

ORDER

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

1850.1

2/11/91

SUBJ: PERFORMANCE OF COMMERCIAL ACTIVITIES

1. **PURPOSE.** This order prescribes policy, designates responsibilities, and establishes procedures for the performance of commercial activities conducted by FAA in accordance with OMB Circular A-76, Performance of Commercial Activities. It provides the framework upon which to base agency determinations regarding the means used to acquire certain commercial products and services. This order provides for the conduct of direct contracting initiatives and establishes the A-76 Project Status Report, included as appendix 1. This order also implements and transmits as appendix 2, Order DOT 4400.2D, Performance of Commercial Activities.
2. **DISTRIBUTION.** This order is distributed to the division level in Washington, regions, and centers and a limited distribution to each field office and facility.
3. **CANCELLATION.** Order 2510.12B, Performance of Commercial Activities—OMB Circular A-76, dated June 3, 1984, is canceled.
4. **BACKGROUND.**
 - a. **OMB Circular A-76 (Revised),** Performance of Commercial Activities, dated August 4, 1983, established the Government's general policies with respect to the performance of commercial functions. The key thrusts of these policies are the achievement of economy, enhancement of productivity, and reliance on the private sector for commercial products and services. The circular and its supplement provide a representative list of the types of commercial activities currently contracted or operated in-house by agencies. This list is not exhaustive, but should be considered an aid in identifying commercial activities. Furthermore, the circular and its supplement define the A-76 process and task most Federal organizations with specific responsibilities. These responsibilities include the development of the cost comparison, review, and appeal guidelines.
 - b. **Executive Order Number 12615,** Performance of Commercial Activities, dated November 19, 1987, required the identification and scheduling for review of all commercial activities performed by the agency and established quarterly reporting requirements. Order DOT 4400.2D, Performance of Commercial Activities, contains the latest Departmentwide instructions on the A-76 process. Associate Administrator for Administration memorandums of June 6, 1984, and August 6, 1984, entitled "A-76 Appeals Procedures" and "Revised A-76 Policy," respectively, provide FAA A-76 implementation procedures which are incorporated into this order revision.
5. **EXPLANATION OF CHANGES.** This revision:
 - a. Incorporates procedural changes contained in Order DOT 4400.2D.
 - b. Establishes a quarterly A-76 reporting system.
 - c. Designates the Quality Improvement Branch, AMS-510, in the Management Analysis Division, Office of Management Systems, as the organization serving as the focus for the A-76 Program in the agency and responsible for providing guidance and direction.
 - d. Reflects organizational changes that have occurred through the date of issuance of this order.

e. Provides agency guidance on the implementation of Executive Order 12615, Performance of Commercial Activities.

f. Incorporates revised appeals procedures including the designation of the Associate Administrator for Administration (AAD-1) as the agency appeals official.

g. Makes changes effective immediately on all ongoing projects.

6. DEFINITIONS.

a. A **background review** is a document that identifies all of the functions of an activity or organization under review and justifies the determination of functions that are inherently governmental. In most cases, this document will only be required for reviews that have a significant mixture of commercial and inherently governmental functions. Activities that include a minimum of inherently governmental functions may have this information included in the management efficiency study.

b. A **commercial activity** is one which is performed by a Federal executive agency and which provides a product or service which could be obtained from a commercial source. A commercial activity may also be part of a larger function which could be separated and reviewed under the A-76 process and which is suitable for performance by contract.

c. An **inherently governmental function** is one which is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities which require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for the Government.

d. An **oversight committee** is a group that may be assigned to each A-76 project that is responsible for reviewing each phase of the project, ensuring that milestone schedules are met, and resolving any problems that may impede the completion of the project.

e. The **project office** is the office, service, region, or center that is responsible for completing an assigned A-76 project.

f. A **project officer** is the person assigned to an A-76 project as the principal point of contact responsible for the completion of the project.

g. The **A-76 program analyst** is an individual in the Quality Improvement Branch, Office of Management Systems, assigned to an A-76 project who is the principal liaison between the project office/officer and the Office of Management Systems.

h. The **agency appeals official** is the sole deciding authority on appeals filed by affected parties involving A-76-related issues.

i. The **agency appeals examiners** are appointed by the appeals official. Appeals examiners conduct fair and impartial investigations of A-76 appeals and submit reports of recommended action to the appeals official.

j. **Privatization.** The act of transferring responsibility for the accomplishment of a commercial function presently performed by the Government to some private sector organization.

7. FORM AND REPORT. Executive Order 12615 and Order DOT 4400.2D require FAA to furnish, on a quarterly basis, A-76 project-related information to OST for inclusion in OMB's A-76 management information system. To facilitate this process, each project office with an ongoing A-76 project shall submit to the Office of Management Systems, Attn: Quality Improvement Branch, AMS-510, an "A-76 Project Status Report" RIS: 1850-1 by December 15, March 15, June 15, and September 15 of each year. An FAA Form 1850-1, A-76 Project Status Report, instructions for its completion, and a completed sample are furnished as appendix 1. This form contains the data required by OMB and is authorized for local reproduction.

a. Direct contracting may not require all of the milestones indicated on the form. When reporting, complete only those items that apply to the project.

b. Accomplishment of major milestones should be reported to the Office of Management Systems, Quality Improvement Branch, AMS-510, by telephone as milestones are accomplished and documented on the next quarterly report.

8. POLICY. FAA is committed to utilizing the private sector when economically justified to obtain commercial goods and services required by the agency. Requirements for commercial products and services shall be satisfied in accordance with the policies and procedures set forth in OMB Circular A-76 and its Supplement, Order DOT 4400.2D, and as provided herein.

a. All conversions from in-house to contract operations, contract expansions, and new requirements, when in-house performance is feasible, shall be justified on the basis of economy, except 8(a) and other preferential procurements. This requirement may be waived by the Associate Administrator for Administration, AAD-1. Functions involving 10 or fewer FTE's are exempted from this requirement. However, when conversion of such organizations poses the possibility of adverse personnel action, formal cost comparisons are still recommended.

b. All A-76 project-related direct contracting shall undergo formal cost comparison unless the functions are exempted by AAD-1 waiver, involve 10 or fewer FTE's, or involve preferential procurements.

c. All solicitations and synopses of solicitations issued to obtain offers from prospective contractors for comparison purposes shall state that no contract will be let if Government performance is found to be more advantageous. Each synopsis shall also include a notice regarding the right of first refusal.

9. RESPONSIBILITIES.

a. **The Associate Administrator for Administration** shall serve as the senior official responsible for implementation of the A-76 Program in the agency. He/she shall implement policy for the A-76 Program and be kept informed of A-76 project personnel developments, such as the hiring of permanent employees and adverse actions. Approval officials are designated in paragraph 13 of this order.

b. **The Office of Management Systems** shall:

(1) Provide the necessary A-76 Program support to carry out the responsibilities of the Associate Administrator for Administration, and provide program guidance and information such as program activity lists to agency organizations.

