in selecting the firms are the key here. When we have reserves that are set aside for small businesses it results in substantial improvement and opportunities for small business.

We have a number of major bundle opportunities here where we have gone to the Nth degree to assure that small businesses get good opportunities. That means that the management has to be committed. It is not the tool, it is the management of the process that I think we really ought to start focusing on and stop throwing rocks at the tools because the tools are only effective in the hands of the individuals that are using them.

Mr. SMITH. Ms. White.

Ms. WHITE. I would just like to talk a little bit more about that segue with your comments, Mr. Neal.

Oversight is a major problem with the GWACs as well. Whether an IDIQ and a GWAC and so forth constitute a contract is almost secondary to whether the OSDBUs and/or the PCR even know what is going on. We have no ability to influence whether something is going to go to a small business or not if a program officer decides to use a GWAC or another agency contract of some sort.

A lot of people are using them to circumvent the small business program in my opinion. I also think it is going to create a problem in measuring how all the streamlining is—well, for example, Federal Supply Service (FSS) does allow the funding agency to take credit for an award, but for all the other non-FSS GWACs it is a matter of the discretion of the agency and whether the agency pushes that award and whether it is Commerce or Federal Technology Service (FTS). If we push to get the credit for it, then yes, but if not, there is no uniformity.

So we do not even know. Our measurement is sporadic as well because sometimes an FTS contract is credited to GSA, sometimes it is credited to State. So we do not know if we are getting a good measure.

Mr. SMITH. Thank you. Senator Cleland of Georgia has joined us. Senator, if you would like to say a few words, please feel free.

**OPENING STATEMENT OF THE HONORABLE MAX CLELAND,  
A UNITED STATES SENATOR FROM GEORGIA**

Senator CLELAND. Thank you very much. I would like to congratulate the Chairman for convening this roundtable. May I say that the issue of contract bundling is an important one to many small business owners in this era of mega-mergers, global economics, and e-commerce. Small businesses still remain the backbone of our Nation's economy despite all the factors stacked against them.

All too often government contracts are being bundled to create a single contract that is simply unattainable for many small businesses and I appreciate the Chairman convening this meeting. I am a Member of the Small Business Committee, and I am interested in your input here.

In my own home State of Georgia there is a bundling issue that exemplifies the difficulties and the relationship between the Federal Government and small businesses. The heated debate over the Air Force's Flexible Acquisition and Sustainment Tool, or FAST Program, at Robins Air Force Base is just one example of many similar cases across the country.

Certainly, as a friend of the Air Force, I find myself in the difficult position of wanting to do whatever I can to help Robins Air Force Base save money in a time of increasing responsibilities and extremely tight military budgets. The Air Force believes that this program, which also is under consideration at the other Air Force depots in Oklahoma and Utah, would conserve tax dollars and increase efficiency, two objectives which I share.

However, I have always considered myself a champion of small businesses and I know how important it is for the small business person to have access to government contracts, both prime contracts and subcontracts.

The concern, that some small businesses in Warner Robins and Macon have not had access to these contracts, is something I am closely monitoring. I have written to Secretary Cohen regarding this issue and I am pleased that the SBA is also focusing on trying to protect the interest of small businesses in such cases. As I mentioned earlier this is just an example of the difficulties faced by both the Federal Government and small businesses.

I hope today's roundtable will help cast some light on some of these difficult questions so that both the Federal Government and small businesses can operate efficiently and effectively. Unfortunately, I have got to go to another Committee meeting. I am unable to stay for the entire roundtable but my staff will be here monitoring the testimony and I welcome any comments from the representatives of the Air Force or the SBA who may want to make a statement for the record.

Thank you all for coming here today and I appreciate your participation in this roundtable. I appreciate your interests in the expansion and development of our small businesses. Thank you all very much.

Mr. SMITH. Thank you, Senator. Mr. DeLuca, would you like to say something quickly?

Mr. DELUCA. I am Tony DeLuca and I am Director of Small Business for the Air Force and thank you for the segue, Sir.

I appreciate that, to talk about what we have done in Warner Robins and what we intend to do with FAST. By way of background for those who are not aware of what we are attempting to do, we are attempting to go ahead and put a tool in place, as Robert Neal indicated, that would provide the Air Force an opportunity to do three things.

First, it would give us an opportunity to go ahead and obtain rare spares, rare repairs in a very timely fashion. Second, it would be able to save the Air Force, we estimate, over \$100 million a year. And third, it would increase total small business utilization by more than double the prime contract awards and probably more than triple the subcontracting awards.

We talked earlier about the issue of the involvement of PCRs and the type of contracts that we look at. FAST and our work on FAST

has been going on for at least 18 months that I know of in trying to work through that.

If there is a lesson to be learned here, and I would share this with the entire group, it is that in the beginning when you stop working through things and you are really unsure of what to do, certain individuals will come out and make the pronouncements that something is a *fait accompli* when in reality it was not.

That was one of the difficulties we ran into at FAST. There were things that were put out that were assumed to be the way we were headed, which indeed was not that way at all.

When we first got into FAST, really the whole focus was originally just on large business as prime contractors because the work was thought to be so involved and so complex that small businesses could not do it. The infrastructure required in terms of being able to support payroll and so forth was fairly heavy.

As we went through that we took a look at the work involved itself. And there was a real concern that what we were doing was going to take work away from existing small businesses down at Warner Robins and throughout the United States. We found that the work we were talking about was work that would be added to the work already being done at Warner Robins.

What I mean by that, it was work that we had MIPRed (Military Inter-departmental Purchase Request) in most cases to the Army. The reason is that the Army had a vehicle that was good for us, that we could get to quickly and that would be able to satisfy the program manager's needs.

I think, for all small business people, we have to look at ourselves and say what are we going to do? Are we going to put our heads in the sand and say, "Gee, that is no good" or are we going to provide the customer—in this case, the program manager—an opportunity to have a vehicle that can at minimum compete with something else that is out there? And that is what FAST has done.

What we evolved into was a strategy that will have six contracts in place, two of which will be awarded to small businesses. We also address the area of bait-and-switch. This was another concern that small businesses have raised where they are part of a team when the contract is awarded, but guess what, they do not get any work afterward.

We have addressed that through the incorporation of a matrix which identifies the team members as well as the Standard Industrial Classification (SIC) codes assigned to those team members and the type of work they will do. So, when those tasks are levied on the contractor, they must go to those companies and if they do not, they have to come back to the contracting officer before they can go to anyone else.

The other thing that we have done is we have assigned a 23-percent total contract value to the subcontracting portion and we intend to enforce that by measuring past performance in the utilization of task orders. The other thing that we have done is we have put in place an oversight board at the senior headquarters in the Air Force, and we have invited the SBA to join us on that senior oversight board.

We want to ensure that what we tell people we are going to do, in reality we will end up doing. It is our sincere belief, and it is

my sincere belief—and I will tell you, Senator Cleland, I have been in this job 10 years, I have been in Federal work for 32 years, I was a former competition advocate of the Air Force—this is a good deal for small business. And I would not say that if I did not believe it. We have worked through it hard and over.

What it comes down to is how do you balance the need to ensure effectiveness and efficiency with the assurances that small businesses need to play. We have letters that come to us from small business teams that said, “Hey, we believe in what you are doing. Let us get on with it.” And that is what we are attempting to do.

I think when all is said and done, hopefully we will get a contract in place, and we will be able to come down and sit with this group and really go through, wholesale, the lessons learned. I think from a standpoint of knowledge management, which is a new buzz word everybody is throwing around, about how one uses intellectual capital to ensure continued improvement, we will be able to share that intellectual capital with everyone. I hope that in the process we can all benefit from what we are doing.

So, Senator Cleland, I want to assure you from an Air Force perspective we understand your concerns. We feel that we have addressed them, and we are willing to do whatever it takes to ensure that people understand that.

Senator CLELAND. Tony, a question. Andrew Carnegie once said to put all your eggs in one basket and then watch that basket. We are going to be watching your basket. OK?

Mr. DELUCA. Yes, Sir.

Senator CLELAND. Thank you all very much.

Mr. SMITH. Thank you. Luz Hopewell, would you like to take a few minutes to comment because the SBA prepared the appeal on this. Then we need to move on to our regular agenda. However, I do want to get everyone’s perspective on the record as long as the issue has been broached.

Ms. HOPEWELL. As you know, we did submit an appeal to the Air Force on the FAST contract. We did look at it very carefully and we wanted to make certain that we were able to balance the requirements of the Air Force as well as the requirements for small businesses.

We know that when you develop a strategy early on, and take into consideration the inclusion of small businesses in the process, it can work. I just came from the Department of Transportation and in Transportation we put in place two major GWAC contracts: ITOP I and ITOP II (Information Technology Omnibus Procurement). I am very proud to say that we had over 40 percent participation by small businesses as primes. They were able to compete against large businesses for every task order.

So it can be done, but the key to the whole thing is to have an open dialog at the very beginning when you start to develop the strategy that you are going to use for that acquisition. I feel that the sooner the OSDDBU directors as well as the PCRs and the acquisition workforce come together and do that development and that planning, the sooner you will be able to succeed.

I would like to put in the record the three points that we used in the appeal to the Air Force. One of them is that we felt that the statement of work was too broad. Because it was so broad it was

difficult to point to small business participation. The contracting office did not provide information or complete the steps required to justify the contract bundling in accordance with the contract bundling regulations.

The other major point is that an inappropriate Standard Industrial Classification code was utilized, resulting in an assigned size standard of over 1,500 employees and that really does not represent the majority of the work that is performed by small businesses.

Mr. SMITH. In the interest of moving on, if you, Luz and Tony, would submit clean copies of your appeal letter and your response letter, we will insert both of them into the record and we will let readers of the transcript decide for themselves. That way we can then proceed. Is that agreeable?

Mr. DELUCA. I agree because obviously we do not agree with my good friend, Luz on this.

Mr. SMITH. Unfortunately, I think we could spend the next 3 hours on this one.

Mr. DELUCA. Right. I agree. We have been spending 18 months; what is another 3 hours?

[The information referred to follows:]



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

AUG 3 2000

Honorable F. Whitten Peters  
Secretary of the Air Force  
1670 Air Force Pentagon  
Room 4E874  
Washington, DC 20330-1670

Dear Mr. Secretary:

This is an appeal pursuant to Section 15 of the Small Business Act and in accordance with Section 19.505 (c) (2) of the Federal Acquisition Regulation (FAR). The U. S. Small Business Administration (SBA) herein appeals the denial by the Head of the Contracting Activity (HCA), Mr. David D. Burton, Director, Directorate of Contracting, Warner Robins Air Logistics Center (ALC), Robins Air Force Base, GA, of the SBA recommendation to consider alternate acquisition strategies for the U. S. Air Force "Flexible Acquisition and Sustainment Tool," or FAST. The enclosed case file contains detailed background information referenced in this appeal.

This acquisition will be issued by Warner Robins ALC and will include requirements for the ALCs at Warner Robins, Ogden, UT and Oklahoma City, OK. This bundled solicitation will be issued on an unrestricted basis, specifying multiple awards, with six contracts anticipated. The agency proposes to reserve, not set aside, two of the six awards for small business. FAST is valued at \$7.4 billion for seven years. This appeal letter is a follow up to my letter of July 28, 2000, (Tab 1) advising you that the SBA had serious concerns about FAST.

The SBA agreed to meet with Mr. Tony DeLuca, Director, U. S. Air Force Office of Small and Disadvantaged Business Utilization, to discuss FAST and to review additional information, to be provided by Mr. DeLuca, prior to submitting a formal appeal. Mr. DeLuca agreed, on behalf of the Air Force, to grant the SBA a one-week extension of their appeal rights. (See Tab 2.) The information provided by Mr. DeLuca indicates that the FAST solicitation includes only requirements that were formerly sent by military interdepartmental purchase request (MIPR) to other Department of Defense (DOD) activities or the General Services Administration and would cover only additive work, contrary to previous information provided to the SBA. We were also advised that FAST would not include current work placed with 8(a) and small and disadvantaged business firms. However, in spite of assurances by the Air Force that FAST will not include current requirements, "requests for coordination records" have been submitted to the SBA Procurement Center Representative (PCR) resident at Warner Robins ALC, requesting interim support contracts be let while awaiting the award of FAST. These requirements are currently being performed by small businesses and **not** via MIPR. This case is but one example of information obtained by the SBA that does not support the fact that FAST covers only requirements acquired via MIPR.

Honorable F. Whitten Peters

The draft solicitation states that FAST is proposed for the sustainment of all Air Force managed weapons systems, support systems, subsystems and components, yet many of these sustainment requirements are currently covered under both small business set-aside and 8(a) contracts. Although the SBA received assurances that current contracts will continue to be utilized, the only protection in place to monitor placement of requirements under FAST is a six-month review. This provision does not appear to be adequate to preclude tasks being absorbed under the FAST umbrella.

We have also reviewed the July 12, 2000, letter to Mr. DeLuca (Tab 3) with the names of small businesses that support the FAST acquisition strategy. We note that the letter is not signed and that one or more of the firms on the list may not qualify as small businesses. The SBA, however, has been contacted by many other small businesses that advised the PCR that they would be unable to compete as prime contractors due to the ambiguous statement of work and magnitude of FAST.

Please be assured that the SBA fully supports the goal of the Air Force to achieve savings and efficiencies through consolidation and elimination of duplicative and more costly contracts. The SBA does not believe that the Air Force should maintain the "status quo," as suggested by the HCA in Tab 11. However, there are many ways to achieve these goals, support the warfighter and still provide an opportunity for **meaningful** small business participation as both prime contractors and subcontractors.

In summary, the SBA's major areas of concern are: that the statement of work is overly broad and ill-defined and provides no indication of the content or complexity of a typical task order; the contract bundling justification furnished to SBA is not responsive to the requirements of P. L. 105-135, "Small Business Reauthorization Act of 1997," dated December 2, 1997, and implementing regulations; and the solicitation utilizes an incorrect Standard Industrial Classification (SIC) Code. These individual concerns are discussed in detail below:

1. Both SBA and industry share the concern that the FAST draft solicitation contained an overly broad statement of work. The industry comments are available to review on the FAST web site and included in Tab 5. Because the scope of FAST is so loosely defined, any and all requirements initiated by the ALCs could be ordered under the resultant contracts. A scope that is too broad and loosely defined does not provide for true competition.

The General Accounting Office (GAO) found in the case of Valenzuela Engineering, B-277979, dated December 9, 1997, that the statement of work in an Army solicitation was so broad as to violate the Competition in Contracting Act of 1984 (CICA). In a letter to the Secretary of the Army, the GAO stated that to implement the requirement to obtain full and open competition in accordance with CICA, agencies are required to specify their needs and develop specifications in a manner designed to achieve full and open competition. Consistent with the CICA requirements, 10 USC 2304(a)(b)(3) requires solicitations for task or delivery order contracts to include a "statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract in a manner

Honorable F. Whitten Peters

that will enable a prospective offeror to decide whether to submit an offer.” The language in 10 USC 2304(a)(b)(3) quoted above reflects congressional concern that “indiscriminate use of task order contracts for broad categories of ill-defined services unnecessarily diminishes competition and results in the waste of taxpayer dollars.” The GAO further stated that “an overly broad statement of work can unjustifiably diminish competition just as bundling does, by deterring businesses, particularly small businesses, from competing for a contract, notwithstanding their ability to perform some of the work at issue.” The FAST draft solicitation appears to mirror the Army solicitation discussed in this case and will diminish competition through an overly broad statement of work contained in a bundled requirement.

2. The SBA PCR received the bundling analysis/justification for the subject acquisition on May 31, 2000 (Tab 7). On June 15, 2000, the PCR provided the contracting officer with a letter stating SBA concerns, including recommendations for consideration of two alternative acquisition strategies (Tab 8). The first strategy suggests that a separate contract be awarded to cover the requirements of each of the three ALCs, alleviating the extensive geographical dispersion of tasks. Our second suggestion was that the bundle be broken into categories of like or similar scope to provide greater small business participation at the prime contract level and provide for small business set-asides. Utilizing multiple awards, indefinite delivery indefinite quantity contracts would provide the Air Force with the speed and flexibility they are seeking.

The appeal of the contracting officer’s denial of the SBA recommendations to the Head of the Contracting Activity (HCA) is contained in Tab 10. The HCA response, upholding the contracting officer’s rejection of SBA recommendations by letter of July 6, 2000, is included in Tab 11.

The contract bundling regulations require that an agency perform market research with specific requirements applicable to bundled acquisitions. In addition, the contracting activity is required to identify the requirements that are currently being performed or those that could be performed under separate smaller contracts by small business. Notification to the small businesses is also required 30 days prior to the issuance of the solicitation, providing the small businesses with the name, phone number and address of the applicable SBA PCR. The contracting officer completed none of these steps.

In addition, the contracting activity has not demonstrated bona fide savings as required under the bundling regulations. The FAST bundling analysis report suggests that savings will be realized through reductions in surcharges and reduced end-item pricing resulting from “enhanced” competition. The SBA does not believe this bundle will result in “enhanced” competition, as discussed earlier in this letter. The bundling analysis compares the FAST bundle to other bundles and not to the issuance of separate smaller contracts. The analysis is based on comparison with the Army contract R2CSR, an Air Force audit dated May 5, 1999, and data describing cost avoidance associated with other ALC’s workload competitions. The R2CSR and other surcharges were then weighted against the \$1B annual estimate for FAST to develop 4.49 percent projected cost avoidance. While this may be proper averaging for statistical purposes, it does not support this bundled acquisition. Costs specific to the requirement to be acquired must be analyzed. A reduction

Honorable F. Whitten Peters

in surcharges or moving the cost to administer contracts from one agency to another does not represent savings to the taxpayer. Note the following comment in the bundling analysis appendix in Tab 7: "Assuming contracts awarded under FAST are amounts currently processed by MIPR to other services/agencies, the total dollar value of overhead costs required to administer these contracts can be "reclaimed" by the AF." However, the dollars associated with the cost of administration and overhead will simply shift from one agency to another, realizing little or no cost reduction for the DOD and no savings to the taxpayer.

In addition to the broad range of services to be acquired under FAST, a significant number of manufacturing requirements is anticipated. Historically, small businesses have proven to save the Government millions of dollars on individual contracts when broken out from the large business original equipment manufacturer. The SBA letter of June 15, 2000, to the WR-ALC contracting officer (Tab 8) included attachments with examples of savings realized by Warner Robins ALC on three simple contracts for modification kits that were written in 1996. The savings realized by going directly to small business manufacturers were millions of dollars over what was paid to the large business for similar quantities during the same year.

3. Lastly, of critical concern is that the contracting activity has not used the criteria set forth in the FAR to select the appropriate SIC code for FAST. FAR 19.102 (d) requires that "when acquiring a product or service that could be classified in two or more industries with different size standards, contracting officers shall apply the size standard for the industry accounting for the greatest percentage of the contract price." The contracting activity indicates they chose SIC 3721 because it best fits the description of the missions of the three ALCs and the comprehensive nature of this requirement. SIC Code 3721 currently accounts for less than two percent of the total dollars expended at Warner Robins ALC. In addition, the Air Force Materiel Command Fiscal Year 1999 Performance data shows that of the total dollars expended in SIC 3721, 99.7 percent was awarded to large businesses.

The SBA Office of Size Standards also reviewed the statement of work and found that SICs 8711 "engineering services" and 8744 "management services" more correctly describe the work included in this proposed bundle. We note that these SIC codes represent much of the work currently being performed by small, small disadvantaged and 8(a) contractors under ALC contracts that are set aside. Therefore, contractors receiving FAST awards as small businesses utilizing SIC 3721 would likely be large businesses under separate contracts using the above noted SIC codes.

The contracting activity maintains that by using SIC Code 3721 and "reserving" two contract awards for small businesses, the prime contract opportunities for small businesses will be greatly increased. We do not agree. Utilizing SIC Code 3721 will only provide an opportunity to award contracts to several large firms that would be classified as small under this SIC Code. Thus the total awards to small business will be inflated as a result of the work under FAST. The use of SIC 3721 would also greatly distort the data collected to determine small business participation in various areas within the Air Force and DOD.

Honorable F. Whitten Peters

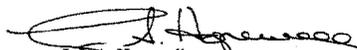
In summary, the SBA requests that the FAST requirements be unbundled and that you consider two alternate acquisition strategies for the program. The first provides for separate awards for each of the three ALCs, permitting each ALC to tailor their solicitation to support the types of aircraft systems they manage. This would alleviate the need for each successful contractor to provide worldwide sustainment support and would encourage the participation of true small business firms.

Alternatively, requirements for manpower support and services could be broken into "families" of more homogenous indefinite delivery indefinite quantity type contracts. This approach would allow many of the small businesses currently performing to compete. Competitive repair work and spare procurements should also be broken out for separate acquisitions. These are often suitable for exclusive small business participation and have proven to have great cost benefit for the Government.

Neither of these alternate strategies would necessarily result in a substantive increase in the number of contracts to be awarded and administered by Warner Robins staff. In the first case, two or three multiple award contracts could be awarded for each ALC. The second recommendation would result in additional contract awards, but true competition would be enhanced while preserving the small business industrial base. Breaking out the requirements as outlined above would also alleviate the SIC code concern. The requirements could be more clearly defined and the SIC code assigned that better describes the actual work being performed or product acquired.

In conclusion, we request your personal review of this appeal and suggestions for alternative strategies that are inclusive of small business. Thank you for your consideration.

Sincerely,



Luz A. Hopewell  
Associate Administrator  
Office of Government Contracting

Enclosure

cc: Mr. Tony DeLuca  
Director OSDBU  
U. S. Air Force

Mr. Robert Neal, Jr.  
Director, OSDBU  
Department of Defense

**SYNOPSIS OF THE SBA SECRETARIAL APPEAL**  
**OF THE U. S. AIR FORCE ACQUISITION**  
**“FLEXIBLE ACQUISITION & SUSTAINMENT TOOL”**  
**(FAST)**

The U. S. Small Business Administration (SBA) submitted a secretarial appeal of the FAST acquisition to the Honorable F. Whitten Peters, Secretary of the Air Force, on August 3, 2000.

The FAST draft solicitation bundles sustainment requirements for the three Air Logistics Centers (ALC), located at Warner Robins, GA, Oklahoma City, OK, and Ogden, UT. The solicitation will be issued by the Warner Robins ALC, Robins AFB, GA. The contracting activity proposes to issue the acquisition on an unrestricted basis, specifying multiple awards to six firms, “reserving” two of the six awards for small business firms. The solicitation includes no provision to set aside contract awards for small businesses or 8(a) firms.

In summary, the SBA took issue with the proposed acquisition strategy, outlining three major areas of concern:

- the statement of work is so overly broad and ill-defined as to limit competition;
- the contracting office did not provide the information or complete the steps required to justify contract bundling in accordance with the contract bundling regulation;
- an inappropriate Standard Industrial Classification (SIC) Code is utilized, resulting in an assigned size standard (1500 employees) that is not representative of the majority of the work to be performed under FAST.

The SBA proposed that alternate acquisition strategies be considered that would be inclusive of small business firms. The first strategy would specify multiple awards for work at each of the three ALCs, providing added competition from local firms and other small business contractors. The second strategy proposed breaking the manpower support and services into groups of more homogenous indefinite quantity indefinite delivery contracts. Each of these strategies would provide the opportunity for small business set-aside and 8(a) contract awards.



DEPARTMENT OF THE AIR FORCE  
WASHINGTON, DC

Office Of The Under Secretary

29 August 2000

SAF/SB

Ms. Luz A. Hopewell  
Associate Administrator  
Office of Government Contracting  
Small Business Administration  
409 3rd Street SW, Suite 8000  
Washington DC 20416

Dear Ms. Hopewell

This is in response to your appeal of the Warner Robins Air Logistics Center (WR-ALC) Head of the Contracting Activity (HCA) decision that rejected the Small Business Administration (SBA) recommendation concerning alternate acquisition strategies for the Flexible Acquisition and Sustainment Tool (FAST).

To ensure that all the facts have been considered, we have once again revisited the FAST strategy in light of your concerns and recommendations. Further, we examined the examples you cited to ascertain their relevance and status. As a result, it is our sincere belief that the strategy we have developed for FAST is a sound business decision that will greatly enhance Small Business participation in Air Force contracts. Moreover, it will set the standard for the future due to its strict terms and conditions and execution parameters. Consequently, we must deny your appeal. The following expands on the above and addresses the issues you raised in the sequence they were discussed:

Referencing the example you cited as not supporting that FAST covers only requirements acquired via MIPR (paragraph 3, page 1): We address your general concern regarding the interpretation that FAST will only include requirements that were previously MIPR'd in the following paragraph (paragraph 4). The FAST Team contacted the local SB/SBA offices to identify the specific examples cited. Only one such Purchase Request (PR) was surfaced. This C-130 System Program Office (SPO) PR was seeking to establish interim contract support for manpower support services since the existing contract vehicle was expiring. The request included the following statement on the DD Form 2579: "SPO wants to go to GSA Schedule until FAST is ready." The existing contract vehicle was an 8(a) set-aside contract. At that time, the SPO had not been briefed on the exclusion of 8(a) set-aside contract requirements from transitioning to FAST after the current contract expires. The FAST Team will address this (and any other) misconceptions by providing training to all program managers in the Product Directorates at each of the three Air Logistics Centers (ALCs). This training and mandatory FAST Users Guide will highlight the scope and purpose of FAST, the exclusions under FAST, and any other information pertinent to potential customers. In the instant case, senior management was alerted and aggressively worked together, and the contract was again awarded to an 8(a) firm.

Referencing your statement that many sustainment requirements are currently covered under both small business set-aside and 8(a) contracts and that provision does not appear adequate to preclude tasks being absorbed under the FAST umbrella (paragraph 1, page 2): Inherent in this allegation is the fundamental question as to whether any work currently being done by small business at the ALCs can ever go under FAST. The answer is "seldom if ever," and then only under rigorously controlled conditions. FAST will neither disrupt nor displace any current contracts. Current small business contracts will not be incorporated into FAST; follow on requirements (with the exception of Section 8(a) and Small Disadvantaged Business (SDB) contracts) may be considered. Section 8(a) and SDB contracts will not be transitioned to FAST. Requirements at the ALCs outside of FAST remain subject to FAR 19 set-aside guidance. The ceiling estimates for FAST are based on bringing the majority of currently MIPR'd dollars back into the AF. The FAST contract ceiling is set at \$7.441 billion over seven years, which equates to an estimated annual contract activity of \$1.063 billion. AF efforts will be focused on meeting the requirements of the ALCs estimated \$1.095 billion discretionary annual MIPR'd dollars. The FAST ceiling would never permit incorporation of the estimated \$8 billion annual ALC requirements that are acquired without the use of MIPRs. However, based on a future best value determination, especially if increased scope is involved, a requirement formerly accomplished by a small business (excluding 8(a) and SDB requirements) might be considered for incorporation under FAST. In this unlikely event, a specific PCO determination shall be required, along with approval of the FAST Program Team, and reporting at FAST Senior Level Oversight Panel meetings.

Your first stated major concern was that the Statement of Work (SOW) is overly broad and ill-defined and provides no indication of the content or complexity of a typical task order (paragraph 5, page 2): Fast is appropriately defined to provide the framework for source selection and follow-on task order competitions of services, modifications, spares, and repairs applicable to AF-managed weapon systems. We address this issue in more detail in the next paragraph.

Concerning the allegation (paragraph 6, page 2) that the SOW is so generic and vague that it violates the Competition in Contracting Act (CICA), specifically 10 USC 2304(a)(b)(3): Unlike the GAO case cited where the Army utilized a SOW so broad as to violate CICA, FAST requirements are much more defined. As stated in the FAST SOW, the focus of the FAST contract "is the sustainment of all Air Force managed weapon systems, support systems, subsystems, and components. This requirement includes services, modifications, spares, and repairs. FAST does not include Military Construction (MILCON), Civil Engineering, or Base Operation Support (BOS). In addition, FAST will not be used for new development programs." Spares and repairs are further limited to critical, limited and contingency, and are specifically defined in the Definitions of Terms at Tab A in the SOW.

Your second stated major concern was that the contract bundling justification furnished to SBA is not responsive to the requirements of P.L. 105-135 and implementing regulations (paragraph 4, page 3): Although the law and implementing regulations do not necessarily apply here, market research was performed and explained in the FAST bundling justification. SBA's request for identification of requirements currently being performed or that could be performed under separate smaller contracts by small business has been addressed, in that FAST is additive and will not disrupt or displace any current ALC small business contracts. Therefore, there are neither requirements to identify nor small businesses to notify. It is also alleged that the contracting activity has not demonstrated bona fide savings (paragraph 5, page 3): FAST cannot

be compared to separate smaller contracts, nor should it be. It will not replace nor disturb any contracts currently in place, so to use those contracts as a base would be in error. The FAST bundling justification and related correspondence demonstrated a clear, quantifiable and auditable net cost savings of 9.99 percent, equating to \$100M annually based on estimated \$1B annual contract usage, which then becomes available for warfighter sustainment. The administrative costs to the Air Force for handling work brought back under FAST (not MIPR'd) are considered by the above and are not an accounting "shift." FAST has clearly demonstrated more than 5 percent savings.

We do not disagree that small business was a best value in your cited instances (paragraph 2, page 4). We are committed to fostering that competition for the manufacturing requirements that were previously unavailable for small business competition due to MIPR activity. FAST provides enhanced competition in two important ways. First, many of the currently MIPR'd requirements go to contracts which only utilize large business primes (such requirements fall under the purview of the contracting agencies' small business programs), while FAST has two contracts reserved for small business primes. Second, FAST has two levels of competition: the initial competition for the six prime awards, and the follow-on competitions for each individual Delivery/Task Order. We share the belief that small business can compete successfully, and FAST will give them this opportunity.

Your third major stated concern is that the solicitation utilizes an incorrect Standard Industrial Classification (SIC) code (paragraph 3, page 4): We do not agree that an incorrect SIC code has been selected. The correct SIC code for a procurement is that which best describes the principal purpose of what is being procured, in light of the industry description in the SIC Manual, description in the solicitation and the relative weight of each element in the solicitation. FAST includes services, modifications, spares, and repairs in support of AF-managed weapons systems, support systems, subsystems, and components. The selected SIC code of 3721 expressly includes manufacturing, assembling, repairing and rebuilding aircraft, R&D applicable to aircraft and, of the alternatives available, most accurately describes the contemplated work under FAST.

Finally, SBA requests that the FAST requirements be unbundled and that we consider two alternate acquisition strategies for the program. The first provides for separate awards for each of the three ALCs, permitting each ALC to tailor their solicitation to support the types of aircraft systems they manage.... Alternatively, requirements for manpower support and services could be broken into "families" of more homogenous indefinite delivery indefinite quantity contracts (page 5): Adjusting the FAST acquisition strategy to meet any of the SBA suggestions would disrupt the very qualities that satisfy the program managers' integration needs. As the strategy currently stands, FAST provides a capability to accomplish various stages of a project under one task order with integrity and accountability. SBA's proposed alternative of having each ALC award their own contracts would require unwarranted duplication of significant workforce resources and greatly increase expenditures for both industry and the Government. Concerning SBA's alternative of breaking the requirement into smaller homogenous families, segmenting this type of work does not meet the AF customers' needs, which has led to the current situation of significantly increased MIPR'd workload and decreased small business participation. FAST has been designed to be quick, flexible, and customer-focused to meet quick-strike war fighter support requirements while eliminating surcharges and increasing small business direct award dollars and percentages. The contract scope provides the ability to satisfy a broad range of requirements commonly encountered in weapon system sustainment, such as

technical and professional services; modifications (excluding new development tasks); and spares and repairs in critical, limited, and contingency situations. Bottomline - Program Managers need the speed, flexibility and economy provided by FAST sustainment capabilities.

We hope that you will join us in implementing an approach that is best for small business both at the prime and subcontract levels, demonstrated through an innovative strategy with executable terms and conditions. We again invite you to participate in our Senior Level FAST Oversight Panel.

Sincerely

A handwritten signature in black ink, appearing to read 'Anthony J. Beluca', with a long horizontal flourish extending to the right.

ANTHONY J. BELUCA, SES  
Director  
Office of Small and Disadvantaged  
Business Utilization

Mr. SMITH. Let us move on then to the next segment on the specific standards and terms that are used in the regulation. I apologize for those of you who had additional comments but I am afraid we want to try to keep on track so the OSDDBU council can meet on time after this is over. The one thing that caught my attention is one of the phrases that is used in the law and which appeared in the SBA's regulation—the term “measurably substantial.”

In order to determine whether a bundling is necessary and justified we look to see whether the benefits from it are measurably substantial. Both words are important because I thought the SBA seized on a very valid point in the regulations. The term “measurable” implies quantifiable. If you are going to measure it, you have to be able to put a number to it and there is certain logic to that.

What I wanted to ask you was, how would non-monetary benefits be calculated? Especially since the thresholds in the regulation are expressed in terms of dollars. There are some thresholds such as quality improvements, reduction in acquisition cycle times, and better terms and conditions that do not automatically come to mind with a specific price tag associated with them.

I wonder how well we know how to translate those non-monetary benefits into a monetary standard.

While someone is thinking of what to say on that, I will give the reason why I have a concern with this. I used to be a lot more thrilled with estimates of cost savings until I submitted an amendment once to the Congressional Budget Office (CBO) for an estimate. They came back with an estimate of \$12 million plus or minus \$2.5 million, which was about an error margin of about 17 percent either way. I was kind of impressed at the level of arbitrariness in these estimates, so that concerns me.

Stan McCall.

Mr. MCCALL. I think Bob Neal said something earlier about there being opportunities within bundled contracts for small business participation. I think measuring the cost of doing this is really what we need to be looking at. I think we are paying a bigger cost than we realize.

My observation has been that bundling is wreaking havoc with the development of new businesses. It is not only from the aspect of creating bundled contracts that large businesses win. We are also bundling within the set-aside programs themselves, in that small businesses and 8(a) firms are putting them together to make larger requirements. Once these instruments are in place they tend to soak up every new opportunity that comes along.

