
BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Development Of A National Make-Or-Buy Strategy-- Progress And Problems

This report contains GAO's assessment of the executive branch's policies and programs for obtaining commercial or industrial products and services for Government use. It discusses the history and evolution, the overall perceptions, the status of implementation, the major problems and influences, and the proposed changes to the current policy.

GAO is particularly concerned that, without a firm national policy, the future for this program will be a repetition of the past--confusion, controversy, and ineffective implementation.

A make-or buy policy is necessary to achieve economical, efficient, and effective Government. The policy must be stable and appropriately balance many issues of national significance. It needs both legislative and executive branch endorsement and support.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20542

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To the President of the Senate and the
Speaker of the House of Representatives

This report contains our assessment of the executive branch's policies and programs for obtaining commercial or industrial products and services for Government use. It discusses the history and evolution, the overall perceptions, the status of implementation, the major problems and influences, and the proposed changes to the current policy. We are particularly concerned that without a firm national policy, fully endorsed and supported by the Congress and the executive branch, the future for this program will be a repetition of the past--confusion, controversy, and ineffective implementation.

We initiated this review to study the many controversial, and often misunderstood, issues surrounding the executive branch's policy and its implementation. The review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

We are sending copies of this report to the President of the United States; interested congressional committees and Members of Congress; the Director, Office of Management and Budget; and the Administrator, Office of Federal Procurement Policy. We are also sending copies to the heads of all Federal agencies and to other interested parties.


Comptroller General
of the United States

D I G E S T

The question of whether the Government should provide its own needed goods and services, as opposed to "contracting out" with private enterprise for them, long has been a subject of controversy involving the departments and agencies, the Congress, industry, and Federal labor unions.

Since its establishment in 1955, the executive branch's policy of reliance on private enterprise to supply needed goods and services has undergone numerous changes.

Because of increased emphasis on contracting out during 1976 and 1977, the Congress expressed concern about how the policy was being implemented.

The purpose of this report is to provide the Congress with:

- A history of the evolution and general requirements of the policy as stated in Office of Management and Budget Circular A-76.
- An overview of the different opinions on the A-76 program.
- A status report on executive branch implementation of the policy.
- A compendium of major problems, influences, and issues surrounding the programs.
- GAO's evaluation of newly proposed policy changes by the Office of Management and Budget.

Based on a comprehensive review, GAO concludes that:

- The policy has not been perceived as a national policy with full executive and legislative branch approval and support.

--Over the years, policy pronouncements and applications have been controversial and unsettled.

--Implementation by executive departments and agencies has been inconsistent and relatively ineffective.

--Make-or-buy decisions were not necessarily based on sound management principles that would produce as economical and effective Government as possible.

Government-wide management of the A-76 program needs

--management control systems acceptable to each of the departments and agencies,

--clarification of the basic policy and regulations,

--clear identification of the types of activities subject to the policy,

--uniform and consistent execution of the policy by all departments and agencies, and

--development of review and appraisal systems that will show how the policy is being carried out.

GAO found confusion, lack of knowledge and understanding, and a reluctance to carry out the program which has not been integrated with the agencies' main decisionmaking processes. Also, existing agency budgetary and accounting systems have not always supported the make-or-buy program.

Federal agencies seldom prepared cost comparisons. They experienced difficulties, such as

--when to prepare them,

--how to prepare them,

--determining the Government's costs,

- determining contractors' costs, and
 - comparability of Federal pay rates with private enterprise.
- Agency make-or-buy decisions were significantly influenced by:
- Personnel ceilings.
 - Personal services contract issues.
 - Federal labor-management relations policies.
 - Legislation relating to obtaining goods or services from other Government agencies.
 - Federal small business policy.
 - Department of Defense policies for assigning military or civilian personnel.
 - Legislation relating to the use of Government arsenals.
 - Federal printing policy.

Because of the foregoing, GAO concludes that there is adequate reason to question the ultimate effectiveness of the additional requirements to Circular A-76 currently proposed by the Office of Management and Budget's Office of Federal Procurement Policy. Priority attention needs to be directed toward resolving basic underlying problems without increasing the program's red tape. For example, it is particularly important that the policies and guidelines contained in Circular A-76 be incorporated into the agencies' main decision-making processes. Without this occurrence, it is likely that the Circular's requirements will not be fully considered at the most important time--that is, while a decision is being made whether to produce in-house or to contract out.

Furthermore, certain proposals will bring no benefits and may increase costs to the Government, such as applying full costing principles in all cases and establishing an appeals procedure.

There is a need for a national policy directing how the Government will acquire its needed goods and services, endorsed and supported by both the legislative and executive branches. The national policy must be stable, understandable, and provide a balance among many conflicting national issues. Until Federal departments and agencies perceive that the policy is a firm national resolve, they will not carry it out effectively. There also is a need to review existing legislation to identify and eliminate potential sources of conflicts and inequities.

AGENCY COMMENTS AND OUR EVALUATION

The Administrator of the Office of Federal Procurement Policy took exception to GAO's position that there is no national policy of reliance on the private sector.

The mere existence of Circular A-76 does not constitute endorsement and support of this policy by both the legislative and executive branches of Government. The results of GAO's review clearly indicated that there was no congressional mandate and that there was uneven acceptance of the policy by the executive departments and agencies.

RECOMMENDATIONS

Office of Federal Procurement Policy

The Administrator should require agency heads to develop a plan for integrating the policies into the mainstream of each agency's management and decisionmaking processes. These plans should be subject to his review and approval.

The Administrator also should undertake studies to establish the extent to which the budgetary and accounting systems will support the make-or-buy program.

The Administrator also should develop the overall policy and requirements for agency heads to institute an independent review process of the A-76 program within each agency.

Office of Management and Budget

The Director should assess the feasibility and practicability of incorporating the objectives of the A-76 program into the budget review process. The Director also should develop a method to systematically review how the agencies carry out the A-76 program.

House Committee on Government Operations and Senate Committee on Governmental Affairs

During their deliberations on the revised A-76 policy, the Committees should consider the findings in this report and the recommendations of the Commission on Government Procurement.

The Congress

The Congress should, through legislation or otherwise:

- Endorse a national policy of reliance on private enterprise for the Government's needed goods and services to the maximum extent feasible, insofar as doing so is consistent with the national interest, within the framework of procurement at reasonable prices.
- Require executive agencies to report on their progress in supporting that national policy.
- Direct reviews of existing legislation relative to the Government make-or-buy decision to identify and eliminate potential sources of conflicts and inequities.

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ABBREVIATIONS

ADP	automatic data processing
CSC	Civil Service Commission
DOD	Department of Defense
FAA	Federal Aviation Administration
GAO	General Accounting Office
GPO	Government Printing Office
GSA	General Services Administration
HEW	Department of Health, Education, and Welfare
HUD	Department of Housing and Urban Development
NASA	National Aeronautics and Space Administration
OFPP	Office of Federal Procurement Policy
OMB	Office of Management and Budget
PMI	Presidential Management Initiatives

CHAPTER 1

INTRODUCTION

PURPOSE OF REPORT

The purpose of this report is to provide the Congress with:

- A history of the evolution and general requirements of Office of Management and Budget Circular A-76.
- An overview of the different opinions on the A-76 program.
- A status report on executive branch implementation of the policy.
- A compendium of major problems, influences, and issues surrounding the program.
- The proposed policy changes and our evaluation.
- Our overall conclusions and recommendations.

This information is also provided to assist appropriate Committees in their forthcoming deliberations on the revised A-76 policy and to present various matters related to the policy and its implementation for the consideration of the Congress.

BACKGROUND

The Office of Federal Procurement Policy (OFPP) was established in the Office of Management and Budget (OMB) by Public Law 93-400, August 30, 1974. (See app. V.) OFPP provides overall procurement policy direction for executive agencies in accordance with applicable laws. One of OFPP's specific functions is:

** * * monitoring and revising policies, regulations, procedures, and forms relating to reliance by the Federal Government on the private sector to provide needed property and services; * * **

Since 1955, the executive branch has maintained a general policy that, with certain exceptions, the Government will rely on the private enterprise system to supply its needs.

As currently stated in OMB Circular A-76, no executive agency will start or continue the operation of a Government commercial or industrial activity except as specifically required by law or as provided for in the Circular.

Whether the Government or the private sector is the best source can easily be determined in many cases. However, billions of dollars worth of requirements fall into an area in which Federal managers must make a decision as to whether to perform in-house or contract out. The Circular provides guidance in making this type of decision. The effectiveness of the executive branch's implementation of this policy has long been a subject of controversy involving the Congress, Federal agencies, private industry, and Federal employee unions.

Because of increased emphasis on contracting out during 1976 and 1977, the Congress expressed concern about how this policy was being implemented. For example, the Congress placed a short-term restriction on contracting out certain work performed by Government personnel in the Department of Defense (DOD) and also required OMB and DOD to jointly conduct a complete and comprehensive review of the criteria used in determining whether commercial or industrial-type functions should be performed by in-house personnel or by private contractors. 1/ The results of that review, dated December 31, 1977, were submitted to the Senate and House Committees on Armed Services.

In addition, the Congress placed a moratorium, for fiscal year 1978, on the conversion of certain base operating support services to commercial contract as well as restricted certain contracting for weapon system engineering and logistical support; intermediate and depot level maintenance; and research, development, test, and evaluation if such conversion resulted in a reduction of Government employees. 2/

The House Committees on Government Operations and on the Budget required various departments and agencies to provide current information on their practices in acquiring commercial products and services within the purview of Circular

1/Section 809, Public Law 95-79, Department of Defense Appropriation Authorization Act, 1978, July 30, 1977.
(See app. V.)

2/Section 852, Public Law 95-111, Department of Defense Appropriation Act, 1978, Sept. 21, 1977. (See app. V.)

A-76. The Committees also requested data on the effects of contracting out on the Federal budget, employment levels within the executive branch, and economic activity in the private sector.

In June 1977, OFPP began a comprehensive review of Circular A-76. On the basis of the results of this review, OFPP's "Proposed Changes in OMB Circular A-76" was published in the Federal Register on November 21, 1977, for public review and comment. (See app. VIII.) Our comments on these proposed changes are included in chapter 8. After analyzing the comments received, OFPP plans to publish a revised draft of the Circular for final review before issuance. 1/

SCOPE OF REVIEW

We made an independent review of the overall effectiveness of the executive agencies' policies and programs for acquiring commercial or industrial products and services for Government use. We evaluated the guidance, procedures, and management controls of the programs. We also examined the agencies' interpretation of the guidelines and reviewed their practices and progress.

During this review, we attempted to avoid unnecessary duplication by reducing coverage of those areas already known to be under study. The specific agency data compiled for the Committees and the public comments OFPP received were made available to us.

We made our review during July through December 1977 at OFPP and nine departments and agencies:

Department of Agriculture
Department of Defense
General Services Administration
Department of Health, Education, and Welfare
Department of Housing and Urban Development
Department of the Interior
National Aeronautics and Space Administration
Department of Transportation
Department of the Treasury

1/On August 22, 1978, OFPP published a proposed revision of Circular A-76 in the Federal Register for public comment. The proposed revision substantially reflects the November 1977 proposed changes, as contained in app. VIII.

These agencies were selected on the basis of their relative significance within the executive branch according to budget outlays, number of employees, and dollar level of procurement activity. (See app. II.) We also visited each agency's intermediate and field level activities that would provide broad and representative reflections of its implementation of the A-76 program. (See app. I.)

We took one or more of the following actions, as appropriate, at each agency location:

- Examined implementing instructions, inventories, reviews, cost comparisons, and/or management support and controls required by the policy guidelines.
- Interviewed agency officials responsible for managing and/or implementing the policy.
- Reviewed applicable documents, studies, and/or internal audit reports.
- Discussed the impact of policy implementation on Federal employees with local officials of Government employee unions.
- Toured the activity.

We also obtained supplemental information through correspondence and/or discussions with individual Members of Congress and other congressional sources, individual contractors and trade associations, and representatives of Government employee unions at the national level.

In examining specific agency determinations of whether to perform in-house or contract out for goods and services, we did not evaluate the need for those goods and services.

CHAPTER 2

OMB CIRCULAR A-76--ITS EVOLUTION,

GENERAL REQUIREMENTS, AND ENFORCEABILITY

HISTORICAL PERSPECTIVE

Government competition with private enterprise has long been a controversial issue. For over 40 years, special and standing congressional committees have conducted many studies of the extent that the Federal Government has engaged in commercial or industrial activities in competition with private enterprise.

In 1932 the first extensive study was conducted by a special House committee, which found several commercial or industrial activities created expressly for World War I needs still in existence. Although the committee recommended termination of many of these activities in 1933, the Government expanded many of them and established new ones.

After World War II, congressional committees again directed their attention to commercial or industrial activities being performed by the Government as carryovers from the war years. Although military operations were their initial concern, studies were soon underway on commercial activities of some civilian agencies. The general finding of these studies was that the Government was involved in many unnecessary and nonessential competitive activities and that efforts should be made to discontinue any activity that the private sector could provide with reasonable convenience and at fair and reasonable prices.

In September 1952, DOD issued the first in a long series of directives, detailing policy and instructions for commercial or industrial facilities operated by the military departments. The directive stated a policy against retaining and operating such facilities where required needs could be effectively and economically met by existing facilities of any other military department or by private commercial facilities; requiring the military departments to survey and justify their continuation; and restricting the establishment of new facilities.

The Congress, in establishing the Commission on Organization of the Executive Branch of the Government, ^{1/} stated that it was the policy of the Congress to eliminate nonessential services, functions, and activities which were competitive with private enterprise.

^{1/}Public Law 83-108, July 10, 1953.

In 1955 this Commission issued a series of reports which contained many recommendations designed to eliminate or substantially decrease those Government activities which were competing with private enterprise and urged the use of private contract services. One of these reports ^{1/} points out several reasons why the Government should not do anything that the people are able to do for themselves. The reasons given were:

"It has been demonstrated over the years that the private enterprise system has been the best way to organize and develop the economic resources of our Nation. This system has resulted in the maximum production of goods and services with the minimum effort, * * *.

"* * * To the extent that Government engages in business enterprises, the base for taxation is reduced and larger taxes must be levied on individuals and industry. * * *

"* * * In private industry the initiative of individuals has been developed to a greater extent than in governmental activities. In private industry, it is possible to provide more adequate incentives in many instances and thus encourage new ideas and improvements, still maintaining competitive costs.

"* * * political control of what are essentially economic activities does not produce the effective results in Government business enterprises that are produced by the competitive and profit motives of private industry."

President Eisenhower's budget message of January 21, 1954, was apparently the first public statement of executive branch policy on Government competition with private enterprise. It stated:

"This budget marks the beginning of a movement to shift * * * to private enterprise Federal activities which can be more appropriately and more efficiently carried on in that way."

^{1/} Subcommittee Report on Business Enterprises of the Department of Defense, June 1955.

After months of study, the Bureau of the Budget (the predecessor of OMB) initiated a program in January 1955 to curtail some of the Federal Government's commercial or industrial activities.

Over the years, many bills have been introduced to legislate a Federal policy concerning Government operations that compete with private enterprise, but none have been passed. The executive branch has consistently opposed the enactment of such a measure on the grounds that it has already adopted a policy and that the President and agency heads have authority to administratively implement such a policy.

The executive branch policy has evolved through four directives--three bulletins and one circular. ^{1/} Although the basic policy of relying on the private sector to supply the Government's needs has remained the same, the guidelines and implementing procedures have been modified. Following are examples of principal changes.

- The policy emphasis was originally directed toward eliminating or preventing Government commercial activities. It was later recognized that, under certain circumstances, there might be factors which made it advisable or necessary for a Government agency to provide products or services for its own use.
- Under the initial phases of the program, procurement from commercial sources was strongly advocated without a comparison of relative costs unless the agency head concluded that the product or service could not be purchased on a competitive basis and at a reasonable price. This was later modified to recognize that, in some instances, commercial sources should be subjected to competitive disciplines, including the possibility of Government production for its own use.

^{1/}Bulletin No. 55-4, Jan. 15, 1955.
Bulletin No. 57-7, Feb. 5, 1957.
Bulletin No. 60-2, Sept. 21, 1959.
Circular No. A-76, Mar. 3, 1966:

Transmittal Memorandum No. 1, Aug. 30, 1967.
Transmittal Memorandum No. 2, Oct. 18, 1976.
Transmittal Memorandum No. 3, June 13, 1977.

--In the early phases of the program, the agencies were required to submit inventory data and detailed justifications to OMB. Since it was believed that the principal responsibility for the policy must rest with the agencies, the current requirements only provide for submission of implementing instructions.

A more detailed summary of the evolution of the A-76 policy as stated in the three bulletins and the Circular is included as appendix III.

CIRCULAR A-76

Policy and definitions

Circular A-76 restates the policy in the previous bulletins of relying on the private enterprise system to supply the Government's needs, unless it is in the national interest for the Government to directly provide its needed products and services. A Government commercial or industrial activity is defined as one which is operated and managed by an executive agency and which provides, for the Government's own use, a product or service that is obtainable from a private source. The term does not include a Government-owned, contractor-operated activity. Circular A-76 directs agencies not to initiate a new activity or to continue one except as specifically required by law or as provided for in the Circular.

Circular A-76 provides a sharper distinction between new starts and existing activities by establishing separate policy guidelines for newly established activities involving additional capital investment of \$25,000 or more or additional annual production costs of \$50,000 or more. A reactivation, expansion, modernization, or replacement of an activity involving additional capital investment of \$50,000 or more, or additional annual production costs of \$100,000 or more is also considered to be a new start. Consolidations of activities are not considered new starts unless the overall amount of products or services is increased.

Administering the policy

Agencies are required to compile and maintain an inventory of their commercial or industrial activities having an annual output of products or services of \$50,000 or more, or having a capital investment of \$25,000 or more. Activities in the inventory are to be systematically reviewed at least once every 3 years and a report prepared of each review.

However, the agency head or his designee may exempt designated activities if it is decided that such reviews are not warranted in specific instances. The primary thrust of the Circular is identifying and systematically reviewing commercial or industrial activities performed by the Government. There is no like provision for reviewing contracted activities.

Exceptions to contracting out

The Circular outlines the following circumstances under which the Government may provide a commercial or industrial product or service for its own use:

- Procurement of a product or service from a commercial source would disrupt or materially delay an agency's program.
- It is necessary for the Government to conduct a commercial or industrial activity for purposes of combat support or for individual and unit retraining of military personnel or to maintain or strengthen mobilization readiness.
- A satisfactory commercial source is not available and cannot be developed in time to provide a product or service when it is needed.
- The product or service is available from another Federal agency.
- Procurement of the product or service from a commercial source will result in higher cost to the Government.

However, the Circular also states that

- the fact that a commercial or industrial activity is classified or is related to an agency's basic program is not an adequate reason for starting or continuing a Government activity;
- urgency of a requirement is not an adequate reason unless there is evidence that commercial sources are not able and the Government is able to provide a product or service when needed;
- the fact that a product or service is being provided to another agency does not, by itself, justify a Government commercial or industrial activity; and

--a decision to rely on a Government activity for reasons involving relative costs must be supported by a comparative cost analysis.

Cost comparisons

The Circular provides that, unless there is reason to believe that inadequate competition or other factors are causing commercial prices to be unreasonable, commercial sources should be relied upon, without a cost study, for products or services costing less than \$50,000 per year. Cost studies must be made in those cases where there is reason to believe that savings can be realized by the Government providing for its own needs. The Commission on Government Procurement, which studied the policy and issued its final report in 1972, recommended a revised threshold of \$100,000 per year. See chapter 4 for a further discussion of the Commission's activities.

To justify a new start or an existing activity on the basis of lower cost, savings must be sufficient to outweigh the uncertainties and risks of unanticipated losses involved in Government activities. Although no precise standard is prescribed, a new start is not to be approved unless the cost of the Government activity is at least 10 percent less than costs of obtaining the product or service from commercial sources. The amount of the differential can vary with the circumstances, such as the amount of capital investment, possibilities of obsolescence, and the reliability of cost estimates and future needs for the products or services. In the case of new starts, the Commission on Government Procurement recommended a cost differential of a minimum of 10 percent up to a maximum of 25 percent. (See ch. 4.)

In the case of existing activities, no specific guideline is prescribed for deciding whether savings are sufficient to justify continuing the activity. The savings must be sufficient to outweigh the disadvantages of Government commercial or industrial activities.

Approvals and implementation

Decisions to establish new starts or continue existing activities must be approved by an Assistant Secretary, or official of equivalent rank, on the basis of factual justifications. These justifications, however, are not required to be submitted to OMB, except as a budget request if a new start is being established which requires statutory authority and funds for construction.

Each agency is responsible for making the provisions of the Circular effective by issuing appropriate implementing instructions and by providing adequate management support and procedures for review and followup to assure that the instructions are placed in effect.

Amendments to Circular A-76

Transmittal Memorandum No. 2, issued on October 18, 1976, provided retirement and insurance costing factors for civilian personnel services. It also emphasized the fact that the Circular does not require that a cost study be made in every case to support a decision complying with the policy preference for relying on commercial sources. It indicated that a cost analysis is not needed in circumstances where the Government's economic interests would be protected, such as the existence of a competitive market, unless the agency has some unique economic advantage.

Transmittal Memorandum No. 3, issued on June 13, 1977, temporarily reduced the retirement cost factor introduced in Memorandum No. 2, pending completion of the comprehensive review of the Circular announced by OMB in June 1977.

ENFORCEABILITY

Insofar as executive agencies are concerned, Circular A-76 is binding upon them for policy purposes. With respect to contractors or other parties, however, it is only a matter of executive policy not establishing legal rights and responsibilities. We have held under our bid protest authority that, with no legal basis for objection, bid protests based on noncompliance with A-76 provisions are matters for resolution within the executive branch. (See app. VI.)

The Circular may be evolving into, at least in part, an enforceable regulation that can be used by affected parties to challenge decisions made thereunder.

Generally, there are two kinds of regulatory materials: (1) those that implement, interpret, or prescribe law or policy, usually termed "legislative" regulations and (2) those concerning organization procedures, documentation, practices or, generally speaking, management functions, usually termed "internal" or "housekeeping" regulations. A regulation of the latter type does not provide a legal basis on which a party may rely to enforce its provisions in the courts.

If a revised Circular A-76 is promulgated by OFPP pursuant to Public Law 93-400, the parts that affect legal rights and responsibilities of agencies, contractors, Federal employees, and the general public would be legally binding. For example, those provisions dealing with cost comparisons could have the force and effect of law and provide a legal basis for requiring accurate cost comparisons. Accordingly, future agency decisions made under the Circular, especially those based on a cost comparison, should be thoroughly reviewed and adequately documented to avoid unnecessary delay and expense if affected parties lodge challenges.

CHAPTER 3

VARYING OPINIONS ON THE PROGRAM

In its review, the Office of Federal Procurement Policy solicited comments on Circular A-76 and its application from Members of Congress, executive agencies, Federal employee unions, private industry, and the general public. As part of our review, we also solicited comments and suggestions from Federal employee unions and the private sector through its trade and industry associations.

We received comments from over 25 different sources and obtained copies of over 100 responses OFPP received. Comments and suggestions expressed in these responses, as well as those in recent congressional hearings, identified a variety of issues and a wide range of opinions concerning the Circular.

The many comments clearly indicate the broad scope of the problems and issues that are present in the implementation of Circular A-76. In general, the policy of relying on the private sector was not challenged, but a need clearly exists to clarify its relationship to other important considerations, such as

- the best interests of the Government and the taxpayer;
- the amount of flexibility agencies need in controlling their missions and operations;
- the functions that should be considered governmental in nature;
- the role of the Government as an employer, in general, and as a model employer of women, minorities, veterans, and the handicapped; and
- the significance of the roles assigned to cost comparisons and personnel ceilings in the operation of Government activities.

The responses have been grouped into four categories: congressional, executive agency, private industry, and Federal employee union. A brief synopsis of each group's comments is below. A sampling of quotations from various respondents is included as appendix IV.

CONGRESSIONAL

The replies from congressional sources generally reflect critical concern about the present structure and implementation of the policy. Although some express support for contracting out, others believe it is in the public interest to use Government employees to supply needed goods and services. Others cite a need for efficient and economical operation of Government without preference for either sector. Generally speaking, Committee Chairmen expressed concern about the basis for contracting, rising costs, operational control remaining in the Government, inherent governmental functions, and economy in Government.

Opinions expressed by individual Members of Congress were wide and diverse. Concern was voiced over many specific problem areas, such as: (1) the lack of monitoring agency compliance by OMB, (2) the need for better public-private wage comparability, (3) the predatory nature of cost comparisons through which the group with the lowest labor costs is given preference, (4) the need for the Government's in-house technology base to possess a needed vitality and competence, (5) the need to make periodic reviews of contracted activities to test their cost effectiveness and efficiency, (6) the continuing controversy over support service contracting versus civil service employment, (7) the use of personnel ceilings to control the number of in-house personnel but not contractor personnel, (8) the loss of agency control over contracted activities, and (9) the need to consider the potential adverse effects of contracting: that is, higher costs, personnel confusion, poorer management, and deterioration of services.

EXECUTIVE AGENCY

Most of the Federal departments and agencies agreed with the policy's basic intent and its application to their operations. However, they expressed great concern for such matters as the need to clarify the policy, difficulty in administration, management flexibility, operational stability, effects on personnel, economy of operation, and conflicts with other policies and regulations. Much concern was also expressed with the need to increase the dollar thresholds for new starts, reactivations and expansions, and inclusions in the inventory. Most agencies cited a need to make accurate cost analyses. They called for a simplified cost analysis formula and specific definitions for cost elements and cost guidelines.

PRIVATE INDUSTRY

Private industry is very concerned about the A-76 policy, and hence, most comments received were from this sector. Many critical industry comments concern OFPP's action to reduce the Federal retirement cost factor to 14.1 percent of payroll. In addition, industry expressed concern about holding down the size of Government, the lack of reliance on a more efficient private sector, the lack of past enforcement, and inaccurate cost comparisons.

Some respondents argued that private industry attains a higher level of productivity than the public sector. They emphasized the flexibility of contracts because they can be stopped or changed on short notice. Many believe that the exceptions to contracting are increasingly being used to circumvent the basic intent of the policy.

FEDERAL EMPLOYEE UNION

Many comments were received from the major employee organizations, and all were critical of the Circular and its effects on Federal employees.

A common theme of the comments was the lack of consideration for the potentially displaced Federal employees. The agencies should be required to perform an accurate cost comparison (on an incremental basis) to justify converting from in-house to contractor performance. Also, a factor for the total Social Security costs should be added to the contractor's costs. They also believe that there should be a range of retirement cost factors rather than one average factor for in-house personnel.

These organizations cited several disadvantages to contracting, as follows: (1) Government accountability and control over performance is diminished, (2) it is very difficult to convert from contract to in-house performance, (3) contracting indirectly adds employees to the Government payroll that are not accounted for, (4) the potential creation of illegal employer-employee relationships, (5) contract prices are not as economical in the long range as they are in the short range, and (6) there is evidence of poor quality work in many cases. In-house employment ceilings were cited as an unnecessary cause of contracting out.

As corrective measures, the employee organizations recommended (1) a list of Government functions that are inappropriate for contracting, (2) periodic reviews of contract costs, and (3) integrating the Circular's decisionmaking processes into the budget process.

CHAPTER 4

EXECUTIVE DEPARTMENT OVERSIGHT

Over the years, OMB has been responsible for promulgating various policy pronouncements relating to obtaining needed commercial or industrial products and services for Government use. Periodic status reports from the agencies on their implementation of the policies indicated that most agencies were not terminating or curtailing their commercial or industrial activities as intended.

Neither OMB nor its predecessor, the Bureau of the Budget, has taken an active oversight role in the program. OMB was responsible for reviewing inventory and evaluation reports submitted by the agencies, but full responsibility for their compliance with policy directives was assigned to the head of the agencies. The periodic reviews or spot checks of the agencies' implementation undertaken by OMB over the years were not adequately staffed.