(2) Issue all appropriate instructions for implementing the provisions of the A-76 Program.

(3) Provide a central point of contact for A-76 to monitor implementation and furnish assistance.

(4) Consolidate and analyze agencywide A-76-related reports and data and prepare reports and data for OST, OMB, and other interested parties.

(5) Coordinate the scheduling of program related activities such as A-76 project milestones, meetings, and the development of the agency inventory.

(6) Act as point of contact for the Office of the Secretary of Transportation.

c. Heads of offices, services, regions, and centers shall:

(1) Take all appropriate steps to implement A-76 policies and programs.

(2) Designate a project office for A-76 Program activities and designate a project officer for each A-76 project.

(3) Ensure that scheduled reviews within their organizations are accomplished within the established milestones.

(4) Prepare and submit quarterly progress reports on specific projects under their purview and other program reports and data as required to the Office of Management Systems.

(5) Identify commercial activities under their purview which should be placed on the agency's A-76 Program Activity List.

(6) Schedule commercial activities under their purview for cyclic A-76 review unless otherwise exempted.

(7) Approve the hiring of other than temporary employees in organizations under their purview undergoing A-76 study. Such hiring should not exceed staffing in existence at the commencement of the study nor should it proceed past a time of 6 months prior to the scheduled cost comparison.

10. PROCEDURES. Agency policy shall be implemented in accordance with the following procedures.

a. A-76 Program Activity List. The Office of Management Systems, Quality Improvement Branch, AMS-510, shall maintain a list of current A-76 Program projects in accordance with Executive Order 12615 and Circular A-76. This list shall include commercial activities identified for A-76 reviews, direct contracting, or privatization. Project candidates shall be submitted through channels by the responsible program officials in consultation with the regional A-76 coordinators where appropriate. The regional coordinators shall provide advice and assistance as needed.

(1) Heads of offices, services, regions, and centers are urged to submit potential candidates for A-76 Program projects to the Associate Administrator for Administration (AAD-1) based on guidance provided by the Office of Management Systems, Quality Improvement Branch, AMS-510. Inventory lists of commercial activities are required by the Circular, Supplement Part I, Chapter I, and Executive Order 12615. The Office of Management Systems, Quality Improvement Branch, AMS-510, shall prepare and coordinate within the agency and with OST and OMB a combined agency A-76 Program activity list.

(2) The activity list shall be approved by the Associate Administrator for Administration and forwarded to the Office of the Secretary of Transportation (OST).

(3) OST will publish annually the DOT combined activity list in the *Commerce Business Daily* and the *Federal Register*.

(4) Copies of the activity list may be released to industry and the public following publication by OST.

b. Project Office/Project Officer. Each organization with an activity included in the agency's A-76 Program shall be responsible for:

- (1) Determining the estimated number of full-time equivalents (FTE) associated with the activity.
- (2) Determining the method of conducting the study (study contractor or in-house resources).
- (3) Establishing an oversight committee for each project.
- (4) Establishing and adhering to the project schedule and milestone dates.

(5) Ensuring that documentation indicating the economic basis for any conversion from in-house to contract be forwarded to the Office of Management Systems.

(6) Forwarding inherently governmental function determinations thru the Office of Management Systems, Quality Improvement Branch, AMS-510, for Associate Administrator for Administration (AAD-1) review and approval.

c. Management Efficiency Study. A management efficiency study (MES) shall be conducted by the project office for all commercial activities that are included in the A-76 Program activity list. These studies are conducted to determine the most efficient in-house organization. The study must include the original cost of performing the function and the most efficient organization (MEO). The MES conducted as part of an A-76 review for commercial activities shall be used to determine the in-house cost estimate. Therefore, information contained in this document shall be restricted to those requiring the information for coordination and approval purposes until bids are opened.

d. A-76 Reviews. An A-76 review will be conducted for all commercial activities. At a minimum, the project office shall retain documentation which shall consist of a:

(1) Background review, identifying commercial and governmental portions of the functions with associated FTE's. For smaller functions, the background review may be part of the management efficiency study.

(2) Management efficiency study stating the original cost of performance and the most efficient organization.

(3) Performance Work Statement (PWS) and concurrently developed Quality Assurance Surveillance Plan (QASP).

(4) Completed cost comparison form.

e. Direct Contract Projects. Certain commercial activities may be appropriate to contract without a formal A-76 review since there would be no adverse impact on personnel. In all cases, an analysis shall be performed by the contracting officer to ensure that any conversion to contract is cost effective before the award of a contract. A record of this comparison shall be kept for audit purposes in the contract file. This includes expansions, new requirements, and activities where all permanent positions are unencumbered.

11. INDEPENDENT REVIEWS. An independent review shall be conducted for A-76 projects involving cost comparisons. The review shall cover both A-76 cost data and procedural requirements. This review shall be done and discrepancies corrected prior to submitting the cost comparison form and supporting data to the contracting officer in preparation for bid opening/proposal evaluation. A maximum of 30 calendar days should be allowed for conducting the independent review. Independent reviewers should have specific knowledge of A-76 and its requirements and be selected from an impartial activity which is organizationally independent of the commercial activity being studied.

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a. The Office of Accounting (AAA-1) shall be responsible for assigning independent reviewers for A-76 studies conducted by the offices and services. To satisfy this responsibility, the Office of Accounting may request assistance from other offices and services whose personnel possess the necessary financial and technical program skills and knowledge.

b. Associate administrators, assistant administrators, regional administrators, center directors, and office and service directors have the option of assigning trained independent reviewers with accounting or financial management backgrounds for A-76 studies conducted in their organizations.

12. APPEALS. The Associate Administrator for Administration (AAD-1) is the agency appeals official. He/she shall render a written determination on each appeal received. It is absolutely essential that all appeals are resolved fairly and impartially. The appeals official may appoint appeals examiners to investigate appellant allegations. Examiners must provide AAD-1 with recommendations for appeal resolution. Decisions of the appeals official are final and there shall be no further discretionary review of final decisions within the agency.

a. Relevant appeals procedures are contained in paragraph 9 of Order DOT 4400.2D.

b. A-76 appeals, which must be in writing, shall be filed during the appeals timeframe with the contracting officer (CO) responsible for the A-76-related procurement. The CO determines the appeals timeframe from 15 to 30 days depending on the complexity of the procurement package. The CO shall forward the appeal within 2 work days to the Associate Administrator for Administration with a copy to the Office of Management Systems, Attn: Quality Improvement Branch, AMS-510. Appeals must be responded to within 30 days of receipt.

c. The appeals official may appoint an appeals examiner(s) and shall ensure that the appeals process is fair and equitable.

d. Appeals examiners shall be knowledgeable, fair, and impartial. Examiners shall have no previous involvement in the project under review. In-depth A-76 experience is not essential, but examiners shall possess a general knowledge of the A-76 process. Examiners will normally conduct the reviews and interviews at the location where the cost comparison package was prepared. This provides maximum access to key Government personnel involved in the study and supporting documentation and is usually more convenient to those appellants making oral presentations. Examiners shall take special care to remain totally impartial and to review all data bearing upon the issues appealed.

e. The appeals examiner shall, within applicable timeframes, conduct a full and fair investigation of each appeal and forward a report containing an analysis of the validity of the appeal and a recommended course of action to the appeals official.

f. Instances may arise when the Associate Administrator for Administration may not serve as the agency appeals official. Such appeals shall be handled on a case-by-case basis, with an appropriate appeals official designated by the Associate Administrator for Administration or the Administrator.