Now I feel that over time the smaller requirements that were out there were developing the American small business base, which was building up the tax base. That is where the jobs are being created. It was also building competition, which was giving us better prices. I can point to many examples of small businesses that got their first small opportunity, grew, and then they were able to compete against the large companies, resulting in much better prices. But those opportunities have been soaked up not only by large businesses but other small businesses and 8(a) set-asides that grant these huge requirements that the little start-up company does not have access to anymore.

How do you measure that impact? You cannot but I know it is there. And despite a 10-percent savings we might be getting up front, we are paying a bigger cost with less competition, less building of the tax base down the way. So where do we draw the boundary of where you measure the cost.

Mr. SMITH. So perhaps there needs to be a cost component to the definition somehow. Although in that case the costs are so wide you would be hard to attribute it to any particular contract but I think that is a very important concern.

Mr. ROBINSON. Quick question. Based on the strength of his argument—

Mr. SMITH. Mr. Robinson.

Mr. ROBINSON. Yes, I am sorry, Jackie Robinson from GSA. Based on the strength of your argument, Mr. McCall, what is your recommendation?

Mr. MCCALL. I think one thing we have got to do is put more than just a cost definition on a particular bundle. Other additional approaches that we must analyze are, we must try to define what we put to this test, including contract consolidation, new requirements, a lot of things that are really bundling but they are not called that.

Like I said we are even doing it within set-aside programs but it is not subject to any tests when we are doing it there. It is a start. Those are some of the things I think we could address.

Mr. SMITH. There was something that Charlie Alderman mentioned to me some months ago before he moved on to bigger and better things. And that was that there had been a study in the early 1960's about the effect of contracting in the, I guess it was at the Defense Department, and that before a lot of the small business program was well-developed, things had become so consolidated that a contractor was essentially able to name a price. Does that ring a bell with anyone?

I have not been able to track down that study. I sure would be interested in knowing where that is or if anyone knows who produced it.

Mr. NEAL. What we are in the process of doing now is what we have gone through, as a commitment to the House Small Business Committee, of performing a bundling study in which we have invited several advocates to sit on our oversight review board for the study. What we are finding—we did not find that particular study because we did do a historical search and we were not able to locate it—but what we are finding as we go through the process is that the point that Stan McCall is making is one that many of us in procurement positions have not come to grips with.

With the economies of scale that we are asking folks to look at, inherently we are looking for firms that have capabilities that are not present in emerging firms. You cannot ask us to serve the mature small business community and the emerging population at the same time and reduce our resources. You are having us at odds with ourselves.

When we consolidate and when we go for efficiencies you have a tendency to look at mature firms with past performance, with history, that you have less difficulty and you spend fewer of your resources assisting. We do not have the people so we are looking

for mature firms that can hit the ground running and do the job and we never have to look at them again. As we look at all of our consolidations at whatever level, the study is coming back to us and pointing out that we are having this schism occur.

And so those are our preliminary results saying that we are focusing now on mature firms at the expense of emerging firms. Now we have a lot of programs that are out there for emerging firms, but do we have contracts that would allow the emerging firms to gain the experience? That is where we really have the difficulty in the agencies. Because if I have a choice as a program manager, I am not going to risk my program on an emerging firm when I know that there are mature small businesses that will give me a check in the check box and satisfy my oversight committees if I use a mature firm.

So we are going to need some help in assisting our leadership as we come up with innovative strategies to try to enhance the opportunities for emerging firms. However, we are going to need some tools in order to assist the emerging firms. Now we used the Mentor-Protégé program as one of the tools to assist an emerging firm. But it requires a commitment on the part of the commercial sector, requiring our prime contractors to invest their resources along with the resources that we have available. There is very strong sentiment that there should not be a Mentor-Protégé program where we offset the cost. If that happens, then emerging firms are going to be dead in the Federal marketplace.

One other point I want to make on this cost-benefit analysis piece, when you ask the question of whether or not we should have cost-benefit analysis, we have got to recognize that we went through a long, painful process with the Office of Management and Budget (OMB) Circular A-76 process to finally get to the point where we feel we have a cost-benefit tool that is useful. We have just begun to scratch the surface in small business and looking at consolidations and recognizing that we need a cost-benefit analysis tool that is useful.

Now that we have recognized that, we can benefit from looking at what took place in the A-76 process and maybe appropriate that cost-benefit analysis tool that took years to develop, and also be able to use it in the area of understanding, what are the costs and the benefits of doing a consolidation. That is going to take us a little time. That is something—as some of the preliminary indications that we have gotten from our consolidation study show—that there is a great demand for us to have clear, concise, detailed guidance to everyone that is involved in the process on how to perform a cost-benefit analysis as it relates to consolidations.

Because, as it is right now, we are throwing out very raw generalizations to our contract folks and we are expecting them to come back with A-76-type cost-benefit analyses and that is not what we are getting from them. What we are getting is the best that they have available to them at that particular point in time and within their abilities. But we are not getting the kind of detail that you would like to have, that we would like to have in order to make informed decisions and help our leaders make informed decisions on consolidations.

It is one area that we are going to have to spend a considerable amount of resources, and when I say resources I mean money, in insuring that we have a good cost-benefit tool because that A-76 tool cost us considerable amount of resources over a number of years.

Mr. SMITH. And if we have already invented the wheel, there is not a lot to be gained by reinventing it. Do you recall how A-76 handles some of the non-monetary things like reduction in acquisition cycle times and terms and conditions and the non-monetary things? Does it have a process that has already been thrashed out on how to translate those into dollar figures?

Mr. NEAL. They have tried to thrash out many of those areas. I would like to submit for the record copies of the cost-benefit analysis that is utilized by the OMB as the beginning where we can start to look and see where it may be tweaked to be more appropriate for what we use in the procurement field.

Mr. SMITH. If you will submit that to us, we will make that a part of the record. Thank you.

[The information referred to follows:]

**CIRCULAR NO. A-76**  
**Revised Supplemental Handbook**

**PERFORMANCE OF COMMERCIAL**  
**ACTIVITIES**



**EXECUTIVE OFFICE OF THE PRESIDENT**  
**OFFICE OF MANAGEMENT AND BUDGET**

**MARCH 1996**

**(UPDATED THROUGH TRANSMITTAL**  
**MEMORANDUM 20, JUNE 1999)**

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### Introduction

The August 1983 Office of Management and Budget (OMB) Circular No. A-76, "Performance of Commercial Activities," establishes Federal policy for the performance of recurring commercial activities. This Supplement replaces the Handbook issued with the 1983 Circular and provides updated guidance and procedures for determining whether recurring commercial activities should be operated under contract with commercial sources, in-house using Government facilities and personnel, or through interservice support agreements (ISSAs). The Revised Supplemental Handbook is an integral part of the 1983 Circular.

As noted in the Vice President's Third Report of the National Performance Review, "Common Sense Government: Works Better and Costs Less," (September 1995), Americans want to "get their money's worth" and want a Government that is more businesslike and better managed. The reinvention of Government begins by focusing on core mission competencies and service requirements. Thus, the reinvention process must consider a wide range of options, including: the consolidation, restructuring or reengineering of activities, privatization options, make or buy decisions, the adoption of better business management practices, the development of joint ventures with the private sector, asset sales, the possible devolution of activities to State and local governments and the termination of obsolete services or programs. In the context of this larger reinvention effort, the scope of this Supplemental Handbook is limited to the conversion of recurring commercial activities to or from in-house, contract or ISSA performance. Circular A-76 is not designed to simply contract out. Rather, it is designed to: (1) balance the interests of the parties to a make or buy cost comparison, (2) provide a level playing field between public and private offerors to a competition, and (3) encourage competition and choice in the management and performance of commercial activities. It is designed to empower Federal managers to make sound and justifiable business decisions.

Reliable cost and performance information is crucial to the effective management of Government operations and to the conduct of competitions between public or private sector offerors. Unfortunately, this

information has not been generally available and has often been found to be unreliable. The Chief Financial Officers Act of 1990 (CFO Act) includes among the functions of chief financial officers "the development and reporting of cost information" and "the systematic measurement of performance." This includes performance by in-house, contract or ISSA resources. In July 1993, Congress passed the Government Performance and Results Act (GPRA), which mandates performance measurement by Federal agencies. The Statement of Federal Financial Accounting Concepts No. 1, "Objectives of Federal Financial Reporting (1993)," stated that one of the objectives of Federal financial reporting is to provide useful information to assist in assessing the budget integrity, operating performance, stewardship, and control of the Federal Government. In 1995, the Federal Accounting Standards Advisory Board (FASAB) recommended standards for managerial cost accounting, which were approved by the Director of OMB, the Secretary of the Treasury and the Comptroller General. These standards were issued as the Statement of Federal Accounting Standards No. 4, "Managerial Cost Accounting Standards for the Federal Government." This Supplement relies on the managerial cost accounting and performance standards established in support of the CFO Act, GPRA, and the Federal Accounting Standards, as they are developed and implemented. Cost and performance information developed for cost comparisons required by the Circular and this Supplement should be drawn from the data base established by these standards and adjusted as appropriate.

The Circular and this Supplement are not intended and should not be construed to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person. It should not be construed to create any substantive or procedural basis on which to challenge any agency action or inaction, except as set forth in Part I, Chapter 3, Paragraph K, of this Supplement and as set forth in Appendix 2, Paragraph G, consistent with Section 3 of the Federal Activities Inventory Reform Act of 1998 (FAIR Act, P.L. 105-270).

This Supplement is divided into two parts (with a table of contents at the beginning of each Part) as follows:

Part I *Policy Implementation*

Sets forth the principles and procedures for implementing OMB Circular A-76.

Part II *Preparing the Cost Comparison Estimates*

Provides instructions for calculating the financial advantage to the Government of acquiring a product or service through in-house, contract or interservice support agreement resources.

Appendices

*Definition of Terms*

Defines terms within the context of OMB Circular A-76.

*Commercial Activities Inventory*

Provides information and reporting guidance.

*Useful Life and Disposal Values*

Provides useful expected life and disposal values for equipment.

*Tax Tables*

Provides Federal tax rate tables for use in A-76 cost comparisons by industry type.

*OFPP Policy Letter 92-1*

Provides guidance and criteria for determining whether activities may be considered inherently governmental and not subject to the requirements of the Circular or this Supplement.

*Aviation/Motor Vehicle*

Provides sector-specific alternatives to the cost comparison methodologies in Part II.

**PART I**

**POLICY IMPLEMENTATION**

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## Chapter 1—General Provisions

### A. General

This Part sets forth the principles and procedures for managing the Government's acquisition of recurring commercial support activities, implementing the "Federal Activities Inventory Reform Act of 1998" ("The FAIR Act"), P.L. 105-270, and Circular A-76. Exhibit 1 summarizes the conditions that permit conversion to or from in-house, contract or Inter-Service Support Agreement (ISSA) performance. The requirements of the FAIR Act apply to the following executive agencies: (1) an executive department named in 5 USC 101, (2) a military department named in 5 USC 102, and (3) an independent establishment as defined in 5 USC 104. The requirements of the FAIR Act do not apply to: (1) the General Accounting Office, (2) a Government corporation or a Government controlled corporation as defined in 5 USC 103, (3) a non-appropriated funds instrumentality if all of its employees are referred to in 5 USC 2105(c), or (4) Depot-level maintenance and repair of the Department of Defense as defined in 10 USC 2460.

### B. Inherently Governmental Activities

1. Inherently Governmental activities are not subject to the FAIR Act, Circular A-76 or this Supplemental Handbook. As a matter of policy, an inherently Governmental activity is one that is so intimately related to the exercise of the public interest as to mandate performance by Federal employees. The Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, dated September 23, 1992 (*Federal Register*, September 30, 1992, page 45096), provides guidance on the identification of inherently Governmental activities (see Appendix 5). This guidance conforms to the definition provided at Section 5, paragraph 2, of the FAIR Act.

2. The decision that a particular function is inherently governmental or commercial rests on a number of factors, including: the level of Federal control required, the ministerial nature of the function, certain statutory provisions, and distinguishing between recurring operations and oversight. Statutory authority to perform a function is not, itself, sufficient to warrant continued in-house performance as an inherently governmental function. The full range of issues addressed by the OFPP Policy Letter 92-1 must be considered. As provided by the Policy Letter, OMB remains available to resolve agency concerns in this determination.

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### C. Government Performance of Commercial Activities

Consistent with paragraph 8. of the Circular, cost comparisons are not required to convert the following activities to or from in-house, contract or ISSA (The application of these conditions should be reviewed by the official in paragraph 9.a. of the Circular, or designee, as a part of the annual inventory of commercial activities.):

1. *National Defense or Intelligence Security*.—Commercial activities may be performed by in-house, contract or ISSA, without cost comparison, when required to assure the national defense or national intelligence security. The Secretary of Defense, or designee, approves requests for conversions on the basis of the national defense. The Director of Central Intelligence, or designee, approves conversions on the basis of national security.

2. *Patient Care*.—As provided by paragraph 8.c. of the Circular, commercial activities at Government-owned hospitals or other health facilities may be performed by in-house, contract or ISSA, without cost comparison, when needed to maintain the quality of direct patient care.

3. *Core Capability*.—A minimum core capability of specialized, scientific or technical in-house or contract employees and related commercial workload, may be maintained, without cost comparison, to ensure that the Government has the necessary capabilities to fulfill its mission responsibilities or meet emergency requirements.

4. *Research and Development*.—As provided by paragraph 7.c.(7) of the Circular, research and development activities may be performed by in-house, contract or ISSA without cost comparison. Recurring and severable activities that are performed in support of direct research and development are subject to the cost comparison requirements of this Supplement.

5. *No Satisfactory Commercial Source Available*.—

a. If a commercial activity could be contracted, but there is no commercial source, the activity is to be operated using the Government's Most Efficient Organization (MEO).

b. Efforts to solicit commercial interest are to be documented, to include: (1) consideration of preferential and non-preferential procurement and (2) a determination that the solicitation did not limit commercial participation.

6. *Functions With 10 or Fewer FTE*.—Activities involving 10 or fewer FTE may be converted from contract

to in-house or ISSA, without cost comparison, if the contracting officer determines that performance is unsatisfactory or that fair and reasonable prices cannot be otherwise obtained.

**7. Meet Performance Standard.—**

a. Performance by in-house, contract or ISSA may be authorized if an agency demonstrates that performance meets or exceeds generally recognized industry performance and cost standards.

b. Competitions based upon output and cost performance measures must reflect the agency's fully allocated costs of performance and must be certified as being in full compliance with the Statement of Federal Accounting Standards No. 4, "Managerial Cost Accounting Standards for the Federal Government." The cost comparability procedures described in this Supplement, such as those related to fringe benefit factors, must also be considered in assessing the comparability of Government and private sector performance measures and costs. Adjustments to Government and private sector performance measures and costs may be required. Performance standards should be monitored in conjunction with the Chief Financial Officers Act (CFO Act) and the Government Performance Results Act of 1993 (GPRA).

c. A full description of the standards, performance measures, costs and adjustments made will be developed by the agency and made available to the public upon request. The use of selected standards, performance measures and adjustments are subject to the administrative appeal procedures provided at Part I, Chapter 3, paragraph K, of this Supplement.

8. *Lower Cost.*—In-house, contract or ISSA performance of a commercial activity may be warranted by the results of a cost comparison conducted in accordance with the procedures described in this Supplement.

9. *Temporary Authorizations for In-House Performance.*—If a contractor defaults or is otherwise terminated, agencies should seek interim contract support. If interim contract performance is not feasible, in-house or ISSA performance of a "contracted" activity may be authorized, on a temporary and emergency basis. As soon as possible, but not later than at the end of the next contract option period, a replacement contract should be awarded or a new requirements cost comparison completed to justify permanent conversion to in-house performance.

**D. Contract Performance of Commercial Activities**

As a matter of policy, the Government shall acquire non-recurring commercial activities through contracts with the private sector. The acquisition of a recurring

commercial activity by contract may be warranted under the following conditions (The application of these conditions should be reviewed by the official in paragraph 9.a. of the Circular, or designee.):

1. *Contracted Activities.*—An activity obtained through a competitively awarded contract will continue to be obtained by contract as long as the quality of service is acceptable and competitive prices are fair and reasonable. If the Government believes that quality is unacceptable or prices appear unreasonable, a cost comparison is conducted to justify conversion to in-house or ISSA performance.

2. *New Requirements.*—A new requirement will be obtained by a competitively awarded contract. If there is reason to believe that contract service quality or prices may be unreasonable, a cost comparison is conducted to justify conversion to in-house or ISSA performance.

3. *Severable Expansions.*—Severable expansions of existing in-house, contracted or ISSA performed activities are obtained by a competitively awarded contract. If the expansion is not severable, a review of the entire activity, including the proposed expansion, is conducted for potential contract performance. If there is reason to believe that contract service quality or prices may be unreasonable, a cost comparison is conducted to justify conversion to in-house or ISSA performance.

**4. Interservice Support Agreements (ISSA).—**

a. Commercial activities may be performed by in-house or contract resources or through ISSAs as provided by law and Part I, Chapter 2 of this Supplement.

b. In responding to interservice support requests, potential agency service providers will certify that their reimbursable cost estimates reflect the full competitive costs to the Government as defined in this Supplement.

5. *Activities With 10 or Fewer FTE.*—Commercial activities involving 10 or fewer FTE may be performed by in-house, contract or ISSA performance, without cost comparison, if the contracting officer determines that offerors will provide required levels of service quality at fair and reasonable prices.

6. *Activities of 11 or More FTE.*—Commercial activities may be converted to contract or ISSA, without cost comparison, if fair and reasonable prices can be obtained through competitive award and all directly affected Federal employees serving on permanent appointments are reassigned to other comparable Federal positions for which they are qualified. In no case, shall any commercial activity be modified,

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reorganized, divided or in any way changed for the purpose of circumventing the requirements of this paragraph or this Supplement.

*7. Activities Performed by the Military.—*

a. The official in paragraph 9.a. of the Circular, or designee, may authorize the direct conversion of activities performed by uniformed military service personnel to contract performance, without cost comparison, if the contracting officer determines that fair and reasonable prices can be obtained from qualified commercial sources.

b. If a cost comparison is conducted or otherwise required to convert to ISSA performance, the uniformed military positions included in the Government's in-house cost estimate are cost at the standard composite rate for uniformed personnel published by the DOD or other applicable agency Comptroller. The Comptroller will also establish the number of productive hours for uniformed personnel (see Part II, Chapter 2, paragraph B, "Personnel").

c. Civilian personnel will be cost as provided by this Supplement. While the uniformed positions may or may not be converted to civilian positions as a part of this process, the conversion of in-house civilian positions to uniformed positions is not authorized.

8. *Preferential Procurement Programs.*—A commercial activity of any size that is performed by Federal employees may be converted to contract performance, without cost comparison—even if it results in adverse employee actions, if the contract is awarded to a preferential procurement source at a fair market price. At the agency's discretion, a cost comparison may be conducted.

9. *Lower Cost.*—Contract or ISSA performance of a recurring commercial activity may be authorized by the results of a cost comparison conducted in accordance with the procedures described in this Supplement.

**E. Agency Cost Comparison Waivers**

1. The official in paragraph 9.a. of the Circular may authorize cost comparison waivers and direct conversions to or from in-house, contract or ISSA performance. ISSA cost comparison waivers may be granted by the requesting agency only.

2. Within the Department of Defense, the authority to issue general cost comparison waivers may be delegated to the Service Assistant Secretary or Departmental Agency Head, without further delegation.

3. Waivers shall be granted only as follows:

a. A written cost comparison waiver will be prepared and signed by the authorized waiver official.

The waiver will be accompanied by a detailed determination that the conversion meets the following requirements:

(1) The conversion will result in a significant financial or service quality improvement and a finding that the conversion will not serve to reduce significantly the level or quality of competition in the future award or performance of work; or

(2) The waiver will establish why in-house or contract offers have no reasonable expectation of winning a competition conducted under the cost comparison procedures of this Supplement.

4. These general-function A-76 cost comparison waivers are subject to the administrative appeal procedures provided at Part I, Chapter 3, paragraph K, of this Supplement. While the justification for a waiver is subject to appeal, a decision not to issue a waiver is not subject to appeal.

5. Federal employees adversely affected by a decision to waive a cost comparison shall be afforded the same personnel considerations provided at Paragraph H of this Chapter.

6. Cost comparison waivers are granted to Department of Defense and other Federal installations scheduled for closure or in cases where functions are designated for termination on specified dates.

**F. Commercial Activities Inventory**

As required by the FAIR Act, Circular A-76 and this Supplemental Handbook, each agency will maintain a detailed inventory of all in-house commercial activities performed by its Government employees. This inventory, as described at Appendix 2 of this Supplement, and any supplemental information requested by OMB, will be submitted not later than June 30 of each year. Agencies should, as appropriate, permit employee involvement in the development of this Commercial Activities Inventory.

**G. Review of Documents**

*1. Access to Supporting Documentation.—*

a. At the earliest possible stages of development, consistent with procurement and conflict of interest requirements, affected parties will have the opportunity to fully participate in the development of supporting documents and proposals, including the development of performance standards, performance work statements, management plans, and the development of in-house and contract cost estimates.

b. Upon issuance, a solicitation used in the conduct of a cost comparison will be made available to directly affected Federal employees or their representatives for comment. The employees or their represent-

atives will be given sufficient time to review the document and submit comments before final receipt of offers from the private sector. Private sector offerors shall comment as provided by the Federal Acquisition Regulations (FAR).

2. *Appeals of Agency Decisions.*—As provided by the Circular and this Supplement at Part I, Chapter 3, paragraph K, agencies shall make all relevant documents available for review as a part of the administrative appeal process. The detailed documentation shall include, at a minimum, the in-house cost estimate, with detailed supporting data, the completed cost comparison form itself, and the management plan.

#### H. Personnel Considerations

1. Adversely affected Federal employees are employees identified for release from their competitive level by an agency, in accordance with 5 CFR Part 351 and Chapter 35 of Title 5, United States Code, as a direct result of a decision to convert to contract, ISSA performance or the agency's Most Efficient Organization (MEO).

2. Federal employees and existing Federal support contract employees adversely affected by a decision to convert to contract or ISSA performance have the Right-of-First-Refusal for jobs for which they are qualified that are created by the award of the conversion.

a. A standard clause is included in direct conversion and A-76 cost comparison solicitations notifying potential contractors of this requirement (see FAR 52.207-3). The Right-of-First-Refusal is afforded to all Federal employees adversely affected by the decision to convert to contract performance.

b. Executive Order 12933, "Non-Displacement of Qualified Workers Under Certain Contracts," dated October 20, 1994, also provides the Right-of-First-Refusal to contract employees (see FAR 7.305 (c)). As a matter of policy, the Right-of-First-Refusal offered at FAR 52.207-3 is superior.

c. Personnel officers should work with the contracting officer and employees to implement these provisions.

3. Agencies should exert maximum efforts to find available positions for Federal employees adversely affected by conversion decisions, including:

a. giving priority consideration for available positions within the agency;

b. establishing a reemployment priority list and an effective placement program;

c. paying reasonable costs for training and relocation that contribute directly to placement, and

d. coordinating with the Office of Personnel Management (OPM) to ensure employees have access to placement programs, including the OPM-operated Displaced Employee Program (DEP) and the Inter-agency Placement Assistance Program (IPAP).

4. Agencies should notify employees affected as soon as possible of an impending cost comparison and keep them informed of its progress at every major milestone of the process.

#### I. Relationship to the Budget

1. Workload and resulting cost estimates will be consistent with the President's Budget covering the performance period. New or expanded work requirements, ISSAs and conversions of existing work to or from in-house or contract performance should be identified.

2. Agencies should include in each annual budget submission the savings from changes in the method of obtaining commercial activities. These savings will be submitted in accordance with the instructions of OMB Circular No. A-11, "Preparation and Submission of Budget Estimates." Changes in the method of performance should be timed to conform with the budget process.

3. Agencies may request OMB approval to retain or redistribute budget savings to other critical missions.

## EXHIBIT 1

## CONDITIONS PERMITTING GOVERNMENT PERFORMANCE OF COMMERCIAL ACTIVITIES

1. **National Defense or Intelligence Security.** The Secretary of Defense, or designee, approves national defense justifications. The Director of Central Intelligence, or designee, approves national security justifications.
2. **Patient Care.** Commercial activities at Government-owned hospitals or other health facilities may be performed by in-house, ISSA or contract employees when needed to maintain the quality of direct patient care.
3. **Core Capability.** A core capability of in-house and contract resources may be warranted for certain functional areas.
4. **Research and Development.** Research and development activities may be converted to or from in-house, contract or ISSA without cost comparison. Severable support activities are subject to the cost comparison provisions of this Supplement.
5. **No Satisfactory Commercial Source Available.** Agencies will solicit private sector interest and certify that the solicitation did not restrict or otherwise limit competition.
6. **Functions With 10 or Fewer FTE.** May be converted to or from in-house, contract or ISSA, without a cost comparison, if the contracting officer determines that reasonable prices cannot otherwise be obtained.
7. **Meet Performance Standard.** Agencies may demonstrate that the activity meets or exceeds generally recognized industry cost and performance standards, after all adjustments required by this Supplement.
8. **Lower Cost.** Results of a cost comparison demonstrate that in-house performance is less costly.
9. **Temporary Authorization.** Temporary emergency performance may be warranted not to exceed the next full contract option year.

## CONDITIONS PERMITTING CONTRACT PERFORMANCE OF COMMERCIAL ACTIVITIES

1. **Contracted Activities.** Should be obtained by contract, unless a cost comparison demonstrates that in-house or ISSA performance is more cost effective.
2. **New Requirement.** Should be obtained by contract, unless contract quality or price appear unreasonable. A cost comparison is performed to convert the activity to in-house or ISSA performance.
3. **Severable Expansions.** Same as above.
4. **ISSAs.** Commercial activities should not be performed through new or expanded ISSAs, except as provided by law or this Supplement.
5. **Activities With 10 or Fewer FTE.** May be converted to or from in-house, contract or ISSA, without a cost comparison.
6. **Activities with 11 or More FTE.** May be converted to contract or ISSA, without cost comparison, if fair and reasonable contract prices can be obtained by competitive award *and* all directly affected Federal employees on permanent appointments can be reassigned to other comparable Federal positions.
7. **Activities Performed by the Military.** Activities performed by military (uniformed) personnel may be converted to contract without cost comparison. Military positions included in cost comparisons are cost at the composite rates provided by the DOD or other appropriate agency Comptroller.
8. **Preferential Procurement Programs.** Contract performance may be granted, without cost comparison, if the contract is awarded to a preferential procurement program.
9. **Lower Cost.** Conversion to contract is required if a cost comparison indicates that contract performance is the lower cost alternative.

## Chapter 2—Interservice Support Agreements (ISSA)

### A. General

1. In accordance with the provisions of the Federal Property and Administrative Services Act of 1949, the Economy Act of 1932 (31 USC 1535), and the Government Management Reform Act of 1994 (103 USC 356), excess property and common administrative services available from other Federal departments or agencies may be used, *unless* the needed product or service can be obtained more economically through agency or private sector resources. The cost principles and competition procedures established by this Supplement are to be used to determine when services should be performed by in-house, contract or interservice support agreement (ISSA) resources.

2. Federal agencies shall not provide commercial activities to the private sector. OMB approval or specific statutory authority is required to deviate from this policy.

3. In accordance with OMB Circular A-97, "Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government," Federal agencies must conduct cost comparisons prior to offering to provide or receive commercial services to or from State or local government agencies. This requirement does not, however, apply to exceptional emergency circumstances such as disaster relief requirements.

4. In accordance with OMB Circular A-126, "Improving the Management and Use of Government Aircraft," dated May 22, 1992, agencies will conduct approved cost comparisons before retaining, purchasing or otherwise providing, directly or through ISSAs, Federal aircraft or aviation services (see Appendix 6).

5. In recognition of Government-wide downsizing and reinvention efforts, the cost comparison requirements of this Supplemental Handbook shall not apply to any ISSA consolidations, where the transfer of work is accomplished prior to October 1, 1997, unless that consolidation includes the conversion of work to or from contract performance and such conversion is not otherwise authorized by this Supplemental Handbook.

a. Effective October 1, 1997, the cost comparison requirements of this Supplemental Handbook will not apply to existing or renewed ISSAs or to the consolidation of commercial or other services within a Department or agency, unless that consolidation includes the conversion of work to or from in-house or contract performance. New, expanded or transferred work requirements will be authorized for per-

formance by an ISSA only as provided by the cost comparison or other provisions of this Supplemental Handbook.

6. The cost comparison provisions of this Chapter do not apply to the performance of inherently governmental functions, such as reimbursable procurement or contract administration services.

### B. Specific

1. The prospective providing agency will furnish the requesting agency a firm price or reimbursable rate for the requested new or expanded product or service. The prospective provider will also issue a certification that its price or reimbursable rate is calculated in accordance with Part II of this Supplement. This cost estimate will then be compared by the requesting agency to an in-house and/or a commercial offer, also calculated or adjusted in accordance with this Supplement. A contract shall be awarded by the requesting agency, if the commercial offer is more economical.

a. If the prospective provider is responding to a formal solicitation issued by the requesting agency, the prospective provider shall submit to the requesting agency a synopsis, management plan and Government cost estimate developed in accordance with this Supplement. A complete response, as required by the Federal Acquisition Regulations (FAR), is not required.

(1) Under no condition, shall the requesting agency cancel or otherwise delay bid opening or contract award in order to permit an agency to submit an ISSA price or reimbursable rate.

(2) The requesting agency may accept or reject the prospective provider's offer as technically qualified or unqualified as it deems appropriate and without appeal. Prospective providers who submit a technically acceptable offer shall compete with private sector and other in-house offers.

b. Agencies that wish to provide a commercial activity to another Department or agency may petition the agency to conduct a cost comparison.

c. At the sole discretion of the requesting agency, the prospective provider may submit performance standard data, as provided by Chapter 1, paragraph C.7. of this Part. The prospective provider shall certify that all necessary adjustments to its performance measures and cost standards have been made. The requesting agency shall review the documentation for these adjustments and make similar adjustments to

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the private and other in-house offers based upon the submission of performance measures.

2. Competitions between a requesting agency, private sector offeror and a potential ISSA provider may require special performance and price adjustments to ensure that all competitors are treated equitably. These performance and price adjustments, include:

- Contract Price
- Contract Administration Costs
- Additional Costs
- One-time Conversion Costs
- Gain/Loss on Disposal/Transfer of Assets
- Federal Income Taxes
- Other Adjustment Costs
- Minimum Differential Costs

3. Proposals to obtain new or expanded products or services from another Government agency or private sector offeror, including ISSA proposals, will be published in the *Commerce Business Daily*.

4. An agency that is currently obtaining a commercial support service from another Department or agency may, with proper notification, terminate that relationship and convert directly to contract performance without cost comparison. If, however, the agency wishes to perform that work directly with in-house resources, it will need to justify that decision through a cost comparison for a "new requirement." Again, this provision does not apply to the performance of inherently governmental activities.

5. Agencies will not retain, create or expand capacity for the purpose of providing new or expanded

levels of interservice support services, unless justified by the cost comparison requirements of this Supplement.

a. Once an interservice support provider has competed its entire interservice support workload with the private sector, that provider may provide new or expanded interservice support work—of the same type—to other agencies, without further review or cost comparison on its or the requesting agency's part. This ability to offer services, without cost comparison, will continue until the providing agency has increased its capability and total workload by the lesser of (1) the expansion requirements of this Supplement or (2) more than 65 FTE are added to the in-house capability, at which time another full review or individual cost comparisons are required.

b. Paragraph 5.a. notwithstanding, if a new or expanded ISSA results in a general conversion of work to or from in-house or contract performance and a cost comparison has not previously justified the provider's method of performance, a cost comparison is required.

6. Cost comparisons conducted to justify ISSAs are subject to independent review and appeal. Prior to bid opening, the requesting agency's Independent Review Officer shall review all Government bids for compliance with the requirements of this Supplement. Appeals shall be conducted in accordance with Chapter 3, paragraph K, of this Part.

## Chapter 3—Cost Comparisons

### A. General

1. Except as provided in Chapter 1 of this Part, agencies will conduct cost comparisons when activities do not meet established performance standards, when agencies believe fair and reasonable prices cannot be obtained from qualified commercial sources, or as otherwise provided to permit the conversion of work to or from in-house, contract or interservice support agreement (ISSA) performance. Detailed guidance on the conduct of cost comparisons is contained in Part II of this Supplement.

2. In consolidating activities for cost comparison, agencies should take existing industry structures, contract administration and other management considerations into account.

3. In general, the cost comparison process consists of six major components. They are: (1) the development of a Performance Work Statement (PWS) and Quality Assurance Surveillance Plan (QASP); (2) the performance of a management study to determine the Government's Most Efficient Organization (MEO); (3) the development of an in-house Government cost estimate; (4) issuance of the Request for Proposal (RFP) or Invitation for Bid (IFB); (5) the comparison of the in-house bid against a proposed contract or ISSA price, and (6) the Administrative Appeal Process, which is designed to assure that all costs entered on the Cost Comparison Form (CCF) are fair, accurate and calculated in accordance with Part II of this Supplement.

4. Cost comparisons should be completed within eighteen months for a single activity (or thirty-six months for multiple activities) from the cost comparison start date, i.e., public or union notification and designation of the study team. Agencies are to provide an annual report to OMB on all cost comparisons that exceed these time frames, including a description of the problems encountered, remedial actions, status and expected completion date.

### B. The Cost Comparison Study Team

1. Generally, a central or field agency study team should be formed. Over time, the team may include individuals with expertise in management analysis, position classification, work measurement, value engineering (see OMB Circular A-131), industrial engineering, cost analysis, procurement and the technical aspects of the activity under study. The team should document mission requirements and seek new and

innovative ways to provide the required products or services.

2. Agencies are encouraged to seek training on the policies and procedures of Circular A-76 and this Supplement, and to ensure that the skills necessary to prepare the Performance Work Statement, in-house management plan and cost estimate are available. Joint training for employees and their representatives is encouraged.