COMMISSION ON GOVERNMENT PROCUREMENT

When Circular A-76 was revised in 1967, OMB intended to keep its provisions under continuing review and anticipated that further changes might be needed.

OMB suspended further changes in the Circular in 1971 when it was announced that the Commission on Government Procurement would be establishing a study group to conduct an extensive review of the policy.

The Commission was created by Public Law 91-129 in November 1969 to study and recommend to the Congress methods "to promote the economy, efficiency, and effectiveness" of procurement by the executive branch of the Federal Government. The statute provided for a bipartisan, 12-member body.

The Commission, in its December 1972 final report, found that the policy was valid and necessary but that it has never been properly implemented by the executive branch. Accordingly, the Commission stated:

"We believe that a new approach and stronger implementation of the program is needed to achieve consistent and timely Government-wide application of the policies set forth in Circular A-76."

The recommendations contained in the Commission's final report on the Government's make-or-buy decision were as follows:

"22. Provide through legislation that it is national policy to rely on private enterprise for needed goods and services, to the maximum extent feasible, within the framework of procurement at reasonable prices.

"23. Revise Circular A-76 to provide that Federal agencies should rely on commercial source for goods and services expected to cost less than \$10,000 per year, without making cost comparisons, provided that adequate competition and reasonable prices can be obtained.

"24. Base cost comparisons on: (a) Fully-allocated costs if the work concerned represents a significant element in the total workload of the activity in question, or if discontinuance of an ongoing operation will result in a significant decrease in indirect costs. (b) An incremental basis if the work is not a significant portion of the total workload of an organization, or if it is a significant portion in which the Government has already provided a substantial investment.

"25. Increase the Circular A-76 threshold for new starts to \$100,000 for either new capital investment or annual operating cost.

"26. Increase the minimum cost differential for new starts to justify performing work in-house from the 10 percent presently prescribed to a maximum of 25 percent. (Of this figure, 10 percent would be a fixed margin in support of the general policy of reliance on private enterprise. A flexible margin of up to 15 percent would be added to cover a judgment as to the possibilities of obsolescence of new or additional capital investment; uncertainties regarding maintenance and production cost, prices, and future Government requirements; and the amount of State and local taxes foregone.) New starts which require little or no capital investment would possibly justify only a 5-percent flexible margin, while new starts which require a substantial capital investment would justify a 15-percent flexible margin, especially if the new starts were high-risk ventures."

Four of the Commissioners did not support the concept presented as the Commission position. Although they supported Recommendation 22, they would have provided for

specific guidelines for implementing the policy and believed that cost comparisons should not be a basis for an exception to the policy of relying on private enterprise.

OMB has never challenged or refuted the Commission's conclusions or recommendations but, nevertheless, has not implemented them as of September 1978. For a further discussion of the Commission's recommendations, a comparison of these recommendations with the executive branch proposals, and a discussion of the differences, see our report entitled "Legislative Recommendations of the Commission on Government Procurement: 5 Years Later," PSAD-78-100, July 31, 1978.

OFFICE OF FEDERAL PROCUREMENT POLICY

On the basis of the Commission's primary overall recommendation, the Congress established the Office of Federal Procurement Policy. 1/ One of OFPP's priority programs has been improving the implementation of Circular A-76. OFPP reported that the results of an inventory of commercial or industrial activities submitted by the agencies as of June 30, 1975, were inaccurate.

An OFPP review of agency implementation indicated that in-house activities were being justified on the basis of cost studies that did not reflect the full cost of Government performance. The Circular's cost comparison guidelines required the inclusion of "the full cost to the Government of retirement systems, calculated on a normal cost basis," but no specific factors had ever been provided to the agencies.

OFPP took steps to provide specific factors for making more accurate cost comparisons. In this connection, the Civil Service Commission developed a computer model that estimated the retirement cost at 24.7 percent of payroll. This was provided to all agencies on October 18, 1976, along with standard factors for health and life insurance. However, OMB suspended the use of this retirement factor on June 13, 1977, because the validity of the computation had been questioned. An interim factor of 14.1 percent of payroll, representing current total payments to employee annuitants, reduced by current employee contributions, expressed as a percentage of current payroll, was to be used instead.

1/Public Law 93-400, Aug. 30, 1974.

Based on its current review, OFPP is proposing to issue a new cost factor of 20.4 percent. (See app. VIII.) Our comments on this proposal are included in chapter 8.

To complement the OFPP efforts, OMB issued a Budget Procedures Memorandum in August 1976 requiring its program divisions staff to review agency justifications for in-house work approved under criteria other than cost. Attention was to be given to new starts to ensure that they received the special review and approval required.

PRESIDENTIAL MANAGEMENT INITIATIVES PROGRAM AND CIRCULAR A-113

In July 1976 President Ford initiated his Presidential Management Initiatives (PMI) program, with the goal of improving executive branch management. One part of the program was to further the objective of reliance on the private sector according to Circular A-76. Each agency was expected to identify at least five in-house functions that were to be reviewed for the potential of increasing the agency's reliance on the private sector.

On November 17, 1976, OMB issued Circular A-113, which prescribed general guidance and responsibilities for the preparation, submission, and execution of management plans by Federal agencies. Each management plan was to briefly describe the actions, taken and proposed, with respect to Circular A-76. This description was to focus on (1) the systems to assure A-76 compliance, (2) functions that were contracted out in the reporting year--and a statement of realized and expected savings, (3) functions that underwent A-76 review and were retained in-house--together with the reasons therefore, and (4) functions scheduled for review during the current and upcoming budget year. At quarterly intervals, each agency was to submit a statement to OMB describing the progress and problems in carrying out its management plan.

The PMI program and Circular A-113 were not well received nor understood by the agencies, especially the requirement to identify five in-house activities for potential contracting out. Little progress was made in converting activities from in-house operations to the private sector.

On March 3, 1977, OMB suspended the reporting requirements of Circular A-113 and announced that it would undertake a comprehensive review of current management improvement policies in the various circulars.

On June 13, 1977, OMB dropped the quota requirement established under the PMI program and later incorporated in Circular A-113 and also announced its comprehensive review of Circular A-76. The review was to be planned and carried out in keeping with the following principles:

- Contracting out should not include policymaking and other inappropriate functions.
- Contracting out procedures must be consistent, fair, and equitable, with primary emphasis on stability and predictability for the workers.
- Quotas and other arbitrary approaches are not acceptable methods for implementing the policy.

The task group was to include in its review:

- Functions which are necessary and appropriate exceptions to contracting out and criteria for assessment.
- Cost comparison methodologies and factors used in such comparisons.
- Agency review cycles for transferring functions to and from in-house and contracted performance as well as appeal procedures.

Comments were requested from Federal departments and agencies, Members of Congress, Federal employee unions, business organizations, and the general public (through Federal Register notice, June 15, 1977).

On July 20, 1977, OFPP requested the agencies to submit the following data: (1) a copy of department and agency implementing instructions, (2) a copy of any implementing guidance issued by subordinate elements, (3) various summary information on the inventory of commercial or industrial activities, (4) the number of ongoing activities reviewed since July 1, 1975, listing the results thereof, and (5) the activities scheduled for review during the remainder of fiscal year 1977 and during fiscal year 1978. The results of the request for inventory data are shown in the following chart.

Summary of Agency A-76 Implementation Reports, as of 7/1/77
Commercial or Industrial Activities Operated In-House

Agency	No. of commercial or industrial activities	Capital investment (\$ millions)	Annual operating cost (\$ millions)	Activities terminated since July 1, 1975	Activities approved					Not reviewed	Exempted	New starts since July 1, 1975	
					a	b	c	d	e			Approved	Disapproved
Agriculture*	68	\$ 53.4	\$ 119.9	0	38	17	5	8	0	10	0	4	0
Commerce	99	57.1	82.5	7	54	5	11	0	23	4	0	0	1
Defense*	8,957	10,516.5	7,108.4	373	2,105	2,157	1,255	1	964	2,038	20	79	38
HEW*	58	15.5	32.9	1	37	0	0	0	12	0	23	0	2
HUD*	5	33.9	10.8	0	5	0	0	0	0	0	0	0	2
Interior*	369	95.4	33.0	1	128	2	17	5	123	15	5	43	1
Justice	92	33.9	63.3	0	0	0	0	0	0	92	0	1	0
Labor	3	.2	8.3	0	2	0	0	0	0	0	1	3	0
State	4	-	1.0	0	0	0	0	0	0	0	4	0	0
Transportation*	25	49.5	61.8	0	1	0	4	0	2	10	18	1	0
Treasury*	52	15.0	26.8	0	50	0	0	0	0	31	0	0	0
GSA*	7,692	24.2	504.6	25	230	0	0	0	34	7,428	0	1	0
NASA*	94	116.6	85.0	0	92	0	2	1	0	0	5	0	0
VA	3,527	456.9	650.7	0	0	0	0	0	0	3,527	0	2	0
FRDA	10	67.1	49.4	1	0	0	0	0	0	10	0	0	0
EPA	43	18.0	10.6	0	0	0	0	0	0	0	2	0	0
USIA	3	4.8	2.2	0	1	0	1	0	1	43	0	0	0
CSC	3	4.3	11.3	0	2	0	0	0	0	0	3	2	0
CPSC	5	2.6	1.7	0	5	0	0	0	0	0	0	1	0
TVA	21	1,436.0	145.0	0	16	0	0	0	0	10	7	0	0
Total	21,130	\$12,971.9	\$9,019.2	408	2,764	2,181	1,304	15	1,168	13,222	91	137	44

a/Use of a commercial source would disrupt or delay an agency program.

b/Necessary for military readiness.

c/No commercial source available.

d/Obtaining product or service from another Federal agency.

e/More economical than commercial performance.

*Agencies covered in our review.

(Note: All lines and columns do not necessarily cross-add due to the use of multiple categories and other factors.)

Source: Office of Federal Procurement Policy.

When the review was completed, OFPP proposed many actions to revise the Circular and its implementing guidelines. These actions are listed in appendix VIII. Our comments are included in chapter 8. 1/

OFPP issued instructions to the heads of executive departments and establishments on February 7, 1978, entitled "Review Schedules for Commercial and Industrial Activities Under OMB Circular A-76." Several steps were requested of agencies to start advance planning for issuing a revised Circular A-76. These plans were requested to be submitted to OFPP by March 15, 1978. The plans were to involve:

1. Reviewing agency inventory to ensure that it is complete.
2. Identifying service contracts over \$100,000 that could be performed in-house.
3. Developing a schedule for triennial reviews of inventory and contracts as they expire.
4. Establishing a central point of responsibility and authority at the agency level and within subordinate organizations as necessary.
5. Developing an appeals procedure.

On March 22, 1978, the Administrator, OFPP, established a Cost Handbook Task Group. Its objective is to develop a comprehensive handbook for making comparative cost analyses as required by Circular A-76.

1/See footnote on p. 3.

CHAPTER 5

IMPLEMENTATION PROBLEMS

Agency compliance with the policies stated in Circular A-76 has been inconsistent and relatively ineffective. Following are factors contributing to this situation.

--Inadequate management systems:

- A-76 is left outside the main decisionmaking process.
- Inadequate delegation of authority.
- Lack of management emphasis.
- Accounting and budgeting systems have not always supported the A-76 program.
- Lack of adequate agency instructions.
- Inconsistent definitions of subject activities.
- Required reviews not performed in earnest.
- Inadequate support for retention in-house.

--Incomplete and inaccurate inventories.

--Lack of review and followup.

OUR PRIOR REPORTS

Since January 1, 1972, we have issued at least 90 reports which directly or indirectly concern executive branch implementation of the A-76 policy. (See app. VII.) Our reports cover many types of support activities, such as airfield marking; aircraft operations; automatic data processing; custodial, food, or guard services; equipment fabrication; maintenance of aircraft, family housing, equipment, and vehicles; cargo handling; photography; printing; storage of household goods; supply; telephone service; and temporary lodging.

The reports generally demonstrate the need for effectively implementing the A-76 policy by OMB and executive departments and agencies. They do not support a broad conclusion that one method of performance (Government or private sector) is always preferred over the other. The circumstances of each situation require individual analysis.

Although most of these reports concern DOD activities, this is probably the result of the relative size and visibility of its operations. It is important to note that DOD has devoted considerably more time and resources over the years to implementing the policy than most of the civilian agencies.

Three reports are of special importance because they represent comprehensive reviews of the administration of the A-76 program. 1/ We criticized agency management of the A-76 programs with respect to:

- Unsupported justifications for continued in-house performance of many activities.
- Significant in-house functions that were not periodically reviewed for possible contracting out.
- Required reviews that were far behind schedule.
- Areas of considerable potential savings that were not being reviewed.
- Incomplete and inaccurate inventories.
- Failure to report new starts.
- Unreliable contract cost estimates.
- Internal audit groups not reviewing the civil agencies' implementation.
- The civil agencies' implementing instructions being restatements or abbreviated versions of the Circular and not providing sufficient guidance.

Our current work shows that many implementation problems identified in the past have not been corrected and continue to exist. A primary reason for this poor performance is that the executive agencies' A-76 programs experience a lack of management emphasis and support. Effective management control systems are needed to properly implement the policy. Agencies consider Circular A-76 as being outside the mainstream of their planning and decisionmaking processes.

1/"Better Controls Needed in Reviewing Selection of In-House or Contract Performance of Support Activities," (Department of Defense, B-158685, Mar. 17, 1972).

"Better Management Needed in Civil Agencies Over Selection of In-House or Contract Performance of Support Activities," (B-158685, July 31, 1973).

"How to Improve Procedures for Deciding Between Contractor and In-House Military Base Support Services," (LCD-76-347, Mar. 28, 1977).

AGENCY MANAGEMENT SYSTEM

Responsibility for implementing Circular A-76 within the agencies is delegated to procurement offices, management analyses groups, or material readiness activities, which are removed from the actual decisionmaking to perform in-house or contract out. These decisions are made by program managers who are not responsible for successfully implementing the Circular. Therefore, Circular A-76 is left outside the decisionmaking mainstream or, at best, it is interjected after most decisions have been made to contract out or retain in-house.

The agencies manage their activities under their traditional guidelines (either formal or informal) that do not necessarily complement the guidelines contained in Circular A-76. Even DOD, whose implementation program has been the most extensive of all the agencies, does not exactly follow the guidelines in the Circular. The agencies' internal decisionmaking systems have been developed to meet different needs and have not been adapted to reflect the policies in the Circular.

Management delegation

The head of each agency or his designee is primarily responsible for implementing the Circular's requirements. In the civil agencies, the Assistant Secretary of Administration is responsible for implementing the policy and ensuring that its provisions are followed throughout the organization. Within DOD, the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) ensures that the policy is carried out by the military departments and the defense agencies. Generally, designated officials at the subordinate levels are authorized to make decisions to continue, discontinue, or curtail commercial or industrial activities within their departments or agencies. Starting new activities, however, requires approval at the Assistant Secretary level.

The lines of authority at the operating levels are not clearly defined. Many people at subordinate levels were not familiar with the Circular's provisions or with their responsibilities. A majority of those contacted were either assigned only to respond to various requests (from their headquarters, OMB and/or the Congress), or had been in the position for years (on paper only) but without specific reporting responsibilities. Examples of these situations occurred within the following departments and agencies:

Agriculture:

Agricultural Research Service
Soil Conservation Service
Forest Service

Health, Education, and Welfare (HEW):

Public Health Service Hospital
Social Security Administration

Housing and Urban Development (HUD):

Chicago Regional Office

Interior:

National Park Service
Geological Survey

**National Aeronautics and Space
Administration (NASA):**

Space and Research Centers

Treasury:

Customs Service
Internal Revenue Service
Alcohol, Tobacco and Firearms

For example, the responsibilities of the Public Health Service Hospital in San Francisco concerning Circular A-76 have not filtered down from either headquarters or other appropriate management levels of HEW. The hospital has made little effort to identify, or assess the feasibility of contracting, any commercial or industrial activities. There appears to be confusion within HEW as to who is responsible for implementing the Circular as far as its hospitals are concerned.

Commercial or industrial activities are centrally inventoried and reviewed on a nationwide basis in the Department of Agriculture's Forest Service. We could not perceive any management structure for implementing the Circular within its Rocky Mountain Region. One regional official was designated as a contact point but has never been contacted by anyone. Regional officials were unable to identify any guidance, inventory reports, documented reviews, or cost studies on this subject.

Although the lines of authority within DOD are more clearly defined than in most other agencies, we found instances where agency personnel, responsible for the Circular at the installation level, had a vested interest in continuing commercial or industrial activities. The policy coordinators

at the Army's Fort Carson, for example, were located in the Directorate of Industrial Operations, which manages the majority of Fort Carson's activities. Their objectivity is open to question because the conversion of any activity from Government to contract performance, in accordance with the policy, would reduce the scope of the Directorate's operations.

Lack of management emphasis

There is not enough management emphasis placed on the requirements of the Circular to ensure its successful implementation. Within many agencies, there is lack of adequate management structure for implementing the Circular, which we believe is essential for proper control of any program. In some cases, the program appears to be controlled from the headquarters level, with little or no input from field offices. Field office personnel assigned to the program have few or no responsibilities except to fulfill requests for information.

The management of each agency has the responsibility to coordinate and control all operations and to make all appropriate efforts needed to ensure that satisfactory results are being obtained. To ensure the proper implementation of the Circular, qualified employees must be assigned to the program, their duties and responsibilities must be clearly defined, and an effective followup system must be used. Decentralization of some inventory, review, and reporting tasks to the operating activities may be necessary to obtain more visibility, awareness, and interest in the overall program. Recognizing the need to channel, in the desired direction, the efforts of personnel assigned to perform the work is important in establishing and operating a management control system. Such a system must have a clear and simple structure and should be designed to obtain maximum effectiveness at minimum cost.

Accounting and budgeting systems

Agencies have done little to relate their Circular A-76 programs with their accounting and budgeting systems. Whenever possible, agency accounting systems should be used for more accurate monitoring of the costs of commercial or industrial type activities. Integration with agencies' budgeting systems is very important because resource allocation decisions are made as a part of each process.

Our 1977 report, 1/ stated that DOD's classification of commercial or industrial activities does not conform to the ways that the military services account for their costs or manage their installations. As a result, the services are unable either to identify many activities for contracting consideration or to accurately determine the costs of reported activities. DOD has identified 101 categories of activities on which each military service is required to review and report. The services have attempted to relate their activities with the DOD categories, but confusion and conflict exists.

For example, of the 978 Air Force functional codes, only about 200 could be related with 66 DOD categories. For some types of DOD activities, there were no corresponding Air Force codes and for some Air Force codes there were no corresponding DOD codes. Because the Air Force uses the DOD codes to identify areas that will be reviewed, some Air Force activities were excluded from the DOD inventory and were not reviewed.

The lack of proper relationship between the Navy's cost accounting system and its A-76 program caused similar problems. The A-76 coordinator at the Navy Public Works Center, Norfolk, Virginia, stated that because the cost accounting system and the A-76 program were developed for separate purposes, the sets of cost codes for each do not interface well; therefore, the A-76 cost data is often inaccurate.

The budget is a blueprint for operating the Government in the year ahead. Budget formulation begins almost 2 years before it is actually implemented. Decisions to perform work in-house or on a contract basis are comparable to other decisions agencies should make in budgeting their resources to ensure economical, efficient, and effective operations. By integrating the A-76 program into the budget process, agencies can bring considerations as to whether to rely on private enterprise into the mainstream of other resource allocation decisions.

In its November 1977 audit report, the Naval Audit Service recognized the need to interface new start submissions with the budget formulation process to ensure advance approval at the requisite level.

1/"How to Improve Procedures for Deciding Between Contractor and In-House Military Base Support Services," (LCD-76-347, Mar. 28, 1977).

The Federal Personnel Management Project of the President's Reorganization Project issued its final staff report in December 1977 with the following recommendation concerning contracting out:

"RECOMMENDATION NO. 37

Require the Office of Management and Budget to update its contracting out policy, specifying the conditions under which the contracting out option should be considered, and the criteria (taking into account all procurement costs and problems) to be applied in making procurement decisions. Coordinate these revisions with the Office of Personnel Management and major agencies. As part of the annual budget process, review contracting practices to assure the agency is neither contracting out work at the expense of effective, economic Federal employment, nor avoiding it when contracting would be cost effective."

To be successful, we believe that the Circular should be made a part of each agency's decisionmaking process. By relating their A-76 programs with their accounting and budgeting systems, the agencies can more accurately monitor their activities and can more readily consider the Circular's provisions when making resource allocation decisions. These actions could lead to additional assurance that agency operations are economical, efficient, and effective.

IMPLEMENTING INSTRUCTIONS

Circular A-76 states that each agency is responsible for making the provisions of the Circular effective by issuing appropriate implementing instructions. During our review, the General Services Administration (GSA), HUD, and Interior did not have implementing instructions currently in effect. We noted that over half of the agency locations visited did not have the appropriate implementing instructions available.

Many instructions were either restatements or abbreviated versions of Circular A-76. While it is important to quote the Circular on some points, such as definitions, one value of an agency instruction is the opportunity to take the policy and general guidelines and present them in more specific procedural terms related to the agency organization and mission.

DOD and each military service have issued implementing instructions. Some major commands of the military services and their subordinate installations, such as the Army's Forces

Command and one of its installations, Fort Carson, had issued supplemental implementing instructions. However, responsible personnel at the DOD installations reviewed complained about the instructions. One policy coordinator considered most of the instructions obsolete or confusing due to continuous policy and procedural changes. Other officials contended that the instructions were vague, subjective, and required a great deal of interpretation. Although these problems have been recognized, revisions were being delayed in view of OFPP's proposed changes to the Circular.

As a policy document, Circular A-76 only offers general guidance to executive agencies concerning commercial or industrial activities. The Circular was intended to be general in nature because of differences in the agencies' internal structures and the many different situations involving commercial or industrial activities. Thus, to ensure proper implementation of the Circular, each agency should develop and issue instructions that are specifically tailored to its specific program and operating requirements. In addition, the instructions should be clear, concise, and easily workable to facilitate actions at all levels of management.

COMMERCIAL OR INDUSTRIAL ACTIVITIES

Circular A-76 currently defines a Government commercial or industrial activity as one which is operated and managed by an executive agency and which provides for the Government's own use a product or service that is obtainable from a private source. The term does not include a Government-owned, contractor-operated activity.

Not all functions or services provided by agencies are subject to the Circular's review procedures. Activities specifically exempted are

- those basic management functions which the agency must perform to retain essential control over the conduct of its program,
- managerial advisory services,
- products and services provided to the public,
- products and services obtained from other Federal agencies authorized or required by law to furnish them, and
- those for which its application would be inconsistent with the terms of any treaty or international agreement.

There is a lack of uniformity throughout the Government with regard to what does and does not constitute a commercial or industrial activity and, therefore, which activities are held subject to the Circular. This is caused by differing interpretations of the definition and variances in the use of the exclusions.

For example, the National Institute of Environmental Health Sciences, HEW, excluded all functions considered to be directly related to its mission. While the Institute was established by law to provide research in the area of environmental problems, the accomplishment of such research by contract under the Institute's direction is not prohibited. Also, this interpretation has not been consistently applied since the Institute does contract for some research.

Bureau of Reclamation officials in the Mid-Pacific Region stated that the Circular's definition is unclear as to what activities should be inventoried and reviewed. They believe that practically all of their activities could be viewed as commercial or industrial in nature even though there are no satisfactory commercial sources available. Consequently, the region has limited its efforts to those categories of activities specifically cited in instructions from Reclamation Headquarters. Other activities which may be commercial or industrial in nature are not inventoried and reviewed.

The Norfolk Naval Shipyard inventory includes 33 activities, but one of these activities, the maintenance and repair of vessels, accounts for about 87 percent of the shipyard's total production costs, and includes a number of different functions. Shipyard officials indicated that they have never made an indepth review of the activity to determine if it contains other commercial or industrial activities which should be reported separately.

We were told by officials of the Federal Aviation Administration's (FAA's) Aeronautical Center that the operation of its Aircraft Services Base was not considered a commercial or industrial activity because it involves flight safety and, therefore, is viewed as a governmental function which cannot be contracted. We believe that this type of exclusion precludes the consideration of activities within the Center which could be recognized as being commercial or industrial and, therefore, subject to the provisions of the Circular.

HEW excludes all hospital functions from the purview of Circular A-76 as services provided to the public. A blanket exclusion of this type also excludes many various support activities within each hospital. We believe that a reassessment of this exclusion is needed, especially in view of the

availability of hospital support and other medical services from sources outside the Government.

Officials at the Corps of Engineers' Louisville District had difficulty determining whether an activity should be an entire operation, such as the operation and maintenance of a lock and dam or various associated tasks, such as painting and electrical repair.

To fully and properly implement the provisions of Circular A-76, a determination must be made of what does and does not constitute a commercial or industrial activity, in view of the broad and varying interpretations of the current definition and exemptions. In the absence of such a determination, the current difficulties will continue and many commercial or industrial activities will not be held subject to the provisions of the Circular.

TRIENNIAL REVIEWS AND SUPPORTING JUSTIFICATIONS

Circular A-76 requires each agency to review its existing activities at least once every 3 years unless waived by the agency head or his designee. This review is to ascertain if continued Government operation of the activity is in accordance with the policy of the Circular. We found that most agencies do not routinely comply with this requirement. Further, in many of those instances where activities had been reviewed, the justifications did not provide enough information to adequately support continued in-house operation.

As shown in the chart on page 21, of the 21,130 reported activities, 13,222, or 63 percent (as of 7/1/77), have not been reviewed. Most of these activities not reviewed are in DOD, GSA, and the Veterans Administration.

The Defense Audit Service reported that of the 8,673 activities on DOD's June 30, 1976, inventory 1,740 had never been reviewed and 1,898 were not reviewed within the required 3-year period.

We noted that 43 percent of the Army's Forces Command inventory had not been reviewed and approved in the past 3 years. A Command official stated that all activities had not been reviewed because their installations did not have enough manpower.

In some cases, agencies performed reviews only in response to external requests from the Congress and OMB. This was true with respect to some organizations within Agriculture, Interior, and Treasury.

We reviewed many justifications that did not provide enough information about the activities, why certain conditions applied, or how the decisions were reached. Many justifications merely restated the exception conditions as cited in the Circular and appeared to have been based on subjective considerations rather than supportive facts.

For example, the Department of the Treasury justified keeping a majority of its activities in-house because procurement from a commercial source would disrupt or materially delay its program. There were no narrative explanations as to why this condition applied to so many activities and, in some cases, who approved the justification for in-house performance.

Based on the inventory data reviewed, most justifications for continuing activities in-house were based on reasons other than lower costs. The conditions cited most frequently were (1) procurement from a commercial source would disrupt or materially delay an agency's program and (2) a satisfactory commercial source is not available and cannot be developed in time to provide the product or service when needed.

Fort Carson continued Government operation of three activities on the grounds that a commercial source was not available. Our review disclosed that the justifications were either questionable at the time they were made or became questionable as the result of subsequent events. For example, a determination was made in 1976 that local contractors were unable to meet certain Federal standards and to obtain a certification of competence required by an Army regulation for performing insect and rodent control functions. However, we were informed that the Environmental Protection Agency was conducting a testing program for local pest control companies in 1977 and that a local company that we contacted had been tested, found to be in compliance with the Federal standards, and had provided pest control services to two other Federal agencies for several years.

The inventory of commercial or industrial activities at Lowry Air Force Base included activities for which we could not evaluate the retention justifications at the Base. Air Force Headquarters had directed that commercial procurement for 6 activities would disrupt or materially delay the installation's program and that another 10 activities must be Government operated for purposes of combat support, military personnel retraining, or mobilization readiness.

The Defense Audit Service's December 1977 report on DOD-wide implementation of the Circular concluded that many

justifications to continue Government operation of activities in DOD were not properly supported.