13. APPROVALS. Order DOT 4400.2D and OMB Circular A-76 require specific approvals and coordination. Heads of offices, services, regions, and centers are delegated authority to approve A-76 actions except as follows: The Associate Administrator for Administration shall: approve inherently governmental determinations, approve the exemption of any commercial function from the A-76 process that is not in the best interest of FAA to contract, and serve as the approving official for any waivers granted to exceed OMB guidelines on contract administration positions permissible to administer a contract for contracted-out functions.

14. PERSONNEL CONSIDERATIONS. The OMB Circular requires Government agencies to exert maximum effort to assist Federal employees who are adversely affected by conversions to contract performance. Required actions are defined in the OMB Supplement, Part I, Chapter 2, Paragraph I, Appeals of Cost Comparison Decisions, and Chapter 3, Paragraph D, Personnel Considerations. In addition, the agency shall:

a. Solicit employee and supervisory inputs in developing the performance work statement and the management study. It is essential that the management study result in the most efficient and cost-effective organization in order for the in-house cost estimate to be as competitive as possible with industry bids.

b. Advise all employees of the procedures of the A-76 process and maintain open communications as to the progress of the review.

c. Apply procedures governing right-of-first-refusal of employment to all A-76 conversions to contract including preferential procurements.

d. Defer filling vacant permanent positions, if possible, in the organizations where A-76 reviews are scheduled pending outcome of the review. Other than permanent employees may be hired provided they are advised of the ongoing review. This action may be waived when valid justifications are documented, prior to 6 months before scheduled cost comparison.

e. Ensure that employment and classification actions proposed in management studies are certified by the appropriate personnel manager as being proper with regard to adherence to appropriate OMB, OST, and FAA personnel regulations.

15. BUDGET CONSIDERATIONS. PWS standards, workload estimates, and cost estimates must be consistent with budget guidance provided through the budget cycle covering the period of performance. Budget estimates should reflect ongoing requirements until the study is complete. Once the cost comparison decision is made budget submissions should reflect the impact of that decision.

a. The possible change in the mode of performance and other issues relating to an A-76 project should be timed to conform with the budget process as much as possible. This should include, but not be limited to:

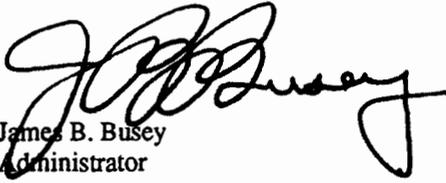
- (1) Potential and resulting actual FTE savings.
- (2) One-time implementation costs.
- (3) Transitional costs that may occur if a decision to contract is made.

b. The Office of Management Systems, Quality Improvement Branch, will provide status information and the results of studies to the Office of Management Planning, OST. This includes:

- (1) A list of current and planned A-76 and direct contracting projects,
- (2) The status of each project and information regarding scheduled milestone dates,
- (3) The potential FTE savings associated with each project, and
- (4) The results of completed projects and actual FTE savings.

c. Any information provided the Office of Budget concerning A-76 projects should be coordinated with the Office of Management Systems.

16. AUTHORITY TO CHANGE THIS ORDER. The Associate Administrator for Administration is authorized to issue changes to this order which do not affect policy or an assignment of responsibilities.



James B. Busey
Administrator

APPENDIX 1. A-76 PROJECT STATUS REPORT INSTRUCTIONS**Project Information (Type or print clearly)**

- (1) **Study ID #.** The number assigned by the agency that uniquely identifies a specific study. Study numbers shall be in the DOT-YR-FAA-000" format.
- (2) **Study Start Date.** The date the agency initiates the study.
- (3) **Agency.** Insert FAA.
- (4) **Organizational Unit.** An abbreviated name of the organizational unit under study. If the study involves more than one organizational unit, indicate the name of the organizational level having responsibility over all of the units involved (i.e., Aeronautical Center).
- (5) **City.** Actual city (not metropolitan region) where study is located. If there is more than one location in the study, enter the city with the largest number of FTE's.
- (6) **State.** Standard state abbreviation where study is located. If more than one State is included in the study, enter the State with the largest number of FTE's.
- (7) **Study Type.** Identify the type of study. The codes are as follows:
- A - Cost study of existing, in-house activity
 - B - Cost study to convert from contract to in-house
 - D - Direct to contract
 - E - Cost study of an expansion
 - R - Cost study of a new requirement
- (8) **Status Code.** Identify the current status of the study by using one of the following codes:
- P - In progress
 - F - Complete
- (9) **Project Officer.** The person assigned to an A-76 project as the principal point of contact responsible for the completion of the project.
- (10) **Telephone.** Telephone number of project officer.
- (11) **FTE's Studied.** The number of authorized FTE's within the function under review at the start of the management efficiency study.
- (12) **Study Activity.** Title of the function under study.

Savings and Milestone Information.

- (13) **PWS Scheduled Completion.** The date the performance work statement (PWS) of the function under study is scheduled for completion. If date changes explain in (15).
- (14) **PWS Actual Completion.** Date PWS is completed.
- (15) **PWS Comment.** Use this space to explain changes to PWS scheduled completion date in (13).
- (16) **Scheduled Solicitation Date.** The date the solicitation is scheduled for issue by the contracting officer. If this date changes explain in (18).

(17) **Actual Solicitation Date.** The issue date of the solicitation by the contracting officer.

(18) **Solicitation Comment.** Use this space to explain changes to scheduled solicitation date in (16).

(19) **Solicitation Type.** Identify the type of solicitation used to obtain contract bids or offers. Use one of the following codes:

S - Sealed Bid
N - Negotiated

(20) **Solicitation Kind.**

Indicate whether the competition for the contract has been limited to a specific class of bidders or offerors. Use one of the following codes:

A - Restrict to small business
B - Small Business Administration - 8(a)
N - National Industries for the Severely Handicapped (NISH)
O - Other mandatory sources
U - Unrestricted

(21) **Scheduled Initial Decision.** Date the initial decision is scheduled for announcement. In a sealed bid procurement, the initial decision is announced at bid opening. In a negotiated procurement, the initial decision is announced after the cost comparison is made between the in-house estimate and the most advantageous; i.e., lowest priced proposal. For details see Part IV, OMB Supplement to Circular A-76. If this date changes, provide an explanation in (23).