3. Procurement restrictions prohibit Federal procurement officials from subsequently working for a contractor on a procurement in which the procurement official was involved. "Procurement official" in this sense includes personnel in the commercial activity who are directly and substantially involved in preparing or approving the PWS, management plan, the in-house cost estimate, or supporting the source selection evaluation process. (See FAR 3.104-4(h)(3) and 41 USC 423.)

a. Employees who participate or provide data to support the development of the various study elements, but do not review, approve or have direct knowledge of the final performance work statement, performance standards, MEO, in-house or contract cost estimates are not considered "procurement officials" and are not affected by this restriction.

b. The participation of functional experts is essential to the quality of the cost comparison. However, when participation on the study team could adversely affect their rights under the Right-of-First-Refusal or the opportunity for future employment with the contractor, employees should be given the option to decline participation.

c. At a minimum, certifying officials for the PWS and Management Plan, the Independent Review Officer(s), those who sign the cost comparison form and the Administrative Appeal Authority are considered procurement officials.

### C. Performance Work Statements

1. Performance Work Statements (PWS) should be developed for all activities being resolicited for contract or scheduled for direct conversion to or from in-house, contract or ISSA performance.

2. The PWS defines what is being requested, the performance standards and measures, and timeframes required. It provides the technical performance sections of the Request for Proposals (RFP) or Invitation for Bid (IFB) issued by the contracting officer.

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3. In the development of the PWS, agencies should refer to the Office of Federal Procurement Policy's (OFPP) Policy Letter 91-2, "Service Contracting," dated April 9, 1991; OFPP Policy Letter 93-1, "Management Oversight of Service Contracting," dated May 18, 1994, and the OFPP Best Practices Guide to Performance-Based Service Contracting.

4. Special care should be taken when developing the PWS to ensure that it does not limit service options, arbitrarily increase risk, reduce competition, unnecessarily violate industry service or service grouping norms or omit statutory or regulatory requirements without full justification. The PWS should be performance-oriented, specifying what outputs or measures are desired and limiting directions as to how the results are achieved. Agencies should not consider a PWS that limits the options available for providing the required product or service, or otherwise unnecessarily restricts private sector participation as being in compliance with Circular A-76 or this Supplement.

#### D. Quality Assurance Surveillance Plans

1. The Quality Assurance Surveillance Plan (QASP) describes the methods of inspection to be used, the reports required and the resources to be employed with estimated work-hours. Although the QASP accompanies the PWS to the Independent Review Officer (IRO) for a cost comparison, it need not be included as a part of the solicitation or provided to private sector offerors. In-house, contract and ISSA offerors should develop their offers based upon the requirements of the PWS alone. The QASP process is supplemented with periodic Post-MEO Performance Reviews.

#### E. Management Plans

1. The Management Plan describes the Government's Most Efficient Organization (MEO) and is the basis of the Government's in-house cost estimates. The Management Plan, which must reflect the scope of the Performance Work Statement, should identify the organizational structures, staffing and operating procedures, equipment, transition and inspection plans necessary to ensure that the in-house activity is performed in an efficient and cost effective manner.

2. Agencies may consider existing management reinvention, consolidation, re-engineering, personnel classification, market and other analyses in the identification and development of the MEO.

3. The Management Plan is certified as reflecting the Government's Most Efficient Organization

(MEO). The certifying official may be any technically competent individual: (a) organizationally independent of the function under study or (b) at least two levels above the most senior official included in the in-house cost estimate. The certifying official must also be able to commit to the provision of necessary resources to perform the activity. Such certification is made before the review of bids or proposals.

4. The Management Plan will document the assumptions used in the development of the MEO and in-house cost estimate, including:

a. *Summary.* An overall comparison of the current organization with the MEO and a review of any special initiatives or assumptions, including equipment or productivity changes.

b. *The Quality Assurance Surveillance Plan (QASP).* A description of the Government's in-house Quality Assurance Surveillance Plan and how it will differ, including resources, if services are provided by ISSA or contract, and why.

c. *Assets.* When existing assets used by the Government's MEO are not provided to the ISSA or contractor for use, an analysis of the benefits to the Government may be warranted.

d. *Transition Plan.* A plan for the transition to or from current organizational structure to MEO, contract or ISSA performance—designed to minimize disruption, adverse impacts, capitalization and start-up requirements.

e. *In-house Cost Estimate.* A description of all costs associated with the performance of the MEO, calculated in accordance with Part II of this Supplement.

#### F. Safeguarding the MEO

1. The Management Plan and the MEO are considered procurement sensitive documents until a tentative decision is reached, e.g., at bid opening and completion of the cost comparison form.

2. The Management Plan, MEO and in-house cost estimate are delivered as sealed documents to the contracting officer prior to the due date for the receipt of bids or technical proposals. The period available to deliver contract offers will be extended until the MEO and the in-house cost estimates are sealed. No private sector offer is opened or otherwise reviewed prior to the sealing of the Government's in-house cost estimate.

#### G. Solicitations

1. The contracting officer reviews the PWS to ensure that it is adequate and appropriate to serve as

a basis for award. The Contracting Officer issues a solicitation based on the PWS.

2. The contracting officer, when contracting by sealed bid, inserts in cost comparison solicitations the provision at FAR 52.207-1, Notice of Cost Comparison (Sealed Bid).

3. The contracting officer, when contracting by competitive negotiation or source selection, inserts in cost comparison solicitations the provision at FAR 52.207-2, Notice of Cost Comparison (Negotiated).

4. The contracting officer inserts the clauses at FAR 52.207-3 and 7.305, the Right-of-First-Refusal of Employment, in all direct conversion and cost comparison solicitations.

#### H. Methods of Procurement

1. All competitive methods of Federal procurement provided by the FAR are appropriate for cost comparison under the Circular and this Supplement. This includes: sealed bid, two-step, source selection and other competitive qualifications-based or negotiated procurement techniques.

2. In selecting the method of procurement and contract type, the contracting officer analyzes the PWS and applies the guidance contained in OFPP Policy Letter 91-2 and FAR Part 16.

3. Source Selection or negotiated procurement techniques may be used for some A-76 Cost Comparisons. To ensure equity in the cost comparison process, the following guidelines are provided:

a. In addition to the PWS, Management Plan and in-house cost estimate, the Government, like the private sector offerors, shall submit the Technical Performance Plan required by the solicitation to the A-76 Independent Review Officer (IRO). The Technical Performance Plan reflects the MEO and is sealed prior to the consideration of any part of any contract offer.

b. As required by the FAR, the Government should establish a Source Selection Authority, including assurances that there are no potential conflicts of interest in the membership of the Authority.

c. The Authority reviews contract and ISSA offers and identifies that offer which represents the "best overall value to the Government." This contract offer competes with the Government's in-house cost estimate.

d. With the selection of the competitive offer, the contracting officer submits to the Authority the Government's in-house Management Plan, which must comply with the technical proposal requirements of the solicitation. The Authority evaluates the in-house offer and assesses whether or not the same level of

performance and performance quality will be achieved. The Authority should not review or have access to the in-house cost estimate.

e. The Government makes all changes necessary to meet the performance standards accepted by the Authority. Revised cost estimates are resubmitted to the IRO for acceptance. This will assure that the Government's in-house cost estimate is based upon the same scope of work and performance levels as the best value contract offer.

#### I. The Independent Review

1. The Government's cost estimates are certified in writing by the agency's A-76 Independent Review Officer (IRO), or designee, as being in full compliance with the procedures and requirements described in this Supplement. The IRO should be a qualified person from an impartial activity that is organizationally independent of the commercial activity being studied and the activity preparing the cost comparison.

2. The PWS, Management Plan, QASP and all Government developed cost estimates, with supporting documentation, are forwarded to the agency IRO, or designee, for review. This is done prior to submission of the Cost Comparison Form (CCF) and supporting data to the contracting officer.

3. The IRO acts as an independent authority to:

a. ensure that the data contained in the Management Plan reasonably establish the Government's ability to perform the PWS within the resources provided by the MEO, and

b. ensure that all costs entered on the CCF are fully justified and calculated in accordance with the procedures described in Part II of this Supplement.

#### J. Evaluation of Bids and Tentative Decisions

1. For sealed bid procurements, the contracting officer opens the bids, including the Government's in-house cost estimate, and enters the price of the apparent low offeror on the Cost Comparison Form (CCF). After all necessary adjustments are made and the CCF is completed, the contracting officer announces the tentative decision, subject to evaluation of bids for responsiveness, responsibility and resolution of possible administrative appeals. The appeal period begins when access to the completed CCF, and all supporting documentation, is provided to affected parties for review, usually the day of bid opening.

2. If, as a result of an appeal or other problem, the selected competitive offeror is other than the previously announced apparent low bidder, the CCF

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is revised. All affected parties should be notified of any such revision.

3. For a negotiated or best value procurement, after selection of the private sector's most advantageous proposal, and all necessary adjustments have been made to ensure that the Government's in-house cost estimate and the other offers are based upon the same scope of work and performance standards, the contracting officer opens the Government's in-house cost estimate, and completes the CCF.

4. If, after contract start, the cost comparison "winner" is found to be unresponsive or otherwise unable to perform, the Government should seek a reaffirmation of bids received from the in-house, private sector and ISSA, as appropriate, to the cost comparison solicitation. Adjustments, limited to time delays or inflation, should be accommodated for all offerors. The CCF is then recalculated and award made to the next lowest bidder.

#### K. Appeals of Tentative Waiver and Cost Comparison Decisions

1. Following a tentative waiver or A-76 cost comparison decision, the A-76 Administrative Appeals process is invoked. To be eligible for review under the A-76 Administrative Appeals process, appeals must:

- a. Be submitted by an eligible appellant.
- b. In the case of a waiver, be received by the official in paragraph 9.a. of the Circular, or designee. In the case of a tentative cost comparison decision, be received by the contracting officer. In either case, the appeal must be received in writing and within 20 calendar days after the date that all supporting documentation is made publicly available. The agency may extend the appeal period to a maximum of 30 days if the cost comparison is particularly complex.
- c. Address specific questions regarding an agency's compliance with the requirements and procedures of this Circular, factual questions regarding agency justifications to waive a cost comparison, or address specific questions regarding the costs entered by the Government on the applicable Cost Comparison Form and set forth the rationale for questioning those items.
- d. Identify specific instances of agency denials of information not otherwise protected by law or regulation.
- e. Demonstrate that the items appealed, individually or in aggregate, would reverse the tentative decision.

2. An eligible appellant is defined as:

a. Federal employees (or their representatives) and existing Federal contractors affected by a tentative decision to waive a cost comparison;

b. Federal employees (or their representatives) and contractors that have submitted formal bids or offers who would be affected by a tentative decision to convert to or from in-house, contract or ISSA performance as a result of a cost comparison; or

c. agencies that have submitted formal offers to compete for the right to provide services through ISSAs.

3. With receipt of an eligible appeal, the official designated in paragraph 9.a. of the Circular, or designee, assigns an official(s) to serve as the A-76 Administrative Appeal Authority for that appeal. The individual(s) selected must be: (a) two levels above the official who signed the waiver, in the case of a cost comparison waiver authorized under Chapter 1, paragraph E, of this Part; or (b) independent of the activity under review or at least two organizational levels above the official who certified the Government's Management Plan and MEO, in the case of a tentative cost comparison appeal.

4. The Appeal Authority ensures that the cost items challenged in the appeal are properly accounted for in accordance with the procedures of Part II of this Supplement. The Authority also ensures that all participants to the cost comparison process have appropriate access to the decision process.

5. If significant problems with the waiver justification or cost comparison estimates are found, such that the tentative decision may be unsupported or is in error, the Appeal Authority corrects the error and cost comparison, if applicable, and the agency proceeds according to the amended decision. The Authority will not review any item not formally challenged by an eligible appellant.

6. Agency A-76 Administrative Appeal procedures do not apply to questions concerning:

- a. the selection of one contract offeror or another for competition with the in-house cost estimate;
- b. award to one contractor in preference to another;
- c. Government management decisions involving the Government's certified in-house MEO, and
- d. the policies or procedures contained in the Circular and this Supplement.

7. The procedure does not authorize an appeal outside the agency or judicial review, nor does it authorize sequential appeals. The appeal process provides reasonable assurances that decisions to waive the cost comparison requirements of this Supplement

are properly reviewed and that the cost comparison requirements of this Supplement are properly adhered to, when applicable. Therefore, all directly affected parties are expected to submit their appeals within the initial appeal period.

8. The appeals procedure should provide for a final decision within 30 days of receipt of the appeal by the Appeal Authority.

**L. Post-MEO Performance Review**

1. When services are performed in-house as a result of a cost comparison, including those involving an ISSA, a formal review and inspection of the Most Efficient Organization (MEO) should be conducted. Typically, this review should be conducted following the end of the first full year of performance.

2. The Post-MEO Performance Review confirms that the MEO has been implemented in accordance with the Transition Plan, establishes the MEO's ability to perform the services of the PWS and confirms that actual costs are within the estimates contained in the in-house estimate. Adjustments may be made for formal mission or scope of work changes.

3. Post-MEO Reviews will be conducted at the direction of the official in paragraph 9.a. of the Circular, or designee, but must be independent of the most senior official included in the Government's in-house or ISSA cost estimate. Post-MEO Performance Reviews will be conducted on not less than 20 percent of the functions performed by the Government as a result of a cost comparison.

4. MEO implementation may be measured in terms of the FTE, grade structure and the contract support included in the Transition and Management Plan.

5. MEO performance may be measured in terms of workload, responsiveness and quality of work. Spe-

cial inspections and a review of the activity's implementation of the Quality Assurance Surveillance Plan may be necessary.

6. Cost conformance may be determined by an analysis of actual labor and material costs against the Personnel, Material, and Other Specifically Attributable costs on the final CCF. Care should be taken to assure that adjustments are made for retained or saved pay and for fringe benefit factors when using actual cost records.

7. Minor cost or performance deficiencies may be corrected to maintain the integrity of the cost comparison process. A period of time consistent with that given to a contractor may be given to the in-house or ISSA activity to correct any deficiencies found. Failure to correct deficiencies that would individually or in aggregate invalidate the original cost comparison, or any finding of a significant deviation from the requirements of the PWS, shall result in the following:

As with a contract default, if an in-house or ISSA failure to perform is identified, including failure to implement the MEO as provided by the Transition Plan, the contracting officer will award the work to next lowest offerer who participated in the cost comparison, if feasible. If award to the next lowest offeror is not feasible the contracting officer will immediately resolicit to conduct a revised and updated cost comparison.

8. An annual list of Post-MEO Performance Review certifications will be made available to the public upon request. This list will identify the total number of cost comparisons completed since the issuance of this Revised Supplemental Handbook and the number of Post-MEO Performance Reviews completed.

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**PART II**

**PREPARING THE COST COMPARISON ESTIMATES**

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## Chapter 1—Implementation Instructions

### A. General

1. Part II provides generic and streamlined cost comparison guidance to comply with the provisions of the FAIR Act and Circular A-76. This includes guidance for developing in-house costs based upon the Government's Most Efficient Organization (MEO) and other adjustments to the contract and inter-service support agreement (ISSA) price. It also sets out the principles for development of cost-based performance standards or other measures that are comparable to those used by commercial sources. Appendices 6 and 7 provide sector-specific cost comparison guidance.

2. The guidance provided by this Part relies on the managerial cost accounting and performance standards established in support of the CFO Act, GPRA and Federal Accounting Standards. Cost and performance information developed for competitions subject to the Circular and this Supplement should be drawn from the data base established by these standards and adjusted as appropriate. This guidance is to be used by Federal agencies to ensure that cost comparisons are fair and reasonable.

3. A cost comparison between in-house, contract or ISSA performance seems straight-forward, but, in fact, is complicated by the very different ways Government agencies and commercial sources account for cost. For example, the Government buys capital equipment and may recognize the entire expense when payment is made. The commercial sector may borrow funds and recognize the expense of capital equipment as it is used. All costs incurred by commercial sources are ultimately charged to a "customer," whereas agency costs may be met by several different appropriations accounts, revolving funds or mixes thereof. Insurance is a real cost of doing business in the commercial sector, while the Federal Government is a "self-insured entity." Taxes are paid by most commercial sources and received and used by the public sector. Assets are purchased from owners equity in the commercial sector, yet they are purchased by the taxpayer in the public sector. The

Government may incur employee retained pay or save pay as a way of mitigating the adverse impacts of a management decision, without assessing these costs to the activity. The commercial sector passes these types of costs on to the customer. These and other differences necessitate cost comparison requirements that equalize the systems to reflect the total alternative costs to the Government and the taxpayer. Such costs may or may not be fully reflected by agency accounts.

4. The procedures set forth in this Part recognize the absence of a uniform accounting system throughout the Federal Government and are intended to establish a practical level of consistency to assure that all substantive factors are considered.

### B. Organization

1. Part II is divided into five chapters.

2. Chapter 2 provides the generic principles and procedures for developing the cost of in-house performance to the Government. The principles and procedures of Chapter 2 represent a competitive cost comparison.

3. Chapter 3 provides the generic principles and procedures for developing the cost of contract or ISSA performance to the Government. The principles and procedures of Chapter 3 represent a competitive cost comparison.

4. Chapter 4 provides procedures for computing the minimum conversion differential, calculating the financial advantages to the Government associated with Government or contract performance and the cost comparison decision.

5. Chapter 5 provides an alternative cost comparison methodology for activities involving 65 in-house FTE or less at the time of study announcement. While the principles and procedures of Chapter 5 represent a competitive cost comparison, this non-mandatory alternative approach is provided to minimize the administrative costs associated with cost comparisons, ensure timely completion and preserve the equity and cost comparability requirements of this Supplement.

## Chapter 2—Developing the Cost of Government Performance

### A. General

#### 1. Overview.—

a. This Chapter provides the policies and procedures that will be used when the Government determines that a cost comparison between in-house (agency), contract or interservice support agreement (ISSA) performance is warranted.

b. The procedures of Part I of this Supplement regarding cost comparison waivers, the certification of the Government's MEO, review by an Independent Review Officer and the Administrative Appeals process apply. Cost comparisons will be based upon the same scope of work and performance requirements contained in the Performance Work Statement (PWS).

c. Cost comparisons are conducted in accordance with this guidance, modified to the extent applicable by Chapter 5 of this Part. The procedures differ for the conversion of work from contract or ISSA to in-house performance, however, in four basic areas: (1) the identification of *new* or *increased* in-house costs, (2) one-time conversion costs and (3) the calculation of the minimum cost differential, and (4) certain other adjustments that may be necessary if an ISSA is being considered.

2. *Standard Cost Factors*.—Standard cost factors are to be used as prescribed in this Part. Agencies are encouraged to collect agency or sector-specific data to update and improve upon the standard cost factors provided herein. The official in paragraph 9.a. of the Circular, or designee, may develop alternative agency-wide or sector-specific standard cost factors, including overhead, for approval by OMB.

3. *Common Costs*.—Costs that would be the same for in-house, contract or ISSA performance, without organizational, workload, or responsibility changes need not be computed or entered into the cost comparison. Common costs or "wash" items will be identified in the Management Plan for review.

4. *Retained and Save Pay*.—Retained and save pay are not included in the in-house cost estimates. Agencies are encouraged to seek their Most Efficient Organization (MEO), without penalty of historical inefficiencies. Agencies cost only the "positions" in the MEO.

5. *Cost of Conducting a Cost Comparison*.—The cost of conducting a cost comparison is not added to the in-house cost estimate or contract price. This is an administrative expense associated with good

management practices and is irrelevant to the cost of performance.

6. *Proration of Performance Periods*.—Cost comparisons are conducted using not less than three years of proposal/cost data, submitted by the Government and commercial sources. In-house cost estimates and contract prices will reflect the same multi-year basis. If permitted by statute and the Federal Acquisition Regulations (FAR), performance periods for cost comparisons in excess of five years may be approved by the official in paragraph 9.a. of the Circular, or designee. Multi-year procurement or pre-priced renewal options provide advantages such as continuity of operations, the possibility of lower prices, and reduced turbulence and disruption. However, in extending the performance period, the official in paragraph 9.a. of the Circular, or designee, must certify that no known cost comparison advantage be conveyed to the in-house, contract or ISSA bid by the extension.

#### 7. *In-House Costs*.—

a. The competitive cost of in-house performance includes all significant performance costs associated with the activity that are not common to the in-house, contract or ISSA options. The in-house cost estimate is based upon the following:

- Personnel Costs
- Materials and Supply Costs
- Other Specifically Attributable Costs
  - Depreciation
  - Cost of Capital
  - Rent
  - Maintenance and Repair
  - Utilities
  - Insurance
  - Travel
  - MEO Subcontracts
  - Other Costs
  - Overhead Costs
  - Additional Costs

b. In addition to costs generally associated with the in-house performance of an activity, including personnel, material and overhead costs, a conversion from contract or ISSA performance to in-house performance may require increased costs for facilities and equipment. The cost of all capital assets not currently provided to the contractor will be computed using the depreciation and cost of capital methods provided in this Chapter. Increases for the rent, maintenance and repair, utilities, travel and

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their associated overhead is also calculated. Government costs that would be the same for in-house, contract or ISSA operation, should be identified, but need not be computed.

8. *Minimum Cost Differentials.*—

a. This Supplement establishes a minimum threshold of undefined costs that must be exceeded prior to a conversion to or from in-house, contract or ISSA performance. The minimum differential is also established to ensure that the Government will not undertake a conversion for marginal estimated savings.

b. An activity will not be converted to or from in-house, contract or ISSA performance, on the basis of a cost comparison, unless the minimum cost differential is met. The minimum cost differential is the lesser of 10 percent of in-house personnel-related costs (Line 1) or, \$10 million over the performance period. Factors such as decreased productivity, and other costs of disruption that cannot be easily quantified at the time of the cost comparison are included in this differential.

c. Whenever a cost comparison involves a mix of existing in-house, contract, new or expanded requirements, or assumes full or partial conversions to in-house performance, each portion is addressed individually and the total minimum differential is calculated accordingly.

9. *Rounding Rule.*—Round all line entries on the Cost Comparison Form (CCF) to the nearest dollar.

10. *Inflation.*—

a. Agencies will use the annual inflation guidance developed annually for the President's Budget and provided by OMB for use in cost comparisons conducted in accordance with this Supplement.

b. In preparing cost estimates, all known or anticipated increases incurred before the end of the first performance period; e.g., salary increases for Government employees, are included in each cost element—prorated as appropriate. For subsequent periods, the cost of anticipated changes in the scope of work, as described in the PWS, is determined. Inflation factors for pay and non-pay categories will then be applied to the estimated year-end costs for the first year of performance. There are some exceptions to the inflation adjustments as discussed later, such as personnel costs subject to economic price adjustment clauses of the Service Contract Act, Davis-Bacon Act, depreciation costs for facilities and equipment, and the cost of minor items.

c. To calculate out-year costs: (1) determine the cost elements affected by inflation during each performance period. For each period, ensure that the

number of months in the period and the changes in the PWS for each period have been considered; (2) multiply each cost element for each performance period by the respective salary/wage or material cost inflation factors to the applicable performance period, and (3) once adjusted for inflation, calculate the total cost of that CCF Line item.

11. *Other ISSA Adjustments.*—

a. It is not the intent of this Supplement to require an ISSA offeror to significantly alter its methods of operation to provide unique or site specific services. While such services may meet agency missions and may legitimately be included in the solicitation, additional adjustments to the ISSA cost estimate may be necessary to reflect differences in in-house and contractor bids.

b. Agencies should identify the minor differences between the requirements of the solicitation (contractor bid) and the ISSA cost estimate. The agency determines if any item or combination of items will impact the agency's ability to perform. If the agency's ability to perform would be adversely impacted, the ISSA cost estimates may be rejected as non-responsive. If the differences will have minimal agency performance implications, and/or can continue to be performed by agency personnel, the ISSA cost estimates will be adjusted for purposes of comparison with the contractor and MEO offers, based upon the comparable costs contained in the agency's MEO.

c. A complete record of all adjustments to the contractor and ISSA cost estimates should be maintained and made available to the public upon request.

**B. Personnel—Line 1**

1. This Line includes the cost of all direct in-house labor and supervision necessary to accomplish the requirements specified in the PWS. Included are salaries, wages, fringe benefits, and other entitlements, such as uniform allowances and overtime. To determine Line 1 Personnel costs, identify the in-house staffing estimate and proper wage/grade classifications as described in the Management Plan.

2. In-house cost estimates that assume a mix of in-house labor and existing contract support should include the cost of labor for the Government's administration and in-house inspection of those support contracts on Line 1. Table 3-1, of this Part, may be used to estimate contract administration costs, based upon the estimated number of contract employees involved. The cost of the support contracts themselves, including the cost of related Government furnished equipment and facilities not provided to

the contractor under this cost comparison, should be entered on Line 3 Other Specifically Attributable costs.

3. Line 1 includes all competitive costs that could change if performance is converted to or from in-house, contract or ISSA. Thus, Line 1 may also include certain management and oversight activities, such as personnel support, environmental or OSHA compliance management, legal or other direct administrative support costs.

4. The conclusion that an activity may be performed by contract or ISSA also reflects a decision that the work need not be accomplished by military or other uniformed Government personnel. The cost of military labor in a cost comparison, even if the work will remain military if retained in-house, will be determined by the composite rate for uniformed personnel established by the DOD or other applicable Comptroller.

5. Generally, in-house staffing should be expressed in terms of productive work hours. With the establishment of the number of productive work hours required, a conversion to the number of full-time equivalents (FTE) is needed. For full-time and part-time positions, estimate the total hours required by skill and divide by 1,776 annual available hours to determine the number of FTE positions required. For intermittent positions to be expressed in FTE, estimate total hours required by skill and divide by 2,007 annual available hours to determine the number of FTE positions required. The military agency comptroller will establish comparable productive hours for military personnel included in an MEO as military positions. The productive hours exclude annual leave, sick leave, administrative leave, training and other nonproductive hours. The factors result from differences in nonproductive time between types of positions.

6. The following considerations are used to compute personnel costs:

a. *Position Title or Skill*—Identify the job. Example: carpenter, driver, janitor, supervisor, foreman, administrative clerk or department head.

b. *Grade*—Identify the appropriate GS/FWS grade for each position title or skill.

c. *Number of FTE Required*—Identify the FTE required for each grade. Identify the temporary and intermittent employee work years. This is important for later fringe benefit calculations, since intermittent and temporary employees get fewer benefits than full-time or part-time employees.

d. *Annual Salary/Wages*—Pay information can be obtained from the personnel or finance office. Use current pay rates based on the Government-wide representative rate of step 5 for GS and step 4 for FWS employees. Multiply that pay rate by the number of FTE, except for intermittent positions where actual hours are used. As a rule, GS salary is expressed as an annual rate of pay and the FWS salary is expressed as an hourly rate. For positions to be used on a prearranged regularly scheduled tour of duty, this hourly rate is multiplied by 2,087 (the number of hours employees are paid annually).

e. *Other Entitlements*—Include entitlements that will also earn fringe benefits. Work closely with the personnel office to make sure all entitlements are considered and to obtain current factors. Examples include: night differential pay for FWS employees, environmental differential pay and premium pay for Federal civilian fire fighters and law enforcement officers.

f. *Fringe Benefits or FICA*—The following fringe benefit factors are estimated according to the Federal Accounting Standards for Liabilities-Exposure. Multiply the following Governmentwide standard factors by the appropriate basic pay:

(1) Full or part-time permanent Federal civilian employees:

(a) The standard retirement cost factor represents the Federal Government's complete share of the weighted CSRS/FERS retirement cost to the Government, based upon the full dynamic normal cost of the retirement systems; the normal cost of accruing retiree health benefits based on average participation rates; Social Security, and Thrift Savings Plan (TSP) contributions. The current (1996) rate is 23.7 percent of base payroll for all agencies. The comparable retirement cost factors for special class employees are 32.3 percent for air traffic controllers and 37.7 percent for law enforcement and fire protection employees.

(b) The cost factor to be used for Federal employee insurance and health benefits, based on actual cost, is 5.6 percent, plus an additional 1.45 percent for Medicare.

(c) The cost factor to be used for Federal employee miscellaneous fringe benefits (workmen's compensation, bonuses and awards, and unemployment programs) is 1.7 percent.

(2) Intermittent or temporary Federal civilian employees.—The Federal Insurance Contribution Act (FICA) employer cost factor of 7.65 (or the current rate established by law) will be applied to civilian employees not covered by either of the two civilian

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civil service retirement systems (normally intermittent and temporary employees). Apply the FICA rate only to wages and salaries subject to the tax; there is an annual salary limitation for FICA tax.

g. *Other Pay*—Include entitlements that do not earn fringe benefits. Some examples are night differential pay for GS employees, overtime, holiday, awards, bonuses, and uniform allowances.

h. *Personnel Cost*—Add Basic Pay, Fringe Benefits or FICA and other pay for all positions and total for both Federal Wage System (FWS) and General Schedule (GS) categories. This figure can now be used as a basis to compute the annual personnel costs for each performance period.

7. Adjustments to annual personnel costs for each performance period are made to reflect anticipated pay increases.

8. All in-house wages, salaries and other costs are adjusted for inflation consistent with the economic assumptions used in the President's most recent Budget, through the end of the first year of performance. Federal wages and salaries for contracts that contain an economic adjustment clause or are subject to the Service Contract Act (SCA) (41 USC 351-357) or the Davis-Bacon Act (DBA) (40 USC 276a-276a-7) are inflated to the end of the first performance period. However, when using the Department of Labor criteria, certain potential contract positions may not be covered under the SCA/DBA provisions; accordingly, the in-house related costs for such positions are escalated through the end of the cost comparison period.

**C. Material and supply—Line 2**

1. Material and supply costs are incurred in each performance period for goods such as raw materials, parts, subassemblies, components and office supplies. Material costs are calculated only if the materials are used by the activity and will not be provided to the contractor or ISSA provider by the Government.

2. Review the PWS to determine the materials required for in-house performance that will not be furnished to the contractor or ISSA provider. Normally, the contractor or ISSA provider will be expected to provide the supplies and materials necessary to perform the work described in the PWS. The policy regarding contractor or ISSA use of Government provided supplies and materials is set forth in FAR 51.101. Adjust historical material use and cost data to reflect the requirements of the PWS.

3. Determine if materials can be obtained on the open market at less cost than from other Government agencies. Material cost includes material, transport,

handling and availability/delay costs. If so, obtain any necessary waivers from the other Government agency(s) to purchase materials on the open market. Include established allowances for normal scrap, spoilage, overruns and defective work. List required material by quantity needed, unit price, escalation for out-years and total cost. A single entry may be made for miscellaneous items such as office supplies.

4. If the furnishing agency establishes and certifies that all costs of acquiring, managing, storing and transporting its material are included in its pricing structure, including overhead, no material mark-up is required. If not, escalation factors based upon the principles and procedures of this Supplement should be developed.

5. Material and supply costs are projected for all performance periods, including adjustments for inflation, consistent with the economic assumption contained in the President's most recent Budget and the rate of transition to the contractor or ISSA provider, as provided in the PWS. Ensure that unit prices are calculated to the end of the first performance period. Future performance period material costs may not be inflated, if the PWS includes an escalation or economic adjustment clause. Such a clause enables a contractor or ISSA provider to be reimbursed for future price increases. The Management Plan shows the computations used to derive the entries for all performance periods.

**D. Other specifically attributable—Line 3**

1. *Overview.*—Personnel and material costs are normally the primary sources of Government costs. The remaining elements of competitive cost are also attributable to the activity. When requirements differ by period due to changes in the PWS or the Transition Plan, additional adjustments will be necessary. Ensure that such adjustments are made before applying inflation factors, if appropriate. Costs that would be the same regardless of the eventual decision, should be identified for each cost element.

Elements of Cost	Paragraph
Depreciation .....	2D2
Cost of Capital .....	2D3
Rent .....	2D4
Maintenance and Repair .....	2D5
Utilities .....	2D6
Insurance .....	2D7
Travel .....	2D8
MEO Subcontracts .....	2D9
Other Costs .....	2D10

**2. Depreciation.—**

a. Depreciation represents the cost of ownership and the consumption of an asset's useful life.

b. Unless an asset is fully depreciated, the Federal Accounting Standards for Property, Plant and Equipment will be used. If an applicable asset is fully depreciated, it is to be used by the MEO during the performance period and is not to be provided to the contractor or ISSA provider, extend the life of the asset through the end of the performance period. The cost of depreciation is then recalculated using the extended life and original acquisition cost.

c. Individual assets costing less than \$5,000 are considered minor items and will not be depreciated, but will be added to *other costs* (see paragraph D.10). The joint use of minor items need not be prorated to the function under study. Assets costing more than \$5,000 are major items for depreciation.

d. If an in-house activity shares an asset with another activity not under review or cost comparison and that asset will not be provided for use by the contractor or ISSA, allocate depreciation to the in-house estimate on the basis of use or other appropriate methodology. If the activity is converted to contract or ISSA performance, the asset's life and utilization rate may change.

e. To find the cost of depreciation added to each option year, subtract the residual value from the total of the acquisition cost plus any capital improvements and, then, divide by the estimated useful life of the asset. Include the resultant annual depreciation for each year of the cost comparison. If the asset was acquired through transfer, seizure or forfeiture, an industry specific standard or engineering appraisal may be used to establish the market or "acquisition" value of the asset at transfer.

f. Facilities are generally categorized as permanent, semi-permanent or temporary and the useful life will be standardized for the entire grouping. The useful life expectancies listed below may be used by type of facility. If useful life has been exceeded, obtain an engineering projection of anticipated remaining useful life. These costs will be prorated to the activity under study by a unit of measure that varies directly with consumption (e.g., floor space, type of facility, number of telephones). Estimates of expenses to be incurred for the first year of performance should be based on current experience, appropriately adjusted for anticipated requirements. Engineering estimates should be used when historical data are not available. All estimates should be appropriately documented with supporting detail.