As of June 30, 1976, DOD reported that 2,300 activities had to be performed in-house for purposes of combat support, individual and unit retraining of military personnel, or to maintain or strengthen mobilization readiness. The Defense Audit Service found that for 204 activities, no military personnel were used.

DOD's inventory (6/30/76) listed 1,932 functions performed in-house because reliance on a commercial source would disrupt or materially delay its program. The Defense Audit Service found that, although contracting for some of these functions might disrupt operations, it was questionable that contracting for installation support services would disrupt or delay an installation's day-to-day operations.

If in-house operation of an activity cannot be properly justified under the provisions of the Circular (including lower costs), the performance of the activity is required to be converted to contract. OFPP has reported that 669 activities were converted to contract from July 1975 to July 1977 as a result of A-76 reviews. Of these, 634 were in DOD and 25 were in GSA. The remainder of the civilian agencies had only 10 conversions.

We believe that the triennial review process is essential to implementing the A-76 program. However, the agencies have not been conducting the required reviews in earnest. Also, if the reviews, when conducted, do not properly support continued in-house operation, the activity should be considered for contracting, where otherwise appropriate. We believe that the lack of management support and commitment to the program are the major factors contributing to the deficiencies.

NEW STARTS

The Circular A-76 policy states that no executive agency will initiate a "new start" or continue the operation of an existing "Government commercial or industrial activity" except as specifically required by law or as provided for in the Circular.

Circular A-76 defines a new start as a newly established Government commercial or industrial activity involving additional capital investment of \$25,000 or more, or additional annual production costs of \$50,000 or more. A reactivation, expansion, modernization, or replacement of an activity involving additional capital investment of \$50,000 or more, or

additional annual production costs of \$100,000 or more are also regarded as new starts.

Although the Commission on Government Procurement recommended in December 1972 that the threshold for new starts be increased to \$100,000 for either new capital investment or annual operating cost, OFPP has proposed thresholds of \$100,000 for annual operating cost and \$50,000 for capital investment.

The Defense Audit Service's recent report stated that DOD's guidance on new starts was vague and confusing and was not applied consistently among the services, their installations, and different managers at the same installation. As a result, the Service stated that at least 279 new functions were initiated without the required approvals.

We were informed that the Norfolk Naval Shipyard has not identified any new starts nor requested any new start approvals since its implementation program began. However, in comparing the shipyard's inventories for fiscal years 1976 and 1977, we found that 12 functional areas had production cost or capital investment increases that exceeded the new start thresholds.

To comply with the intent of the Circular, agencies should subject all new proposed commercial or industrial activities to an appropriate objective review and approval process. In the absence of such a process, the policy's objectives could be circumvented.

INCOMPLETE AND INACCURATE INVENTORIES

Circular A-76 requires each agency to compile and maintain an inventory and to review all commercial or industrial activities at least once every 3 years. Additionally, the Circular points out that only those activities having an annual operating cost of \$50,000 or more or a capital investment of \$25,000 or more should be inventoried.

The inventories, as required, should provide management with complete and accurate information for directing and controlling reviews to determine whether in-house or contract performance is best for the Government. Omissions from the inventories could result in failure to provide the goods or services in the most appropriate or economical way.

We found that in some cases, personnel at the agencies' headquarters determine what activities or functions are included on their inventories. In several cases, field office

personnel were unaware of identified activities at their field sites and, at times, disagreed with the headquarters office as to whether certain activities were properly identified as commercial or industrial.

We found that some agencies failed to include in their latest inventories some activities which we believe the Circular requires to be inventoried. The following examples were noted:

- Agricultural Research Service's Southern Regional Research Center did not include two types of machine shops, a photography unit, and an automatic data processing (ADP) operation.
- Agriculture's Soil Conservation Service South Technical Service Center's reproduction section was not included even though it had an annual operating cost of over \$500,000 in fiscal year 1976.
- HEW's Public Health Service Hospital in San Francisco does not maintain an inventory. Our review noted 10 activities with annual operating costs of over \$10 million.
- Geological Survey's (Interior) September 1977 inventory omitted two activities--its ADP operations which cost about \$13.9 million annually and a pamphlet illustration and design activity costing about \$500,000 annually.
- The Bureau of Reclamation's Mid-Pacific Region failed to include 11 activities involving 277 employees and annual operating costs of \$5.8 million.
- National Park Service's Glacier National Park (Interior) inventory did not include 12 activities which accounted for \$1.3 million annual operating costs and \$23 million of capital investments.
- FAA's Aeronautical Center had not reported three activities: a print shop, photography lab, and animal caretakers with total annual operating costs of about \$1.1 million and capital investments of \$745,900. We also noted three other activities that were on FAA's inventory but were not forwarded to the Department of Transportation. These included operation of warehouses, ADP services, and aircraft maintenance and major overhaul with combined annual operating cost of \$10.8 million and capital investments of \$11.6 million.

--NASA's Johnson Space Center's telecommunications operations were not included in its inventory even though other NASA centers and headquarters list these services. After our visit, three activities were added to the Center's inventory, including the telecommunications operations.

We found several cases where the inventory was clearly inaccurate. For example, the Agricultural Research Service has listed three activities from its Southern Region, one of which is Trade and Craft Services in the New Orleans Research Center. The capital investment reported (\$5 million) is the approximate cost of all Research Center facilities. The capital investment for the Trade and Craft Services should be about \$50,588.

The DOD implementing instructions list 101 categories of commercial or industrial activities to facilitate identification and compliance with reporting requirements at the installation levels. However, some DOD installations have omitted some listed activities from their inventories. Lowry Air Force Base did not include the operation of bulk liquid storage and data processing services. The Norfolk Naval Air Reserve Facility did not include engineering and technical services and the maintenance of aircraft components. The Navy Public Works Center in Norfolk, Virginia, did not include the maintenance of improved grounds and surfaced areas.

As of June 30, 1976, DOD's inventory identified 8,673 activities with annual costs of \$7.1 billion for in-house functions and \$2.7 billion for contracted functions. Defense Audit Service's December 1977 report estimated that at least 1,600 activities were excluded from the reported data. The Service also estimated that the in-house costs were understated by \$2.9 billion and contract costs were understated by \$370 million. Most DOD agencies did not report functions that were not specifically listed in DOD's instructions. The costs were understated because (1) interservice and intraservice support were not reported by either the supplier or the receiver, (2) DOD's functional codes had not been correlated to cost accounts, and (3) functions with combined in-house and contractor costs of \$50,000 or more were not reported.

Further, we found that incomplete and inconsistent inventory data concerning agencies' activities was submitted to the House Committee on Government Operations and OFPP during 1977. For example, in 1977 the Geological Survey prepared two inventories: one in August for OFPP and a second in September for the Committee, but the two differed substantially.

The August inventory reflected total in-house annual operating costs of \$3 million and a capital investment of \$1 million. The September inventory reported \$25.4 million in annual operating costs and \$6.5 million in capital investment.

Overall, we found that many agencies' inventories of commercial or industrial activities were incomplete and inaccurate. Although the Defense Audit Service estimated the extent of the omissions and errors on DOD's inventory, we did not attempt to make a Government-wide estimate. There is a need for each agency to reevaluate its inventory based on a more comprehensive interpretation of the definition of a commercial or industrial activity. In doing so, the agencies should approach this effort from the "bottom-up" without wholesale exclusions and any other predeterminations of applicability or nonapplicability.

REVIEW AND FOLLOWUP

Circular A-76 states that each agency is responsible for making the provisions of the Circular effective by providing adequate management support and procedures for review and followup to assure that agency implementing instructions are placed in effect. We found that only DOD regularly reviews its program implementation efforts through its internal review staff.

The Defense Audit Service made a major review of DOD's A-76 implementation program and reported numerous deficiencies in late 1977. The success of DOD's review and followup program will depend on the extent to which corrective actions are taken.

An important mechanism for providing management officials with information as a basis for management action is a system of independent internal review of operations, methods, systems, procedures, and practices. This review is needed to provide an appraisal of all other elements of control.

CHAPTER 6

COST COMPARISON PROBLEMS

Although cost comparisons are important to agency decisionmakers for selecting the least costly method of obtaining needed goods and services, we have made the following observations:

- A-76 does not generally require cost comparisons to support contracting out decisions.
- A-76 does not require cost comparisons on activities already contracted out to assure their continued cost effectiveness.
- Complete and accurate in-house cost data is not readily available.
- Uncertainty exists on whether in-house costs should be determined on an incremental or a fully allocated basis.
- Estimates of in-house personnel needs are often inaccurate and can seriously distort cost comparisons.
- Uncertainty exists concerning the stability and accuracy of the Government retirement cost factor.
- Past methods of estimating, or obtaining informational quotes of, contractor costs have been unreliable.
- A proposed firm bid/offer procedure intends to place agencies in direct bidding competition with private firms.
- Procurement regulations do not provide for rejection of potential buy-in bids.
- Agencies may be forced to contract out solely on the basis of higher wages paid to in-house employees.
- Cost comparisons lack credibility in some cases because they are often prepared by personnel who are unqualified or who would be affected by the outcome.

In view of the range and importance of these factors, we believe that cost comparisons have not been fully serving the purpose intended.

PURPOSE, EXTENT OF USE, AND DISCLOSURE

The purpose of a cost comparison is to determine the lower cost alternative available to the Government, in-house performance or contract, for obtaining needed commercial or industrial goods and services. A decision to rely on in-house performance for reasons involving relative costs must be supported by a cost comparison.

The A-76 policy has gradually shifted from reliance on private enterprise through competitive procurement at reasonable prices to a newly proposed policy of choosing the more economical alternative, all other considerations being equal. As a result, complete and accurate cost comparisons have become more important to agency decisionmakers.

Despite this fact, the extent of using cost comparisons to authorize continued in-house performance has been minimal. Agency data (see chart on p. 21) shows that, of 21,130 reported commercial or industrial activities, only 1,168 or 5 percent were approved for in-house performance on the basis of cost.

Under the provisions of the Freedom of Information Act of 1966 (5 U.S.C. 552), agencies are required to make copies of cost comparisons available to interested parties when requested. In addition, under the firm bid/offer procedure, in-house cost estimates are to be made available for public scrutiny and comment after sealed bids are opened or negotiations are completed, but before a decision is made by the Government.

CIRCUMSTANCES REQUIRING PREPARATION

A decision to rely on a Government activity for reasons involving relative costs must be supported by a comparative cost analysis. However, such studies are not to be made if in-house provision of the product or service, or commercial procurement thereof, is clearly justified in accordance with other provisions of the Circular.

Comparisons usually arise, and are generally required by the Circular, in situations where:

- There is reason to believe that savings can be realized by the Government providing for its own needs. For example, it has some unique economic advantage which would enable it to supply the product or service at less than commercial cost.

--There is reason to believe that inadequate competition or other factors are causing commercial prices to be unreasonable.

--The terms of contracts will cause the Government to finance directly or indirectly more than \$50,000 for facilities and equipment to be constructed to Government specifications.

In the absence of any of these considerations, the Circular states that a decision to rely on private enterprise in compliance with the policy preference does not have to be supported by a cost comparison, especially if the estimated cost is less than \$50,000 per year. 1/

Therefore, given these guidelines, an agency may possibly take any one of the following actions without making a cost comparison.

--Contract out an existing in-house function.

--Award a contract for new or additional workload requirements.

--Resolicit an existing contract.

Reasonable efforts to obtain satisfactory prices from existing commercial sources, or to develop other commercial sources, are required before in-house performance may be authorized on the basis of a cost comparison study.

In determining whether a cost study should be undertaken, consideration must be given to the delay and expense involved to perform a study sufficiently detailed and comprehensive to provide valid results.

As indicated by Proposed Action 5C in appendix VIII, OFPP intends to require agencies to review, on a 3-year cycle, continuing functions performed by contract which are of a type commonly performed by Government activities, and conduct a comparative cost analysis when there is reason to believe that in-house performance would be less costly.

1/The Commission on Government Procurement recommended increasing this threshold to \$100,000 when adequate competition and reasonable prices can be obtained.

DETERMINING GOVERNMENT COSTS

Agencies have numerous problems determining Government costs of in-house performance. Generally, agencies' accounting systems cannot provide the proper cost data needed for comparisons. Uncertainty exists about whether Government costs should be determined on an incremental or fully allocated basis. Estimates of in-house personnel needs are often inaccurate and can seriously distort cost comparisons. Further, uncertainty exists concerning the stability and accuracy of the Government retirement cost factor.

Availability of cost data

One of the major problems encountered in determining the costs of an in-house operation is the lack of accurate and complete cost data.

The report of the Commission on Government Procurement noted that Government accounting records are not kept on a basis that readily permits identification and allocation of all indirect costs and depreciation. Thus, where their use is required, these types of cost elements have to be estimated. At the present time, most DOD accounting systems (exclusive of Industrial Funds) do not produce appropriate data on the cost of carrying out operations, as required by the GAO Policy and Procedures Manual for Guidance of Federal Agencies (title 2, sec. 16.4).

In a recent report to the Congress, we stated that of 26 Federal data processing organizations reviewed, none had adequate cost information on their ADP assets and operations. 1/

Although we and OMB have offered guidance in this area, it has not been effectively followed. The reasons for this problem are not clear but one contributing factor is that Government accounting frequently attempts to keep track of only obligations and disbursements at the appropriation and program levels. Since data processing costs are only a part of program costs, they have not been separately identified.

Federal agencies must keep accounting records that provide adequate financial information for management's use and reliable data to support their budget requests to the President and the Congress. We believe it is essential that this

1/"Accounting for Automatic Data Processing Costs Needs Improvement," (FGMSD-78-14, Feb. 7, 1978).

financial information include cost data on all agency activities, including commercial or industrial-type activities. The source of financing an operation is not a valid consideration for not maintaining cost data. Reliable cost data is indispensable in making sound decisions on whether to obtain needed services from in-house or commercial sources.

Accurate and complete cost data would also be useful to track the cost effectiveness of in-house activities, thereby providing management with better information to make future decisions.

Incremental versus fully allocated costing

Circular A-76 states that, in determining the costs of in-house operation, the objectives should be to compute, as realistically as possible, the incremental or additional cost that would be incurred by the Government under the alternatives being considered.

The incremental method of computation is designed to estimate the amount by which all costs (direct and indirect) to the Federal Government would increase or decrease from existing levels of activity. It is intended to be the most realistic measure available of the financial consequences of deciding to provide or not provide the product or service in-house.

An argument is raised by commercial firms, however, that in the interests of comparability and equity, in-house costs should be estimated on the same basis that commercial firms are required to use when providing cost data under Government contracts--a fully allocated basis. For example, under the fully allocated costing method, a part of the costs of high-level agency management should be allocated to each and every commercial or industrial activity of the agency. These "allocated" costs, however, would not change because the top agency management will remain whether the activity is done in-house or under contract.

In the case of new starts, fully allocated costing requires transferring a part of existing costs from existing activities to the new in-house activity. The cost transferred to the new in-house activity is considered a cost of that activity and thus, a cost resulting from the decision to produce in-house. However, the related reduction in indirect costs of all the existing activities is not recognized.

As indicated by Proposed Action 3B in appendix VIII, OFPP intends to move toward fuller costing for Government

costs for both contract and in-house activities, and provide sufficiently detailed guidance to make in-house and commercial cost estimates comparable.

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We believe that the purpose of an A-76 cost comparison is to determine the lower cost alternative to the Government (in-house or contract) that is as accurate as can reasonably be expected, given the significant differences in the size and nature of the organizations involved.

In a January 25, 1978, letter to the Administrator, OFPP (see app. IX), our comments on Proposed Action 3B cited the related recommendation of the Commission on Government Procurement as follows:

"We are concerned with the proposal dealing with fuller costing (3B). * * * It is difficult to determine the extent to which fuller costing will be carried, but it apparently is intended to change the method of costing in-house activities from an incremental to a fully allocated basis.

"The Circular currently provides for the use of incremental costing, and the use of that method was also included in the following recommendation of the Commission on Government Procurement:

'Recommendation 24. Base cost comparisons on:
(a) Fully-allocated costs if the work concerned represents a significant element in the total workload of the activity in question or if discontinuance of an ongoing operation will result in a significant decrease in indirect costs.

(b) An incremental basis if the work is not a significant portion of the total workload of an organization or if it is a significant portion in which the Government has already provided a substantial investment.'

"While it can be argued that incremental costing can tilt a comparison toward Government performance in some circumstances, it can also be argued that fully allocated costing can tilt a comparison away from Government performance in other circumstances. Thus, we support the guidelines contained in the above recommendation and believe that they represent a balanced approach to this controversial area."

In taking exception to OFPP's proposed changeover to "fuller costing" for in-house costs, we were concerned, as was the Commission, about whether the cost of Government might increase unnecessarily in situations where agencies have already made large investments in facilities, tools, and equipment.

Determining the cost of needed personnel

A major problem encountered in estimating the costs of an in-house operation is determining the number of personnel needed to accomplish a given workload. Since many activities covered by Circular A-76 are highly labor intensive, estimates of labor costs are critical to the outcome of cost comparisons. Labor costs are influenced by several different items, such as:

- The amount of work to be performed.
- The productivity of the work force.
- The number and skills of personnel needed.
- The wage rates.
- Associated labor costs (retirement factor).

We noted difficulties in estimating all of these items, which could result in both understatements and overstatements of in-house labor costs. The following discussion of two Air Force cost comparisons typifies some of the difficulties encountered in developing in-house costs.

Lowry Air Force Base

In early 1977, we reviewed a cost comparison prepared by Lowry Air Force Base which showed a potential 3-year savings of about \$3 million if the motor pool maintenance and operation function at the base were contracted out. The comparison used the firm bid/offer procedure discussed later in this chapter. We could not substantiate the savings because of omissions and errors in the Government estimate, and inadequate and ambiguous specifications in the statement of work. In view of these factors, the contract solicitation was canceled before award.

We found that the in-house estimate of the number of personnel needed was not based on an analysis of the workload. Instead, it was based on the Air Force manpower authorization

system, which in this case authorized 117 positions. However, workload frequencies in the statement of work supported only 77 positions. Thus, the use of authorized positions instead of actual needs greatly overstated in-house personnel requirements and their associated costs.

We also noted that the cost comparison converted military positions to civilian positions on a one-for-one basis which was inappropriate because military positions include recognition of time to be spent on performance of military duties and training. Although Air Force policy guidance does not require conversions from military to civilian positions on a one-for-one basis, it has been interpreted that way by some people preparing the cost comparisons. The Air Force has recognized this problem and held a seminar with its major commands to correct it.

Alaska aircraft control and warning sites

In 1976 the Air Force decided to convert, from military personnel to contractor performance, support functions at 13 aircraft control and warning sites in Alaska under the Alaskan Air Command.

Proposals were received from three companies and all were judged to be adequate to accomplish the required work. The low proposal was about \$104 million, and the Air Force estimate was about \$203 million. The Air Force Audit Agency reviewed the cost estimate for in-service civilian manning and concluded that it was sound and in general compliance with the applicable directives.

We made a limited analysis of some cost elements in both the contractor's and the Air Force's estimates and found them generally comparable, except for estimated personnel costs. The Air Force personnel costs were more than double the contractor's personnel costs. The contractor proposed staffing of 505 personnel, while the Air Force estimated staffing of 1,185 personnel. The Air Force accepted the contractor's staffing level as adequate to perform the job. The Air Force estimate was based on established workload standards in the Air Force manpower authorization system.

Air Force officials could not explain the overall difference in the number of employees needed. They commented that, in some cases, contractor personnel handled more than one type of work, while civil service personnel cannot. For example, they said that the contractor uses three building mechanics in place of five Government personnel--one civil

service maintenance foreman, one electrician, one pipefitter, one air-conditioning mechanic, and one carpenter.

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The Rand Corporation concluded in March 1975 ^{1/} that there were a number of opportunities for the Air Force to achieve economies in providing base operating support at two undergraduate pilot training bases.

Rand reported that, among other things, support functions could be accomplished most effectively by planning a task organization that was adapted to local base conditions. This task orientation would result in an organization that was markedly different from the standard support organization as prescribed by the various Air Force manuals. By employing some variety of nonstandard organization, some savings in manpower could be achieved.

The retirement cost factor

The determination of in-house costs has been further complicated by recent changes made in the retirement cost factor for civilian personnel.

In October 1976 OMB required the use of a standard retirement cost factor of 24.7 percent of payroll in all Circular A-76 cost comparisons. It was then reduced to 14.1 percent in June 1977. The Congress mandated that under certain circumstances DOD use 7 percent of payroll in fiscal year 1978. ^{2/} OFFPP is now proposing to increase this factor to 20.4 percent.

Since its establishment, this cost factor has been viewed as a weathervane of the Government's movement toward, or away from, more reliance on private industry. For example, one industry association in commenting on the reduction of the factor from 24.7 percent to 14.1 percent stated:

"The immediate impact of this action can only be a further reduction in private sector participation, especially small business, in government procurement. * * *"

^{1/}"An Analysis of Methods of Base Support: Contractor Operations Versus Standard Operations at Two Undergraduate Pilot Training Bases."

^{2/}Section 809, Public Law 95-79, Department of Defense Appropriation Authorization Act, 1978; July 30, 1977 (see app. V).

It has been our experience, however, that the retirement cost factor might not affect the outcome of any given cost comparison as significantly as might be expected. For example, in a 1977 report, 1/ we found that for 39 cost studies for which information was available, the use of the initial retirement cost factor (24.7 percent) would not have reversed the decisions to either continue in-house performance or contract out the activities. It should be noted that these cost comparisons were based on a retirement cost factor of 7 percent.

We further believe that the problems in estimating the size of the work force or other problems discussed in this chapter could affect the outcome of any given cost comparison more significantly than the retirement cost factor.

The number of recent changes in the retirement cost factor indicates not only a lack of stability but also uncertainty about its accuracy. In our reports of November 5, 1976 (PSAD-77-6 and PSAD-77-7), we evaluated the reasonableness of the 24.7 percent retirement cost factor and the economic assumptions used in its calculation. We concluded that, based on the economic assumptions used, the cost factor of 24.7 percent was reasonable. However, we also noted that, by using assumptions based on recent historical experience within the Government, the cost factor would increase to about 30 percent.

DETERMINING CONTRACT COSTS

Agencies also have many problems determining the cost of contract performance. Past methods of estimating, or obtaining informational quotes of, contractor costs have been unreliable. To remedy this problem, DOD has adopted, and OFPP is proposing for Government-wide application, a procedure for comparing contractors' competitive firm bids or offers with documented estimates of in-house costs. Complications also resulted when bid protests were filed which alleged that a successful bidder was seeking future advantages by submitting an unrealistically low bid. Each of these situations is discussed below.

1/"How to Improve Procedures for Deciding Between Contractor and In-House Military Base Support Services," (LCD-76-347, Mar. 28, 1977).

Estimates and informational quotes

Agencies have used several methods for determining contractor costs to compare with Government costs. Most of these methods are not always reliable and their use can result in inaccurate determinations of contractor costs. In a 1977 report, 1/ we reviewed 64 comparative cost studies prepared by 12 Army, Navy, and Air Force installations. We found that many cost studies prepared by the Army and the Navy were not reliable because they were based on estimates or informational quotations of contractor costs.

Informational quotes can have several disadvantages for procurement and cost comparison purposes. For example:

- Potential contractors might not submit quotes for informational purposes.
- Potential contractors might not prepare accurate informational quotes since a contract might not be awarded.
- The Government might not be able to obtain the products or services for the price quoted.
- Informational quotes might be subjectively adjusted by the preparer of the cost comparison in attempting to develop more "realistic" costs.

During our current review, we found similarly unreliable contract cost estimates prepared by certain civilian agencies. For instance, we found that the Social Security Administration in Baltimore, Maryland, had estimated contractor costs for several activities based on its own in-house labor requirements. We also considered other costs to be inaccurate because of their source or method of calculation.

We also found that the Mid-Pacific Region of the Bureau of Reclamation estimated contractor labor costs by equating contractor labor hours directly to those of the Government.

The firm bid/offer procedure

It has become evident over a period of time that constructive estimates or informational quotes of contractor

1/"How to Improve Procedures for Deciding Between Contractor and In-House Military Base Support Services, "(LCD-76-347, Mar. 28, 1977).

costs have been unreliable. To avoid this problem, the Air Force has developed and used, for several years, a formal advertising and negotiation procedure which compares contractors' competitive firm bids and offers with documented estimates of in-house costs. In our report (LCD-76-347), which was mentioned above, we commented that this procedure was far superior to the past procedures used to develop contractor costs. This procedure was adopted Defense-wide in 1976.

The firm bid/offer procedure has been described by DOD as follows:

"* * * first, a work statement is devised which is used for both developing an in-house cost estimate and securing a bid from industry and, second, an in-house estimate is computed and sealed; third, firm bids are solicited from industry, and finally, the in-house estimate is opened at the same time and compared to the bids received from industry.

"The decision on how the work is to be performed is then one of pure economics.

"After bid opening, both the Government estimate and the industry bids are available for examination under the Freedom of Information Act. This insures objectivity and integrity of the process. Such an approach insures a more uniform and equitable comparison and has, therefore, been adopted DOD-wide."

The procedure is further described by Air Force Manual 26-1 in statements which are required to be placed on the face of all solicitation documents to ensure that bidders and offerors are aware of the contemplated costing procedures. With respect to formal advertising procedures, for example, the manual states that:

"* * * If the total contractor cost is lower than the Government's in-house cost estimate, a contract will be made if otherwise appropriate. However, a contract award will not be made for at least 5 workdays after bid opening to allow for review of the in-house cost estimate. If the in-house cost estimate is lower than the low responsive and responsible bidder, the workload will be accomplished in-house. A copy of the completed cost comparison will be made available after contract award or cancellation of the solicitation as appropriate."

The firm bid/offer procedure merely combines the decision of whether or not to contract out with the decision to choose a contractor by source selection procedures. The decisions can be made in sequence, and there is no legal impediment to combining them.

Under Federal procurement regulations, Government solicitation of bids or proposals without an intent to award a contract is generally not justified. However, in those cases where it is justified, the solicitation must advise prospective contractors that the bids or proposals are to be used for informational or planning purposes only. Under the firm bid/offer procedure, however, the Government has a definite intent to award a contract should certain conditions occur, namely that a contractor is determined to be responsive and responsible and that the total cost of contracting is less than the total cost of in-house performance. Prospective contractors are informed of these conditions.

Although the firm bid/offer procedure appears to be an improvement over past procedures for determining contract costs, Army officials in one command have made the following comment about its use:

*** This procedure *** apparently conflicts with current procurement procedures.[1] Under firm bid procedures, the cost analysis developed as the Government's 'bid' is to be provided in a sealed envelope and remain unopened until bid opening or conclusion of negotiations. Procurement regulations, however, require that the contracting officer obtain an independent Government estimate before solicitation. The independent Government estimate under firm bid procedures is specifically denied to procurement personnel. In addition, procurement regulations require that the contracting officer ensure that funds are available for the procurement prior to issuing the solicitation. Firm bid, however, is a decision making process and the decision to procure is not made until the solicitation is issued and

1/We were notified in March 1978 by the Armed Services Procurement Regulation Committee that certain changes in the procurement regulations were being proposed relative to the "firm bid/offer" procedure. Final issuance of these changes is being delayed pending the release of OFPP's cost comparison handbook.

bids are received and opened. Consequently, there is serious question about advance commitment of funds, particularly when a long procurement lead time is required, for a procurement which may or may not be completed. * * *

In two bid protest decisions (see app. VI) involving the firm bid/offer procedure, we have indicated that the cost comparisons justifying retention of an in-house activity were erroneous and, therefore, detrimental to the procurement system. The estimates of in-house costs in those cases were clearly and admittedly understated, thereby putting the contractors at a disadvantage. However, we could not provide a legal remedy for erroneous comparisons made under Circular A-76 because they are policy decisions which are not subject to review under our bid protest authority.