(22) **Actual Initial Decision.** Date of actual initial decision.

(23) **Comment.** Use this space to explain changes in (21).

(24) **Initial Decision Results.** The preliminary results of the cost comparison announced by the contracting officer when the bids or offers are compared. Use one of the following codes:

I - In-house
C - Contract

(25) **Number of Bids/Offer.** After contract award only, the number of commercial bids or offers received by the contracting officer in response to the solicitation.

(26) **Final Decision Date.** The date a contract was awarded in a formal advertised solicitation or the date the contractor was authorized to proceed on a conditional award contract in a negotiated solicitation. For in-house retentions, this is the date the contracting officer publishes an amendment to the solicitation canceling it.

(27) **Final Decision Result.** Identify the final result of the cost comparison study. Use one of the following codes:

I - In-house
C - Contract

(28) **Decision Rationale.** Identify the rationale for awarding a contract or retention in-house. The work shall either be performed in-house or by contractor, based on cost, or the work shall be performed in-house because no satisfactory commercial source was available (no bids/offers received or the pre-award survey determined no commercial sources were responsive or responsible). Enter one of the following codes:

C - Cost
N - No satisfactory commercial source

(29) **Original Cost.** After contract award only, cost of operating the function prior to the performance of the management efficiency study (in thousands), projected for the performance period.

(30) **MEO FTE's.** After contract award only, the number of FTE's to perform the work described in the PWS. This is the number of FTE's in the in-house bid.

(31) **In-House Cost.** After contract award only, the total annualized cost of in-house performance in thousands of dollars, rounded to the nearest thousand (total of Line 6 of the CCF), for the performance period.

(32) **Contract Price.** The total annualized cost of the contract in thousands of dollars, rounded to the nearest thousand (total of line 7 of the cost comparison form (CCF)).

(33) **Contract Administration Staffing.** The number of FTE's required to perform contract administration/quality assurance.

(34) **Cost of Contracting.** The total annualized cost of contracting in thousands of dollars, rounded to the nearest thousand (total of line 8 through 13 of the CCF).

(35) **FTE Savings.** For contract awards, the number of FTE's studied (11) minus contract administration staffing (33). For in-house retentions, the difference between the FTE's studied (11) and the MEO FTE's (30). An MEO increase of FTE's should be shown as a negative number using a minus sign.

(36) **Dollar Savings.** For contract awards, the total annualized cost difference in thousands of dollars, rounded to the nearest thousand, between the original Cost of Operation (29) and the Total Contract Costs (total of line 14 of the CCF. For in-house retentions, the total annualized cost difference in thousands of dollars, rounded to the nearest thousand, between the original Cost of Operation (29) and the In-house Cost (31). Comparisons shall be made for identical performance periods.

(37) **Notification Date.** The date that the cost comparison result is made public.

(38) **Total Cost of Project to Agency.** Estimated cost in thousands of developing the Management Efficiency Study, PWS, QASP, and associated staff time.

(39) **MEO/Contract Scheduled Start Date.** The date the contractor is scheduled to begin operation of the commercial activity, as reflected in the contractual documents, or the date the MEO is scheduled for implementation. If this date changes, provide an explanation in (41).

(40) **MEO/Contract Actual Start Date.** The date the contractor began operation of the commercial activity, as reflected in the contractual documents, or the date the MEO was implemented. This date should not change.

(41) **MEO/Contract Comment.** Use this space to explain changes in dates in (39).

Personnel Data

(42) **Permanent Transfers.** Number of permanent employees reassigned to positions within the Federal Government as of the start date of the contract/implementation of MEO.

(43) **Early Retirement.** Number of employees who took early retirement as of the start date of the contract/implementation of MEO.

(44) **Normal Retirement.** Number of employees who took normal retirement as of the start date of the contract/implementation of MEO.

(45) Permanent Separations. Number of permanent employees who were separated from Federal employment as of the start date of the contract/implementation of MEO.

(46) Temporary Separations. Number of temporary employees who were separated from Federal employment as of the start date of the contract/implementation of MEO.

(47) No. of Severances. Number of employees entitled to severance pay upon their separation from Federal employment as of the start date of the contract/implementation of MEO.

(48) Contractor Hires. Number of civilian employees (full-time or otherwise) hired by the contractor, or subcontractors, as of the start date of the contract.

(49) Appeals Filed. Were administrative appeals filed? Use Y or N.

(50) GAO Protest Filed. Was a protest(s) filed with GAO? Use Y or N.

(51) Performance Period (Months). In the case of contract award, identify the length, in months, of the contract (the first year plus all option years). If the function remains in-house, leave blank.

(52) Contractor Change. Indicate whether the contractor for the second or subsequent performance periods has changed from the original contractor.

Y - The contractor has changed.
N - The contractor has not changed.

(53) Cost Period 1. The actual in-house cost/contract cost for the first performance period.

(54) Cost Period 2. The actual in-house cost/contract cost for the second performance period.

(55) Cost Period 3. The actual in-house cost/contract cost for the third performance period.

(56) Cost Period 4. The actual in-house cost/contract cost for the fourth performance period.

(57) Cost Period 5. The actual in-house cost/contract cost for the fifth performance period.

Validation

(58) Reporting Official. The appropriate senior official (office head, service head, regional administrator or center director).

(59) Date. The date this report is signed.

(60) Signature.