Facility Category	Useful Life
Permanent (P) .....	75 years
Semi-Permanent (S) .....	50 years
Temporary (T) .....	25 years

**3. Cost of Capital.—**

a. The annual cost of capital is added to the depreciation cost of any asset costing more than \$5,000 acquired by the Government if: (1) not provided for the contractor's or ISSA provider's use, (2) is purchased less than two years prior to the cost comparison date or (3) is scheduled for purchase within the performance period.

b. The cost of capital is defined as an imputed charge on the Government's investment in capital assets necessary for the activity to provide the product or service.

c. To estimate the annual cost of capital, it is necessary to identify the total depreciable acquisition cost of new assets or, if acquired by transfer, forfeiture or seizure, the market value of the assets. The total cost results from the value of the asset, transportation costs (if not already included in the purchase price) and any installation costs to place the asset in operation. The cost of capital will be computed by applying the nominal rate provided by OMB Circular A-94 to the determined total cost of the asset.

4. *Rent.*—Rent is incurred for the use, operation and maintenance of land, building space, plant and machinery, etc., by the activity under study. Compute only those costs that are associated with the MEO, on an allocated basis, not provided to the contractor or ISSA provider.

5. *Maintenance and Repair.*—This cost is incurred to keep buildings and equipment in normal operating condition. It does not include capital improvements that add value to an asset and are accounted for under depreciation. Allocate maintenance and repair costs for those assets that will not be furnished to the contractor or ISSA provider but are: (1) needed for MEO performance and (2) are not covered by rental fees.

6. *Utilities.*—This category includes charges for fuel, electricity, telephone, water and sewage services, etc., that will not be furnished to the contractor or ISSA provider by the Government but are needed for in-house performance of the activity. The amount of these costs applicable to the activity under study will be determined either on a metered or allocated basis of consumption.

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**7. Insurance.—**

a. Operation of any Government activity involves risks and potential costs from property losses (fire, flood, accident, etc.) and liability claims. These risks are normally covered by insurance included in any commercial cost estimate.

b. To the extent assets are not provided to the contractor or to the extent that property losses may be assessed against a contractor who uses Government space, facilities or equipment, in-house casualty premiums must be computed. Generally, the Government's casualty premium equivalent cost will be computed by multiplying .005 times the net book value of Government's equipment and/or facilities, plus the average value of material and supplies.

c. Insurance to be computed on assets will depend on the requirements of the Performance Work Statement (PWS). If the contractor or ISSA provides special casualty insurance on all Government furnished assets, compute insurance for *all* assets used by the activity under study. If the contract does not require the contractor to furnish special casualty insurance, e.g., the Government will self indemnify, compute casualty insurance on *only* those assets to be used by the activity under study that would not be provided to the contractor or ISSA provider, as appropriate.

d. Personnel liability losses will be computed by multiplying .007 times the Government's total personnel-related costs on Line 1. Additional liabilities assigned to the contractor or ISSA provider by the PWS that are not associated with personnel will also be computed by applying the standard .007 factor to the estimated liability ceiling identified in the PWS and included in the in-house cost estimate.

8. *Travel*.—This category covers the expected cost of in-house travel that would not continue in the event of contract or ISSA performance. These costs should be readily available from budgeted amounts of per diem and transportation cost for the activity under study.

9. *MEO Subcontract Costs*.—Solicitations that include work currently performed by contract and by Federal employees, should include the MEO cost of labor for the Government's administration and inspection of the continued support contracts on Line 1. The cost of the support contract itself, including the cost of related Government furnished equipment and facilities not provided to the contractor or ISSA, should be entered on Line 3. Escalate to each performance period as appropriate. Support contract costs should also be adjusted (downward) to offset for potential

Federal income tax revenue to the Government. This is done by applying the appropriate tax rates in Appendix 4 of this supplement.

**10. Other Costs.—**

a. Other Costs is a general category for specifically attributable costs that do not properly fit into one of the other cost elements, but would change in the event of contract or ISSA performance. Some examples are purchased services packaging and crating (if not already a part of material and supplies); transportation costs; and royalties. Ensure these costs are not also covered in Line 4 overhead costs.

b. Include the cost of *minor items* that are not immediately consumed by the activity and not provided to the contractor or ISSA provider. This includes items such as overhead projectors, office equipment, tools, chairs, desks, cabinets, etc. Estimate the cost of minor items for each performance period by allocating 10 percent of the total estimated replacement cost of all such items. Should the supply source markup increase the item's cost to more than \$5,000, it will still be considered a minor item.

**E. Overhead—Line 4**

1. While direct labor, supervision and material costs are prorated, as appropriate, to Lines 1 and 2, overhead expenses, which include general management and administrative expenses, are entered on Line 4.

2. Line 4 includes two major categories of cost. The first is *operations overhead* and is defined as those costs that are not 100 percent attributable to the activity under study, but are generally associated with the recurring management or support of the activity. The second is *general and administrative overhead* and includes salaries, equipment, space and other activities related to headquarters management, accounting, personnel, legal support, data processing management and similar common services performed outside the activity, but in support of the activity. These costs are affected by the conversion of work to or from in-house, contract or ISSA.

3. For each year of the cost comparison, Line 4 is calculated by multiplying Line 1, including fringe, by 12 percent (.12) and entering the total on Line 4. If military personnel are included in Line 1, apply the 12 percent factor to civilian MEO Line 1 costs only. The composite military rate should include all military related overhead.

**F. Additional—Line 5**

1. This cost element includes costs not otherwise properly classified on Lines 1 through 4. This cost category should reflect those additional costs result-

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ing from unusual or special circumstances that may be encountered in particular comparisons. Examples include office and plant rearrangements, transport, employee recruitment, training, relocation, and other expenses.

2. Amounts entered on Line 5 should be supported by a definition of the type of cost reported, a justification for its inclusion in the cost comparison, an explanation of the underlying assumptions, and methods of computation.

3. The additional costs of an expansion, new requirement or conversion from contract or ISSA to in-house performance, which are added to the in-house costs, should be made on Line 5 in consultation with engineering, production, management and contracting personnel.

a. New investment by the Government in facilities and equipment should not be included as one-time

costs. The costs incurred in acquiring facilities or equipment and installing the equipment should be included in the capitalized cost of in-house performance.

b. Government facilities and equipment will not normally be expanded to accommodate new or expanded work if cost-effective contract or ISSA facilities and equipment are available. Likewise, agency ownership shall not preclude a contractor or an ISSA provider from competing for the service. If in-house operation is dependent upon the Government's purchase or construction of new facilities or other major capital asset purchases, the cost comparison and conversion to in-house performance will be delayed until the approval to purchase or construct such items is obtained, subject to the cost comparison.

**G. Total cost—in-house performance—Line 6**

Enter the sum of Lines 1 through 5 on Line 6.

### Chapter 3—Developing the Cost of Contract Performance

#### A. General

This Chapter provides guidance for the determination of the cost to the Government of obtaining a commercial product or service by contract or inter-service support agreement (ISSA). It includes a determination of not only the amount to be paid to the contractor/provider (price) but also a determination of the additional costs to the taxpayer that would be incurred in the event of a conversion.

#### B. Contract price—Line 7

1. *Overview.*—The contract or ISSA price reflects the cost to perform the requirements of the PWS as presented by the offeror selected to compete with the in-house work force. The solicitation for bids or proposals will notify the offerors that a comparison will be made between the cost of contracting, the cost of the in-house performance and, if appropriate, the cost of performance through an ISSA. A contract may or may not be awarded as a result.

##### 2. Contract Types—

a. In determining the amount to be recorded as the contract price, consider the contract type. The following guidance is provided in this regard.

b. In the case of a sealed bid, firm fixed price contract, the price of the low responsible, responsive offeror will be entered. If a firm fixed price contract is to be negotiated, the negotiated price will be entered.

c. If a cost-reimbursement or cost-sharing type contract is proposed, enter the low negotiated estimate.

d. If a contract with an incentive or award fee is proposed, enter 65 percent of the potential maximum incentive or award fee plus the contract costs of the most advantageous offer to the Government.

e. If a time and material or labor-hour contract is proposed, enter the estimated total cost of performance. Alternatively, comparable rates can be developed for the Government cost estimate, developed in accordance with this Supplement, and the comparison can be made on the basis of rates, rather than costs.

##### 3. Tax Exempt Organizations.—

a. If the apparent low contract offeror is a tax-exempt organization, the tax-exempt's contract price is adjusted by an amount equal to the estimated Federal income taxes that the lowest non tax-exempt offeror would pay. This adjustment is necessary to determine which offeror has the lowest overall cost to the Government.

b. Calculate the Federal tax adjustment by using the procedures in paragraph G of this Chapter. Add the Federal taxes calculated to the tax-exempt's offer for comparison with other non tax-exempt offerors.

c. Compare the tax-exempt's adjusted offer to the low non tax-exempt offer. The lowest cost offeror, after this comparison, will then compete against the Government's in-house cost estimate and any ISSA proposals. If the tax-exempt's adjusted offer is lower than the low non tax-exempt offer, enter the *unadjusted* tax-exempt's offer on Line 7.

##### 4. Procurement Preference Eligible Organizations.—

a. If a preference eligible contractor meets the requirements of an unrestricted solicitation, and is an otherwise fully responsive offeror, the preference eligible may compete with non-preference eligible offerors. This is accomplished by adding 10 percent of each non-preference eligible's offer to their offer for initial comparison purposes only. The lowest offer, after adjustment, will be chosen to compete with the Government's in-house cost estimate and ISSA offers.

b. If the preference eligible's offer is lower than all other commercial sources—after adjustments—enter the preference eligible's price on Line 7. If the non-preference eligible's adjusted price is lower, enter the *unadjusted* non-preference eligible's price on Line 7.

#### C. Contract administration—Line 8

1. Contract administration costs are incurred in administering a contract or ISSA. It includes the cost of reviewing compliance with the terms of the contract, processing payments, negotiating change orders, and monitoring the closeout of contract operations. It does not include inspection and other administrative requirements that would be common to contract and Government performance to assure acceptable performance.

2. The contract administration costs entered on Line 8 are limited to the personnel shown at Table 3-1.

3. Table 3-1 represents the estimated additional cost to administer a contract or ISSA over and above the cost to administer the same work performed by in-house employees.

4. Contract administration organization and grade structure should be certified as being in compliance with all applicable personnel regulations.

Table 3-1. Contract Administration Factors

MEO Staffing	Contract Administration FTE
10 or less .....	.5
11-20 .....	1
21-50 .....	2
51-75 .....	3
76-100 .....	4
101-120 .....	5
121-150 .....	6
151-200 .....	7
201-250 .....	8
251-300 .....	9
301-350 .....	10
351-450 .....	11
451 and above .....	2.5 percent of in-house MEO staffing

**D. Additional—Line 9**

1. This cost element includes any additional costs to the Government such as transportation or purchased services resulting from unusual or special circumstances that may be encountered in particular cost comparisons.

2. The supporting documentation for additional costs should describe the nature of the cost item and indicate the reason the additional cost will not be incurred if the activity is performed with the agency's in-house resources.

3. The costs entered on Line 9 should be supported by a definition of the type of cost reported, justification for inclusion, methods of computation, and, if applicable, a detailed listing of the cost components.

4. When an in-house activity is terminated in favor of contract or ISSA performance and the agency elects to hold MEO equipment and facilities on standby, solely to maintain performance capability, the standby costs are not to be charged to the cost of the contract.

**E. One-time Conversion—Line 10**

1. *Overview*—When the Government converts to or from in-house, contract or ISSA performance, there are usually one-time costs incurred as a result of the conversion.

**2. Material Related Cost—**

a. A conversion may result in certain items of Government material or equipment, that would otherwise have been used by the in-house MEO, becoming excess and available for transfer to another in-house activity or to the contractor.

b. It should be possible to transfer the material to the contract or ISSA offeror. In this case, it may be appropriate to conduct a special joint physical

inventory and include the Government's cost of conducting the joint inventory (costs may be shared with the winning bidder) on Line 10.

c. If the transfer of existing materials to the contract or ISSA offeror is feasible, and the agency elects not to provide the material, no charge for conducting the inventory is permitted.

**3. Labor-Related Costs—**

a. A conversion will also normally result in certain one-time labor-related expenses. These may include health benefit costs, severance pay, homeowner assistance, relocation and retraining expenses and initial contractor security clearance requirements.

b. Estimated severance pay is calculated at four percent of the annual basic pay (performance period 1 only) entered on Line 1, without fringe benefits.

c. If there is a requirement for the commercial source to have access to classified information or other security clearances under existing agency directives, only those costs that would be necessitated by the conversion may be calculated. Recurring requirements necessitated by in-house attrition or by employees that may be hired under the Right-of-First-Refusal will not be included.

4. *Other Costs*.—A conversion to contract or ISSA performance may require an agency to take certain actions that would not be necessary if the activity were continued in-house. Agencies have an obligation to mitigate these costs and justify why such costs are necessary. For example, it may not be possible to terminate a rent or lease agreement without a penalty fee, or it may be necessary to move materials that are not associated with the activity under study to another location in order to facilitate conversion or the contractor's or ISSA's use of a facility. Such termination, penalty or facilitation costs are also costs caused by the conversion.

5. *One-Time Cost Computation*.—Supporting documentation should clearly state the type of cost anticipated, justification for inclusion or exclusion and methods of computation.

**F. Gain from disposal/transfer of assets—Line 11**

1. As the Government develops its MEO, certain assets may be found to be no longer needed. These assets may be disposed of or transferred without consideration in a cost comparison. The cost comparison is concerned with comparing the Government's MEO with that of the best commercial or ISSA provider. Therefore, only those assets that are to be used by the Government's MEO and not made available to the contractor or ISSA are considered on Line 11.

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## PART II—PREPARING THE IN-HOUSE AND CONTRACT COST ESTIMATES

2. The Government should not dispose of or transfer MEO assets unless there is an economic advantage to the Government to do so. If the cost of transfer exceeds the net book value of the asset, such that there is a net loss, no such losses are assessed against the contractor or ISSA. Management has made a decision not to make such assets available to the contractor or ISSA irrespective of the economic costs related to such a decision.

3. The net gain generated to the Government as a result of a conversion to a contract or ISSA and a decision not to provide certain MEO assets to the contractor or ISSA should equate to the net book value of the asset less any costs incurred to remove the asset.

**G. Federal income tax—Line 12**

1. When developing the Government's cost of contract performance, the potential Federal income tax revenue should be considered. Since contract performance would provide the contractor with income subject to tax, an estimated amount of such taxes is an appropriate deduction from the net cost to

the Government, unless the prospective contractor is a tax-exempt organization.

2. To simplify the tax computation, Appendix 4, prepared by the Internal Revenue Service, provides, by types of industry, appropriate tax rates in relation to business receipts. The industry groupings conform to the Enterprise Standard Industrial Classification issued by the Department of Commerce. To determine the amount of estimated Federal income tax, the contract price (Line 7 of the GCCF) for each performance period will be multiplied by the applicable tax rate. The estimated amount of Federal income tax will be entered on Line 12 as a deduction, i.e. negative, reducing the cost of contracting.

**H. Total cost—contract or ISSA performance—Line 13**

Add Lines 7, 8, 9 and 10. If there is a number in parenthesis, i.e., a deduction, in Line 11, add to Line 12 and subtract this total from the total of Lines 7 through 10 and enter the difference on Line 13.

### Chapter 4—Calculating the Cost Comparison Decision

#### A. Conversion differential—Line 14

1. A minimum cost differential of the lesser of, (1) 10 percent of personnel costs (line 1) or (2) \$10 million over the performance period, has been established that must be met before converting to or from in-house, contract or interservice support agreement (ISSA) performance. The minimum differential is established to ensure that the Government will not convert for marginal estimated savings.

2. Whenever a cost comparison involves a mix of existing in-house, contract, new or expanded requirements, or assumes full or partial conversions to in-house performance, each portion is addressed individually and the total minimum differential is calculated accordingly.

#### B. Adjusted total in-house cost—Line 15

If the cost comparison is being conducted to determine if an activity should be converted from contract or ISSA performance to in-house operation, the conversion differential as calculated above (Line 14) is added to the In-house performance cost estimate (Line 6, Total Column only) and the sum is entered

under Adjusted Total Cost of In-House Performance (Line 15). The amount in the Total Column for Line 13 is replicated on Line 16.

#### C. Adjusted total contract or ISSA cost—Line 16

If the cost comparison is being conducted to determine if an activity should be converted from in-house operation to contract or ISSA performance, the conversion differential as calculated above (Line 14) is added to the Contract performance cost estimate (Line 13, Total Column only) and the sum is entered under Adjusted Total Cost of Contract or ISSA Performance (Line 16). The amount in the Total Column for Line 6 is replicated on Line 15.

#### D. The cost comparison decision—Lines 17 and 18

Subtract Line 15 from Line 16 and enter the result on Line 17. A positive amount on Line 17 supports a decision to perform the activity with in-house resources. A negative amount on Line 17 supports a decision to accomplish the work with contract resources. Indicate in the appropriate block on Line 18 the decision supported by Line 17.

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**ILLUSTRATION II-1**  
**THE GENERIC A-76 COST COMPARISON FORM (GCCF)**  
**IN-HOUSE VS. CONTRACT OR ISSA PERFORMANCE**

	Performance Periods					Reference
	1st	2nd	3rd	Add'l	Total	
<b><u>IN-HOUSE PERFORMANCE</u></b>						
1. Personnel						
2. Material and Supply						
3. Other Specifically Attributable						
4. Overhead						
5. Additional						
6. Total In-house						
<b><u>CONTRACT OR ISSA PERFORMANCE</u></b>						
7. Contract/ISSA Price						
8. Contract Administration						
9. Additional						
10. One-time Conversion						
11. Gain on Assets	( )	( )	( )	( )	( )	
12. Federal Income Taxes	( )	( )	( )	( )	( )	
13. Total Contract or ISSA						
<b><u>DECISION</u></b>						
14. Minimum Conversion Differential						
15. Adjusted Total Cost of In-house Performance						
16. Adjusted Total Cost of Contract or ISSA Performance						
17. Decision—Line 16 minus Line 15						
18. Cost Comparison Decision: Accomplish Work						
In-House (+)						
Contract or ISSA (-)						

## THE GENERIC A-76 COST COMPARISON FORM (GCCF)

19. In-House MEO Certified By: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Office and Title

"I certify that, to the best of my knowledge and belief, the in-house organization reflected in this cost comparison is the most efficient and cost effective organization that is fully capable of performing the scope of work and tasks required by the Performance Work Statement. I further certify that I have obtained from the appropriate authority concurrence that the organizational structure, as proposed, can and will be fully implemented — subject to this cost comparison, in accordance with all applicable Federal regulations.

20. In-House Cost Estimate Prepared By: \_\_\_\_\_ Date: \_\_\_\_\_

21. Independent Reviewer: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Office and Title

"I certify that I have reviewed the Performance Work Statement, Management Plan, In-house cost estimates and supporting documentation available prior to bid opening and, to the best of my knowledge and ability, have determined that: (1) the ability of the in-house MEO to perform the work contained in the Performance Work Statement at the estimated costs included in this cost comparison is reasonably established and, (2) that all costs entered on the cost comparison have been prepared in accordance with the requirements of Circular A-76 and its Supplement.

22. Cost Comparison Completed By: \_\_\_\_\_ Date: \_\_\_\_\_

23. Contracting Officer: \_\_\_\_\_ Date: \_\_\_\_\_

24. Tentative Cost Comparison

Decision Announced By: \_\_\_\_\_ Date: \_\_\_\_\_

25. Appeal Authority (if applicable): \_\_\_\_\_ Date: \_\_\_\_\_

## Chapter 5—Streamlined Cost Comparisons for Activities with 65 FTE or Less.

### A. General

1. This chapter provides procedures that may be used when the Government determines that a simplified cost comparison will serve the equity and fairness purposes of Circular A-76 for conversion to or from in-house, contract or interagency support agreement (ISSA). The methodology is limited to activities that meet the following criteria:

- a. possible conversion to or from in-house, contract or ISSA performance involving 65 FTE or less;
- b. activities that will compete largely on a labor and material cost basis such as, but not limited to, custodial, grounds, guard, refuse, pest control, warehousing and maintenance services;
- c. activities for which significant capital asset purchases are not required or for which all equipment requirements will be Government Furnished/Contractor Operated (GOCO), and
- d. activities that are commonly contracted by the Government and/or private sector, e.g., there are not less than four comparable agency contracts of the same general type and scope and the range of the existing service contract costs are reasonably grouped.

2. In no case, shall any commercial activity involving 66 or more FTE be modified, reorganized, divided or in any way changed for the purpose of circumventing the requirements of this section or other procedures of this Supplement.

3. A Streamlined Cost Comparison Form (SCCF) is provided at Illustration II-2.

### B. Procedure

1. The streamlined A-76 cost comparison process assumes that the activity being considered is regularly performed by contract. Thus, it assumes that existing fixed price contracts can be used, with only minor modification, to define the scope of the competition and to avoid the need for the development of a new or original Performance Work Statement (PWS) or a formal solicitation.

2. The employee participation and notification provisions of Part I apply.

3. The Government will base its in-house costs on the current organization.

4. The Government's in-house Labor and Material costs (Lines 1 and 2 of the Generic A-76 Cost Comparison Form) will be calculated in accordance with Chapter 2 of this Part. Overhead costs will be calculated as provided by Chapter 2 of this Part for

Line 4. Any contract support costs normally included in Line 5 of the GCCF will be calculated. No other in-house costs will be calculated. The provisions for an Independent Review apply. Upon acceptance by the agency's A-76 IRO, the in-house cost estimate will be sealed and submitted to the contracting officer.

5. Upon receipt of the in-house cost estimate, the contracting officer will develop a range of contract cost estimates, based upon not less than four comparable service contracts or ISSA offers. Adjustments for differences in scope may be necessary. The contracting officer is not required to issue a solicitation for bids from the private sector. If, however, the contracting officer finds that four comparable contracts or ISSA offers are not available, the contracting officer may issue a solicitation for bids and the agency may conduct a cost comparison as otherwise provided by this Supplement.

6. At cost comparison, the in-house cost estimate will be compared with ISSA offers and the range of estimated contract costs developed by the contracting officer. The range of estimated contract costs will then be adjusted for the cost of contract administration (limited to Table 3-1) and Federal tax impacts. In calculating the Adjusted Total Costs, the minimum conversion differential shall be added to the total cost of contract or ISSA performance if the cost comparison is being conducted to determine if an activity should be converted from in-house operation to contract or ISSA performance. If the comparison is being conducted to determine if an activity should be converted from contract or ISSA performance to in-house operation, the differential is added to the total cost of in-house performance.

7. If the Government's Adjusted Total In-house Cost estimate is greater than the range of Adjusted Total Contract or ISSA Cost estimates, the contracting officer will announce a tentative decision to contract or enter into an ISSA. Upon notification of adversely affected Federal employees and publication of this tentative decision in the *Commerce Business Daily*, the A-76 Administrative Appeal process outlined in this Supplement will be initiated. With the A-76 Administrative Appeal Authority's confirmation of all costs entered on the SCCF and certification of the reasonableness of the contract and ISSA pricing adjustments made by the contracting officer, the contracting officer will solicit for award to contract or ISSA performance. The Right-of-First-Refusal will

be offered to employees adversely affected by the award.

8. If the Government's Adjusted Total In-house Cost estimate is below or within the range of Adjusted Total Contract or ISSA Cost estimates, the contracting officer will announce a tentative decision that the activity will be performed in-house. Again, upon notification of Federal employees and publication of the tentative decision in the *Commerce Business Daily*,

the A-76 Administrative Appeal process will be initiated.

9. Activities to be performed or retained in-house as a result of a streamlined cost comparison should be submitted to Post-MEO Performance Review, in compliance with this Supplement. This recognizes that, for retained activities, the existing organization is assumed to be the MEO and no management plan is required.

**ILLUSTRATION II-2**  
**THE STREAMLINED A-76 COST COMPARISON FORM (SCCF)**  
**(LIMITED TO 65 FTE OR LESS)**  
**IN-HOUSE VS. CONTRACT OR ISSA PERFORMANCE**

	Performance Periods				Total	Reference
	1st	2nd	3rd	Add'l		
<b><u>IN-HOUSE PERFORMANCE</u></b>						
1. Personnel						
2. Material						
3. Overhead						
4. Other						
5. Total In-house						
<b><u>CONTRACT OR ISSA PERFORMANCE</u></b>						
6. Contract and ISSA Price Range						
7. Contract Administration						
8. Federal Taxes (-)						
9. Total Contract and ISSA Price Range						
<b><u>DECISION</u></b>						
10. Minimum Conversion Differential						
11. Adjusted Total Cost of In-house Performance						
12. Adjusted Total Cost of Contract or ISSA Performance						
13. Cost Comparison (Line 12 minus Line 11)						
14. Cost Comparison Decision:						
Perform In-House						
Convert to Contract or ISSA						

**THE STREAMLINED A-76 COST COMPARISON FORM (SCCF)  
(LIMITED TO 65 FTE OR LESS)**

15. In-House Cost Estimate Prepared By: \_\_\_\_\_ Date: \_\_\_\_\_  
16. Independent Reviewer: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Office and Title

I certify that I have reviewed the proposed contract, in-house and ISSA cost estimates and contract prices and find them to be reasonable and calculated in accordance with the principles and procedures of Circular A-76 and its Supplement.

17. Cost Comparison Completed By: \_\_\_\_\_ Date: \_\_\_\_\_  
18. Contracting Officer: \_\_\_\_\_ Date: \_\_\_\_\_  
19. Tentative Cost Comparison  
Decision Announced By: \_\_\_\_\_ Date: \_\_\_\_\_  
20. Appeal Authority (if applicable): \_\_\_\_\_ Date: \_\_\_\_\_

## APPENDIX 1

## Definition of Terms

**Administrative appeal authority.**—With receipt of an appeal, the official designated in paragraph 9.a. of the Circular A-76, or designee, assigns an official(s) to serve on an A-76 Administrative Appeal Authority for that appeal. The individual(s) selected must be: (a) independent of the activity under review or, (b) at least two organizational levels above the official who certified the Government's Management Plan and MEO. The Appeal Authority reviews appeals to ensure that all costs are properly accounted for in accordance with the principles and procedures of this Supplemental Handbook. The Authority shall also ensure that all participants have full and equal access to the decision process.

**Affected parties.**—Federal employees and existing Federal contractors that will or could be impacted by a decision to waive a cost comparison or have submitted bids to convert to or from in-house, contract or ISSA performance, as a result of a cost comparison, and their representatives are affected parties. Agencies or parts of agencies that have submitted formal bids or offers, in order to compete for the right to provide services through ISSAs, are also considered affected parties.

**Commercial activity.**—A commercial activity is the process resulting in a product or service that is or could be obtained from a private sector source. Agency missions may be accomplished through commercial facilities and resources, Government facilities and resources or mixes thereof, depending upon the product, service, type of mission and the equipment required.

**Commercial source.**—A commercial source is any business or other concern that is eligible for contract award in accordance with Federal Acquisition Regulations.

**Contract administration.**—Contract administration includes those inherently governmental activities performed by warranted contracting officers (CO), the contracting officer's technical representatives (COTR), and related payment evaluation staff. Contract administration is not to be confused with contract quality control, performance evaluation or inspection, which are defined as commercial activities by this Supplement and OPPP Policy Letter 92-1.

**Conversion to contract.**—A conversion to contract is the change of performance of a commercial activity

from in-house performance by Federal employees to performance by a commercial source.

**Conversion from contract.**—Conversion from contract to in-house performance means the change of a commercial activity from performance by contract with a commercial source to performance by Federal employees with Government resources. It also includes the conversion of expansions and/or new requirements (work) from contract performance to in-house performance.

**Core capability.**—A core capability is a commercial activity operated by a cadre of highly skilled employees, in a specialized technical or scientific development area, to ensure that a minimum capability is maintained. The core capability does not include the skills, functions or FTE that may be retained in-house for reasons of National Defense, including military mobilization, security or rotational necessity, or to the patient care or research and development activities, as provided in Part I, Chapter 1 of this Supplement.

**Cost comparison.**—A cost comparison is the process whereby the estimated cost of Government performance of a commercial activity is formally compared, in accordance with the principles and procedures of this Circular and Supplement, to the cost of performance by commercial or ISSA sources.

**Expansion.**—An expansion is the modernization, replacement, upgrading or the enlargement of an in-house commercial activity or capability. If the expansion involves a 30-percent increase in the operating cost of the activity, a 30-percent increase in the total capital investment to perform the activity or an increase of 65 FTE or more, a cost comparison is required prior to authorizing in-house performance. A consolidation of two or more existing commercial activities is not an expansion, unless the total operating cost is 30 percent greater than the total of the individual components or it requires an increase of 65 FTE or more.

The above definition notwithstanding, pursuant to OMB Circular A-126 all aircraft purchase decisions should be justified through formal cost comparison, as provided by this Supplement.

**Exemption.**—An exemption is a determination, made in accordance with Circular A-76 and this Supplement, that a commercial activity may be converted to or from in-house, contract or ISSA performance.

without cost comparison and may be justified by reasons other than cost.

**Inherently governmental activity.**—An inherently governmental activity is one that is so intimately related to the public interest as to mandate performance by Federal employees. Activities that meet these criteria are not in competition with commercial sources, are not generally available from commercial sources and are, therefore, not subject to Circular A-76 or this Supplement. Guidance to avoid an unacceptable transfer of official responsibility to contract performance may be found in the Office of Federal Procurement Policy (OFPP) Policy Letter 92-1. See Appendix 5.

**Independent Review Officer (IRO).**—The agency official who certifies—prior to bid opening—that the Government's performance and cost comparison estimates have been prepared in accordance with Circular A-76 and this Supplement.

**ISSA.**—The provision of a commercial activity, in accordance with an interservice support agreement, on a reimbursable basis. This includes franchise funds, revolving funds and working capital funds.

**Management Plan.**—The Management Plan is the document that outlines the changes that will result in the Government's Most Efficient Organization (MEO) to perform a commercial activity in-house. It provides the staffing patterns and operating procedures that serve as a baseline for in-house cost estimates.

**Most Efficient Organization (MEO).**—The MEO refers to the Government's in-house organization to perform a commercial activity. It may include a mix of Federal employees and contract support. It is the basis for all Government costs entered on the Cost Comparison Form. The Most Efficient Organization (MEO) is the product of the Management Plan and is based upon the Performance Work Statement (PWS).

**National defense activity.**—A national defense activity is a commercial activity that is approved by the Secretary of Defense, or designee, as being subject to deployment in a direct military combat support role.

**National security.**—A national security activity is a commercial activity that is approved by the Director of Central Intelligence, or designee, as being necessary to meet the national security.

**New requirements.**—A new requirement is a newly established need for a commercial product or service.

**Overhead.**—Overhead is included in the in-house estimate and is defined as those costs that are not directly attributable to the activity under study.

**Performance measures.**—Performance measures provide a series of indicators, expressed in qualitative, quantitative or other tangible terms, that indicate whether current performance is reasonable and cost effective. Performance measures can include workload and output-to-cost ratios, transaction ratios, error rates, consumption rates, inventory fill rates, timeliness measures, completion and back order rates, etc. Quality service measures may include responsiveness rates, user satisfaction rates, etc.

**Performance standard.**—A performance standard reflects the minimum, sector-specific, Federal requirement for the performance of a commercial activity. It incorporates both quality measures and cost measures. Cost measures reflect the cost comparability procedures of Part II of this Supplement to assure equity in the comparison of performance standards with private industry standards.

**Performance Work Statement (PWS).**—A Performance Work Statement is a statement of the technical, functional and performance characteristics of the work to be performed, identifies essential functions to be performed, determines performance factors, including the location of the work, the units of work, the quantity of work units, and the quality and timeliness of the work units. It serves as the scope of work and is the basis for all costs entered on the Cost Comparison Form.

**Post-MEO performance review.**—When services are performed in-house, as a result of a cost comparison, including those involving an interservice support agreement, a formal review and inspection of the Most Efficient Organization (MEO) should be conducted. Typically, this review should be conducted following the end of the first full year of performance. Post-MEO Performance Reviews confirm that the MEO has been implemented in accordance with the Transition Plan, establish the MEO's ability to perform the services of the PWS and confirm that actual costs are within the estimates contained in the in-house cost estimate. Adjustments may be made for formal mission or scope of work changes.

**Preferential procurement programs.**—These are special "commercial" source programs, such as Federal Prison Industries and the workshops administered by the Committee for the Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day Act.

**Performance requirements summary (PRS).**—A PRS is a synopsis of the scope of work and output performance measurements that may be used in conjunction

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## APPENDIX 1

with aviation cost comparisons that rely on the GSA FAMIS data system for identifying contract costs.

**Privatization.**—Privatization is the process of changing a public entity or enterprise to private control and ownership. It does not include determinations as to whether a support service should be obtained through public or private resources, when the Government retains full responsibility and control over the delivery of those services.

**Quality assurance surveillance.**—Quality Assurance Surveillance is the method by which Federal employees will supervise in-house or contract performance to ensure that the standards of the PWS are met within the costs bid.

**Reasonable or competitive prices.**—The expected range of prices resulting from experience obtained through the competitive free enterprise system for like or similar activities. Determinations are to be made by the contracting officer.

**Recurring commercial activity.**—A recurring commercial activity is one that is required by the Government on a consistent and long term basis. This definition does not imply an hourly, daily, monthly or annual requirement, but must, in a general sense, be repet-

itive in nature, wherein the expected workload can be reasonably estimated.

**Sector.**—Certain commercial activities are common to more than one agency. Many of these commercial activities can be aggregated. For example, an agency may inventory transportation acquisition, operations, maintenance and disposal as independent commercial activities.

**Severable expansion.**—A severable expansion is an expansion of currently contracted, in-house or inter-service support agreement provided work that could be provided using the current approach or could, without severe additional administrative burden, be provided by another competitive offeror. Economies of scale are not justification for dismissing new or expanded work as severable, these economies will be tested through competitive offer.