The firm bid/offer procedure directly affects contractors which are induced to expend time and money preparing and submitting bids in competition with the Government. If incorporated into an agency's procurement regulations, this procedure could be considered not only for the benefit of contractors and the Government but also legally binding. Contractors submitting bids might, therefore, have standing before the courts to contest faulty cost comparisons. We have noted several court cases that upheld the proposition that contractors are entitled to fair consideration of their bids. This legal right also benefits the Government in maintaining a competitive procurement system.

OFPP is proposing that the firm bid/offer procedure be adopted by all executive agencies. (See Proposed Action 3C in app. VIII.) As an improved method of obtaining accurate contractor costs, we believe that this proposal should be adopted. However, there is a potential for bad cost comparisons in some cases because of poor estimates of in-house costs.

With the courts becoming more involved in the propriety of Circular A-76 decisions and cost comparisons, and with the apparent advent of an appeals process (see Proposed Action 5D in app. VIII), agencies must improve their procedures to develop in-house cost estimates, and indeed, the accounting data used must be complete, accurate, and consistently used. A great deal of time and money can be lost due to a hastily prepared, poorly documented Government cost comparison that is challenged on the basis of its infringement upon the actual or perceived rights of affected parties, including contractors and Federal employees.

The potential buy-in

Over the years we have received bid protests (see app. VI) alleging that a successful bidder was seeking future advantages by buying into a contract, or that a successful bidder had submitted a below-cost bid, an unrealistically low bid, or a bid that would result in an unprofitable contract. The protestors generally claimed that the contractors could not properly perform or complete the contract and that there would be additional costs to the Government.

However, we have found no legal basis or principle to preclude or disturb a contract award merely because the low bidder might have submitted a below-cost bid. In the same light, the possibility of a buy-in is not a proper basis upon which the validity of an award can be challenged. Procurement regulations do not provide for rejection of such bids and the fact that a low bidder might incur a loss at its bid price does not justify rejecting an otherwise acceptable bid. The Comptroller General does not review protests regarding inability to perform, except in cases of fraud or misapplication of specific criteria set out in the solicitation.

It is important to note that a buy-in is a potentially serious problem primarily in cases where there is not a competitive market.

COMPARABILITY OF PERSONNEL COSTS

The policy of the Federal Government is to pay wages in accordance with the principle of comparability with the local prevailing wage rates. Wage rates for Federal blue-collar employees are determined under the provisions of the Federal Wage System. Wage rates for contractor employees under a Government service contract are subject to the provisions of the Service Contract Act of 1965.

Private sector wage rates are normally based on the competitive forces of supply and demand for various skills in the local labor market.

Differences in wage survey methods and other wage determination procedures have caused major differences in Federal and contractor employee wage rates and have removed both from the principle of local prevailing wage rates. Personnel costs are generally the most important element in cost comparisons, especially in labor intensive service activities. Significantly higher Federal wages will increase the likelihood that agencies will contract for needed goods and services. Other situations may arise where the Government will be paying

higher wage rates than necessary. These conditions have been reported by us and others many times. A short discussion of the Federal Wage System and the Service Contract Act follows.

The Federal Wage System

Federal blue-collar employees generally include (1) workers in a recognized trade or craft, or other skilled mechanical craft, or in a manual labor occupation and (2) foremen or supervisors in positions having trade, craft, or labor experience and knowledge as their paramount requirement. These types of occupations are most frequently affected by the application of Circular A-76. In October 1977 there were about 469,000 such employees working for the Government in the United States.

The Federal Wage System, which covers Federal blue-collar employees, was established pursuant to legislation approved in 1972. ^{1/} The law sets forth the policy that Federal blue-collar pay rates be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing private sector rates. The law further provides that pay rates be based on the principles that:

- There will be equal pay for substantially equal work within the same local wage area.
- There will be relative differences in pay within a local wage area when there are substantial or recognizable differences in duties, responsibilities, and qualification requirements among positions.
- The levels of pay will be maintained in line with prevailing levels for comparable work within a local wage area.
- The levels of pay will be maintained to attract and retain qualified employees.

In a 1975 report to the Congress, ^{2/} we discussed the legislative provisions which were resulting in Federal blue-collar pay being higher than local prevailing private sector rates. In that report, we stated:

^{1/}5 U.S.C. 5341 et seq.

^{2/}"Improving the Pay Determination Process for Federal Blue-Collar Employees," (FPCE-75-122, June 3, 1975).

"The legislative pay principle of comparability is not being attained because the application of certain other legislative provisions results in substantially higher pay rates for Federal blue-collar employees than the rates of their private sector counterparts in the same localities."

These provisions:

- Establish a Federal pay range of 16 percent at each grade with five equal steps through which employees progress based on length of service. [In contrast, studies have shown that most private sector employees are paid under single-rate pay schedules and that many private sector multiple-step schedules have fewer steps than the Federal Wage System. Moreover, while the second Federal step is equated to the prevailing private sector rate, 77 percent of the Federal employees were above the second step as of June 30, 1977--16 percent in step 3, 12 percent in step 4, and 49 percent in step 5.]
- Prescribe conditions under which private sector wage rates of other localities may be used in setting Federal rates. [The purpose of this provision, 1/5 commonly referred to as the Monroney Amendment, was to provide a procedure whereby Federal blue-collar jobs requiring special skills which were not found in local private enterprise could be evaluated or equated with comparable private enterprise positions in other similar areas. Application of the Monroney Amendment may not be used to reduce the pay rates for any grade below that which would have been established without the use of the out-of-area survey data. Under this authority, we stated in the above report that wages in about 29 of 137 wage areas, containing about one-third of the Federal blue-collar employees, have been based on other than local private sector rates.]
- Establish uniform night differentials based on a percentage of the employees' scheduled wage rate. [This practice does not necessarily reflect prevailing private sector practices and often results in a more generous differential.]

1/5 U.S.C. 5343(d), Public Law 90-560, Oct. 12, 1968.

We suggested that the Congress reconsider existing provisions pertaining to the five-step system, night differentials, and setting wage rates on the basis of rates paid in another wage area.

In January 1977, the Civil Service Commission (CSC) submitted a legislative proposal to the Congress which would reform the Federal Wage System. DOD has estimated that the proposed reforms would save \$397 million in the Defense budget in fiscal year 1979. We have not made a detailed review of the estimates; however, from our review of the methodology used, we believe that the amounts are reasonable. Further, the report on the President's Federal Personnel Management Project estimated that the proposed revisions would result in savings of \$2.8 billion in the first 5 years after enactment.

The Service Contract Act

When a contractor bids on a Government contract to provide a service, the minimum wages that it must pay its employees are determined by the Secretary of Labor under the provisions of the Service Contract Act of 1965 as amended. ^{1/} The act requires that a service contractor's employees be paid at least the prevailing rates for similar employees in the locality, or the rates provided for in a collective bargaining agreement covering such employees.

The act further requires a successor contractor to pay its employees no less than the wages provided for in a predecessor contractor's collective bargaining agreement, unless they are substantially at variance with prevailing wages for similar services in the locality. Another provision of the act requires that the contract must contain a statement of the rates that would be paid by the Federal agency to the various classes of service employees and that the Secretary of Labor shall give due consideration to those rates in making wage determinations.

As stated earlier, Federal wage rates, in most cases, are higher than local prevailing rates, and, when used in making a wage determination, would tend to inflate Service Contract Act wage rates. Although Federal blue-collar and service contractor employee wage rates are claimed to be based on the concept of prevailing wages in a particular locality, the wages can, in many cases, differ considerably in comparison and with the actual prevailing rates in the locality.

^{1/}Public Law 89-286, 79 Stat. 1034.

An illustration of the effects of this situation is set forth in our June 20, 1977, report. 1/ We stated that the Air Force Academy's cost analysis indicated that the cost for contracting the food service would be 34 percent less than in-house cost. The indicated savings were due primarily to lower wage rates paid by the contractor compared to the rates paid to Federal employees. The contractor would have been required to pay \$3.27 an hour, while a Federal employee performing the same duties would have received wages of \$5.81 per hour.

Wage rates for Federal employees at the Academy are determined by DOD with concurrence by CSC. The differences in wages for contractor employees and Federal employees can vary substantially according to industry, geographic areas, selected boundaries, and timing of required wage surveys.

To improve the Federal Wage System's pay determination process, we recommended that CSC obtain wage information more representative of the types of services needed.

OTHER CONSIDERATIONS

In some situations, cost comparisons lack credibility because they are prepared by personnel who are unqualified or who would be affected by the outcome. These factors tend to discredit the objectivity of comparisons and invite criticism. Further, the interests of the Government might not be adequately protected.

Preparation of cost comparisons can be time consuming and expensive. A report of the Army Audit Agency, dated October 1977, discussed the cost of making cost comparisons. It pointed out that the cost incurred at 12 installations to prepare 92 cost comparisons totaled over \$223,000. It also cited an example in which one installation spent about \$10,130 to prepare an analysis for an activity with an annual operating cost of only \$20,000.

1/"Potential for Contracting Selected Operations at the Air Force Academy Cadet Dining Hall," (FPCD-77-57).

CHAPTER 7

INFLUENCES ON IMPLEMENTATION

Circular A-76 is not the only directive that agencies must follow in deciding whether to perform commercial or industrial activities on an in-house or contract basis. The Circular states that it will not:

"* * * be used to justify departure from any law or regulation, including regulations of the Civil Service Commission or other appropriate authority, * * *."

In this chapter, we will provide some perspective for the Circular by identifying and discussing several other major policies, regulations, and laws that might affect or be affected by decisionmaking under the Circular or that might preempt or override its provisions. Where available, specific case situations are also discussed. The policies, regulations, and laws noted during our review concern:

- Personnel ceilings.
- Personal services contracts.
- Federal labor-management relations policies.
- Intra/Interagency support.
- Federal small business policy.
- DOD's personnel resource policies.
- Army/Air Force factories and arsenals.
- Federal printing policy.

A discussion of each of the foregoing policies, regulations, and laws follows.

PERSONNEL CEILINGS

Federal employment is controlled primarily through personnel ceilings which OMB establishes for each agency. Since fiscal year 1975, the Congress has set civilian personnel ceilings for DOD.

In a June 1977 report 1/ to the Congress, we stated that personnel ceilings create an administrative burden and an illusion of control. We found that managers are more concerned with the number of persons actually employed on one particular day than with getting essential work done through the most effective, efficient, and economical use of people.

If Government agencies cannot directly hire enough people to accomplish programs and functions approved by the President and the Congress, they must pay employees overtime or obtain the services of additional people indirectly through contracts with private firms or through grants to institutions and State and local governments. These people are neither included in employment ceilings nor counted as part of the Federal work force, but must be paid from Federal funds.

We recommended that OMB:

- Establish a task force at the earliest practicable time to develop criteria and action plans for a controlled and rigorous demonstration of the feasibility and general applicability of the budget process as a control over total manpower resources, including direct employment. The demonstration project should be undertaken simultaneously in several agencies with different types of operations.
- Consult and coordinate closely with congressional committees involved to invite their support of this project and furnish the committees periodic reports on the progress of the demonstration effort.

OMB disagreed with our conclusion that personnel ceilings are a barrier to effective manpower management. OMB believes that it is fundamentally desirable to control the number of employees on the Federal payroll and that such a position correctly reflects the preferences of the Congress, the President, and the public.

The December 1977 report on the President's Federal Personnel Management Project recognized that position ceilings were a barrier to effective work force management and recommended the use of budget controls as a substitute.

Although Circular A-76 requires that contracting not be used to avoid established salary or personnel limitations,

1/"Personnel Ceilings--A Barrier to Effective Manpower Management," (FPCD-76-88, June 2, 1977).

we found that agency decisions to contract out or stay in-house apparently continue to be influenced by the necessity of meeting yearend personnel ceilings. For instance, personnel ceilings may cause agencies to contract out basic governmental functions or other activities that could be performed in-house. Instances we encountered where personnel limitations might have circumvented the lower in-house cost justification of the Circular include the following:

- The Bureau of Reclamation contracts for guard service in its Mid-Pacific Region due to personnel limitations, although in-house performance is estimated by the Bureau to save \$15,000 annually.
- The Agricultural Research Service contracts out much of its work because of personnel ceilings even when in-house performance might be less costly.
- The Army is proceeding with a contract for fuel analysis and testing services at Fort Carson, Colorado, because of personnel ceilings without making a comparison with in-house costs.
- The Norfolk Naval Shipyard has justified contracting three activities on the basis of cost effectiveness. However, neither we nor the Naval Audit Service found evidence that cost comparisons had been prepared. Shipyard officials told us that much of the shipyard's commercial contracting had resulted from reductions in personnel ceilings. Because a Navy instruction prohibits the use of contractor performance for the purpose of avoiding established personnel limitations, shipyard officials feel that they must justify contracting on the basis of cost effectiveness.

As indicated by Proposed Action 4A in appendix VIII, OFPP intends to clarify the interrelationship of the A-76 policy and the policy regarding personnel ceilings. Our comments on this proposed change are included in chapter 8.

PERSONAL SERVICES CONTRACTS

For many years, the issue of contracting for personal services by Government agencies has received critical attention from executive agencies, CSC, our office, and several congressional committees. Unless specifically authorized by law, an agency's procurement of personal services by contract is subject to the requirements of the Federal personnel laws. Contracting agencies have primary responsibility

for identifying illegal contracts and taking appropriate action. CSC is responsible for assuring compliance with the personnel laws. We have enforcement authority to disallow payments made pursuant to contracts that have been found to be illegal.

The term "personal services" as used in early Comptroller General decisions (see app. VI) included all services normally performed by Government employees and all services which could be performed by incumbents of existing civil service positions. It was held in those decisions that Government agencies were not authorized to contract for the performance of such services because governmental functions should not be performed by contractors which could not be personally held responsible for failure or misfeasance.

Since those early decisions, CSC and our office have recognized that services normally performed by Government personnel can be performed under a proper contract if that method of procurement is found to be more feasible, more economical, or necessary to accomplish an agency task. A "proper contract" for services is considered to be one in which the relationship established between the Government and contract personnel is not that of employer-employee. Further, the services must be of a type which can be properly delegated to non-Government personnel.

Support service contracts are not outlawed per se by Federal personnel laws. However, CSC has taken the position that a contract is to be questioned if it permits or requires detailed Government supervision over a contractor's employees. No single provision of a contract is used as the sole basis for a determination that a support service contract is or is not outlawed. Legality is based on an evaluation of the provisions of the entire contract and the manner in which it is performed and administered. The test of legality under the personnel laws is whether the contract creates what is tantamount to an employer-employee relationship between the Government and the employees of the contractor.

The basic criteria 1/ by which this relationship is judged are whether an employee is

--appointed in the civil service by a Federal officer or employee,

1/5 U.S.C. 2105(a).

- engaged in the performance of a Federal function under authority of law or an executive act, and
- subject to the supervision of a Federal officer or employee while engaged in the performance of the duties of his position.

The General Counsel of CSC issued an opinion in October 1967 (hereinafter called the "1967 Opinion") regarding the legality of selected contracts of NASA's Goddard Space Flight Center. The 1967 Opinion held that the contracts under review were outlawed by Federal personnel laws. Six elements 1/ were identified in the 1967 Opinion which were considered in determining the legality of support service contracts.

- Performance on-site.
- Principal tools and equipment furnished by the Government.
- Services are applied directly to integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.
- Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.
- The need for the type of service provided can reasonably be expected to last beyond 1 year.
- The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly Government direction or supervision of contractor employees in order to:
 - adequately protect the Government's interest,
 - retain control of the function involved, or
 - retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

1/Also referred to as the "Pellerzi Standards" after the former CSC General Counsel, Leo M. Pellerzi, who issued the 1967 Opinion.

In 1967 a suit was filed against NASA, challenging the propriety of replacing Federal employees with contractor employees to perform the same work at the same location-- Marshall Space Flight Center. In 1976 after years of litigation, the U.S. District Court for the District of Columbia declared 22 of the 32 NASA service contracts involved in the case null and void. The court based its ruling on its interpretation of the criteria and elements outlined in the 1967 Opinion. However, NASA appealed, and on March 20, 1978, the U.S. Court of Appeals for the District of Columbia disagreed with the lower court's interpretation of the 1967 Opinion and thereby declared the lower court's finding that 22 of the contracts were invalid to be clearly erroneous. The Appeals Court stated that the contracts in question

"* * * were outside the civil service laws, and the manner in which they were carried out did not violate their terms and bring them within those statutes."

The 1978 Appeals Court ruling held that only relatively continuous, close supervision of a substantial number of contractor employees was sufficient to constitute a basis for declaring a contract to be illegal.

Similar suits have been filed, alleging that the Government has created what is tantamount to an employer-employee relationship in several other instances. The eventual outcome of these suits would be difficult to predict because each case will, of course, be decided on its specific circumstances.

We found instances in which agencies were hesitant to contract out for support services for fear of having the legality of the contracts challenged. For example, because of the 1967 Marshall Space Flight Center suit discussed above, which has only recently been resolved, NASA officials continue to be reluctant to displace more in-house employees through contracting out.

In addition, we found that in 1975 the Geological Survey considered contracting for mail shuttle services between the Department of the Interior in Washington, D.C., and the National Center in nearby Reston, Virginia. Contracting was thought to be less costly than continued in-house performance. A contract was drafted, and the Survey's personnel officer reviewed it. Because of comments that were made concerning perceived violations of the 1967 Opinion, the Survey decided to continue operating its mail shuttle services in-house.

As indicated by Proposed Action 4B in appendix VI, OFPP intends to clarify the Circular to specifically prohibit contracting that establishes an employer-employee relationship between the Government and contractor personnel. We believe that this issue should be seriously addressed by OFPP and the executive agencies in view of the potential for costly and lengthy court challenges.

FEDERAL LABOR-MANAGEMENT
RELATIONS POLICIES

Presidential policies governing the relationships between officers and agencies of the executive branch, on the one hand, and Federal employees and organizations representing such employees, on the other hand, are stated in an Executive order. 1/

The enforcement of rights, assured Federal employees and their organizations by this order, are having an increasing impact on management's personnel policies and practices, including those in the area of contracting out. As of November 1976, approximately 50 Federal agencies had negotiated almost 3,000 labor agreements covering more than 1 million Federal employees. Of these, over 700 contained provisions on employer rights in connection with contracting out. Many of these provisions require that the union be notified of the decision to contract out and include arrangements for employees adversely affected.

Included in this order is a provision (section 9(b)) that when a labor organization has been accorded national consultation rights, the agency shall notify representatives of the organization of proposed substantive changes in personnel policies that affect employees it represents, provide an opportunity for the organization to comment on the proposed changes, carefully consider changes suggested by the organization, and consult with the organization, on request, on personnel policy matters.

The fundamental importance of these negotiated agreements and Executive order provisions is that Federal employee unions may have an influence on new personnel policies before they are put into effect by the Government. This could have a considerable affect on decisions to contract out work normally or historically performed by union personnel.

1/Executive Order 11491, "Labor-Management Relations in the Federal Service," Oct. 29, 1969, as amended.

INTRA/INTERAGENCY SUPPORT

There are many statements of statutory authority for the provision of materials or services by one Federal agency (or bureau or office thereof) to another. The general authority is contained in the Economy Act of 1932 (31 U.S.C. 686(a)). (See app. V.)

Based on our analysis of the provisions of this act and its legislative history, we believe that before an agency acquires goods or services under the act, it must make a reasonable effort to perform a cost comparison, except where it determines that it is more convenient to obtain such goods or services from a Federal agency rather than a private contractor. 1/ We also believe that, since acquisition from a Federal agency under the act is discretionary, a cost comparison is not required under the act if the item is procured from a private contractor.

In connection with the act, we noted that section 5-701 of the Defense Acquisition Regulation 2/ prohibits use of solicitations for bids or requests for proposals from commercial sources before deciding whether to obtain supplies or services from other Government agencies. Accordingly, use of the firm bid procedure would be precluded as a means of making the cost comparisons required by the Economy Act. The regulation also provides that for cost comparisons, the procurement agency must either test the market by obtaining informal quotes from private firms or depend on prices of earlier procurements. 3/

As indicated by Proposed Action 1F in appendix VIII, OFPP intends to provide that agencies may obtain products or services from another Federal agency if such products or services have been reported as excess to GSA, where applicable, or the providing agency certifies that such action would be in accordance with the objectives and applicable provisions of Circular A-76. Our comments on this proposed change are included in chapter 8.

1/A decision in this latter situation would, of course, be subject to evaluation on the basis of principles of efficient and effective management.

2/Formerly the Armed Services Procurement Regulation.

3/See footnote on p. 51.

FEDERAL SMALL BUSINESS POLICY

It is the declared policy of the Congress that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government be placed with small business concerns (15 U.S.C. 631(a)). The policy's objective is to preserve free competition, which is essential to the country's economic well-being and security.

Procurements made from small business concerns by the civilian executive agencies during the fiscal year ended June 30, 1976, amounted to about \$4.3 billion or 24.1 percent of all procurements made by those agencies in that year.

In fiscal year 1976, DOD, as a major Government agency, placed about \$7.5 billion in prime contracts for goods and services with small business concerns for its military functions. This represented about 20 percent of its total value of military prime contracts to all U.S. business firms during that period.

In 1960 the Air Force put into effect a major operations and maintenance service contract at Vance Air Force Base, Oklahoma. The Vance contract is an umbrella-type contract, which requires a single contractor to perform the maximum number of functions possible on the base. Although Air Force officials feel that the umbrella concept is more effective and less costly than several smaller contracts, it has had only limited application.

Implementing an umbrella-type contract, however, may conflict with the Government's small business policy. For example, separate contracts for individual functional areas which would otherwise be suitable for set-aside purposes would no longer be available if consolidated into a single large contract. Further, if the size of the contract package were beyond the capability, competency, capacity, credit, etc., of small business concerns, those concerns would not be in a position to compete with large concerns on initial contract awards or resolicitations. This latter point does not appear to have been a problem at Vance in the past because only two contractors have provided support at that base since 1960, the first of which Air Force records indicate was an extremely small business. This point, however, could become a problem in the future.

For example, the Army has attempted to use the umbrella concept in a pilot test at Fort Gordon, Georgia, in 1977. 1/ In connection with that test, the Small Business Administration recommended that the planned umbrella contract be divided into smaller contracts as small business set-asides. The recommendation was rejected and the Small Business Administration appealed to the Secretary of the Army. However, the pilot test was subsequently suspended because the DOD Appropriation Act provision prohibits funding for conversions of base operating support functions from in-house to contract performance during fiscal year 1978. (See app. V.)

Section 809 of the DOD Appropriation Act for fiscal year 1978 requires the Secretary of Defense, insofar as practicable, to assist U.S. small business to participate equitably in furnishing commodities and services financed with funds appropriated under the act.

DOD's PERSONNEL RESOURCE POLICY

Because of DOD's unique mission, a determination of what method of performance to use (in-house or contract) for its commercial or industrial activities is subject to special considerations. For example, the following summary illustrates some of these considerations:

"In summary, defense activities are identified first in terms of those that must be performed by military personnel. Secondly, those activities are identified which must be performed by DOD civilian personnel because they are managerial in nature or because they are required as a minimum capability necessary to assure an ability to immediately respond to military contingencies. Activities not included in the above are considered to be available for performance by contract, subject to an evaluation of the comparative cost of in-house and contractor performance. It is not feasible to identify a list of functions not suitable for performance by contract since the manpower source is necessarily determined on a case-by-case basis." 2/

1/"Contracting Out Base Support Services at Fort Gordon," (LCD-78-320, July 27, 1978).

2/Report of Performance Review of Department of Defense Commercial or Industrial Functions, December 31, 1977, prepared jointly by the Office of Management and Budget and the Department of Defense.

The Brookings Institution completed a study for the Senate Committee on Armed Services in September 1977 entitled "Shaping The Defense Civilian Work Force." The study identified and discussed the major issues surrounding the utilization and management of civilian personnel employed by DOD. Among the conclusions made by the authors are the following:

** * * The composition of the defense work force results from a collection of general rules contained in several directives. These rules can be summarized as follows:

(a) Uniformed personnel are to be assigned to jobs that, in the judgment of the armed forces, require a military incumbent.

(b) All other jobs are to be filled by Federal civilians or contracted for in the private sector; the services must prove that a military person is required.

(c) Reliance on the private sector is encouraged; the service or agency must prove that a "compelling" reason exists to keep certain jobs in-house.

* * * These guidelines are not followed to the letter. Their vague contours leave a great deal open to interpretation, thus permitting institutional and political forces to exert considerable influence. On balance, these interests discourage even marginal changes in the composition of the defense labor force--irrespective of changes in the cogency of the underlying justification."

The authors of this study also stated that:

"An important conclusion * * * is that the overall composition of defense manpower is not derived analytically. Manpower issues are raised at several points, but usually not in the context of evaluating the relative costs and effectiveness of alternatives for specific activities, and rarely from a 'zero base.' And even less often is consideration given to possible trade-offs among the several forms of manpower available to the Department of Defense--military, Federal civilian, and contract. Such analyses are avoided partly because the process is so complicated (participants seek

simple rules, like comparing the current year's request with last year's authorization) and partly because institutional and political forces exert unusual and often conflicting influence. The net tendency is to discourage changes in the manpower mix and to perpetuate the status quo.

* * * * *

* * * the size and character of the defense civilian work force are determined not only by technical requirements, but also by institutional interests and domestic politics. Indeed, many factors largely unrelated to national security play an important role in shaping the defense work force. Military planners, usually backed by their civilian leaders, are inclined to protect uniformed personnel. And while many legislators are concerned about the high cost of defense manpower, particularly on the civilian side, they are often torn between national security interests and the particular desires of local constituencies and special interest groups. * * *

Applying DOD's personnel resource philosophy is extremely complex. For example, in a report 1/ to the Secretary of Defense, we discussed two series of DOD policies relating to the distribution of depot maintenance workloads between in-house and contract sources--the A-76 series and the mobilization base series. We stated that the relationship between the two series was not clear and that this had resulted in a lack of consideration for economy in distributing depot maintenance.

Depot maintenance for all military equipment was estimated to cost between \$5 and \$6 billion annually. It included major overhaul, or complete rebuild, of parts, assemblies, subassemblies and end items; and manufacture of parts, modification, testing, and reclamation as required.

Under Circular A-76, in-house performance of all mission-essential depot maintenance workloads could have been justified on the basis of the need for a mobilization readiness

1/"Should Aircraft Depot Maintenance Be In-house or Contracted? Controls and Revised Criteria Needed," (FPCD-76-49, Oct. 20, 1976).

base, and any workload not considered mission essential could have been distributed between in-house and contract sources on the basis of relative cost when feasible. However, DOD Directive 4151.1 ("Use of Contractor and Government Resources for Maintenance of Materiel") stated that

"The extent of facility capability and capacity within the Military Departments for depot support of mission-essential equipment will be kept to the minimum required to insure a ready and controlled source of technical competence and resources necessary to meet military contingencies."

The directive also stated that, generally, each military department should plan in-house depot maintenance capacity to accomplish no more than 70 percent of its gross mission-essential workload. The guidance implied that, to the maximum extent feasible, all non-mission-essential workload and at least 30 percent of the mission-essential workload should have been performed by commercial sources. Thus, there was a fundamental difference between the Circular and the directive as to the basis for determining distribution of workload between in-house and contract sources.

DOD's overall personnel resource policy is governed by the following expression of congressional concern:

"It is the sense of Congress that the Department of Defense shall use the least costly form of manpower that is consistent with military requirements and other needs of the Department of Defense. Therefore, in developing the annual manpower authorization requests to the Congress and in carrying out manpower policies, the Secretary of Defense shall, in particular, consider the advantages of converting from one form of manpower to another (military, civilian, or private contract) for the performance of a specified job. A full justification of any conversion from one form of manpower to another shall be contained in the annual manpower requirements report to the Congress required by section 138(c)(3) of title 10, United States Code." 1/

1/Section 502 of DOD's Appropriation Authorization Act, 1975 (Public Law 93-365, Aug. 5, 1974).