A-76 Project Status Report	
Project Information	
1. Study ID#:	_____
2. Study Start Date:	_____
3. Agency:	F. A. A. _____
4. Organization Unit:	_____
5. City:	_____
6. State:	____
7. Study Type:	<input type="checkbox"/>
8. Status Code:	<input type="checkbox"/>
9. Project Officer:	_____
10. Telephone:	_____
11. FTE's Studied:	_____
12. Study Activity:	_____
Savings and Milestone Information	
13. PWS Scheduled Completion:	_____
14. PWS Actual Completion:	_____
15. PWS Comment:	_____
16. Scheduled Solicitation Date:	_____
17. Actual Solicitation Date:	_____
18. SOL Comment:	_____
19. Solicitation Type:	<input type="checkbox"/>
20. Solicitation Kind:	<input type="checkbox"/>
21. Scheduled Initial Decision:	_____
22. Actual Initial Decision:	_____
23. Comment:	_____
24. Initial Decision Results:	<input type="checkbox"/>
25. Number of Bids/Offers:*	_____
26. Final Decision Date:	_____
27. Final Decision Result:	<input type="checkbox"/>
28. Decision Rationale:	<input type="checkbox"/>
29. Original Cost:*	_____
30. MEO/FTE's:*	_____
31. In-House Cost:*	_____
32. Contract Price:	_____
33. Contract Admin Staffing:	_____
34. Cost of Contracting:	_____
35. FTE Savings:	_____
36. Dollar Savings:	_____
37. Notification Date:	_____
38. Total Cost of Project to Agency:	_____
39. MEO/Cont Sched. Start Date:	_____
40. MEO/Contr. Actual Start Date:	_____
41. MEO Contract Comment:	_____
* AFTER CONTRACT AWARD ONLY	
Personal Data	
42. Permanent Transfers:	_____
43. Early Retirement:	_____
44. Normal Retirement:	_____
45. Permanent Separations:	_____
46. Temporary Separations:	_____
47. No. of Severances:	_____
48. Contractor Hires:	_____
49. Appeals Filed:	<input type="checkbox"/>
50. GAO Protest Filed:	_____
51. Performance Period (Months):	_____
52. Contractor Change:	<input type="checkbox"/>
53. Cost Period 1:	_____
54. Cost Period 2:	_____
55. Cost Period 3:	_____
56. Cost Period 4:	_____
57. Cost Period 5:	_____
Validation	
58. Reporting Official:	_____
59. Date:	_____
60. Signature: _____	

A-76 Project Status Report	
Project Information	
1. Study ID#:	<u>DOT-88-FAA-183</u>
2. Study Start Date:	<u>03-30-88</u>
3. Agency:	<u>FAA</u>
4. Organization Unit:	<u>AAC</u>
5. City:	<u>OKLAHOMA CITY</u>
6. State:	<u>OK</u>
7. Study Type:	<u>A</u>
8. Status Code:	<u>E</u>
9. Project Officer:	<u>JOHN DOE</u>
10. Telephone:	<u>FIS-747-3333</u>
11. FTE's Studied:	<u>5.0</u>
12. Study Activity:	<u>VEHICLE MAINTENANCE</u>
Savings and Milestone Information	
13. PWS Scheduled Completion:	<u>08-30-88</u>
14. PWS Actual Completion:	<u>01-30-89</u>
15. PWS Comment:	<u>ADDITIONAL TIME TO STUDY NEW VEHICLE REQUIREMENTS</u>
16. Scheduled Solicitation Date:	<u>06-30-89</u>
17. Actual Solicitation Date:	<u>06-30-89</u>
18. SOL Comment:	
19. Solicitation Type:	<u>S</u>
20. Solicitation Kind:	<u>B</u>
21. Scheduled Initial Decision:	<u>09-30-89</u>
22. Actual Initial Decision:	<u>09-30-89</u>
23. Comment:	
24. Initial Decision Results:	<u>C</u>
25. Number of Bids/Offers*:	<u>4</u>
26. Final Decision Date:	
27. Final Decision Result:	<u>C</u>
28. Decision Rationale:	<u>C</u>
29. Original Cost*:	<u>2000</u>
30. MEO/FTE's*:	<u>4.0</u>
31. In-House Cost*:	<u>1800</u>
32. Contract Price:	<u>1500</u>
33. Contract Admin Staffing:	<u>2</u>
34. Cost of Contracting:	<u>50</u>
35. FTE Savings:	<u>4.8</u>
36. Dollar Savings:	<u>450</u>
37. Notification Date:	<u>09-30-89</u>
38. Total Cost of Project to Agency:	<u>200</u>
39. MEO/Cont Sched. Start Date:	<u>12-30-89</u>
40. MEO/Contr. Actual Start Date:	<u>01-30-90</u>
41. MEO Contract Comment:	<u>CONVERSION DELAYED BY RELOCATION OF FACILITY</u>
* AFTER CONTRACT AWARD ONLY	
Personal Data	
42. Permanent Transfers:	<u>1.0</u>
43. Early Retirement:	<u>1.0</u>
44. Normal Retirement:	<u>2</u>
45. Permanent Separations:	<u>26</u>
46. Temporary Separations:	
47. No. of Severances:	<u>26</u>
48. Contractor Hires:	
49. Appeals Filed:	<u>0</u>
50. GAO Protest Filed:	
51. Performance Period (Months):	<u>14.8</u>
52. Contractor Change:	
53. Cost Period 1:	<u>1500</u>
54. Cost Period 2:	
55. Cost Period 3:	
56. Cost Period 4:	
57. Cost Period 5:	
Validation	
58. Reporting Official:	<u>JOHN DOE</u>
59. Date:	<u>12-30-91</u>
60. Signature:	<u>John Doe</u>



U.S. Department of
Transportation
Office of the Secretary
of Transportation

2510.12C
Appendix 2
2/11/91

ORDER

DOT 4400.2D

9-9-88

Subject: PERFORMANCE OF COMMERCIAL ACTIVITIES

1. PURPOSE. This Order provides Department-wide instructions for implementing Executive Order No. 12615, Performance of Commercial Activities, dated November 19, 1987, hereafter the Executive Order; the Office of Management and Budget (OMB) Circular A-76, Performance of Commercial Activities, dated August 4, 1983, hereafter the OMB Circular; and the Supplement to the OMB Circular, hereafter the OMB Supplement. These instructions will assure that appropriate products and services needed by the Department are being obtained most economically.
2. CANCELLATION. DOT 4400.2C, Performance of Commercial Activities, dated 2-24-84.
3. REFERENCES.
 - a. Executive Order No. 12615, "Performance of Commercial Activities," dated November 19, 1987.
 - b. OMB Circular A-76, "Performance of Commercial Activities," dated August 4, 1983.
 - c. Supplement to OMB Circular A-76 Parts I-IV, dated August 1983.
 - d. OMB Circular A-76, Transmittal Memoranda No. 1-7 (No. 7 dated August 8, 1988).
4. BACKGROUND.
 - a. The OMB Circular establishes the policy that the Government will rely on private sources to supply the products and services it needs whenever it is economical to do so. The Supplement to the OMB Circular provides procedures, including cost comparison procedures, for determining whether commercial activities should be performed under contract by a commercial source or in-house using Government facilities and personnel. These techniques also provide an excellent mechanism for improving productivity.
 - b. The key elements of the A-76 process include:
 - (1) Inventory Lists of commercial activities.
 - (2) Notification to all directly affected and interested parties of inventory lists, schedules of reviews and decisions resulting from cost comparisons.