**Start date.**—This term is used in two ways. First, it is the date when a cost comparison begins, generally defined as the date that a local Study Team is formed and actual work on the Performance Work Statement, Management Plan and in-house cost estimate begins. Second, it may refer to the actual date work is scheduled to begin under a contract, as provided in the solicitation.

## APPENDIX 2

## Commercial Activities Inventory

**A. Annual Inventory Submission**

In accordance with the FAIR Act, Circular A-76 and this Handbook, each agency must submit to OMB, by June 30 of each year, a detailed Commercial Activities Inventory of all commercial activities performed by in-house employees, including, at a minimum, the following:

- a. Organization unit.
- b. State(s).
- c. Location(s).
- d. FTE.
- e. Activity function code.
- f. Reason code.
- g. Year the activity first appeared on FAIR Act Commercial Activities Inventory (initial value will be 1999).
- h. Name of a Federal employee responsible for the activity or contact person from whom additional information about the activity may be obtained.
- i. Year of cost comparison or conversion (if applicable).
- j. CIV/FTE savings (if applicable).
- k. Estimated annualized Cost Comparison dollar savings (if applicable).
- l. Date of completed Post-MEO Performance Review (if applicable).

Agencies have the discretion to automate and to structure the initial submission of the detailed inventory as they believe most appropriate, so long as the inventory includes each of these data elements. Agencies must transmit an electronic version of the inventory to OMB as well as two paper copies. The elec-

tronic version should be in a commonly used software format (commercial off-the-shelf spreadsheet, database or word processing format). OMB anticipates issuing additional guidance on the structure and format of future inventory submissions, based on the experience gained from the first annual review and consultation process.

**B. Reporting**

The above is public information. The data may be summarized into reports for the Congress, the General Accounting Office (GAO), agency officials, OMB or the public.

**C. FTE**

Enter the number of authorized full-time employees or FTE (as applicable) in the commercial activity function or functions as of the date of the inventory. Employees performing inherently Governmental activities are not reported in the Commercial Activities Inventory.

**D. A-76 Commercial activity functional codes**

The Department of Defense has developed a comprehensive list of function codes for use in their A-76 inventory system. In applying these function codes Government-wide, the codes standardize the functional descriptions of activities and facilitate the aggregation of activities Government-wide and by agency.

**E. Reason codes**

The following reason codes will be used in the Commercial Activities Inventory. Agencies may add additional sub-groupings (A1, A2 for example) within any reason code, as deemed necessary.

## APPENDIX 2

Code	Explanation
A	Indicates that the function is performed by Federal employees and is specifically exempt by the agency from the cost comparison requirements of the Circular and this Supplement.
B	Indicates that the activity is performed by Federal employees and is subject to the cost comparison or direct conversion requirements of the Circular and this Supplement.
C	Indicates that the activity is performed by Federal employees, but it has been specifically made exempt from the provisions of the Circular and this Supplement by Congress, Executive Order or OMB.
D	Indicates that the function is currently performed by in-house Federal employees and is in the process of being cost compared or converted directly to contract or interservice support agreement performance.
E	Indicates that the function is retained in-house as a result of a cost comparison.
F	Indicates the function is currently being performed by Federal employees, but a review is pending force restructuring decisions (i.e., base closure, realignment, consolidation, etc.).
G	Indicates that the function is prohibited from conversion to contract because of legislation.
H	Waiver issued.
I	Indicates the function is being performed in-house as a result of a cost comparison resulting from a decision to convert from contract to in-house performance.

**F. Maintenance of aggregate data**

Agencies should maintain aggregate program implementation data by fiscal year, to include: total number of studies, FTE and dollar savings by conversion to contract, conversion to in-house or otherwise retained in-house. Agencies should also track total FTE studied and MEO savings generated.

**G. Inventory Review and Publication; Challenges and Appeals.**

1. Review and Publication: In accordance with Section 2 of the FAIR Act, OMB will review the agency's Commercial Activities Inventory and consult with the agency regarding its content. After this review is completed, OMB will publish a notice in the Federal Register stating that the inventory is available to the public. Once the notice is published, the agency will transmit a copy of the detailed Commercial Activities Inventory to Congress and make the materials available to the public through its Washington, D.C. or headquarters offices.

2. Challenges and Appeals: Under Section 3 of the FAIR Act, an agency's decision to include or

exclude a particular activity from the Commercial Activities Inventory is subject to administrative challenge and, then, possible appeal by an "interested party." Section 3(b) of the FAIR Act defines "interested party" as:

a. A private sector source that (A) is an actual or prospective offeror for any contract or other form of agreement to perform the activity; and (B) has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source.

b. A representative of any business or professional association that includes within its membership private sector sources referred to in a. above.

c. An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity.

d. The head of any labor organization referred to in section 7103(a) (4) of title 5, United States Code that includes within its membership officers or employees of an organization referred to in c. above.

3. An interested party may submit to an executive agency an initial challenge to the inclusion or exclusion of an activity within 30 calendar days after publication of OMB's Federal Register notice stating that the inventory is available. The challenge must set forth the activity being challenged with as much specificity as possible, and the reasons for the interested party's belief that the particular activity should be reclassified as inherently Governmental (and therefore be deleted from the inventory) or as commercial (and therefore be added to the inventory) in accordance with OFPP Policy Letter 92-1 on inherently Governmental functions (see Appendix 5) or as established by precedent (such as when other agencies have contracted for the activity or undergone competitions for this or similar activities).

4. The agency head may delegate the responsibility to designate the appropriate official(s) to receive and decide the initial challenges. As mandated by the FAIR Act, the deciding official must decide the initial challenge and transmit to the interested party a written notification of the decision within 28 calendar days of receiving the challenge. The notification must include a discussion of the rationale for the decision and, if the decision is adverse, an explanation of the party's right to file an appeal.

5. An interested party may appeal an adverse decision to an initial challenge within 10 working days after receiving the written notification of the deci-

sion. The agency head may delegate the responsibility to receive and decide appeals to the official identified in paragraph 9.a of the Circular (or an equivalent senior policy official), without further delegation. Within 10 working days of receipt of the appeal, the official must decide the appeal and transmit to the interested party a written notification of the decision together with a discussion of the rationale for the decision. The agency must also transmit to OMB and the Congress a copy of any changes to the inventory that result from this process, make the changes available to the public and publish a notice of public availability in the Federal Register.

#### **H. Agency Review and Use of Inventory.**

Section 2(d) of the FAIR Act requires that each agency, within a reasonable time after the publication of the notice that its inventories are publicly available, review the activities on the detailed commercial activities inventory. Agencies will report to OMB on this process as part of the Report on Agency Management of Commercial Activities required under Paragraph I, below. In addition, Section 2(d)-(e) of the FAIR Act provides that, each time the head of the executive agency considers contracting with a private-sector source for the performance of an activity included on the inventory, the agency must use a competitive process to select the source and must ensure that, when a cost comparison is used or otherwise required for the comparison of costs, all costs are considered and the costs considered are realistic and fair. In carrying out these requirements, agencies must rely

on the guidance contained in Circular A-76 and this Supplemental Handbook to determine if cost comparisons are required and what competitive method is appropriate. All competitive costs of in-house and contract performance are included in the cost comparison, when such comparison is required, including the costs of quality assurance, technical monitoring, liability insurance, retirement benefits, disability benefits and overhead that may be allocated to the function under study or may otherwise be expected to change as a result of changing the method of performance.

#### **I. Annual Report on Agency Management of Commercial Activities.**

As part of ongoing agency responsibility to manage their performance of commercial activities and ongoing OMB oversight, OMB will require agencies to report annually on such management. The content of the reports is likely to vary depending upon the progress made by each agency in reviewing their inventory and on the experience OMB gains from the first round of inventory submissions, review, challenges and appeals mandated by the FAIR Act. OMB anticipates issuing subsequent guidance if it determines that supplemental reports or other information is needed for future inventory submissions to assure that agencies have correctly implemented all of the provisions of the FAIR Act and taken advantage of the management information inherent in the detailed Commercial Activities Inventory.

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## APPENDIX 2

**A-76 Commercial Activation Functional Codes**

<b>G—Social Services</b>	
G001	Care of Remains of Deceased Personnel & Funeral Services
G008	Commissary Store Operation
G009	Clothing Sales Store Operations
G010	Recreational Library Services
G011	Morale, Welfare, and Recreation Services
G012	Community Services
G900	Chaplain Activities and Support Services
G901	Housing Administrative Services
G904	Family Services
G999	Other Social Services
<b>H—Health Services</b>	
H101	Hospital Care
H102	Surgical Care
H105	Nutritional Care
H106	Pathology Services
H107	Radiology Services
H108	Pharmacy Services
H109	Physical Therapy
H110	Materiel Services
H111	Orthopedic Services
H112	Ambulance Services
H113	Dental Care
H114	Dental Laboratories
H115	Clinics and Dispensaries
H116	Veterinary Services
H117	Medical Records
H118	Nursing Services
H119	Preventive Medicine
H120	Occupational Health
H121	Drug Rehabilitation
H999	Other Health Services
<b>J—Intermediate, Direct or General Repair and Maintenance of Equipment</b>	
J501	Aircraft Maintenance
J502	Aircraft Engine Maintenance
J503	Missiles
J504	Vessels
J505	Combat Vehicles
J506	Noncombat Vehicles
J507	Electronic and Communication Equipment Maintenance
J510	Railway Equipment
J511	Special Equipment
J512	Armament
J513	Dining Facility Equipment
J514	Medical and Dental Equipment
J515	Containers, Textile, Tents, and Tarpaulins
J516	Metal Containers
J517	Training Devices and Audiovisual Equipment
J519	Industrial Plant Equipment
J520	Test, Measurement and Diagnostic Equipment
J521	Other Test, Measurement and Diagnostic Equipment
J522	Aeronautical Support Equipment
J999	Maintenance of Other Equipment

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**A-76 Commercial Activation Functional Codes—Continued**

<b>K—Depot Repair, Maintenance, Modification, Conversion or Overhaul of Equipment</b>	
K531	Aircraft
K532	Aircraft Engines
K533	Missiles
K534	Vessels
K535	Combat Vehicles
K536	Noncombat Vehicles
K537	Electronic and Communication Equipment
K538	Railway Equipment
K539	Special Equipment
K540	Armament
K541	Industrial Plant Equipment
K542	Dinning and Facility Equipment
K543	Medical and Dental Equipment
K544	Containers, Textile, Tents, and Tarpaulins
K545	Metal Containers
K546	Test, Measurement and Diagnostic Equipment
K547	Other Test, Measurement and Diagnostic Equipment
K548	Aeronautical Support Equipment
K999	Other Depot Repair, Maintenance, Modification, Conversion or Overhaul of Equipment
<b>P—Base Maintenance/Multifunction Contracts</b>	
P100	Installation Operation Contracts (Multi-function)
<b>R—Research, Development, Test, and Evaluation (RDT&amp;E) Support</b>	
R660	RDT&E Support
<b>S—Installation Services</b>	
S700	Natural Resource Services
S701	Advertising and Public Relations
S702	Financial and Payroll Services
S703	Debt Collection
S706	Bus Services
S708	Laundry and Dry Cleaning
S709	Custodial Services
S710	Pest Management
S712	Refuse Collection and Disposal Services
S713	Food Services
S714	Furniture Repair
S715	Office Equipment Maintenance and Repair
S716	Motor Vehicle Operation
S717	Motor Vehicle Maintenance
S718	Fire Prevention and Protection
S719	Military Clothing
S724	Guard Service
S725	Electrical Plants and Systems Operation and Maintenance
S726	Heating Plants and Systems Operation and Maintenance
S727	Water Plants and Systems Operation and Maintenance
S728	Sewage and Waste Plants Operation and Maintenance
S729	Air Conditioning and Refrigeration Plants
S730	Other Utilities Operation and Maintenance
S731	Supply Operations
S732	Warehousing and Distribution of Publications
S740	Transportation Management Services
S750	Museum Operations
S760	Contractor-Operated Parts Stores & Civil Engineering Supply Stores

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APPENDIX 2

**A-76 Commercial Activation Functional Codes—Continued**

8999	Other Installation Services
<b>T—Other NonManufacturing Operations</b>	
T800	Ocean Terminal Operations
T801	Storage and Warehousing
T802	Cataloging
T803	Acceptance Testing
T804	Architect-Engineering
T805	Operation of Bulk Liquid Storage
T806	Printing and Reproduction
T807	Visual Information
T808	Mapping and Charting
T809	Administrative Telephone Services
T810	Air Transportation Services
T811	Water Transportation Services
T812	Rail Transportation Services
T813	Engineering and Technical Services
T814	Aircraft Fueling Services
T815	Scrap Metal Operation
T816	Telecommunication Centers
T817	Other Communications and Electronics Systems
T818	Systems Engineering and Installation of Communications Systems
T819	Preparation and Disposal of Excess and Surplus Property
T820	Administrative Support Services
T821	Special Studies and Analysis
T900	Training Aids, Devices, and Simulator Support
T999	Other NonManufacturing Operations
<b>U—Education and Training</b>	
U100	Recruit Training
U200	Officer Acquisition Training
U300	Specialized Skill Training
U400	Flight Training
U500	Professional Development Training
U510	Professional Military Education
U520	Graduate Education, Fully Funded, Full-time
U530	Other Full-time Education Programs
U540	Off-Duty (Voluntary) and On-Duty Education Programs
U600	Civilian Education and Training
U700	Dependent Education
U800	Training Development and Support
U999	Other Training Functions
<b>W—Automatic Data Processing</b>	
W824	Data Processing Services
W825	Maintenance of ADP Equipment
W826	Systems Design, Development and Programming Services
W827	Software Services
W999	Other ADP Functions
<b>X—Products Manufactured and Fabricated In-House</b>	
X931	Ordnance Equipment
X932	Products Made From Fabric or Similar Materials
X933	Container Products and Related Items
X934	Preparation of Food and Bakery Products
X935	Liquid, Gaseous and Chemical Products
X936	Rope, Cordage, and Twine Products; Chains and Metal Cable Products

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**A-76 Commercial Activation Functional Codes—Continued**

X937	Logging and Lumber Products
X938	Communications and Electronic Products
X939	Construction Products
X940	Rubber and Plastic Products
X941	Optical and Related Products
X942	Sheet Metal Products
X943	Foundry Products
X944	Machined Parts
X999	Other Products Manufactured and Fabricated In-House
<b>Z—Maintenance, Repair, Alteration, and Minor Construction of Real Property</b>	
Z991	Maintenance and Repair of Family Housing Buildings and Structures
Z992	Maintenance and Repair of Buildings and Structures Other Than Family Housing
Z993	Maintenance and Repair of Grounds and Surfaced Areas
Z997	Maintenance and Repair of Railroad Facilities
Z998	Maintenance and Repair of Waterways
Z999	Other Maintenance, Repair, Alteration, and Minor Construction of Real Property

APPENDIX 3

## APPENDIX 3

## Useful Life and Disposal Value

The attached useful life and disposal values are estimated by the Defense Logistics Agency. The disposal value factor, as a percent of acquisition cost, is based upon the rate of return.

Useful Life \* and Disposal Value Table

FSC No.	Nomenclature	Expected Useful Life (Years)	Disposal Value Factor as a Percent of Acquisition Cost
	Guns, through 30mm	15	3.15
	Guns, over 30mm up to 75mm		1.18
	Guns, 75mm through 125mm	25	0.63
	Guns, over 125mm through 200mm		2.14
	Guns, over 200mm through 300mm		2.61
1040	Chemical Weapons and Equipment	16	
	Launchers, Rocket and Pyrotechnic	15	2.00
1080	Camouflage and Deception Equipment	10	1.75
1090	Assemblies Interchangeable between Weapons in Two or More Classes	25	2.25
1095	Misc. Weapons		1.06
1135	Fusing and Firing Devices Nuclear Ordnance	16	0.08
1190	Specialized Test and Handling Equipment, Nuclear Ordnance	8	0.60
1220	Fire Control Computing Sights and Devices	8	0.29
1230	Fire Control System, Complete	11	
1240	Optical Sighting and Ranging Equipment	11	1.80
1250	Fire Control Stabilizing Mechanisms	11	1.76
1260	Fire Control Designating and Indicating Equipment	12	0.58
1265	Fire Control Transmitting and Receiving Equipment, except Airborne	11	0.39
1270	Aircraft Gunnery Fire Control Components		0.22
1285	Fire Control Radar Equipment, except Airborne		1.19
1290	Misc. Fire Control Equipment	19	0.79
1340	Rockets, Rocket Ammo and Rocket Components	18	3.62
1375	Demolition Materials		
1377	Cartridge and Propellant Activated Devices and Components		1.28
1398	Specialized Ammo Handling and Servicing Equipment	12	0.52
1410	Guided Missiles	19	1.55
1420	Guided Missile Components	15	0.13
1430	Guided Missile Remote Control Systems	19	0.45
1440	Launchers, Guided Missile	17	0.66
2450	Guided Missile Handling and Servicing Equipment	27	0.65
1560	Airframe Structural Components	20	2.48
1610	Aircraft Propellers	10	4.58
1615	Helicopter Rotor Blades, Drive Mechanisms and Components	10	3.52
1620	Aircraft Landing Gear Components	10	2.71
1630	Aircraft Wheel and Brake Systems	10	4.92
1650	Aircraft Hydraulic, Vacuum and De-icing System Components	10	2.19
1660	Aircraft Air Conditioning, Heating and Pressurizing Equipment	10	2.23
1670	Parachutes, Aerial Pick Up, Delivery, Recovery Systems and Cargo Tie Down Equipment	7	5.52
1680	Misc. Aircraft Accessories and Components	7	1.92
1720	Aircraft Launching Equipment	25	1.91
1730	Aircraft Ground Servicing Equipment	20	3.12
1740	Airfield Specialized Trucks and Trailers	6.37	
1905	Combat Ships and Landing Vessels	20	2.53

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## Useful Life\* and Disposal Value Table—Continued

FSC No.	Nomenclature	Expected Useful Life (Years)	Disposal Value Factor as a Percent of Acquisition Cost
1915	Cargo and Tanker Vessels	30	8.54
1925	Special Service Vessels	25	8.54
1930	Barges and Lighters, Cargo	27	11.05
1935	Barges and Lighters, Special Purpose	30	19.83
1940	Small Craft	23	6.35
1945	Pontoons and Floating Docks	30	14.42
1950	Misc. Vessels		8.74
2010	Ship and Boat Propulsion Components	20	10.26
2030	Deck Machinery		3.31
2040	Marine Hardware and Hull Items	20	16.57
2050	Buoys		11.05
2090	Misc. Ship and Marine Equipment		4.81
2210	Locomotives	29	16.51
2220	Rail Cars	40	10.27
2230	Right-of-Way Construction and Maintenance Equipment, Railroad	20	18.69
2240	Locomotive and Rail Car Accessories and Components		9.98
2250	Track Materials, Railroad		41.00
2305	Ground Effect Vehicles	15	*
2310	Passenger Motor Vehicles	*	17.00
	Passenger Cars and Station Wagons	6	
	Buses (11 or more passengers)	8	
	Ambulances	7	
2320	Trucks and Truck Tractors, Wheeled	*	17.96
	Less than 12,500 (payload 1 ton and less)	6	
	12,500 through 16,999 (payload, 1 1/2 through 2 1/2 tons)	7	
	17,000 and over (payload, tons and (over)	9	
	Multiple Drive Vehicles	6	
2330	Trailers	23	10.09
2340	Motorcycles, Motor Scooters and Bicycles	12	27.31
2350	Combat, Assault and Tactical Vehicles, Tracked	14	32.82
2410	Tractors, Full Track, Low Speed	14	27.62
2420	Tractors, Wheeled	13	22.70
2430	Tractors, Track Laying High Speed		7.42
2510	Vehicular Cab, Body and Frame Structural Components	10	14.18
2520	Vehicular Power Transmission Components	12	16.22
2530	Vehicular Brake, Steering, Axle, Wheel and Track Components	12	12.17
2540	Vehicular Furniture and Accessories	18	6.95
2590	Misc. Vehicular Components	10	7.04
2805	Gasoline Reciprocating Engines except Aircraft and Components	7	5.68
2810	Gasoline Reciprocating Engines, Aircraft and Components		3.43
2815	Diesel Engines and Components		13.33
2835	Gas Turbines and Jet Engines, except Aircraft and Components	15	3.59
2840	Gas Turbines and Jet Engines, Aircraft, and Components		1.77
2845	Rocket Engines and Components		0.11
2910	Engine Fuel System Components, Nonaircraft		8.01
2915	Engine Fuel System Components, Aircraft		3.01
2920	Engine Electrical System Components, Nonaircraft		10.32
2925	Engine Electrical System Components, Aircraft		7.94
2930	Engine Cooling System Components, Nonaircraft		21.96
2935	Engine Cooling System Components, Aircraft		7.41
2945	Engine Air and Oil Filters, Strainers and Cleaners, Aircraft		1.71
2950	Turbochargers		8.26
2990	Misc. Engine Accessories, Nonaircraft		7.77
2995	Misc. Engine Accessories, Aircraft		4.10

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Useful Life \* and Disposal Value Table—Continued

FSC No.	Nomenclature	Expected Useful Life (Years)	Disposal Value Factor as a Percent of Acquisition Cost
3010	Torque Converters and Speed Changers		5.93
3020	Gears, Pulleys, Sprockets and Transmission Chain		4.54
3040	Misc. Power Transmission Equipment		3.22
3110	Bearings, Antifriction, Unmounted		22.14
3120	Bearings, Plain, Unmounted		4.78
3130	Bearings, Mounted		7.50
3210	Sawmill and Planing Mill Machinery	15	28.41
3220	Woodworking Machines	15	27.37
3405	Saws and Filing Machines	20	30.87
3408	Machining Centers and Way-Type Machines	7.49	
3410	Electrical and Ultrasonic Erosion Machines	10	9.75
3411	Boring Machines	20	49.61
3413	Drilling and Tapping Machines	15	40.16
3414	Gear Cutting and Finishing Machines	10	29.58
3415	Grinding Machines	15	35.06
3416	Lathes	20	39.84
3417	Milling Machines	20	28.22
3418	Planers and Shapers	20	27.66
3419	Misc. Machine Tools	15	17.92
3422	Rolling Mills and Drawing Machines	10	68.35
3424	Metal Heat Treating and Nonthermal Treating Equipment	25	11.72
3426	Metal Finishing Equipment	20	6.53
3655	Gas Generating and Dispensing Systems	12	7.35
3680	Industrial Size Reduction Machinery	9	27.30
3680	Foundry Machinery, Related Equipment and Supplies	10	12.61
3690	Specialized Ammo and Ordnance Machinery and Related Equipment		3.41
3693	Industrial Assembly Machine	0.45	
3694	Clean Work Stations, Controlled Environment and Related Equipment		6.43
3695	Misc. Special Industry Equipment	4	7.58
3910	Conveyors	12	6.85
3920	Materials Handling Equipment Nonself Propelled	22	9.07
3930	Warehouse Trucks and Tractors, Self Propelled	*	18.60
	<i>Gasoline</i>		
	Fork Truck (2,000 pounds to 16,000 Pounds)	8	
	Fork Truck (over 6,000 pounds)		10
	Tractor	8	
	Crane	12	
	Platform Truck	8	
	Straddle Truck	15	
	<i>Electric</i>		
	All types	15	
3940	Blocks, Tackle, Rigging and Slings		9.61
3950	Winches, Hoists, Cranes and Derricks	13	10.23
3990	Misc. Materials Handling Equipment	30	8.71
4010	Chain and Wire Rope		5.11
4020	Fiber Rope, Cordage and Twine		6.81
4030	Fittings for Rope, Cable and Chain		13.16
4110	Refrigeration Equipment	11	7.07
4120	Air Conditioning Equipment	10	3.82
4130	Refrigeration and Air Conditioning Components	16	4.26
4140	Fans, Air Circulators and Blow Equipment	4.79	
4210	Fire Fighting Equipment	14	6.55
4220	Marine Lifesaving and Diving Equipment	10	5.65
4230	Decontaminating and Impregnating Equip.	17	5.87
4240	Safety and Rescue Equipment	19	2.53

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Useful Life \* and Disposal Value Table—Continued

FSC No.	Nomenclature	Expected Useful Life (Years)	Disposal Value Factor as a Percent of Acquisition Cost
4310	Compressors and Vacuum Pumps	10	7.59
4320	Power and Hand Pumps	15	4.27
4330	Centrifuges, Separators and Pressure and Vacuum Filters	20	4.90
4410	Industrial Boilers	9	3.78
4420	Heat Exchanges and Steam Condensers	9.73	
4430	Industrial Furnaces, Kilns, Lehrs and Ovens	10	6.59
4440	Driers, Dehydrators and Anhydrators	10	4.55
4460	Air Purification Equipment	11	3.71
4510	Plumbing Fixtures and Accessories	15	5.91
4520	Space Heating Equipment and Domestic Water Heaters	8	8.36
4540	Misc. Plumbing, Heating and Sanitation Equipment	8	3.01
4610	Water Purification Equipment	14	4.55
4620	Water Distillation Equipment, Marine and Industrial	15	15.61
4710	Pipe and Tube		7.79
4720	Hose and Tubing, Flexible		6.13
4730	Fittings and Specialties, Hose, Pipe and Tube		4.83
4810	Valves, Powered		2.20
4820	Valves Nonpowered		4.91
4910	Motor Vehicle, Maintenance and Repair Shop Specialized Equipment	11	6.63
4920	Aircraft Maintenance and Repair Shop Specialized Equipment	20	1.58
4925	Armo. Maintenance, Repair and Checkout Specialized Equipment	21	1.67
4927	Rocket Maintenance, Repair and Checkout Specialized Equipment		
4930	Lubrication and Fuel Dispensing Equipment	15	5.00
4931	Fire Control Maintenance and Repair Shop Specialized Equipment	9	1.18
4933	Weapons Maintenance and Repair Shop Specialized Equipment	15	1.91
4935	Guided Missile Maintenance, Repair and Checkout Specialized Equipment	19	0.40
4940	Misc. Maintenance and Repair Shop Specialized Equipment	20	4.48
5110	Hand tools, Edged-Nonpowered	10	9.26
5120	Hand tools, Nonedged, Nonpowered	21	5.53
5130	Hand tools, Power Driven	10	10.31
5133	Drill Bits, Counterbores and Countersinks, Hand and Machine	10	24.07
5136	Taps, Dies and Collets, Hand and Machine	10	8.08
5140	Tool and Hardware Boxes	20	26.42
5180	Sets, Kits and Outfits of Hand Tools	23	3.83
5210	Measuring Tools, Craftsmen	10	4.87
5220	Inspection Gages and Precision Layout Tools	12	3.17
5280	Sets, Kits and Outfits of Measuring Tools	25	1.01
5410	Prefabricated and Portable Building	8	2.48
5411	Rigid Wall Shelters	20	2.44
5420	Bridges, Fixed and Floating	17	7.25
5430	Storage Tanks	7	6.83
5440	Scaffolding Equipment and Concrete Forms	5	6.83
5445	Prefabricated Tower Structures	23	5.23
5450	Misc. Prefabricated Structures	25	1.30
5670	Architectural and Related Metal Products	10	59.16
5680	Misc. Construction Materials	69	9.59
5805	Telephone and Telegraph Equipment	23	2.37
5810	Communications Security Equipment and Components	16	0.40
5811	Other Cryptologic Equipment and Components	11	1.25
5815	Teletype and Facsimile Equipment	22	6.99
5820	Radio and Television Communications Equipment, except Airborne	8	2.44
5821	Radio and Television Communications Equipment, Airborne	24	1.01
5825	Radio Navigation Equipment, except Airborne	24	1.37
5826	Radio Navigation Equipment, Airborne	24	1.44
5830	Intercommunication and Public Address Systems, except Airborne	24	1.74

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Useful Life \* and Disposal Value Table—Continued

FSC No.	Nomenclature	Expected Useful Life (Years)	Disposal Value Factor as a Percent of Acquisition Cost
5831	Intercommunication and Public Address Systems, Airborne	25	0.61
5835	Sound Recording and Reproducing Equipment	22	1.43
5840	Radar Equipment, except Airborne	23	0.92
5841	Radar Equipment, Airborne	24	0.53
5845	Underwater Sound Equipment	13	1.14
5850	Visible and Invisible Light Communication Equipment	24	0.32
5855	Night Vision Equipment, Emitted and Reflected Radiation	25	1.18
5860	Stimulated Coherent Radiation Devices, Components and Accessories	25	
5865	Electronic Countermeasures, Counter Countermeasures and Quick Reaction Capability Equipment	20	0.27
5895	Misc. Communications Equipment	23	0.67
5905	Resistors	8	1.02
5910	Capacitors	8	2.32
5915	Filters and Networks	25	0.93
5920	Fuses and Lightning Arrestors	25	3.12
5925	Circuit Breakers	10	7.49
5930	Switches	10	1.55
5935	Connectors, Electrical	22	20.61
5940	Lugs, Terminals and Terminal Strips	8	1.66
5945	Relays and Solenoids	25	1.36
5950	Coils and Transformers	8	1.35
5955	Piezoelectric Crystals	8	0.65
5960	Electron Tubes and Associated Hardware	8	1.00
5961	Semiconductor Devices and Associated Hardware	8	1.04
5962	Microcircuits, Electronic	8	0.54
5963	Electronic Modules	8	
5965	Headsets, Handsets, Microphones and Speakers	24	4.28
5970	Electrical Insulators and Insulating Materials	8	34.93
5975	Electrical Hardware and Supplies	23	3.73
5977	Electrical Contact Brushes and Electrodes	8	2.08
5985	Antennas, Waveguide and Related Equipment	8	2.02
5990	Synchros and Resolvers	14	1.65
5995	Cable, Cord and Wire Assemblies, Communications Equipment	24	4.16
5999	Misc. Electrical and Electronic Components	20	1.01
6105	Motors, Electrical	10	5.31
6110	Electrical Control Equipment	8	2.45
6115	Generators and Generator Sets, Electrical	19	6.50
6116	Fuel Cell Power Units, Components and Accessories	15	22.88
6120	Transformers: Distribution and Power		
6125	Converters, Electrical, Rotating	25	2.88
6130	Converters, Electrical, Nonrotating	22	1.75
6135	Batteries, Primary	15	2.51
6140	Batteries, Secondary	25	6.91
6145	Wire and Cable, Electrical	25	16.29
6150	Misc. Electric Power and Distribution Equipment	15	2.55
6210	Indoor and Outdoor Electric Lighting Fixtures	16	3.95
6220	Electric Vehicular Light and Fixtures	10	4.58
6230	Electric Portable and Hand Lighting Equipment	17	3.44
6240	Electric Lamps	10	6.92
6250	Ballasts, Lampholders and Starters	10	3.91
6310	Traffic and Transit Signal Systems	4	3.52
6320	Shipboard Alarm and Signal Systems	4	2.68
6350	Misc. Alarm, Signal and Security Detection Systems	6	1.38
6515	Medical and Surgical Instruments Equipment and Supplies	9	2.54
6520	Dental Instruments, Equipment and Supplies	8	7.66

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Useful Life \* and Disposal Value Table—Continued

FSC No.	Nomenclature	Expected Useful Life (Years)	Disposal Value Factor as a Percent of Acquisition Cost
6525	X-Ray Equipment and Supplies: Medical Dental, Veterinary	9	3.57
6530	Hospital Furniture, Equipment, Utensils and Supplies	10	4.18
6540	Opticians' Instruments, Equipment and Supplies	10	6.23
6545	Medical Sets, Kits and Outfits	10	5.60
6605	Navigational Instruments	15	0.87
6610	Flight Instruments	17	2.30
6615	Automatic Pilot Mechanisms and Airborne Gyro Components	25	1.17
6620	Engine Instruments	15	3.04
6625	Electrical and Electronic Properties Measuring and Testing Instruments	15	1.55
6630	Chemical Analysis Instruments	5	1.70
6635	Physical Properties Testing Equipment	13	6.62
6636	Environmental Chambers and Related Equipment	10	2.20
6640	Laboratory Equipment and Supplies	20	2.12
6645	Time Measuring Instruments	25	5.54
6650	Optical Instruments	8	2.31
6655	Geophysical and Astronomical Instruments	25	2.02
6660	Meteorological Instruments and Apparatus	20	1.05
6665	Hazard-Detecting Instruments and Apparatus	16	1.44
6670	Scales and Balances	18	4.77
6675	Drafting, Surveying and Mapping Instruments	19	2.44
6680	Liquid and Gas Flow, Liquid Level and Mechanical Motion Measuring Instruments	10	2.87
6685	Pressure, Temperature and Humidity Measuring Controlling Instruments	10	2.53
6695	Combination and Misc. Instruments	8	2.06
6710	Cameras, Motion Pictures	25	5.29
6720	Cameras, Still Picture	24	1.82
6730	Photographic Projection Equipment	25	3.52
6740	Photographic Developing and Finishing Equipment	24	3.32
6750	Photographic Supplies	25	8.64
6760	Photographic Equipment and Accessories	24	1.36
6780	Photographic Sets, Kits and Outfits	22	3.24
6910	Training Aids	20	0.96
6920	Armament Training Devices	20	3.22
6930	Operation Training Devices	21	0.62
6940	Communication Training Devices	21	0.79
7010	ADPE Configuration	8	0.73
7021	ADP Central Processing Unit, Digital	15	0.73
7022	ADP Central Processing Unit, Hybrid	15	
7025	ADP Input/Output and Storage Devices	13	1.01
7030	ADP Software	15	0.97
7035	ADP Accessorial Equipment	13	0.72
7040	Punched Card Equipment	15	0.87
7045	ADP Supplies and Support Equipment	11	1.50
7050	ADP Components	15	0.95
7105	Household Furniture	10	9.94
7110	Office Furniture	10	16.20
7125	Cabinets, Lockers, Bins and Shelving	20	9.47
7195	Misc. Furniture and Fixtures	10	6.17
7310	Food Cooking, Baking and Serving Equipment	12	5.40
7320	Kitchen Equipment and Appliances	18	5.60
7420	Accounting and Calculating Machine	12 Electric 15 Manual	1.46
7439	Typewriters and Office Type Composing Machines	12 Electric 15 Manual	6.10
7450	Office Type Sound Recording and Reproducing Machines	12	1.17

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## APPENDIX 3

## Useful Life \* and Disposal Value Table—Continued

FSC No.	Nomenclature	Expected Useful Life (Years)	Disposal Value Factor as a Percent of Acquisition Cost
7460	Visible Record Equipment		2.26
7490	Misc. Office Machines	12	3.30
7710	Musical Instruments	12	14.67
7910	Floor Polishers and Vacuum Cleaning Equipment		5.72
8140	Ammo and Nuclear Ordnance Boxes, Packages and Special Containers	15	12.33
8145	Specialized Shipping and Storage Containers	22	6.55
8340	Tents and Tarpaulins	5	4.86
8345	Flags and Pennants	5	8.30
8415	Clothing, Special Purpose	5	10.81
8820	Live Animals, Not Raised for Food	3	55.05
9320	Rubber Fabricated Materials	5	19.40
9340	Glass Fabricated Materials	5	4.14
9515	Armor Plate	10	19.00
9530	Metal Bar	10	47.51
9535	Metal Plate	10	52.44

\* There is no expected useful life for those items left blank.