Although this expression of congressional policy appeared in the act for 1975, it continues to mandate consideration by the Secretary of Defense. It is clear from its provisions that the Congress intends that DOD make a reasonable effort to convert higher cost forms of manpower (military, civilian, or contract) to lower cost forms of manpower, when consistent with military requirements. The legislative history of the act provides some evidence that, in determining relative costs, DOD will follow the cost comparison guidelines of Circular A-76 to achieve the desired objective.

ARMY/AIR FORCE FACTORIES AND ARSENALS

The Arsenal Statute, which is actually two separate laws--one expressly applicable to the Army and the other to the Air Force--provides for the manufacture of needed supplies in facilities owned by the United States. (See app. V.) In substance, the provisions of subsection (a) of the Army Arsenal Statute (10 U.S.C. 4532) were enacted in 1920 but were, in effect, a reenactment of a similar provision contained in section 5(a) of the National Defense Act of 1916. Subsection (a) states that:

"The Secretary of the Army shall have supplies needed for the Department of the Army made in factories or arsenals owned by the United States, so far as those factories or arsenals can make those supplies on an economical basis."

Under the Army Statute, the Secretary must, unless there is another law saying otherwise, have supplies needed by the Army made in a Government-owned factory or arsenal if production there is on an economical basis.

The Air Force Arsenal Statute (10 U.S.C. 9532), which was enacted in 1951, is the same as subsection (a) of the Army version, except that it provides that the Secretary of the Air Force may (rather than shall) have needed supplies made in U.S.-owned facilities, including depots. There is no similar legislation covering the manufacture of supplies for the Navy.

The basic concept of the statutes seems to be that Government-owned industrial facilities not be permitted to remain idle if it would be possible to use such facilities to produce supplies needed by the Army or the Air Force at a cost to the Government no greater than the cost of procuring such needs from private industry. In a December 15, 1960, letter (B-143232) to the Chairman, Subcommittee for Special

Investigations, House Committee on Armed Services, concerning application of the Army Statute, the Comptroller General stated:

"* * * it is our opinion that the words 'economical basis' were intended to require a comparison of all costs incurred by the Government as a result of producing an article in Government-owned facilities, with the price at which the article could be purchased from a private manufacturer.

Consequently, it is our further opinion that, in determining under this statute whether an article could have been produced in a Government-owned facility on an 'economical basis,' it would have been improper to include in the evaluation of such cost any amount which did not represent an actual expenditure by, or loss of savings to, the Government which was directly attributable to such production. * * *

In a related report (B-143232) also of December 15, 1960, to the Secretary of Defense, the Comptroller General further commented that:

"* * * The words 'economical basis,' as used in 10 U.S.C. 4532(a), are to be construed to mean a cost to the Government which is equal to or less than the cost of such supplies to the Government if produced in privately owned facilities, and it is our opinion that this statute requires the cost of production in Government plant to be computed on the basis of actual out-of-pocket cost to the Government. * * *

The provisions of both statutes cover Government-owned industrial facilities operated by contractors as well as those operated by the Government. However, the statutes cover only those Government-owned facilities which can furnish the Army or the Air Force with supplies made in those facilities. There is nothing in their provisions or legislative history to show congressional intent that maintenance and repair facilities were also contemplated.

FEDERAL PRINTING POLICY

In 1860 legislation was enacted requiring all Government printing work to be done at the Government Printing Office (GPO), unless otherwise authorized by law. Current law (44 U.S.C. 501) provides that all Government printing work, except

for that of the Supreme Court of the United States, must be done at GPO unless otherwise stated by the Joint Committee on Printing. However, title 44 also allows the commercial procurement of printing which cannot be accomplished at GPO, if approved by the Joint Committee. (See app. V.)

The Joint Committee has authorized Federal agencies to establish about 300 printing plants. The authorized plants are supposed to produce only that work which is not deemed to be commercially procurable, with exceptions provided for timeliness and efficiency.

The Joint Committee also authorizes map and chart printing plants to produce multicolor maps and charts, excluding support publications, without referral to GPO procurement offices. Therefore, these agencies have the option to procure map and chart work directly from commercial sources or through GPO procurement offices.

Our review included work at several printing plants that agencies are authorized to operate by the Joint Committee. For example, we found that the Geological Survey is authorized to operate an in-house map printing facility by the Joint Committee. The Survey regards the authorization as justification for continued in-house operation of its printing plant and gives no consideration to contracting out map printing unless workload exceeds in-house capability. Thus, the Survey perceives the regulations of the Joint Committee as an exemption from the requirements of Circular A-76.

While our work at this location emphasized the influence of Federal printing policy on the implementation of the Circular rather than agency compliance with either policy, we did note that a large portion of the map printing now performed by the Survey could be procured commercially. A Survey official estimates approximately 50 to 60 percent of the in-house map printing could be obtained from commercial sources over a 2- or 3-year conversion period. About 10 percent of the remaining workload requires a quicker response than commercial printers can normally deliver, about 30 percent is specialized work that only the Survey can do, and a small portion is classified.

We also found that the Army Corps of Engineers, Louisville District, is also authorized to operate and maintain an in-house printing plant although such printing services are available from commercial firms. During fiscal year 1977, its operating costs totaled \$163,000. In addition, the District contracted for special printing costing about \$40,000.

At the Internal Revenue Service's Printing Plant in New York, we found that the Joint Committee had reduced the status of that activity in August 1976 to that of a duplicating installation. It further required its commercially procurable printing to be handled through GPO contracts. In addition, its printing jobs not considered to be commercially procurable were to be handled by the GPO New York Field Service Office.

CHAPTER 8

PROPOSED CHANGES IN CIRCULAR A-76

AND OUR COMMENTS

OFPP has proposed a number of changes in Circular A-76 with the stated purpose of achieving a balanced approach to restructuring the Circular to promote equity and consistency in the application of the policy by executive agencies. Although our reaction to many of the individual proposals is generally favorable, we believe they present a strong collective potential for unnecessarily increasing the cost of Government without commensurate benefits.

There is reason to question the overall effectiveness of the proposed changes, most of which only address the specific mechanics of the program. We believe that priority should be given to more basic underlying problems, including (1) the need to develop a firm national resolve concerning the content and scope of the policy, (2) the need to establish supporting management systems and structures at all agency levels to better implement the policy, and (3) the need to develop an independent OMB/OFPP review and appraisal system. If these basic problems are not addressed, we believe that the inequities and inconsistencies OFPP hopes to minimize will continue.

On November 21, 1977, OFPP issued a memorandum to executive departments and agencies requesting their comments on the proposed changes in Circular A-76 and its implementing guidelines. A similar document was published in the Federal Register for public review and comment, and responses were requested by January 20, 1978.

It is important to emphasize that these documents only propose changes. They are not a new statement of Circular A-76. OFPP is now evaluating and analyzing the comments. It plans to publish a revised draft of the Circular for final review before issuance. 1/

Public Law 93-400 requires that, at least 30 days prior to the effective date of any major policy or regulation prescribed under this law, the Administrator, OFPP, shall transmit to the House Committee on Government Operations and the Senate Committee on Governmental Affairs a detailed report on the proposed policy or regulation. The act further requires that such a report include

1/See footnote on p. 3.

- a full description of the policy or regulation;
- a summary of the reasons for the issuance of such policy or regulation; and
- the names and positions of employees of the Office who will be made available, prior to such effective date, for full consultation with such Committees regarding such policy or regulation.

Accordingly, when a revised policy concerning Government reliance on private enterprise has been developed by OFPP, a report thereon should be transmitted to the appropriate Committees, as required above.

The proposed changes are categorized as follows:

<u>Category</u>	<u>Number of changes</u>
Basic principles and coverage	6
Definitions and implementation	7
Cost comparisons	14
Personnel considerations	6
Review and appeals	<u>4</u>
	<u>37</u>

A list of the proposed changes are included in appendix VIII. Our interim comments thereon, which were prepared before the results of our review were available, are included in appendix IX.

BASIC PRINCIPLES AND COVERAGE

OFPP is proposing a new three-part statement of basic philosophy: (1) Government reliance on the private sector is a valid principle, (2) certain functions are inherently governmental in nature and must be performed in-house, and (3) the taxpayer is entitled to economy in Government and cost comparisons are appropriate as criteria. Other proposals in this section include describing basic governmental functions, listing predominant activities that normally should be contracted, narrowing the criteria for exceptions to the policy, and establishing limitations on interagency support.

We found that the lack of guidance concerning what activities should or should not be subject to the Circular was a major problem. Movement toward a more explicit definition of a Government commercial or industrial activity is needed, and OFPP's proposal to describe governmental functions will further resolve this problem.

The principle that certain functions are inherently governmental in nature and must be performed in-house has, for the most part, only been implicit in the A-76 policy. Consequently, it has been misunderstood by many, both in and out of Government. By defining the program's approximate boundaries, we believe important gains can be made toward better implementation.

We agree with OFPP's philosophy which places economy in Government on an equal footing with Government reliance on the private sector. Although using cost comparisons as criteria may be appropriate, many problems exist in their preparation. (See ch. 6.) A little understood fact is that an agency can contract out under the Circular for needed goods and services without making a management determination that it was the most economical alternative. This position is based, in large part, on a belief that competition in the marketplace will result in a reasonable price.

OFPP's move to tighten the criteria for exceptions to the policy is needed, but successfully applying any new criteria will be directly related to the amount of implementation effort exerted by the agencies and OMB/OFPP. The use of any exception to the policy should be adequately documented and subjected to appropriate internal and external review.

Proposal 1F intends to further limit interagency procurement of goods and services. If pursued, the final form of the limitation should be consistent with the provisions of the Economy Act, which authorizes agencies to use the capabilities of other agencies if more economical or convenient than commercial procurement.

DEFINITIONS AND IMPLEMENTATION

In this category, OFPP is proposing several new definitions, various increased dollar thresholds, application of Circular A-76 principles to Government-owned, contractor-operated activities, development of supplements for telecommunications and ADP, and a statement of implementation, oversight and leadership responsibilities. Our comments on the new definitions and thresholds are included in appendix IX.

The new definitions, increased dollar thresholds and supplements are generally acceptable in concept as technical changes. We endorse subjecting Government-owned, contractor-operated activities to the principles of the A-76 policy and believe that this proposal should be pursued.

Proposed action 2G states:

"Detailed implementation responsibility will rest with the agencies subject to OMB oversight and OFPP leadership to review implementing regulations and performance."

We do not see this proposal as a change, but increased emphasis on agency implementation and OMB/OFPP oversight and leadership is needed. The number and scope of the proposed changes clearly recognize seriously needed improvements. In its memorandum, OFPP stated that:

"Although the general policy expressed in OMB Circular A-76 has been in effect for over twenty years, it has not been implemented properly by the executive agencies. * * *"

The lack of independent oversight and appraisal contributes to ineffective agency implementation. While recognizing that OMB and OFPP are limited by available resources, we believe that they must become more active in the overall implementation of the policy.

COST COMPARISONS

This category, which has the largest number of proposed changes, represents a commitment to completely overhaul the cost comparison area. Major proposed actions include (1) developing a detailed cost comparison handbook, (2) moving toward fuller costing for Government costs, (3) using competitive firm bids or proposals from industry, (4) providing a cost margin to support continuation of in-house activities, (5) providing a new cost margin on new starts, and (6) providing a new retirement cost factor. Other proposed actions in this category relate to technical aspects of the retirement cost factor, a cost factor for Social Security retirement benefits, and other costing methodology that depends on developing the detailed cost comparison handbook.

We disagree with the use of fuller costing in all cases as being potentially inconsistent with the policy objective of economy in Government and as an unnecessary potential bias toward contracting with private industry. (See ch. 6.) The firm bid/offer procedure has been used by the Air Force for several years as an improved method to develop contractor costs. (See ch. 6.)

The accuracy of the new retirement cost factor is, of course, determined by the reasonableness of the underlying

economic assumptions used. We have pointed out to OFPP that the new assumptions do not appear to be in line with recent Government experience. (See app. IX.)

When the Federal employee benefit cost factors were first introduced in 1976, we raised the issue of the need for a cost factor for Social Security benefits. At that time, the Social Security system's financial status was questionable and proposals were offered to use general tax revenues as additional support. However, in late 1977, the Congress voted to increase Social Security taxes and, hence, a Social Security cost factor may not be needed now.

A firm statement of a Government-wide A-76 policy that is supported by all parties is needed. Major improvements are needed in the agencies' management structures which we believe are necessary to properly implement the policy. An effective review and appraisal system at the OMB/OFPP level is needed. In our opinion, these basic underlying problem areas should be a primary consideration to OMB and OFPP in promoting better implementation of the policy. Addressing these areas on a priority basis would allow more time for developing the proposed cost handbook and eliminate further confusion as a result of a patchwork approach.

PERSONNEL CONSIDERATIONS

In this category, OFPP's proposals concern personnel ceilings, employer-employee relationships, employee preference requirements for contractors, contract development and administration procedures, and providing Federal employees with a right of first refusal for available contract vacancies.

With the exception of the first two proposals, this group of proposed actions does not directly affect, to any great extent, the main thrust of the policy--deciding between in-house or contract performance of commercial or industrial activities.

We continue to believe that personnel ceilings can and do cause contracting out without consideration of the various factors contained in Circular A-76. We endorse the President's Federal Personnel Management Project recommendation to use budget controls rather than personnel ceilings.

OFPP's recognition of the potential problems with employer-employee relationships is long overdue. Federal employee unions have been very active in this area on the behalf of their membership. There is a need for guidance in this area, not only in the preparation of statements of work but also in the day-to-day administration of contracts.

The proposed action to give Federal employees a right of first refusal for available contract vacancies would provide employees displaced by contract conversions with an opportunity to work for the contractors. OFPP noted in its supporting rationale that, while various benefits accrue to employees subject to reduction in force, reassignment of all displaced employees in other Federal jobs is not always possible. While OFPP hopes to provide this right as a condition to contracting, it also noted that its legality would have to be established before incorporation into the Circular.

The intent of this proposal appears to complement that stated by OMB and CSC on December 14, 1977, in a joint memorandum on the "Personnel Impact of Managerial and Reorganization Actions." This memorandum addresses various actions to ease the effect on Federal Government employees as a result of managerial changes to achieve efficiency and economy in the Government. It deals with such things as a reassignment program, reasonable training, gradual phasing, relocation assistance, and assistance in finding other jobs. The managerial actions contemplated could also apply to instances which result from contracting out.

REVIEW AND APPEALS

In this category, OFPP proposes to require agencies to maintain central points of contact for A-76 implementation, develop and announce detailed plans for triennial reviews, periodically review certain contracted activities, and establish an appeal mechanism.

We believe that a central point of contact for A-76 is a good idea. However, under present circumstances, this proposal appears to be aimed more at fulfilling Freedom of Information requests rather than improving the implementation of the Circular. We believe that A-76 should be established within the mainstream of the agencies' decisionmaking processes with strong management emphasis and review.

We support the proposal to review contracted activities when subsequent events make in-house performance less costly. We believe that specific criteria should be established to trigger cost comparisons to reduce subjectivity. However, before studying the feasibility of in-house performance in these cases, we believe the executive agencies should make a reasonable effort to identify or develop other private sources to improve competition, or to take such other remedies in procurement as needed. Further comments on this proposal are included in appendix IX.

Due to the current implementation problems, we do not agree with the proposal to establish an appeals process at this time. The added administration costs and the potential for abuse and costly delays inherent in such a process outweigh any perceived advantages to the Government.

We also believe that, if an appeals mechanism is to be established at some future date, OFPP should develop a uniform system rather than having each agency develop its own.

CHAPTER 9

CONCLUSIONS, AGENCY COMMENTS, AND RECOMMENDATIONS

CONCLUSIONS

In 1955 the executive branch issued a policy of reliance on private enterprise to supply goods and services needed by Federal departments and agencies. Over the years, this policy has moved gradually from almost outright reliance on private sources of supply, to qualified reliance, to reliance with exceptions. A newly proposed policy by the executive branch would, for the first time, provide equal consideration to the need for economy in Government.

Based on the results of our review, we conclude that:

- Circular A-76 has not been perceived as a national policy with full executive and legislative branch approval and support.
- Over the years, policy pronouncements and applications have been controversial and unsettled.
- Implementation by executive departments and agencies has been inconsistent and relatively ineffective.
- Make-or-buy decisions were not necessarily based on sound management principles that would produce as economical and effective Government as possible.

Government-wide management of the A-76 program needs

- management control systems acceptable to each of the departments and agencies,
- clarification of the basic policy and regulations,
- clear identification of the types of activities subject to the policy,
- uniform and consistent execution of the policy by all departments and agencies, and
- development of review and appraisal systems that will show how the policy is being carried out.

We found confusion, lack of knowledge and understanding, and a reluctance to carry out the program which has not been

integrated with the agencies' main decisionmaking processes. Existing agency budgetary and accounting systems have not always supported the make-or-buy program.

Federal agencies seldom prepared cost comparisons. They experienced difficulties, such as

- when to prepare them,
- how to prepare them,
- determining the Government's costs,
- determining contractors' costs, and
- comparability of Federal pay rates with private enterprise.

Agency make-or-buy decisions were significantly influenced by:

- Personnel ceilings.
- Personal services contract issues.
- Federal labor-management relations policies.
- Legislation relating to obtaining goods or services from other Government agencies.
- Federal small business policy.
- DOD policies for assigning military or civilian personnel.
- Laws relating to the use of Government arsenals.
- Federal printing policy.

We conclude that there is adequate reason to question the ultimate effectiveness of the additional requirements to Circular A-76 currently proposed by OFPP. Priority attention needs to be directed toward resolving the basic underlying problems without increasing the program's red tape.

Furthermore, certain proposals will bring no benefits and may increase costs to the Government, such as applying full costing principles in all cases and establishing an appeals procedure.

We conclude that there is a need for a national policy directing how the Government will acquire its needed goods and services, endorsed and supported by both the legislative and executive branches. The national policy must be stable, understandable, and provide a balance among many conflicting national issues. There also is a need to review existing legislation to identify and eliminate potential sources of conflicts and inequities.

Until Federal departments and agencies perceive that the A-76 policy is a firm national resolve, they will not carry it out effectively.

AGENCY COMMENTS AND OUR EVALUATION

In commenting on our report, the Administrator of OFPP takes issue with our conclusion that there is no national policy directing how the Government will acquire its needed goods and services, endorsed and supported by both the legislative and executive branches. The Administrator also challenges our observations relating to the implementation of the policy and OFPP's proposals to achieve a more effective system.

We clearly recognize the existence of the executive branch's policy in this matter as delineated in OMB Circular A-76. (See ch. 2 and app. III.) However, the mere existence of this Circular does not constitute endorsement and support of such by both the legislative and executive branches of Government. The legislative history of Public Law 93-400, which established the Office of Federal Procurement Policy, clearly states that, notwithstanding support by some subcommittee l/ members for reliance on the private sector, "* * * * The bill does not endorse or assure any particular policy * * *." (Underscoring supplied.) During our review of the implementation of Circular A-76 in nine Federal departments and agencies, we observed that DOD had a highly structured program while two civilian agencies had nonexistent programs. Implementation and acceptance of this policy by the executive agencies over the past 23 years has been very uneven. The studies and reform proposals currently being undertaken by OFPP are further evidence of the need for more effective and consistent implementation of the policy in the executive branch.

l/Ad Hoc Subcommittee on Federal Procurement, Senate Committee on Government Operations; Report No. 93-692, Feb. 26, 1974.

Our forecast for continued confusion, controversy, and ineffective implementation of this policy is founded on our strong belief that, without a firm national policy with both legislative and executive branch endorsement and support, there is little hope for success. The past 23 years' experience also attests to this prediction.

The Administrator also commented that two issues covered in this report, personnel ceilings and Government accounting systems, should be addressed in a broader context than the implementation of A-76. Although we agree that these issues are broad and not solely related to A-76, we believe that A-76 is a major Government-wide issue and should not be dealt with by itself. We continue to maintain that personnel ceilings are an illusion of control over personnel resources and can force agencies to contract out when that may not be the most appropriate method of performance. While recognizing that needed changes and improvements in Government accounting systems will not be readily accomplished, we believe that, with a determined effort, much progress can be made in obtaining better cost data for use in cost comparisons at this time.

A copy of the Administrator's letter to us is included as appendix X.

RECOMMENDATIONS

Office of Federal Procurement Policy

We recommend that the Administrator require agency heads to develop a plan for integrating the policies into the mainstream of each agency's management and decisionmaking processes. These plans should be subject to his review and approval.

We recommend that the Administrator also undertake studies to establish the extent to which the budgetary and accounting systems will support the make-or-buy program.

We also recommend that the Administrator develop the overall policy and requirements for agency heads to institute an independent review process of the A-76 program within each agency.

Office of Management and Budget

We recommend that the Director assess the feasibility and practicability of incorporating the objectives of the A-76

program into the budget review process. We also recommend that the Director develop a method to systematically review how the agencies carry out the 1-76 program.

House Committee on Government Operations
and Senate Committee on Governmental Affairs

During their deliberations on the revised A-76 policy, we recommend that the Committees consider the findings in this report and the recommendations of the Commission on Government Procurement.

The Congress

We recommend that the Congress, through legislation or otherwise:

- Endorse a national policy of reliance on private enterprise for the Government's needed goods and services to the maximum extent feasible, insofar as doing so is consistent with the national interest, within the framework of procurement at reasonable prices.
- Require executive agencies to report on their progress in supporting that national policy.
- Direct reviews of existing legislation relative to the Government make-or-buy decision to identify and eliminate potential sources of conflicts and inequities.

LIST OF AGENCY LOCATIONS VISITED OR CONTACTEDAgency/Bureau/SiteDepartment of Agriculture

Headquarters

Agricultural Research Service Headquarters

Southern Regional Research Center,
New Orleans, Louisiana

Northeastern Region Agriculture and Research Center,
Beltsville, Maryland

Soil Conservation Service Headquarters

South Technical Service Center, Ft. Worth, Texas

Forest Service Headquarters

Rocky Mountain Region, Denver, Colorado

Department of Defense

Office of the Secretary of Defense

Department of the Air Force Headquarters

Air Force Logistics Command

Wright-Patterson Air Force Base, Ohio

Air Force Management Engineering Agency,

Randolph Air Force Base, Texas

Air Training Command Headquarters

(Randolph Air Force Base, Texas)

Lowry Air Force Base, Colorado

Vance Air Force Base, Oklahoma 1/

Alaska Air Command Headquarters

Elmendorf Air Force Base, Alaska

Department of the Army Headquarters

Chief of Engineers, Department of the Army

Ohio River Division Corps of Engineers

Cincinnati, Ohio

Louisville District, Kentucky

United States Army Forces Command Headquarters

(Fort McPherson, Georgia)

Fort Carson, Colorado

United States Army Training and Doctrine

Command Headquarters (Fort Monroe, Virginia)

Fort Knox, Kentucky

1/Work performed at Air Training Command Headquarters
(Randolph Air Force Base, Texas).

Department of the Navy Headquarters
Naval Air Systems Command Headquarters
Naval Air Logistics Center, Patuxent River,
Maryland
Naval Air Rework Facility, Norfolk, Virginia
Naval Facilities Engineering Command
Headquarters
Public Works Center, Norfolk, Virginia
Naval Sea Systems Command Headquarters
Norfolk Naval Shipyard, Norfolk, Virginia

General Services Administration

Headquarters

Regional Office, Washington, D.C.

Department of Health, Education, and Welfare

Headquarters

National Institutes of Health Headquarters
National Institute of Environmental Health Sciences,
Research Triangle Park, North Carolina

Public Health Service Headquarters
PHS Hospital, San Francisco, California

Social Security Administration Headquarters

Department of Housing and Urban Development

Headquarters

Regional Office and Area Office, Chicago, Illinois

Department of the Interior

Headquarters

Geological Survey Headquarters
Central Region, Denver, Colorado
National Park Service Headquarters
Denver Service Center, Denver, Colorado
Rocky Mountain Region, Denver, Colorado
Bureau of Reclamation Headquarters
Engineering and Research Center, Denver, Colorado
Mid-Pacific Region, Sacramento, California

National Aeronautics and Space
Administration

Headquarters

Lyndon B. Johnson Space Center, Houston, Texas

Lewis Research Center, Cleveland, Ohio

Office of Management and Budget

Office of Federal Procurement Policy

Department of Transportation

Headquarters

United States Coast Guard Headquarters
Aircraft Repair and Supply Center,
North Carolina
District Office/Base, Louisiana

Federal Aviation Administration Headquarters
Aeronautical Center, Oklahoma City, Oklahoma

Department of the Treasury

Headquarters.

Bureau of Alcohol, Tobacco and Firearms Headquarters
Cincinnati Regional Laboratory, Cincinnati, Ohio

United States Customs Service Headquarters
Customs Laboratory, New Orleans, Louisiana
Customs Laboratory, New York, New York

Internal Revenue Service Headquarters
Printing Plant, New York, New York

RELATIVE SIZE OF DEPARTMENTS AND AGENCIES REVIEWED

<u>Department or agency</u>	<u>FY 1977 outlays (note a)</u>	<u>FY 1976 Major procurements (note b)</u>	<u>FY 1977 full- time permanent civilian employees (note a)</u>
	(millions)		
Agriculture	\$ 16,738	\$ 353	82,051
Defense	<u>c/ 97,930</u>	41,527	940,549
General Services Administration	-31	1,707	34,040
Health, Education, and Welfare	147,455	1,841	140,399
Housing and Urban Development	5,838	258	15,261
Interior	3,194	1,071	53,291
National Aeronautics and Space Administration	3,944	3,205	23,569
Office of Management and Budget	-	-	-
Transportation	12,514	604	71,550
Treasury	<u>49,560</u>	<u>249</u>	<u>107,150</u>
Total	<u>\$337,142</u>	<u>\$50,815</u>	<u>1,467,850</u>
U.S. total	<u>\$401,902</u>	<u>\$59,441</u>	<u>d/1,908,988</u>
Percent of U.S. total	84	85	77

Sources:

a/The Budget of the United States for Fiscal Year 1979.

b/As reported by the departments and agencies.

c/Includes allowances for civilian and military pay raises for Department of Defense.

d/Excludes Postal Service employment.

EVOLUTION OF THE A-76 POLICYBulletin No. 55-4

After extensive studies, the executive branch issued Bulletin No. 55-4 on January 15, 1955, which announced that:

"It is the general policy of the administration that the Federal Government will not start or carry on any commercial activity to provide a service or product for its own use if such product or service can be procured from private enterprise through ordinary business channels. Exceptions to this policy shall be made by the head of an agency only where it is clearly demonstrated in each case that it is not in the public interest to procure such product or service from private enterprise."

It was felt that a general policy establishing a presumption in favor of procurement from commercial sources would further the free enterprise system and permit agencies to concentrate on their primary objectives. This bulletin required agencies to inventory all commercial activities and to evaluate the manufacturing-type activities identified to determine which ones should be discontinued.

The bulletin provided that the relative costs of Government operation would be a factor only in those cases where the agency head concluded that the product or service could not be purchased on a competitive basis and at a reasonable price. The reasons for this policy on relative costs have been stated as follows:

1. The cost of Government operations are not comparable with corresponding business costs. The Government, for example, pays no income taxes and operates its own tax-free facilities, thereby keeping costs down.
2. Government accounts are not kept in the same manner as business accounts, so that a comparison of the operating costs of Government versus business, for example, is not only difficult but often misleading.
3. Above all, the decision of whether to continue or discontinue a Government activity solely on an apparent cost basis runs counter to our concept that the Government ordinarily has no right to compete in a private enterprise economy.

The initial inventory compiled under Bulletin No. 55-4 was not published until May 1956 and was of limited use. It made available, for the first time, on a Government-wide basis, information on the kind and size of existing commercial or industrial activities. However, it only included activities of civilian agencies and DOD's manufacturing activities. There were inconsistencies in reporting activities among agencies. For example, types of activities included by one agency were omitted by another.