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- (3) Management Efficiency Studies conducted prior to a cost comparison of an existing in-house activity to determine the most efficient and effective organization for performance of the activity.
 - (4) Performance Work Statements to be used in preparing cost estimates of in-house performance and in obtaining bids or proposals from private industry to establish commercial source prices. Focus should be on "essential" elements, eliminating unnecessary functions.
 - (5) Reviews of activities on the inventory lists, including cost comparisons of in-house and commercial source performance to determine:
 - (a) if existing in-house activities should be converted to contract;
 - (b) if existing contracted activities should be converted to in-house performance when it appears that contractor prices would be unreasonable; and
 - (c) if new requirements or proposed expansions of existing in-house activities should be performed by contract or in-house.
 - (6) Decisions to convert existing in-house commercial activities directly to contract without a formal cost comparison in limited circumstances and where the basis for conversion can be documented in terms of economy to the Government, furtherance of preferential procurement programs, or furtherance of the mission objectives of the agency.
 - (7) Appeals Procedures by which directly affected parties may appeal cost comparison decisions.
- c. For the purposes of this Order, a commercial activity, as defined in the OMB Circular, is one which is operated by a Federal executive agency and which provides a product or service which could be obtained from a commercial source. A commercial activity is not a Governmental function. A commercial activity also may be part of an organization or a type of work that is separable from other functions or activities and is suitable for performance by contract.

5. POLICY. Experience has shown that the A-76 program is an effective management tool that provides opportunities to reduce the costs and increase the efficiency of operations. Therefore, it is the Department's policy that Secretarial Officers and Heads of Operating Administrations shall incorporate the requirements of the A-76 program into their resource management effort.
6. RESPONSIBILITIES.
 - a. The Assistant Secretary for Administration shall:
 - (1) Establish implementation policy for the A-76 program.
 - (2) Evaluate the implementation and effectiveness of the program.
 - (3) Provide program guidance to the Secretarial Officers and Heads of Operating Administrations.
 - (4) Be the central point of contact with OMB, other Government agencies, and the private sector in providing information and reports on inventories, review schedules, results of cost comparisons and cost comparison data for completed studies.
 - (5) Be responsible for implementing the program in the Office of the Secretary (OST).
 - b. The Director, Office of Management Planning (M-20), will provide the necessary program support to carry out the responsibilities of the Assistant Secretary for Administration.
 - c. Secretarial Officers and Heads of Operating Administrations shall:
 - (1) Designate an official to have responsibility for implementation of the OMB Circular. This official shall be at the Deputy Assistant Secretary level in OST and the Associate Administrator level in the Operating Administrations (Resource Director/Comptroller for the U.S. Coast Guard (USCG)).
 - (2) Establish a central point of contact to carry out implementation and to work with the Office of the Assistant Secretary for Administration.
 - (3) Issue the minimum internal instructions necessary for implementing the provisions of this Order, the Executive Order and the OMB Circular.
 - (4) Compile and maintain inventories of commercial activities, expansions and new requirements.

- (5) Prepare schedules for conducting A-76 reviews of all activities listed in the inventories.
- (6) Conduct the necessary A-76 reviews, including cost comparisons.
- (7) Notify affected employees and their representatives, as early as possible, of an impending review and keep them informed of its progress.
- (8) Conduct the appeals procedure to resolve questions from directly affected parties relating to review decisions.
- (9) Exert maximum effort to find suitable employment for any displaced employee including participation in the DOT Priority Placement Program.
- (10) Prepare quarterly reports on implementation of the OMB Circular in accordance with paragraph 8 of this Order. Provide interim reports and other information as required by the Assistant Secretary for Administration.

d. In addition to the responsibilities listed in paragraph 6.c. above, the Commandant of the Coast Guard, or the designated official responsible for implementation of the OMB Circular within the Coast Guard, shall prepare and submit to Congress those reports mandated by Section 205 of the Coast Guard Authorization Act of 1989 (Public Law 101-225), and detailed below in paragraph 7.k.

7. PROCEDURES.

a. Inventory Lists and Review Schedules

- (1) Secretarial Officers and Heads of Operating Administrations shall:
 - (a) Reexamine their operations and functions to assure that their inventory list of existing in-house commercial activities is current and complete, and prepare an updated inventory, using the guidelines in the OMB Circular.
 - (b) Establish review schedules for each of the activities in the updated inventory. Activities added to the inventory list shall be reviewed within two years from the time they are added to the list.

Vertical line denotes change.

- (c) Prepare an inventory list of new requirements and expansions. This inventory shall identify activities that have been funded and activities for which funds have been requested from Congress. Review schedules shall be provided for those new requirements and expansions that have already been funded. Schedules should be set to match the budget cycle and coordinated with the appropriate budget office.
 - (2) Commercial activities which may not be competed with the private sector (i.e., where legislative restrictions exist or where there have been exemptions for any reason) will be included on the inventory list and scheduled for management efficiency study.
 - (3) Updated inventories of in-house commercial activities, new requirements and expansions shall be submitted to the Assistant Secretary for Administration. These inventories shall be updated annually and submitted not later than April 29 each year.
 - (4) The Assistant Secretary for Administration shall prepare a consolidated Department-wide review schedule of cost comparisons for submission to OMB. OMB will publish a Government-wide consolidated schedule annually in the Commerce Business Daily and the Federal Register for the information of prospective contractors, all potentially affected employees and their representative organizations and other interested parties.
 - (5) When a cost comparison schedule is changed, or if a new schedule is established for an activity not previously reported, the schedule shall be submitted to the Assistant Secretary for Administration 60 days before the review is to start. This will allow sufficient time for OMB notification.
- b. Approval and Coordination of Reviews, Including Cost Comparisons.
- (1) General. Decisions resulting from reviews, including cost comparisons, shall be approved by senior officials. In the Operating Administrations, these officials shall be appointed by the Associate Administrator (Resource Director/Comptroller for USCG) responsible for implementing the A-76 program. The Deputy Assistant Secretary for Administration shall be the approving official in OST.

- (2) Scheduling Cost Comparisons for Existing Contracted Activities, New Requirements and Expansions. A cost comparison of an existing contracted commercial activity, a new requirement or an expansion shall not be scheduled without prior coordination with the Director, Office of Acquisition and Grant Management (M-60).
- (a) Existing Contracts. Commercial activities performed under contract will normally continue unless there is reason to believe that prices have become unreasonable. If commercial prices are considered unreasonable, a written explanation must be provided to justify a cost comparison.
- (b) New Requirements. A newly established need for a commercial product or service should normally be performed by contract, unless it meets the following criteria for in-house performance:
- 1 national defense;
 - 2 no commercial source available;
 - 3 program disruption; or
 - 4 there is reason to believe that commercial prices may be unreasonable. In this case, an informal cost review must be conducted. If this informal review shows that it is likely that the cost to perform the work in-house would be less than the cost of contract performance, then a full cost study is required.
- (c) Expansions. In cases where expansion of a Government commercial activity is anticipated, a cost study of the entire activity, including the proposed expansion, is required. No investments in these facilities and equipment should be made prior to conducting such a cost study. Such an investment would presume the facilities could be used as Government-owned contractor operated facilities, without a thorough investigation of the potential contractors' in-house capacity to perform the required work. Exceptions should be well

documented and approved by the Associate Administrator (Resource Director/Comptroller for USCG) responsible for implementing the A-76 program.