## APPENDIX 4

## Tax Tables

The estimated Federal income tax rates, presented for use in comparisons of commercial and in-house cost estimates, are derived from the Department of the Treasury's Internal Revenue Service 1988 Corporation Source Book of Statistics of Income, Publica-

tion 1053. The formula for estimating the tax rates is based upon total income before credits divided by the business receipts for each unique industry. These tax rates will be updated periodically.

Tax Rate Table \*

Code No.	Industry	Tax Rate (Percent)
<b>Extractive Industries</b>		
10-01-0400	Agriculture Production	0.8
10-01-0600	Agricultural Services	0.5
20-02-1010	Mining Iron Ores	3.8
20-02-1070	Mining Copper, Lead, Zinc, Gold and Silver Ores	8.3
20-02-1098	Mining other Metals	0.6
20-03-1150	Coal Mining	1.1
20-05-1430	Sand, Gravel, Dimension, Crushed and Broken Stone	2.2
<b>Construction</b>		
30-06-1510	General building (construction)	0.4
30-06-1531	Operative builders (construction)	0.8
30-07-1600	Heavy construction	0.8
30-08-1711	Plumbing, heating, air conditioning	0.4
30-08-1731	Electrical work	0.5
30-08-1798	Other special trades	0.5
<b>Manufacturing</b>		
40-09-2010	Meat products	0.5
40-09-2020	Dairy products	2.1
40-09-2030	Preserved fruits and vegetables	2.0
40-09-2040	Grain mill products	2.1
40-09-2050	Bakery products	1.1
40-09-2060	Sugar and confectionery products	1.9
40-09-2089	Bottled soft drinks and flavorings	2.1
40-09-2096	Other food and kindred products	0.9
40-12-2315	Men's and boy's clothing	1.5
40-12-2345	Women's and children's clothing	1.1
40-12-2388	Other apparel and accessories	0.5
40-12-2390	Other fabricated textile products	0.5
40-13-2415	Logging, sawmills and planing mills	2.1
40-13-2430	Milwork, plywood, related products	1.3
40-13-2498	Other wood products	0.5
40-14-2500	Furniture and fixtures	1.1
40-15-2625	Pulp, paper and board mills	2.8
40-15-2699	Other paper products	2.4
40-16-2710	Newspapers (printing and publishing)	3.7
40-16-2720	Periodicals (printing and publishing)	1.6
40-16-2735	Books, greeting cards and miscellaneous publishing	3.9
40-16-2799	Commercial and other printing and printing trade services	1.1
40-17-2815	Industrial chemicals, plastics materials and synthetics	3.3
40-17-2830	Drugs	5.9
40-17-2840	Soap, cleaners and toilet goods	2.1
40-17-2850	Paints and allied products	1.5
40-17-2898	Agricultural and other chemical products	1.6

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## APPENDIX 4

## Tax Rate Table \*--Continued

Code No.	Industry	Tax Rate (Percent)
40-18-2998	Petroleum and coal products, not elsewhere classified	1.3
40-19-3050	Rubber products; plastics, footwear, hose and belting	1.6
40-19-3070	Miscellaneous plastics products	1.0
40-20-3140	Leather footwear	1.3
40-20-3198	Leather and leather products not elsewhere classified	0.8
40-21-3225	Glass products	1.8
40-21-3240	Cement, hydraulic	0.8
40-21-3270	Concrete, gypsum and plaster products	1.4
40-21-3298	Other nonmetallic mineral products	2.3
40-22-3370	Ferrous metal industries; miscellaneous primary metal product	1.2
40-22-3380	Nonferrous metal industries	1.1
40-23-3410	Metal cans and shipping containers	1.9
40-23-3428	Cutlery, hand tools and hardware; screw machine products, bolts and similar products	2.2
40-23-3430	Plumbing and heating, except electric and warm air	2.0
40-23-3440	Fabricated structural metal products	1.0
40-23-3460	Metal forgings and stamping	1.0
40-23-3470	Casting, engraving and allied services	1.0
40-23-3480	Ordnance and accessories, except vehicles and guided missiles	1.2
40-23-3490	Miscellaneous fabricated metal products	1.0
40-24-3520	Farm machinery	1.2
40-24-3530	Construction and related machinery	1.6
40-24-3540	Metal working machinery	1.1
40-24-3550	Special industry machinery	1.1
40-24-3570	Office and computing machines	5.2
40-24-3598	Other machinery, except electrical	1.7
40-25-3655	Radio, television, communication equipment	1.3
40-25-3670	Electronic components and accessories	2.4
40-25-3698	Other electrical equipment	2.2
40-26-3710	Motor vehicles and equipment	1.7
40-27-3725	Aircraft, guided missiles and parts	3.0
40-27-3730	Ship and boat building and repairing	0.8
40-27-3798	Other transportation equipment, except motor vehicles	1.3
40-28-3815	Scientific instruments and measuring devices; watches and clocks	4.0
40-28-3845	Optical, medical and ophthalmic goods	2.9
40-28-3860	Photographic equipment and supplies	2.5
40-29-3998	Miscellaneous manufacturing and manufacturing not allocable	1.4
<b>Transportation And Utilities</b>		
50-30-4000	Railroad transportation	2.5
50-30-4100	Local and interurban passenger transit	0.4
50-30-4200	Trucking and warehousing	0.6
50-30-4400	Water transportation	1.2
50-30-4500	Transportation by air	2.0
50-30-4600	Pipe lines, except natural gas	10.5
50-30-4700	Transportation services not elsewhere classified	0.4
50-31-4825	Telephone, telegraph and other communication services	3.1
50-31-4830	Radio and Television broadcasting	4.4
50-32-4910	Electric services	3.0
50-32-4920	Gas production and distribution	1.7
50-32-4930	Combination utility services	3.0
50-32-4990	Water supply and other sanitary services	2.7
<b>Wholesale Trade</b>		
61-33-5004	Groceries and related products	0.3
61-34-5008	Machinery, equipment and supplies	0.6
61-35-5010	Motor vehicles and automotive equipment	0.6

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Tax Rate Table \*—Continued

Code No.	Industry	Tax Rate (Percent)
61-35-5030	Lumber and construction materials	0.3
61-35-5050	Metals and minerals, except petroleum and scrap	0.7
61-35-5060	Electrical goods	0.5
61-35-5070	Hardware, plumbing and heating	0.5
61-35-5098	Other durable goods	0.5
61-35-5110	Paper and paper products	0.4
61-35-5129	Drugs, chemicals and allied products	0.5
61-35-5130	Apparel, piece goods and notions	0.6
61-35-5150	Farm-product raw materials	0.3
61-35-5170	Petroleum and petroleum products	0.3
61-35-5180	Alcoholic beverages	0.3
61-35-5190	Miscellaneous nondurable goods; wholesale trade not allocable	0.5
<b>Retail Trade</b>		
62-36-5220	Building materials dealers	0.4
62-36-5251	Hardware stores	0.4
62-36-5265	Garden supplies and mobile home dealers	0.4
62-37-5300	General merchandise stores	1.1
62-38-5400	Food stores	0.3
62-39-5541	Gasoline service stations	0.2
62-39-5598	Other automotive dealers	0.3
62-40-5600	Apparel and accessory stores	1.1
62-41-5700	Furniture and home furnishings stores	0.8
62-42-5800	Eating and drinking places	0.6
62-43-5912	Drug stores and proprietary stores	0.6
62-43-5921	Liquor stores	0.2
62-43-5995	Other retail stores	0.6
63-44-5997	Wholesale and retail trade not allocable	0.3
<b>Services</b>		
80-52-7000	Hotels and other lodging places	1.0
80-53-7200	Personal services	0.8
80-54-7310	Advertising services	0.7
80-54-7399	Business services, except advertising	0.8
80-55-7500	Auto repair and services	0.7
80-55-7600	Miscellaneous repair services	0.4
<b>Services</b>		
80-56-7812	Motion picture production, distribution and services	1.8
80-56-7830	Motion picture theaters	1.1
80-56-7900	Amusement and recreation services, except motion pictures	1.4
80-57-8015	Physicians' services	0.2
80-57-8021	Dentists' services	0.1
80-57-8050	Nursing and personal care facilities	0.2
80-57-8071	Medical laboratories	1.2
80-57-8099	Other medical services	0.7
80-57-8111	Legal services	0.2
80-57-8200	Educational services	0.5
80-57-8980	Miscellaneous services, not elsewhere classified	0.5

\* Tax Rates are in relation to business receipts.

\*\* Does not reflect revisions contained in the 1987 Standard Classification Manual.

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## APPENDIX 5

## Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, "Inherently Governmental Functions"

September 23, 1992

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Inherently Governmental Functions.

1. **Purpose.** This policy letter establishes Executive Branch policy relating to service contracting and inherently governmental functions. Its purpose is to assist Executive Branch officers and employees in avoiding an unacceptable transfer of official responsibility to Government contractors.

2. **Authority.** This policy letter is issued pursuant to subsection 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, codified at 41 U.S.C. § 405(a).

3. **Exclusions.** Services obtained by personnel appointments and advisory committees are not covered by this policy letter.

4. **Background.** Contractors, when properly used, provide a wide variety of useful services that play an important part in helping agencies to accomplish their missions. Agencies use service contracts to acquire special knowledge and skills not available in the Government, obtain cost effective services, or obtain temporary or intermittent services, among other reasons.

Not all functions may be performed by contractors, however. Just as it is clear that certain functions, such as the command of combat troops, may not be contracted, it is also clear that other functions, such as building maintenance and food services, may be contracted. The difficulty is in determining which of these services that fall between these extremes may be acquired by contract. Agencies have occasionally relied on contractors to perform certain functions in such a way as to raise questions about whether Government policy is being created by private persons. Also, from time to time questions have arisen regarding the extent to which *de facto* control over contract performance has been transferred to contractors. This policy letter provides an illustrative list of functions, that are, as a matter of policy, inherently governmental (see Appendix A), and articulates the practical and policy considerations that underlie such determinations (see para. 7).

As stated in paragraph 9, however, this policy letter does not purport to specify which functions are, as

a legal matter, inherently governmental, or to define the factors used in making such legal determination. Thus, the fact that a function is listed in Appendix A, or a factor is set forth in paragraph 7(b), does not necessarily mean that the function is inherently governmental as a legal matter or that the factor would be relevant in making the legal determination.

5. **Definition.** As a matter of policy, an "inherently governmental function" is a function that is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities that require either the exercise of discretion in applying Government authority or the making of value judgements in making decisions for the Government. Governmental functions normally fall into two categories: (1) the act of governing, i.e., the discretionary exercise of Government authority, and (2) monetary transactions and entitlement.

An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to:

(a) bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(b) determine, protect, and advance its economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(c) significantly affect the life, liberty, or property of private persons;

(d) commission, appoint, direct, or control officers or employees of the United States; or

(e) exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions

that are primarily ministerial and internal in nature, such as building security; mail operations; operation of cafeterias; housekeeping; facilities operations and maintenance, warehouse operations, motor vehicle fleet management and operations, or other routine electrical or mechanical services.

The detailed list of examples of commercial activities found as an attachment to Office of Management and Budget (OMB) Circular No. A-76 is an authoritative, nonexclusive list of functions that are not inherently governmental functions. These functions therefore may be contracted.

**6. Policy.**

(a) *Accountability.* It is the policy of the Executive Branch to ensure that Government action is taken as a result of informed, independent judgments made by Government officials who are ultimately accountable to the President. When the Government uses service contracts, such informed, independent judgment is ensured by:

(1) prohibiting the use of service contracts for the performance of inherently governmental functions (See Appendix A);

(2) providing greater scrutiny and an appropriate enhanced degree of management oversight (see subsection 7(f)) when contracting for functions that are not inherently governmental but closely support the performance of inherently governmental functions (see Appendix B);

(3) ensuring, in using the products of those contracts, that any final agency action complies with the laws and policies of the United States and reflects the independent conclusions of agency officials and not those of contractors who may have interests that are not in concert with the public interest, and who may be beyond the reach of management controls otherwise applicable to public employees; and

(4) ensuring that reasonable identification of contractors and contractor work products is made whenever there is a risk that the public, Congress, or other persons outside of the Government might confuse them with Government officials or with Government work products, respectively.

(b) *OMB Circular No. A-76.* This policy letter does not purport to supersede or otherwise effect any change in OMB Circular No. A-76, Performance of Commercial Activities.

(c) *Drafting of congressional testimony, responses to congressional correspondence, and agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity.* While the approval of a Government document is an inherently govern-

mental function, its drafting is not necessarily such a function. Accordingly, in most situations the drafting of a document, or portions thereof, may be contracted, and the agency should review and revise the draft document, to the extent necessary, to ensure that the final document expresses the agency's views and advances the public interest. However, even though the drafting function is not necessarily an inherently governmental function, it may be inappropriate, for various reasons, for a private party to draft a document in particular circumstances. Because of the appearance of private influence with respect to documents that are prepared for Congress or for law enforcement or oversight agencies and that may be particularly sensitive, contractors are not to be used for the drafting of congressional testimony; responses to congressional correspondence; or agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity.

7. *Guidelines.* If a function proposed for contract performance is not found in Appendix A, the following guidelines will assist agencies in understanding the application of this policy letter, determining whether the function is, as a matter of policy, inherently governmental and forestalling potential problems.

(a) *The exercise of discretion.* While inherently governmental functions necessarily involve the exercise of substantial discretion, not every exercise of discretion is evidence that such a function is involved. Rather, the use of discretion must have the effect of committing the Federal Government to a course of action when two or more alternative courses of action exist (e.g., purchasing a minicomputer rather than a mainframe computer, hiring a statistician rather than an economist, supporting proposed legislation rather than opposing it, devoting more resources to prosecuting one type of criminal case than another, awarding a contract to one firm rather than another, adopting one policy rather than another, and so forth).

A contract may thus properly be awarded where the contractor does not have the authority to decide on the course of action to be pursued but is rather tasked to develop options to inform an agency decision maker, or to develop or expand decisions already made by Federal officials. Moreover, the mere fact that decisions are made by the contractor in performing his or her duties (e.g., how to allocate the contractor's own or subcontract resources, what techniques and procedures to employ, whether and

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whom to consult, what research alternatives to explore given the scope of the contract, what conclusions to emphasize, how frequently to test) is not determinative of whether he or she is performing an inherently governmental function.

(b) *Totality of the circumstances.* Determining whether a function is an inherently governmental function often is difficult and depends upon an analysis of the facts of the case. Such analysis involves consideration of a number of factors, and the presence or absence of any one is not in itself determinative of the issue. Nor will the same emphasis necessarily be placed on any one factor at different times, due to the changing nature of the Government's requirements.

The following factors should be considered when deciding whether award of a contract might effect, or the performance of a contract has effected, a transfer of official responsibility:

(1) Congressional legislative restrictions or authorizations.

(2) The degree to which official discretion is or would be limited, i.e., whether the contractor's involvement in agency functions is or would be so extensive or his or her work product is so far advanced toward completion that the agency's ability to develop and consider options other than those provided by the contractor is restricted.

(3) In claims adjudication and related services, (i) the finality of any contractor's action affecting individual claimants or applicants, and whether or not review of the contractor's own is *de novo* (i.e., to be effected without the appellate body's being bound by prior legal rulings or factual determinations) on appeal of his or her decision to an agency official;

(ii) the degree to which contractor activities may involve wide-ranging interpretations of complex, ambiguous case law and other legal authorities, as opposed to being circumscribed by detailed laws, regulations, and procedures;

(iii) the degree to which matters for decision by the contractor involve recurring fact patterns or unique fact patterns; and

(iv) The contractor's discretion to determine an appropriate award or penalty.

(4) The contractor's ability to take action that will significantly and directly affect the life, liberty, or property of individual members of the public, including the likelihood of the contractor's need to resort to force in support of a police or judicial function; whether force, especially deadly force, is more likely to be initiated by the contractor or by some other

person; and the degree to which force may have to be exercised in public or relatively uncontrolled areas. (Note that contracting for guard, convoy security, and plant protection services, armed or unarmed, is not proscribed by these policies.)

(5) The availability of special agency authorities and the appropriateness of their application to the situation at hand, such as the power to deputize private persons.

(6) Whether the function in question is already being performed by private persons, and the circumstances under which it is being performed by them.

(c) *Finality of agency determinations.* Whether or not a function is an inherently governmental function, for purposes of this policy letter, is a matter for agency determination. However, agency decisions that a function is or is not an inherently governmental function may be reviewed, and, if necessary, modified by appropriate OMB officials.

(d) *Preaward responsibilities.* Whether a function being considered for performance by contract is an inherently governmental function is an issue to be addressed prior to issuance of the solicitation.

(e) *Post-award responsibilities.* After award, even when a contract does not involve performance of an inherently governmental function, agencies must take steps to protect the public interest by playing an active, informed role in contract administration. This ensures that contractors comply with the terms of the contract and that Government policies, rather than private ones, are implemented. Such participation should be appropriate to the nature of the contract, and should leave no doubt that the contract is under the control of Government officials. This does not relieve contractors of their performance responsibilities under the contract. Nor does this responsibility to administer the contract require Government officials to exercise such control over contractor activities as to convert the contract, or portion thereof, to a personal service contract.

In deciding whether Government officials have lost or might lose control of the administration of a contract, the following are relevant considerations: the degree to which agencies have effective management procedures and policies that enable meaningful oversight of contractor performance, the resources available for such oversight, the actual practice of the agency regarding oversight, the duration of the contract, and the complexity of the tasks to be performed.

(f) *Management controls.* When functions described in Appendix B are involved, additional management attention to the terms of the contract and the manner of performance is necessary. How close the scrutiny or how extensive or stringent the management controls need to be is for agencies to determine. Examples of additional control measures that might be employed are:

(1) developing carefully crafted statements of work and quality assurance plans, as described in OFPP Policy Letter 91-2, Service Contracting, that focus on the issue of Government oversight and measurement of contractor performance;

(2) establishing audit plans for periodic review of contracts by Government auditors;

(3) conducting preaward conflict of interest reviews to ensure contract performance in accordance with objective standards and contract specifications;

(4) physically separating contractor personnel from Government personnel at the worksite; and

(5) requiring contractors to (a) submit reports that contain recommendations and that explain and rank policy or action alternatives, if any, (b) describe what procedures they used to arrive at their recommendations, summarize the substance of their deliberations, (d) report any dissenting views, (e) list sources relied upon, and/or (f) otherwise make clear the methods and considerations upon which their recommendations are based.

(g) *Identification of contractor personnel and acknowledgment of contractor participation.* Contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties must be required to identify themselves as such to avoid creating an impression in the minds of members of the public or the Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. All documents or reports produced by contractors are to be suitably marked as contractor products.

(h) *Degree of reliance.* The extent of reliance on service contractors is not by itself a cause for concern. Agencies must, however, have a sufficient number of trained and experienced staff to manage Government programs properly. The greater the degree of reliance on contractors the greater the need for oversight by agencies. What number of Government officials is needed to oversee a particular contract is a management decision to be made after analysis of a number of factors. These include, among others, the scope of the activity in question; the technical

complexity of the project or its components; the technical capability, numbers, and workloads of Federal oversight officials; the inspection techniques available; and the importance of the activity. Current contract administration resources shall not be determinative. The most efficient and cost effective approach shall be utilized.

(I) *Exercise of approving or signature authority.* Official responsibility to approve the work of contractors is a power reserved to Government officials. It should be exercised with a thorough knowledge and understanding of the contents of documents submitted by contractors and a recognition of the need to apply independent judgment in the use of these work products.

#### 8. Responsibilities.

(a) *Heads of agencies.* Heads of departments and agencies are responsible for implementing this policy letter. While these policies must be implemented in the Federal Acquisition Regulation (FAR), it is expected that agencies will take all appropriate actions in the interim to develop implementation strategies and initiate staff training to ensure effective implementation of these policies.

(b) *Federal Acquisition Regulatory Council.* Pursuant to subsections 6(a) and 25(f) of the OFPP Act, as amended, 41 U.S.C. 405(a) and 421(f), the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this policy letter is published in the *Federal Register*. Issuance of final regulations within this 210-day period shall be considered issuance "in a timely manner" as prescribed in 41 U.S.C. § 405(b).

(c) *Contracting officers.* When requirements are developed, when solicitations are drafted, and when contracts are being performed, contracting officers are to ensure:

(1) that functions to be contracted are not among those listed in Appendix A of this letter and do not closely resemble any functions listed there;

(2) that functions to be contracted that are not listed in Appendix A, and that do not closely resemble them, are not inherently governmental functions according to the totality of the circumstances test in subsection 7(b), above;

(3) that the terms and the manner of performance of any contract involving functions listed in Appendix B of this letter are subject to adequate scrutiny and oversight in accordance with subsection 7(f), above; and

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(4) that all other contractible functions are properly managed in accordance with subsection 7(e), above.

(d) *All officials.* When they are aware that contractor advice, opinions, recommendations, ideas, reports, analyses, and other work products are to be considered in the course of their official duties, all Federal Government officials are to ensure that, they exercise independent judgment and critically examine these products.

9. *Judicial review.* This policy letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting. Thus, this policy

letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this policy letter.

10. *Information contact.* For information regarding this policy letter contact Richard A. Org, Deputy Associate Administrator, the Office of Federal Procurement Policy, 725 17th Street, N.W., Washington, DC 20503. Telephone (202) 395-7209. (*UPDATED 8/1995—contact the Budget Analysis and Systems Division, Office of Management and Budget, 725 17th Street, N.W., Washington, DC 20503. Telephone (202) 395-6104.*)

11. *Effective date.* This policy letter is effective 30 days after the date of publication.

Signed by

ALLAN V. BURMAN  
*Administrator*

## Appendix A to OFFP Policy Letter 92-1

The following is an illustrative list of functions considered to be inherently governmental functions:<sup>1</sup>

1. The direct conduct of criminal investigations.
2. The control of prosecutions and performance of adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).
3. The command of military forces, especially the leadership of military personnel who are members of the combat, combat support or combat service support role.
4. The conduct of foreign relations and the determination of foreign policy.
5. The determination of agency policy, such as determining the content and application of regulations, among other things.
6. The determination of Federal program priorities or budget requests.
7. The direction and control of Federal employees.
8. The direction and control of intelligence and counter-intelligence operations.
9. The selection or nonselection of individuals for Federal Government employment.
10. The approval of position descriptions and performance standards for Federal employees.
11. The determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency).<sup>12</sup> In Federal procurement activities with respect to prime contracts.
  - (a) determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);
  - (b) participating as a voting member on any source selection boards;

<sup>1</sup>With respect to the actual drafting of congressional testimony, of responses to congressional correspondence, and of agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity, please see special provisions in subsection 6.c of the text of the policy letter, above.

- (c) approval of any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;
- (d) awarding contracts;
- (e) administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);
- (f) terminating contracts; and (g) determining whether contract costs are reasonable, allocable, and allowable.
13. The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.
14. The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.
15. The approval of Federal licensing actions and inspections.
16. The determination of budget policy, guidance, and strategy.
17. The collection, control, and disbursement of fees, royalties, duties, fines, taxes and other public funds, unless authorized by statute, such as title 31 U.S.C. § 952 (relating to private collection contractors) and title 31 U.S.C. § 3718 (relating to private attorney collection services), but not including:
  - (a) collection of fees, fines, penalties, costs or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard cash management techniques, and
  - (b) routine voucher and invoice examination.
18. The control of the treasury accounts.
19. The administration of public trusts.

## Appendix B to OFFP Policy Letter 92-1

The following list is of services and actions that are not considered to be inherently governmental functions. However, they may approach being in that category because of the way in which the contractor performs the contract or the manner in which the Government administers contractor performance. When contracting for such services and actions, agencies should be fully aware of the terms of the contract, contractor performance, and contract administration to ensure that appropriate agency control is preserved.

This is an illustrative listing, and is not intended to promote or discourage the use of the following types of contractor services:

1. Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.
2. Services that involve or relate to reorganization and planning activities.
3. Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.
4. Services that involve or relate to the development of regulations.
5. Services that involve or relate to the evaluation of another contractor's performance.
6. Services in support of acquisition planning.
7. Contractors' providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).
8. Contractors' providing technical evaluation of contract proposals.
9. Contractors' providing assistance in the development of statements of work.
10. Contractors' providing support in preparing responses to Freedom of Information Act requests.
11. Contractors' working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the Defense Industrial Security Program described in FAR 4.402(b)).
12. Contractors' providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.
13. Contractors' participating in any situation where it might be assumed that they are agency employees or representatives.
14. Contractors' participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.
15. Contractors' serving as arbitrators or providing alternative methods of dispute resolution.
16. Contractors' constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.
17. Contractors' providing inspection services.
18. Contractors' providing legal advice and interpretations of regulations and statutes to Government officials.
19. Contractors' providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

## APPENDIX 6

## Aviation Competitions

## A. General

1. This Appendix provides guidance for use in cost comparisons involving the provision of aircraft or aviation management support services. It has been prepared to ease completion of cost comparisons conducted in accordance with OMB Circular A-76 and OMB Circular A-126, "Improving the Management and Use of Government Aircraft," dated May 22, 1992.

2. In accordance with OMB Circular A-126, agencies should conduct approved cost comparisons before retaining, purchasing or otherwise providing Federal aircraft or aviation services not otherwise exempt from Circular A-76 (see Part I). In reviewing aviation programs, agencies should consider that although an activity or mission may be inherently governmental, the tools needed to perform the activity are not necessarily inherently governmental. Related aviation support services should be reviewed, in accordance with this Supplement, for possible conversion to or from in-house, contract or interservice support agreement (ISSA) performance. Leases for aircraft of 90 days or more are subject to these principles and procedures.

3. Agencies may estimate lease, charter, or other contract aviation support costs through the General Services Administration's (GSA) Federal Aviation Management Information System (FAMIS) or other pre-approved data sources. This approach avoids the need for formal solicitations to acquire commercial bids for comparison with an in-house Government cost estimate. Other aspects of the process described in this Supplement are maintained.

4. When an aviation cost comparison is conducted, the agency will notify affected Federal employees and announce the tentative cost comparison decision in the *Commerce Business Daily*. The announcement will initiate the A-76 Administrative Appeal process. The Performance Requirements Summary, the Management Plan, including the calculation of commercial costs, and the aviation cost comparison form will be made available to the public upon request.

5. Appeals of tentative aviation cost comparison decisions will be directed to the agency's A-76 Administrative Appeal Authority, who will conduct the appeal as provided in Part I and Part II of this Supplement.

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6. These instructions incorporate the cost element definitions used elsewhere in Parts I and II of this Supplement. In addition, there are several cost definitions that pertain to only aircraft and aviation services as provided by this Appendix.

7. Agencies will provide copies of each aircraft or aviation cost comparison to the GSA Office of Aircraft Management Division, when completed, and to the Office of Management and Budget (OMB) upon request or as required by OMB Circular A-11 to justify aircraft purchases.

## B. Policy

1. Agencies should rely on commercial airline or other aviation services to meet their aviation mission and transportation support needs.

2. In general, the operations of aircraft and aviation services are commercial in nature and are not inherently governmental. Certain Government officials or missions may require enhanced levels of security, both on the ground and in the air. In most cases, however, the aviation industry can accommodate the Government's need for services and for on-board security devices, special flight profiles, testing equipment, etc.

3. The number of aircraft owned or leased by an agency may not exceed the number necessary to carry out direct mission requirements and, then, only where commercial operations are not as cost effective or are not available, as demonstrated by the procedures of this Supplement.

4. The size and capacity of agency aircraft acquired or leased should not exceed that necessary to cost-effectively meet mission requirements, including the crew and equipment for the mission flight profiles.

## C. The Aviation Management Plan

1. The Management Plan for aircraft or aviation support services should conform to the principles and procedures in Part I of this Supplement. The Management Plan is structured to identify the lowest overall cost to the taxpayer and to fully consider Government Owned Contractor Operated (GOCO) options.

2. A Performance Work Statement (PWS) or a Performance Requirements Summary (PRS) is a part of the Management Plan. It should define the scope of services, workload data and performance criteria needed to meet agency mission requirements. It may

## APPENDIX 6

not describe a specific kind or make or model of aircraft.

3. Agencies should determine if equipment and/or personnel can be fitted to a contract or charter/rental aircraft agreement that results in a lower total service cost to the Government. Equipment requirements include, but are not limited to, aircraft, unique navigation, secure communication, and flight test devices.

4. GSA FAMIS data assume that the contractor will provide all related equipment, including aircraft. Agencies that wish to use these aircraft cost comparison procedures, under a GOCO arrangement, may need to solicit adjusted rate schedules from a variety of sources. If acceptable information sources are not available, a formal competition with commercial and/or ISSA sources may be necessary.

5. If the scope of the competition includes non-aviation support (ground support activities), the cost of such in-house, contract or ISSA support is calculated as provided in Part II of this Supplement.

#### D. The cost of government performance

All labor, material and fuel costs are estimated and escalated as provided in Part II of this Supplement.

#### E. Standard aviation operation cost elements—variable

The variable costs of operating aircraft are those costs that vary depending on how much the aircraft are used. The specific variable cost elements include:

1. **Fuel and other fluids.** These are the costs of aviation gasoline, jet fuel, and other fluids, e.g., engine oil, hydraulic fluids, and water-methanol, consumed by aircraft. Fuel costs are the cost per gallon times gallons per hour. Engine oil and other lubricants can be estimated using manufacturers' estimates or on the basis of an historic percentage of engine fuel cost per hour.

2. **Crew.** The crew costs that vary according to aircraft usage consist of travel expenses, particularly reimbursement of subsistence, i.e., per diem and miscellaneous expenses, overtime charges, and wages plus benefits of crew members hired on an hourly or part-time basis.

3. **Aircraft lease or rental.** When aircraft are obtained under an open-ended arrangement, such as an on-call (hourly/availability rate) basis, the associated lease or rental costs are considered variable costs.

4. **Landing and tie down fees (if applicable).** Landing and tie down fees that are not common costs and are associated with aircraft usage are considered vari-

able costs. Tie down fees for storing an aircraft at its base of operations should be considered a fixed cost. Include the historic fees paid or assessed per landing, times landings, divided by projected flight hours.

#### 5. Variable maintenance and spares.

All maintenance activities and parts costs based on aircraft use are variable costs. All non-scheduled maintenance and all non-scheduled maintenance inspections are also variable costs. Maintenance and inspection activities scheduled on a calendar interval basis will be considered fixed. In addition to the costs of normal maintenance activities, variable maintenance costs include aircraft refurbishment, such as painting and interior restoration, and costs of or allowances for performing overhauls and modifications required by service bulletins and airworthiness directives.

a. **Maintenance labor.** All labor expended by mechanics, exclusive of the overhaul or major repair of components and engines.

b. **Maintenance parts.** This includes materials and parts consumed in aircraft maintenance and inspections, exclusive of materials and parts for engine overhaul, aircraft refurbishment, and/or repair of major components. Typical items in this category are tires, instruments, avionics, generators, relays, pumps, brakes, filters, airframe hardware, windows, interiors, paint, shafting, and bearings not inside components covered under an overhaul.

c. **Maintenance contracts.** This includes all contracted costs for unscheduled maintenance and for maintenance scheduled on a flying hour basis or based on the condition of the part or component.

d. **Engine overhaul, aircraft refurbishment, and major component repairs.** These are the materials and labor costs of overhauling engines, refurbishing aircraft, and/or repairing major aircraft components.

e. **Reserves.** This is for overhauling components of engines, and other major work including painting, refurbishment of the aircraft interior, and expenses not recognized in other maintenance accounts.

f. Add lines 5a through 5e and enter on line 5f for the total cost of direct variable maintenance and spares.

6. Add lines 1 through 4 and 5f to find the total direct operations cost per flight hour.

7. Enter the annual number of flight hours from the PWS/PRS.

8. Multiply the total direct operating cost per flight hour (line 6) by the number of flight hours (line 7) to find the total direct operating cost.

**F. Standard aviation operation cost elements—fixed**

The fixed costs of operating aircraft are those that result from owning and supporting the aircraft and do not vary according to aircraft usage.

9. **Crew.** Federal pilots/crew are often paid whether or not the aircraft are flown. These fixed crew costs include the salaries, benefits, and training costs of crew members who perform minimal aircraft maintenance or other administrative tasks that could be impacted by a conversion to contract performance. Also included in fixed crew costs are the costs of their charts, personal protective equipment, uniforms, and other personal equipment when the agency is authorized to purchase such items. Non-aviation activities performed by pilots/crew that would continue even if operations were converted to contract should not be included.