Because of the lack of response to the primary objective of curtailing commercial activities, agencies were asked to reevaluate their manufacturing activities in April 1956. This reevaluation was considered to be of only limited success. The Cabinet reviewed the program in November 1956 and decided to evaluate service-type activities.

Bulletin No. 57-7

Bulletin No. 57-7, issued on February 5, 1957, contained the same statement of policy as Bulletin No. 55-4. This bulletin provided instructions on evaluating commercial activities classified as services. It also provided further interpretation of the policy and procedures for terminating existing activities and starting new ones.

In further refining the relative cost criteria, Bulletin 57-7 provided that commercial prices were to be considered reasonable when the price to the Government was not greater than the lowest price obtained by other purchasers, taking into consideration volume of purchases and quality of the products or services. In those cases where the product or service could not be purchased on a competitive basis, or at a reasonable price on a noncompetitive basis, it was necessary to make a comparison of prices with costs of Government operation.

Except where a statutory change was necessary, the agencies were to discontinue or curtail each commercial activity as soon as the agency head determined that it was reasonably possible to do so. Each agency was to diligently carry out such actions in an orderly way and on a reasonable time schedule.

Both the local community and the employees were to be given adequate advance notice. Each agency was to assist affected employees, as necessary, in finding other employment.

No new commercial activity was to be started until, as a minimum, the head of the agency had

- (a) ascertained that the product or service was necessary to the conduct of governmental function,
- (b) provided a reasonable opportunity for private enterprise to indicate its ability to furnish the product or service,
- (c) determined that the product or service could not be supplied on a competitive basis or at a reasonable price through ordinary business channels,
- (d) determined that it was not in the public interest to procure the product or service from private enterprise, either because it is not available on a competitive basis or at a reasonable price, or because of overriding considerations of law, national security, or national policy, and
- (e) made an adequate record that the foregoing steps had been taken.

Most evaluation reports, as required by Bulletin 57-7, were not only submitted late but also indicated that the agency had decided to continue the service activity. In most cases, the justifications were not persuasive.

Agencies were to submit evaluation reports promptly, after the evaluations took place and decisions were made to terminate or curtail the activity. However, in 1958 a random check indicated that many decisions made 1 or 2 years earlier had not yet been put into practice.

As a result of its experience under the first two bulletins, the executive branch concluded that the program was important to agency heads in deciding whether to start new Government activities or to procure from commercial sources. Furthermore, it was believed that the required analyses helped stimulate improvements in management and operations. However, it was concluded that more specific criteria must be developed for the application of the policy.

Bulletin No. 60-2

Bulletin No. 60-2, issued on September 21, 1959, contained the following statement:

"It is the general policy of the administration that the Federal Government will not start or carry on any commercial-industrial activity to provide a service or product for its own use if

such product or service can be procured from private enterprise through ordinary business channels."

The bulletin instructed the agencies to evaluate those activities not previously reviewed. This bulletin represented a significant change in program and policy guidelines because it recognized compelling reasons which might make it necessary or advisable for the Government to provide products or services for its own use. The compelling reasons for exceptions to the general policy included national security, relatively large and disproportionately higher costs, and clear unfeasibility.

National security as a compelling reason for continued Government ownership and operation was not meant to be all inclusive of all products and services with restrictive classifications. It was specifically noted that commercial contractors, operating under proper security clearances and safeguards, had been, and would continue to be, essential to the national defense effort. Therefore, this exception was to be used only in those instances when an activity could not be turned over to private industry. These activities were to include, but were not necessarily limited to, functions which must be performed by Government personnel to provide them with vital training and experience for maintaining combat units in readiness.

Continuation of Government operation on the grounds that procurement through commercial sources would involve higher costs were to be justified only if the costs were analyzed on a comparable basis and the differences were found to be substantial and disproportionately large. In such cases, the costs of both Government operation and private procurement were to be fairly computed and complete. The admissibility of relatively large and disproportionately higher costs as a possible compelling reason did not alter the general policy of reliance on commercial sources and did not prohibit procurement from more costly commercial sources. For example, it could have been found to be in the public interest to purchase a product or service from the private sector to foster and maintain the development of commercial production capabilities to meet ultimate governmental and nongovernmental needs at potentially lower costs.

Clear unfeasibility as a compelling reason was to be used when the product or service was an integral function of the agency's basic mission, was not available commercially or in the foreseeable future because of the Government's unique

or highly specialized requirements or geographic isolation of the installation, or was administratively impractical to contract for commercially.

The burden of proof rested with the agency in determining that an exception to the general policy was required. All relevant factors were to be taken into account, including pertinent economic and social aspects of public policy, even though they may not have been the immediate concern of the agency or official directly responsible for the particular activity.

Circular A-76

Some of the principal objectives in revising Bulletin 60-2 were to

- restate the policy in a Circular because a bulletin was generally considered to be a less permanent directive,
- provide more complete and explicit guidelines to agencies for applying the policy,
- establish a clearer distinction in applying the policy to new starts and existing activities,
- replace the standard of relatively large and disproportionately higher costs with a more precise set of cost guidelines,
- provide for a study of procurements from commercial sources when it appears that costs from such sources were exorbitant,
- eliminate detailed inventory and statistical reports sent to OMB because the principal responsibility for applying the policy rested with each agency, and
- provide for proper coordination of the policy with other related directives.

Circular A-76, first issued on March 3, 1966, contained the following statement:

"The guidelines in this Circular are in furtherance of the Government's general policy of relying on the private enterprise system to supply its needs.

In some instances, however, it is in the national interest for the Government to provide directly the products and services it uses. These circumstances are set forth in * * * this Circular.

No executive agency will initiate a 'new start' or continue the operation of an existing 'Government commercial or industrial activity' except as specifically required by law or as provided in this Circular."

At the time of its issuance, the Circular's objectives were to assure that Government programs were performed with maximum efficiency, effectiveness, and economy as well as to maintain the Government's policy of relying on private enterprise.

The Circular provided the following five circumstances under which the Government may provide a commercial or industrial product or service for its own use:

- Procurement of a product or service from a commercial source would disrupt or materially delay an agency's program.
- It is necessary for the Government to conduct a commercial or industrial activity for purposes of combat support or for individual and unit retraining of military personnel or to maintain or strengthen mobilization readiness.
- A satisfactory commercial source is not available and cannot be developed in time to provide a product or service when it is needed.
- The product or service is available from another Federal agency.
- Procurement of the product or service from a commercial source will result in higher cost to the Government.

In addition to delineating the exception criteria in more specific terms, the Circular (1) provided a sharper distinction between existing Government activities and new starts, (2) assigned full responsibility to the agencies for implementing the policy, (3) provided for a continuing review of activities on a 3-year cycle, and (4) provided a cost differential favoring private enterprise in cost comparisons for new starts.

The Circular also provided further clarification on the use of the above exceptions and more precise guidelines on the use of the relative cost criteria and the preparation of cost comparisons.

Costs of obtaining products or services from Government activities were to include all costs which would be incurred if a product or service were provided by the Government and which would not be incurred if the product or service were obtained from a commercial source.

Circular A-76 was revised on August 30, 1967, by issuing Transmittal Memorandum No. 1 for clarification purposes and to lessen the agencies' burden of work in implementing its provisions. However, the basic policies for determining whether commercial or industrial activities were to be provided on an in-house or contract basis remained the same.

Some of the principal changes included:

- Providing increased dollar thresholds for reactivations, expansions, modernizations, or replacements of activities.
- Clarifying the definition of a commercial or industrial activity to specifically exclude Government-owned contractor-operated activities.
- Providing for the preparation of cost comparison studies in those cases where there was reason to believe that savings can be realized by the Government providing for its own needs.
- Clarifying the fact that the incremental method of costing is to be employed in making cost comparisons and emphasizing the importance of realistically recognizing all such additional or incremental costs.

On October 18, 1976, the Circular was further revised by issuing Transmittal Memorandum No. 2. This revision provided further amplification of the basic policy, supplemental guidance on the use of cost comparisons, and standard factors for computing the costs of civilian personnel services.

It was stated that the Government should generally perform only those functions which are governmental in nature and should utilize the private enterprise system to provide the products and services which are necessary to support governmental functions. Those commercial or industrial

activities, which the Government performed directly for itself, were not considered to be inherently governmental functions but rather exceptions to the fundamental policy.

Further, it was stated that the Circular did not require a cost study to be made in every case to support a decision to rely on commercial sources. Also, cost studies would not be needed where the Government's economic interests were protected, such as the existence of a competitive market, unless the agency had some unique economic advantage which would enable it to supply the needed product or service at less than commercial cost.

The following cost factors (as a percentage of payroll) were provided for use by all agencies: Retirement--24.7 percent; Health Insurance--3.5 percent; and Life Insurance--.5 percent.

Transmittal Memorandum No. 3 was issued on June 13, 1977, to amend, pending further review, the cost factor for computing retirement costs of civilian personnel services. As an interim measure, a cost factor of 14.1 percent of payroll was provided.

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A further discussion of the Circular's requirements is included in chapter 2 and throughout this report.

A SAMPLING OF QUOTATIONSCONGRESSIONAL

The following are excerpts from congressional sources on Circular A-76.

Chairman, Subcommittee on
Manpower and Personnel,
Senate Committee on Armed
Services

"However, it is clear that comprehensive planning and analysis have not been conducted with respect to the manpower requirements and workload of Defense functions and services that are contracted out to private firms. * * * The so-called inventory of commercial and industrial activities compiled by Defense does not reflect the true number of activities or the associated manpower. * * *"

House Committee on Appropriations
(Report No. 95-451, June 21, 1977)

"The Committee has had many years of experience with efforts to convert in-house government services to commercial contract. We have found that such efforts in many instances lead to higher costs, needless confusion and consternation on the part of government personnel, poorer management since contract employees may not be as closely supervised as government employees, and a general deterioration of services. * * *"

"While conversion of services to commercial contract often appears to be attractive at the outset, contract costs frequently rise after the initial award when the contracts must be renewed. Contract employees can strike and stop vital support functions at critical times. Government personnel cannot strike against the Government. * * *"

Chairman, House Committee
on Armed Services

"* * * the Committee has expressed a great deal of concern over the basis for contracting out activities of the Department of Defense. The Committee's prime

concern has been two-fold. First, is the substantial disagreement over the factors used to determine whether an activity can be performed at a lower cost by the private sector. Second, the Committee is concerned that certain activities are of such significance to the operational capabilities of our armed forces that they must remain under government control."

Chairman, Subcommittee on Research
and Development, House Committee
on Armed Services

"* * * In particular, the Subcommittee, after taking testimony this year, has become concerned over potential effects of contracting to private industry those tasks which can and should be performed by government personnel to insure that the government's technology base possesses a needed vitality and competence required to fully assess and monitor military system development projects."

Chairman, Subcommittee on Military
Personnel, House Committee on
Armed Services

"* * * I must emphasize the Subcommittee's concern regarding the factors used by the government to calculate projected costs. These factors are critical since they are essential in making an accurate comparison with contractor bids in determining the most cost effective approach to providing services. * * *"

Chairman, House Committee on
Post Office and Civil Service

"As a general rule, the Committee on Post Office and Civil Service believes it is in the public interest to use Government employees, rather than contracting out for services from the private sector. Although cost is a factor, expertise and dedication to the public interest are equally if not more important. * * *"

Chairwoman, Subcommittee on Employee
Ethics and Utilization, House
Committee on Post Office and Civil
Service

"The root issue involved is whether or not the taxpayers save any money by contracting out * * *. Second, the question of whether or not private contractors perform as well as Government workers."

Senator Birch Bayh

"* * * most DOD Industrial Fund Activities cannot compete with the private sector that is not burdened with maintaining a mobilization base. If retention of DOD's industrial capability were based on cost comparisons alone to the same degree as before, it has been pointed out that the physical plant and human resources that are the cornerstone of mobilization planning would deteriorate and become obsolescent."

Senator Henry L. Bellmon

"In my opinion the government could save a significant amount of money and considerably improve the efficiency of its operation if it would open other opportunities [comparable to that at Vance Air Force Base] to private contractors at installations where such services could be supplied by the private sector. * * *"

Senator John C. Danforth

"Based on my short experience, however, I believe that implementation of this policy has too often overlooked its impact on affected employees. Secrecy surrounding studies evaluating contracting possibilities should be removed and employees clearly told the full scope of the study, who would be affected, and the probability and timing of implementation. * * *"

Rep. D. Douglas Barnard, Jr.

"I would like to reemphasize * * * that we in Congress are very much mindful of the taxpayer and the effect it is going to have on him. We likewise are concerned about the people who have rendered dedicated service in the civilian area of the Federal Government, and for that reason we think that this contracting needs to be studied very, very carefully, even more so than has been studied at this particular point."

Rep. Christopher J. Dodd

"After two-and-a-half years, I must conclude that Congress and the Executive Branch must act as expeditiously as possible to re-shape federal contracting out policies and procedures.

"These policies and practices, certainly in the recent past, have seemed to be unfairly weighted against the best interest of the government, our civil servants, and the taxpayers.

* * * * *

"In the past, federal contracting out decisions have not been based on the best, most comprehensive information as to their human and economic costs now and in the future, their appropriateness, and their effects on the ability of the government to fulfill necessary missions. Contracting out has had unhappy results."

Rep. Barry M. Goldwater, Jr.

"* * * as a general principle, I do not believe a good return [on the taxpayer's dollar] includes increasing the amount of in-house agency work to (1) justify the existence of federal employees or (2) prove that the federal government can work more cheaply than the private sector when too often government cost estimates are based on an entirely different set of figures than those that must be used by a private contractor."

Rep. Henry B. Gonzalez

"* * * The reality is that the typical contract for Government work that I have seen is a contract

to provide labor services; it is a high-labor input job * * *.

"If contracting is seen in this light, it becomes clear that whatever cost advantage there is to be gained must come from cheaper labor. Not infrequently, when a job is placed on contract, the same person may end up performing the task, but at a much lower rate, or for lower benefits, or for both."

Rep. Marjorie S. Holt

"The major question can be formulated thusly: In every function of government, how can the mission be accomplished efficiently at the least possible cost? * * *"

Rep. Jack Kemp

"I do not believe government has any business being in business. I see no reason why it should compete with the private sector in providing goods and services. In those instances where the costs to the government will be less when a good or service is obtained by contract, that ought to be the course followed. And all factors in the formulae used in making relative cost comparisons between contract performance and in-house performance should reflect accurately the true cost to government and the taxpayers. * * *

* * * * *

"* * * Federal employees don't have a right to their jobs. They are protected against politics through the career civil service system, but their jobs are no more guaranteed--nor ought they to be-- than one in the private sector. That's why we have an orderly process within the civil service system for reductions in force. If we adopt the attitude that everyone now holding a Federal job is entitled by right to keep it, we'll never be able to reduce the size of government and its cost to the taxpayers. Most civil servants are conscientious, capable employees, and I am as sympathetic to them as I am to someone in the private sector, but our democratic society does not believe in government jobs as a matter of right. * * * The realities being what they are, most reductions in force can be handled by natural attrition anyway,

and that way a national objective--returning to the private sector a responsibility which it ought to have been undertaking all along and reducing the costs of government to the taxpayers--can be accomplished at minimum emotional costs and financial disruption to the employees."

Rep. Morris K. Udall

"My conclusion from several months of study of this issue is that no action should be taken to increase drastically present levels of contracting out. It must be remembered that government loses a substantial degree of control over functions which are contracted out. * * *"

EXECUTIVE AGENCY

The following are excerpts from executive departments, agencies, and administrations.

Department of Agriculture

** * * Debatable issues emerge in applying A-76 to some individual activities, but standards and justification criteria fitting so broad a policy to all situations would be cumbersome to administer. We believe that A-76 is basically sound, contains all needed regulations, but is in need of a revision for clarity and operational efficiency. * * *"

Civil Service Commission

"The criteria agencies should follow in deciding whether to hire civil service employees or to contract out for services is important in the management and control of the total manpower resources available to carry out Government programs. * * * In addition, we believe your review of Circular A-76, should include the adequacy of the guidelines in:

- defining those basic Federal responsibilities or functions which as a matter of principle and public interest should not be contracted out, particularly in the administration and enforcement of Federal laws and regulations. The distinction between these basic functions and "support services", should be clearly emphasized.

--insuring, when decisions are being made to contract out for services, that appropriate consideration is given to the direct and indirect effects of the decisions on Federal employees particularly, and on Federal personnel manpower policies generally, including those policies related to the employment of minorities, women, veterans, and the handicapped."

Department of Commerce

"* * * The cost concepts required by the Circular should be strengthened and clarified. The Circular presently requires consideration of only incremental costs of agency operations in making a comparison with the costs of procurement with private enterprise. The Department of Commerce is proceeding internally to require full costing of Government activities in making comparisons and to require life-cycle costing where it is expected that the activity will take place over a number of years.

* * * * *

"* * * OMB's present interpretation of the Circular permits agencies to acquire facilities and equipment if they can justify the need for them and then evaluate whether the facilities should be operated by Government personnel or by a contractor. Separate procurement of facilities defeats the purpose of the Circular. Before any facilities or equipment are acquired, a study should be made to determine if it would be more advantageous for the Government to contract for the product or service with the contractor furnishing the facilities."

Department of Defense

"* * * In addition, as a sound management policy, it would not be prudent to curtail comparison of the cost of Government and commercial sources to determine the most economic and effective means of acquiring products and services. * * *

* * * * *

"* * * Status quo - Establish a factor of the least 10% in favor of the status quo in making cost comparisons. This is to compensate for unpredictable risks encountered when a change is made from one method of performance to another."

Environmental Protection Agency

"The major concern we have with regard to the Federal policies on contracting out is that we find ourselves facing the dilemma of having a greatly increased workload with severe constraints on our means of getting the job done. We have received strict employment ceilings for both our permanent and non-permanent employees, we are required to reduce overtime, we are asked not to use contracting to circumvent employment ceilings, and yet we must meet the workload demands of our on-going programs as well as our pressing new requirements. As a result of these various restrictive budget related policies, we find our internal management flexibility severely limited."

General Services Administration

"* * * Flexibility: Some Government activities, such as ADP installations, once started, are difficult to stop, even in the face of changing or terminating requirements for facilities and personnel. The industry alternative is not without problems in this regard, but there is always the real possibility of periodic recompetition or for drastic change of personnel. The options in the in-house situation are more limited, in most cases tantamount to an irreversible commitment. * * *"

Department of Health, Education, and Welfare

"* * * ADP technology advances rapidly and this may cause frequent alteration of the relative costs of in-house and contracted out operations of ADP systems or parts of systems. Yet, overall economy depends materially on long-range planning of substantial equipment investments. Application of A-76 decision criteria may therefore conflict with long-range economy. * * *"

Department of the Interior

"* * * we feel that the circular in its present form is unneeded. Most judgments and decisions to procure by contract are based on sound internal business practices. It would be virtually impossible for the Government to totally supply its own needs and Congress would not permit such a situation. Therefore, it is our feeling that Circular A-76 serves no real purpose other than to formalize an existing governmental practice."

Department of Justice

"* * * Generally, we have found it difficult to convince Departmental operating officials that the implementation of the Circular is supported by the highest levels of the new Administration. Numerous rumors and newspaper articles have indicated that the new Administration's support of the Circular was less than total and official correspondence has not necessarily discouraged those innuendos. Whatever the outcome of this current review we recommend the Office of Management and Budget develop or reaffirm its position in such a manner that speculation over the support (or lack of it) for A-76 will end."

Department of Labor

"If a standard comparative cost analysis procedure, incorporating cost accounting procedures and specific guidelines for handling each cost element were developed, this would standardize cost analysis, eliminate, or minimize, the bias that otherwise creeps into cost analyses, and simplify the determination of the lowest cost source of support."

National Aeronautics and
Space Administration

"The key to successful application of the policy is directly related to the reasonableness of the flexibility afforded agency management to make overall resource judgments including contracting out decisions. Although there may be a temptation to want to specify with some particularity precise sets of circumstances whereby contracting out may be mandated or precluded, we believe that such an objective approach should be avoided in favor of more traditional forms of flexible discretionary

decision-making by those management officials charged by law with carrying out the programs entrusted to their care.

"We are especially concerned about the apparent trend developing which concentrates on comparative cost analyses as a substitute for discretionary decision-making. We believe it is unnecessary to require a cost comparison in each case where a new start is considered. The important principle which should be recognized in any case is that agency management should have the option to choose the higher cost approach if, in management's judgment, the delta increase in cost is justified in terms of programmatic considerations.

* * * * *

"Further, we feel that a clarification of the function of the Civil Service Commission relative to the contracting for services should be a major end result of your review. OMB should consider implementation of some type of procedure by which the Commission or some similar agency could handle complaints relative to the undesirable aspects of service contracts, and more importantly would provide advice to agencies regarding such features which might cause conflicts between the use of this resource and the civil service system."

Department of Transportation

"A continuing problem of OMB Circular A-76 has been the absence of a precise definition of a commercial or industrial activity in the Circular. This has lead to varying interpretations by different agencies as to what should be considered within the scope of activities covered by the Circular, and within this Department to different interpretations of the dividing line between normal organizational functions that should be accomplished under the concept of 'management' prerogative and those activities which should properly be done by outside contract. * * *

* * * * *

"From the automatic data processing (ADP) point of view, OMB Circular A-76 and the manner of its interpretation provides considerable difficulty. The initial philosophy that an Agency does not need a study to go commercial but only needs it to retain ADP 'in-house' is undesirable. * * *

"Another major ADP activity problem is the contractual aspect of obtaining such commercial or industrial products and/or services. Where the workload is well defined, generally static, and does not require a close functional relationship, an appropriate contract can be issued. However, most agencies have dynamic workloads whose definition is not sufficiently definable to properly specify in a solicitation document. In this environment the Government is the loser because the vendor usually requests heavy reimbursement for anything not specifically covered in the contract.

An important restrictive item in applying OMB Circular A-76 to ADP is the financial advantage which must be demonstrated before a decision favoring an 'in-house' capability can be made. The Office of Federal Procurement Policy has been using a figure of about 10 percent. This means that the Government could be paying 10 percent more for an ADP functional activity by being forced to use a commercial source. From a sound managerial standpoint, it may be more beneficial not to change from 'in-house' to contractor operation if the costs are about even because the problems of change, disruption and aggravation may far outweigh whatever small dollar savings are realized.

"In summary, with respect to ADP activities, we believe the basic philosophy of OMB Circular A-76 should be to obtain that optimal mix of 'in-house' and contractor support which best meets mission requirements. * * **

Veterans Administration

** * * One [issue] concerns the decision to procure services of a commercial nature when the choice is between procurement from another Federal agency or from a non-government source. The current procedure assumes that all federal agencies have appropriately reviewed the commercial type activity and made the proper determinations. This has not always been the case. Also, the added volume of work might affect the propriety of the earlier determination. We feel

that a strengthened procedure should address the issue of whether or not cross servicing by another agency should be a higher priority source than a commercial enterprise.

"One difficulty encountered in our application of this circular is the availability of adequate commercial sources to insure the government will receive a fair price. Our experience with the use of commercial laundry facilities is that the volume and nature of hospital laundry is such that you quickly find yourself dealing with just one source. The prices tend to escalate dramatically following the initial contracts. * * *"

PRIVATE INDUSTRY

The following excerpts indicate that private industry is very critical about the current implementation and prospects for the future of the policy.

--"The thrust of Circular A-76 in the past has been to:

- 1) restrain growth in the Federal sector, and
- 2) to foster and promote growth in the private sector, especially among small to medium-size business.

We suggest that these are both valid and proper effects, and that revisions to A-76 should strengthen, rather than diminish, these objectives."

--"Previous administrations did not enforce, or perhaps were not able to persuade, federal agencies to conduct the required review of commercial-industrial activities on a thorough basis so as to determine cost effectiveness of contract-out versus in-house performance. * * *"

--"It is believed that the intent of Circular A-76 was a worthy one, that of Government performing only those functions which are governmental in nature and utilizing the private sector for all support products and services necessary. * * *"

--"Although the basic policy set forth in OMB Circular A-76 fosters governmental use of private

enterprise systems to obtain certain products or services to support government functions, the civil air carriers who participate in the Civil Reserve Air Fleet program have been denied meaningful participation in the routine peacetime airlift of DOD cargo traffic since the end of FY 1975. We believe that if DOD continues to exercise the policy outlined in paragraph 5 of the Circular, as it pertains to mobilization readiness, it will nullify the long established legislative and administrative policy of making maximum use of commercial airlift through the CRAF program for movement of routine military cargo."

--"I was at the Office of Management and Budget the other day reviewing the ADP portion of the Federal budget. In my judgment, the \$4 billion identified as ADP costs is only the tip of the iceberg when it comes to total computer associated costs within the Federal Government. I notice in the budget that some \$300 million are spent for systems and programming services while about \$ 1 1/2 billion are budgeted for salaries of 150,000 Government employees. I am concerned that one-time system development needs are often used as justification to hire Government employees who remain on the payroll long after the original requirement is complete. How much better it would be if the Government drew from the private sector for these requirements, and agencies looked upon their needs in terms of systems rather than people. I believe the cost and labor savings would be significant."

--"This action which orders an immediate reduction from 24.7% to 14.1% appears to us to be precipitous in view of your own statement that:

'This Administration is undertaking a complete review of all aspects of Circular A-76 and the methods for its implementation to ensure that the policy and its application are predictable, consistent, fair and equitable.'

"The immediate impact of this action can only be a further reduction in private sector participation, especially small business, in government procurement. This is directly contrary to the policies expressed by both the Administration and the Congress."

--"In recent years, however, the rationale for exceptions to the policy is, in our opinion, increasingly being used to circumvent the basic intent of the policy. The apparent reasons are the normal tendency, particularly of military organizations, toward self sufficiency and the natural inclination of governmental institutions towards self perpetuation. We believe these forces have overbalanced the interests of the taxpayer and the national economy. For example, in 1967, total federal goods and services totaled \$90.706 billion, 60.5 percent of which were contracted-out. In the succeeding decade, however, government bureaucracy ballooned and in 1974, total goods and services were \$116.900 billion, but only 52.3 percent were procured from industry.

* * * * *

"* * * we urge the task group to set up clear rules and criteria as to what constitutes a 'mission essential' function. Too many times under this proviso, programs or services well within the capability of industry are held in-house at great cost when they could and should be contracted out. * * *"

--"The guidelines as to when contracting out should be considered need to be clear and concise as to all the factors that may be involved and the exceptions that are allowable. In this regard, any new or revised procurement approval procedures should be reduced in complexity so as to provide a simplified policy framework for agency guidance."

--"* * * The current OMB Circular A-76 does not provide the party from the private sector a method to appeal a decision of the agency making the cost comparison study. It would appear to be more equitable if the decision based on a cost comparison study was made by an impartial party or government agency.

"* * * The lack of past enforcement of the provisions of OMB Circular A-76 warrants careful study in any comprehensive review of the Circular. In addition, any revision to the Circular should include the requirement for periodic reviews and appropriate action to insure that the services provided and costs incurred meet the terms of the original cost comparison decision."

--"* * * We feel that legislation is needed to force the Government agency to comply with the directives in OMB Circular A-76. In our estimation, the problem lies not in the policy itself, but in the implementation of the policy set forth in the Circular. As it now stands, the directives outlined in OMB Circular A-76 are there - but, there is no checking to see that they are, in fact, being carried out. * * *

--"We recognize that the basic accounting systems used in the public and private sectors are different, reflecting different purposes. Nevertheless, we believe that a 'full costing' requirement is important for a number of reasons:

- 1) it is consistent with the general policy of reliance on the private sector that cost comparisons not be biased in favor of the public sector,
- 2) it is consistent with the general policy of efficiency and economy in government, and
- 3) its use would tend to improve management in the public sector by calling attention to the true cost of governmental activities.