(3) Budget Considerations.

- (a) Cost comparisons of existing contracts, new requirements and expansions must be planned and conducted in coordination with the annual budget review to assure that the necessary resources will be available when needed to implement review decisions. When a review cannot be completed prior to an upcoming budget submission, budgeting should be for the alternative which is likely to be less costly, subject to adjustment after the analysis is completed.
- (b) Conversion to in-house performance from an existing contract, a new requirement or expansion may also require substantial new investment by the Government in facilities and equipment. All preliminary or full cost studies must include, in the in-house cost estimate, the computed cost of capital on those additional and currently owned assets which would be used solely by the in-house operation and which would not be provided to a contractor (see Part IV of the OMB Supplement, page IV-44).

c. Decision to Perform an Activity In-house Because No Satisfactory Source Available or Program Disruption.

- (1) Decisions to continue to perform a commercial activity in-house because no commercial source is capable of providing the needed product or service must be coordinated with the Director, Office of Acquisition and Grant Management (M-60). A written justification showing the effort made to find commercial sources and the specifications and requirements in the solicitation must be submitted (see paragraph 8.a.(1) of the OMB Circular).
- (2) Decisions to continue to perform a commercial activity in-house because use of a contract would cause unacceptable delay or disruption of an essential

program, must be approved by the Associate Administrator (Resource Director/Comptroller for USCG) responsible for implementing the A-76 program or a designee. In addition, the decision must be coordinated with the Assistant Secretary for Administration. A written explanation must be provided to the Assistant Secretary showing the specific impact of using a commercial source on the mission in terms of cost and performance. In OST the Deputy Assistant Secretary for Administration will approve such decisions.

d. Management Efficiency Studies (Certification of Most Efficient and Effective Organization).

- (1) The Associate Administrator (Resource Director/Comptroller for USCG) responsible for implementing the A-76 program, or a designated senior official, shall certify prior to the pricing out of the in-house cost estimate, that the in-house cost estimate will be based on the most efficient and cost effective operation practicable. In OST the Deputy Assistant Secretary for Administration will make the certification.
- (2) The performance of management efficiency studies shall be assigned to or coordinated with existing management analysis organizations. Operating Administrations may contact M-20 for assistance in conducting management efficiency studies (see Part III, of the OMB Supplement).

e. Converting In-House Commercial Activities To Contract.

(1) Cost Studies.

- (a) Estimates of in-house and contractor costs for the commercial activity must be included for every review. Part IV of the OMB Supplement for the cost comparison process must be followed except that conversions without formal cost comparisons may be made where:

- 1 the conversion is made to a non-competitive source under a preferential procurement program;
- 2 ten or fewer full-time equivalents (FTE's) are involved; or

- 3 the cost comparison is waived by the official responsible for the A-76 program (Part I, Chapter 2, paragraph A, of the OMB Supplement).
- (b) However, when formal cost comparisons are not made, estimated current in-house cost and contract price must be subjected to an informal cost comparison. The estimated in-house cost for an informal comparison can be based upon available data and management judgments rather than the formal comparison process of Part IV of the OMB Supplement. The documentation need not be lengthy, but should be sufficient to explain to directly affected employees why the activity was converted to contract without a formal cost comparison.
- (c) Contract conversions as a result of informal comparisons must be at contract prices that are less than the estimated current in-house cost. When contract prices exceed the estimate of current in-house cost, the Contracting Officer shall cancel the solicitation and a formal cost comparison shall be conducted.
- (d) For formal cost comparisons, the current cost of in-house performance may be used only if the current organization is certified as the most efficient.
- (2) If the contract prices are to be obtained by competitive negotiation or sealed bids, the informal cost comparison method shall not be used unless there is substantial evidence that a competitive market for the service exists and that contract prices will be less than the estimated current in-house cost. Each synopsis and solicitation issued under the informal cost comparison method will include a notice that the solicitation may not culminate in a contract award when all offers from responsible contractors exceed the estimated in-house cost.
- (3) Plans to convert in-house activities to contract or to contract for an expansion under a preferential procurement program, with an informal cost comparison, shall be coordinated with the Associate Administrator (Resource Director/Comptroller for USCG) responsible for implementing the A-76 program, or a designated senior official.

f. Independent Review.

- (1) Operating Administrations shall assign organizations with accounting or financial management capability the responsibility for conducting the independent reviews of cost comparisons (see Part I, Chapter 2, paragraph 4 of the OMB Supplement). In OST, the Director, Office of Financial Management (M-80), shall have this responsibility. Operating Administrations may contact M-80 for advice in conducting independent reviews.
- (2) The independent review should be of those costs which can be determined prior to bid opening, including costs to the Government in the event of contract performance. This shall be done prior to submitting the cost comparison form and supporting data to the contracting officer. Up to 30 calendar days may be allowed for conducting the independent review. Elements of the cost comparison form calculated after bid opening, which are not based on standard cost factors, should also be subject to an independent review.

g. Inflation Guidance. This is provided periodically from OMB. See Transmittal Memorandum No. 6, dated March 4, 1988, for guidance through 1993.

h. Standard Cost Factors. Standard cost factors shall be used as prescribed in Part IV to the OMB Supplement, the "Cost Comparison Handbook" and as supplemented by Secretarial Officers and Heads of Operating Administrations for particular operations. Any variations in the use of standard cost factors from one cost comparison case to another must be fully explained in writing, and included in the cost comparison documentation and approved by the Associate Administrator (Resource Director/Comptroller for USCG) responsible for implementing the A-76 program, or a designated senior official. The Director, Office of Acquisition and Grant Management (M-60), will approve such variations in cost factors for studies conducted in OST.

i. Procurement Procedures For Commercial Activities. Procurement procedures for commercial activities are contained in the Federal Acquisition Regulation (FAR), Subpart 7.3 - Contractor versus Government Performance. Section 7.305 states those solicitation provisions which must be included: FAR 52.207-1, Notice of Cost Comparison (Sealed Bid); or FAR 52.207-2, Notice of Cost

Comparison (Negotiated), and FAR 52.207-3, Right of First Refusal of Employment. It should be noted that Federal Acquisition Change (FAC) 84-25 (July 1, 1987) requires that the Right of First Refusal clause be included in all solicitations covering work currently being performed by the Government and in all contracts that result from the solicitations whether or not a cost comparison was performed. The Transportation Acquisition Regulation (TAR), section 1207.3, supplements the FAR on this subject and requires the use of these additional solicitation provisions in certain situations: TAR 1252.207-70, Implementation of Right of First Refusal of Employment, and TAR 1252.207-71, Financial and Technical Ability. The FAR Council is currently considering cases on these issues and may eventually include similar provisions in the FAR, in which case the TAR provisions would be superseded.

j. Relationship to the Budget.