**10. Fixed maintenance.**

Maintenance and inspection activities are scheduled on a calendar interval basis and take place regardless of whether or how much the aircraft are flown. These are fixed costs, including labor and material.

a. **Maintenance labor.** This includes all projected labor expended by mechanics, technicians, and inspectors associated with maintenance scheduled on a calendar interval basis. This category also includes costs associated with non-allocated maintenance labor expenses; i.e., associated salaries, benefits, travel expenses, and training costs. These costs should be evenly allocated over the number of aircraft in the fleet.

b. **Maintenance parts.** This includes all parts and consumables used for maintenance scheduled on a calendar interval basis.

c. **Maintenance contracts.** This includes all contracted costs for maintenance or inspections scheduled on a calendar interval basis.

11. **Aircraft lease.** When aircraft are leased for 90 days or more, with a known fee, utilization rate or minimum reimbursement guarantee, the associated lease costs are considered fixed. Include the entire amount paid.

**12. Depreciation.**

As provided in Part II of this Supplement, aircraft and other major asset (hangar) depreciation costs are added to each option year. Aircraft have finite economic or useful service lives. Depreciation is the method used to spread the acquisition cost, less residual value, over an asset's useful life. Although these costs are not direct outlays as is the case with most other costs, it is important to recognize them for

analysis. Subtract the residual (not market) value from the total of the acquisition cost plus any capital improvements and, then, divide by the remaining estimated useful life of the asset—not less than the cost comparison period.

a. The acquisition cost is the value initially recorded on agency property/accounting records at the time of acquisition. If the aircraft is acquired through an interagency transfer, the acquisition cost is the greater of the aircraft net book value plus the cost of returning the aircraft to an airworthy, mission ready condition or the commercial retail value of that aircraft in average condition, as established by the *Aircraft Bluebook Price Digest* or other industry standard. If it is a military aircraft without a direct commercial equivalent, the acquisition cost is equal to the most comparable commercial equivalent plus the cost of returning the aircraft to an airworthy, mission ready condition. The following explains the relevant terms:

b. **Useful life.** Useful life is the estimated period during which the aircraft will be used. If a new aircraft has an airframe with a design life of 10,000 hours and the agency expects to fly the aircraft 500 hours per year, the useful life is twenty years.

c. **Residual value.** Residual value reflects the historically expected condition of the asset at the end of its useful life. It is the dollar value below which the asset will not be depreciated. Residual value is established at the time of acquisition. Agencies will select the lessor of the following methods to calculate the residual value of aircraft:

(1) Assume a 10 percent residual value for purposes of calculating the depreciable value of the aircraft and annual depreciation expenses.

(2) Select the average of the historic resale value of similar aircraft by age and type, as provided by GSA.

d. **Reconstructions, conversions, refurbishment, and certification of ex-military aircraft.** These maintenance efforts add value or prolong the life of aircraft. They are capital improvements that add to the Net Book Value of the asset (acquisition cost less accumulated depreciation). This revised total value should then be depreciated over the remaining or extended useful life of the asset.

e. **Fully depreciated assets.** If an asset has been fully depreciated or has exceeded its expected useful life, recalculate the depreciation schedule through the end of the cost comparison period.

**13. Self insurance costs.**

(March 1996)

## APPENDIX 6

Aviation activity involves risks, potential casualty losses and liability claims. These risks are covered in the commercial sector by purchasing insurance, the costs for which are captured within the GSA FAMIS system. Actual or historic agency costs are not comparable with the costs included in the commercial bid (FAMIS) or representative of the overall cost to the Government as a whole.

a. Agencies should calculate annual in-house hull aircraft casualty insurance costs by multiplying the "Blue Book" or market value of the aircraft by the insurance factors provided annually by the General Services Administration's Aircraft Management Division. Enter these cost estimates on line 13a.

b. Agencies should calculate annual Federal aircraft liability insurance costs on the basis of the number of aircraft seats the agency has or will install, including pilots, over the course of the cost comparison period. Enter the aircraft liability cost developed using data provided annually by the General Services Administration's Aircraft Management Division on line 13b.

c. All other insurance costs incurred in the performance of the aviation service under study are calculated in accordance with Part II and entered on Line 13a or 13b, as appropriate.

d. Enter the total for all insurance (sum of lines 13a through 13c) on Line 13d.

14. **Overhead.** This includes all costs associated with operational and administrative overhead. As described in Part II of this Supplement, aviation management overhead costs shall be calculated by applying the standard overhead cost factor of 12 percent to the total of lines 2, 5.a, 9 and 10.a of the Aircraft and Aviation Cost comparison Form. Enter the total of this calculation on Line 14.

15. **Cost of capital or finance expense.**

a. The cost of capital is the annual cost to the Government of acquiring the funds necessary for capital investments. The cost of capital is applied to the outstanding balance of the aircraft purchase price for each year of the performance period.

b. The annual cost of capital is included for any depreciable asset acquired less than two years prior to or after the cost comparison that will be used as a part of the MEO. The cost of capital is only applicable to assets required by the MEO that will not be provided (GOCCO) to the commercial source.

c. The cost of capital is calculated by applying OMB Circular A-94 "Discount Rates to be Used in Evaluating Deferred Costs and Benefits," plus any capital improvements.

d. If the purchase price is unknown, as in the case of a forfeited asset or interagency transfer, the acquisition cost is the greater of the aircraft net book value plus the cost of returning the aircraft to an airworthy, mission ready condition or the commercial retail value of that aircraft in average condition, as established by the *Aircraft Bluebook Price Digest* or other industry standard. If it is a military aircraft without a direct commercial equivalent, the acquisition cost is equal to the most comparable commercial equivalent plus the cost of returning the aircraft to an airworthy, mission ready condition.

e. Aircraft acquired through lease/purchase arrangements are not be burdened with the cost of capital. The cost of capital is assumed to exist in the lease/purchase agreement. At the transfer of title, depreciation expenses, calculated from the then existing market price of the aircraft, will be incurred.

16. **Total fixed operating costs.** Add lines 9 through 15 and enter on line 16.

17. **Total in-house MEO performance costs.** Add lines 8 and 16 and enter on line 17.

**G. Standard aviation operation cost elements—developing the cost of contract performance**

18. **Contract cost.**

a. The comparable cost of contract performance is to be calculated on the Aviation CCF.

b. The most efficient commercial cost of meeting the service requirement is to be entered if a solicitation was issued requesting formal bids. If GSA/FAMIS data is being used to estimate contract costs, this figure is established by reviewing existing contracts and rental/charter flight rate information provided by FAMIS or from other GSA approved sources.

c. Enter the estimated trip costs times the number of trips/missions or the hourly rate for that aircraft times the number of estimated flight hours from the PWS/PRS on line 19. If FAMIS does not reflect the aircraft services requirements, and reasonably accurate costs cannot be constructed by extrapolation from the FAMIS database, agencies may utilize other approved data sources.

19. **Cost construction to meet PWS/PRS.**

There may be other adjustments necessary to estimate the cost of contract performance using GSA/FAMIS data. The following are other costs that may be considered and entered—to the extent that they are not common costs or costs included in the published/developed rates. All such costs will be fully justified and made available for public review.

a. Daily Availability/Standby/Guarantee Hours.

- b. Additional Pilot and Crew Charges.
- c. Additional Maintenance Support.
- d. Airframe Alteration/Equipment Installation.
- e. Equipment Not Provided by the Government.
- f. Additional Ground Service Support.
- g. Travel and Per Diem.
- h. Service Equipment Mileage.
- i. Airport Fees.
- j. Other.

20. **Contract administration.** There will be costs that the agency incurs in administering the contract. These costs are relevant only if they differ between in-house and contract alternatives. Agencies should refer to Part II, Chapter 3, Table 3-1 for guidance.

21. **One-time conversion costs.** See Part II, Chapter 3 of this Supplement.

22. **Gain from disposal/transfer of assets.** See Part II Chapter 3 of this Supplement.

23. **Federal income tax.** Multiply line 19 as provided in Appendix 5 and enter as a savings/revenue to the Government caused by the conversion to contract performance.

24. **Total estimated cost of contract performance.** This element reflects the total of lines 18 through 24.

#### H. Aviation cost comparison of in-house versus contractor or ISSA performance.

25. **In-house performance costs.** Data is taken from Line 17—for each year of performance as established in the PRS, but not less than three years.

26. **Contract or ISSA performance.** Data is taken from line 24—for each year of performance.

27. **Conversion differential.** As provided in Part II of this Supplement, a conversion differential equal to the lesser of, (1) 10 percent of the in-house personnel related costs (total of Lines 2, 5 a, 9 and 10.a.) or (2) \$10 million over the performance period, is added to the total cost of current method of performance. Enter the result of this calculation on Line 27.

28. **Adjusted total cost of in-house performance.** If the cost comparison is being conducted to determine if an aircraft or aviation service should be converted

from contract or ISSA performance to in-house operation, the conversion differential as calculated above (Line 27) is added to the In-house performance cost estimate (Line 25, Total Column only) and the sum is entered under Adjusted Total Cost of In-House Performance (Line 28). The amount in the Total Column for Line 26 is replicated on Line 29.

29. **Adjusted total cost of contract performance.** If the cost comparison is being conducted to determine if an aircraft or aviation service should be converted from in-house operation to contract or ISSA performance, the conversion differential as calculated above (Line 27) is added to the Contract performance cost estimate (Line 26, Total Column only) and the sum is entered under Adjusted Total Cost of Contract Performance (Line 29). The amount in the Total Column for Line 25 is replicated on Line 28.

30. **Decision.** Subtract Line 28 from Line 29 and enter the result on Line 30. A positive amount on Line 30 supports a decision to perform the aircraft and aviation support activity with in-house resources. A negative amount on Line 30 supports a decision to accomplish the work with contract resources.

#### 31. Cost comparison decision.

Indicate in the appropriate block on line 31 the decision supported by line 30.

a. If the result of the comparison is a decision to accomplish the work with contract resource and that decision is affirmed after adjustments by the public review, the agency will:

(1) Expand the Performance Requirements Summary developed under the aviation methodology to meet the requirements of a Performance Work Statement.

(2) Issue a formal solicitation for bids from the commercial sector and convert to contract.

b. If the decision of the aviation cost comparison is to accomplish the work with in-house resources, and that decision is affirmed after adjustments by the public review, the agency will announce the final decision in the *Commerce Business Daily*. The results will be recorded in the OMB Circular A-76 tracking system.

APPENDIX 6

THE A-76 AIRCRAFT AND AVIATION COST COMPARISON FORM

**DIRECT OPERATION COST PER FLIGHT HOUR (PFH)**

1. Fuel and Other Fluids		\$ _____
2. Crew (PFH)		_____
3. Aircraft Lease or Rental		_____
4. Landing and Tie-Down Fees (if applicable)		_____
5. Variable Maintenance and Spares		_____
a. Maintenance Labor @ \$ _____ per hour multiplied by _____ man-hours PFH	_____	
b. Maintenance Parts	_____	
c. Maintenance Contracts	_____	
d. Engine over-haul, etc.	_____	
e. Reserves	_____	
f. Total variable maintenance cost		_____
6. Total Direct Operating Cost Per Flight Hour		_____
7. Flight Hours for PWS		_____
8. TOTAL DIRECT OPERATING COST (line 6 x line 7)		\$ _____

**FIXED OPERATING ANNUAL COST**

9. Crew		_____
10. Fixed Maintenance		_____
a. Maintenance Labor		_____
b. Maintenance Parts		_____
c. Maintenance Contracts		_____
11. Aircraft Lease		_____
12. Depreciation		_____
13. Self Insurance		_____
a. Hull	_____	
b. Liability	_____	
c. Other	_____	
c1. Casualty	_____	
c2. Personnel Liability	_____	
d. Total Self-Insurance		_____
14. Overhead		_____
15. Cost of Capital or Finance expense		_____
16. TOTAL FIXED OPERATING ANNUAL COST (Lines 9 thru 15)		_____
17. TOTAL IN-HOUSE PERFORMANCE COST (Lines 8 + 16)		_____

**CONTRACT AVIATION OPERATIONS COST WORKSHEET**

18. Contract (PFH times number of hours)		_____
19. Cost construction to meet PWS		_____
a. Daily availability/guarantee hours		_____
b. Additional pilot and crew charges		_____
c. Additional maintenance support		_____
d. Airframe alteration/equipment installation		_____
e. Equipment not provided by Government		_____
f. Additional ground service support		_____
g. Travel and per diem		_____
h. Service equipment mileage		_____
i. Airport fees		_____
j. Other		_____
20. Contract Administration		_____
21. One-time Conversion		_____
22. Gain on Disposal/Transfer of Assets (deduct)		{ _____ }
23. Federal income tax (deduct)		{ _____ }
24. TOTAL CONTRACT PERFORMANCE COST		_____

IN-HOUSE VERSUS CONTRACT PERFORMANCE

	Performance periods				Total
	1st	2nd	3rd	Add'l	
25. In-house performance	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
26. Contract performance	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
27. Conversion Differential					\$ _____
28. Adjusted Total Cost of In-House Performance					\$ _____
29. Adjusted Total Cost of Contract Performance					\$ _____
30. Decision—Line 29 minus Line 28:					\$ _____
31. COST COMPARISON DECISION: Accomplish Work					
In-house (+)					\$ _____
Contract (-)					\$ _____

32. In-House MEO Certified By: \_\_\_\_\_ Date: \_\_\_\_\_  
 \_\_\_\_\_  
 Office and Title

"I certify that, to the best of my knowledge and belief, the in-house organization reflected in this cost comparison is the most efficient and cost effective organization that is fully capable of performing the scope of work and tasks of the PWS/PRS. I further certify that I have obtained from the appropriate authority concurrence that the organizational structure, as proposed, can and will be fully implemented — subject to this cost comparison, in accordance with all applicable Federal regulations.

33. In-House Cost Estimate Prepared By: \_\_\_\_\_ Date: \_\_\_\_\_  
 34. Independent Reviewer: \_\_\_\_\_ Date: \_\_\_\_\_  
 \_\_\_\_\_  
 Office and Title

"I certify that I have reviewed the PWS/PRS, Management Plan, In-house and CSA/FAMIS cost estimates and supporting documentation available prior to bid opening and to the best of my knowledge and ability have determined that: (1) the ability of the in-house MEO to perform the work contained in the PWS/PRS at the estimated costs included in this cost comparison is reasonably established, (2) that the selection and inclusion of contract performance costs are reasonable and, (3) that all costs entered on the cost comparison have been prepared in accordance with the principles and procedures of Circular A-76 and its Supplement.

35. Cost Comparison Completed By: \_\_\_\_\_ Date: \_\_\_\_\_  
 36. Contracting Officer: \_\_\_\_\_ Date: \_\_\_\_\_  
 37. Tentative Cost Comparison  
 Decision Announced By: \_\_\_\_\_ Date: \_\_\_\_\_  
 38. Appeal Authority (if applicable): \_\_\_\_\_ Date: \_\_\_\_\_

## APPENDIX 7

## Motor Vehicle Competitions

**A. General**

This Appendix provides joint guidance by OMB and The General Services Administration (GSA) for use in cost comparisons involving the provision of motor vehicle fleet management services. It applies to conversions to or from in-house, contract or inter-service support agreement (ISSA). Agencies should consider the costs, benefits and feasibility of using the agency's fleet management system, the GSA Inter-agency Fleet Management System (IFMS), other ISSA providers and qualified commercial management providers.

**B. Specific**

1. Cost comparisons will comply with Part I and Part II of this Supplement, and as discussed in this Appendix.

2. Cost comparisons should distinguish between the benefits of centralized Government vehicle acquisition and the potential benefits of fleet acquisition, operation, maintenance, and disposal management support services. Solicitations should permit or may require offerors to compete vehicle asset costs separately from fleet management services.

3. In accordance with Part I, Chapter 2 of this Supplement, all Government offerors will certify that their performance cost estimates or reimbursable rates are calculated in accordance with this Supplement.

4. Agencies may include all of their fleet requirements, including those currently being met by the GSA/IFMS or the private sector. Vehicles currently provided by the GSA/IFMS may be included in the agency's in-house cost estimate as IFMS vehicles.

**C. Developing the requesting agency's in-house motor vehicle fleet management costs**

1. The requesting agency's in-house costs are calculated as provided in Parts I and II of this Supplement and entered on Lines 1 through 7 as appropriate. Care should be taken to separate vehicle asset costs (cost of vehicles) from vehicle acquisition and other administrative management support costs.

**D. Developing comparable motor vehicle fleet costs**

1. Competitions between a requesting agency, private sector offeror, the GSA/IFMS or another ISSA

offeror may require that the requesting agency make certain adjustments in scope and cost to ensure that the cost comparison is equitable. These scope and cost adjustments, as discussed below, include:

- Contract Price
- Contract Administration Costs
- Additional Costs
- One-time Conversion Costs
- Gain/Loss on Disposal/Transfer of Assets
- Federal Income Taxes
- Other Adjustment Costs
- Minimum Differential

2. **Contract Price (Line 9 and Line 16).**—The contract price is the price proposed by the lowest priced, fully qualified commercial offeror, IFMS or ISSA offeror. This will be obtained by issuing a solicitation requesting offers. The agency should be careful that the solicitation accurately describes its fleet management needs.

3. **Contract administration costs (Line 10 and Line 17).**

Include costs, as appropriate from Part II Table 3-1.

4. **One-time conversion costs (Line 11 and Line 18).**

a. One-time conversion costs may result when a contractor, IFMS or ISSA offeror takes over the operation of the fleet. This can involve the costs of the transfer of Government-owned supplies or temporary labor costs incurred to facilitate the transition to a new fleet manager.

b. When items of material become available for transfer to the contractor, IFMS or ISSA, material related conversion costs may result. If materials consumed as a part of the requesting agency's MEO are clearly identified in the PWS to be transferred to the contractor, IFMS or ISSA, the value of those materials and supplies are common costs and not considered a part of the comparison.

c. If, however, those same materials are not to be provided to the contractor, IFMS or ISSA offeror, but are instead to be transferred to another agency location or excessed, the value of that material should be subtracted from the contract, IFMS or ISSA offers as a net savings to the Government resulting from the conversion.

5. **Gain on disposal of assets (Line 12 and Line 19).**

a. If an agency requires the contractor, IFMS or ISSA to replace existing Government (agency) owned

vehicles (assets) by a specific date, the projected fair market value of those existing assets, as established by generally available industry guides, are *subtracted* from the contractor's, IFMS or ISSA's cost estimates. These values represent a net "savings" caused by conversion.

b. Agencies may provide that vehicle replacement by the contractor, IFMS or ISSA offeror will be in accordance with the Government's existing or MEO replacement schedule. In this case, all parties to the competition should assume replacement at the same rate. Values from existing fleet to the Government apply to all alternatives equally.

c. Agencies may also continue to provide vehicles for contractor, IFMS or ISSA fleet management. No adjustments are necessary.

d. Finally, agencies may require replacement by the contractor, IFMS or ISSA offeror and may allow the IFMS or ISSA offeror to simply assume ownership of the existing fleet as Federal agencies. In this case, the agency, IFMS or ISSA offeror receives a gain—and a considerable competitive advantage over the contract bid—estimated at the fair market value of the existing fleet. An amount equal to the fair market value of the existing fleet is *added* to the agency, IFMS or ISSA offeror bid at Line 19 for cost comparison purposes.

6. *Federal income tax* (Line 13 and Line 20).

a. Agencies should recognize the current contract support identified in Line 6, above. Calculate the total Federal Income Tax, based upon the contractor's offer (Line 9) and Appendix 5, Tax Rate Table. Subtract from the contractor's estimated tax liability the Federal taxes paid within the in-house cost estimate (estimated from the appropriate share of Line 6 and as described in the Management Plan) and enter the remainder.

b. The same treatment may be afforded to the GSA/IFMS or ISSA offer, if the offeror certifies the value of its contract support contained within its overall cost estimate. This estimate must be available to the requesting agency's Independent Review Officer for review and concurrence.

7. *Conversion differential* (Line 7, Line 14 and Line 21).

The standard minimum differential, as provided in Part II of this Supplement, shall be applied to the contract, IFMS and ISSA offers. If the cost comparison is being conducted to determine if motor vehicle fleet management services should be converted from contract, IFMS or ISSA performance to in-house agency operation, the conversion differential

is added (on Line 7) to the in-house performance cost estimate. If the cost comparison is being conducted to determine if motor vehicle fleet management services should be converted from in-house operation to contract, IFMS or ISSA performance, the conversion differential is added (on Line 14 and Line 21) to the contract, IFMS or ISSA performance cost estimates.

8. *Other IFMS/ISSA Scope Adjustments* (Line 22).

a. It is not the intent of this Supplement to require the IFMS or other potential ISSA offerors to alter their methods of operation to provide unique or site specific services. While such services may meet agency missions and may legitimately be included in the solicitation, additional adjustments to the IFMS/ISSA cost estimate may be necessary to reflect differences in the bids. Examples of such services include: dispatching, vehicle transition, maintenance work warranties, certain disposal services/costs, accessory installations and removals, tire replacements, etc.

b. Agencies should identify the differences between the requirements of the solicitation (contractor bid) and the IFMS/ISSA cost estimate. The agency determines if any item or combination of items will impact the agency's ability to perform. If the agency's ability to perform would be adversely impacted, the IFMS/ISSA cost estimates may be rejected as non-responsive. If the differences will have minimal agency performance implications, and/or can continue to be performed by agency personnel, the IFMS/ISSA cost estimates will be adjusted for purposes of comparison with the contractor and MEO offers, based upon the comparable costs contained in the agency's MEC.

c. A complete record of all adjustments to the contractor's, IFMS and ISSA's cost estimates should be maintained and made available to the public upon request.

**E. Motor vehicle cost comparison**

1. A Motor Vehicle Cost Comparison Form (MVCCF) has been developed. Use of this form will help agencies move through the cost comparison in a structured manner. The Form has been set up with five sections. Each section relates to a different set of costs or to the evaluation itself. Within each section, the appropriate cost elements have been shown.

2. Each cost listed is projected for all periods of the cost comparison. The first year will reflect current estimated costs. For each of the following years, the inflation factors provided by this Supplement shall be used for each element of cost that is affected

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APPENDIX 7

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by inflation. A minimum of one year and three option years will be used for comparative purposes.

3. With the completion of the MVCF, the agency may evaluate the alternatives. In order to do this, the total Lines (Lines 8, 15 and 23) should be en-

tered on Lines 24, 25 and 26, respectively. The decision is based upon the lowest overall cost to the Government over the minimum five-year cost comparison period. Enter the decision as appropriate.

THE A-76/MV COST COMPARISON FORM FOR MOTOR VEHICLE FLEETS

	Performance Periods (Fiscal Years)					Total
	Base Year	Option Yr 1	Option Yr 2	Option Yr 3	Option Yr 4	
<b>A. DEVELOPMENT OF IN-HOUSE COSTS</b>						
1. Personnel						
2. Material						
3. Other Direct						
4. Cost of Capital						
5. Overhead						
6. Additional						
7. Conversion Differential						
8. Total In-house						
<b>B. DEVELOPMENT OF CONTRACT COSTS</b>						
9. Contract Price						
10. Contract Administration						
11. One-time Conversion						
12. Gain on Disposal						
13. Federal Income Taxes	( )	( )	( )	( )	( )	( )
14. Conversion Differential						
15. Total Adjusted Contract Price						
<b>C. DEVELOPMENT OF IFMS OR ISSA COSTS</b>						
16. IFMS/ISSA cost estimate						
17. Contract Administration						
18. One-time Conversion						
19. Gain on Disposal						
20. Federal Income Taxes	( )	( )	( )	( )	( )	( )
21. Conversion Differential						
22. Other Scope Adjustments						
23. Total Adjusted IFMS or ISSA Price						
<b>D. COST COMPARISON</b>						
24. In-House						
25. Contract						
26. IFMS and/or ISSA						
<b>E. DECISION</b>						
<input type="checkbox"/> Retain In-House						
<input type="checkbox"/> Contract						
<input type="checkbox"/> Consolidate to GSA/IFMS or ISSA						
<input type="checkbox"/> Convert from Contract to: <i>In-house , IFMS or ISSA</i>						

APPENDIX 7

**THE A-76/MV COST COMPARISON FORM FOR MOTOR VEHICLE FLEETS**

27. In-House MEO Certified By: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Office and Title

"I certify that, to the best of my knowledge and belief, the in-house organization reflected in this cost comparison is the most efficient and cost effective organization that is fully capable of performing the scope of work and tasks required by the Performance Work Statement. I further certify that I have obtained from the appropriate authority concurrence that the organizational structure, as proposed, can and will be fully implemented—subject to this cost comparison, in accordance with all applicable Federal regulations.

28. In-House Cost Estimate Prepared By: \_\_\_\_\_ Date: \_\_\_\_\_

29. Independent Reviewer: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Office and Title

"I certify that I have reviewed the PWS, Management Plan, In-house, GSA/IFMS or ISSA cost estimates and supporting documentation available prior to bid opening and, to the best of my knowledge and ability, have determined that: (1) the ability of the in-house MEO to perform the work contained in the Performance Work Statement at the estimated costs included in this cost comparison is reasonably established and, (2) that all costs entered on the cost comparison have been prepared in accordance with the requirements of Circular A-76 and its Supplement

30. Cost Comparison Completed By: \_\_\_\_\_ Date: \_\_\_\_\_

31. Contracting Officer: \_\_\_\_\_ Date: \_\_\_\_\_

32. Tentative Cost Comparison  
Decision Announced By: \_\_\_\_\_ Date: \_\_\_\_\_

33. Appeal Authority (if applicable): \_\_\_\_\_ Date: \_\_\_\_\_

Mr. SMITH. Sharron Harris, you have been waiting very patiently.

Ms. HARRIS. I would say that I recognize San McCall's concerns and I agree with what Bob Neal is saying. Part of it is looking at the tools that we have now that we are working with and making determinations for how this bundling will affect small businesses. There may be many small businesses that participate if we are making multiple awards for a requirement. That is a major opportunity if multiple small business partners get an opportunity at their varying levels of capability to perform. So we are still looking at the tools.

Mentor-Protege is one of those tools that can help us with this. Subcontracting is another one of those tools if we are looking at large business as prime contractors in the bundling. And that is an area that we have got to do a lot of work in strengthening how we manage subcontracting. There are a lot of weaknesses in the tools that we have under subcontracting to make it work effectively.

Ms. WILLIAMS. I just want to echo also what Bob Neal is saying. When we put the rules together and looked at the literal words of the statute, trying to do the measurably substantial benefit analysis and testing cost was grouped together as one factor. When we looked at trying to craft the rule we said agencies can look at costs as well as the other factors individually or in the aggregate to come up with their analysis. But, we certainly do need help in trying to come up with best practices that we can share with our PCRs as well as with the agencies to come up with a good model for trying to conduct these analyses. So we tried to craft the rule looking at benefits and recognizing that cost is one of those benefits that must be achieved.

Mr. SMITH. As an offset to benefits, right.

Ms. WILLIAMS. Right.

Mr. SMITH. Ms. Aguilera.

Ms. AGUILERA. Thanks. I guess one of the key words that we found was balance in here and from what Stan McCall was saying there is clearly a role for the Federal Government to play to ensure we have a strong small business community. But we also have extraordinary tools through our contracting to help do that.

The question becomes the tools and how we could promote programs within our program office. If I were able to go to a program manager and say, "Listen, you do not need to worry, we have got some extra resources here to do some business development in that particular area of scientific work that they are doing," they would get excited about it. Right now we do not have that extra tool for business development.

I do think that the subcontracting area is a huge area that is underutilized. I agree that prime contracting needs to continue to have a very strong push, but we should consider subcontracting as one of the ways where we can develop some of the smaller firms and things of that nature. There are weaknesses in subcontracting but that is a key tool.

Right now we do not have a particular goal and we do not measure subcontracting and how much we do. There is a ton of opportunity there. So there might be a balance in looking at how we could leverage some of these opportunities.

Mr. SMITH. Tracey Pinson.

Ms. PINSON. One benefit that I think that we have a tendency to overlook, that we probably should be trying to assess, is the extent to which small businesses will benefit from the bundled contract. Invariably we may take 20 or 30 contracts and consolidate them down to one or two, but can we package those contracts in such a way that small businesses will still participate as prime contracts?

I think that is what, since we are kind of accepting the fact that bundling is here to stay—I do not know whether we want to say that publicly or not, but I think that is a reality—but we want to make sure that small businesses can still play at the prime contracting level.

So bundling is not always negative for small business. Now it may be negative for that small business that is being consolidated out of the process and may not be that one or two that gets the contract but again, our objective is if we have to live with the bundled contract, we want to make sure that the small business can play at the prime contracting level. I think that is a benefit that we have to take a look at, and a reality.

Mr. SMITH. Mike Green.

Mr. GREEN. Just a little follow-up on the subcontracting aspect of bundled contracts. When you are talking about subcontracting plans, \$500,000 or a million dollars, you have got these things called commercial plans that somebody puts together for all business and one agency accepts it so that is the plan that everybody accepts.

The way subcontracting is currently structured, there is really no way to ensure that those companies, excluded from government opportunities by a huge bundled contract, would have an opportunity to participate as subcontractors instead.

The Government does not have a right to direct prime contractors to consider specific firms for their subcontracting. Prime contractors do that themselves. But it would be kind of interesting to see if we are, in fact, losing numbers of small businesses in the prime contracting game.

There is something to be done about commercial plans, something to be done for each contract that we issue. For a huge contract that the potential small contractors that have been weeded out, at least give them the opportunity to compete with that big prime for the requirements to become subcontractors. Nine times out of ten the big prime will already have their subcontractors in place and companies that are doing business with the agencies do not have such an opportunity to compete at all.

Mr. SMITH. Jeanette Brown.

Ms. BROWN. One of the other things, going to what Tracey Pinson was saying, I think we also need to look at and strongly encourage the small businesses to team together and do the joint venturing so that they can go after these large contracts. We do not see enough of that and I think it is our job to work with them to get them in that position. If contract bundling is here to stay and this is a factor that we have to live with, a lot of times they can team together to go after these contracts and win. But I think the

onus is on us in the small business community to work more with them and the SBA to get them to that point.

Mr. SMITH. Michael Gerich.

Mr. GERICH. If you will let me, I would like to just backtrack a little bit. This conversation started on the question of measurably substantial benefits, the statutory and regulatory definitions, the SBA regulation, et cetera. In defense of the SBA and also the Administration it did, in fact, yes, take a long time to come up with those regulations in interim and in final form. But I think that reflects the difficulty in balancing these situations.

We have got competing, compelling interests on the part of—and DOD has given you examples of the reductions in manpower. We have to deal with these situations. Nevertheless, we all are committed to small business participation. It has only been since, I believe, July 26 that both the final regulations on contract bundling, SBA's and the Federal Acquisition Regulation (FAR) were put in place.

The difficulty, I think, in arriving at those regulations reflects the fact that we have to balance these concerns: the small business interest, the bundling interest, and the procurement reform efforts that often reflect the reduced resources we have. I would hope that before we delve into mandatory changes in the statutory and regulatory definitions of measurably substantial benefits, et cetera, we give some time to operate for our agencies to experience these regulations and find out what is necessary. You see examples here where perhaps we need more best practices.

We need to develop more practices using these regulations. Again, these may not be perfect but again, there was difficulty at arriving at those regulations. That reflects the various interests here: the interest of the major procuring agencies, the SBA and all involved. So I am hoping that we will have a little more time with those regulations and operations and agency experiences with those regulations.

Mr. SMITH. That is a very worthwhile comment. We are not wanting to use this as a chance to throw rocks at anybody at the SBA or the OFPP or anybody. This is just simply to get a temperature check to see how people understand the regulations as they currently are written and what they are beginning to see as it starts getting underway. So it is really intended to be more of an information session. So that is kind of what we are shooting for here. Ben Saji, you had a comment?

Mr. SAJI. Bundling, to me, seems to be really a return to business as usual with the potential for monopolistic practices. It was just a few years ago that we were using strategies on how to break out some of those big dollar contracts so that small businesses could participate. We did that because there was no real savings to the Government in the first place with what looked like monopolistic practices.

Now I do not see any promise of government benefit and what we now say is we must have bundling procedures in order to help the Government. Whether or not it is hurting the small businesses seem to be clearly evident as they are screaming at the top of their voices that they are being hurt. I do not see how anyone is being helped by it.

Mr. SMITH. Let me make one quick statement and raise something for everyone and then move to you so that we can be thinking about the next thought. One of the tiers that the SBA came up with in its regulations was the \$75-million threshold of looking at measurably substantial benefits at a two-tiered level, and trying to figure out when those benefits should be reckoned as a different figure above a certain threshold. The figure they used was \$75 million.

The regulations—the explanation and justification I think they called it—the SBA maintains records on the value of bundled contracts and over the past 4 years they determined that the majority of bundled contracts fell within a range of \$50 million to \$75 million and that is kind of the origin of that. And that is looking I guess at a government-wide basis, just collecting from all over. I was curious though about some of you.

Some of you have smaller budgets than others, and I was wondering how you look at that \$75-million threshold and how that applies to your agency. Is it very high for your agency? Is it very low for your agency? Or what is your experience? Lynn King, if you want to go ahead and comment, but if everyone would please be thinking about that.

Ms. KING. This will sort of tie in a little bit. Again, these are the words of my council member, Patricia Stout, and this is her experience, not to throw stones but to just provide information to the directors here from a small business owner.

Last year, the GSA issued multiple-award contracts for travel services. That included a good number of set-asides to small business. The GSA included multiple awards for nationwide travel services whereby government agencies could select a single travel contractor to provide services to all those government agency's locations nationwide. This was done to allow the greatest flexibility possible to the various government agencies.

The sheer size of the GSA contract line item for the nationwide coverage limited the competitors to the very few, very large travel companies. Through this practice the small business set-asides were not enforced. Just to give an example, the travel contract for the Department of the Interior was recently awarded to a nationwide single contractor for a total of \$49 million and that again, ties with the threshold \$50 million to \$75 million and has effectively removed its purchases from the small business set-aside. The INS, the GSA, and the SBA are a few of these agencies that are adopting this practice and this just happened this year.

So I mean the issue of the \$50 million to \$75 million does, I think, depend on the agencies because obviously DOD for their contracting numbers that is all right, but smaller agencies and independent agencies might not have that threshold level of the \$50 million to \$75 million, maybe \$49 million and under.