"It is important to note that 'full costing' does not bias the cost comparison in favor of the private sector. Rather, it puts the public sector and the private sector on an equal basis. Nevertheless, there will be those who oppose 'full costing' as raising the cost of government 'in-house' activities, making them relatively less attractive than 'contracted-out' activities. We appreciate these concerns. In fact, these concerns are identical to those raised in the private sector by line program managers when indirect and overhead costs are allocated to their activities. We believe, however, that the 'full costing' approach expands the cost consciousness of line managers, whether in the public or the private sector. It is this broad perspective on costs, we submit, that is most consistent with one of the basic goals of OMB Circular A-76: To achieve overall efficiency and economy in government activities."

FEDERAL EMPLOYEE UNION

The following excerpts indicate the union opposition to contracting-out, particularly if it is not the most economical and efficient method of performance or when it is caused by rigid personnel ceilings.

--"* * * Congress must face up to the use of total labor dollars to do a job and not the fictitious ceiling concept."

--"If Congress wants to make the federal government a model employer then it must not tear the civil service down by making it possible for entrepreneurs, taking a little fiscal risk, to employ and pay less than comparable wages - with handsome profits to the corporations."

--"In the name of efficiency or cost savings, or personnel controls, agency managers are told they cannot manage their programs the way they deem most efficient. No private sector business could operate efficiently under such conditions nor can any Government agency."

--"* * * contracting out can cost the government a great deal in terms of decreased service. When a function is transferred to a private company, the Federal agency loses much of its control over that activity. This can seriously impact on the accountability, efficiency, and cost effectiveness which the government should continually strive to maintain in its programs."

--"* * * Government managers should be allowed the discretion to operate efficiently free of misdirected procurement policies, artificial personnel ceilings, and grade controls. Once the level of the appropriation is set, the manager should be free to operate within that dollar amount using Federal employees, in the most efficient manner possible. Contracting out simply puts additional indirect employees on the Federal payroll and either removes them entirely from managerial control, or if not, creates an illegal employer-employee relationship between the contractor employees and the Government.

"Our experience demonstrates the contracting out for services in most instances, does not save the

Government money, does not improve the service, and tends to leave the remaining bureaucracy in a hobbled or decimated condition which causes its operations to become more inefficient and disjointed. Further, and just as importantly, it removes responsibility for the service from agency management to private hands, and thus diminishes the accountability of Federal officials to the public they are paid to serve."

--"No one has answered the question how the government can morally substantiate a policy of relying on private sector employees who have the right to strike, while it pontificates about the national interest precluding federal employees being given the right to strike. * * *"

--"The full impact of contracting out remains unknown. OMB neither maintains complete statistics on the number and dollar value of all Federal contracts, nor requires agencies to submit ongoing cost comparisons to justify their contracting out activities. This haphazard system has fostered the unnecessary waste of tax dollars, while the lack of clear policy directives has caused much confusion on the part of Federal agencies."

--"* * * we observe that criteria we have seen is totally devoid of such factors as National Defense needs, productivity, efficiency, and impact on the community. These factors are all important and should be seriously considered when a decision is being made on contracting out."

--"Adjustment of the standard factor for retirement to 14.1% on cost proposals submitted by Government agencies is certainly a step in the right direction. * * * the 24.7% factor gave the private sector a distinct advantage when bidding for work."

--"In lieu of the present A-76 cost comparison and review system, we strongly urge that the decisional process by which agencies determine to contract out for services be fully integrated into the normal agency budget process. In final analysis what is involved is indirect staffing

of the agencies by use of service contract personnel. Integration into the budget process would eliminate the special comparative cost analysis now required by A-76 and would ensure more thorough consideration of the trade off values inherent in the recommended criteria. * * *

LEGISLATIVE PROVISIONS

The following are excerpts from various laws (some temporary, some codified) that illustrate the intent and policy of the Congress concerning reliance on the private sector, Government operation of commercial or industrial activities in competition with private industry, or OMB Circular A-76.

I ARMY ARSENAL STATUTE

10 U.S.C. 4532. Factories and arsenals:
manufacture at; abolition of

"(a) The Secretary of the Army shall have supplies needed for the Department of the Army made in factories or arsenals owned by the United States, so far as those factories or arsenals can make those supplies on an economical basis.

(b) The Secretary may abolish any United States arsenal that he considers unnecessary."

II AIR FORCE ARSENAL STATUTE

10 U.S.C. 9532. Factories, arsenals, and depots: manufacture at

"The Secretary of the Air Force may have supplies needed for the Department of the Air Force made in factories, arsenals, or depots owned by the United States, so far as those factories, arsenals, or depots can make those supplies on an economical basis."

III ECONOMY ACT

31 U.S.C. 686. Purchase or manufacture of stores or materials or performance of services by bureau or department for another bureau or department.

"(a) Any executive department or independent establishment of the Government, or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau,

or office to be in the interest of the Government to do so, may place orders with any other such department, establishment, bureau, or office for materials, supplies, equipment, work, or services, of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render * * * Provided further, That if such work or services can be as conveniently or more cheaply performed by private agencies such work shall be let by competitive bids to such private agencies * * **

IV INTERGOVERNMENTAL COOPERATION ACT (42 U.S.C. 4222)

Subchapter III - Special or Technical services provided for State and Local Units of Government by Federal Departments and Agencies.

"* * * Provided, however, That such services shall include only those which the Director of the Office of Management and Budget through rules and regulations determines Federal departments and agencies have special competence to provide. Such rules and regulations shall be consistent with and in furtherance of the Government's policy of relying on the private enterprise system to provide those services which are reasonably and expeditiously available through ordinary business channels."

V PRODUCTION AND PROCUREMENT OF PRINTING AND BINDING (44 U.S.C. 501 et seq.)

Sec. 501. Government printing, binding, and blank-book work to be done at Government Printing Office.

"All printing, binding, and blank-book work for Congress, the Executive Office, the Judiciary, other than the Supreme Court of the United States, and every executive department, independent office and establishment of the Government, shall be done at the Government Printing Office, except--

- (1) classes of work the Joint Committee on Printing considers to be urgent or necessary to have done elsewhere; and
- (2) printing in field printing plants operated by an executive department, independent office or establishment, and the procurement of printing by an executive department, independent office or

establishment from allotments for contract field printing, if approved by the Joint Committee on Printing.

Printing or binding may be done at the Government Printing Office only when authorized by law."

Sec. 502. Procurement of printing, binding, and blank-book work by Public Printer.

"Printing, binding, and blank-book work authorized by law, which the Public Printer is not able or equipped to do at the Government Printing Office, may be produced elsewhere under contracts made by him with the approval of the Joint Committee on Printing."

* * * * *

Sec. 504. Direct purchase of printing, binding, and blank-book work by Government agencies.

"The Joint Committee on Printing may permit the Public Printer to authorize an executive department, independent office, or establishment of the Government to purchase direct for its use such printing, binding, and blank-book work, otherwise authorized by law, as the Government Printing Office is not able or suitably equipped to execute or as may be more economically or in the better interest of the Government executed elsewhere."

VI DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1956;
PUBLIC LAW 84-157

"Sec. 638. No part of the funds appropriated in this Act may be used for the disposal or transfer by contract or otherwise of work that has been for a period of three years or more performed by civilian personnel of the Department of Defense unless justified to the Appropriations Committees of the Senate and the House of Representatives, at least ninety days in advance of such disposal or transfer, that its discontinuance is economically sound and the work is capable of performance by a contractor without danger to the national security: Provided, That no such disposal or transfer shall be made if disapproved by either Committee within the ninety-day period by written notice to the Secretary of Defense."

VII OFFICE OF FEDERAL PROCUREMENT POLICY
PUBLIC LAW 93-400; AUGUST 30, 1974

"Sec. 2. It is declared to be the policy of Congress to promote economy, efficiency, and effectiveness in the procurement of property and services by and for the executive branch of the Federal Government by--

- (1) establishing policies, procedures, and practices which will require the Government to acquire property and services of the requisite quality and within the time needed at the lowest reasonable cost, utilizing competitive procurement methods to the maximum extent practicable;
- (2) improving the quality, efficiency, economy, and performance of Government procurement organizations and personnel;
- (3) avoiding or eliminating unnecessary overlapping or duplication of procurement and related activities;
- (4) avoiding or eliminating unnecessary or redundant requirements placed on contractor and Federal procurement officials;
- (5) identifying gaps, omissions, or inconsistencies in procurement laws, regulations, and directives and in other laws, regulations, and directives, relating to or affecting procurement;
- (6) achieving greater uniformity and simplicity, whenever appropriate, in procurement procedures;
- (7) coordinating procurement policies and programs of the several departments and agencies;
- (8) minimizing possible disruptive effects of Government procurement on particular industries, areas, or occupations;
- (9) improving understanding of Government procurement laws and policies within the Government and by organizations and individuals doing business with the Government;
- (10) promoting fair dealing and equitable relationships among the parties in Government contracting; and

(11) otherwise promoting economy, efficiency, and effectiveness in Government procurement organizations and operations.

* * * * *

Sec. 6(a) The Administrator shall provide overall direction of procurement policy. To the extent he considers appropriate and with due regard to the program activities of the executive agencies, he shall prescribe policies, regulations, procedures, and forms, which shall be in accordance with applicable laws and shall be followed by executive agencies

(1) in the procurement of--

- (A) property other than real property in being;
- (B) services, including research and development; and
- (C) construction, alteration, repair, or maintenance of real property; * * *

* * * * *

Sec. 6(d) The functions of the Administrator shall include--

* * * * *

- (3) monitoring and revising policies, regulations, procedures, and forms relating to reliance by the Federal Government on the private sector to provide needed property and services;

* * * * *

Sec. 8(b) At least 30 days prior to the effective date of any major policy or regulation prescribed under section 6(a), the Administrator shall transmit to the Committees on Government Operations of the House of Representatives and of the Senate a detailed report on the proposed policy or regulation. Such report shall include--

- (1) a full description of the policy or regulation;

- (2) a summary of the reasons for the issuance of such policy or regulation; and
- (3) the names and positions of employees of the Office who will be made available, prior to such effective date, for full consultation with such Committees regarding such policy or regulation."

VIII DOD APPROPRIATION AUTHORIZATION ACT OF 1975

The Congress authorizes the end strength as of each fiscal year for military and civilian personnel for each component of DOD. The Secretary of Defense, as required by 10 U.S.C. 138(c)(3), must submit his recommendations, and justification therefore, for end strength levels of all personnel for each component of DOD for the upcoming fiscal year. An explanation of the relationship between the recommended personnel strength levels and the national security policies of the United States in effect at the time also is required.

A section of the DOD Appropriation Authorization Act of 1975 (Public Law 93-365) provided that:

"It is the sense of Congress that the Department of Defense shall use the least costly form of manpower that is consistent with military requirements and other needs of the Department of Defense. Therefore, in developing the annual manpower authorization requests to the Congress and in carrying out manpower policies, the Secretary of Defense, shall, in particular, consider the advantages of converting from one form of manpower to another (military, civilian, or private contract) for the performance of a specified job. A full justification of any conversion from one form of manpower to another shall be contained in the annual manpower requirements report to the Congress required by section 138(c)(3) of title 10, United States Code."

IX DEPARTMENT OF DEFENSE APPROPRIATION AUTHORIZATION ACT, 1978, PUBLIC LAW 95-79

"Sec. 809. (a) The Secretary of Defense and the Director of the Office of Management and Budget shall jointly conduct a complete and comprehensive review of the criteria used in determining whether commercial or industrial type functions

at Department of Defense installations located in any State, the District of Columbia, the Commonwealth of Puerto Rico, and Guam should be performed by Department of Defense personnel or by private contractors. The review shall include--

- (1) an evaluation of the basis for, and assumptions underlying, Department of Defense methods for conducting cost analyses with respect to decisions to contract for performance of commercial or industrial type functions;
- (2) an evaluation of the differences between private contractors and the Department of Defense in their procedures and policies relating to personnel compensation and other differences affecting their analysis of the cost of personnel;
- (3) identification of the defense mission essential functions identified by the Secretary of Defense as not suitable for performance by private contractors; and
- (4) an evaluation, to be made by the Director of the Office of Management and Budget, of all aspects of OMB Circular A-76 and of the implementation of such circular.

(b) A detailed report describing the results of the review required by subsection (a) shall be submitted to the Committees on Armed Services of the Senate and House of Representatives before January 1, 1978. No commercial or industrial type function of the Department of Defense which on the date of enactment of this Act is being performed by Department of Defense personnel shall be converted to performance by private contractors before the earlier of March 15, 1978, or the end of the 90-day period beginning on the date the report required by this section is received by such committees. The prohibition in the preceding sentence shall not apply to the conversion to performance by private contractors of any commercial or industrial type function at any Department of Defense installation referred to in subsection (a) if such conversion would have been made under policies and regulations in effect before June 30, 1976.

(c)(1) The Secretary of Defense shall, before January 1, 1978, submit a report to the Committees

on Armed Services of the Senate and House of Representatives (A) detailing the rationale of the Department of Defense for the establishment of goals for the percentage of work at defense research installations to be performed by private contractors, and (B) detailing the rationale for any direction in effect on the date of enactment of this Act (i) establishing a minimum or maximum percentage for the allocation of work at any defense research installation to be performed by private contractors, or (ii) directing a change in any such allocation in effect on the date of enactment of this Act.

(2) Until March 15, 1978, or the end of the 90-day period beginning on the date the report required by this subsection is received by such committees, whichever is earlier, the percentage of all research and exploratory development work to be performed at or by any Department of Defense research installation which is to be performed by private contractors may not exceed the percentage of such work that was performed by private contractors during the period beginning on July 1, 1975, and ending on September 30, 1976."

X DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1978, PUBLIC LAW 95-111

"Sec. 824. None of the funds appropriated in this Act shall be used for the construction, replacement, or reactivation of any bakery, laundry, or dry-cleaning facility in the United States, its territories or possessions, as to which the Secretary of Defense does not certify in writing, giving his reasons therefore, that the services to be furnished by such facilities are not obtainable from commercial sources at reasonable rates." 1/

* * * * *

"Sec. 852. (a) None of the funds appropriated by this Act may be used to (1) convert base operating support functions, excluding real property maintenance and repair, to commercial contract during the

1/This provision has been included in the DOD Appropriation Act each year since 1955 to the present year 1978.

period October 1, 1977, through September 30, 1978, or (2) to fund continued performance during fiscal year 1978 of base operating support contracts, excluding real property maintenance and repair, awarded between the date of enactment of this Act and September 30, 1977, which convert base operating support activities performed by employees of the Government of the United States to commercial contract.

(b) None of the funds appropriated by this Act may be obligated for commercial contracts to be physically performed at an installation or facility including leased facilities for the following types of work: (1) weapons system engineering and logistical support; (2) ship, aircraft, missile, automotive and vehicle intermediate level maintenance or depot maintenance; or (3) research development, test, and evaluation, if the work to be physically performed at an installation or facility during fiscal year 1978 by commercial contract would result in a reduction of employees of the Government of the United States at that installation or facility."

XI RIVERS AND HARBORS, IMPROVEMENTS, PUBLIC LAW 95-269
April 26, 1978

Section 3 of the Act of August 11, 1888 (25 Stat. 423; 33 U.S.C. 622), is amended to read as follows:

"Sec. 3. (a) The Secretary of the Army, acting through the Chief of Engineers (hereinafter referred to as the 'Secretary'), in carrying out projects for improvement of rivers and harbors (other than surveys, estimates, and gagings) shall, by contract or otherwise, carry out such work in the manner most economical and advantageous to the United States. The Secretary shall have dredging and related work done by contract if he determines private industry has the capability to do such work and it can be done at reasonable prices and in a timely manner. During the four-year period which begins on the date of enactment of this subsection, the Secretary may limit the application of the second sentence of this subsection for work for which the federally owned fleet is available to achieve an orderly transition to full implementation of this subsection.

(b) As private industry reasonably demonstrates its capability under subsection (a) to perform the work done by the federally owned fleet, at reasonable prices and in a timely manner, the federally owned fleet shall be reduced in an orderly manner, as determined by the Secretary, by retirement of plant. To carry out emergency and national defense work the Secretary shall retain only the minimum federally owned fleet capable of performing such work and he may exempt from the provisions of this section such amount of work as he determines to be reasonably necessary to keep such fleet fully operational, as determined by the Secretary, after the minimum fleet requirements have been determined. Notwithstanding the preceding sentence, in carrying out the reduction of the federally owned fleet, the Secretary may retain so much of the federally owned fleet as he determines necessary, for so long as he determines necessary, to insure the capability of the Federal Government and private industry together to carry out projects for improvements of rivers and harbors. For the purpose of making the determination required by the preceding sentence the Secretary shall not exempt any work from the requirements of this section. The minimum federally owned fleet shall be maintained to technologically modern and efficient standards, including replacement as necessary. The Secretary is authorized and directed to undertake a study to determine the minimum federally owned fleet required to perform emergency and national defense work. The study, which shall be submitted to Congress within two years after enactment of this subsection, shall also include preservation of employee rights of persons presently employed on the existing federally owned fleet."

Sec. 2. Section 8 of the Act of March 2, 1919 (40 Stat. 1290; 33 U.S.C. 624), is amended to read as follows:

"Sec. 8. (a) No works of river and harbor improvement shall be done by private contract--

(1) If the Secretary of the Army, acting through the Chief of Engineers, determines that Government plant is reasonably available to perform the subject work and the contract price for doing the work is more than 25 per centum in excess of the estimated comparable cost of doing the work by Government plant; or

(2) in any other circumstance where the Secretary of the Army, acting through the Chief of Engineers, determines that the contract price is more than 25 per centum in excess of what he determines to be a fair and reasonable estimated cost of a well-equipped contractor doing the work.

(b) In estimating the comparable cost of doing the work under subsection (a)(1) by Government plant the Secretary of the Army, acting through the Chief of Engineers shall, in addition to the cost of labor and materials, take into account proper charges for depreciation of plant, all supervising and overhead expenses, interest on the capital invested in the Government plant (but the rate of interest shall not exceed the maximum prevailing rate being paid by the United States on current issues of bonds or other evidences of indebtedness) and such other Government expenses and charges as the Chief of Engineers determines to be appropriate.

(c) In determining a fair and reasonable estimated cost of doing work by private contract under subsection (a) (2), the Secretary of the Army, acting through the Chief of Engineers, shall, in addition to the cost of labor and materials, take into account proper charges for depreciation of plant, all expenses for supervision, overhead, workmen's compensation, general liability insurance, taxes (State and local), interest on capital invested in plant, and such other expenses and charges the Secretary of the Army, acting through the Chief of Engineers, determines to be appropriate."

GAO note: Underscoring supplied.

COMPTROLLER GENERAL DECISIONSOMB CIRCULAR A-76

Kaufman De Bell Printing, Inc.; August 8, 1977 (B-188054)

Kaufman De Bell Printing, Inc. - Reconsideration;
October 25, 1977 (B-188054)

Kasper Brothers; February 8, 1977 (B-188276)

M.B.I. Security Services, Inc.; November 8, 1976
(B-187681)

Meldick Services, Inc.; October 10, 1975 (B-184916)

Globe Air, Inc.; June 26, 1975 (B-183396)

General Data Comm Industries, Inc.; April 9, 1975
(B-182556)

American Telephone and Telegraph Co.; February 14,
1974 (B-179285)

Wilner & Scheiner; August 8, 1973; 53 Comp. Gen. 85
(B-178780)

Mountain States Telephone and Telegraph Company;
May 17, 1963; 42 Comp. Gen. 640 (B-151192)

FIRM BID/OFFER PROCEDURE

Service Is Basic, Inc.; October 1, 1976 (B-186332)

Kahoe Enterprises, Inc.; June 17, 1976 (B-183866)

ECONOMY ACT

Department of Commerce; January 21, 1977; 56 Comp.
Gen. 275 (B-136318)

Administrator, Environmental Protection Agency;
September 11, 1972; 52 Comp. Gen. 128 (B-176209)

DOD APPROPRIATION ACT, 1978
RESTRICTION ON CONTRACTING-OUT

What-Mac Contractors, Inc.; March 3, 1978 (B-190241)

Bendix Field Engineering Corporation; April 17, 1978
(B-190518)

ARSENAL STATUTE

Olin Corporation; January 18, 1978 (B-189604)

Olin Corporation; July 23, 1973; 53 Comp. Gen. 40
(B-175703)

Secretary of Defense; December 15, 1960 (B-143232)

Chairman, Subcommittee for Special Investigations,
Committee on Armed Services, House of Representatives;
December 15, 1960 (B-143232)

PERSONAL SERVICES CONTRACTS

American Federation of Government Employees Local No.
3347, AFL-CIO; July 3, 1975, (B-183487) April 25, 1977
(B-183487)

Office of Economic Opportunity; March 6, 1972; 51 Comp.
Gen. 561 (B-174726)

Administrator, General Services Administration; June 1,
1965; 44 Comp. Gen. 761 (B-156219)

Commissioner, Internal Revenue Service; October 17, 1963;
43 Comp. Gen. 390 (B-152643)

Secretary of the Army; April 3, 1953; 32 Comp. Gen.
427 (B-113739)

Secretary of Commerce; February 11, 1952; 31 Comp. Gen.
372 (B-107153)

UNREALISTICALLY LOW BIDS/BUY-INS

Inter-Con Security Systems, Inc.; June 15, 1977 (B-189165)

Caltex Engineering Co.; June 2, 1976 (B-186525)

Parsons Custom Products, Inc.; November 14, 1975
(B-185104)

Oswald Brothers Enterprises, Inc.; May 9, 1974 (B-180676)

LIST OF GAO REPORTS CONCERNING IMPLEMENTATIONOF THE A-76 POLICY (SINCE JANUARY 1, 1972)

<u>Title</u>	<u>Addressee</u>	<u>Date</u>	<u>Publication number</u>
Cost of Using Civil Service versus Contract Labor for Loading Containers at the Military Ocean Terminal, Bayonne, New Jersey	House Subcommittee on Manpower and Civil Service Committee on Post Office and Civil Service	1/25/72	B-171695 (LCD)
Better Controls Needed in Reviewing Selection of In-House or Contract Performance of Support Activities <u>1/</u>	Congress	3/17/72	B-158685 (FPCD)
Observations on Dredging Activities and Problems	Congress	5/23/72	B-161330 (RED)
Conversion of Unofficial Telephone Service from Government-owned to Commercial Service	Secretary of Defense	6/8/72	B-158469 (LCD)
Cost of Using Civil Service versus Contract Labor for Loading and Unloading the GTS Admiral William M. Callaghan at the Military Ocean Terminal, Bayonne, New Jersey	House Subcommittee on Manpower and Civil Service Committee on Post Office and Civil Service	6/21/72	B-171695 (LCD)
Possible Conflicts Between Office of Management and Budget Circulars A-76 and A-94	Congressman Michael J. Harrington	10/17/72	B-115398 (FGMSD)
Procurement of Audio-visual Projection Systems	Congressman Joel T. Broyhill	2/22/73	B-176496 (PSAD)

1/Major report involving DOD.

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<u>Title</u>	<u>Addressee</u>	<u>Date</u>	<u>Publication number</u>
Make-or-Buy Decisions of the Frankford Arsenal	Secretary of Defense	3/5/73	B-146977 (PSAD)
Procurement of Milk and Milk Products in the Far East	Secretary of Defense	3/22/73	B-172428 (PSAD)
Selection and Use of Contractor for Developing a Management Information System for the Atomic Energy Commission	Joint Committee on Atomic Energy	6/8/73	B-164105 (RED)
Contracting Out of Custodial Services at Norton Air Force Base, California	Congressman George E. Brown, Jr.	7/2/73	B-178849 (FPCD)
Industrial Management Review of the Naval Air Rework Facility, Alameda, California	Secretary of Defense	7/3/73	B-133014 (LCD)
Inquiry into Status of Temporary Lodging Facilities Project, Andrews Air Force Base, Maryland	Senator J. Glenn Beall, Jr.	7/5/73	B-169926 (LCD)
In-House Performance Versus Contracting Out-of-House-Operations at the Pacific Missile Range, Point Mugu, California	House Subcommittee on Manpower and Civil Service, Committee on Post Office and Civil Service	7/24/73	B-168700 (FFCD)
Better Management Needed in Civil Agencies Over Selection of In-House or Contract Performance of Support Activities <u>1/</u>	Congress	7/31/73	B-158685 (FPCD)
Build and Charter Program for Nine Tanker Ships	Congress	8/15/73	B-174839 (PSAD)

1/Major report involving civil agencies.