- (1) In general, the performance work statement standards, workload estimates and resulting cost estimates must be consistent with Department budget guidance covering the period of performance. This ensures that economic assumptions and guidance developed for the Department are used when developing the cost study. Cost estimates for expansions or conversions of existing contracts to in-house performance must also be prepared in accordance with budget guidance. This may require additional work since these options may not be in the Department's projected budget. The budget implications must also be considered for the overhead organizations. The key consideration is whether the budgets of these organizations would be revised if the mode of operation of the function under study is changed.
- (2) Dollar and personnel savings associated with projected cost comparison decisions must be clearly identified in budget estimates transmitted to the Office of the Secretary, in accordance with guidance issued by the Assistant Secretary for Budget and Programs.

k. Limitations on Contracting of Coast Guard Services.

- (1) Public Law 101-225 states that notwithstanding any other provision of law, an officer or employee of the United States may not enter into a contract for procurement of performance of any function being performed by Coast Guard personnel as of January 1, 1989, before--
 - (a) a study has been performed by the Secretary of Transportation under the OMB Circular A-76 with respect to that procurement;

- (b) the Secretary of Transportation has performed a study, in addition to the study required by paragraph (a) of this subsection, to determine the impact of that procurement on the multimission capabilities of the Coast Guard; and
 - (c) copies of the studies required by paragraphs (a) and (b) of this subsection are submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.
- (2) The Commandant of the Coast Guard, or the official designated in paragraph 6.d. to complete the above studies, shall provide a copy of the required studies to the Assistant Secretary for Administration for approval prior to submission to the Congressional committees.
8. REPORTING REQUIREMENTS. Secretarial Officers and Heads of Operating Administrations shall submit to the Assistant Secretary for Administration quarterly reports on the progress of implementing the Executive Order, in accordance with instructions for the A-76 management information system provided by OMB. These reports shall be submitted by January 10, April 10, July 10 and October 10. The Assistant Secretary for Administration will prepare consolidated reports for submission to OMB.
9. APPEAL PROCEDURE.
- a. Purpose.
 - (1) The appeal procedure provides an opportunity for directly affected parties to review the basis for decisions (a) resulting from cost comparisons performed under the OMB Circular and Part IV of the OMB Supplement and (b) to convert an in-house commercial activity to contract performance with an informal cost comparison in accordance with criteria in paragraph 7.e.(1) of this Order. The procedure also permits directly affected parties to submit questions on these decisions for fair and impartial adjudication.
 - (2) The appeal procedure does not apply to questions concerning award to one contractor in preference to another; or to Government management decisions, including decisions made as a result of management efficiency studies.
 - (3) The appeal procedure must be independent and objective and provide the appellant with a reply within 30 calendar days of receipt of the appeal. When more than

Vertical line denotes change.

one appeal is received, the replies to the appellant may be provided within 30 days from the end of the appeal period.

- b. Definition. Directly affected parties are Federal employees and their representative organizations impacted by a cost comparison decision or a decision to convert to contract with an informal cost comparison; and the bidders and offerors on the solicitation issued in connection with a cost comparison.
- c. Request from Affected Parties for Documentation Supporting Cost Comparison Decisions. All documentation supporting the decision shall be made available to directly affected parties upon request when the initial decision is announced. If the documentation is not available at that time, the appeal period shall be extended the number of days equal to the delay.
 - (1) If the decision is to contract out, the details and documentation shall include the in-house cost estimate with the detailed supporting data, the completed cost comparison form and the name of the successful bidder or offeror.
 - (2) If the decision is to perform in-house, the details and documentation shall include the in-house cost estimate with the detailed supporting data, the completed cost comparison form and the price of the bidder whose proposal would have been most advantageous to the Government.
- d. Eligible Appeals. To be considered eligible for review, appeals must:
 - (1) Be received in writing within 15 working days after the date the supporting documentation is made available to the directly affected party. Mailed appeals must be postmarked no later than the last day of the appeal period to be eligible for consideration. The appeal period may be extended by the contracting officer to a maximum of 30 working days if the cost comparison is particularly complex.
 - (2) Address specific line items on the Cost Comparison Form (Part IV) or specific points in the explanation for converting to contract and set forth the rationale for questioning those items.
 - (3) Demonstrate that the result of the appeal may change the decision.
- e. Appeals Official.
 - (1) The appeals official shall be at a higher organizational level than the official who approved the cost comparison decision being appealed.

- (2) Departmental elements shall designate appeals officials at appropriate organizational levels. In OST, the appeals official shall be the Assistant Secretary for Administration.

f. Nature of the review. The appeals official shall:

- (1) Conduct an independent and objective review of the decision and the written appeal received from affected parties.
- (2) Provide the directly affected parties that submitted appeals with an opportunity for an oral presentation for the purpose of elaborating on the issues contained in the written appeal.
- (3) Resolve the appeal questions fairly and equitably with regard to all directly affected parties.

g. Review of the Appeal. In making a determination, the appeals official shall:

- (1) Review all the material upon which the decision was made including the cost comparison documentation, solicitation requesting contractor bids, statement of work and any other related documents or explanations.
- (2) Review the reasons given by the directly affected party in the appeals letter for questioning the results of the decision.
- (3) Review any additional written material supporting the appeal that has been submitted by the affected party during the appeal period.
- (4) Consider the directly affected party's oral presentation of appeal questions previously submitted in writing.
- (5) Obtain and review the Government's position on the appeal questions from the organization that conducted the cost comparison or prepared the explanation for converting to contract.
- (6) Consider any further information which in the discretion of the appeals official is obtained by request, investigation or research in order to conduct a fair and full review of the appeal questions.
- (7) Prepare findings for each of the appeal questions.

h. Final Determination.

- (1) The appeals official shall deliver a written reply to the official who approved the decision package. The written reply shall include, but need not be limited to:

- (a) The appeals official's final determination on the appeal.
 - (b) The facts and findings for each of the appeal questions upon which the final determination is based, including any pertinent explanation or rationale for the final determination.
 - (c) The relief, if any, to which the directly affected party is entitled and directions on how such relief is to be accomplished.
- (2) When the appeals official is unable to make a final determination based on the facts and findings for each of the appeal questions, the facts and findings shall be delivered to the official who approved the decision package. The approving official shall revise the decision package to comply with the appeal official's findings for each of the appeal questions, and shall make the final determination.
 - (3) The decision of the appeals official shall be final, and there shall be no further appeal outside the Department, nor any judicial review.
 - (4) The appellants shall be notified of the final determination, and shall be provided with the revised decision package and the appeal official's findings.
- i. As soon as an appeal is received in OST, a copy should be sent to the Office of Management Planning (M-20).

FOR THE SECRETARY OF TRANSPORTATION:



Jon H. Seymour
Assistant Secretary
for Administration

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