Mr. SMITH. Tony DeLuca.

Mr. DELUCA. Just a couple of comments I guess. First of all, I would caution us all that we do not take something out of here as a given when indeed it has yet to be proven. What I mean by that is, we are going through a study in DOD now looking at what is happening in bundling and what is not.

So I would hate to have everyone leave the room thinking that bundling is bad and we are bundling every contract we have and that small businesses cannot play because that is not true. We do not really know the answer to that yet. I think that is something that we have to find out.

With respect to the teaming issue, I think that is a very good point. The SBA changed the affiliation rule and I co-authored a letter with the head of contracting in the Air Force encouraging all contracting officers to take advantage of that. We have done that. At Brooks Air Force Base we awarded a contract to a team of two women-owned businesses for \$100 million. Individually they could not have done that. So I would note here again that is an opportunity that should be taken advantage of.

The issues of tools and bundling and break-out reps—reminded me of years back when I was competition advocate and being there we had to fight toilet seats and hammers. The way we did that is we introduced competition. Competition is nothing more than the phenomena of the marketplace. We have a cycle going now. And we see that cycle in large businesses.

I saw this statistic and it was in the Democratic platform, and I am not saying I am for one or the other, but it stated that of the 22-million jobs created in the last 8 years, 90 percent came from small businesses. So, are we bundling? Yes. Is it affecting small businesses? Well, if job growth is really there, I am not sure.

I think the other thing we have to look at, Cordell, is that within the context of this overall 23-percent fandango, we have got so many subgoals it is like, which one am I pushing today? And oh, by the way, we in DOD have lost one of the biggest tools we had, which was our small disadvantaged business set-aside, because it was determined that we could not do that anymore.

So I think as we go forth on this, yes, balance is to be achieved, but I think we need to take a look at what is happening in the environment out there. What does the economy look like? Sometimes we have to step back and say, “If we are really going to make a difference, if the Federal Government is really going to step in and do something, then we have to understand that the role needs to be effectiveness, not always efficiency.” Effectiveness sometimes runs right smack against efficiency, and that is something that we run into everyday.

Mr. SMITH. Sharron Harris.

Ms. HARRIS. I agree with Tony DeLuca’s comments but what I was also going to say was that as we look at that \$75-million threshold for some agencies—and Agriculture is a large agency that is still in the higher scale for industry specific thresholds, and I know that creates a ton of confusion when you are looking at industry-specific thresholds—but that \$75 million is a large volume.

We do a lot of food commodity acquisition. Mike Green and I were thinking. We cannot recall when we have done a food commodity acquisition at that threshold and we are struggling for small business participation in those industries. So that is a substantial threshold. It may not be for DOD, we recognize that there are agency uniquenesses but for some of the larger agencies that is a significant threshold, especially when you are looking at a rural constituency like the community we serve.

Mr. SMITH. Debra Murphy.

Ms. MURPHY. Debra Murphy with the Library of Congress. Our budget approaches basically \$250 million a year so a \$75-million threshold is pretty high relative to our budget. But what we do have is a commitment. We are averaging roughly about 60 percent of our awards going to small businesses. In the context of individual development, individual Indefinite Delivery Type Contracts (IDTCs) and multi-awards and all of the different types of contractual instruments that we have, many of them as Tracey Pinson has indicated, are going to small businesses.

We are in the process of implementing a supplier diversity program where we plan on encouraging small business participation by way of teaming for a lot more of our more sophisticated projects for our exhibits. But I just wanted to say that while \$75 million is a tremendous threshold, it certainly does not diminish the challenge that we all have in terms of balancing contributions and participation on the part of the small business community with the needs of our program managers.

Mr. SMITH. Thank you. I apologize to the rest of you. I think in order to stay on time we are going to have to move on to the next segment. So I apologize for moving on before everyone has had a chance to comment.

Now, I want to go ahead and raise the issue of where OSDBUS fit into this process because that is obviously something that you all know better than I do and anyone else for that matter. I put up the chart over here of what it says is in section 15(k). You have this also in your packet if you cannot see the large chart.

[The chart follows:]

## **Responsibility of OSDBUs**

**OSDBUs shall... "identify proposed solicitations that involve significant bundling of contract requirements, and work with the agency acquisition officials and the [Small Business] Administration to revise the procurement strategies for such proposed solicitations where appropriate to increase the probability of participation by small businesses as prime contractors, or to facilitate small business participation as subcontractors and suppliers, if a solicitation for a bundled contract is to be issued;"**

Source: Small Business Act, § 15(k)(5)

Mr. SMITH. It is from the Small Business Act on OSDBUs—or SADBUs as the case may be—of identifying proposed solicitations and trying to find ways for small business to get into the process and work with reforming solicitations to make them better and so forth.

We raised a question earlier, in the context of the procurement center representatives, about how they find out about potential bundlings. It looked like in some cases agencies had learned that it was in their best interest, in order to get an acquisition out the door, to work with the PCRs early on rather than wait until late in the game and having to go through an appeal process. Some of you had, I think, Joe Capuano, you were the one who mentioned about a PCR with whom you had very good working relationship and brought him into the process very early on.

What is your experience as OSDBUs? The regulation itself does not mention OSDBUs in particular, it just mentions the PCRs. My supposition is that a lot of contracting probably occurs by rushing to try to get it out the door before you hear about it. How do you hear about procurements that are happening in your agency? When do you get the opportunity to intervene? How much of what your agency does do you actually get to see?

Ms. Harris.

Ms. HARRIS. At one time at the USDA we had a threshold that any requirement over \$100,000 needed clearance through the OSDBU office if the acquisition strategy had not been to set the requirement aside.

Now we have run into fierce competition among our procurement council members because part of what they do is negotiate. Part of what the small business reps in our different bureaus would do is negotiate when they can get an award set aside but some they would have to give up. So right now we suspended that strategy because of the challenges that we were getting and went to a more cooperative effort to encourage the business reps to reach their goals and then be given a waiver.

So we are in a resting stage for that but that was one of the ways we tried to identify requirements that were not targeted for set-aside. And we set a threshold to do so. Now what has happened, though, is a number of agencies utilize instruments that will allow them to circumvent even making that requirement available. They may use a GWAC instrument. They may use a Federal Supply Schedule instrument or an interagency agreement of some type so that when they have requirements, another agency is going to procure for them. So it is a tug-of-war to really get a strategy in place that works effectively.

Mr. SMITH. Scott Denniston.

Mr. DENNISTON. A couple of things. I have been sort of quiet today because, after my first comment and hearing all the rest of how great the PCRs are, I did not want to put a negative tone on this meeting. But I would suggest to you that Tony DeLuca's comment about small business job growth—I cannot dispute that. Yet the SBA tells us we have 20-million small businesses in the United States, but if we look at the Federal Procurement Data System (FPDS) statistics, we have only have about 5,000 small businesses on a yearly basis that do business with the Government.

So my point is, we are looking at a small universe compared to the 20 million. I think that is a problem. If we look at FPDS statistics over the last 6 years, even though we know that the percentage of the total procurement going to small businesses stayed about the same, the number of actions that have gone to small businesses in any category—whether it be small, SDB, women, 8(a)—has been cut in half.

I would suggest that that gets back to Stan McCall's questions about what are we doing for the smaller businesses and some of these issues that we have been addressing. They are tough issues. I do not know that any of us have an answer. One of the biggest problems I have, though, is knowing what is going on. We have processes in place, like some of the other agencies where anything over \$100,000 is not going to be bought through a small business program.

It is supposed to come in to us to review but again we have got a staff of 10 people. We have got 200 buying offices. Quite frankly, the way we find out about what is going on is we review the CBD every day. That is how we know what actions are going on within the agencies, within the Veterans Affairs anyway.

As an example, we have a brand new opportunity where the Office of Management and Budget (OMB) is telling us we have got to get out of the business of managing home loans. The private sector can do that better than we can. We are doing it under A-76. We think a regional strategy would be excellent for small business but I am told that OMB is saying "no," the only way we can do a fair cost comparison is we have got to do it nationwide. That is going to cut out opportunities for small business.

Our folks are getting very creative at using GWACs. We have a major push on for Federal Supply Schedules. Even though we are the largest healthcare provider in the United States, we are only about 5 percent of the total contracting dollars that are spent on healthcare in the United States.

Quite frankly, we do not have the kind of leverage that I think a lot of folks think we have to impose strong subcontracting goals.

We go to a pharmaceutical company and we say we want a subcontracting plan. They say, "Hey, we are the only game in town. You take what we have got or you do not buy our product." When it is healthcare, you know we are going to buy the product.

We have the same problem when we spend a tremendous amount of dollars every year with our affiliated teaching institutions, those medical schools around the country that we use. In some instances, depending on the strength of the local management, people will say that the healthcare schools run the VA. We say to them, "We want a subcontracting plan with opportunities for small business." They say, "Hey, we are not going to play."

And it is very difficult sometimes to impose some of these requirements. When we do find out about them, do we get involved? Sure, we all do but the dilemma is that as we have new contracting strategies to use it gets more and more difficult for us to get some of that basic information that we are talking about in order to do our jobs.

Mr. SMITH. When your offices put out the forecast, does it specify a contracting approach or does it just say this is what we expect to buy?

Mr. DENNISTON. Each agency does it a little bit differently. From our standpoint, most of our anticipated requirements we put out with no contracting strategy. The reason we do that is, for instance, we want to make sure everybody has an opportunity. If you find something in our forecast that you think you have the capability to perform, we want to hear from you.

So we do not want to say this is going to be a HUBZone, for instance, or this is going to be an 8(a) or this is going to be a small business set-aside because in a lot of instances, especially with the 8(a) program and the HUBZone program, we do not know enough about the capabilities of the firms to make those types of determinations if they do not come to market us.

Mr. SMITH. The reason I ask that is, obviously for you to prepare the forecast, someone has to let you know what the agency expects to buy. But do they let you know a timetable? Do you have an idea of, well, that in November we will probably buy widgets, therefore I should probably contact this contracting officer to see what is happening or whether they are going to go buy it off the schedule without telling me? How much information does that forecast generate for you in terms of—

Mr. DENNISTON. For those types of products and services that we buy on a recurring basis, the forecast is pretty accurate because we know when contracts are going to expire. We know what we are going to be competing for. The dilemma that we have is that many times when we put the forecast together the actual budget has not been approved.

So when we are talking about new, unique things, especially in the IT world, it is very, very difficult to get people to tell us what they want to do. This is especially because the IT procurement people have all these other contracting vehicles; therefore, they do not need to go through the normal, traditional procurement process.

So, quite frankly, not only don't they want us to know, they do not want our contracting people to know where they intend to spend their money because they want total autonomy to make those decisions. Those decisions are made based on who markets them and just because of economies small businesses do not market the same way some of the big guys in the industry do.

Mr. SMITH. Joe Capuano.

Mr. CAPUANO. I would like to offer a comment on the question of access to information. Please excuse me, I am struggling with a cold. One of the things which—why don't I pass and then come back to me?

Mr. SMITH. Linda, you have been waiting for quite awhile. Why don't you go?

Ms. WILLIAMS. I just wanted to clarify a point you raised earlier, Cordell, as to the mention of the OSDBU directors and the regulations.

As you well know most of the OSDBU directors are headquarters-located. We put the responsibilities in the regs on the small business specialists because they are the people that are in the field offices that actually work with the PCRs and the pro-

curing officials to determine the strategies. So that is why we did not mention the OSDBU directors. Instead, we mentioned small business specialists, but they are covered.

Mr. SMITH. Mr. Neal, I cut you off earlier so why don't you go next and then we will go back to Joe Capuano?

Mr. NEAL. Very quickly, one of the things that was slighted when you talk about small businesses and our effort, and again this is from our preliminary results from our consolidation study, what we found is from 1994 to 1999 we had an increase in the number of small businesses that DOD does business with. We went from 3,900 small businesses that we would—I am sorry, small disadvantaged businesses that we were doing business with to 4,600 small disadvantaged businesses. And in the area of small businesses we went from 16,000 small businesses to 18,000 small businesses that we are doing business with. Those numbers are from 1994 to 1999.

When you look at numbers like that, it gives you results that are counter-intuitive to a lot of the concerns about harming small business. So it gets back to this balance that everyone is trying to strike. There are some things that we are doing very well and maybe there are some areas that we are not doing as well.

What I would encourage folks to start looking at is to sit down and really identify what principles we are operating under in terms of acquisition reform and acquisition efficiency, and what principles we are operating under for small business. Then sit down and work out a strategy that melds those two sets of principles together. But that requires a lot of heavy lifting and a lot of work on a number of levels.

In particular with the leadership at all of the agencies it is going to be absolutely imperative—and I am talking senior leadership, not SADBUs. We do not sign any contracting documents. We do not make the commitments. The people that are making the commitments for the agencies have to be held accountable. That is where all of this is ultimately going to end up.

I mean, although the numbers are going up, the balance has to be struck. But the people that are signing on the dotted lines are the ones that have to strike the balance because we are merely their consciences on their shoulders talking in their ears.

Mr. SMITH. Mr. Capuano, would you like to try again?

Mr. CAPUANO. Yes. As a matter of fact, Bob Neal gives a good lead-in to this. One of the things which is really important on access to information and on contracts is to really have a good partnership. With Secretary of Transportation, Rodney Slater and Deputy Secretary of Transportation, Moritimer Downey, one of the things we started in 1995 with our former Director, Luz Hopewell, was to have the small business focus in our strategic plan. It was actually identified in our economic growth outcome. It is equally important in our new plan, but has been refined and has looked at some of the new areas that we need to focus on.

The other key point that Mr. Neal mentioned was that the Procurement Center Representatives are very important. However, the procurement management council at DOT has access to those procurements across the department, and that is important in a \$50 billion department, 100,000 employees, with a national focus. The relationship that I hope we have at DOT with our procurement

management council as a result of the leadership of Luz and others has been excellent. We are actually a member of the council.

So with that strategy which was started in 1997 we actually started to move forward anticipating where this was going. Now, we have a long way to go. Like many agencies we are struggling with some of the new requirements coming out, the lack of tools that was mentioned, the rule of one. Those tools at the operational level are critical for small business specialists and procurement officials on the big contracts out there. Those tools may be five times as valuable on the smaller contracts or those that are not being bundled.

And so the balance that we look at is a combination of that, but the leadership that Bob mentioned is absolutely critical. I think that is essential across the board.

Mr. SMITH. Arthuretta Martin and then Esther Aguilera?

Ms. MARTIN. Thank you. I am Arthuretta Martin. I am from the Department of Health and Human Services.

I just wanted to respond to the question that was posed here and that was the OSDBU involvement in bundling. At the Department of Health and Human Services we have a process in which procurements are reviewed by both a PCR—we do have a PCR onsite—and also the small business managers.

As far as the OSDBU's office involvement in that process, we are only as involved as the small business managers inform us. A small business manager's involvement is only as good as their ability to find out about the requirement. We have had a number of different OSDBU offices, and I hope that you have heard this repeatedly, say we even as small business managers do not always have access to the requirements.

I think also what was said, and we need to really hear this is: Even the procurement community does not always have access to the requirements.

We, as a community, do not have as much control over Federal dollars as we did once upon a time. I think that there is a lot of competition within the procurement community. They are competing from one procurement activity to another to make sure that they get work to do so that they will not become a part of an A-76 study. I think that also within the dollars available, the program officials do have a job to do and they do not want obstacles hindering them from being able to accomplish that. So if they can go to a GSA schedule or another agency's contract to meet their goal, they are going to do it.

We have too many competing things going on in this environment to be able to do the job that we have been put here to do. Those contracting officers, when they get a requirement if the program official agrees and is willing to work with him, we can do a lot of work for small business. But it is important that you understand and that the deciding people understand that the person or the individuals that have the most control over this process are the program officials. We need their support. We need their buy-in in order to make this work.

Mr. SMITH. Esther.

Ms. AGUILERA. We have a process in our agency where we review contracts of \$3 million and above. We are making some changes to

that, but what we found is that we are getting them at the end of the process only when some of the key decisions have been made and they want to move with it quickly. So we have been meeting with all the program managers and offices to talk about plans for getting involved in the acquisition planning early on. I think that will make a big difference.

But specifically on the role of OSDBUs and this bundling area I am concerned that this has not been mentioned. I think the important thing is, while the Small Business Act does place small business specialists in each of the procuring agencies and offices, the Department of Energy is in 23 States across the country. It is important to understand the role of these offices; how they are empowered or not and our role with them.

They report to that program manager. They do not report to me. We do have monthly calls with them. We are constantly involved and engaged with the small business program managers in the field but it is important to understand the role.

We had a couple of cases where the field office was involved in a procurement and the SBA and the PCRs contacted the local office to raise some objections and it went forward anyway. We did not find out about it until it was too late, the 11th hour. We could make a bigger difference if we are somehow tied in and we are in the loop. Granted, I think that we have very good PCRs that work with us.

Our small business program managers are very committed but they have managers that they report to as well. And unless we want to have some kind of more direct oversight, again in terms of our relationship with them, then I think it is a problem. I think OSDBUs want to help on some of these bundling issues, but we are not involved early enough. What we are looking to consider doing at DOE is try to figure out a way to make sure that my office is alerted about some of these things early on because it is not in the reg. It is not something that automatically happens.

Mr. SMITH. One quick question. Because the one time when the OSDBUs do get some information at some point is apparently in preparing the forecast. So that does give you some idea of what is coming up. How is that information compiled? Does your office happen to know what you expect because of contracts that are expiring over the next year or do program offices contact you? How does the OSDBU get involved before the forecast is actually developed?

Ms. AGUILERA. As I mentioned, actually we have two processes. One is the review of the contracts of three million and above. For our forecast we send out a notification asking specific questions of information we need to get to put together the forecast.

We do ask about the acquisition method, and when it is going to be procured. And we get a very good response. The forecast has quite a few requirements in it but it does not represent the entire universe of what is happening out there. Our forecast contains maybe opportunities of about \$3 billion over 3 years, which is a lot of money both in the prime area and the subcontract area, but it still does not capture everything that is happening out there.

There are, I would say, two or three times more activities happening out there than what we capture in the forecast and others.

Mr. SMITH. We will put a pause on this discussion, on the role of the OSDBUs, because I had a couple of requests that I agreed to honor in terms of a few folks wanting to talk about some miscellaneous issues. So we put some miscellany on the agenda, and then if everyone decides that we wrap that up, we will go back and take some of the additional comments that we have not gotten to hear yet. Mr. Neal, I know you had some things you wanted to call to our attention so please proceed.

Mr. NEAL. There are two issues that I wanted to bring to the attention of the Committee and to the Members of the Small Business Committee. First of all, I have spent a great deal of time talking about the preliminary results that we are starting to see from our consolidation study. That study—we are expecting to wrap it up and to have a final report this month that will be available and it reveals some things that surprised us as advocates for small business and also it confirmed some things for us.

As we go through the process we think it will be very instructive for Members of the Committee and for members of the small business community to take a look at this study and to take into consideration that this is one of the first times that we have actually had any organization spend the time and the money to develop some statistical measures of what is actually going on with respect to consolidation. It is very insightful for us.

As we have looked at it we see some things that are indicating that small businesses are faring very well with consolidations. Then there are some other things that are of concern to us. Those are the types of things that we think we need to start focusing on in addressing the issues where the gaps exist, where we need to devote more resources and to devote our focus to, for example, cost-benefit analysis—being able to do a good job of not only performing the initial cost-benefit analysis but to follow-up on things to find out if the cost savings that were projected were actually achieved. I mean we have that problem across the board whenever we use cost-benefit analysis.

Second, I wanted to bring to the attention of everyone here that, in looking at the issues that we are looking at today, we came to realize that we really needed to pull together a team to focus on how we get top level senior management involvement and accountability at every level. Not only is it important for our base commanders who are responsible for executing at the individual bases, but it is also important to have the senior leadership in the secretary's office and the secretary involved in these sort of things.

Now when you have agencies that are very large and have very diverse interests, it is not always possible to put those types of things in front of the secretary and get them to spend a consistent amount of time focusing and reminding the management structure of how to do it. What we have come to recognize is that through a rapid improvement team that has met over the last 2 weeks, we have got some very concrete strategies that we are looking at utilizing within the Department of Defense to help focus our management attention and more importantly focus on accountability.

We, as SADBUs and small business specialists, do not sign the documents. We do not make the commitments. In order to ensure that people are committed they have to recognize that that is one

of the key parts of their jobs as program managers and contracting officers. What we spent the bulk of our time looking at is, how do we ensure that those individuals understand that it is a key function of their responsibility to ensure that small business opportunities are available? As soon as we are able to clear the review process within the Pentagon, we will be very happy to share that with anyone and to talk about how we arrived at those conclusions.

We do feel that we are on the right track, that the grades that were handed out by the House Small Business Committee were a wake-up call. Not that we would agree with them in total, but we do believe that it pointed out to us that we could do more as an agency and we are committed to doing more. So the results that you will see as part of our consolidation study and as part of the report of our rapid improvement team will show that the Department of Defense has taken this task on and that we believe that we are going to be very successful.

As Tony DeLuca pointed out in looking at the FAST, we are going to be very aggressive in how we address consolidations and insuring that small businesses receive great opportunities as a result of our efforts to consolidate.

Mr. SMITH. We will look forward to hearing the results of what you are putting together there. I think we are very interested and excited about the way that you have tackled this study. I think you are onto something. There is a lot of—the folks at the top may be aware of the goals and the agency as a whole is responsible for achieving them, but if everyone is responsible, no one is responsible. You need to find a way to get that down to the level of people that are making the day-to-day decisions. So, I think we will be very interested in what you have on that. Mr. Robinson, you had something for us?

Mr. ROBINSON. Yes. In reference to Bob Neal's statement about senior level management involvement and their support, at the GSA we are a part of the leadership; therefore, issues such as these, we have brought the record to the attention of the leadership and we get feedback, direct feedback.

One of the questions that I had is, and it may have been addressed prior to my arrival, what do you expect to take place as a result of the things that you are hearing today with this roundtable? In addition to that, what is the timetable involved?

Mr. SMITH. As to the timetable, I can tackle that first because there are 440 Members of the House and 100 Members of the Senate who feel free to disagree with me on timing. I have never quite been able to understand that. But obviously, realistically we are probably pretty much out of time in terms of doing anything this year.

In terms of how we can improve the goaling process or what improvements, if any, should be made to the contract bundling regulation, I think Michael Gerich raised some valid points about waiting and seeing for a little bit longer. On the other hand, if there are some obvious loopholes they might be worth closing. Those will all be things that we will be looking at very early in the 107th Congress which would be in January 2001.

As far as just exactly what we would do, that is going to depend on what we hear about what is actually happening. That is one of

the things that this roundtable is designed to help us with and that is to get that information. I did make the commitment very early on that we would not ask you to help us write a new definition for bundling because you are not legislative—your legislative offices probably would not be too happy if I asked you to do that.

But the information that you relate to us gives us some idea on how the real world looks at these terms and defines them and maybe gives us some ideas on how to go about making improvements.

Mr. ROBINSON. A follow-up question. The report that you will draft, will that report be brought to the attention of the Committee Members or to this group that is here?

Mr. SMITH. You mean of this meeting?

Mr. ROBINSON. Yes.

Mr. SMITH. There will be a transcript prepared and we will be happy to send that to you as soon as it has been published. Allow about 5 to 6 months for that. I mean it is a matter of going back and forth between the GPO and proofreading and typesetting and all that stuff.

Mr. ROBINSON. I want to make sure I am clear on my question. Not the minutes from the proceeding but what will be the next step, the recommendations, et cetera.

Mr. SMITH. From this?

Mr. ROBINSON. Yes.

Mr. SMITH. I do not envision that we would actually issue a report per se based on this meeting. It would just be the same as any of our Committee meetings. We come away with information that we would use when we start looking at legislation. I would think the work product would ideally be legislation. But there are more people involved in that question than just me.

Ms. FORBES. Basically, I agree with Cordell that we are pretty much out of time. The bills that are going to get done this year are primarily Appropriations bills. There may be some others. We are hoping at least SBA's Reauthorization bill will get done, but it is not going to be anything involving bundling at this point.

It is far too late in this year but what this roundtable will do is enable us to decide, when we are planning and discussing with our Senators and our Committee, what do they want for the legislative agenda for next year. This is a very timely date to have this roundtable so that information can be factored in. That is what I see. Also, it would not be concluded in January. We will start working on it in January.

As I am sure you know, the Armed Services Committee and the Governmental Affairs Committee are very interested whenever we start focusing on bundling or anything that affects their work. It is a very complicated process.

Mr. SMITH. Mr. Faithful, you had something for us?

Mr. FAITHFUL. I am Bob Faithful, the Director of the Interior Department's OSDBU office. I wanted to come back to a point that Lynn King had made in her reading and I think that as a short-timer among the OSDBUs it has become evident to me that there are actually two government activities here.

I think you were right to ask about the level of commitment that was set up. DOD, NASA, GSA and Energy are 4 out of the top 20

organizations that do more than \$5 billion a year in business. So you have got 16 of the organizations sitting around here that basically do about \$31 billion.

However, out of those 16, almost all of them met the 23 percent goal for small business last year. The GSA in particular, if you are looking for a best practices among the larger organizations, was in the top five, I think, in almost every category in terms of looking for how accountability is handled.

Also starting with the Departments of Transportation, Interior and State, they led with at least 50 percent of their organization's procurements going to small businesses. Is bundling the same type of issue? Are the standards that are set up correct? The answer is probably "No" in terms of what we do. In terms of the threshold of \$75 million those are not realistic standards for the majority of Federal agencies that are out here.

If you are looking for how small businesses will make contact, it is not always with NASA or, because of the need for security clearances, the Defense Department or with the Energy Department's contractors. The GSA, like I said, is doing a good job so you cannot say anything about the GSA. They are on top of their percentages. The reality is that most small businesses are going to come into contact with the rest of the Federal Government.

Oftentimes the regulations are written to handle the large amounts of money, the \$152 billion that go through those four Federal agencies. Somehow there has got to be a way to differentiate between the majority of Federal agencies that are sitting here and the rules that we also are trying to work under. Interior has a partnership with our procurement community. We need to talk with them. We have a meeting tomorrow.

The reality is that with the smaller organizations maybe there is more flexibility, maybe we are different, you know. Maybe we do not have some of the same issues, but I think there has to be a look, by both the House and the Senate, at the real differences between those groups, and the fact that the majority of the Federal Government has been successful in meeting its goals on many of the areas.

Women-owned businesses is another area that again we are going to have to take a look at, and find ways to have strategies that are successful such as some of the best practices whether by the State Department or the other organizations.

Mr. SMITH. In addition to women-owned businesses I would also add HUBZones, which is a major concern for Senator Bond. That is his program and some of you have heard from us lately on this issue. We are very concerned that that program is not getting off the ground as well as we would like. Some people have done really well and some have not done as well as we would like. So it is a mixed bag but we are hoping to make it more on the good side than on the bad side eventually.

Lynn King.

Ms. KING. I would just like to put on my general National Women's Business Council hat. Actually, we do commend the GSA for their efforts on behalf of women businesses. In fact, on Monday we recognized Mirinda Jackson, seated at this table, for her efforts and the GSA's efforts in outreach to women-owned businesses. In terms

of tools and in terms of accountability the Small Business Administration has a number of Memoranda of Understandings (MOUs) with Federal departments and agencies for increasing business and contracts to women-owned businesses. There are Federal departments and agencies, Cordell, at this table that have not signed their MOUs. They are out there.

Perhaps maybe the Senate Small Business Committee could encourage the Federal departments and agencies to enter into and sign off on those MOUs with the SBA. Of the MOUs that are in place, the only agency has an accountability measure in it, and that at the Department of Transportation. It is not for lack of effort at the SBA trying to get that accountability in there, it is just a lack of people agreeing to sign off and this is, of course, a negotiable instrument. The Department of Transportation is the only one that would sign off on accountability. There are tools that can assist in this outreach and perhaps the Senate Small Business Committee could encourage the use of some of those tools.

The final thought that I had was on the GAO report that was issued a couple months ago on contract bundling. It stated that it was unable at that point to determine if the contract bundling had an effect on small businesses. Is there going to be follow-up GAO report requested by the Senate Small Business Committee? Because I hear from the small business community that it does affect them and I hear from a lot of people at the table that it does not and the GAO is in the middle saying we do not know.

Mr. SMITH. I do not have a letter drafted to commission such a study right now. One of the things we did discover in that report is FPDS needed to make its changes to its computer system to start collecting the data, and they needed the final rules in place to do that and the final rules are out now.

Now FPDS can go to work and obviously we would want to be at a point where there are enough data to be useful before we actually commission a study of that. But let me put it in a more general way. Contract bundling is a continuing concern here and it is a continuing concern of Senator Bond. I have got to tell you that of the phone calls I receive, I have not heard anyone say anything good about contract bundling yet.

I understand the argument being made and obviously the calls I get are going to be from those who are injured or are perceived to be injured. So obviously, there is concern out there. And if there is a concern out there, then obviously we are concerned, too.

Ms. KING. On December 8, the GAO will be submitting to Congress their report on women-owned businesses and the barriers that do exist.

Mr. SMITH. Yes. We like to keep the GAO busy.

Tony DeLuca.

Mr. DELUCA. I guess just a couple of final thoughts here. I would hope that the Committee just does not get hung up on bundling, that there are other issues that need to be looked at. I mean, if you look at opportunity dollars that we have, opportunity dollars to us are much different than opportunity dollars made with other agencies in terms of the major systems that we procure. If the Congress gives the Department of Defense more dollars for major systems,

that is fewer dollars that we could award at the prime contract level.

Subcontracting is an issue we need to look at, I agree, but I think Scott's point should be well taken. If the marketplace does not support competition at the prime contract level and you only have one or two large businesses, then our ability to influence subcontracting is going to be very, very difficult. I think that point needs to be made.

The other thing I think we cannot lose sight of is what the IMPAC card and credit cards have done to us. When Steve Kelman and OFPP came out and said, "Let us go ahead and use credit cards," everybody said that is really good and everybody likes it. The fact of the matter is last year the Air Force did well over a billion dollars in credit card buys and we do not have any visibility where those dollars go.

So one could argue that those dollars should all be small business dollars and we will credit the agencies as if they all are. I will tell you that DOD went well beyond 23 percent. So I think that is another issue that we need to look at.

So I guess the message I would give you, Cordell, is that bundling is one of those things that is high interest right now. Should it be the only interest? No.

Mr. SMITH. I will agree with you on that. It is far from our only interest, and I will say again as long as Senator Bond is Chairman, the HUBZone program is another one—

Mr. DELUCA. And we obviously support him, too.

Mr. SMITH. Mike Green.

Mr. GREEN. Just one very quick comment. You know if you really want to improve small business numbers—the SBA is concerned about all the numbers, it seems like everybody is concerned about all the numbers, when it might be more contracts going to small businesses but fewer dollars—at least those are the numbers I have seen.

If we are concerned about bundling and other issues, I think one major stumbling block that we have is that the OSDBU can recommend a lot of things but they do not have any teeth at all. If in the bundling arena, if I did not do anything, I would require the concurrence of the Director of the Small Business Office for every contract that is bundled. If you do not get that concurrence, then you do not go forward, other than just making a recommendation.

Mr. SMITH. Other thoughts?

Ms. KING. I support that.

Ms. BROWN. Just one more. I think it is important when Bob Neal said that we have a mission to support the small businesses and we try to do that as the OSDBU offices, but again you have to go back to the program offices and the contracting people.

Until you recognize that and have that accountability we can serve as advocates all we want but it is not going to happen. We need to look at how we hold that sector accountable to this type of program. They cannot just give us lip service.

I had this conversation just this morning with the Deputy Chief of Staff at the EPA. We have problems and we are doing everything we can with outreach and all of those things, but the bottom line is the contracting officer is signing off. The program manager

is ultimately making the decision in terms of where those funds are going to go. Until we have a mechanism in place—one of the things that we were talking about was adding performance standards and accountability to the small business program. I think that is something that you really need to consider.

Ms. HARRIS. Sharron Harris, the OSDBU Director of USDA. I will add to that, going back to Bob Neal's comment. The leadership commitment is key because that is going to influence the program manager's strategy for how they are going to put pressure on that contracting officer to support the program. Most of the time they lead to the larger business constituency.

They have concern that their project requirement is successful. They do not tend to have the faith or the trust in the small business constituency so they steer that contracting officer's decision as best they can. The leadership support is the critical piece. That is going to affect positively everything.

Mr. SMITH. Luz Hopewell, then Mirinda Jackson, then Ramona Jones, and then I think we will have to wrap it up.

Ms. HOPEWELL. I echo everybody's comments. It all really comes down to accountability and support from the very top. At DOT, just like Joe Capuano mentioned, the small business program is part of the strategic plan of the whole agency. Because of that, the Secretary is on top of the issues. Everybody's performance plan has criteria for small business participation within each agency. Each buying activity commits to it. Each program person commits to it.

So it makes the job of the small business people a lot more manageable because those offices are really very understaffed and they cannot cover every activity. Until we are able to get small business participation as part of a department strategic plan, we are going to continue to have a fight.

Mr. SMITH. Mirinda.

Ms. JACKSON. I would like to say that we should hold the procurement executives accountable as well because they play a major role in the procurement world and also they are responsible for the contracting workforce.

Mr. SMITH. And Ramona.

Ms. JONES. At Commerce, part of the evaluations for the chief financial officers is meeting small business goals. They are starting to pay attention.

Mr. SMITH. I would like to thank everybody again for your participation. I have gotten a note that there are two rollcall votes on the Floor, and I think we are only halfway through the first one so Senator Bond is not going to be able to come back for probably another half-hour to 45 minutes, so we will go ahead and wrap things up.

I would like to thank everybody for a very helpful and insightful exchange and for taking time out to visit with us. I look forward to doing this again and I hope we will stay in touch. Your congressional liaisons always hate it when I say this but feel free to call me. I am always happy to talk on an off-the-record basis. So with that this roundtable is adjourned.

[Whereupon, at 11:40 a.m. the Committee was adjourned.]

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