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<u>Title</u>	<u>Addressee</u>	<u>Date</u>	<u>Publication number</u>
Study of Military Temporary Lodging Facilities and the Availability of Commercial Motels	House Subcommittee on Small Business Problems in Smaller Towns and Urban Areas, Select Committee on Small Business	9/27/73	B-169926 (LCD)
Improper Use of Contractor-Furnished Employees by AEC's Regulatory Organization	Chairman, Atomic Energy Commission	11/1/73	B-164105 (RED)
Transfer of Cargo Operations at the Military Ocean Terminal, Oakland, California, from Civil Service to Contract Labor	Congressman Ronald V. Dellums	6/11/74	B-171695 (LCD)
Project REFLEX (Resource Flexibility)-- A Demonstration of Management Through Use of Fiscal Controls Without Personnel Ceilings	Congress	6/21/74	B-165959 (FPCD)
Implementation and Impact of Reductions in Civilian Employment, Fiscal Year 1972	Congress	7/2/74	B-180257 (FPCD)
The Cost of Aerospace Ground Equipment Could be Reduced	Congress	9/11/74	B-177751 (PSAD)
Contract for Food Service Operations at Lackland Air Force Base	Congressman Henry B. Gonzalez	10/4/74	B-180966 (LCD)

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<u>Title</u>	<u>Addressee</u>	<u>Date</u>	<u>Publication number</u>
The Air Force Should Review Contracting Out for Services at McGuire Air Force Base	Congressman Edwin B. Forsythe	11/5/74	B-158685 (FPCD)
Agency Printing and Duplicating Operations Need Management Improvements	Joint Committee on Printing	11/1/74	B-114829 (LCD)
Improvements Needed in Criteria Used by Executive Agencies in Making Cost Comparisons	Director, OMB and Administrator of General Services	11/14/74	B-163762 (OP)
Contracting for Base Operations at Army, Navy, and Air Force Training Installations	Secretary of Defense	11/18/74	B-158685 (FPCD)
Inquiry Into In-House Rather Than Contract Airfield Marking Operations	Congressman Mark Andrews	12/13/74	LCD-74-331
Inquiry Into Contracting Out of Services and Manpower Reductions-In-Force at Picatinny Arsenal, New Jersey	Senator Harrison A. Williams	1/7/75	FPCD-75-127
Industrial Management Activities at Rock Island Arsenal, Rock Island, Illinois	Secretary of the Army	1/20/75	LCD-75-427
Financial Operations of the Five Service Academies	Congress	2/6/75	FPCD-75-117
Resolution Concerning Military Housing Needs in the Fort Eustis Area	Congressman Thomas N. Downing	2/14/75	LCD-75-322
Information on Commissary Store Operations	House Committee on Appropriations	3/19/75	FPCD-75-132

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Patrick Air Force Base Food Service Cost Comparison Study	Congressman Lou Frey, Jr.	5/8/75	LCD-75-438
Use of Temporary Lodging Units at the Newport Naval Base, Rhode Island	Senator Claiborne Pell	5/15/75	LCD-75-319
The Military Commissary Store: Its Justification and Role in Today's Military Environment	Congress	5/21/75	FPCD-75-88
Improving the Pay Determination Process for Federal Blue-Collar Employees	Congress	6/3/75	FPCD-75-122
Ways of Increasing Productivity in the Maintenance of Commercial-Type Vehicles	Administrator of General Services, Postmaster General, Secretary of Defense	6/24/75	LCD-75-421
Savings Available by Contracting for Supply Support Services at the Eastern Test Range	Senator Lawton Chiles, Congressman Lou Frey, Jr.	8/18/75	FPCD-76-5
Practices in Providing Cleaning and Guarding Services in Federal Buildings	Senate Committee on Appropriations	8/18/75	LCD-75-337
Office of Education Contracts with Consultants, Experts, and Consulting Organizations	Senate Subcommittee on Education Committee on Labor and Public Welfare	8/28/75	MWD-76-11
Disposition of the Functions of 375 Employee Positions Eliminated in a Reduction-In-Force at Picatinny Arsenal	Senator Clifford P. Case	9/9/75	FPCD-76-11

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<u>Title</u>	<u>Addressee</u>	<u>Date</u>	<u>Publication number</u>
Examination of the Announced Closure of Frankford Arsenal	Congressman William A. Barrett	9/23/75	LCD-76-305
Reduction of Civilian Personnel at New London, Connecticut, Naval Installations	Congressman Christopher J. Dodd	11/4/75	FPCD-76-22
Tugboat Operations in the Navy	Secretary of the Navy	11/24/75	LCD-76-419
Navy Aircraft Overhaul Depots Could be More Productive	Congress	12/23/75	LCD-75-432
Use of Commercial Facilities for the Maintenance of Postal Vehicles	House Committee on Post Office and Civil Service	12/23/75	GGD-76-30
The Air Force Should Use Both Contract and In-House Services for Maintaining Military Family Housing at Dover Air Force Base	Senator William V. Roth, Jr.	1/20/76	FPCD-76-34
Use of Commercial versus Government Facilities for Storing Household Goods of Military Personnel	Secretary of Defense	1/28/76	LCD-76-210
Proposed Changes at the Oakland Army Base	Congressman Ronald V. Dellums	2/11/76	LCD-76-216
Effect of New Criteria on Commissary Store Authorizations	Senator Charles H. Percy	3/8/76	FPCD-76-44
Inquiry into Replacement of Department of Defense Research Employees with Contract Personnel at Point Mugu, California	Senator John V. Tunney	4/7/76	FPCD-76-52

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GSA's Program Providing Systems Analyst and Programmer Services to Other Federal Agencies	Administrator of General Services	4/7/76	None (LCD)
Contracting for Photo Lab Services by the Air Force Photo Squadron of Arlington, Virginia	House Subcommittee on Manpower and Civil Service, Committee on Post Office and Civil Service	5/20/76	FPCD-76-63
Management of the Program for Maintaining Construction Equipment in the Army	Secretary of Defense	6/3/76	LCD-76-446
Observation for Improving Depot-Level Maintenance Construction in the Department of Defense	Secretary of Defense	6/7/76	LCD-76-432
Comments on the Energy Research and Development Administration's Contract with TRW, Inc., for Planning and Analysis Services	House Subcommittee on Energy Research, Development, and Demonstration (Fossil Fuels), Committee on Science and Technology	9/21/76	EMD-76-11
27 Years' Experience with Defense Industrial Funds	Congress	10/5/76	FGMSD-76-51
Use of Government versus Commercial Facilities for Storing Military Personnel Household Goods	Senators John G. Tower and Lloyd Bentsen, and Congressmen Henry B. Gonzalez, Robert Krueger, and Abraham Kazen, Jr.	10/6/76	LCD-76-245 through LCD-76-249
Comparing Costs of Marking Airfields: Air Force versus Contractor	Congressman Mark Andrews	10/8/76	LCD-76-354

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Use of Government versus Commercial Facilities for Storing Military Personnel Household Goods	Assistant Secretary of Defense (I&L)	10/18/76	LCD-76-241
Should Aircraft Depot Maintenance Be In-House or Contracted? Controls and Revised Criteria Needed	Secretary of Defense	10/20/76	FPCD-76-49
Management of Cargo Handling at the Military Ocean Terminal, Bayonne, New Jersey	Congressman Dominick V. Daniels	10/22/76	LCD-76-350
Action of OMB Designed to Expand the Amount of Contracting Out of Functions Now Performed In-House by Civil Service Employees	Congressmen Christopher J. Dodd and Morris K. Udall	11/5/76	PSAD-77-6 and PSAL-77-7
Alternatives in Controlling Department of Defense Manpower Costs	Congress	11/12/76	PAD-77-8
Action of OMB Designed to Expand the Amount of Contracting Out of Functions Now Performed by Civil Service Employees	Congressman Clarence J. Brown	2/16/77	PSAD-77-79
Government Printing Operation Improvements Since 1974	Congress	2/22/77	LCD-77-408
Evaluation of Forest Service Plans for Carrying Out Activities of the Stockton, Calif., Regional Equipment Depot	Congressman John J. McFall	3/23/77	CED-77-55

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How to Improve Procedures for Deciding Between Contractor and In-House Military Base Support Services <u>1/</u>	Secretary of Defense	3/28/77	LCD-76-347
Plan to Contract for Cargo Handling Being Done by Government Employees	Senator Clifford P. Case	4/25/77	LCD-77-318
What Defense Says About Issues in Defense Manpower Commission Report --A Summary	Congress	5/3/77	FPCD-77-40
Government Printing Office Production and Management Controls--Improvement Opportunities	Congress	5/4/77	LCD-77-410
Reporting, Staffing, and Other Changes Would Enhance the Internal Audit Function in the Department of Commerce	Secretary of Commerce	6/1/77	CED-77-58
Personnel Ceilings--A Barrier to Effective Manpower Management	Congress	6/2/77	FPCD-76-88
Potential for Contracting Selected Operations at the Air Force Academy Cadet Dining Hall	Congressman Frank E. Evans	6/20/77	FPCD-77-57
Federal Retirement Systems: Unrecognized Costs, Inadequate Funding, Inconsistent Benefits	Congress	8/3/77	FPCD-77-48

1/Major report involving DOD.

APPENDIX VII

APPENDIX VII

<u>Title</u>	<u>Addressee</u>	<u>Date</u>	<u>Publication number</u>
Review of Navy Contracting Procedures and Decision to Overhaul Ship Equipment Using Contractor Rather than Naval Shipyard Employees	Senators Henry M. Jackson and Warren G. Magnuson, and Congressman Norman D. Dicks and Morris K. Udall	8/11/77	PSAD-77-149 and PSAD-77-150
Need for Department of Defense to Give Greater Attention to Managing Training Device Research and Development and Realizing Benefits of Self-Paced Instruction	Secretary of Defense	11/21/77	FPCD-78-4
The Five Service Academies: A Followup Report	Congress	11/25/77	FPCD-77-78
Improvements Are Needed in Managing Aircraft Used by Federal Civilian Agencies	Congress	12/22/77	LCD-77-430
The Military Services Are Constructing Unneeded Family Housing	Congress	12/29/77	CED-78-8
Accounting for Automatic Data Processing Costs Needs Improvement	Congress	2/7/78	FGMSD-78-14
Analysis of the Need for Additional Family Housing at the Navy's Trident Submarine Base	House Committee on Appropriations	2/9/78	CED-78-49
Opportunities Exist for Substantial Savings in Administration of Military Skill Training Programs	Secretary of Defense	2/14/78	FPCD-78-13

APPENDIX VII

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<u>Title</u>	<u>Addressee</u>	<u>Date</u>	<u>Publication number</u>
Review of Allegations About Use of Federal Funds at the National Medical Audiovisual Center, Atlanta, Georgia	Congressman Elliott H. Levitas	3/28/78	HRD-78-95
Shifting the Government's Automatic Data Processing Requirements to the Private Sector: Further Study and Better Guidance Needed	Director, OMB	4/11/78	FGMSD-78-22
More Direction Needed to Establish a Uniform Depot Maintenance Accounting System	Secretary of Defense	5/22/78	FGMSD-78-35
Is there a Need for Additional Family Housing at Fort Stewart?	House Committee on Appropriations	6/2/78	CED-78-108
Contracting Out Base Support Services at Fort Gordon	Senate Subcommittee on Manpower and Personnel, Committee on Armed Services	7/27/78	LCD-78-320
Legislative Recommendations of the Commission on Government Procurement: 5 Years Later	Congress	7/31/78	PSAD-78-100

SUMMARY--PROPOSED CHANGES IN CIRCULAR A-76 1/

- | <u>No.</u> | <u>Proposed Action</u> |
|------------|--|
| | 1. Basic Principles and Coverage |
| 1A | Incorporate a new statement of the basic philosophy of this Administration: <ul style="list-style-type: none"> . Government reliance on the private sector is a valid principle. . Certain functions are inherently governmental in nature and must be performed in-house. . Taxpayer is entitled to economy in Government; cost comparisons are appropriate as criteria. |
| 1B | Describe the basic governmental functions, plus the basic governmental aspects of other functions, which should always be performed by Federal personnel, and list the predominant commercial and industrial activities that normally should be contracted out. |
| 1C | Develop more specific criteria for circumstances that would constitute disruption or material delay in a program. |
| 1D | DOD should develop more specific criteria for the exception relating to military readiness, subject to approval by OMB. |
| 1E | Require agencies to advertise requirements in the <u>Commerce Business Daily</u> , at least 90 days in advance, before concluding that there is no commercial source available. |
| 1F | Provide that agencies may obtain products or services from another Federal agency if such products or services have been reported as excess to the General Services Administration, where applicable, or the providing agency certifies that such action would be in accord with the objectives and applicable provisions of Circular A-76. |

1/Federal Register, November 21, 1977, as proposed by the Office of Federal Procurement Policy.

<u>No.</u>	<u>Proposed Action</u>
	2. Definitions and Implementation
2A	Provide a new definition for "New Starts" by limiting this category to those commercial and industrial Government activities that are newly established or those that are reactivated (i.e., strictly limit "new start" activities to those not currently being done in-house at that location). Establish a separate category, "Expansions," to cover modernization, replacement or enlargement of existing activities currently defined as "New Starts."
2B	Assuming "New Starts" to be newly established or reactivated activities only, increase the thresholds, at which a formal review and approval is required, to \$50,000 capital investment or \$100,000 annual costs of production.
2C	Increase thresholds for review of "expansions" (i.e., modernization, replacement or enlargement of existing activities) to \$100,000 capital investment or \$200,000 annual costs of production. Add a provision for the use of 20 percent of capital investment/annual costs of production where unusual circumstances or magnitude of investments or production costs of certain activities make the established thresholds impractical.
2D	Include a definition to specifically identify and describe conversions of in-house activities to contract services.
2E	Require Government-owned, contractor-operated (GOCO) activity management to apply A-76 policy principles to in-house vs. contract considerations; also require that in-house aspects of GOCO activities (ownership and management) be considered as Government C/I activity subject to A-76 review requirements.

- | <u>No.</u> | <u>Proposed Action</u> |
|---------------------|--|
| 2F | After revision of OMB Circular A-76, develop supplements addressing its application to special areas such as telecommunications and automatic data processing. |
| 2G | Detailed implementation responsibility will rest with the agencies subject to OMB oversight and OFPP leadership to review implementing regulations and performance. |
| 3. Cost Comparisons | |
| 3A | Develop a detailed handbook on cost comparisons to be issued later as a supplement to the Circular; improve existing cost guidelines in the Circular as an interim measure. |
| 3B | Move toward fuller costing for Government costs for both contract and in-house activities, and provide sufficiently detailed guidance in the cost comparison handbook to make in-house and commercial cost estimates comparable. |
| 3C | Base the commercial cost figure in all cost comparisons on a competitive firm bid or proposal from industry. |
| 3D | Prescribe standard cost factors for Circular A-76 comparisons to the extent feasible. |
| 3E | When a comparative cost analysis is conducted for an existing Government commercial or industrial activity, provide a cost margin supporting the continuation of the activity that is equal to 10% of the estimated personnel-related costs. |
| 3F | When a comparative cost analysis is conducted for a proposed new Government commercial or industrial activity, provide a cost margin supporting commercial performance that is equal to 10% of the estimated personnel costs and 25% of the estimated cost for facilities and materials. |

- | <u>No.</u> | <u>Proposed Action</u> | | | | | | |
|--------------------------------------|--|--------------------------------------|------|-----------------------------|------|-------------------------|------|
| 3G | Calculate Government employee retirement cost on a dynamic normal cost basis. | | | | | | |
| 3H | In calculating the dynamic normal cost of the Civil Service Retirement System, use the following economic assumptions, which were recommended by the Council of Economic Advisers:

<table border="0" style="margin-left: 40px;"> <tr> <td>Average Real Annual Salary Increase:</td> <td style="text-align: right;">1.5%</td> </tr> <tr> <td>Average Real Interest Rate:</td> <td style="text-align: right;">2.5%</td> </tr> <tr> <td>Average Inflation Rate:</td> <td style="text-align: right;">4.0%</td> </tr> </table> <p>These assumptions produce a Government cost factor of 20.4% of salary.</p> | Average Real Annual Salary Increase: | 1.5% | Average Real Interest Rate: | 2.5% | Average Inflation Rate: | 4.0% |
| Average Real Annual Salary Increase: | 1.5% | | | | | | |
| Average Real Interest Rate: | 2.5% | | | | | | |
| Average Inflation Rate: | 4.0% | | | | | | |
| 3I | Continue to use a single actuarial model and a single retirement cost factor for all employees covered by the Civil Service Retirement System. | | | | | | |
| 3J | The retirement cost factor should be reviewed at some regular interval, preferably every five years. | | | | | | |
| 3K | Amend Circular A-76, at a future time, to establish a cost factor for Social Security, if and when Congress and the Administration act to fund Social Security liabilities from general revenue. | | | | | | |
| 3L | Describe the cost elements to be included in the commercial cost figure (in addition to contract price) in more specific terms. | | | | | | |
| 3M | Describe the cost elements to be included in the Government cost figure (in addition to direct salary of assigned personnel) in more specific terms. | | | | | | |
| 3N | Revise Circular A-76 guidelines to use a standard and consistent present value analysis as prescribed by OMB Circular A-94 for capital investments, and amortize any conversions costs over a time period that is appropriate for the nature of the activity. | | | | | | |

No.Proposed Action

4. Personnel Considerations

- 4A Clarify the interrelationship of A-76 policy and other policy regarding personnel ceilings.
- 4B Specifically prohibit contracting that establishes an employer-employee relationship between the Government and contractor personnel.
- 4C Provide emphasis on the statutory and regulatory provisions which impose employee preference requirements on Government contractors similar to those required under Civil Service regulations.
- 4D Add a provision to state that Government policy considers military, Government civilian employees, and contractor employees to be equally loyal, conscientious, and industrious in accomplishing Government workload.
- 4E Place greater emphasis on: preparation of contract work statements, including comprehensive performance specifications; screening and selection of contractors for award; monitoring contract performance; and use of penalties (suspensions and debarment) for unsatisfactory contract performance.
- 4F Give qualified Federal employees, adversely affected by the contracting of a service function, a right of first refusal for available contract vacancies.

5. Review and Appeals

- 5A Require agencies to maintain central points of contact for OMB Circular A-76 implementation, with access to all inventories and justifications for commercial and industrial activities, to respond to requests for these documents from any interested parties.

<u>No.</u>	<u>Proposed Action</u>
5B	Require each agency to develop and announce a detailed plan to review each commercial and industrial activity within a reasonable time period, not to exceed three years, and on the same cycle thereafter.
5C	Review, on a three year cycle, continuing functions which are performed by contract, but are a type commonly performed by Government activities; conduct a comparative cost analysis when there is reason to believe that in-house performance would be less costly.
5D	Require each agency to establish an A-76 appeal mechanism to provide prompt and objective consideration of appeals from A-76 decisions.



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-158685

JAN 25 1978

The Honorable Lester A. Fettig
Administrator, Office of Federal
Procurement Policy
Office of Management and Budget

Dear Mr. Fettig:

We appreciate the opportunity of providing you with our comments on your proposed changes in OMB Circular A-76, dated November 21, 1977.

As you are aware, we are currently reviewing the overall effectiveness of the executive agencies' policies and programs for acquiring commercial or industrial products and services for Government use. The results of our review are not yet available.

While GAO has generally supported the policy of obtaining needed goods and services from commercial sources, we believe that this must be merged with the objective of obtaining such goods and services at the lowest possible cost, consistent with requirements to maintain quality. The effective implementation of both policies requires that complete and accurate cost comparisons be made. We believe that this point should be emphasized strongly in the revised Circular.

Serious consideration should be given to the development of rules and accompanying policing procedures, whereby an appraisal could be made concerning the level and degree of compliance with the policy by the agencies. The lack of an independent appraisal may result in a continued lack of agency implementation.

We are concerned with the proposal dealing with fuller costing (3B). This action contemplates moving toward fuller costing for Government costs for both contract and in-house activities and providing sufficiently detailed guidance in the cost comparison handbook to make in-house and commercial cost estimates comparable. It is difficult to determine the extent to which fuller costing will be carried, but it apparently is intended to change the method of costing in-house activities from an incremental to a fully allocated basis.

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The Circular currently provides for the use of incremental costing, and the use of that method was also included in the following recommendation of the Commission on Government Procurement:

"Recommendation 24. Base cost comparisons on:
(a) Fully-allocated costs if the work concerned represents a significant element in the total workload of the activity in question or if discontinuance of an ongoing operation will result in a significant decrease in indirect costs.

(b) An incremental basis if the work is not a significant portion of the total workload of an organization or if it is a significant portion in which the Government has already provided a substantial investment."

While it can be argued that incremental costing can tilt a comparison toward Government performance in some circumstances, it can also be argued that fully allocated costing can tilt a comparison away from Government performance in other circumstances. Thus, we support the guidelines contained in the above recommendation and believe that they represent a balanced approach to this controversial area.

It is noted that the rationale supporting the proposed action cites a decision of this Office as advocating full costing. That decision, 56 Comp. Gen. 275 (1977) broadly concerned the pricing of reimbursable work between agencies under the Economy Act which requires reimbursements to be based on actual costs. It was not directed to the policy question of how to determine whether to perform a service or produce a product in-house or to contract out, and use of that decision toward that purpose would be inappropriate.

* * * * *

We would also like to offer some general comments on some of the other proposals.

Proposed action 2A provides for a new definition for "new starts" and establishes a separate category for "expansions." Neither of these definitions appear to discuss "consolidations" as does the current Circular. The current Circular states that the consolidation of two or more activities without increasing the overall total amount of products or services provided is not

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a "new start." It would appear that clarification is needed as to the application of the A-76 policy to consolidations.

Action 2C proposes to increase thresholds for review of "expansions" to \$100,000 capital investment or \$200,000 annual costs of production. It also adds a provision for the use of a threshold related to the size of certain activities and a factor of 20 percent of capital investment/annual costs of production is suggested. Although we believe that the percentage threshold is reasonable, we also believe some flexibility in this threshold should be provided. For example, there may be situations involving diminishing Government activities where investments falling under the 20 percent limit would be inadvisable without a cost comparison. Another case may be on a large dollar size program where an investment not reaching the 20 percent limit might be large enough to warrant a cost comparison.

Proposed action 2F contemplates the development of supplements to the Circular, after its revision, addressing special areas, such as telecommunications and automatic data processing. If supplemental guidance is needed, it is not clear as to whether the functional areas involved would be exempt from the A-76 policy pending publication of that guidance. We see no reason why executive agencies could not follow the basic A-76 policy in the interim.

On December 6, 1977, OMB Draft Bulletin entitled "Guidelines for the Use of Consultant Services" was issued for comment. Consideration should be given to making this guidance a supplement to Circular A-76. We will be forwarding separate comments to you on this proposed bulletin in the near future.

Proposed action 3C intends to base the commercial cost figure in all cost comparisons on a competitive firm bid or proposal from industry. The supporting rationale for this proposal, however, includes a statement that:

"*** Where there is no in-house capability, and no reason to expect that the Government commercial or industrial activity could be operated to meet the need at less cost, the availability of an established market price may be sufficient, without an in-house cost study, to justify a decision to contract for the product or services."

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It is our position that this guidance will increase the risk of an executive agency selecting an uneconomical source and that such a step seems highly inadvisable without a careful analysis of the costs of the studies that have been made in the past as compared to potential savings disclosed. In the absence of the above analysis, we think that a cost comparison should be made whenever the thresholds are met.

Proposal 3F recommends a cost margin supporting commercial performance equal to 10 percent of the estimated personnel costs and 25 percent of the estimated cost for facilities and materials in comparative cost analyses for proposed new Government commercial or industrial activities. In this regard, we support the following recommendation of the Commission on Government Procurement which proposed the use of a flexible rate rather than a fixed rate:

"Recommendation 26. Increase the minimum cost differential for new starts to justify performing work in-house from the 10 percent presently prescribed to a maximum of 25 percent. (Of this figure, 10 percent would be a fixed margin in support of the general policy of reliance on private enterprise. A flexible margin of up to 15 percent would be added to cover a judgment as to the possibilities of obsolescence of new or additional capital investment; uncertainties regarding maintenance and production cost, prices, and future Government requirements; and the amount of State and local taxes foregone.) New starts which require little or no capital investment would possibly justify only a 5 percent flexible margin while new starts which require a substantial capital investment would justify a 15 percent flexible margin, especially if the new starts were high-risk ventures."

We know that in certain situations the Government assumes the same risk under the contract as it would if it had performed the task in-house. For example, in the Navy build and charter program, and in the National Aeronautics and Space Administration tracking data relay satellite system (see page 13 of your proposed changes), the Government assumed virtually the same risk under contract as it would have had the activities been done in-house.

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Proposal 3H deals with calculating the dynamic normal cost of the Civil Service Retirement System and produces a Government cost factor of 20.4 percent of salary. Estimates of the dynamic normal cost of the retirement system can vary considerably depending upon the assumptions made regarding future real wage increases and real interest rates. By their very nature, the validity of these economic assumptions cannot be judged on the basis of their precision or accuracy but rather should be considered in terms of their reasonableness. The assumptions used are not in accordance with past experience for Government salaries and interest rates on special issue Government bonds and result in lower in-house personnel costs.

Proposal 3I advocates continued use of a single actuarial model and a single retirement cost factor for all employees covered by the Civil Service Retirement System. While we have advocated a multiple actuarial model that recognizes differences in net cost to the Government, we can appreciate the difficulty encountered in the application of that procedure at this time. However, we continue to believe that without a multiple actuarial model, cost comparisons cannot be made accurately, and we continue to encourage the development of a multiple actuarial model. We believe that, in the interim, a sensitivity analysis of each decision to use a single actuarial rate should be made in order to ascertain the effect of such a rate on the decision.

Under proposed action 3L, the cost elements to be included in the commercial cost figure (in addition to contract price) are to be described in more specific terms. The rationale for the proposal indicates that the Circular currently provides an extensive listing of cost elements to be considered, including premature retirement costs for Government personnel whose early retirement is caused by a decision to use a commercial source. The Civil Service Commission calculates the normal cost of the retirement system by assuming a rate of future early retirement for the system as a whole. Thus, an agency's cost comparison should include a cost factor for early retirement only when a contracting-out decision is expected to result in early retirement at a rate materially greater than that assumed by the Commission. We suggest that the Commission be asked to provide general guidelines for handling early retirement in cost comparisons.

Proposal 3N deals with utilizing a 10 percent discount rate in present value computations. While we concur in the

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use of present value analysis, we do not agree with the use of the 10 percent discount rate which is based upon the opportunity cost foregone in the private sector as is presented in the current OMB Circular A-94. We have consistently held that the discount rate used to compute present values be based on the time value of money to the Federal Government, as measured by the average yield on those outstanding marketable obligations of the U.S. Treasury that have a remaining maturity comparable to the period of the investment analysis.

Under proposed action 5C, agencies will be required to review continuing functions which are performed by contract and to conduct a comparative cost analysis when there is reason to believe that in-house performance would be less costly. We agree with the need to review contracted-out activities when subsequent events make in-house performance less costly. But, we think the proposal is too subjective, i.e., when there is "reason to believe" in-house performance would be less costly. The rationale mentions only the circumstance where the contract price has increased significantly. Perhaps some additional objective criteria could be prescribed. For example, dollar or percent limits of cost growth could be established that would trigger a review if breached. Another example may occur if the competitive base reduces or is eliminated. Again, if the wage rates of the private sector should rise faster than those of the public sector a cost comparison may be warranted.

Proposed action 5D requires each agency to establish an A-76 appeal mechanism to provide prompt and objective consideration of appeals from A-76 decisions. We believe that the Office of Federal Procurement Policy (OFPP) should exercise its leadership responsibilities and coordinate the development of a uniform appeals process rather than leave the matter to the discretion of each agency. Assistance by OFPP in the development of an appeals process should enhance its perceived objectivity.

Thank you for the opportunity to present our comments. We trust that they will be useful in the development of revised A-76 policy guidelines.

Sincerely yours,

(Signed) Elmer B. Staats

Comptroller General
of the United States



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

JUL 24 1978

Honorable Elmer B. Staats
Comptroller General of the
United States
Washington, D.C. 20548

Dear Mr. Staats:

Thank you for the opportunity to review and comment on the draft report "Development of a National Make-or-Buy Strategy -- Progress and Problems." This report discusses the background and origin of OMB Circular A-76, the current expression of the Government's general policy of reliance on the private sector; assesses the implementation of that policy and problems encountered; evaluates proposed changes; and provides conclusions and recommendations for more effective implementation.

The General Accounting Office is to be commended for undertaking the task of preparing a permanent record of the extensive history and evolution of the general policy of the Government to rely on the private sector for the products and services it requires. The report should serve as an excellent source document for Congressional committees and other interested parties who seek to understand the background for the Government's policy as expressed in OMB Circular A-76.

While the draft report is comprehensive and informative, we are concerned with inconsistencies of various statements and conclusions which question the existence of a national policy of reliance on the private sector, and challenge the commitment of the executive and legislative branches of the Government to effectively implement such a policy. This questioning tone, which runs throughout the report, is contrary to the long history of bi-partisan executive and legislative support for the general policy that the Government should not compete with its citizens. Of particular concern are comments which characterize Circular A-76 and current Administration proposals as ineffectual efforts to promulgate a policy that is unsupported and possibly opposed by the legislative branch, and hopelessly in conflict with various laws and established policies.

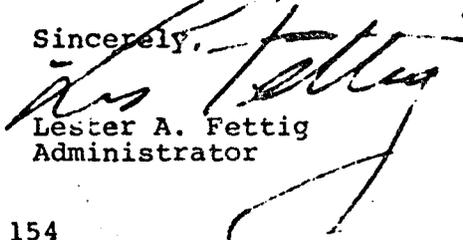
I wholeheartedly concur with the draft report's central concern that implementation of this national policy, or any other policy for that matter, would greatly benefit from unequivocal legislative support. To the extent that we already have Section 6(d)(3) of Public Law 93-400, we have a basic recognition of the policy; to the extent that the Congress reviews and comments on the draft revision of Circular A-76, we will have a further calibration of legislative sentiment. But to expect even a semblance of unanimity in the face of existing political pressures is neither likely nor a necessary precondition for our proposals to be effectively implemented.

This Administration has recognized the need for more effective and consistent implementation of Circular A-76. Sincere efforts are being made to develop a balanced approach to implementation and reduce the uncertainty and controversy which have existed in the past. As presently drafted, the GAO report would not appear to be supportive of current progress toward these objectives.

I consider the package of reform proposals to be a balanced, workmanlike prescription to put some stability, predictability and uniformly recognized equity into the hundreds of critical decisions which regularly affect the jobs of Federal workers; the jobs of contract employees; and the business base and profitability of American businesses (large and small and minority-owned) and which create perplexing problems for our elected representatives. To build such a stable, predictable and equitable system in the face of such extraordinary pressures has been our objective from the outset. With this purpose and approach, I must therefore question the draft report's prominent forecast that not much will change and we are in for more of the same: "confusion, controversy and ineffective implementation". On the contrary, I believe we have identified the root problems, constructed a balanced package of reforms, and fully intend to carry forward with a deliberate and effective implementation program.

In addition to these general observations, my staff has discussed with representatives of GAO other specific points which you may wish to consider. Among these are two broad proposals regarding the need for personnel ceilings and the adequacy of Government accounting systems, each of which involves major policy considerations. If changes are needed in these areas they should be addressed in a much broader context than the implementation of A-76.

Sincerely,



Lester A. Fettig
Administrator

